

he did not warn Lambert was that he did not see it himself; and that his not seeing it was an "overlook."

The city corporation was also properly found liable. The condition of affairs was perfectly safe up to the time when the city corporation, for its own purposes, threw a wire across near to the pole, and created a situation of danger for all persons mounting the pole and doing certain of the company's necessary work—knowing that it was to be expected that such work would be done.

Assuming that the workman's rights must be limited to those of the company, and that he must be barred if the company could not sue, the company was not prevented from suing by reason of its contract to indemnify the corporation against any action. The city corporation was made liable in this action not by reason of anything done or left undone in this action, but by reason of the city corporation's own negligence in changing a safe arrangement into an unsafe one. This case did not come within the indemnity contract, and the city corporation had no answer against the claim of the plaintiff.

The same considerations applied to the claim of the city corporation against the company.

The appeals should be dismissed with costs.

LENNOX, J., was of the same opinion, for reasons stated in writing.

MASTEN, J., concurred.

MEREDITH, C.J.C.P., dissented, for reasons stated in writing.

*Appeals dismissed; MEREDITH, C.J.C.P., dissenting.*

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SECOND DIVISIONAL COURT.

MARCH 17TH, 1916.

RE LEE AND LAKE ERIE AND NORTHERN R.W. CO.

*Railway — Expropriation of Land — Dominion Railway Act — Compensation — Award — Appeal — Reduction of Amount Allowed for Severance — Costs.*

Appeal by the railway company from an award of arbitrators, under the Dominion Railway Act, fixing the compensation to be paid to a land-owner for land taken for the railway and injurious affection of the remaining lands of the owner, the claimant.