

Had I been called upon to consider the question of negligence, it seems to me doubtful that, even if the defendants were entitled to use the whistle in its present position in the management of their works, that would justify them in using it, as on this occasion, on the mere possibility that some person might be making an unauthorized use of the water. I have not searched for authority on this point, but see *Stott and Wife v. G.T.R. Co.*, 21 C.P. 347, *supra*.

The result is I find all the issues for the plaintiff, and assess his damages at \$125 (the amount agreed upon by consent in case I should find for the plaintiff).

And I order judgment to be entered accordingly for that sum, with costs, after the second day of the next April sitting of the court.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.]

[Feb. 20.

ATTORNEY-GENERAL OF CANADA *v.* CITY OF TORONTO.

Municipal corporation—Water rates—Discount by prompt payment—Property exempt from municipal taxation—Discrimination as to—R.S.O. (1887), c. 184, s. 480, s-s. 3; c. 192, ss. 19, 29.

By R.S.O. (1887), c. 184, s. 480, s-s. 3 (Municipal Institutions Act), it is the duty of a municipal corporation which has constructed waterworks to supply water to all buildings or land along the line of any supply pipe on request of the owner or occupant thereof. By c. 192, s. 19 (Municipal Waterworks Act) the corporation has authority to regulate the distribution and use of water and fix the process and time of payment therefor, and by s. 20 the corporation may pass by-laws, etc., for allowing a discount for prepayment.

Pursuant to these powers, the corporation of the city of Toronto passed a by-law allowing a discount on all water rates paid in the first month of the quarter for which they should be due, but the same was not to apply to government or other institutions which are exempt from city taxes. A tender was made to the city of the amount assessed on property of the Dominion Government, less the discount allowed by the by-law, which was refused, and the whole amount having been paid under protest an action was brought against the city for the rebate.

Held, reversing the decision of the Court of Appeal (18 A.R. 622), and that of FERGUSON, J., at the trial (20 O.R. 19), PATTERSON, J., dissenting, that the legislature intended and enacted that the rate for water supplied by the city should be an equal rate charged upon all consumers alike, and the city corporation had no power to impose a greater rate for water supplied to a consumer who is not subject to civic taxation than is imposed on consumers who are; therefore the by-law was *ultra vires* in so far as it makes a distinction between two classes of consumers.

Per PATTERSON, J.: The imposition of water rates is not a tax, and there