

Sir George Gibbons, K.C., and V. H. Hattin, for the appellant.
I. F. Hellmuth, K.C., and P. Kerwin, for the defendants,
respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that the trial Judge had found that the respondents' engineer was negligent in not having a covering placed over the place where the explosives were set and in not taking proper steps to remove the crowd from the danger area, or to warn them of the danger. These findings of the trial Judge were supported by the evidence; and the case must be dealt with on the hypothesis that the appellant's injuries were caused by the negligence of the engineer.

The appellant was in no sense an employee of the respondents, and occupied no different position with regard to the work that was being done than a member of the municipal council would have occupied if there had been no Board of Commissioners, and the work was being done under the direction of the council.

It was clear, upon the evidence, that what the members of the Board did was merely to approve of the recommendation of the engineer that the dam should be blown up, leaving entirely to him the selection of the means by which that should be accomplished and the carrying out of the work. The engineer was an officer of the respondents, and it was his duty as such, under the provisions of the by-law by which he was appointed, to carry out the directions of the Board as to matters which, under the provisions of the by-law by which it was constituted, were committed to its charge. He having been guilty of negligence in the performance of those duties, the respondents were answerable for the consequences of that negligence.

The maxim "*volenti non fit injuria*" has no application where there is not a full appreciation of the risk that is being run.

The learned Chief Justice said that he knew of no reason why a member of a municipal council, which has directed work to be done by its engineer, and who (the member), whether from curiosity or any other motive, is present when the work is being done, and is injured owing to the negligence or want of skill of the engineer in doing it, may not recover from the corporation damages for the injuries he has sustained; and, if he may, there is no reason why a member of a Board to which the council has delegated the performance of its duties may not, in the like circumstances, recover.

The doctrine of common employment could have no application, because the appellant was not an employee of the respondents.

It was argued that the appellant, having undertaken the duty