dicate that any partnership existed; and the defendants, having no right of control, were not jointly liable with the company, nor in any way liable, for the death of the plaintiff's son.

Lyon v. *Knowles* (1863), 3 B. & S. 556, 560 followed.

Flynn v. *Toronto Industrial Exhibition Association* (1905), 9 O.L.R. 582, and *Inder maur* v. *Dames* (1866-7), L.R. 1 C.P. 274, L.R. 2 C.P. 311, distinguished.

J. L. Counsell, for defendants.   *J. W. Nesbitt*, K.C., for plaintiffs.

Riddell, J.]   Rex *v.* Colahan.   [April 6.

Criminal law—Habeas corpus—Imprisonment in default of payment of fine and costs—Tender to deputy keeper of gaol—Reasonable time—Rule of prison as to hour of receipt of fine—Effect of—Discharge of prisoner.

A warrant of commitment commanded the keeper of a common gaol to receive the defendant into his custody in the common gaol, there to imprison him 'or 30 days unless the amount of a fine and costs were sooner paid to the keeper. The defendant was apprehended under this warrant and received by the gaoler on the 12th March. His agent, on the 14th March, at 10 minutes before 8 o'clock in the afternoon, tendered the proper amount of the fine and costs to the person in charge, the deputy keeper, who refused to receive the money, on the ground that there was a rule of the gaol that no person would or could be released, on payment of his fine after 5 o'clock in the forenoon, until the next morning:—

Held, that there was no power, statutory or common law, to make such a rule, and that the tender having been made at a reasonable time and to the proper person, the prisoner should have been released; and having been improperly detained after the tender, he was entitled to be discharged upon habeas corpus.

J. B. Mackenzie, for defendant.   *T. L. Monahan*, for Crown.

Meredith, C.J.C.P., MacMahon, J., Teetzel, J.]   [May 7.

RE RICKEY AND TOWNSHIP OF MARLBOROUGH.

Municipal Act—By-law—Publication—"Three successive weeks" —Non-compliance—Incurable as irregularity.

The publication of a proposed by-law in a paper "each week