

of which of these two persons is liable for his negligence must be decided by ascertaining which of them was exercising control over him at the time of the negligent act or omission, and if, in an action for damages against the alleged master, there is any evidence of exercise of control the case must go to the jury. In this case, where the defendants had hired from another company a horse and waggon and driver at a certain rate per day, it was held by the majority of the Court that there was some evidence from which exercise of control might be inferred.

Judgment of a Divisional Court affirmed, BURTON, C.J.O., and MACLENNAN, J.A., dissenting.

A Divisional Court in ordering a new trial in an action for damages against the alleged master on the plaintiff's application may properly add as a party defendant a person against whom relief is then for the first time claimed in the alternative.

Judgment of a Divisional Court affirmed.

Kitchie, Q.C., for the appellants the Consolidated Plate Glass Co. *Shepley*, Q.C., for the appellants the Cobban Manufacturing Co. *McCullough* and *Lobb* for the respondent.

From Rose, J.] ATTORNEY-GENERAL v. CAMERON. [Jan. 24.
Revenue—Succession Duty Act—Forum—55 Vict., c. 6 (O.), R.S.C., c. 24.

When the Provincial Treasurer and the parties interested do not agree as to the succession duty payable the question must be settled by the tribunal appointed by the Act, namely, the Surrogate Registrar, with the right of appeal given by the Act. The High Court has no jurisdiction to decide the question in a stated case. The Court of Appeal refused therefore to entertain an appeal from the judgment of ROSE, J., 27 O.R. 380 and 28 O.R. 571.

Armour, Q.C., for appellants. *Aylesworth*, Q.C., for respondent.

From Rose, J.] COCKBURN v. IMPERIAL LUMBER COMPANY. [Jan. 24.
Water and water courses—Timber—Saw logs driving Act—R.S.O. (1887) c. 121—Arbitration and award.

When a person floating logs down a stream fails to break jams of such logs, as directed by section 3 of The Saw logs driving Act, another person whose logs are obstructed by the jam has no right of action for damages but is limited to the remedy given by the Act, namely, the breaking of the jam at the expense of the person whose logs have formed it. When an arbitrator awards one sum in respect of matters, some of which are within and some without his jurisdiction, the award must be set aside.

Judgment of ROSE, J., reversed.

Aylesworth, Q.C., for appellants. *H. D. Gamble*, and *H. L. Dunn* for respondents.