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MCGREGOR v. TOWNSHIP OF HARWICH.

[March 22.]

Municipal corporation—Negligence—Obstruction of road—Statutory officer—Liability for acts of.

M. and his wife were driving along a public highway when the carriage came on a lot of gravel piled on the road and was upset, throwing Mrs. M. out and seriously injuring her. In an action against the municipal corporation for damages, it was proved that statutory labour had been performed on the road where the accident occurred, and that gravel had been hauled to and dumped there for the purpose. The work was done under the superintendence of the pathmaster, who was appointed by the council, under the Municipal Act. There was no direct evidence as to who dumped the gravel which caused the accident, but witnesses connected with the work swore that none had been hauled there except what was required for the statutory labour.

Held, affirming the judgment of the Court of Appeal, that in the absence of evidence that it had been dumped there by orders of the council, or of some person for whose acts the council was responsible, the plaintiff could not recover.

Per STRONG, C.J.—*Quære*: Would the corporation be responsible for the acts of a statutory officer like the pathmaster, or of a ratepayer performing statute labour?

Gundy, for appellant. *Wilson*, Q.C., for respondent.

Exch. Court.]

QUEEN v. OGILVIE.

[Feb. 2.]

Debtor and creditor—Appropriation of payments—Error in appropriation—Arts. 1160, 1161 C.C.

A bank borrowed from the Dominion Government two sums of \$100,000 each, giving deposit receipts therefor respectively numbered 323 and 329. Having asked for a further loan of a like amount it was refused, but afterwards the loan was made, on O., one of the directors of the Bank, becoming personally responsible for re-payment, and the receipt for such last loan was numbered 346. The Government having demanded payment of \$50,000 on account, that sum was transferred in the bank books to the general account of the Government and a letter from the President to the Finance Department stated this had been done, enclosed another receipt numbered 358 for \$50,000 on special deposit, and concluded: "Please return deposit receipt No. 323—\$100,000 now in your possession." Subsequently \$50,000 more was paid and a return receipt no. 358 requested. The bank having failed, the Government took proceedings against O. on his guarantee for the last loan made to recover the balance after crediting said payments, and dividends received. The defence to these proceedings was that it had been agreed between the bank and O. that any payments made on account of the borrowed money should be first applied to the