

been loaded, proceeded to sea and was wrecked before reaching her destination.

Held, that the shipment made by plaintiff not being according to contract defendants were not bound to accept delivery.

Also, that the receipt of the goods by the master of the vessel, who was merely defendants' agent to receive the goods for the purpose of carriage, was not an acceptance as delivery under the terms of the contract.

Also, that plaintiff's claim could not be sustained as against the defendant T., he being shewn to be a mere intermediary.

Plaintiff claimed, in addition, for money supplied the master of the vessel, at defendant's request and for commission thereon.

Held, as to this, that he was entitled to recover.

Harris, Henry & Co. for plaintiff. *Murray & McKinnon*, for the defendant Tyrer. *McInnes, Mellish & Co.*, for the defendants G. & W.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] SHAW *v.* CITY OF WINNIPEG. [Jan. 17.

Negligence—Liability of municipal corporation for negligence of employee of waterworks department—Agency of servant of corporation.

A municipal corporation authorized by the legislature to establish and manage a system of waterworks, but not bound by law to do so, will, if it does so, be liable for injuries caused by the negligence of the servants employed by it therein while in the performance of their duties.

Hesketh v. Toronto, 25 A.R. 449, and *Garbutt v. Winnipeg*, 18 M.R. 345, followed.

It is actionable negligence if an employee of the waterworks department of a city, having opened the trap door in the floor of a kitchen for the purpose of reading the water meter in the basement, leaves the trap door open on going away, whereby an occupant of the house is injured by falling through the open trap door.

Dennistoun, K.C., and *Young*, for plaintiff. *Hunt*, for defendants.