est factum—that is, that she did not know that she was signing a guaranty. The other branch of the case presented more difficulty, chiefly because the evidence at the trial was so ill-directed to the material circumstances. It was plain, however, that the guaranty signed by the defendant was for debts to be incurred only. No other material fact was plainly proved: see Morrell v. Cowan (1877), 7 Ch. D. 151. When the guaranty was given, a note for the amount of it was taken from the debtors, and the amount of that note was placed to the credit of their overdrawn account, overdrawn to an amount greater than the amount of the guaranty and note, which was $2,500; and so at first sight it would appear that the guaranty had been misapplied; but there was some evidence from which it might be surmised that the guaranty was treated as creating an additional credit upon the security of which money was subsequently advanced which would be covered by it. This, of course, ought to have been plainly proved, if a fact, by the plaintiffs; and they were blamable for the unsatisfactory state of the evidence upon the point. In this unsatisfactory state of the evidence, the proper course was to refer the case to a local officer to ascertain and state what sum, if any, is really due upon the guaranty, reserving further directions and all questions of future costs. There was not enough evidence to prove a merger of the debt guaranteed in the mortgages taken—or otherwise any discharge of the guarantor. The appellant should have her general costs of the appeal.

The other members of the Court agreed in the result, LENNOX and MASTEN, JJ., each giving written reasons.

Appeal allowed in part.

SECOND DIVISIONAL COURT. MARCH 17TH, 1916.

*LAMBERT v. CITY OF TORONTO.

Negligence—Death of Workman Employed by Electric Company — Negligent Arrangement of Wires — Electric Shock — Failure of Foreman to Warn Workman—Liability of Company—Fatal Accidents Act—Workmen's Compensation for Injuries Act—Dangerous Condition Due to Operations of City Corporation—Liability of Corporation—Findings of Jury—Indemnity—Contract—Relief over.

Appeals by the two defendants, the Corporation of the City of Toronto and the Interurban Electric Company, from the judgment of MULOCK, C.J.Ex., of the 8th November, 1915, in