Re SMITH AND TOWNSHIP OF COLLINGWOOD.

By-law Opening Road—Application to Quash—Failure to Define Width of Road

Donald Smith, a ratepayer of the township affected by a certain by-law, moved for a summary order quashing the by-law, which is No. 12 for 1903, being a by-law providing for the opening of a deviating road through the lands of the applicant. It was contended that no notice was given to the applicant, that the width of the road was not defined in the by-law, and that the by-law was not passed in the interests of the public, but for a particular class. Order made quashing the by-law on the ground that the width of the road is not defined, without costs.

MAHONEY v. CITY OF OTTAWA.

Accumulation of Snow and Ice on Sidewalk—Injury Resulting—Negligence of Defendants.

Judgment in action tried without a jury at Ottawa. Action to recover damages for injuries suffered by plaintiff from a fall on Nepean street, in the city of Ottawa, on January 15th last. It was alleged that defendants were guilty of gross negligence as regards the condition of the sidewalk as to snow and ice and the method adopted of partly removing the snow and ice. Held, that there was no evidence of negligence on the part of defendants. Action dismissed with costs.

REX EX. REL. MOORE v. HAMILL.

Qualification of Mayor and Councillors of Town—Excessive Borrowing of Money to Meet Current Expenditure—Effect of.

Judgment on motion by relator to void the election of the mayor and four of the councillors of the Town of Meaford on the ground that they are disqualified by their violation of the provisions of section 435 of The Municipal Act, 1903. They are alleged to have voted for borrowing money to meet the current expenditure for 1903 in excess of the amount authorized by the statute. Order declaring the respondents not duly elected, and ordering a new election with costs.

REX EX REL. PILLAR v. BOURDEAU.

Motion to Unseat Councillors—Resignations—Disclaimer—Duties of Clerk.

Judgment on application (heard at Ottawa) by the relator to set aside the election of Ovila Bourdeau and Louis Menard as councillors for the township of Russell, and to have it declared that William Argue and Alva Bennett Cheney were duly elected as such councillors for 1904. P. Emile Guerin, township clerk and returning officer at the election, was added as a respondent. It was admitted (1) that William Argue and Alva Bennett Cheney were nominated as candidates for the office of township councillor at the election in question, on 28th December, 1903; (2) that the name of Argue and Cheney appeared upon the ballot papers used at the election; (3) that at the polling on the 4th January, 1904, more votes were given for Argue and Cheney, respectively, than for either Bourdeau or Menard; (4) that on 5th January, 1904, Bourdeau and Menard were declared elected; (5) that documents purporting to be disclaimers of the office Bourdeau and Menard were delivered to the township by clerk on the 23rd January, 1904, at about 420 in the afternoon; (6) that the relator was a duly qualified elector of the township. Eight persons were nominated for the council, namely, Albert Fielding, John Cochrane, William Argue, Alva Bennett Cheney, Louis Menard, Ovila Bourdeau, Cleopas Geoffrion, and Napoleon Lemieux. On 29th December, 1903, Argue and Cheney each signed and addressed to the clerk a notice stating that he would not be a candidate at the election. The notices were attested by witnesses. If these notices were in fact delivered to the clerk before nine o'clock on the evening of 29th December, they should have been acted upon by him pursuant to section 129, sub-sections 2 and 3, of The Con. Municipal Act, 1903. He did not, however, act upon these, but caused the ballot-papers to be printed with the names of Argue and Cheney thereon. This was evidence that Guerin did not, in fact, get these resignations until 30th December. The ballot-papers as printed and used had upon them the names of all the candidates nominated, but not arranged alphabetically, as required by section 139, sub-section 1 of the Act. The result of the polling was as follows: Fielding, 430 votes; Cochrane, 422; Argue, 311; Cheney, 301; Menard, 265; Bourdeau, 281; Geoffrion, 256; Lemieux, 238. The township clerk treated the resignations of Argue and Cheney as valid and declared Menard and Bourdeau elected. These two men accepted office, made a declaration of qualification, and attended a council meeting. On 22nd January the relator obtained a fiat to serve notice of this motion. On the same day, but before respondents were served, they each signed a disclaimer and sent it to the clerk of the council. Held, that Argue and Cheney, being duly qualified candidates, regularly nominated, their names on the ballots, and elected by votes, should be declared elected unless disentitled by reason of the resignations. The electors are entitled to the services of these men unless the resignations stand in the way. The onus of showing this is upon respondents. As a first step it must be clearly shown that the resignations were in the hands of the clerk before nine o'clock on the evening of the 29th December. Upon the evidence the resignations were not received in time. Upon the whole case, these signed resignations must be ignored, must be considered as nothing more than declarations of intention. The respondents disclaimed, but they did not do so under section 238, under which a disclaimer must be sent to the clerk in chambers or the judge. Nor are the disclaimers such as are provided for by section 240; they were not made before the election was complained of; they were before service of the notice, but the relator had then taken the first step in the complaint. The respondents, on the other hand, had accepted the office, had taken the necessary declarations, and had acted as members of the council. They were de facto members of the council and could only resign under section 210, or disclaim under section 238. See Regina ex rel Mitchell v. Davidson, 8 P.R. 434. Nevertheless, costs should not be imposed upon them; they are not shown to be wilful trespassers or wrong-doers, they had accepted the office to which the clerk had wrongfully declared them entitled. The case of the respondent, Guerin, should be regarded as one in which he became confused and uncertain about dates, but did not desire wrongfully to do what was wrong, and there shold be no costs against him. Order made, unseating Bourdeau and Menard and seating Argue and Cheney without costs.

Lieut.-Col. J. P. Macpherson of Ottawa recently brought action against the City of Kingston for $5,000 damages for injuries sustained by tripping over a loose board in the Simcoe street sidewalk on June 3 last, and it was heard at the non-jury sittings of the High Court by Justice Street, who found the city liable, and awarded the plaintiff $350 and costs. Previous to the trial the city offered Col. Macpherson exactly that amount in settlement, but he refused to take it.