

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

as the vendor had as assignee. Hamelin attended at the sale, and objected to the sale of the land, and bid for the same, and the plaintiff became the purchaser, and took a conveyance from W. on 4th February, 1881. Most of the purchase money went to Hamelin as assignee of the claims against his estate. Hamelin and his wife remained in undisturbed possession from his discharge in insolvency.

*Held*, that Hamelin was not estopped from setting up a title by possession by reason of the manner in which the sale was brought about; that the acknowledgment of the L. mortgage by Hamelin's petition was not sufficient to stop the running of the Statute, because by assignment of the M. mortgage to Hamelin, and the latter's conveyance under the power to his wife, she became, and was at the time of the petition, the owner of the equity of redemption, and was not affected by her husband's acknowledgment, and therefore the plaintiff failed.

*P. O'Brian* for the plaintiff.

*E. T. Dartnell* for the defendant.

Cameron, J.]

IN RE THE TOWNSHIP OF SARNIA AND THE TOWN OF SARNIA.

[Sept. 22.]

*Extending the limits of town—Arbitration—Drainage assessment—Award against township invalid.*

A portion of the Township of Sarnia was added to the Town of Sarnia by proclamation of the Lieutenant-Governor. The former municipality was indebted to the Province of Ontario for certain drainage works, under the provisions of R. S. O. cap. 33, which works had benefitted certain roads in the Township. The arbitrators, in settling the matters of dispute between the two corporations, were of opinion that the drainage assessment was not a proper subject of arbitration, and made their award without adjudicating thereon.

*Held*, that the award was invalid, for the drainage assessment was an ordinary debt, payable out of the general funds of the Township, under R. S. O. cap. 33, to which the Town of Sarnia should contribute a just proportion, under R. S. O. cap. 174, sec. 53.

The award as made directed the Township to pay a certain sum to the Town.

*Held*, bad; for the only terms upon which the acquisition of adjacent lands can be had by a Town are contained in R. S. O. cap. 174, sec. 53, which only authorizes a payment by the Town to the Township or County.

*Robinson, Q.C.*, for the award.

*Aylesworth*, contra.

IN RE BRONSON AND THE CITY OF OTTAWA.

*Railway—Point of commencement—"From," meaning of—Eminent domain—Expropriation of lands already devoted to public purposes.*

The charter of the C. A. R. Co., reciting in the preamble that the line of Railway which it was proposed to construct would afford the shortest and most convenient connection between the Cities of Ottawa and Montreal, authorized the Company to construct their track from the City of Ottawa.

*Held*, that they had the right to enter the City and construct from a point within its limits.

The City passed resolutions providing for a lease of right of way to the Company over lands expropriated by the City for waterworks purposes under 35 Vict. cap. 80 (O).

*Held*, that though, *prima facie*, the only right intended to be conferred on a company is that of expropriating the private property of individuals or corporations, and not property already devoted to public uses, or already expropriated under other Acts, yet under some circumstances the right to make such expropriations might exist, and if so, then the city would have the corresponding power to convey. And as the applicants had not shown to the Court that circumstances did not exist under which the Railway Company could take the land, the Court would not assume that the City had committed a breach of trust in passing the resolutions.

The railway was to cross certain streets at a grade different from that required by the Railway Act, but the resolutions provided that the streets should be graded up to the railway.

*Held*, objectionable.

*Robinson, Q.C.*, and *Christie*, for the motion.

*McCarthy, Q.C.*, and *Gormully*, contra.