

Div'l Court.]

HOWARTH *v.* MCGUGAN.

[March 4.

*Municipal corporations—Negligence—Hammer left in highway by contractor—Accident—Want of repair—Limitation of action—Municipal Act, s. 531—Improper user—Corporate assent—Liability of contractor—Finding of jury—New trial—Surprise—Corroborative evidence.*

In an action against a municipal corporation and a contractor to recover damages for injuries sustained by the plaintiff by reason of her horse shying at a hammer left upon the highway by a contractor, it was found by the jury that the hammer was the cause of the accident; that leaving it on the highway was a negligent act; that the corporation had sufficient notice of its being there; and that they were guilty of negligence in not erecting a railing at the side of the road, which would have prevented the accident. The action was not begun till after three months from the accident.

*Held*, that if the action as against the corporation was to be regarded as based upon want of repair of the highway, it was barred by s. 531 of the Municipal Act.

And if based upon an improper user of the highway, it could not succeed against the corporation in the absence of evidence of any corporate assent to the contractor's leaving the hammer in the highway.

But the contractor was liable for improper user, and was not relieved by the finding as to the railing.

New trial, on the ground of surprise and discovery of new evidence, refused where the evidence was merely in corroboration.

*E. D. Armour*, Q.C., for the plaintiff.

*W. B. Doherty* for the defendant corporation.

*Tremcear* for the defendant McGugan.

Div'l Court.]

YOUNG *v.* SAYLOR.

[March 4.

*Justice of the peace—Summary Convictions Act—Power to commit for contempt—Power to exclude from court-room—Privilege of counsel—Review by court of justice's proceedings.*

A barrister and solicitor acted as counsel for certain persons charged with a misdemeanour before a justice of the peace, holding court under the Summary Convictions Act, and while so acting was arrested by a constable by the order of the justice, without any formal adjudication or warrant and excluded from the court-room, and imprisoned for an alleged contempt and for disorderly conduct in court.

In an action by the counsel against the justice and the constable for assault and false arrest and imprisonment,

*Held*, (1) that the justice had no power summarily to punish for contempt *in facie curiæ*, at any rate, without a formal adjudication, and a warrant setting out the contempt.

*Armour v. Boswell*, 6 O.S. 153, 352, 450, followed.