Toronto Wins.

ASSESSMENT APPEALS DISMISSED. INCOMES DERIVED FROM PROPERTIES HELD IN TRUST ARE TAXABLE.

His Honor Judge McDougall recently handed out judgment in two assessment appeals, and in both decided in favor of the city. The first was the appeal of the trustees of the estate of the late Hon. William McMaster from the assessment by the City of Toronto of the income derived from investments of the moneys realized from the estate or arising out of the unrealized outstanding assets. The judgment recited the terms of the will and stated the way in which the various moneys were devised.- It then went on to say that the income of the trustees last year from the estate was $30,325. Of this $8,504 was in rentals from real estate, the balance the interest from mortgages and other investments. $7,400 was paid to annuitants and the balance, $22,925, to the university. The contention of the trustees was that this sum, $22,925, was to be regarded as part of the income of the university, and they said that the accounts of the university showed no taxable income because the annual expenditure equalled or exceeded the gross revenue from all sources, including the $22,925. They claimed that as the university income would not be assessable, the income from the endowment fund when in the hands of trustees was also not assessable. They also urged that the amount paid in salaries to members should not be taxed, as on these salaries the municipal tax had already been paid. The proceeding was therefore tantamount to a double assessment. The judgment says: "This contention is untenable. I cannot take cognizance of the destination of incomes in determining the liabilities of trustees to be assessed for income" His Honor said that the Assessment Act ignored trusts and treated persons in control as actual owners. The trustees should be assessed for the value of the real and personal estate held by him, whether in his individual name or in conjunction with others of such representive character. "Personal property, which term includes incomes, when vested in or under the control of trustees, as in this case, must be regarded for purposes of assessment as the property of the trustees, and the income therefrom as their own income." The judgment concluded by dismissing the appeal. It stated that the appellants were entitled to the usual exemption. The taxable income was fixed at $21,421.

The appeal of S. C. Smoke and J. Grayson Smith, trustees of the estate of Mrs. Grayson Smith of England, was likewise dismissed. The judgment in the McMaster appeal disposed of the questions raised in the Smith case. The judge said that after every consideration he was unable to make any distinction between the two cases. His Honor held that the personal property of non-residents which was in the hands of trustees should be deemed the individual property of the trustees for purposes of assessment.

Murphy vs. Township of Oxford.

Judgment on appeal of plaintiff from judgment of drainage referee dismissing the action, which was brought by the owner of part of lot eight in the fourth concession of the township of West Oxford against the township corporation (1) for damages by reason of the construction by the defendants of culverts across the highway adjoining the plaintiff's farm, which has caused an overflow upon the farm, and (2) for a declaration that the drainage by law adopted by defendants is invalid because not founded on a proper petition, and for damages resulting from work done under that by law. The referee held that he had no jurisdiction as to the second claim, and as to the first that the construction of the culverts was within the defendants' rights and no negligence had been shown. Appeal dismissed with costs.

Re Robertson and City of Chatham.

Judgment on appeal by A. K. Robertson from order of a Divisional Court (30 O. R. 158) affirming an order of Meredith, J., in Chambers, prohibiting the Judge of the Court of Kent from enforcing his decision allowing in part an appeal by Robertson from the decision of the Court of Revision for the City of Chatham confirming his assessment in respect to a sewer. The municipality in 1894 by by law adopted the local improvement system as to the making of sewers, and also passed a general by-law for the purpose mentioned in sec. 612 (1) of 55 Vict., ch. 42. The appellant's lands, fronting on a street along which the municipality proposed to make a sewer were, with the other lands so fronting, assessed at a uniform rate per foot frontage, for a portion of the cost of the sewer, and cer tain lands not fronting on the street, but which would derive benefit from the sewer, were assessed for the remainder of the cost. The County Court Judge found that the lands in question would be benefitted by the proposed sewer, but that the assessment was too high, and he reduced it, directing that the amount struck off should be assessed pro rata over the other properties included in the assessment. The court below held that he had no jurisdiction to do so, and, having regard to the provisions of the municipal act. R.S. O. ch. 233, secs. 664-685, relating to local improvements, the method of assessment in such a case as this is to determine what proportion of the cost the land front ing on the street shall bear, and what proportion the land not so fronting shall bear and assess the proportion appertaining to each class according to its frontage, and not according to the proportion of benefit received by each parcel or lot of land. In this case there was a double difference of opinion. Osler, Maclennan and Moss, J. J. A., held that the equal frontage rate is still required by the statute, nothwithing that the word "equal" has been dropped. Burton, C. J. O., and Lister, J. A., were of the contrary opinion. Burton, C. J. O., Maclennan and Lister, J. J. A., were of the opinion that the functions of the County Court Judge were at an end when the motion for prohibition was made, and there was nothing to prohibit, and therefore the motion for a prohibition should not have been granted. Osler and Moss, JJ. A. were of the contrary opinion. In the result the appeal was allowed on the latter ground, with costs here and below.

Township of Anderson, v. Burns.

Judgment on appeal by defendant Burns from judgment of Senior Judge at Sandwich, (sitting as a Judge of the High Court by virtue of rule 47,) disposing of the question of the costs of the action, and orde ing that the costs of the defendant Burns be paid by defendant McCarthy, and not by plaintiffs, the action having failed against the defendant Burns, and ordering defendant Burns to pay the costs of his counter-claim against the plaintiffs, which was dismissed. Held, that the Judge in making the order as to costs which is complained of has violated no principle to which he should have had and has exercised a proper discretion on the facts appearing in evidence. Appeal dismissed with costs.

A Suit for Damages.

C. E. Burkholder, of Hamilton, acting on behalf of Jacob Wardell, of the township of Caistor, farmer, issued a writ Tuesday in an action against the corporation of the county of Lincoln claiming $450 damages. On September 18 last Mr. Wardell was crossing the Elgin Oille bridge, over the Twenty Mile Creek, between the Townships of Caistor and South Grimsby, with a threshing machine, when the bridge fell and his threshing machine was almost totally destroyed. The plaintiff alleges that the bridge was not in a proper state of repair.

In the case of Bonner vs. South Monaghan et al Samuel Bonner sued for $500 damages from Wilson Montgomery, M. D., medical health officer for the township Board of Health, alleging neglect of duty on the part of Dr. Montgomery and the board during an outbreak of diptheria in his family in 1897. The case had been tried before and a non-suit entered against the defendants except Wilson Montgomery, M. D., to which the court directed a new trial. After hearing the evidence Judge McMahon dismissed the action, not letting it go to the jury.—*Peterborough Review.*