

MUNICIPAL DEPARTMENT

LEGAL DECISIONS AFFECTING MUNICIPALITIES.

TOWNSHIP OF TILBURY WEST VS. TOWNSHIP OF ROMNEY. -- This case was heard in the Divisional Court at Toronto. Judgment affirming order of local judge at Chatham staying proceedings. Action to recover \$7,480.25 (and interest), the shares of defendants in the amount of the cost of the "Big Creek Drain" in the county of Essex, pursuant to report of engineer appointed by plaintiffs. The order in appeal stays proceedings in this action pending the appeal to the Supreme Court of Canada in an action of the Sutherland Innes Co. v. Romney, brought by land-owners in the township of Romney, to set aside a by-law of said township adopting said report, and to prevent the assessment of the plaintiff's land to provide part payment for the drain. It was contended for plaintiffs that their action is properly constituted, and that have a valid cause of action; that they are not parties to the action of Innes v. Romney, and cannot be affected by the results, and that defendants have no defence and are estopped from questioning the report because they have not appealed against it, but, on the contrary, recognized their liability by passing a by-law pursuant to and making assessments and levying rates and issuing debentures thereunder, and also standing by while the plaintiffs completed the work, and then using the drain, and that at all events a stay should not be granted until after delivery of defence. Held, that plaintiffs in bringing this action are pursuing an undoubted right, and that they are not doing anything of a vexatious character; see Higgins v. Woodhall, 6, T. L. R., and G. N. W. Central Railway Co. v. Stevens, 18 P. R., 392. Appeal allowed with costs here and below.

FEE VS. TOWNSHIP OF OPS.—Action tried at Lindsay brought by landowners to recover damages for negligence of defendants, and their failure to maintain the drain along the boundary of plaintiffs' land, and for a mandamus or mandatory injunction to defendants to repair and maintain the drain. Leave to plaintiff to plead the absence of an engineer during the construction of the drain as evidence of negligence refused. Held, having regard to the rough character of the locality at the time of the construction of the drain in 1881, to the extent of the work, and to the amount of money allowed, that all that was to be reasonably expected was top drainage of superficial char-

acter, and, also, having regard to the length of time elapsed and to the fact that defendants have only just been authorized to, and are proceeding upon, a new and general scheme of more effective drainage, that the action should be and is dismissed with costs.

BOGART VS. TOWNSHIP OF KING.—Judgment (E.B.B.) in action tried without a jury at Toronto. Action to restrain the levy of a rate under a by-law of the defendant corporation giving a bonus to the Schomberg & Aurora Electric Railway Co., and providing for the levying of a rate. Held, that the clerk of the defendants was bound by sec. 129 of the assessment act to include the rate in question in the collector's roll; the council had by the by-law, ordered a certain sum to be levied, and the clerk rightly calculated the amount chargeable against the plaintiff, and set it down in the roll; it was not necessary for the council to do anything further, either because of sec. 402 or otherwise. Clarke v. Town of Palmerston, 6 O.R. 616, distinguished. Held, also, that the rate could be levied notwithstanding that the debentures had not all been sold. Held, lastly, that the rate could be levied notwithstanding that it had not been collected for the first year. Action dismissed with costs.

REPORT ON GAS TAR.

Mr. J. W. Williams recently presented the following expert report to the Hamilton city council on a quantity of tar purchased in Toronto: Four lots were tested for pitch strength, volatile matter and water. I reported finding the pitch strength 60 per cent., and classed the tar as high grade on that basis. Results in roadwork being not satisfactory I have tested pitch from this tar, and find to contain 30 per cent. retort or coke dust, equal to 18 per cent. coke dust in the tar. This, with the presence of volatile matter, such as light oils, naphthalene, etc., make this tar unsuitable for road making. The tar which should be used for this work is tar which has been distilled for the removal of the volatile portions, and also which on analysis contains only small proportions of retort dust, or practically none. As described above, the result would be just as is found in actual practice—that tar of the kind under discussion (that is, untreated tar) would dry up and leave a black, dusty surface, possessing no adhesive, bonding or waterproof qualities. The New York tar, on assay for coke dust, was found to contain twelve per cent. This, as against the eighteen per cent. in the Toronto tar, is one-third less, and as it has, what is more important, no volatile matter to evaporate it, the New York tar has material for the road stuff of the right nature, while being filled with one-third less dry matter.

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