

Legal Department

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PINKERTON v. TOWNSHIP OF GREENOCK.

Damage from Flooding—Erection of Bridge—Spring Freshets—Unusual Contingencies.

Judgment in action tried without a jury at Walkerton. Action for damages for injuries to lots 1 and 2, in the village of Pinkerton, in the township of Greenock, containing about two acres, on which are erected a dwelling house, grist mill, woollen mill, saw mill and barn, by flooding, owing to the erection of a bridge by defendants over the Teeswater River. Held, upon the evidence, that, during the freshets of 1904 and 1905, plaintiff's property was not flooded by the backing up of water from the new bridge, but that the water entered on his land from the south and west, and was flooded in that way. The snowfall preceding the flood of 1904 was the greatest in many years, and the freshet was of an unusual character; and the freshet of 1905 was unusual by reason of the quick melting of the snow, causing the Teeswater River and its tributaries to fill up with extraordinary rapidity. Against these unusual contingencies, defendants were not called upon to provide: *Dixon v. Burnham*, 14 Gr. 594. Defendants having employed competent and experienced engineers, who submitted the plans and specifications for the bridge to defendant's council, which approved thereof, that alone would have been sufficient to free defendants from liability: *Hill v. Taylor*, 9 O. L. R., 643; *McCann v. City of Toronto*, 28 O. R., 650. *Denton on Municipal Negligence*, p. 187. Action dismissed with costs. Plaintiff's damages assessed contingently.

Re VILLAGE OF NEWBURGH ANC COUNTY OF LENNOX AND ADDINGTON

Municipal Law—Liability of County for Maintenance of Bridge.

Appeal by the county from the judgment of the county judge who found that the county was required to build and maintain certain bridges crossing the Napanee River in the Village of Newburgh. The river in question, where it passes through the Village of Newburgh, divides into two channels, which re-unite enclosing an island. These two channels at that point constitute the river. The river is more than 100 feet in width above and below the island. The road, which it is admitted, is a highway leading through the county, passes over these channels by bridges. The channel crossed by one bridge is 38 feet in width, and the channel crossed by the other bridge is 80 feet in width. The island contains 5 or 6 acres. The question was, whether, under the Act, the county council had exclusive jurisdiction over these bridges. The statute declares that the county council shall have exclusive jurisdiction over all bridges crossing streams or rivers over 100 feet in width.

HELD, that the statute has reference to the width of the river, and not to the length of the bridge. The two channels of the river being together, admittedly over 100 feet in width at the place where it is crossed by the bridges in question, the matter is concluded. The case is clearly within the purview of the statute. See *Regina v. County of Carleton*, 1 O. R. 277.

RE CLEARY AND TOWNSHIP OF NEPEAN.

Local Option—Recount—Uncounted Ballots—Illegal Votes.

Judgment on motion by Cleary to quash a local option by-law of the township. The electors of the township voted on the by-law on the 7th of January, with the result, as appeared in the certificate of the township clerk, dated 9th January, that 995 votes were polled, there being 587 for the by-law, 391 against, and 17 rejected ballots. A recount was had before the County Court Judge, and his certificate of 25th January gives 589 for the by-law, 392 against, and rejected or uncounted ballots 20, thus giving the by-law a majority of 197. Three-fifths of the ballots counted would be 588 $\frac{3}{5}$, so the by-law, having 589 in its favor, received "the approval of at least three-fifths of the electors voting thereon." (6 Edward VII., ch. 47, sec. 24, sub-sec. 4) unless the 20 uncounted ballots are to be taken into consideration in computing the number "of the electors voting thereon" mentioned in the section. The by-law was finally passed by the council on the 4th of February. Mabee, J., agrees with the opinion of Morgan, Co. C. J., in *re Weston* by-law, 9 O. W. R., 250, that the rejected or uncounted ballots cannot be considered. It appeared that, by accident, in so far as the lists were concerned, five persons, and probably nine, voted who had no right to vote. Held, that these votes must be deducted from the 599 favorable to the by-law, thus defeating it. Order made quashing by-law with costs.

TAYLOR AND MARTIN.

Vendor and Purchaser—Removal of Local Improvement Charge—Section Consolidated Municipal Act.

Judgment on petition by the purchaser under the vendors and purchasers' act, (heard at London) for an order directing the vendor to comply with certain requisitions of the purchaser in respect to title. A discharge of mortgage was given in 1888 by the executor of one George Stevens, the mortgagee. Held, that the purchaser being entitled to a registered title, the vendor was bound to register the probate of the will of the late George Stevens. Upon another point: Held, that, though section 681, of The Municipal Act, is applicable quantum valeat to a vendor before conveyance, it does not relieve him of liability to remove a charge for local improvement rates, where he is bound to convey free from incumbrances, notwithstanding the purchaser's agreement to assume "all taxes, rates assessments wherewith the lands may be rated or charged," from and after the date fixed for completion of the sale. On the argument counsel for the vendor stated his readiness to supply evidence that no dower had attached to the property by reason of the seisin of one Buckle. Held, that the purchaser must satisfy himself by the usual searches as to entries in the general register and executions affecting the lands in the hands of the Sheriff. Order declaring accordingly. Purchaser to be paid by vendor his reasonable costs of petition.

The Brant county council has let the contract for building the Glen bridge to the Hamilton Bridge Works Co., Limited, the contract price being \$13,500.