LEGAL DEPARTMENT.

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LEGAL DECISIONS.

NEWSOME VS. OXFORD.

The *Sentinel-Review* states that the hearing in this case took place during April, 1893, and that those interested had given up all hope of ever obtaining a decision from the Judge. The following particulars of the case will be of interest:

For years Judge Finkle and County Court Clerk Canfield have ordered certain law stationery for their own private use and for the use of local lawyers from Newsome, a law stationer of Toronto. The bills have been sent into the county and regularly paid. Some years ago, however, Wm. Nancekivell, then reeve of Dereham, introduced a resolution which was duly adopted by the County Council, providing that on and after that date the county would not be responsible for such stationery ordered by the court officials.

Acting in accordance with this resolution the council refused to recognize the next account rendered by Newsome, amounting to $95.75. This account covered the period between August, 1888, and February, 1891, and represented such stationery as embossed notepaper, envelopes, diaries, executions, foolscap paper, probate forms, etc. The council argued that the county was not responsible under the authority which the judge has to order such things, the statute providing that the county shall supply proper offices together with fuel, light and "furniture," and immediately took proceedings to compel them to pay.

Ordinarily the case would have come before the county judge, but Judge Finkle being an interested party the case was removed to St. Thomas and brought up before Judge Hughes of Elgin, in October, 1892. But the decision would effect all counties, more or less, and Judge Hughes did not care to try it. A motion was therefore made before Justice Rose and in December he signed an order transferring the case from the third division court of Elgin to the Queen's bench division on the understanding that the county pay all the expenses in excess of what a Division Court trial would have cost.

On March 22, Newsome put in a statement of claim for $95.75, and the case was tried before Judge Rose, on April 24, 1893, J. O. Fullarton, Q. C., appearing for the plaintiff, and B. B. Osler, Q.C., for the corporation. The Judge witheld the decision. On several occasions he was applied to to give a decision, but each time the date was postponed, and only recently did he announce that the plaintiff had a good case and the council must pay, basing his judgment upon the word "furniture" and on the ground that the county had previously paid every similar bill.

The county entered a counter claim against Newsome for $101.39, the price of similar articles supplied to Mr. Canfield in previous years and paid for out of the corporation funds under orders signed by Judge Finkle. This claim His Honor dismissed with costs.

The Judgment reads as follows:

Newsome v. Corporation of County of Oxford. Judgment in action transferred to High Court from 1st Division Court of the County of Oxford and tried without a jury at Woodstock. The plaintiffs claimed $95.78, balance of account for writing paper, blotting paper, envelopes, etc., and Surrogate and County Court forms, supplied on the order of Jas. Canfield, Esq., Deputy-Clerk of the Crown, Clerk of the County Court and Registrar of the Surrogate Court. The defendants counterclaimed for $101.39, price of similar articles supplied to Mr. Canfield in previous years and paid for out of the corporation funds under orders signed by A. Finkle, as Chairman of the County Board of Audit. The learned Judge holds that by R. S. O., ch. 184, sec. 466 (the act in force at the time of the transactions in question) the duty being cast upon the defendants to provide proper offices, together with fuel, light and "furniture" for all offices connected with the courts of justice in the county other than is excpeted, and having regard to the meaning given "furniture" in Exp. Furgand, 14 Q. B. D., at p. 645, in various standard diets referred to this judgment that the word "furniture" must be held to include the articles in question, and under sec. 470 were properly ordered. Even admitting that the Registrar was wrong in following a county standing custom in supplying forms at the expense of the county, it was the duty of the Registrar of the Surrogate Court to prepare papers to lead to grant in non-contentions matters where estate does not exceed $200 (now $400). Besides, the Council for years permitted the Registrar to procure such forms; it is impossible to say now that he had no authority. By the consolidated municipal act, 55, Vic., ch. 42 (O) the County Councils are required to provide inter alia "stationery" for the courts of justice, and the learned Judge suggests the insertion of that word in the clauses relating to the officers of the courts, also to avoid misunderstanding in fururc. Plaintiff's claim allowed with costs and counterclaim dismissed with costs. Costs to be taxed on High Court scale. Fullerton, Q.C., for plaintiffs, Osler, Q.C., for defendants.

IN MCDERMOTT VS TRACHSEL, ET. AL.

It was decided that the mere delivery to a ratepayer, in places other than cities and towns, of the statement of taxes due, is not sufficient evidence of the demand required to be made for the payment thereof, unless a by-law has been passed under the Consolidated Assessment Act, 1892, section 123, sub-section 2, empowering the collector to take that course.

In delivering judgment, Chief Justice Meredith said,—"In Chamberlain vs. Turner, 31 C. P. 460, Wilson, C. J., expressed the opinion, that the mere delivery of the statement to the ratepayer, nothing being said or done about it, could not be held to be a proper demand of payment; and that view was approved of, and adopted by this court in the case of Carson vs. Veitch, 9 O. R. 706; the amendment which has since been made to the section, indicates that the legislature recognized the interpretation placed upon it by the court to be the correct one. I refer to the amendment, which allows the demand to be made, by leaving a statement of the taxes, but only in cases where the collector is empowered by by-law of the municipality to take that course.

CONSUMERS' GAS CO'Y. V. CITY OF TORONTO

Assessment and Taxes—Gas Mains—Liability to Assessment.

The mains of a gas company laid beneath the surface of public streets are assessable by the municipality, being, with the underground soil occupied by them, appurtenances to the central land upon which the manufacture is carried on, and subject to taxation as realty of the company.

UNION SCHOOL, SECTION FIVE, TOWNSHIP OF HULLET V. LOCKHART.

Public Schools—Union School Sections—Alteration of—Petition of Ratepayers—Award—54 Vic. c. 55, ss. 87, 96.

By sub-section 1 of section 87 of the Public School Act, 54, Vic. chap. 55, it is enacted that "on the joint petition of five ratepayers from each of the municipalities concerned, to their respective municipal councils, asking for the formation, alteration, or dissolution of a union school section," etc., certain proceedings may be taken.

Held, that a petition to be valid under this enactment, must be the joint petition of five ratepayeas from each municipality in the case of each petition; that is to say, in each petition presented to each council, five ratepayers from each municipality must join.

An award based upon a petition not conforming to the above requirements is void *ab initio*, and is not within the purview of section 96 of the Act.

By sub-section 11 of section 87, it is enacted that "no union school section shall be altered or dissolved for a period of five years after the award of the arbitrators has gone into operation," etc.

Held, that this prohibition does not apply to the case of an award that "no action should be taken in the matter of the said petition," but only to awards effecting some change in the *status quo ante*.

This has been a particularly healthy season all the world over.