Re TOWN OF EAST TORONTO AND COUNTY OF YORK.

County By-Law Forming Union School Section—Motion to Quash—Disqualification of Arbitrator—Defective Petition.

The town corporation, moved to quash a by-law of the county corporation for the formation of a union school section from parts of previously existing school sections in the town and in the Township of York, on the ground that it was improperly passed by section 46 of the Public Schools Act, and that one of the arbitrators appointed was disqualified. The county corporation and the school boards interested, opposed the motion. Held, that the by-law was void because the foundation was lacking in that the petition to the Town Council was not signed by five duly qualified petitioners, one of the petitioners not being on the last revised assessment roll, though he was in fact a ratepayer. There was no authority for the passing of the by-law, a motion to quash it was in order, and could be made by the town corporation as applicants. Order made quashing by-law, but without costs, as it was passed in good faith.

VASSAR v. BROWN ; FINN v. BROWN.

Excavation in Highway—Resulting Damages—Liability as Between Contractors and Municipality.

Judgment in actions tried together without a jury at Lindsay. Actions to recover damages for injuries which plaintiffs sustained on 22nd January, 1903, owing, as alleged, to an excavation in the Township of Thorah, into which plaintiff Vassar and his companion plaintiff Finn, who were returning from Beaverton to Kirkfield, where they lived, in a cutter drawn by a pair of horses belonging to Vassar, who was driving, were thrown, causing injuries to both men and to one of the horses as well as the cutter and harness. The action was against Brown & Aylmer, contractors for the construction of a section of the Trent Valley Canal, for negligence in failing sufficiently to guard the excavation, and against the township corporation for breach of duty to keep the highway in repair. Judgment for plaintiff Vassar for $400 with costs, and for plaintiff Finn for $1,400, with costs, against defendants Brown & Aylmer. Action as against the municipality dismissed with costs. No costs as between the co-defendants.

CITY OF TORONTO v. TORONTO R. W. CO.

Agreement—Payment by Street Railway Co. to City—Ownership of Track.

Judgment on appeal by defendants from report of Master in Ordinary. The action was brought on 5th February, 1897, to recover a balance alleged to be due by defendants to plaintiffs under the 15th paragraph of the agreement set out in 55th Vict., chapter 99 (O), by which defendants are bound to pay to plaintiffs $800 per annum per mile for single track or $1,600 per mile of double track occupied by their railways, not including turn-outs. By the judgment of the Court of Appeal of 16th January, 1900, the judgment of the trial Judge was varied with regard to the track on Roncesvalle avenue, and it was referred to the Master in Ordinary to "inquire and report by whom that track was constructed and at what time, and what rights of running upon the said track the defendants possessed." This judgment was affirmed by the Judicial Committee of the Privy Council on 2nd August, 1901. The Master reported that defendants had, on 31st March, 1902, paid to plaintiffs the amount of principal due them (excepting that based on the track west of Roncevalles avenue), immediately after the amount had been arrived at and settled by the parties, but that he had allowed to plaintiffs interest on the arrears of principal from the time when they matured till 31st March, 1902, and that such interest amounted to $8,047.95. He further reported that the portion of the track on Queen street, west of Roncevalles avenue, was constructed by defendants on or about 30th June, 1893, as part of their own undertaking, and that their rights of running upon it were governed by the agreement in the pleadings mentioned and subject to the same obligations as are imposed upon defendants with reference to their other tracks; and he found that there was due by defendants to plaintiffs in respect of this portion of the track $501.60 for principal and $185.56 for interest to 5th March, 1903, the date of his report. The defendants appealed on both branches. Appeal dismissed on all grounds with costs.

Re SYDENHAM SCHOOL SECTION No. 5.

Formation of New School Section—Petition to Township Council—Refusal to Entertain—Appeal to County Council—Award and Jurisdiction of Arbitrators.

Petitioners appealed from order of Street, J., (2 O. W. R. 830), setting aside an award, upon an application by the board of trustees of school section No. 6 of the Township of Sydenham. By by-law No. 623 of the county council, a large tract of land was detached from the Town of Owen Sound and attached to the Township of Sydenham. A large number of ratepayers petitioned for the erection of a new school section, to consist of the added property and parts of other sections of the Township of Sydenham. The township council refused the petition and an appeal was made to the county council. The county council, by by-law No. 638, allowed the appeal and appointed arbitrators under The Public Schools Act to consider and determine the formation of a new section. The arbitrators made their award. Street, J., set aside the award on the grounds that the county council had no power to authorize the arbitrators to do more than sit in appeal from the refusal of the township council to grant the prayer of the petition. Appeal dismissed without costs.

MILLS v. TOWN OF ST. MARYS.

Runaway—Steam Roller, etc., on Highway—Accident Resulting—Telegraph Poles.

This was an action heard in the High Court of Justice at Stratford, to recover unstated damages for injuries sustained in a runaway. The presiding Judge awarded a verdict for the plaintiff and assessed the damages at $1,000, including medical attention. According to the evidence it appears that the horse took fright at a steam roller and some barrels which had been left standing near the middle of the road by a gang of men employed in street repairs, and dashed across the road, bringing the buggy in contact with a telegraph pole. The driver was thrown out, and the frightened animal dashed down the road to the next telegraph pole, where the buggy got caught fast. When found, the plaintiff was still lying in the rig, but had one of her thighs broken and a knee badly injured, and was suffering from other bruises. Drs. Stanley and Smith, of St. Marys, testified that it would be a matter of two or three years before she recovered, and that, in all probability, her knee would never be strong again.

The plea made by the defence was that the real cause of the accident was the proximity of the telegraph pole, for which the town could not be held responsible.