LEGAL DEPARTMENT.

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Legal Decisions.

BERNERDIN VS. MUNICIPALITY OF NORTH DUFFERIN.

This was an interesting case from Manitoba, heard and decided by the Supreme Court of Canada at a recent sittings. G., in answer to an advertisement, tendered for a contract to build a bridge for the municipality of North Dufferin, and his tender was accepted by a resolution of the Municipal Council. No by-law was passed, authorizing G. to do the work, but the bridge was built and partly paid for, but a balance remained unpaid, for which B., to whom G. had assigned the contract, notice of the assignment having been given to the council in writing, brought an action. This balance had been garnisheed by a creditor of G., but the only defence urged to the action was that there was no contract under seal, in the absence of which the corporation could not be held liable. At the trial there was produced a document, signed by G., purporting to be the contract for the building of the bridge. It had no seal, and was not signed by any officer of the municipality. It was held, reversing the judgment of the Manitoba Court of Queen's Bench, that the work, having been performed, and the corporation having accepted it, and enjoyed the benefit thereof, they could not now be permitted to raise the defence that there was no liability on them because there was no contract under seal.

VILLAGE OF NEW HAMBURG VS. COUNTY OF WATERLOO.

Judgment on appeal by the defendants from the judgment of Ferguson J., in favor of the plaintiffs in an action, brought under 53 Vic., ch. 50, section 40 (o), to compel the defendants to maintain a bridge built by the plaintiffs over the River Nith, otherwise Smith's Creek, where it flows through the village of New Hamburg, along Huron street. The principal question was whether the river in question came within section 534 of the Municipal Act, as being a stream over a hundred feet wide, and to solve this question it was necessary to determine whether the measurement was to be from the top of one bank to the top of the opposite bank, or whether it was to be at the average high water mark, as the appellants contended, or how otherwise. The court held that the evidence did not support the finding of the learned judge; that the proper way to measure the stream was across the natural channel. If the plaintiffs think that they can establish that the width of the stream crossed by the bridge in question, ascertained in the way pointed out, is over 100 feet, they may have a new trial on payment of costs, electing to take it within ten days; otherwise their action will be dismissed with costs

M'KELVIN VS. CITY OF LONDON.

Judgment on motion by the defendants the city of London and the defendants Colwell to set aside the verdict and judgment for the plaintiff for $250 in an action for damages for negligence tried before Macmahon, J., and a jury at London, and to enter a non-suit or for a new trial. The injury to the plaintiff occurred while he was driving a horse and sleigh on the highway at the corner of Palace street and Princess avenue, in the city of London, the runner of his sleigh coming in contact with a large boulder which had been placed there by the defendant Colwell, the plaintiff's horse and sleigh being overturned and the plaintiff thrown from his sleigh, and in his endeavor to raise his horse, then lying on its side, he sustained a fracture of the right leg. The principal contention of the defendants was that the damages were too remote. The court agreed with the trial judge that the damages were not too remote and dismissed the motions of both defendants with costs to the plaintiff. The defendants, the city of London, to have no costs in the Divisional Court against the defendant, Colwell.

JONES VS. THE CORPORATION OF THE TOWN OF PORT ARTHUR.

This was a motion to continue an inspection restraining the defendants from passing a by-law, providing for the raising of $5,000 for the purpose of purchasing real estate for the use of the corporation. The real estate, when purchased, was to be presented to the Dominion Government for the purposes of a site for the post office and custom house. Although this fact was not stated on the face of the by-law, the by-law had been submitted to the ratepayers and passed by a small majority, but had not had its final reading by the council. It was held that the corporation had no power to pass a by-law for the purchase of land to be devoted to the above purpose, and that the words "for the use of the corporation," used in sub-section 1, of section 479, of chapter 184, of the Revised Statutes of Ontario, 1887, do not mean merely "for the benefit of," and that although the by-law was not bad on its face, the proper way to draw a by law is to state on its face the purpose of it.

A very singular case has been before the courts for some time, and it will be probably many months before we hear the end of it. As it contains points of considerable interest, we give the story as far as it has gone at present. Three prominent men of Waterford, Ontario, built a block of business premises on the main street of that town. The boundaries of the street had not been definitely decided, but when they were it was found that the new block encroached some six feet upon the street. The owners of the building were proceeded against for allowing a nuisance and were fined. They appealed, but the result was an order to remove the "nuisance" within three months. This they failed to do, and the county judge allowed a writ of *de nocumento amovendo* to issue, which enjoined the sheriff to pull down the projecting part of block at the owners' cost. The barrister in charge of the owners' interests held that the county judge had not the power to issue this curious writ, but that it was a matter for the High Court. He succeeded in obtaining a writ of *certiorari* during the recent term, so that proceedings were stayed on account of the irregularity, and will proceed during the ensuing term to apply for a rule *nisi* whereby the present proceedings will be quashed. The case gains interest from the fact that the writ of *de nocumento amovendo* is said to be the first that has been issued for a hundred years. The matter may still be brought before the High Court, and if so, the owners are liable to a fine of almost any amount, and repeated fines until the "nuisance" complained of is removed. There seems to be a difference as to the term which may be applied to an encroachment upon adjoining property, for there is a case recorded in which, by a mistake, a house was erected with one side wall, just its thickness, nine inches, on the adjoining lot. In this case the owner was proceeded against, not for a "nuisance," but simply for encroachment, and when the sheriff was ordered to tear down the wall he found he could not do so without injury to that part of the house touching the wall on the other side, and clearly within the lot of the house-owner. He had no right to enter upon the lot or touch anything therein, and so far as we have been able to discover, the matter had to be left in this state.—[*Canadian Architect.*

The following from "The Canada Law Journal," of the 16th March, 1892, we think is worth reproducing:— "The Legislative mill of Ontario is again grinding out alterations to various acts and alterations and altered amendments thereof, and especially in reference to the subjects so dear to those of the rural population namely, assessment law, and municipal matters generally. There are already a score of these before the House for consideration. We have heard nothing lately of the proposition for a biennial session. It is doubtful whether there will ever be a government strong enough to suggest such a change; but it would be a great saving of expense to the country, and would allow people time to see the working of a law before a dozen so-called amendments knock it into "pi."