Ontario.] [Dec. 9, 1896.

CITY OF TORONTO *v.* C. P. RY. CO.

Municipal corporation—By-law—Assessment—Local improvements—Agreement with owners of property—Construction of subway—Benefit to lands.

An agreement was entered into by the corporation of Toronto with a railway company and other property owners for the construction of a subway under the tracks of the company, ordered by the Railway Committee of the Privy Council, the cost to be apportioned between the parties to the agreement. In connection with the work a roadway had to be made, a part of which fronted on the company's lands, and which, when made, cut off to some extent the lands from abutting as before on certain streets, and a retaining wall was also found necessary. By the agreement the company abandoned all claims to damages for injury to its lands by construction of the works. The city passed a by-law assessing on the company its portion of the cost of the roadway as a local improvement, the greater part of the property in respect to which the assessment was made being on the approaches to the subway.

Held, that to the extent to which the lands of the company were cut off from abutting on the streets as before, the work was an injury, and not a benefit to such lands, and therefore not within the clauses of the Municipal Act as to local improvements; that as to the length of the retaining wall the work was necessary for the construction of the subway and not assessable; and that the greater part of the work, whether or not absolutely necessary for the construction of the subway, was done by the corporation under the advice of its engineer as the best mode of constructing a public work in the interest of the public, and not as a local improvement.

Held, further, that as the by-law had to be quashed as to three-fourths of the work affected, it could not be maintained as to the residue which might have been assessable as a local improvement if it had not been coupled with work not so assessable.

Notice to a property owner of assessment for local improvements under s. 622 of the Municipal Act cannot be proved by an affidavit that a notice in the usual form was mailed to the owner; the Court must, upon view of the notice itself, decide whether or not it complied with the requirements of the Act.

In the result, the judgment of the Court of Appeal (23 A.R. 250) was affirmed.

Appeal dismissed with costs.

Robinson, Q.C., and *Caswell*, for the appellant.

Armour, Q.C., and *MacMurchy*, for the respondent.

Quebec.] [Dec. 9, 1896.

SENESAC *v.* VERMONT CENTRAL RY. CO.

Appeal—Finding of Court below—Absence of proof—Interference with on appeal—Railway Co.—Negligence.

An action was brought by S. against a railway company for damages from loss of property by fire from a woodshed on the company's premises spreading