STREET, J.]

PECK *v.* CORPORATION OF AMELIASBURG.

Municipal Act—Power to take stock in Bridge Co.—Special Act—Special rate to be levied each year—Form of.

Held, that sub-sec. 2 of section 479 of the Municipal Act R.S.O., ch. 184, providing that the Council of a municipality may pass by-laws for taking stock, etc., in an incorporated company in respect of any bridge, etc., "under and subject to the respective statutes in that behalf," only authorizes the passing of by-laws to take such stock where in any special or general Act under which a bridge Company is incorporated, a provision is contained authorizing the Municipal Council to hold such stock, etc.

Where, therefore, the Act incorporating the Bay of Quinte Bridge Company, 50 and 51 Vic., ch. 97 (D.), did not profess to confer any power on the municipality to take stock, etc., in such company, no power was conferred under the Municipal Act to do so; and a by-law passed by the Municipal Council for such purpose was therefore held bad, and directed to be quashed.

The by-law, instead of, as required by sec. 340 of the Municipal Act, directing specific sums directed to be levied each year for the payment of the debt and interest to be so raised in each year by a special rate sufficient therefore, leaving the amount of the rate to be determined each year, directed that during the currency of the debentures a special rate of interest, so much on the dollar, specifying it over and above all other rates, should be levied and collected in each year.

Held, this also rendered the by-law bad.

A. H. Marsh, for plaintiff.

Watson, contra.

Divisional Court.]

WOOD *v.* MCPHERSON.

Jury—Challenge—Bias of jury—Change of venue.

At the trial of an action the defendant's counsel challenged a juryman for cause. On the learned judge stating that he did not think any cause was shown, and that the counsel had better challenge peremptorily, the counsel did not claim the right to try the sufficiency of any cause against the impartiality of the juryman, but accepted the opinion of the learned judge, and the juryman remained on the jury.

Held, that on a motion for a new trial, an objection to the juryman could not be entertained.

The action was tried at Brantford, and a new trial was moved for at a place other than Brantford, because that the jury there were biassed against defendant.

Held, that this formed no ground for a new trial.

Wallace Nesbitt, for plaintiff.

Ermatinger, Q.C., for defendant.

Divisional Court.]

FLANNIGAN *v.* CANADIAN PACIFIC RAILWAY.

Railways—Dry grass on side of track—Fire therefrom—Liability of company.

During the summer of 1888, which was a very dry one, little rain having fallen, and none for some time prior to the fire in question, fires also having been frequent in that section of the country, the defendants allowed brush and long dry grass, which had been growing for two or three years, to remain on the side of the track adjoining the plaintiff's farm, while they had, the day previous to the fire, for the protection of their own property on the other side of the track, burnt up the dry grass, etc., there.

A spark from the defendants' engine having set fire to the dry grass, etc., adjoining the plaintiff's land, the fire extended into the plaintiff's land, and destroyed his fences, growing crops, etc. In an action against defendants, therefore, the jury found for the plaintiff.

Held, that the case was properly submitted to the jury, and could not be interfered with.

R. W. Scott and *Watson*, for plaintiffs.

W. Nesbitt and *Kidd*, for defendants.

ROSE, J.]

THE HAMILTON PROVIDENT LOAN AND INVESTMENT CO. *v.* SMITH.

Mortgage—Sale by mortgagor subject to mortgage—Further mortgage by purchaser—Lien