Legal Department.

J. M. GLENN, K. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Rex vs. McGregor.

Judgment on motion by defendant to make absolute a rule *nisi* to quash conviction of defendant by the police magistrate for the city of Windsor for that defendant "being agent of the Queen City Oil Company, did keep at one time in a house or shop within the city limits, a larger quantity than three barrels of coal oil, rock oil, water oil, or oth r similar oil, and a larger quantity than one barrel of crude oil, burning fluid, naphtha, benzole, benzine, or other combustible or dangerous material, contrary to the city by-law for prevention of fires and other purposes therein mentioned." It was contended, *inter alia*, that the by-law was *ultra vires*, not being within any of the powers conferred by section 542, of the Municipal Act; and that sub-section 17, of sub section 542 is *ultra vires*. It was urged that the *ejusdem generis* rule should be applied to the words "and other combustible or dangerous materials," and that they therefore apply only to articles or things which are combustible or dangerous, as gunpowder is, and they must therefore be confined to explosives. Held, referring to Anderson vs. Anderson, (1895,) 1 Q. B., 794, re Stockport Co., (1898,) 2 Chy. 687, 696, and Parker vs. Marchant, 1 Y., and C. C., 290, that general words are to be given their common meaning unless there is something reasonably plain on the face of the instrument to show that they are n t used with that meaning, and that the mere fact that general words follow specific words is not enough. But, even if the general words were to be given a restricted meaning, looking at the evident purpose of the whole section—the prevention of fires—and the powers given by the various subsections to enable councils to pass by-laws to that end, the sense in which the word "combustible" and the word "dangerous" are used, is that of liability to c use or spread fire. It was argued in support of the other objection to the by-law that, inasmuch as the parliament of Canada, by the Petroleum Inspection Act, 62 and 63, Vic., ch. 27, has legislated on the subject of the storing of petroleum and naphtha, the provincial legislation in so far as it deals with the same subject, is superseded by the Dominion legislation. Held, that the Dominion Acts, and the regulations made thereunder do not supersede the provincial legislations or any by-laws passed under the authority of that legislation. The provincial legislation was intended to confer power to make regulations in the nature of police or municipal regulations of a merely local character, for the prevention of fires and the destruction of property by fires, and (Hodge vs. The Queen, 9 App. Cas. at p. 131,) as such cannot be said to interfere with the general regulation of trade and commerce, and does not conflict with the provision of the Petroleum Inspection Act, 1899, or the regulations as to the storage of petroleum and naphtha, which are in force under the authority of that Act. Rule *nisi* discharged with costs.

Holmes vs. Town of Goderich.

Judgment in action tried with a jury at Goderich. Action to restrain defendants from discounting or in any way dealing with promissory note for $2,500 made for the purpose of providing funds for security for appeal to Supreme Court of Canada in a former action of Holmes vs. town for Goderich and for delivery up of note of cancellation. The note in question was signed by the mayor and treasurer of the town and sealed with the seal of the town corporation. The council of the town had previously passed by-laws authorizing the mayor and treasurer to borrow $22,000 from the bank of Montreal for current expenditure of the corporation. These by-laws were acted upon, and from time to time moneys were drawn from the bank as required for current expenditure, notes being delivered to the bank for such sums as were required. At the time the note in question was given $5,000 of the $22,000 remained to be borrowed. Held, that the by-laws authorizing the borrowing of the $22,000 were not *ultra vires* of the council, and the defendants, the corporation, had the right to use the $22,000 to pay into court as security in the former action.

C. P. R. Co. vs. City of Toronto.

Judgment on appeal by defendants from judgment of Street, J., consolidating with this action a motion to quash a by-law and declaring the latter invalid. The by-law (No. 3,757) passed 16th October, 1899, authorized licensed cabs, carriages and express wagons, to the number of eight, to stand for hire on Station s reet, in the city of Toronto, half an hour before and after the arrival of any train at the Union Station. An injunction was also granted restraining the defendants from passing another by-law. The agreement of 26th July, 1892, between the C. P. R. and G. T. R. companies and defendants, with reference to the Union Station site and adjacent land, is contained in the appendix to 55 Vict. ch. 90 (O.) and 56 Vict. ch. 48 (D.), and sec 13. is in the following words:—"The G. T. R. Co. will dedicate to the public a street not less than 66 feet wide, extending along the north side of the Union Station block, from Simcoe street to York street. The city agrees that at the request of the G. T. R. Co and C. P. R. Co. a part of the said street shall be designated as a stand for cabs or express wagons, but this shall not be done except upon such request." Held, that the true construction of the agreement was the one placed upon it by Street, J., viz.:—That no part of Station street shall be set aside as a stand for cabs, etc., except upon the request of the railway companies, and there is jurisdiction in the court to enjoin any breach of it. There is jurisdiction also to set aside the by-law passed in breach, altogether irrespective of the provisions of the municipal act in relation to quashing by-law, just as the court has jurisdiction in the case of an individual to prevent a breach by him of his agreement. The by-law was clearly illegal under the authorities, having been passed not in the interest of the general public, but in the interest of a particular class. Appeal dismissed with costs.

Lamphier v. Stafford.

Judgment on appeal by defendant from judgment of Falconbridge, C. J., for $5 damages and an injunction. Action for damages for tresspass to land by alleged unlawful entry on defendant's land by plaintiff and the digging by him of a ditch. The defend nt justified his acts under the ditches and watercourses act, R. S. O., ch. 285, and the award thereunder of the engineer of the township of Richmond, in which the land is situate. The award provides for clearing out and deepening the existing ditch on the east side of the road allowance between the township of Richmond and Tyendinaga, and also a ditch on the land in question, part of lot 2 in the second concession of Richmond, and directs one English, the owner of the south half of lot 2 to deepen the latter ditch five inches and clean out, so as to allow the water to run freely to the road ditch, and imposes on plaintiff the duty of maintaining the latter ditch after being cleaned and deepened by English. After English had finished the plaintiff filled up the ditch. The engineer then assumed to let the work of cleaning out to defendant, who was proceeding to do so when stopped by the injunction in this action. The award is objected to *inter alia* because (1) the requisition being for the construction of a ditch for the purpose of draining the land of one McHenry the engineer acted without authority in providing by his award for the "construction" of a ditch but for the cleaning out of existing ditches; (2) the work of cleaning out the ditch in question having been done by English pursuant to the award there was no justification for the act of the engineer in letting the work and authorizing the defendant to do it again or for the defendant's entering on the plaintiff's land and cleaning out the ditch. Held, that the objections must prevail. Appeal dismissed with costs.