

And, under all the circumstances of the case, leave to appeal was granted, upon security for costs being furnished, the question being a new and important one, and the amount involved considerable.

Moss, Q.C., and F. E. Hodgins, for the applicant.

S. H. Blake, Q.C., and W. R. Smyth, for the executors.

MACMAHON, J.]

[Jan. 10.

FOSTER v. CORPORATION OF HINTONBURGH.

Municipal corporations—Annual rate limited to two cents—"School rate"—Debentures for school house—Con. Mun. Act, 1892, 55 Vict., c. 42 (O.).

The annual amount required to pay for debentures issued under a by-law passed for the purchase of a school site and the erection of a school house thereon, comes within "school rates" excluded from the two cents, to which by s. 356 of the Con. Mun. Act, 1892, 55 Vict., c. 42 (O.), the annual rate required to be levied by municipalities, is limited.

G. C. S. Lindsay, for the plaintiff.

Clement, for the defendants.

MEREDITH, C.J., ROSE, J., }
MACMAHON, J. }

[Jan. 25.

SCOTTISH ONTARIO LAND CO. v. CITY OF TORONTO.

Municipal corporation—Action for not supplying water according to contract—General issue—Notice of action—Reasonable and probable cause—R.S.O. c. 73, ss. 1, 13, 14, 15.

The plaintiffs brought their action alleging that in consideration that the plaintiffs would pay to the defendants their charges for the proper supply of pure water for the purpose of supplying power to the plaintiffs' hydraulic elevator, the defendants undertook and agreed to supply the plaintiffs with such water; that in supplying such water the defendants negligently caused and allowed such water so furnished by them during six years prior to the commencement of this action to be impregnated with sand and such deleterious matter held in suspension therein (said water being in such condition to the knowledge of defendants), that it so greatly damaged the said apparatus of the plaintiffs' elevator that the same became totally useless to the plaintiffs, etc., whereby, etc.

The defendants pleaded not guilty by statute, and that it was not expressly alleged that the act complained of was done maliciously and without reasonable or probable cause; that the act complained of was done by them in the execution of their office, etc.; that the act was not caused within six months; and that no notice of action had been given, setting up 35 Vict., c. 79; 41 Vict., c. 41, ss. 1-3, R.S.O. c. 73, ss. 1, 13, 14, 15.

Held, affirming the judgment of Robertson, J., that the action being one for breach of contract none of the statutory defences set up were applicable or could be pleaded.

Fullerton, Q.C., for the defendants, appellant.

H. M. Mowat, for the plaintiffs.