

Q. B.]

NOTES OF CASES.

[Ontario.]

was about to pay the first premium on the policy, B. asked him to deposit it to his (B.'s) credit. Defendant accordingly drew a cheque on another branch where he had funds, and the amount was transferred to B.'s credit. B. at the time handed the policy to defendant duly executed. B. not having paid plaintiffs this sum,

Held, in any action to recover it from the defendant, that the transaction amounted to a payment to plaintiffs.

Semble, also, that the acceptance of the policy and the other facts raised a promise to pay the premium.

Hagel for plaintiffs.

M. C. Cameron, Q.C., for defendant.

VACATION COURT.

DEVLIN V. HAMILTON AND LAKE ERIE RAILWAY COMPANY.

R.W. Co.—Mandamus to assess damages—Structural damage. (April 25, 1876.)

Defendant's road is brought into the city of H. through C. Street, a very narrow street, with the leave of the municipality. Plaintiff had one brick and two rough-cast houses on the street, and the trains caused the houses to vibrate and plaster to fall, and were a serious inconvenience to the user of the houses.

HAGARTY, C.J., C.P., on an application to assess damages, *held*, that no such peculiar structural injury is shown as would entitle plaintiff to relief, and, apart from structural injury, no relief could be granted.

J. B. Read for applicant.

C. Robinson contra.

RE ARKELL AND CORPORATION OF ST. THOMAS.

Limiting licenses to one—Billiard tables—Hours for closing. (April 23, 1876.)

Held, following *In re Brodie and Bowmanville*, that a by-law limiting shop licenses to one is *ultra vires*.

HAGARTY, C.J., C.P., *held*, that the corporation have power to declare that no billiard table kept for hire shall be allowed in any licensed tavern.

Held also, under the power given by sec. 12 of the last Tavern and Shop License Act, as to shops, that the municipality "may impose any restrictions upon the mode of carrying on such traffic as the Council may think fit," the Council may require shops to sell between the hours of 7 A.M. and 7 P.M. only.

Robinson, Q.C., for applicant.

F. Osler contra.

RE DONELLY AND TOWNSHIP OF CLARKE. (April 28, 1876.)

Liquor licenses—Different duties in same municipality.

The council of a township passed a by-law fixing the duties to be paid for licenses for taverns and shops in several villages in the township at one sum, and in the rest of the township at a lower sum.

HAGARTY, C.J., C.P., *held*, that the distinction was unwarranted and contrary to the spirit of sec. 224 of 36 Vict., cap. 48.

Hutcheson for applicant.

RE WYCOTT AND TOWNSHIP OF ERNESTOWN.

Dunkin Act by-law—Defective publication—Power to quash. (May 5, 1876.)

In publishing the requisition and notice for a by-law under the Dunkin Act, there was no publication at all during one of the "four consecutive weeks" before the day fixed for the poll, as required by sec. 5 of the act. The by-law was carried by a large majority, and there was no allegation on the part of the applicant that any voters were misled by want of the notice.

HARRISON, C.J., *held*, that granting the Court might in its discretion quash the by-law, it was not, under the circumstances, a proper case for the exercise of that discretion. *Cox v. Pickering*, 24 U.C.Q.B. 441, and *Miles v. Richmond*, 23 U.C.Q.B. 333, distinguished.

The rule was discharged without costs, as the corporation did not see fit to appear.

F. Osler for applicant.

RE McLEOD AND TOWN OF KINCARDINE.

Harbour dues—By-law to raise—Duties on merchandise. (May 9, 1876.)

The town of Kincardine passed a by-law, sec. 1 of which made all goods, wares, merchandise, coming into or going out of the harbour, chargeable in the hands of consignees, with certain scheduled duties for the purposes of the harbour. Sec. 2 gave the harbour officer power to seize and sell the goods for these duties. Sec. 3 gave an action for the dues; and sec. 4 provided for punishing any one evading payment of the duties. Sec. 6 provided imprisonment for 30 days, for any one who fouled, injured, or incumbered the harbour piers, &c.

HARRISON, C.J., *held*, that sections 1 to 4 were clearly *ultra vires* of the corporation, as the duties must be imposed on the vessels.

Held also, that so much of sec. 6 as imposed imprisonment for 30 days must also be quashed.

F. Osler for applicant.

McMichael, Q.C., contra.