McCrimmon v. Township of Yarmouth.

Judgment in action tried at St. Thomas. The plaintiff sues on behalf of herself, her children and the estate of her deceased husband, for damages for injury to property and health owing to the flooding of the land with water which flowed through a drain called the Bailey award drain, upon the construction road and on to the land of deceased. Bailey's land lies east and north of the injured land. The Canada Southern R. W. Co. are third parties. Held, that award made on the proceedings by Bailey under the Ditches and Watercourses' Act does not bind the railway company. It is not subject to the jurisdiction of the engineer under the act; Miller v. G. T. R., 46 U.C. R., 222, nor to the act which is confined to ditches "situate on the property of any railway and running along or under the railway," and the scheme of the engineer did not provide for a proper outlet, for he directed by the award the company "to carry it to a proper outlet without damage to adjacent lands giving a fall, etc." Held, also that the evidence of Smith (who under the award was to construct the third section of the drain) so connected the defendants with the conducting of the water which flowed through the award drain from Bailey's land as to make them responsible for injury to plaintiff. Claim against third parties dismissed with costs. Judgment for plaintiff for $150 if defendants agree, having regard to sections 6 and 7, R. S. O., chapter 166, the husband having died more than 12 months before action. If the defendants do not agree, reference to junior judge of County of Elgin to ascertain amount of plaintiff's damage as to liability of defendants for injury, which is found to have arisen from flow of water through the Warehouse Street culvert and assessing damages if he finds liability to exist. Further directions and costs reserved.

A Drainage Case.

The action of Mrs. McSherry against the town of Sarnia for damages for the flooding of her property on Devine street by reason of an insufficient tile outlet for an open ditch on that street, came up for trial recently, before Drainage Referee Thos. Hodgins, Q. C.

Since the action was commenced the town has taken steps to remedy the defect in the drain, and thereby prevent a recurrence of the damage to property in that locality of the town. When the action came up for hearing the referee suggested that the best thing to do was for the corporation to try and effect a settlement of the case, which was accordingly done, the town paying $135 for damages and costs, in addition to their own costs.

The town authorities could undoubtedly have effected a settlement for a small sum at an early stage in the proceedings but the town council were determined to fight to a finish. The drainage referee thought the settlement made was a most favorable one for the town. The plaintiff's counsel, in view of the efforts to remedy the evil by means of a trunk sewer, was not disposed to unduly press the claim and the settlement as above was thereby effected.—*Sarnia Observer.*

Reg. ex. Rel; Burnham v. Hagerman and Beamish.

Judgment on motion of nature of quo warranto to determine the validity of the election of respondents as Aldermen for the Town of Port Hope. Held, that respondents were properly qualified within sec. 75 of the Municipal Act. Beamish was assessed for $2,000 upon the last revised assessment roll as owner of land of which he had been in possession since 1886. His title was admitted by the former owner, who executed a conveyance shortly after the election. Hagerman's wife was assessed at $800 as owner of land and at $600 as tenant of other land. There was a mortgage on the freehold at the time of election of $665, and upon some chattels assessed at $590. Following the principle of Reg. ex. rel. Ferris, v. Spick, 28 O.R., 486, the amount unpaid on the mortgage should be proportioned between the land and chattels in proportion to their assessed value, which would make $408 of the $665 a charge to be deducted from the assessed value of the land, and leave $392 as the assessed value of the land. The wife's leasehold is free from encumbrance. Sec. 75 of the act says "partly freehold and partly leasehold," and fixes qualification in towns at $600 freehold and $1,200 leasehold. In the absence of any judicial interpretation hitherto on these words, they should be held to mean that a person having one-half freehold and one-half leasehold qualification is qualified, and, therefore, Hagerman is qualified, his wife having $392 freehold and $600 leasehold. Motion dismissed with costs.

Re Township of Colchester North and Township of Gosfield North.

Judgment on appeal by township of Colchester North from the judgment of the drainage referee, confirming a report by Wm. Newman, engineer, reporting a scheme for drainage in these townships. It was contended inter alia that the proceedings to obtain the report were not in accordance with the provisions of The Municipal Drainage Act, that the petition was insufficient under section 3, and that the engineer did not make and file the affidavit required by section 5; that the work in question was a new drainage scheme for Gosfield North, and not for improvement of existing drain number 15; that the proposed drainage work is in breach of an agreement between the townships pursuant to which Colchester North has paid Gosfield North $2,000. That the proposed work was not authorized by section 75 of the Act; that the assessments in connection with the work were unjust and improper; that the drain would work injury to land in Colchester North beyond its termination, which result had not been taken into consideration, and that evidence had been improperly excluded, and an amendment of the engineer's report improperly allowed by the referee. Held, that while an appeal is pending against a report a council cannot refer it back for amendment unless upon consent of all parties, and that treating the amended report as an original report, it is bad, because the engineer before making it had not taken again the oath of office, which is an essential requisite of jurisdiction. Appeal allowed with costs.

Struthers v. Town of Sudbury.

Judgment on appeal by defendants from judgment of Meredith, C. J., (30 O. R. 116), in favor of plaintiffs in action brought to determine whether or not the Sudbury General Hospital is entitled to exemption from municipal taxation as being a "public hospital" within the meaning of sub-sec. 6 of sec. 7 of The Assessment Act. The hospital is the property of private individuals, and the profits derived from carrying it on belong to them; it has not a perpetual foundation; no part of its income is derived from charity; it is not managed by a public body, but one object of it is the benefit of a large class of persons, and the Ontario Legislature subsequently placed it on the list of institutions named in schedule A to The Charity Aid Act, R.S.O., 1887, ch. 248, and declared it to be entitled to aid under the provisions of that act, subjecting its by-laws to the control of the Executive Government and the hospital itself to Government inspection. Under those circumstances, the trial Judge held that it was a public hospital. Held, that the institution receiving aid under the act and thus recognized as a public body and being subject to Government control should be exempted. Appeal dismissed with costs.

Re Township of Orford and Township of Howard.

Judgment on appeal by the corporation of the township of Orford from the decision of the drainage referee delivered 28th December, 1898, whereby the appellants' appeal against an assessment at the instance of the respondents was dismissed, but the assessment changed. The respondents having passed a by-law and made an assessment under the drainage act for certain work in Howard, and assessed therefor lands in Orford as liable to contribute by reason of injuring waters, and from this assessment the appeal was taken. The circumstances were the same as in township of Orford v. township of Howard, 18 A. R., 496, and the appellants contended that the law had not been varied by changes in statutes since that judgment was given. Appeal dismissed with costs.