

# MUNICIPAL DEPARTMENT

## LEGAL DECISIONS AFFECTING MUNICIPALITIES.

**CALDWELL V. TOWN OF GALT.**—Judgment on appeal by plaintiff from judgment of Rose, J., dismissing action with costs and giving judgment on counter-claim for defendants with costs. The plaintiff is the owner and occupant of the Central hotel in the town of Galt, and the action is brought to restrain defendants from removing the two-storey verandah which surrounds it. The counter-claim asked for a direction for removal of the verandah. It was contended for plaintiff that the verandah, which projects over Main street, was in its present position before the street was dedicated to the public, and that such dedication was subject to the rights of user of the plaintiff's predecessors in title, which rights are now vested in plaintiff, and were vested 60 years before commencement of action, and that he could acquire a right of possession, prescription, or user to maintain such an obstruction on a highway against a municipality. It was contended for defendants that the onus of proving dedication lay upon plaintiff, which had not been discharged, and that the defendants had the right to require the removal of the verandah without compensation under sub-section 2 of section 557 of the Municipal Act. Appeal dismissed without costs, and without costs of motion to allow further evidence or of the taking of further evidence.

The following is a digest of the judgment of Drainage Referee Hodgins in the case of Elma vs. Ellice Townships, handed down at Toronto on 27th March last:

The appellant municipality of Elma adopted the drainage schemes initiated by the by-laws of the respondent municipality, and passed several by-laws to give effect to the same and to assess the specific lands and roads within its jurisdiction affected thereby.

The drainage work was commenced by the respondent municipality in 1885, and was constructed by it through the several municipalities. During such construction the following actions for claims and damages consequent thereon, were brought against the municipality:

Partridge v. Ellice, action for damages to plaintiff's lands in Elma; award against the defendant municipality for \$572.84. Coxon v. Ellice, action for damages to plaintiff's lands in Elma; judgment against defendant for \$375.25. Taylor v. Ellice, damages to plaintiff's lands in Elma; judgment against defendant for \$520.35. Hiles v. Ellice, action for damages to plaintiff's lands in Ellice; judgment against defendant for \$767.96. Crooks v. Ellice, action for damages caused to plaintiff's lands in Elma; judgment against defendant for \$677.14. All the above judgments included costs.

The municipal law dealing with the liabilities and expenses incurred by municipalities in construction and maintenance of drainage works is as follows: "Except where otherwise provided by this act, the cost of any reference (arbitration) had in

connection with the construction or maintenance of any drainage work, the cost of the publication of service, of by-laws, and all other expense incidental to the construction and maintenance of the work, and the passing of by-laws shall be deemed part of the cost of such work, and be included in the amount to be raised by local rate on all roads and lands liable therefor." Again the Drainage Act reads, "Where, on account of proceedings taken under this act, damages are recovered against the corporation or parties constructing the drainage works or other relief is given by any judgment or order of any court, or any award or order made by the Referee under this Act, all such damages or any sum of money that may be required to enable the corporation to comply with any such judgment, order or award made in respect thereof, shall be charged pro rata upon the lands and roads liable to assessment for such drainage works."

Such were the statutory guarantees of the respondent municipality during or at the close of the contests forced upon it

by the respective litigants above named. The effect of these statutory guarantees, I think, clearly entitle the respondent municipality to be indemnified against all charges and expenses properly incurred by it.

Apart from these statutory guarantees, it must be remembered that municipalities' claims for indemnity are sustained on the grounds of it being a trustee for the municipalities and co-adventurers for whose benefit the drainage work is undertaken, and in which their moneys are invested.

My conclusions are confirmed by Worrell v. Halford, and Lewin on Trusts, also by certain evidence given by the referee of the appellant municipality in answer to my questions.

The appeal of the municipality is therefore dismissed with costs. As Logan and Mornington had not availed themselves of the right of appeal given by the Act, I cannot recognize their right to join in Elma's appeal, and they must pay whatever costs have been incurred by Ellice in resisting their right to appear and join in the appeal.



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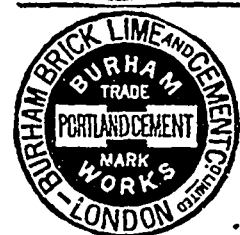
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