

ONTARIO REPORTS.

QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., Q. C., Reporter to the Court.)

BROWN v. THE CORPORATION OF THE TOWN OF BELLEVILLE.

Corporation—Contract not under seal—Liability.

The defendants wished to dredge their harbour, and the plaintiff had a dredge, then in the State of New York, which, after negotiations with the chairman of the committee on harbour and town property, he offered to lend to the corporation on certain terms, one of which was that the corporation should pay the cost of its transport to Belleville. The committee reported and recommended this offer to the council, and it was adopted, and the chairman then told the plaintiff to bring the dredge to Belleville, which he did, at the cost of \$373. The committee afterwards decided to let out the dredging by contract to another person.

Held, that the corporation were liable to the plaintiff for the cost of bringing the dredge, although there was no contract under seal.

[30 U. C. Q. B. 373.]

DECLARATION. First count, on an agreement that if the plaintiff would bring to the town of Belleville, from Broome county, in the State of New York, a certain dredging machine which the plaintiff had there, to be used by the defendants in the work of dredging the harbour within the limits of the town of Belleville, which dredging was about to be undertaken by the defendants, and in consideration that the plaintiff would allow the said machine to be used in the work of dredging the said harbour, the defendants agree to pay the plaintiff all expenses incurred in the transportation of the machine from Broome county to Belleville, and to keep the same in good repair, and to return the same in as good order as the defendants received it, and to pay the plaintiff for the use of the said machine by the defendants ten per cent. per annum upon the sum which the plaintiff had paid for the machine. And the plaintiff alleged that, relying on the promise of defendants, he caused the machine to be transported from Broome county to Belleville, and placed the same upon wharves in the said harbour, of all which the defendants then had notice. Yet the defendants, in violation of their agreement in that behalf, refused to receive the said machine, although requested so to do, and refused to employ the same in the work of dredging the said harbour, but, on the contrary, employed another dredging machine for the said work, and refused to pay the plaintiff the expenses, costs, and charges, in transporting the said machine to Belleville, whereby the plaintiff has suffered great loss and damage.

Common counts were added, for work and materials, &c.

Defendants pleaded, to the first count:—

1. That they did not agree as alleged.
2. That the plaintiff did not bring the machine to the town of Belleville as alleged.

And to the second count never indebted.

The cause was tried at the Spring Assizes for 1870, at Belleville, before Gwynne, J.

The evidence shewed that, in 1868, A. Diamond, Esq., was appointed chairman of the committee on harbour and town property. Under the by-law to regulate proceedings and establish rules of order in the town council, by the 41st clause, committees appointed were to report on any sub-

bank closed, which was about one o'clock. The defendants having charged the amount of the cheque to the plaintiff, he sued them for money had and received and money lent.

Held, that he could not recover, for defendants were not guilty of laches; and *semble*, that they could have recovered back the amount from the plaintiff, even if they had paid it to him.—*Owens v. The Quebec Bank*, 30 U. C. Q. B. 382.

ARTIFICIAL CHANNEL—PENNING BACK WATER.

—The plaintiffs owned land on the River Humber on which there was a mill, the water from which flowed through an artificial channel of about 700 feet into the river. Defendant having built a dam by which the water was penned back in this channel, so as to obstruct the working of plaintiff's mill and the natural flow of the stream.

Held, that the plaintiffs were clearly entitled to maintain an action therefore.—*Wadsworth et al v. McDougall*, 30 U. C. Q. B. 369.

LIABILITY OF HUSBAND—MARRIED WOMAN'S ACT.

—Defendant, during several years prior to, and for part of the year 1862, had a shop which he and his wife, who lived with him, attended, the shop being divided into two parts, in one of which defendant carried on a confectionery and saloon business, and in the other a fancy goods business, the latter being under the personal superintendence of the wife, who always gave the orders for the goods, which he, however, paid for. In 1862 defendant gave up the confectionery, &c., business, and then, as he stated, sold out the other business to his wife for a certain sum, she agreeing to pay him \$5 a week, which, however, she failed to do. She continued, with his permission, to carry on the fancy goods business, still living with him as before. There was no change either in the exterior or in the interior of the shop, except that the defendant no longer carried on the confectionery, &c., business there, though he was frequently seen on the premises. In 1869 the wife gave an order for the goods in question, just as she had always previously to 1862 been in the habit of doing. Held, that the business must be considered defendant's, and that he was liable to the plaintiff for the goods ordered in 1869.

Held, also, that the Married Woman's Act (C. S. U. C. ch. 73) had no application to the case.—*Foulds v. Curtelett*, 21 U. C. C. P. 368.