

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.]

[June 28.

WILLIAMS v. TOWNSHIP OF RALEIGH.

Municipal corporation—Exercise of municipal powers—Municipal Act (R.S.O., 1887), c. 184, ss. 483, 569, 583, 586—Drainage of flooded lands—Lands injuriously affected—Remedy—Arbitration—Mandamus—Notice.

Certain lands in the township of Raleigh were drained by what were called the Raleigh Plains drain and Government drain No. 1. The ratepayers petitioned for further drainage under the Municipal Act (R.S.O., 1887, c. 184), and a surveyor was directed under s. 569 of the Act to examine the locality, make plans, and report as to how the drainage could be effected. In pursuance of his report the municipality caused a number of drains to be constructed leading into the Raleigh drain and Government drain No. 1, with the result that the additional volume of water proved too great for the capacity of the latter, which overflowed and flooded the adjoining lands of C., who brought an action for the damage thereby occasioned. The matter was referred to a County Court judge, who reported the facts in favour of C. and against the contentions of the municipality, and estimated the damages at \$850. The Divisional Court affirmed this finding, and also ordered a mandamus to issue under s. 583 of the Act. The Court of Appeal reversed this decision, holding that the only remedy for the damage to C.'s land was by arbitration under the statute, and that he was not entitled to a mandamus.

Held, reversing the judgment of the Court of Appeal, that the right infringed by the municipality being a common law right, and not one created by the statute, C. was not deprived of his right of action by s. 483 of the Act, which provides for determination by arbitration of a claim for compensation for lands injuriously affected by the exercise of municipal powers.

Held, further, that the municipal council had a discretion to exercise in regard to the adoption, rejection, or modification of the report of a surveyor appointed under s. 569 to examine the locality and make plans, etc., and if the re-

port is adopted the council is liable for the consequences following from any defect therein.

Held, also, that the council, by the manner in which the drainage work was executed, was guilty of a breach of the duty imposed on it by s. 583 of the Act to preserve, maintain, and keep in repair such work after its construction. The work having been constructed under s. 583 of the Act, C. was not entitled to a mandamus under that section to compel the municipality to make the necessary repairs to preserve and maintain the same, the notice required by that section not having been given. If the work had been done under s. 586, notice would not have been necessary.

Per STRONG and GWYNNE, JJ.: C. was not entitled to the statutory mandamus, but it could be granted under the Ont. Jud. Act (R.S.O., 1887, c. 44).

Held, also, that though s. 583 makes notice a necessary preliminary to the liability of the municipality to pecuniary damage suffered by a person whose land is injuriously affected by neglect or refusal to repair, the want of such notice did not divest C. of his right of action, nor affect the damages awarded to him.

Appeal allowed with costs, and judgment of FERGUSON, J., restored, except as to mandamus.

Robinson, Q.C., and *Douglas*, Q.C., for appellants.

Wilson, Q.C., for respondents.

Quebec.]

DOMINION SALVAGE & WRECKING COMPANY
v. ATTORNEY-GENERAL.

Public company—Act of incorporation—Forfeiture of—44 Vict., c. 6 (D.)—Attorney-General of Canada—Information—R.S.C., c. 21, s. 4—Scire facias—Form of proceedings—Arts. 997, et seq., C.C.P.—Subscription to capital stock—Condition precedent.

The appellant company by its Act of incorporation (44 Vict., c. 61 (D.)) was authorized to carry on business provided \$100,000 of its capital stock were subscribed for and thirty per cent. paid thereon within six months after the passing of the Act; and the Attorney-General of Canada having been informed that only \$60,500 had been *bona fide* subscribed prior to the commencing of the operations of the company, the balance having been subscribed for by