

Ont.]

[June 12.]

HISLOP v. TOWNSHIP OF MCGILLIVRAY.

*Municipality—Duty of—Road allowance—Obligation to open—Substitution in lieu thereof—Jurisdiction of court over municipality—C.S.U.C., c. 54.*

H. was owner of, and resided on, a lot in the eight concession of the Township of McGillivray, and under the provisions of C.S.U.C., c. 54, an allowance was granted by the township for a road in front of said lot. This road was, however, never opened, owing to the difficulties caused by the formation of the land, and a by-law was passed authorizing a new road in substitution thereof. Some years after H. brought a suit to compel the township to open the original road, or, in the alternative, to provide him with access to his lot, and also to keep said road in repair, and pay damages for injuries caused by the road not having been opened.

*Held*, affirming the judgment of the court below, that the provisions of the act C.S.U.C., c. 54, requiring a township to maintain and keep in repair roads, etc., and prohibiting the closing or alteration of roads, only applied to roads which have been formally opened and used, and not to those which a township, in its discretion, has considered it inadvisable to open.

*Held*, also, that the courts of Ontario have no jurisdiction to compel a municipality, at the suit of a private individual, to open an original road allowance and make it fit for public travel.

Appeal dismissed with costs.

*R. M. Meredith* for the appellant.

*W. R. Meredith, Q.C.*, for the respondents.

Ont.]

[June 12.]

GRANT v. BRITISH CANADIAN LUMBER CO.

*Action for discovery—Possession of company's books—Evidence.*

G. was for some time manager of the British Canadian Lumber Co., and his services were dispensed with by written notice which directed him to hand over the books, etc., to a person named. He demanded an audit of the books, which was begun and partially finished, and while the books were, presumably, in an office formerly occupied by G. as such manager, he ejected from said office a liquidator of the company, which had become insolvent. In an action against G. to compel him to hand over the

books or make discovery as to where they were, he alleged that they were not in his possession, or under his control. The trial judge held that they had been in his possession when the liquidator was ejected from the office and that the defence was not made out. He made an order for discovery and his judgment was affirmed by the Divisional Court and the Court of Appeal. On appeal to the Supreme Court of Canada,

*Held*, affirming the judgments of the courts below, that the judgment of the trial judge, who saw and heard the witnesses, affirmed as it was by two courts, should not be interfered with, only matters of fact being in issue.

Appeal dismissed with costs.

*Hoyle, Q.C.*, and *Wild*, for the appellant.

*W. Cassels, Q.C.*, and *Gordon*, for the respondents.

Ont.]

[June 12.]

TITUS v. COLVILLE.

*Solicitor—Action by—Professional services—Election petition—Evidence—Questions of fact.*

T., a solicitor, brought an action for professional services rendered in the conduct of a petition against the return of a member of the legislative assembly of Ontario. The defendants in the action were respectively the president, secretary, and treasurer of the Liberal-Conservative Association of the county returning the member whose election was protested. In his statement of claim T. alleged that at a meeting of the association when it was determined to protest the return, a resolution was passed appointing him solicitor to carry on the proceedings, and that defendants retained and employed him as such solicitor. The defence to the action was that defendants never retained T. as alleged, but that he had volunteered to act as such, in the said proceedings without any remuneration. The action was tried without a jury and the trial judge found that there was no evidence of any resolution appointing T. solicitor, or of any retainer of T. by defendants as solicitor in said proceedings, and he gave judgment for the defendants. The Divisional Court reversed this judgment, holding that the retainer was proved; but the Court of Appeal, in turn, reversed the judgment of the Divisional Court and restored that of the trial judge. On appeal to the Supreme Court of Canada,