Re Toronto Public School Board and City of Toronto.

Judgment on appeal by the city corporation from the order of a Divisional Court (2 O. L. R. 727), varying an order of Street J., in chambers, upon an application by the School Board for a mandamus to the city corporation to levy certain sums of money alleged by the School Board to be required for school purposes for the year 1901, and granting such application in respect of most of the items of expenditure estimated by the applicants. The principal points decided by the Divisional Court were that it is only when it is made to appear that the expenditure would be clearly an illegal one, or ultra vires the School Board, that the Council is justified in refusing to raise the sum required by the board, and that all that the Council has a right to ask is that an "estimate" shall show that the board has in good faith estimated the amounts required to meet the expenses of the schools for the current year, and the purposes for which the sums are required, in such a way as to indicate that they are purposes for which the board has a right to expend the money of the ratepayers, and when that has been done the duty is imposed upon the Council of raising by taxation the sums required according to the estimate. Judgment below affirmed substantially for the reasons given by Meredith, C. J., in the court below. Appeal dismissed with costs.

Madill v. Township of Caledon.

Judgment on appeal by defendants from judgment of Meredith, J., in action for damages for injuries sustained by plaintiff, who fell owing to a hole 13 inches deep, nine inches wide, and 3 feet in length, which had existed for several months in the sidewalk upon the highway of the 3rd line, Caledon West, in the Hamlet of Alton. Held, that the judgment below should be affirmed. The evidence establishes beyond question that the highway is one for the maintenance of which, in good repair, the defendants are responsible. Their liability to keep it in repair is admitted as regards the central portion or portion which vehicles travel, but it is contended that it does not extend to the side or portion on which the sidewalk is shown to be, but that part is as much a part of the original road allowance as the centre part, and may be lawfully used by persons travelling on foot, and had been so used for twenty years, and it is impossible to say that it is not part of the public highway in the keeping or control of defendants. It is not necessary to determine the origin of the sidewalk. If placed there by defendants, or being there, was assumed by them, their liability is clear. If not so placed or assumed by them they allowed it to remain, and its condition of non-repair was an obstruction to the safe use of the travelled way, which it was their duty to remove, and by reason of their neglect the highway was out of repair.

O'Hearn v. Town of Port Arthur.

Judgment on appeal by defendants from judgment of Britton, J, upon the findings of a jury in an action by plaintiff, a teamster in Town of Port Arthur, for damages for bodily injuries caused by being run into by a street car of defendants owing to alleged negligence, running at a rapid and dangerous speed. The jury found that the speed of the car on the occasion of the accident was excessive, that the motorman was negligent in not sounding the gong and that the plaintiff could not have avoided the accident nor be justly accused of ordinary negligence, and assessed the damages at $200. Held, that the plaintiff was guilty of contributory negligence in attempting to cross the defendants' electric street railway without looking to see if he might safely cross. Danger v. London Street R. Co. 30 O. R. 493, followed. Appeal allowed and action dismissed with costs, if asked, on the lower scale,

McGarr v. Town of Prescott.

Judgment on appeal by defendants from judgment of Ferguson, J. (1 O. W. R. 53), in favor of plaintiff in action for damages for injuries sustained by her owing to non-repair of a board sidewalk on Ann street, in the Town of Prescott. The sidewalk was four feet wide, the planks running crosswise. One plank, about ten inches wide, was missing, leaving a hole six to eight inches deep. The accident occured at 8.30 p. m. of 7th July, 1901. The trial Judge found upon the evidence that the walk was in a dangerous condition from the 29th June, 1901, and that having regard to other circumstances, the population of the town, the old age and worn out condition of the sidewalk and the travel on the street, the defendants ought to have known of its state. He assessed the damages for the plaintiff's injuries at $1,500. Appeal dismissed with costs, but amount of damages reduced to $900.

McDonnell v. City of Toronto.

Judgment on appeal by plaintiff from judgment of Robertson, J., in action for a declaration that the assessment of plaintiff's property for local improvement (part of cost of opening up Sunnyside avenue, in the City of Toronto), for the years 1892, 1893, 1894, 1896 and 1897, was illegal and void; that defendant corporation have no right to distrain for such taxes; and that they have now no right to collect the said taxes by action or in any other way, and that the same are not a charge on plaintiffs' lands on Indian road. Appeal allowed, with costs and judgment below varied by declaring that the local improvement rates for 1896 and 1897 are due and payable by plaintiff and chargeable under the defendants' by-law No. 3,012 against plaintiff and her lands, and varying paragraphs 3 and 5 of the judgment accordingly. No costs to either party up to trial. McLennan J. A.

Macdonell v. City of Toronto.

Judgment on special case. The plaintiff is tne "owner" within section 668 of the Municipal Act, of a parcel of land in the City of Toronto, between Cecil and Baldwin streets. Nine persons, including plaintiff, are assessed as owners of property in the same block, fronting on Huron street, and "the City of Toronto" is on the roll in respect of two parcels in the same block, with the word "exempt" opposite the name. Six of the persons assessed as owners have petitioned the council for an asphalt pavement on Huron street, between Cecil and Baldwin streets, as a local improvement under section 668 of the Municipal Act. The value of the lands and buildings of these six is according to the roll, $14,553, while that of the lands and buildings of the three others, including the plaintiff, $13, 959, and the value of the vacant lots of the city is $3,060. Held, that under these circumstances, the petition has been signed by two-thirds in number of the owners, and one-half in value of the real property to be benefited. As to the proportion of value, the buildings must be taken into account as well as the lands, and the city is not to be regarded as an owner within section 668, not being a "taxable person," and being improperly mentioned in the roll, and should not be counted in reckoning the number of owners or in ascertaining the proportion of value. Judgment for defendants with costs.

Ruttan v Burk.

Judgment in action brought by plaintiff to have it declared that the sale of certain lands in Port Arthur for alleged arrears of taxes for 1892, 1893 and 1894 was illegal and void. The by-law of the municipality No. 354, imposing the taxes and fixing the rate, was passed October 18th, 1892. It was also objected that the plaintiff has no status to maintain the action. The learned judge referred to assessment act of 1892, latter part of section 140 and to section 160, and held that what these sections really mean is that the taxes for the year 1892 must be declared to have been due before they were imposed by the said by-law (354), and in this view a a part of the taxes for which these lands were sold was in arrear for three years, and again the Legislature by 63 Vic., ch. 86, validated sales of lands for taxes in Port Arthur prior to January 1, 1890, consequently the sale was a good sale. Held, also, that, in this view of the sale it is unnecessary to consider the question raised of the status of the plaintiff in the action and his right to maintain it. Action dismissed with costs.

A by-law to raise by the issue of debentures the sum of $50,000 to consolidate the floating debt of the town of North Bay, etc., was voted on by the electors of that town recently and carried by a majority of 46.