

[Chan.]

NOTES OF CASES.

[Chan.]

Boyd, C.]

[May 11.]

FENELON FALLS v. VICTORIA RAILWAY CO.

*Demurrer—Municipality—Railway Act—Trespass.*

The plaintiff, a municipal corporation, filed a bill, seeking to restrain the defendants, a railway company, from trespassing, by running their track along one of the streets of the municipality, without the consent thereof, thus impeding the traffic, in contravention of the Railway Act, C. S. C. ch. 66, sec. 12, ss. 1.

*Held*, that by virtue of the Municipal Act, there is such power of management, control, &c., bestowed upon municipalities, and such a responsibility cast upon them, as to justify them in intervening on behalf of the inhabitants for the preservation of their rights.

*Semble*—But for the language of SPRAGGE, V. C., in *Guelph v. Canada Co.*, 4 Gr. 656, where he says, "I think the suit is not improperly constituted," that the proper frame of the suit would have been by way of information in the name of the Attorney-General, with the corporation as relators.

*Hodgins*, Q. C. for plaintiffs.

*Cattanach*, for defendants.

Proudfoot, V. C.]

[May 16.]

HATHAWAY v. DOIG.

*Injunction—Practice—Irreparable damage—Restraining nuisance—Public nuisance.*

Although a man may be engaged in a perfectly legitimate trade or calling, he will not be permitted to carry on the same in such a manner as to cause a nuisance or unreasonable inconvenience to his neighbors, and in order to obtain an interlocutory injunction to restrain his so doing, it is not necessary for the plaintiff to show that the damage is irreparable. Therefore, where a man was engaged for some time in a thickly inhabited part of the city of Toronto, in the manufacture of gas receivers and was in the month of Feb., 1881, engaged in contracts for the manufacture of vessels which required the joining together of boiler plates by rivetting, which created so great a noise as to render the occupation of the plaintiff's house, distant only about fifteen feet from the factory, difficult, and whereby the wife of the plaintiff, who was the owner of the house, was kept in a nervous state of health, and a bill was filed in

April, the Court [PROUDFOOT, V. C.], upon an interlocutory application, restrained the defendant from "continuing his works so that the noise cause a nuisance to the plaintiff."

The fact that the nuisance, if a nuisance at all, was alleged by the defendant to be a public nuisance, and should be moved against by the Attorney-General, formed no ground for refusing relief to the plaintiff, although the property on which the injury was inflicted was the property of the wife of the plaintiff, not his own.

*Blake*, Q. C., and *Moss* for plaintiff.

*MacLennan*, Q. C., and *McCarthy* for defendant.

Proudfoot, V. C.]

[May 17.]

CAMPBELL v. MOONEY.

*Will, construction of—Devise in trust to sell—Power to mortgage—Family—Children.*

A testator devised all his landed property, or his interest therein to be held by his executors until his youngest child came to maturity, but should it appear to his executors to be to the advantage of the infant members of his family to dispose of his real estate, or his interest therein, "they might dispose of it by sale;" and gave them all power and authority vested in himself to dispose of the same, holding the proceeds for the benefit of his widow and infant members of his family; and as soon as the youngest child came of age he desired that a suitable provision should be made for his widow, and that all his property be sold, if not previously disposed of, and the surplus divided amongst his family. He named his wife and two others as executors, but his widow alone proved the will; the other two renounced.

Two of the children came of age, and they joined the widow in creating a mortgage in favor of the plaintiff to raise money wherewith to pay a balance of money due the Crown on the land devised.

*Held*, that under the words of this devise the power to sell did not authorize the creation of a mortgage by the executors; but that so far as the interests of the widow and of the two adult children were concerned, the mortgage bound them; and that the money raised by the mortgage, having been expended in the payment of a balance of purchase money due on the devised land, must be considered as salvage