LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

CUNNINGHAM V. GOWANLOCK.

Mr. Cunningham, late acting city engineer of Toronto, won a libel suit against Ald. Gowanlock, but, while the verdict was a substantial vindication of his professional character, the result must have been at some personal sacrifice, seeing that the litigents are each lett to pay their own costs, no damages being awarded In the course of the trial Mr. Justice Falconbridge gave a ruling to the effect that a member of a municipal council has not the same degree of privilege in making charges that a member of Parliament has. The decision sprang from a technical point raised by Mr. Osler. He wanted the defence to enter a plea of justification but Mr. East declined taking that line.

JAMES TRAN OF CEDAR GROVE V. TOWNSHIP OF PICKERING.

This case was heard at the last Whitby Assizes. The action was to recover damages for an accident sustained by an upset on the 6th con. of Pickering, whilst driving along the turnpike. The statement of claim alleged that the roadway was turnpiked eight feet high, and that there was a hole in a culvert which was emphasized by a plank and a bush stuck up, etc. His lordship suggested that the lawyers retire and endeavor to to make a settlement, and after about an hour they returned to court allowing Tran $800 for his bruises, which had laid him up a month, and $400 to his niece, who had her arm dislocated. Each party to pay their own costs.

FLEMING VS. CITY OF TORONTO.

Judgment on appeal by the defendants the city of Toronto from the judgment pronounced by Street, J., at Toronto at the trial of the action, which was brought to restrain the defendants from entering into any contract for the building of a bridge or bridges on Dundas street, Toronto, over the tracks of the Grand Trunk and Canadian Pacific railways, without first submitting a by-law to the ratepayers for raising money to pay for their erection, At the the trial the defendants contended that under 53 Vic. (O.) ch. 50, sec. 621, sub-sec. 2, a by-law was not necessary, but Street J., held that it was, and gave the plaintiff his costs of the action, though the defendants had meanwhile passed a by-law and taken other steps to validate their acts, making an injunction order no longer necessary. The appeal was taken on the grounds that the learned judge was wrong in finding that the corporation intended to execute the agreement in question without complying with the provisions of sec. 618 of the Municipal Act; that the corporation had in fact complied with all the provisions of the section cited before the action was brought, and that therefore the Council was in a position to pass a by-law for raising the city's share of the moneys required without requiring the assent of the electors to such by-law. Appeal dismissed with costs. E. D. Armour, Q. C., for the appellants. Moss, Q.C., and Coatsworth for the respondent.

HUSON VS. TOWNSHIP OF SOUTH NORWICH.

Judgment on appeal by the township from two orders made by Galt, C. J., the first quashing a local option by-law of the township, and the second refusing an application for the rehearing of the application on which that order was made. The grounds on which the learned chief justice held that the by-law should be quashed were that it enacted no penalty for breach of its provisions ; that the municipality had no authority to pass the by-law to take effect at once; and that the by-law was in excess of the authority of the provincial legislature as amounting to an absolute prohibition of the sale of liquor within the township. The appeal was taken on the grounds that the by-law did not impose total prohibition, but a prohibition of the sale of liquor by retail only; that itwas validated by 54 Vic., ch. 46, sec. 1; that the omission to provide a penalty was not sufficient to avoid the by-law; that a penalty is provided by another by-law of the township, and on other grounds. The court held that the by-law prohibited retail selling only, and also held in favor of the by-law upon the other grounds urged. Appeal allowed with costs and order setting it aside recinded with costs.

ATTORNEY-GENERAL (VAUGHAN TOWNSHIP) VS. VAUGHAN ROAD COMPANY.

Action for an injunction to restrain the defendants from collecting tolls on the Vaughan road until the engineer of the township of Vaughan shall have certified the road to be in a fit state of repair, he having notified the defendants, under the General Road Companies' Act and amendments, not to collect tolls. The defendants contended that they were not subject to the provisions of the general Act. The question at issue has been decided by the court of appeal in favor of the defendants, on a motion for an interlocutory injunction; but the motion was brought down to trial in order to enable the plaintiffs to appeal to the supreme court. Judgment for the defendants, following that of the court of appeal already pronounced, and dismissing the action with costs. Reference as to damages by reason of the injunction. Proceedings stayed till further order.

VILLAGE OF GEORGETOWN V. STIMSON.

Judgement in special case submitted. R. S O., c. 184, sec. 340, provides that "Every municipal council may, under the formalities required by law pass by-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the ratable property of the municipality for any purpose within the jurisdiction of the council, but no such by-law shall be valid which is not in accordance with the following restrictions and provisions, except in so far as is otherwise provided in the next following two sections of this Act." The by-law in question was passed under the formalities required by law, but was not in accordance with the provisions and restrictions referred to, and its defects were apparent on its face, but it was duly registered under sec. 351 of the Act, and no application or action to quash or set aside the same was made within three months from the registry. The learned chief justice holds that the by-law was at first invalid under sec. 340, but that by sec. 351 the by law and the debentures issued thereunder, is, are, and will be absolutely valid and binding upon the plaintiffs according to the terms of the by-law ; that if there is any repugnancy between secs. 340 and 351, the former must give way to the latter, as the later expression of the will of the legislature ; and that registration cures defects apparent on the face of the by-law. Judgment in favor of the plaintiffs upon the special case.

S. S. 18, VS. MARIPOSA TOWNSHIP

At Osgoode hall, on monday, 11th april before V. C. Ferguson, a motion was made on behalf of the trustees of S. S. No. 18, Mariposa, for a mandamus to compel the municipal council of Mariposa to pass a by-law for the issueing of debentures to pay for a new school site and the erection of a new school house. For more than a year the question of change of site was agitated and finally an award was made establishing the old site. The statute makes such an award binding for at least five years. The agitation continued, however, and on the presumed authority of a special meeting held since the award, the trustees applied to the township council to pass the required by-law. This the council refused to do. Hence the motion for a mandamus to compel them. On behalf of the trustees it was urged that the council were obliged to pass the by-law on its being shown that a majority vote of a special meeting of ratepayers held sanctioned the application for the loan. Council for the township argued that notwithstanding the imperative language of section 115, it was the right as well as the duty of the council, in the interests of their township and of their particular ratepayers, to see that the applicants had established a clear legal right to demand what they did ; that section 64 is to be read with section 115 of the act as a condition precedent, and that in the absence of proof that a majority vote had adopted the new site the council properly refused ; also that the requisition asking the debentures to be made payable in ten years, was an improper interference with the discretion given to the council by the statute to extend payment over a term not exceeding thirty years, and that the court would not deprive the council of this discretion. His lordship ruled in favor of the township council on each of these points and refused the mandamus, with costs to be paid by the trustees, but without prejudice to any application which they may choose to make on other materials.