

strip reserved by H. & M. Subsequently H. & M. sold all their land except the one-foot strip, and afterwards the corporation expropriated the two strips to make D. Street a thoroughfare, and H. & M. were allowed merely nominal damages for their strip.

Held (BURTON, J.A., dissenting), that this was right, there being no evidence that the property had any market value in the hands of the owners, or was worth anything except for the purpose of opening the street, or that it was capable of being put to any other use whatever. The higher price that H. & M. might have obtained for their lots if the street had been made a thoroughfare before the lots were sold, or the price that the residents on the street might be willing to give to have the obstruction removed could not be considered as elements in fixing the damages.

Per OSLER, J.A.—Where works are done under the local improvement clauses of the Municipal Act, compensation for property expropriated is to be ascertained in the same manner, and by the application of the same principles, as in cases where the corporation are not acting under those clauses, and this whether the corporation initiate the proceedings or they are put in motion by the petition of the parties who desire the improvements to be made. There is nothing to justify the notion that in the latter case more is to be paid for the work than if the cost had to be borne by the corporation.

Judgment of BOYD, C., 16 O.R., 372, affirmed.

The Attorney-General for Ontario (*Mowat*, Q.C.), for the appellants.

J. H. Macdonald, Q.C., and *C. R. W. Biggar* for the respondents.

FINCH v. GILRAY.

Landlord and tenant—Payment of taxes by tenant—Rent—Tenant acquiring title by possession—Real Property Limitation Act—R.S.O., c. 111, s. 5, s. 5, s. 6—Acknowledgment of barred debt.

A tenant agreed to pay for certain premises six dollars a month and taxes; and for some eighteen years remained in possession, paying the taxes to the municipality and paying nothing else.

The tenant, after the expiration of this period, gave to his landlord an acknowledgment of indebtedness for rent for the whole period.

Held, that a payment of taxes was not a payment of rent within the meaning of the Real Property Limitation Act, and that the tenant, although he had always intended to hold merely as tenant, had acquired title by possession, and could not make himself liable for rent accruing after the expiration of the statutory period by giving to the landlord an acknowledgment of indebtedness in respect of it.

Judgment of the Queen's Bench Division reversed, and that of STREET, J., at the trial restored. See 16 O.R., 393.

J. B. Clarke for the appellant.

W. M. Douglas for the respondent.

MCINTYRE v. HOCKIN.

Master and servant—Wrongful dismissal—Condonation—Province of jury.

In an action of damages for wrongful dismissal tried with a jury, it is for the judge to say whether the alleged facts are sufficient in law to warrant a dismissal, and for the jury to say whether the alleged facts are proved to their satisfaction.

If good cause for dismissal exists, it is immaterial that at the time of dismissal the master did not act or rely upon it, or did not know of it, and acted upon some other cause in itself insufficient. When the master has full knowledge of the nature and extent of misconduct on the part of his servant sufficient to justify dismissal, he cannot retain him in his employment and afterwards at any distance of time turn him away for that fault without anything new, but this condonation is subject to the implied condition of future good conduct, and whenever any new misconduct occurs the old offences may be invoked and may be put in the scale against the offender as cause for dismissal. Condonation is a question of fact for the jury if in the opinion of the judge there is any evidence of it to be laid before them.

Judgment of the County Court of Elgin affirmed.

Moss, Q.C., for the appellant.

J. M. Glenn, for the respondents.

ROBB v. MURRAY.

County Court—Jurisdiction—Claim over \$200—Liquidated or ascertained amount—R.S.O., c. 47, s. 9, s. 2.

Pending negotiations for the sale by the plaintiff to the defendant of a certain business