

The 7 Geo. IV, cap. 18, the act incorporating the Desjardins Canal Company states in the preamble, that "it is of manifest importance to form a water communication or canal from the said bay (Burlington), to the village of Cook's Paradise, through the intervening marsh and other lands." I do not find anything else in this or other acts of Upper Canada respecting the Desjardins Canal, touching the question, however remotely. The only act of Canada affecting this canal is 16 Vic., cap. 54, which throws no light on the question. None of these acts show the bridge to be within the harbour, though the water over which it crosses should be deemed part of Burlington bay.

There is in fact no evidence to show where the boundary line between the townships of Barton and Flamboro' West meet, if in fact they meet at all in the marsh through which the waters in question run. Looking merely at a map, it would seem as if they did not, but that the marsh generally lies either in the township of Ancaster or of West Flamboro'. According to Mr. Blythe's evidence, the place on the west side where the bridge and its continuation comes to the firm ground is in West Flamboro'; but in which township, or whether in any township, the marsh or the water-channel over which the bridge passes does not appear as a distinct matter in evidence.

If this marsh and this channel are within the limits of either of the townships named, or in fact of any township, then the bridge must be, I think, considered as not within the meaning of the 39th section, as a bridge lying between the county and city. I understand that section to refer to roads forming a separation in their longitudinal extent as well as in the breadth, either between two counties or a city, and the other part of the county in which the city is. A road along which a traveller would pass between the two, or across which he would go out of one into the other, and not a road which passes through one county directly it reaches the boundary between it and some other territorial division, passes along and through such other. I take this road to be of the latter character, and therefore not within the strict meaning of the statute. But it may be (and I so understood it to be suggested) that the marsh is without the limits of any township, is in fact Crown property ungranted, and it was contended to form part of the waters of Burlington Bay; and then the joint liability of the city and county was rested on one of two grounds: 1st, that the navigable channel was within the clause 39; in which case I do not perceive that the statute extends to making a bridge over it; or, 2nd, that this road comes within the spirit or the letter of the act, as a road crossing a portion of ungranted marsh, which intervened between the city and another portion of the county. If this were so, then it would, I suppose, be within the limits of the county of Wentworth, which by 14 & 15 Vic., cap. 5, schedule A, No. 42, consists of the townships (among others) of Flamboro' West, Ancaster and Barton; for by the 11th sec. the limits of all townships on lake Ontario, &c., and also on any rivers, lakes and bays not specifically mentioned in the act (which Burlington bay is not) extend to the middle of the lakes and bays, and to the middle of the channels of the said rivers: so that this marsh, if omitted from any survey as part of the waters of Burlington bay, must, within this enactment, form part of the township or townships immediately abutting on it.

But the effect of this extension of the side lines of a township would only be to bring the bridge in question, either in part or altogether, within the limits of one of the townships adjacent; and that would apparently not affect the city of Hamilton, as not coming within the application of that enactment, being composed of a part of the township of Barton, but leaving Barton still a township, and as such subject to the provisions of the statute referred to; so that in that view this bridge would not be between the city of Hamilton and the county of Wentworth. And if the limits of Hamilton were to be extended by force of the statute till they reached the middle of the channel of the navigable waters, the limits of the town-

ship of West Flamboro' must be in like manner extended until they met those of the city. So that it appears to me this bridge can in no way be treated as one lying or being between the city and the county, so as to create the joint liability to repair declared upon. The verdict that the bridge, &c., was not within a part of the city, seems quite right; and for the reasons already given, I think, as to the city, the rule for a nonsuit should be made absolute.

As to the county, I am by no means disposed to accede to the argument, that being an action of tort, the plaintiff may retain his verdict against one defendant, though failing against the other. My inclination at present is, that where the wrong is the non-performance of a joint duty, if the joint duty be not proved the plaintiff must fail altogether. But were it otherwise, I do not see any evidence to make the county liable for keeping this road in repair. No proof was given of any by-law making this a county bridge or road, nor any other proof establishing the liability of the county to keep it in repair. No statute that has been cited, or that I have seen, imposes such an obligation. It is not a toll bridge, for all that appears, so as to come within the provisions of 16 Vic., cap. 190, sec. 34.

I think, therefore, the rule obtained by the county to enter a nonsuit should also be made absolute.

BUCHART V. THE MUNICIPALITY OF THE UNITED TOWNSHIPS OF BRANT AND CARRICK.

(Easter Term, 19 Vic.)

Proof of by-law.

The court will discharge a rule to quash a by-law moved on a copy of the by-law, verified in a manner different from that pointed out by the statute, unless the reasons for such variance are clearly and satisfactorily explained.

(6 C. P. R., 130.)

S. Richards, in Michaelmas term last, obtained a rule *Nisi* (returnable on the 1st of Hilary term) calling on the Municipality of the United Townships of Brant and Carrick to show cause why a by-law, entitled, "No. 4, to raise, by way of loan, the sum of £500, payable with interest in seven years, for the purpose of cutting several roads and bridging streams in the United Townships of Brant and Carrick," should not be quashed, on the following grounds: First—That the amount of rateable property in the Municipality for the financial year next preceding the passing of the by-law is not set forth therein. Second—That no day is named on which the by-law shall come into operation. Third—That the interest on the debentures is directed to be made payable half-yearly or otherwise, which is uncertain. Fourth—That the by-law purported to be for the construction of certain works, which were nearly all done and paid for before the by-law was passed. Fifth—That there are several distinct and unequal rates in the pound, mentioned in the schedule, to be levied. Sixth—That the by-law does not impose a special rate per annum, to be levied in addition to all other rates levied in each year. Seventh—That the by-law was not submitted to the qualified municipal electors of the Municipality for their approval.

There were affidavits, verifying the copy of the by-law produced to be a true copy. The copy produced had, moreover, no seal. The facts extrinsic of the by-law itself, which constituted the foundation of the fourth and seventh objections, were also stated on affidavit.

In Easter term C. Robinson showed cause. He objected to the want of a seal, and to the sufficiency of the excuse for its not being attached to the copy as the statute requires; also, that the certificate of the clerk was insufficient; that the papers should be entitled, that it might appear who was the relator: that though Buchart is put forth as the relator, it is another party who swears to the copy of the rule—See Fisher v. The Municipal Council of Vaughan, 10 U. C. Q. B. R., 492. He referred to 12 Vic., chap. 81, sec. 198; in re Conger v. Peterboro' Municipal Council, 8 U. C. Q. B. R. 349; Cole on Quo Warranto, 181; the rule in the Court of Queen's Bench