

seizure; (d) a number of small charges for the maintenance of the mortgaged chattels. (2) Whether the defendant Honsinger was chargeable with the price of several of the chattels offered at the sale.

J. A. Robinson, St. Thomas, for appellants.

W. K. Cameron, St. Thomas, for plaintiff.

OSLER, J.A., delivered the judgment of the Court (ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, J.J.A.) affirming the decision of the Divisional Court, after an examination of the conflicting evidence, holding that it was open to the Court below to form their own conclusions and to overrule the Master's finding and the order affirming them.

J. A. Robinson, St. Thomas, solicitor for appellants.

McLean & Cameron, St. Thomas, solicitors for respondents.

BOYD, C.

APRIL 15TH, 1902.

TRIAL.

BROWN v. CITY OF HAMILTON.

Municipal Corporation — By-law—Prohibiting Fireworks in City—Discretionary with Corporation—Non-intervention by Corporation as to Enforcement is mere Non-feasance—Costs—Rule 373.

Action for damages for the permanent loss of the use of plaintiff's left eye, owing to the negligence of defendants, who, he alleges, contrary to sec. 34 of their by-law No. 30, allowed and licensed an unlawful and dangerous display and use of fireworks on the market square, and at the City Hall, and on the steps of the latter, and the streets and sidewalks. The plaintiff was travelling in a street car when he was struck by a portion of explosive substance, a roman candle, which was being set off by some one in a procession. The by-law was passed under the authority conferred by the Municipal Act

J. G. Farmer, Hamilton, for plaintiff.

F. Mackelcan, K.C., for defendants.

BOYD, C.—The passing of the by-law by the defendants was an exercise of the delegated sovereign power intrusted to municipalities—a function the exercise of which is discretionary. The city is free to enact or not to enact, and having enacted may repeal without any responsibility which can be examined by the Courts. Having enacted such a by-law, there is no duty cast on the municipality to see to its enforcement. That rests with any one and every one in