

All that the Railway Acts require is that "leave shall be obtained" from the proper municipal or local authorities before a railway is carried along an existing highway. Such leave may be granted at any time, whether before, during, or after the construction of the railway. Although, moreover, the most proper way to grant such leave would be by by-law, yet it may also be granted by resolution. R. S. O. c. 174, sec. 277, enacting that the powers of Township Councils shall be exercised by by-law, must be construed as referring only to the exercise of powers of the Council under the Municipal Act, and not to powers which may be exercised under a special Act passed for other purposes or by another legislature.

*Held* also, that apart from this, the plaintiffs had acquiesced in the acts complained of, and a corporation may be bound by acquiescence as an individual may. The plaintiffs had power to grant or refuse leave to do what they were now complaining of, and the evidence shewed that they stood by while the railway was being built, on the assumption that it was assented to by them, and they had allowed it to be operated for four or five years without objection; moreover, by the resolution above referred to, they had recognised what had been done and procured further expenditure by the defendants.

*Moss, Q.C., (W. R. White with him) for the plaintiff.*

*J. H. Metcalf for the defendants.*

#### PRACTICE.

Divisional Court.]

MCTIERNAN V. FRASER.

*Appeal—Divisional Court—Court of Appeal—O. J. A.*

An appeal from the report of the Master at Ottawa was decided by PROUDFOOT, J., on 29th June, 1882. The cause was made and decree made before the O. J. A. came into operation. The plaintiff then appealed to the Divisional Court.

*Held*, that the cause was not distinguishable from *Re Galena*, 46 U. C. R. Under the O. J. A. the appeal should have been to the Court of Appeal and not to the Divisional Court.

*S. H. Blake, Q.C., for appellant.*

*Bethune, Q.C., contra.*

The Master in Chambers.]

[Sept. 8.]

WALLACE V. WHALEY.

*Reference—Powers of Local Masters—O. J. A. secs. 47 and 48.*

The following order of reference was made at the trial of the cause: "Upon hearing the solicitors on both sides, and by their consent, I order that all matters in difference in this cause between the parties in this cause be referred to the certificate of the local Master, etc., with all powers, as to certifying and amending, of a Judge of the High Court, and that the costs of the suit and of the reference be in the discretion of the local Master."

The Master found on every issue between the parties, and exercised his discretion as to the costs, and concluded his report as follows, "All which I humbly certify and submit to this honorable Court," but the report did not contain any order on any party to pay according to the findings or the costs.

Upon this report the defendant signed judgment, and this was a motion by the plaintiff to set the same aside.

*Held*, that the signing judgment was proper, as the Master had acted as an arbitrator under the Common Law Procedure Act, whose decision was final, and not as an official of the Court under secs. 47 or 48, O. J. A.

*Shepley for motion.*

*Clement, contra.*

Burton, J.]

[Sept. 9.]

INTERCOLONIAL BRIDGE CO. V. SOUTHERN RAILWAY.

Motion to disallow a bond filed by the defendants (appellants), to secure the amount found due the plaintiffs, pending an appeal to the Privy Council. The bond was in the form given in Rule 36, O. J. A., with some further recitals.

It was objected that the condition of the obligation ought to read "do and shall effectually prosecute such appeal and pay," etc., instead of "or pay," as given in the form, and also that the condition should be to pay "what had been found due by the Court appealed from," instead of "such costs and damages as shall be awarded."