Town of Whitby v. G. T. R. Co.

Judgment on motion by plaintiff' pursuant to leave given in the judgment of this court (1 O. L. R. 480) on the appeal from the judgment of Boyd, C. (32 O. R. 99), for leave to amend so as to claim a remedy (if any) against defendants by reason of the breach of the prohibition contained in 45 Vict. ch. 67, sec. 37 (O.), which provides that "the workshops now existing at the Town of Whitby, on the Whitby section, shall not be removed by the Consolidated Company without the consent of the Council of the corporation of the Town of Whitby." Held that it cannot be doubted the provisions of the above section were introduced to protect the plaintiffs against the removal of the workshops at the sole will of the Midland Railway Company, and the defendants have succeeded to the position of that company, and assume and become liable to its obligations. The workshops having been removed partly by each company and no injunction sought or obtained, the plaintiffs are not left without a remedy, but ought to be allowed to show in this action such damages as have fairly resulted from the breach, such as loss of taxes, as long as the building would last, but those damages cannot be assessed upon the basis of the prohibition being against the shutting down of or the reducing the extent of the work carried on in the workshops. Some of the bases as to damages are indicated in Brussels v. Ronald, 11 A. R. 605, St. Thomas v. Credit Valley, 11 O. R. 673, but the plaintiffs should not be tied down to these or claims of a similar kind if there are any others that may appear to be fair and reasonable damages to them as a corporation. Order made allowing plaintiffs to amend. Reference to Master at Whitby as to damages upon plaintiffs' election to take it within one month. Costs to and including judgment to defendants. Further directions and subsequent costs reserved. If election not made motion dismissed with costs.

Re Medler & Arnot and City of Toronto.

Judgment on appeal by Medler and Arnot from an award of arbitrators and on cross-appeal by the corporation as to an allowance of $100 for damages. The appellants allege that their lands on Berkeley street, in the city of Toronto, have been injuriously affected by the laying of several tracks and rails for shunting purposes at the foot of the street, and by the closing of the street pursuant to an agreement known as to the tripartite agreement between the city and the Grand Trunk and Canadian Pacific Railway Companies and ratified by 55 Vict. chap. 90, section 2 (O). Held, that the city cannot be held liable in damages, because prior to the tripartite agreement the Railway Committee of the Privy Council had granted, on February 23,892, leave to the railway companies to construct their lines along Mill, Parliament and Berkeley streets, and permitted a deviation of Berkeley street, and that leave has been ratified by 56 Vict., ch. 48; nor does section 2 of the former act make the city liable, because the injury complained of is not within the meaning of that clause, as a liability could only arise where any person's "lands are injuriously affected," and here they are not, the injury not being to the land, but consisting in personal inconvenience or discomfort to the owners; Caledonian v. Ogilvie, 2 Macq. 229. Becketts' Case, L. R. 3 C. P. at p. 94; Pawell v. Toronto H. & B. R. W. Co. 25 A. R. 209, nor are appellants entitled to damages by reason of the loss from filling in the lots south of the new windmill line, because they have no title to the water lots in question; nor should the appellants be allowed damages for the closing of Berkeley street, because their lands do not abut thereon; Falls v. Tilsonburg, 23 C. P. 167. Held, also, that the arbitrators had no discretion to direct the costs, including stenographers' fees, etc., amounting to $2,000 to be paid by the city. Appeal dismissed with costs and cross-appeal allowed.

Thompson v. Township of Yarmouth.

Judgment in the action brought at St. Thomas by plaintiff on behalf of himself and other ratepayers. The plaintiff alleges a contract or quasi-contract between himself and other ratepayers and the corporation of the Township of Yarmouth, made on or about January 16, 1892, by which the defendant corporation agreed to maintain and repair Hughes street bridge, to be used as an ingress to and exit from St. Thomas. The plaintiff seeks specific performance of this contract and a declaration that the defendant corporation is liable to maintain and repair the approaches to Hughes street bridge, and a mandamus compelling the defendant corporation to repair and maintain same or in the alternative the plaintiff claims the return of certain moneys which he paid to the defendants towards a fund to purchase an approach to the bridge. Held, that the plaintiff cannot maintain this action, because individually he has no interest in the matter except as a ratepayer of the township. An indictment is probably the appropriate remedy. Held, further, that the defendant corporation cannot lawfully enter into the contract alleged by the plaintiff, and that the representations which the plaintiff claims were made to him and the conversations in 1891 with the then Reeve and Deputy Reeve were not of such a character as to bind the defendant corporation. Action dismissed with costs. Thirty days' stay.

Rex v. St. Pierre

Judgment on motion by defendant to make absolute a rule *nisi* quashing a conviction of defendant by the police magistrate for the City of Ottawa for offering goods for sale contrary to a transient traders' by-law of the city of Ottawa. Held, that there being no statutory provision as regards transient traders similar to that as regards hawkers, that the description is to include those who carry or expose samples or patterns of goods to be delivered afterwards, the defendant does not come under the category of transient traders. No goods were offered for sale. Samples of goods were exhibited suitable for clothing, and the transaction was carried out by the choice of some particular pattern in Ottawa, notification of which was sent to Montreal, whereupon the garment was made out of that material and forwarded to the person giving the order at Ottawa, who then made payment on delivery. The collocation of the words in the statute as to sale or offering for sale by transient traders implies some exhibition and visible presentation of the goods dealt in, such as occurs in sales by auction. the whole trading being carried on by the occupant of fixed premises within the municipality. Neither in terms nor in substance was there an offering of goods for sale within the municipality. Nevertheless the effect of this method of dealing may be to affect prejudicially the business of tax-paying tailors and clothiers of Ottawa. According to the cases certiorari lies if the magistrate has no juri diction over the matter adjudicated. That is, there was no power to pass a by-law or to convict under the transient traders' clauses in the municipal act in respect to a person living at a hotel and taking orders for clothing to be made out of material corresponding with samples exhibited. Rule absolute quashing conviction without costs.

Mann v. City of St. Thomas.

Judgment in action tried without a jury at St. Thomas. Action by James Mann to recover $1,000 damages for injuries (dislocation of shoulder) received on January 11, 1902, by a fall upon an icy sidewalk at the corner of Talbot street and Woodworth avenue, in the City of St. Thomas. The plaintiff charged that the defendants were guilty of gross negligence in allowing the sidewalk to be out of repair. Held, that having regard to the place where the accident happened the state of the weather and other surrounding circumstances, there was not that "gross negligence" which must exist to fasten liability on defendants. Ince v. City of Toronto, 27 A. R. 410, 31 S. C. R. 323, referred to. There was a very much stronger case against defendants in M. Quillan v. Town of St. Marys, 31 O. R. 401. If the finding were for the plaintiff the damages would not be sufficient to carry costs on the High Court scale. Action dismissed with costs.