

APPEAL ALLOWED

Full Court Decides for the City in the Matter of Point Ellice

one of nonfeasance, that when the road has fallen into a bad condition the failed to execute the necessary repairs. If, then, they are liable to the present action, it must be either because that liability has been expressly imposed by some enactment or because the legislature has imposed some duty upon them for the breach of which a right of action accrues to any person injured by it.

Before examining the Victoria Electric Railway & Lighting Company Act, 1894, and the agreement in the schedule A, to see whether the city council have any right to require the company to incur any liability to the company, it seems proper to observe that the legislature must have intended that the Municipal Councils should have no interference with the contracting of debt, sections 110 and the following sections should not be interfered with. In other words the city council have no right to interfere unless by distinct provisions. Now section 12 of the act of 1894 says that in addition to the powers conferred by the act, the council are authorized and empowered to construct, maintain and operate a single or double track, etc., and reference is made to the agreement of approval and supervision in reference thereto. It is far from suggesting any liability on the part of the city towards the company. Section 13 of the agreement makes the company responsible for all charges arising out of the construction or operation of the works, etc.

the provision is to the company furnishing and laying at their own expense a new flooring over the whole of a bridge so crossed, may be considered according to the maxim "expressio unius est exclusio alterius" as negative liability on the part of the other company. In other respects on the part of the company (though this maxim is frequently misunderstood). But the real question is whether, according to the authorities to which I have referred, a maxim in distinct language is imposed on the company to repair the bridge, and the company to repair it in such a manner as to render it suitable to carry trams. I may observe that this above maxim is to use the expression in the last edition of Maxwell on statutes

occasionally misapplied in argument, and its true application is pointed out at pages 459-461, in such a way as to give no assistance to the plaintiff's case. The learned Judge's decision, in paragraph part of section 33 of the agreement, contains nothing imposing liability upon the city council. I see nothing in the statute or agreement requiring the city council to repair a bridge for the company. In *Municipal Council of Sydney v. Bourke*, 1895, A.C. 433, part of the head note is "Cowley v. Newmarket L. Board 92, A.C. 345, followed as establishing the principle that an action for damages will not lie for non-repair, even in cases where non-repair consti-

states an indictable breach of duty, refer to this because it was agreed that the council would be liable on the ground that the conduct of the city council amounted to nuisance—but the council would not be liable on the ground that it was negligent. It was there, at page 143 the judicial committee say: "In the series of cases ending with *Cowley v. Newmarket L. Board*, the question of liability on the ground of negligence would not lie on re-par of a highway, the duty to repair was upon the highway authority, and the council was not liable on the ground that the council's duty rendered themselves liable to penal proceedings by indictment or otherwise." The question in contrast was whether an authority maintained a highway. But here it cannot be seriously contended that the city council by reason of its failure to maintain the highway for vehicles and at the same time attempting to make it suitable for transverse traffic, have acted contrary to the statutory duty. The council cannot be held liable on any breach of duty whatever. It follows that the declaration of right in the

decree must, as well as the remainder of it, be reversed. I think it is clear the plaintiffs have no such right, and the judgment must be reversed, and, as usual, with costs.

Mr. Justice McColl—I concur.

W. J. Taylor and C. D. Mason for the city; E. P. Davis, Q.C., and L. P. Dunn for the tramway.

Hon. Mr. Justice Walkem's judgment will appear to-morrow.

EAST KOOTENAY MINERALS.

A Growing Description of the District's Capabilities.

The Crow's Nest Pass, through which the proposed railway will enter the Kootenay valley, has an elevation of 5,500 feet above the sea level. This is about 200 feet higher than the Kicking Horse pass, through which the Canadian Pa-

The railway now crosses the Rocky Mountains. It is reported that the grade of the proposed road through the Crow's Nest pass will be only 1 per cent. The proposed road will open the largest mineral country yet discovered—a section of vast undeveloped mineral wealth yet in its infancy. East Kootenay has coal, copper, silver and gold mines, which are being developed. This road when completed will be the means of opening up

the whole southern portion of East Kootenay. It will run for a distance of 150 miles through a section of country rich in mineral, tributary to and dependent upon this road "for future shipment of ore and supplies" are the North Star and Sullivan group of mines numbering 100 claims or prospects. On Perry creek are 90 more, Weaver creek 20; Moye lake and river 22; Bull river and Elk

river, 15; St. Mary's river and tributaries over 100. Wild Horse creek, 90; Wasa and the vicinity of Tracey creek, 30; and the largest coal field upon the American continent. Thus it will be seen that there are over 500 mineral claims on the line of and tributary to this proposed road. The North Star can ship 100 tons daily, the St. Eugene 50 to 70, the Dibble mine has sacked over 100,000 tons of coal, and the road is ready for shipment of such quantities.

ready to shipment, and several mines in the vicinity of Tracey creek have considerable ore on the dump. On Broder river there are at least two copper properties that can become producers at once, and there is no doubt that at least ten per cent. of the claims in this district would become producers upon the advent of a railroad into this valley.—Fort Steele Prospector.

Ayer's Cherry Pectoral is known by its works. The experience of half a century proves that no other preparation stops coughing and allays irritation of the throat and bronchial tubes so promptly and effectually as this.