

Q.B. Div.]

NOTES OF CANADIAN CASES.

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by-law. They cannot, however, delegate any powers except those which they exercise under the Public Health Act.

A by-law was passed by the Municipal Council of the city of Brantford, regulating the cleansing of privy-vaults, and imposing a fine of not less than \$1, nor more than \$50 for a breach of its provisions.

*Held*, valid as the by-law was one under the Municipal Act, and not under the Public Health Act, which restricts the penalty to \$20.

The by-law, as set out below, was objectionable as delegating to persons not members of the council, the Board of Health, the powers which as municipal matters belonged exclusively to the council.

*Beck*, for the motion.

*Wilkes*, contra.

IN BANCO.

ROBERTSON V. HAMILTON PROV. AND  
LOAN SOCIETY.

*Mortgagor and mortgagee—Short forms Act—  
Distress for arrears—Leave and license.*

Defendant company were mortgagees of plaintiff's land, under the Short Forms Act, the mortgage containing this clause: "Provided the Society may distress for arrears of instalments." The principal and interest were added together, and, by the mortgage, the amount was repayable by equal annual instalments. There was also a covenant to pay interest in arrear and for interest thereon. The bailiff, by arrangement, sold the goods in plaintiff's shop from day to day, plaintiff assisting, a larger amount being thus realized than if sold by auction, and the balance over defendant's debt being paid plaintiff.

*Held*, affirming OSLER, J., that plaintiff, by the mortgage and his assent to the distress and sale, licensed the selling of the goods, though he was entitled to nominal damages for the sale of what was unnecessary; but that, as there was the right to distress for instalments in arrear only and not for interest thereon, plaintiff was entitled to judgment for the difference between the instalment and the amount distrained for. Per OSLER, J., the substitution of "instalments" for "interest" in

the Short Forms Act did not take it out of the statute.

*J. K. Kerr*, Q.C., for plaintiff.

*Muir*, contra.

HATELY ET AL. V. MERCHANTS' DESPATCH  
COMPANY ET AL.

*Carriers—Bill of lading—Conditions—Negligence—  
Judgment against three defendants—Separate  
appeals.*

Plaintiff consigned butter to his co-plaintiffs in England, shipping it by the defendant's company, under contract with defendant, Despatch Co.; on this bills of lading endorsed by plaintiff to his co-plaintiff in England, at a through rate, paid to defendants, Despatch Co., and apportioned by agreement amongst them. The butter was conveyed by the defendants, the G. W. R. Co., from London to New York, and there handed over sound on a vessel of the defendants, the G. Wes. Steamship Co., where it remained, through the latter's negligence, during some hot weather, causing damage, in which state it was when it reached the consignees. By the bill of lading it was provided that the consignees should see that they got their right marks and numbers, and that after the lighterman, wharfinger, or applicant for the goods had signed for the same the ship was to be discharged from all responsibility for misdelivery or non-delivery, and from all claims under the bill of lading. The learned judge (Osler, J.) who tried the case found for the plaintiff, giving a general verdict against all the defendants.

*Held*, per HAGARTY, C. J., affirming OSLER, J., that the condition on the bill of lading should, notwithstanding the general words at the end, be confined to cases arising from misdelivery or non-delivery, and did not relieve the Steamship Co. from liability for actual negligence.

Per CAMERON, J.—The stipulation in the bill, by its concluding general terms, discharged defendants from liabilities for the negligence complained of.

Per ARMOUR, J.—Where there is a general judgment against several defendants, rule 510 does not enable them to sever and appeal to several courts, but they must all appeal to the tribunal to which the defendant taking the first step has appealed.