

ors were bound to make a formal survey, and could not take a line run by one of them at a former time as the said boundary line. Appeal allowed with costs.

Gregory, for the appellant.

Weldon, Q.C., for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.]

[Mar. 9.

STALKER v. TOWNSHIP OF DUNWICH.

Municipal Corporation—Pathmaster—Public duty—Private interest—R. S. O. (1877) c. 73, s. 1.—Liability—Acquiescence by corporation—Compensation under Municipal Act—Assessment of Damages.

A pathmaster is "an officer or person fulfilling a public duty" within the meaning of R. S. O. (1877) c. 73, s. 1, and for anything done by him in the performance of such public duty he is entitled to the protection of the statute; but where, professing to act as a public officer, he seeks to promote his private interest by some act, he disentitles himself to the protection of the statute, and may be proceeded against for such act as if he were a private individual.

And where a pathmaster of a township, in the course of his employment, so acted as to disentitle himself to the protection of the statute, and thereby causes damage to the plaintiff,

Held, that the township corporation, as well as the pathmaster was liable; and even if not originally so, the corporation made itself liable by sanctioning what was done, and refusing to amend it after notice.

Damage to land, arising from an overflow of water, caused by negligently diverting the water from its natural course without providing sufficient outlet, is not the subject of compensation under the Municipal Act, 1883.

Since the O. J. Act damages should be assessed up to the date of judgment.

W. R. Meredith, Q.C., for the plaintiff.

Lash, Q.C., and *Glenn*, for the defendants.

Full Court.]

[Mar. 9.

REGINA v. BUSH.

Constitutional law—Appointment of magistrates by Lieutenant-Governor of Province—Powers of Provincial Legislature—B. N. A. Act, ss. 91, 92, 48 Vict. c. 17 (O.).

The Crown has the prerogative right to appoint justices of the peace within the Dominion of Canada and each of its Provinces, but it derogated from that right by assenting to the B. N. A. Act, which conferred upon either the Parliament of Canada or the Legislatures of the Provinces the power to pass laws providing for the appointment of justices of the peace. Such laws are in relation to the administration of justice, and upon the proper construction of ss. 91 and 92 of the B. N. A. Act, are exclusively within the power of the Provincial Legislatures, under s. 91, para. 14. Additional weight is given to the construction placed upon these sections by the Parliament of Canada having from time to time, since the B. N. A. Act, passed laws recognizing the right assumed by the Provincial Legislatures to pass such laws and the appointments made under them.

An order *nisi* to quash a conviction made by a police magistrate appointed by the Lieutenant-Governor of Ontario, under 48 Vict. c. 17 (O.), on the ground that such statute is *ultra vires*, was therefore discharged with costs.

A. H. Marsh, for the defendant.

Irving, Q.C., and *Moss*, Q.C., for the Attorney-General of Ontario.

Delamere, for the magistrate.

Chancery Division.

Boyd, C.]

[Mar. 1.

IN THE MATTER OF THE UNION RANCH COMPANY.

This was a petition by certain shareholders of the above Company, praying a winding-up order under R. S. C. c. 129.