

pany with the cost of the construction of the roadway as a local improvement, under the Consolidated Municipal Act, 1892, and passed a by-law for that purpose.

*Held*, that the work having been done under the agreement between the parties and the order in council, the local improvement clauses were not applicable and the by-law was void.

Judgment of McMahon, J., affirmed.

*Fullerton*, Q.C., and *Caswell*, for the appellants.

*Armour*, Q.C., and *MacMurchy*, for the respondents.

From Robertson J.]

[May 12.]

BELL v. GOLDING.

*Easement—Abandonment—Sale of land—Sale by plan—Lane not in use.*

Abandonment of an easement may be shown not only from acts done by the owner of the dominant tenement indicating an intention to abandon, but also from an acquiescence in acts done by the owner of the servient tenement.

Where therefore the owner of the property over which a right of way existed, with the knowledge of the owner of the property for the benefit of which the right of way had been reserved, built an ice house upon the portion reserved, and after some years pulled down the ice house, and with the same knowledge built a stable on the same site, it was held that the owner of the dominant tenement could not then have the right of way opened.

Per MACLENNAN, J. A. A conveyance of a lot according to a registered plan upon which a lane is laid out does not pass any interest in the lane when it has not in fact been opened on the land and has not been used or enjoyed with the lot in question.

Judgment of ROBERTSON, J., reversed.

*Armour*, Q.C., and *Blain*, for the appellant.

*McFadden*, for the respondent.

From Chy. Div.]

[May 12.]

PIERCE v. CANADA PERMANENT LOAN AND SAVINGS CO.

*Mortgage—Building loan—Subsequent mortgage—Priority of advances on first mortgage.*

This was an appeal by the plaintiff from the judgment of the Chancery Division, reported 25 O. R. 671, reversing the judgment of Ferguson, J., reported 24 O. R. 426, and was argued before BURTON, OSLER and MACLENNAN, J.J.A., and STREET, J., on the 4th of December, 1895.

The appeal was dismissed with costs, MACLENNAN, J.A., dissenting, the reasons for judgment of the majority of the Court being substantially the same as those reported below.

See now 57 Vict., ch. 34 (O.).

*George Bell*, for the appellant.

*S. H. Blake*, Q.C., and *Beverley Jones*, for the Canada Permanent Loan and Savings Company.

*Caston*, for Parsons.