

*Held*, that the by-law was ultra vires of the council, and a conviction under it was bad.

*Held*, also, following *Regina v. McFarlane* (1897) 33 C.L.J. 119, that the conviction was bad because it did not negative the exception contained in the proviso, and there was no power to amend it, because the evidence did not show whether or not the defendant's act came within it. The conviction was therefore quashed, but costs were not given against the informant.

Trial of actions—Meredith, C.J.]

[Dec. 13, 1899.

MONTGOMERY v. RUPPENBURG.

*Specific performance—Lands abroad—Foreign plaintiff—Jurisdiction.*

The plaintiff, a resident of Buffalo, agreed in writing with the defendant to exchange certain lands situate in Buffalo for land of defendant situate in Ontario, and now brought this action for a specific performance of this contract.

*Held*, that the plaintiff having brought his action in this Court and thereby submitting to its jurisdiction, the Court had jurisdiction to decree specific performance.

*Collier* and *Morwood* for the plaintiff. *L. C. Raymond* for the defendant.

Meredith, C.J.]

[Dec 13, 1899.

IN RE MEDLAND AND CITY OF TORONTO.

*Municipal corporations—Local improvements—Block pavement—Liability to repair—Reconstruction—R.S.O., c. 223, s. 666—62 Vict., sess. 2, c. 26, s. 41.*

A city corporation having, by law passed in 1888, adopted the local improvement system, a pavement was constructed as a local improvement in 1891, composed of cedar blocks, circular in form and seven inches in length, laid upon a bed of clean gravel, the roadway having been first graded to the proper level, with wooden kerbing on each side of it. The by-law for levying the assessments stated that ten years was the "lifetime" of the pavement. Secs. 664 and 665 of the Municipal Act, R.S.O., c. 223, authorize the passing of by-laws providing for the construction of local improvements and the making of assessments therefor. Sec. 666 provides that "nothing contained in the two preceding sections shall be construed to apply to any work of ordinary repair or maintenance, and all works or improvements constructed under the said sections shall thereafter be kept in a good and sufficient state of repair at the expense of the city generally."

*Held*, that what the Legislature contemplated was that the initial cost of the construction of the local work or improvement should be borne by the owners of the property benefited by it, but that they should not be