

Asst. Cases.]

IN RE HAMILTON, ETC.—JONES V. HOLDEN.

[County Court.]

against each shareholder under the 36th section at their respective places of business or of residence.

The question arises at once what is it that the company owns which is assessable? On the principle laid down in the 9th section that all land and personal property in the Province shall be liable to taxation—it can never be contended that it is liable both as real estate and personal property, for that would be inconsistent with the intention of the 8th section which requires that taxes shall be levied equally upon the whole rateable property of the locality according to its assessed value, and not upon any one or more kinds of property in particular or in different proportions—in other words I do not apprehend it was the intention to have the interest of shareholders in a Road company in the same property taxed in one county as real estate and in another county as personal estate, which would be the case were the decision of the Court of Revision in this case upheld.

The Road company was incorporated under the Joint Stock Company's Act—Con. Stat. U. C., cap. 49—and under the decision of the Court of Queen's Bench in *Regina v. Davis*, 35 U. C. Q. B. 110, it is a public highway within the meaning of the Municipal Act as being a road laid out by virtue of a statute, and as said by Morrison, J. in that case, "we see nothing in any of the statutes to deprive the highway of its public character, or abridge or interfere with the rights of the public to the use and enjoyment of these highways."

It was contended here that because the 60th section of the Joint Stock Road Companies Act, vests the road and property of the company in the corporation, that therefore it is private property and assessable as land the same as any other property, but under the decision I have named, it is still a public highway in the same way as roads declared to be vested in Municipal corporations under the Municipal Act are declared to be so, and because it is a public highway it is within the exemption of the 6th sub-section of the 9th section of the Assessment Act.

The authorities quoted in the judgment in the case of the *Toronto Street Railway Co. v. Fleming*, 35 U. C. Q. B. 264, go strongly to illustrate another principle upon which this property would not be assessable as real estate; (supposing there were no such exemption in existence as that provided by the 6th sub-section of section 9 of the Assessment Act), that is, that the company are not either occupants or owners of the property in the sense that they have the right (although owners of the road by

statute) to occupy any part of it to the exclusion of others of Her Majesty's subjects, and exclusive occupation has been held to be the foundation of rateability. The decision of the Court of Revision, should therefore, I think be reversed.

COUNTY COURT OF THE COUNTY OF ONTARIO.

(Reported for the *Law Journal*).

JONES V. HOLDEN.

Justice of the Peace acting mala fide and beyond jurisdiction—Quashing conviction bad on its face.

Trespass against a Justice of the Peace. The magistrate in a case brought before him by a complainant who alleged that the plaintiff had taken a sheep of his off the road and sheared it, and kept the wool, made an order which was subsequently embodied in a document purporting to be a conviction, which stated that the plaintiff "unlawfully took a certain ewe from R. W.'s flock on the 4th June last, at Pickering, and having heard the matter of the said complaint, I do adjudge that the said ewe and fleece is the property of the said W. and I order and adjudge the said Jones be discharged therefrom upon giving up the said ewe and fleece to the said W. and paying the costs of this suit." The costs were fixed at \$20, and the paper contained the usual distress clause, but the warrant to commit in case of default was struck out.

Held, on motion for non-suit, that, although the pretended conviction was clearly unsustainable, it should nevertheless have been quashed before action brought.

[Whitby, Dec. 12th, 1876—DARTNELL, J. J.]

The declaration contained a count in trespass and one in trover, the chattel in question being a sheep and its fleece. No special damage was alleged. Plea, not guilty by statute (C. S. C. cap. 126). It was stated by counsel that the real defences were that the defendant, in doing what he did, acted *bona fide* as a magistrate, and that the action could not be maintained until the conviction was quashed. It was admitted that the defendant was a Justice of the Peace for the county of Ontario.

The facts were as follows: one Ward having lost a sheep laid an information before the defendant. The defendant thereupon issued a search warrant setting forth "that on the 4th June, 1876, Ward had a ewe stolen off the highway near his place of residence, and that he had traced her to the residence of the present plaintiff and found said ewe with the wool then shorn." The information, as sworn to by Ward, was substantially to the same effect. The pres-