Legal Department.

J. M. GLENN, K. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Gaby vs. City of Toronto.

Judgment in action tried at Toronto brought by the widow and administratrix of Levi Gaby, late of Richmond Hill, deceased, to recover damages for injuries which caused his death. The learned judge finds, after a lengthy review of the evidence, that the deceased left the Commercial Hotel, on Jarvis street in the City of Toronto, on November 19, 1900, at 8.30 p. m., in a sober condition, and that his body was found between 7 and 8 o'clock the next morning in a hole, 4½ feet wide and nearly eight feet deep, dug three weeks before by the contractor for New St. Lawrence Market, added as a third party; that the hole was not properly guarded, and the deceased fell into it, and, that under his contract with the defendants, the third party, James Craig, was liable to them. Judgment for plaintiff for $2,500 and costs against defendants, and judgment for defendants against the third party for that amount and the plaintiff's costs together with their own costs.

Leitch vs. Township of Chatham.

Defendants appealed from judgment of Meredith, C. J., in action for damages for injuries sustained by plaintiff, an insurance inspector, while being driven on the highway, between the first and second concessions in the township of Chatham, in front of lot six, a short distance west of Prince Albert road. Owing to a ditch and hole at the side thereof being left unguarded, and without light, the buggy slid over into the ditch and plaintiff fell out, and the buggy and driver fell on top of him. The Chief Justice found that the highway was out of repair; that there was no contributory negligence on the part of the driver Atwell, and even if there had been plaintiff would not have been affected thereby, because Atwell was the liveryman's servant, not plaintiff's; that plaintiff had not made admissions that the cause of the accident was other than want of repair, and that $1,250 damages should be awarded, adopting the testimony of three medical witnesses, two of whom had attended the plaintiff in the long illness following the accident, and wholly rejecting the testimony of the physician (called on behalf of the defendants,) who, in the face of the testimony of three other physicians, who had far better opportunity of judging the case than he had, went into the witness box and made statements calculated to lead the presiding judge to believe that there was no foundation whatever for the testimony of the three other physicians. It was contended for appellants that the obligation to keep the highway in repair was satisfied by keeping the road in such a state of repair as was reasonably safe and sufficient for the requirements of the particular locality. Lucas vs. Moore, 3 A. R., 602, Walton vs. York, 6 A. R., 181; that the ditch having been in the same condition for nineteen years was of itself evidence of the absence of negligence, and no one considered it unsafe; that hundreds of such ditches are in existence in the counties of Essex, Kent and Lambton, and to hold a fence necessary would be to impose an unreasonable burden on municpalities; that an indictment against defendants would not lie owing to the condition of the road, and therefore they could not be liable to plaintiff. Steele vs. York, 15 A. R., 670. Appeal dismissed with costs.

Holmes v. Town of Goderich.

Judgment on appeal by plaintiff from order of a Divisional Court (20 C. L. T. Occ. N. 303) reversing judgment of Armour, C J. O. The plaintiff, tendering for a supply of 1,000 tons of coal for the defendants' waterworks, wrote: "I will deliver in bond into the coal shed at pumping station or grounds adjacent thereto, where directed by you, 1,000 tons, etc." The tender was accepted for 800 tons. and a contract executed by the mayor and clerk, but without previous resolution of the council, was drawn up and executed, by which plaintiffs agreed to deliver 800 tons "at the coal shed," etc. Armour, C. J. O., held at the trial that all the coal which was left at the dock near the pumping station was delivered "at the coal shed," within the intent and meaning of the contract: that "at," as used in the contract, meant "near to." The Divisional Court held upon the evidence that the coal in question was not delivered at the place designated in the contract, and per Boyd, C., that the word "at" meant rather within a place than without; that the cases cited merely showed the meaning of the word under the circumstances of each case, such words taking their coloring from their circumstances and situation, and, per Meredith, J., that if necessary the contract should be reformed as the meaning of the parties was clear. Held, Maclennan, J. A., dissenting, that the contract as sealed was not intended to vary the terms of the tender. The provision in the tender that plaintiff was to deliver "into the coal shed," etc., did not entitle defendants to direct at their pleasure plaintiff to place some coal in the shed and some on the adjacent grounds, or the whole in the sheds or on the grounds. The agreement provides for two modes of delivery, and the defendants' right to direct is confined to the grounds adjacent to the shed, and only comes into play in the event of the plaintiff exercising his right of election in favor of the grounds instead of the shed. Where it is not specified at whose option one of two alternatives is to take place, the option is to the party who is to do the first act: Reed v. Kilburn, L. R. 10 Q. B. 264, per Lord Blackburn. Here, therefore, the plaintiff exercised the option in favor of the grounds, and defendants having declined to give any direction plaintiff was justified in acting as he did. Appeal allowed with costs throughout to plaintiff.

Madill vs. Township of Caledon.

Judgment in action tried at Brampton, brought to recover damages for injuries received by plaintiff owing to a defective condition of a sidewalk. Held, that plaintiff had not been guilty of contributory negligence; (2) that the sidewalk (which was at the time of the accident in an unincorporated village, and had been built twenty years before,) being on the highway, which the defendants were bound to keep in repair, was an invitation to passengers to use it. It was there with their knowledge and acquiescence, and they had time to repair, and it was their duty to prevent the walk from becoming a source of danger. Judgment for plaintiff for $475 and costs fixed at $125.

Rex vs. Allan.

This was an appeal from order of Meredith, C. J., refusing a writ of certiorari to remove a conviction of defendant under by-law 267 of the town of Mitchell respecting transient traders. The by-law in the terms of R. S. O., chap. 223, sec. 583, sub-sec. 31. The defendant was convicted because he, not being entered on the assessment roll, offered goods for sale without having paid the license fee. Held (1) that the by-law, in terms of the section, was intra vires, and the use of the word; "effect" instead of "affect" was immaterial (2) that since I, Edward VII. ch. 13, sec. 1, it is not necessary to negative an exception and Reg. v. Smith 31 O. R. 224, is no longer useful: (3) that the objection that the evidence showed that defendant was managing the business of his wife and was not a transient trader nor occupant of the premises should have been raised by appeal. Appeal dismissed with costs.

Re McArthur and Village of Paisley.

This was a motion by J. D. McArthur, for a summary order quashing a by-law of the village granting a bonus to one Silas E. Van Camp, to aid him in establishing a factory in the village, upon the ground that the by-law was illegal by reason of the provisions of 63 Vict. (O.), ch. 36, sec. 12 (e) and (f). No cause shown for the village. Order made quashing by-law. No costs.