LEGAL DECISIONS.

Moore v. Woodstock Woolen Mills Co.

Highway--Dedication—User—Evidence.

In order to establish the existence of a public highway by dedication it must appear that there was not only an intention on the part of the owner to dedicate the land for the purposes of a highway, but also that the public accepted such dedication by user thereof as a public highway.

In a case where the evidence as to the user was conflicting and the jury found that there had been no public user of the way in question, the trial judge disregarded this finding and held that dedication was established by a deed of lease filed in evidence, and this decision was affirmed by the whole court.

Held, that as such a decision did not take into account the necessity of establishing public user of the locus it did not stand, Judgment of the Supreme Court of New Brunswick reversed. Appeal allowed with costs.

Martin vs. City of Hamilton.

Judgment in action tried without a jury at Hamilton. Action by Joseph Martin to restrain the defendants from obstructing an alleged watercourse, a box-drain, by means of which the water was dammed back and caused to flow over the surface of the ground, and so upon and over the plaintiff's lot on Hannah street, in the city of Hamilton, by reason of which his buildings were injured. Held, that the *causa causans* was not the obstruction of the drain, but the closing up of the watercourse to the north, and the construction of the private drain and its junction with the box-drain across the alley-way were not shown to have been with the knowledge or consent of the defendants. Nor is the water which did the injury, water which would have gone into the box-drain as originally constructed. Ostrom vs. Sills, 24 A. R. 526, 28 S. C. R. 485; Wilton vs. Murray, 12 Man. L. R. 35; Darby vs. Crowland, 38 U. C. R. 338; Fitzgerald vs. City of Ottawa, 22 A. R. 297, and Dalton vs. Township of Ashfield, 26 A. R. 363, referred to. Action dismissed with costs.

Township of Chinguacousy vs. McLellan.

Judgment in action tried without a jury at Brampton. Action for an injunction restraining defendant from interfering with or obstructing a certain ditch or watercourse, and for a mandamus directing him to remove the obstruction and restore the ditch to the condition it was in before Sept 3, 1898, and for damages. Judgment for the plaintiffs for an injunction and a mandamus as prayed with costs. Costs of interim injunction motion to be in the cause. Jarvis v, City of Toronto, 21 A. R. 365, 25 S C. R. 277, referred to.

Campbell vs. Public School Trustees Sec. 7, Township of Albion.

Judgment in action by plaintiffs, ratepayers of Township of Albion, to restrain defendants from proceeding with erection of any school house upon any other site than that fixed in the award dated Febuary 22, 1899, and to compel such erection on the sight mentioned in the award. Held, that the description of the site in the award is too indefinite, it being manifest that it would be impossible to ascertain the site chosen from the award itself, and also that the award does not determine how much land is to be taken, and that the arbitrators should have taken evidence as to whether conditions in the school section existed which called for an acre of land for school purposes. See Vance vs. King, 21 U. C. R., at p. 200. Action dismissed with posts.

City of Ottawa vs. Ocean Accident and Guarantee Co.

Judgment in action tried at Ottawa without a jury. The defendants issued a policy indemnifying plaintiffs against liability on account of bodily injuries sustained by their employees or other persons on streets or sidewalks in the City of Ottawa under circumstances imposing a common law or statutory liability upon the corporation. Upon the happening of an accident to one McGowan he brought an action against the plaintiffs, who forwarded the writ to the defendants, st ting that they, under the terms of the policy, should defend it. A defence was made under protest McGowan recovered judgment with costs, which the present plaintiffs paid, and bring this action to recover the amount paid. These defendants counterclaimed for damages, being the amount of costs paid their solicitors for defending the action. Action dismissed with costs, and counter-claim dismissed with costs.

City of Kingston vs Rogers.

In this action of Mr. Justice Street held, that R. S. O., 224, section 135, sub-section 1 of the Assessment Act, which provides that the collector may levy for arrears of taxes "upon the goods and chattels wherever found within the county belonging to or in the possession of the person who is actually assessed for the premises, etc.," does not authorize the collector to levy upon the goods which are already in *custodia legis* as goods under seizure by a bailiff for arrears of rent due a landlord.

Johnson vs. City of Hamilton.

Judgment in action tried without a jury at Hamilton. Action for damages for injuries sustained by plaintiff owing to alleged accumulation of ice and snow on a sidewalk in the City of Hamilton. Action dismissed without costs. City of Kingston vs. Brennan, 27 S. C. R., pp. 56-7-8, and Forwood vs. City of Toronto, 15 O. R. 34, referred to.

Hornby vs. New Westminster Southern Railway Company.

Railway— Water and Watercourses—Flooding of adjoining Lands caused by Construction of Railway Embankment — Damages — Negligence—B. C. Stat. 1887, c. 36.

The plaintiffs were the owners of land having a slope and natural drainage towards the sea. The defendants under authority of an Act of parliament had constructed a line of railway through this land, (which was then owned by the plaintiffs' predecessors in title) and had there-by cut off the ditches which had been constructed on the lands in question for the purpose of drainage. The defendants for the purpose of protecting their line cut a ditch paralled with the embankment on which the line was built, and cutting across the ditches on the plaintiffs' lands which hereafter emptied into the defendants' ditch. The defendants constructed a flood gate being insufficient to carry off the water accumulated in the defendants' ditch, the plaintiffs' lands were flooded.

Held that under the defendants' special Act (incorporating section 16 of the Railways Clauses Consolidation Act, 1845) the construction of the embankment and ditch were authorized by the legislature and that the plaintiffs could not complain of the flooding of the lands caused by the construction of the embankment.

Held, also (reversing the judgment of of Irving J.,) that no duty or obligation was imposed on the defendants to see that the plaintiffs had an outlet through their ditch which collected on their lands.

This is a case recently decided by the Supreme Court of British Columbia.

An Important Judgment.

Mr. Justice Falconbridge in the case of Ricketts against the town of Markdale has given a decision of the utmost importance to municipal corporations. Judgment was in regard to an action tried at Owen Sound brought to recover damages for loss occasioned to plaintiff ow ng to the death of his child, under 21 years of age, while playing on the highway. The court finds all the facts in issue in the plaintiff's favor, and assesses damages at $450, but finds himself, in the absence of English or Canadian authority obliged to follow the proposition of law laid down in some of the United States courts, viz: "Little children using a highway merely for play purposes are putting it to a use for which it was not intended, and cannot recover for injuries due to defects or obstructions. The American cases supporting the foregoing proposition seem to be founded on a condition of law as to municipal liability similar to that existing in Ontario. This ground is a complete defence to the present action and defendants must, therefore, pay the costs to the third party brought in for their protection. Judgment accordingly and dismissing action without costs. Stay for thirty days.