Legal Department.

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

LEGAL DECISIONS.

In re Medland and City of Toronto.

Municipal Corporations—Local Improvement—Block Pavement—Liability to Repair—Reconstruction—R. S. O., chapter 223, section 666, 62 Vict., sess. 2, chap. 26, sec. 41.

A city corporation having, by 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 curbing on each side of it. The by-law for levying the assessments stated that ten years was the "lifetime" of the pavement. Sections 664 and 665 of the Municipal Act, R. S. O., chapter 223, authorize the passing of by laws providing for the construction of local improvements and the making of assessments therefor. Section 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 comtemplated 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 responsible for the keeping of it in repair, that duty being cast upon the municipality generally, and that when it should become necessary to reconstruct the work or improvement, the cost of doing so should be defrayed by the owners of the property benefited by the work of construction.

Held, also, that this duty to repair is imposed upon the municipality for the benefit of those at whose expense the work or improvement has been made, and is not to be confounded with the general duty to repair, which is one towards the public.

Held, also, that this duty ends when it becomes necessary to reconstruct the work or improvement, and that whenever it is in such a condition that practical men would say of it that it is worn out and not worth repairing, no order for repair can be made under the amendment to section 666 contained in section 41 of 62 Vict., sess. 2, chapter 26.

Semble, that if the dilapidated condition of the pavement were due to the municipality having in the past neglected the duty to repair, the result would be different, the Amending Act of 1899 being applicable to cases where the breach took place before it was passed.

Queen vs. Langley.

Municipal Corporation—By-Laws—Transient Traders—Sale—Trading Stamps—Convictions—R. S. O., 222, s. 583, sub-s. 30, 31.

The defendant entered into an arrangement with various retail merchants by which each of them was to receive from him a number of "trading stamps" (the property in which, however, was to remain in him,) and to pay him fifty cents per one hundred of such stamps received, and to give one of these stamps to each customer who purchased for cash ten cents worth of goods, while he, on his part, was to advertise them in certain directories to be distributed by him and also in newspapers. A blank space was left in these directories for pasting in such stamps, and every customer of any of the merchants who brought to the defendant one of these directories with 990 stamps pasted in it was entitled to receive in exchange any one he might select of an assortment of goods kept in stock by the defendant. Apart from this these goods were not for sale.

Held, that these transactions did not constitute a selling or offering for sale by the defendant within the meaning of a municipal by-law, passed under R. S. O., c. 223, s. 583, sub-s. 30, 31, the stamps delivered to defendant in exchange for his goods being of no value to him. The essence of sale is transfer of property from one person to another for money or money's worth.

Caston vs. City of Toronto.

A case of very great interest to municipal officers of Ontario was decided by the Supreme Court of Canada at Ottawa on Tuesday, June 12th.

The writ was issued in the action the 12th day of June, 1896, and judgment was delivered which may or may not be a final termination of the action, exactly four years afterwards.

The case it is said has been constantly on the move from the day it was first started.

A short statement of the facts is as follows: The plaintiff is Captain Caston, of Toronto. He lived at No. 66 Huntley Street in that city. The house immediately adjoinining his house was owned by Richard T. Coady, the treasurer of the city of Toronto. It seems that Mr. Coady made an agreement some years ago to sell this house to one Mrs. Robinson, who was a sister of Captain Caston, but the deal was not carried out for a considerable time afterwards. It was while the deal was pending and while city treasurer Coady yet owned the house that the taxes which were alleged to be unpaid accrued which formed the subject for this action. Captain Caston in the year 1896 had a demand made upon him for about $75, which were alleged to be unpaid taxes on his own house. These taxes were said to be the taxes for the year 1893. Captain Caston at once answered and said that he didn't owe the City of Toronto any taxes, that he had always paid his taxes and produced a receipt for the taxes of 1893. The city of Toronto claimed that while the sum mentioned in the receipt had been paid at the time it was paid they said with a direction to apply it for taxes owing on the house next door. Captain Caston disputed this and he held that he had quite enough to do to pay his own taxes without paying other peoples.

The city of Toronto were relentless, however, and after a great number of communications between the city officials and the captain's solicitors the city finally put in their bailiffs and seized the captain's furniture for the taxes which they alleged were unpaid in the year 1893. Captain Caston's solicitors at once advised him to issue a writ against the city and to obtain an injunction to prevent the threatened sale of his furniture.

The action came to trial, and at trial the city of Toronto succeeded. The case, however, was appealed to the Queen's Bench Division which unanimously gave judgment in favor of Captain Caston and awarded damages against the city of Toronto. The city were not satisfied with this judgment but carried the case to the Court of Appeal for Ontario, where it was heard by five judges who unanimously pronounced in favor of the plaintiff. The city alleged the case to be of great importance to them and that if that ruling of the Courts were sustained it would mean a great loss to the city of Toronto and took the case to the Supreme Court of Canada where it was argued in the month of April and judgment was delivered on June 12th in favor of Captain Caston. The city of Toronto was condemned in all cost from the beginning of this litigation which has extended over a period of fully four years.

The Town Won.

On Tuesday His Honor Judge Morrison non-suited Mr. G. S. Price, proprietor of the Owen Sound Meaford stage line, in his action against the town to recover $60 damages for injuries received by his horse in an accident caused by a damaged culvert near the railway track on St. Vincent street. The judge held, on the evidence submitted, that the town had repaired the break immediately upon notification, and as the culvert had been in a safe condition prior to and until within a few days of the accident, it was not liable for damages, and the case was dismissed. As the plaintiff, however, had suffered considerable loss, His Honor relieved him of the town's witness fees, and assessed him only for his own costs and the costs of the court.