

# LEGAL NOTES.

[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

## FAIR WAGE CLAUSE PROVED INEFFECTIVE—PARTIES TO CONTRACT.

**Kelly vs. City of Winnipeg.**—The plaintiffs contracted with the city to reconstruct the concrete piers of the Redwood Bridge, and the contract contained what is commonly called a "fair wage scale" as to what wages should be paid to workmen. The work was in progress and certificates as to the amount performed had already been issued when the city discovered that the wages being paid were not as specified.

The city calculated the difference between wages that should have been paid and what were actually paid to be \$1,043, and held back this sum in paying the contractors to make up the wages of the men employed on the contract. The contractors then sued for this difference.

The following is an extract from the judgment of Mr. Justice Macdonald:—

"However commendable the action of the civic authorities may be in their efforts to protect the working classes, I cannot see how the city can successfully resist the plaintiff's demand. If the city supplied the workmen it could no doubt compel adherence to this provision of the agreement, but I do not think that, under the agreement entered into there is anything to prevent the contractors making such a bargain as they can for the performance of the work so long as the work is done to the satisfaction of the defendant corporation.

"The city might have been justified in withholding the progress estimate, in which event it might have been difficult for the plaintiffs to recover without first settling for wages on basis of fair wage schedule, but after progress estimate had issued, and after deposit of pay rolls showing workmen paid in full, the contractor at once became entitled to the amount certified due him.

"The workmen have no claim upon the defendant corporation, they are not parties to this issue, nor before the court; and it is not established that the corporation has sustained any damage."

The court notes that if, in making their tender, the defendants figured on wages as per the fair wage schedule, their expenses have been \$1,043 less, and they have imposed upon their workmen to that extent. If, on the other hand, they did not figure on this basis, but upon that of the wages actually paid by them, they were indifferent to the interests of the workmen, as they might have secured to the latter an additional \$1,043, which the city was quite willing to pay.

Now, in any case the workmen are not parties to the present contract, and, therefore, cannot maintain any action for the breach of it. On the other hand, the city being a party to the agreement, is entitled to sue for the breach, but can only recover to whatever extent it can prove itself to have suffered damage; but it cannot show itself to have suffered any damage, and, therefore, is powerless. Judgment for the plaintiffs for the amount withheld and costs.

## MUNICIPAL BOUNDARY.

The limits of the city of London, Ont., were defined by a proclamation setting the municipality apart as "all the lands comprised within the old and the new surveys of the town of London, together with the lands adjoining thereto, lying between the said surveys and the River Thames, the

northern boundary of the new survey to be produced until it intersects the north branch, and the eastern boundary to be produced until it intersects the east branch of the river."

It was held that where two properties are divided by a river or highway, the limit of each is prima facie the centre line of such river or roadway; and that in the present case the limits of the city extended to the centre of the River Thames.—Re McDonough, 30 U.C.R., 288.

## NEGLIGENCE—IMMEDIATE CAUSE—PLAINTIFF MUST PROVE INJURY.

**Thomas vs. Ontario Sewer Pipe Co.**—The plaintiff, an engineer, was employed by the defendants to run a stationary engine, and while thus engaged the front of a valve was blown out by the pressure on it, resulting in serious scalding to the engineer, who brought this action for damages, alleging that the accident occurred from negligence of the defendants. He adduced evidence upon which the jury found that the defendant company allowed "the engine to run on an improper bed; also, that they did not supply proper appliances for the work to be done by the plaintiff, and that the engine and engine-room were in bad condition," but they also found that "the valve itself was not defective."

A verdict was given for the plaintiff, but upon appeal it was set aside, and the Supreme Court upheld the Court of Appeal. The court points out that the negligences or shortcomings of the defendants, however numerous, will not make them liable for injuries the plaintiff may have sustained unless there is direct connection between such negligences and the injury which resulted. The facts that the engine-room was in bad condition, that the bed of the engine was also defective, and even the engine in bad condition, all combined go for nothing unless it can be shown that these negligences, or some one of them, was the immediate cause of the injury complained of. The jury in this case decided that the company were remiss in many regards, but they also expressed their opinion that the valve itself was not defective. Now, the immediate cause of the accident must have been within the valve which gave out, and, as the plaintiff has not been able to show any direct connection between the negligences proved and the bursting of that particular valve, he has failed to prove the liability of the defendants.—42 S.C.R., 396.

## NON-NAVIGABLE STREAM—OWNERSHIP OF BANKS AND BED.

**Canadian Electric Light Co. vs. Tanguay.**—The plaintiff had for some time been the owner of certain lands on the Chaudiere River, Province of Quebec, and it was omitted that at this point the river was not navigable for vessels and rafts, but could be used for floating loose logs.

The plaintiff dammed the stream and made other improvements for the purpose of generating power. The defendant owned timber limits further up stream, and, as he desired to avail himself of the Chaudiere for floating his logs, he undertook to place certain piers and other improvements in the river to facilitate his purposes, and the plaintiff brought this action, endeavoring to compel him to remove the same. Held, that in the Province of Quebec, where a watercourse is capable merely of floating loose logs, it is not a dependency of the Crown within the meaning of the Civil Code, and consequently the plaintiff who owned the banks owned also the bed of the stream, and could compel the defendant to remove any permanent work which he had placed thereupon.

The defendant was within his rights in attempting to float his logs down stream; he had a right to use such watercourse for all advantages which the stream and its banks