

Q. B.]

NOTES OF CASES.

[Q. B.]

to regulate trade and commerce on the one side, and the right to impose police regulations on the other, considered and discussed.

*Robinson, Q.C., and H. J. Scott* for applicant.

*J. K. Kerr, Q. C., contra.*

GUNN V. NORTH.

*Equitable assignment—Contract.*

A, of whom plaintiff is assignee in insolvency, contracted with T. and B. to do certain wrought iron, cast iron, and galvanized iron work, and sublet the different kinds of work to different people; amongst it some to defendants for \$982. The work to be performed by defendants under the terms and conditions entered into between A. and T. and B., and defendants to be paid the \$982 under the terms, and at the times, &c., expressed in the contract.

*Held*, a good equitable assignment as to the \$982.

*Bethune, Q.C., for plaintiff.*

*R. Martin, Q.C., contra.*

GORDON V. ADAMS.

*Counsel fees, assignment of—Implied contract.*

H. assigned to the plaintiff a claim against defendant for counsel fees. Defendant is an attorney, and took H., a barrister and attorney, into his employ at a weekly wage. Nothing was said in the contract or during the engagement, which lasted some years, as to H.'s right to claim counsel fees.

*Held*, that no implied promise could be presumed to pay these counsel fees, and at all events none that they should be paid by the attorney.

*Beaty, Q.C., for plaintiff.*

*J. K. Kerr, Q.C., contra.*

BURNS V. CITY OF TORONTO.

*Negligence—Ice on side-walk—Contributory negligence.*

The plaintiff, while walking on Sherbourne Street, a street centrally situated in Toronto, fell on some ice on the side-walk and injured herself, for which she sues the city. It appeared from the weight of evidence that the ice had remained at the place of the accident all the winter; that the ice was caused by the thaw of the premises adjoining, which were higher than the side-walk; that the City Com-

missioner, whose duty it was to look after the state of the roads, had passed up and down the street in question repeatedly; that the plaintiff knew the street well, and passed up and down it a couple of times a day, that she had passed it once before the same day; that she knew it to be dangerous, and might have gone another way.

*Held*, that she could not recover.

*Per HARRISON, C.J.*—Because she was guilty of contributory negligence.

*Per WILSON and ARMOUR, JJ.*—There was not sufficient evidence to shew that the city was aware the road was out of repair. The fact that the Commissioner passed the place was not sufficient. *Kingland v. City of Toronto*, 23 C.P. 99, not assented to.

*J. K. Kerr, Q.C., for plaintiff.*

*McWilliams* for the Corporation.

STEVENS V. BUCK.

*Ejectment—Improvements—Equitable defence after argument in term—Amendment.*

Plaintiff brought ejectment for a piece of land as part of lot 3, which he held under a patent from the Crown, and the defendant claimed to hold it under a subsequent patent as part of lot 4. The Court were of opinion, on the evidence, that the land in dispute was part of lot 3, but refused to find for plaintiff, as the defendant had been in possession for many years before plaintiff's patent issued, and plaintiff never made any claim till this action, and refused to pay for the improvements. There was no equitable defence filed by defendant, but the Court directed the defendant to amend by filing one *nunc pro tunc*, and to join issue for the plaintiff, and directed that on this being done a verdict should be entered for the defendant.

*J. K. Kerr, Q.C., for plaintiff.*

*M. C. Cameron, Q. C., contra.*

DENNY V. MONTREAL TELEGRAPH COMPANY.

*Negligence—Contributory negligence—Finding of Judge without a jury, as to.*

Action by widow and executrix for damages for the death of her husband, caused, as alleged, through the negligence of the defendants.

It appeared from the evidence that the deceased was attending the Brockville Assizes as a suitor, when it became necessary to telegraph for witnesses. He went to defendants' office for this purpose. The day was bright,