

Div'l Court.]

[Feb. 21.]

FARQUHAR v. CITY OF TORONTO.

Chose in action—Assignment—Rights of assignor under original contract—R.S.O., c. 122, ss. 6-13.

The contract between the defendants and plaintiff's assignor for the paving of a certain street provided that the defendants might, on the recommendation of the city engineer, settle and pay the price of any materials for which payments were in arrear, and deduct the amount thereof from any money falling due to the contractor under the contract. The contractor assigned to the plaintiff all such money so to become due to him, and the defendants were duly notified. After this the engineer certified that a certain sum was due to the contractor. The defendants, however, deducted from such sum the amount of a certain claim for materials furnished to the contractor.

Held, that they had the right to do so, notwithstanding the assignment to the plaintiff, which was subject to such conditions and restrictions with respect to the right of transfer as were contained in the original contract.

Riddell and Smyth for the plaintiff.

Delamere, Q.C., for the defendants.

Div'l Court.]

[March 2.]

FLICK v. BRISBANE.

Constitutional law—British North America Act—Ultra vires—Criminal assault—Bar of civil remedy—Criminal Code, 1892—55-56 Vict., c. 29, ss. 865, 866.

Held, that ss. 865 and 866 of the Criminal Code, 1892, are *intra vires* of the Dominion Parliament.

Per BOYD, C.: "The Code gives one who is assaulted the option to proceed by complaint in a summary way before a magistrate, and if he elects to take his remedy by this method of private prosecution he foregoes his right of action in respect of the same assault in order to recover damages as a civil wrong."

Smyth for the plaintiff.

Fullerton, Q.C., for the defendant.

Div'l Court.]

[March 2.]

IN RE TORONTO BELT LINE R.W. CO. AND WESTERN CANADA L. & S. CO

Railways—Compensation for land taken—"Owner"—Mortgagee—Injuriouly affected—R.S.O., c. 170, s. 13.

Appeal from order of STREET, J., directing mandamus to the above railway company to arbitrate as to the compensation payable to the Western Canada L. & S. Co. as mortgagees for injuries sustained by them through the taking by the railway company of a portion of certain lands mortgaged to them.

The railway company had agreed with the mortgagor that certain privileges granted by them should be accepted in lieu of compensation to be paid to the mortgagor, and set this up in answer to the motion. No notice had been given to the loan company as to this agreement.