Legal Department

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

Waechter vs. Pinkerton.

Illegal Seizure for Taxes.—Tender of Part of Entire Demand Ineffective.—Specific Tender as to Distinct Item Sufficient.—Commuted Statute Labor to be Computed Against Each Separate Lot or Parcel of Lot.

Judgment on appeal by defendants from judgment of County Court of Bruce in favor of plaintiff, in action by Andrew Waechter against Thomas Pinkerton, the collector of taxes for the township of Greenock for 1901, and Ezra Briggs, the collector's bailiff, for illegal seizure of plaintiff's chattels as a distress for taxes and for a return of the goods. The judge found that there was a tender of all taxes except those for statute labor. Defendants contended that tender of part was no valid tender. Held, that tender of part of one entire demand or entire contract debt or liability is ineffective: Dixon v. Clark 56 B., 365; but if a tender is specifically made as to one distinct item in an account fairly divisible into items or parts, it is a good tender as to that item. Whether there was specific appropriation by plaintiff when making the tender is a question of fact, and the judge has found the fact in plaintiff's favor; Hardingham v. Allen, 5 C. B., 793. This leaves but the one question to be disposed of: Can there be distress for statute labor commutation, when the amount for which several lots are liable is put down in gross against them all, instead of being rated and charged against every separate lot and parcel, as required under section 109 of the Assessment Act? The provision of section 109 as to special apportionment of the statute labor tax is imperative and not merely directory. In the case of resident and non-resident, the words of the section are: "The statute labor shall be rated and charged against every separate lot or parcel, according to its assessed value." Love v. Webster, 26, O. R., 453, followed. In the event of there being no distress upon any of plaintiff's lots, a sale of them, or any of them, could not be validly made for this unapportioned tax, or for any part of it where not apportioned on the roll. If the taxes which plaintiff admits to be due, for which he tendered $68.40, have not been paid, the township should not lose them, and as the township has indemnified the collector, this amount should be set off, if defendants wish it, against plaintiff's costs. If there should be any difficulty about the lien for costs of plaintiff's solicitor an application may be made. Appeal dismissed with costs.

Matthews vs. City of Hamilton.

Right of Municipality to Discharge Sewer Water into Bay—Must not Interfere With Rights of Parties Lawfully Using its Waters—Municipality Liable for Special Damages Caused by Such Discharge to Vessel Moored at Dock.

Judgment on appeal by defendants from judgment of county court of Wentworth, awarding plaintiffs $200 damages and costs for injuries caused to a certain steamer Acacia, the property of plaintiffs, by reason of alleged negligence of defendants. Held, that defendants have the right to discharge water from their sewers into the bay at Hamilton, providing they do not interfere with the rights of persons lawfully using the waters of the bay The plaintiffs were lawfully using the waters in mooring their steamboat at the wharf during the winter months. The evidence establishes damages to plaintiffs caused by the discharge from the defendants' sewer into the bay of hot water, by the effect of which the ice forming about plaintiffs' vessel was affected, and the safety of the vessel's mooring was interfered with. The discharge of the hot water into the bay was, under the circumstances, a public nuisance, and the plaintiffs having received special and peculiar damage from it, are entitled to maintain this action: 10 Am. & Eng. Ency. of Law, 2nd ed. p. 248, 21 ib. p. 442; Wood on Nuisances; 2nd ed. sec. 480; Original Hartlepool Collieries Co. vs. Gibb, 5 Ch. D. 713; McDonald vs. Lake Simcoe Ice Co.; 26 A. R. 416; 31 S. C. R. 133; Ellis vs. Clemens, 21 O. R. 227. Appeal dismissed with costs.

Re Macdonald and Village of Alexandria.

Quashing Drainage By-Law—Authority of Engineer to Change Route—Councils Cannot Accept Alteration Without New Petition—Distinction Between Local Assessments and Those for General Revenue Purposes—Statute Giving Power of Local Taxation Must be Strictly Followed—Costs.

Judgment on motion to quash by-law 243 of the village, passed on 2nd September, 1902, to provide money, by the issue of debentures, secured by a special rate, to pay for the construction of a drain on Main street, in a village, from a point 33 feet north of the northerly side of St. George street to the north side of Catherine street, then easterly along Catherine street to a point opposite to lot A, then southerly through said lot to the River Garry. The by-law recited that a petition was presented by the owners of real property to be benefited, to the council for the construction of a drain on Main street from Kincardine street to the River Garry. The total cost of the drain was $3,600. Held, that the engineer had no authority to alter the route in the manner he did, substantially making a new work, and one not asked for. The council should not have accepted the new route without a new petition, unless they were prepared to enter upon it and proceed under section 669 of the Municipal Act. The distinction between local assessments, or assessment for local improvements, and those for general revenue purposes, must be recognized. The statute giving the power of local taxation must be strictly followed: McCullough v. Township of Caledonia, 25 A. R. 417. The council acted in good faith. Although the cost is larger than estimated, the amount is not oppressive. Upon the evidence, the work is a beneficial one to the village. Therefore, the costs should be limited. Order made quashing the by-law, with costs fixed at $80.

McCoy v. Township of Cobden.

Quashing By-Law Regulating Tavern and Shop Licenses.—By-Law Should be Signed by Chairman of Meeting at Which Passed.—Untrue References in.

Plaintiff moved on consent for order quashing by-law for regulation of duties on tavern and shop licenses in defendant municipality, on grounds, among others, that, although such by-law was signed by the reeve, he was not in fact present at the meeting at which the by-law was passed, and the by-law was not signed by the member of the council, who was in the chair at that meeting, and that the by-law referred to certain legal provisions as being in force, whereas such was not the case. Order made quashing by-law, without costs, as per consent.

Re Murphy and Town of St. Mary's.

Quashing By-Law Regulating the Number of Tavern Licenses in Towns.—In the Absence of Objection and the Whole Council Consenting, By-Law Valid.

Counsel for applicant moved for order quashing so much of by-law No. 6 of the Town of St. Mary's as provides that "the tavern licenses to be issued in the Town of St. Mary's for the ensuing year shall be limited to five," on the grounds of irregularity. Held, that as there was an unanimous consent of the council, all the members being present, and no objection being made, the by-law was valid. Motion dismissed with costs.

The Court of Appeal gave judgment recently in the case of the appeal of the Guelph Pavement Company against the verdict of $200 obtained against it by the city before Judge Falconbridge for water supplied the company by the city. The city claimed payment; the company claimed that no corporation had ever charged them for water. The fact that the city entered upon new contracts with the company without making any claim for water under the old contracts was the chief barrier to the city's case.

Chief Justice Moss said: "We have come to the conclusion that the city's case fails. They have not made out such a case as would entitle them to charge the defendants for the water they used. There was certainly no agreement or contract proved. The evidence, we think, shows that the city consented, or at least acquiesced, in the contractors taking the water. In any case the amount charged is excessive. It should have been $40 or $50 if anything, not $200. We allow the company's appeal with costs.