

Province of British Columbia.

SUPREME COURT.

MCCOLL, J.]

[Feb. 18.]

TETLEY v. THE CITY OF VANCOUVER.

Municipal law—Construction of statute—"Action of council."

The plaintiff having some time previous to December 29th, 1890, been appointed to the office of city accountant at a monthly salary less than \$125, had such salary increased to that amount by resolution of the council passed on that day. The plaintiff continued to hold the office until some time subsequent to the expiration of one month after February 19th, 1894, on which day another resolution was passed by the council fixing his salary at \$100 per month. The plaintiff during the time he thereafter continued in office, received his reduced salary under protest, claiming that the second resolution was illegal because 40 Vict. 32, s. 150, sub-sec. 13, which enacts that "no previous action of the council on any matter shall be rescinded unless by a two-third vote of the members of the council then present, and no decision or ruling of the mayor or presiding officer while in the chair shall be overruled except by a vote of two-thirds of the members of the council present." S. 154 of the Act provides that the engagement of any officer appointed by the council may, notwithstanding any agreement to the contrary, be terminated by one month's notice in writing, given by either party to the other.

Held, that the latter section applied to the present case, and that the resolution in question was not illegal merely because of not having received a two-thirds vote of the members of the council present when it was passed.

Davis, Q.C., for plaintiff.

Hamersley, for defendant.

DAVIE, C.J.]

[March 30.]

STEVES v. MUNICIPALITY OF SOUTH VANCOUVER.

Municipal corporation—Highway—Nuisance—Independent contractor.

This was an action by the widow of Walter Herbert Steves on behalf of herself and two children, to recover damages from the corporation on account of the death of her husband, which occurred on the 23rd of December, 1895. The jury found that the deceased was killed by a falling tree whilst lawfully travelling on a public highway within the limits and under the control of the municipality; that previously to the action the ground around the trees had been excavated away by order or permission of the defendants to such an extent as to remove the support of the roots, and that the falling of the tree was due to or precipitated by the excavating, also that the tree stood within the limits of the municipality; that its presence in its standing condition was a dangerous nuisance and a visible menace to the public safety; and that the defendants had notice or knowledge of the existence of the danger reasonably long enough to remove the nuisance or otherwise protect travellers on the highway against the danger, and awarded the plaintiff \$10,000 damages, \$2,000 of which amount was to go to the infant children. An application for non-suit was made