

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

TROOP and LEWIS (Plaintiffs), Appellants
v. MERCHANTS' MARINE INSURANCE CO.
(Defendants), Respondents.

Marine Insurance—Insurance on freight—Constructive total loss—Abandonment—Repairs by underwriters.

On appeal from the Supreme Court of Nova Scotia.

A vessel proceeding on a voyage from Arecibo to Acquam and thence for New York, encountered heavy weather, was dismasted and towed into Guantanamo. The underwriters of the freight sent an agent to Guantanamo to look after their interests, and the master of the vessel, under advice from the owners, abandoned her to such agent and refused to assist in repairing the damage and complete the voyage. The agent had the vessel repaired and brought her to New York with the cargo. On an action to recover the insurance on the freight,

Held (reversing the judgment of the court below), that there being a constructive loss of the ship, the action of the underwriters in making the repairs and earning the freight would not prevent the assured from recovering.

Appeal allowed with costs.

Graham, Q.C., for appellants.

Henry, Q.C., for respondents.

CANADA ATLANTIC RAILWAY CO. and LONSLLEY (Plaintiffs), Appellants, v. CITY OF OTTAWA (Defendants), Respondents.

Municipal corporation—By-law—36 Vict. c. 48 Ont.—Bonus to railway—Vote of ratepayers on by-law for—Premature consideration of by-law—Error in copy submitted to ratepayers—Signing and sealing by-law—To be passed by same council.

On appeal from the Court of Appeal for Ontario.

A by-law was submitted to the council of the city of O. under 36 Vict. c. 48, for the purpose of granting a bonus to a railway then in course of construction, and after consideration by the council it was ordered to be submitted to the ratepayers for their vote. By the notice published in accordance with the provision of the statute, such by-law was to be

taken into consideration by the council after one month from its first publication on the 24th September, 1873. The vote of the ratepayers was in favour of the by-law, and on October 20th a motion was made in the council that it be read a second and third time, which was carried, and the by-law passed. The mayor of the council, however, refused to sign it on the ground that its consideration was premature, and on November 27th the same motion was made and the by-law was rejected. Nothing more was done in the matter until April, 1874, when a motion was again made before the council that such by-law be read a second and third time, which motion was, on this occasion, carried. At this meeting a copy only of the by-law was before the council, the original having been mislaid, and it was not found until after the commencement of this suit. When it was found it was discovered that the copy voted on by the ratepayers contained, by mistake of the printers, a date for the by-law to come into operation different from that of the original. In 1883 an action was brought against the corporation of the city of O. for the delivery of debentures provided for by the city by-law, in which suit the question of the validity of the whole proceedings was raised.

Held (affirming the judgment of the court below),

1. That the vote of November 20th, 1873, was premature, and not in conformity with the provisions of sec. 231 of the Municipal Act, and that the mayor properly refused to sign it, and that without such signature the by-law was invalid under sec. 226.

2. That the council had power to consider this by-law on November 5th, 1873, and the matter was then disposed of.

3. That the proceedings of April 7th, 1874, were void for two reasons—one that the by-law was not considered by the council to which it was first submitted as provided by sec. 236, which is to be construed as meaning the council elected for the year and not the same corporation; and the other reason is that the by-law passed in 1874 was not the same as that submitted, there being a difference in the dates.

Seem, that the functions of a municipality in considering a by-law after it has been voted