

McKim vs. Township of East Luther.

Judgment on appeal by defendants from report of the referee under the drainage laws upon a reference in an action for a mandamus and for damages caused to plaintiff's lands owing to the alleged improper construction of a drain, known as number 10, commencing in said township, at Wylde Lake. The plaintiff is the owner of lot 18, in the seventh concession of West Luther, and of lot 19, in the sixth concession of East Luther, and alleges that water has become lodged on her lands, and that the drain has become out of repair. The appellants contended *inter alia* that the referee erred in directing the maintenance of the drain, as such maintenance would not afford plaintiff any relief. Held, that in cases such as this, the referee may proceed partly on view, but in this case there was no appointment to view, the inspection was made without notice to and in the absence of the parties or their solicitors, and, under such circumstances, the referee's statement as to the condition of the drain, when viewed by him, cannot be considered by the court, but, as it is supported by the evidence, it should not be set aside but affirmed. Held, also, that the letter relied on as being sufficient under section 73 of the Municipal Drainage Act to constitute the written notice under the section was inadequate, and notice being essential to vest in the referee jurisdiction to direct a mandamus, there was no power in this case in him so to direct, and that it is not necessary to plead want of notice. Held, also, that the by-law under which the work was executed should not on the evidence be declared invalid. Appeal allowed in so far as the report directs a mandamus, and varied as to amount of damages by reducing it to \$50. No costs of appeal to either party, except cost of objection to the jurisdiction already disposed of.

Reg. vs. McMillan.

Judgment on motion by defendant to make absolute an order nisi to quash conviction of defendant for that being the occupier of a shop in the city of Ottawa for the sale of watches and jewelry by retail, he unlawfully neglected to close and keep closed his said shop from and after 7 o'clock, on June 7, 1900, contrary to an early closing by-law of the said city, passed under sec. 44, ch. 257, R. S. O., and by sub-sec. 18 of that sec. is to be treated as having been passed under the municipal act. Held, that the conviction is bad in that after imposing payment of fine and costs it provides that in default of sufficient distress for the fine and costs, the defendant be imprisoned at hard labor for three days. The imposition of imprisonment, unless both fine and costs are paid, is clearly beyond the authority given by the by-law, which gives power to imprison only for non-payment of the one. Held, also, that there is no power

to amend, sec. 709 of the municipal act not applying to this case. Order made absolute with costs. Magistrate is to be protected as usual.

Currie vs. Township of Dunwich.

This was an appeal by the defendants, from judgment of County Court of Elgin, for plaintiff for \$150 in action for damages for injuries. The plaintiff, when walking in January, 1900, along the centre of a highway in the township, slipped and fell on the ice upon it, breaking her arm. The trial judge found that the highway was out of repair, that water overflowed from the side ditch into the road, which was in a hollow at the place of the accident, and formed a pool, and that a culvert should have been placed at the spot so as to drain it. It was contended for defendants that, having regard to the nature of the country, the character of its roads, the care exercised by defendants in respect to such roads, the nature and amount of ordinary traffic on them, the number of roads to be kept in repair, the means at the disposal of the defendants for such purposes, the season of the year, the nature of the accident and other considerations, that the road could not be said to be out of repair. Appeal dismissed with costs.

The Township of Grenville vs. Ward.

This was an appeal from the judgment of the Court of King's Bench, Quebec, *appal side*.—Condemning the defendant to pay the plaintiffs \$4,250 damages.

The plaintiffs were the owners of an iron bridge crossing the Rouge river. The defendant was hurriedly floating his logs and timber down the river; and the river suddenly rising, as it often did, a jam was forced, and the plaintiffs bridge was injured. The defendant pleaded that the damage was caused by an irresistible force over which he had no control.

Held, affirming the judgment that, the river being unnavigable, the defendant had the right to use it as an ordinary highway only; that the defendant must be taken to have been aware of the fact that the river was subject to sudden rising and that the accident was caused not by force majeure, but by the negligence of the defendant in placing too many logs in the river at once without having at the same time a correspondingly sufficient number of men to keep abreast of them in order to prevent a jam.

Niagara & St. Catharines Electric Railway Co. vs. Town of St. Catharines.

Judgment on motion by plaintiff to continue an injunction granted by local judge at St. Catharines, restraining defendants from granting a franchise to Hamilton, Grimsby & Beamsville R. W. Co., in breach of alleged agreement with plaintiffs. Motion adjourned until the trial. Costs in the action. Injunction not continued meantime.

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sibilities that are not in accord with the interests of all whom it represents.

If a municipality engages in an enterprise within the competence of local capital it is very likely to drive that capital to outside fields of enterprise.

It has been realized, what might have been foreseen, that municipal trading enterprises do not keep so closely in touch with public needs, or with the march of improvements, as those sustained by private capital and controlled directly by its owners. A municipal committee cannot be expected to have the energy, stimulus, or the business capacity of those who administer a private enterprise in which they each personally have a large, direct, pecuniary interest. Aldermen, however able, however public spirited, cannot watch over the management of a municipal enterprise with the close scrutiny that is usually given by a board of directors in control of a private enterprise. Nor is a municipal committee as able to act promptly in emergencies, nor is it as amenable to public opinion, or the opinion of the patrons of a public enterprise, as those whose capital therein is at stake. The advantage of economy in working is wholly on the side of private enterprise, though this has been obscured by some municipalities charging some part of the actual working expenses of a municipal trading enterprise to other departments.

Thus a municipality operating a gas supply plant has been known to charge the cost of street openings to lay gas mains, as well as of laying gas services to consumers, to the roads department, other expenses properly chargeable to the gas service, have also been charged to departments having no direct connection with the gas supply business. By this cooking of the accounts the real cost to the citizens of the gas service has been concealed. The loss of income arising from the deprivation of the taxes payable by private enterprises when their business has been undertaken by a municipality, has been overlooked in statements as to the economic result of the municipal ownership of business undertakings. The recent collapse of the Toledo city gas works is an impressive lesson as to the hollowness of the plea that a municipality can supply lighting more cheaply than a private enterprise. It is a significant fact that in Glasgow, where the city corporation has taken up the municipal ownership scheme on a great scale, the taxes are high. The citizens are said to be paying back in their tax bills what they save by cheap car fares, etc. There is a reaction in progress from the movement to provide services of a trade character by municipalities, as experiences have proved, that it is more to the public advantage for mercantile enterprises to be controlled by private capital, and more desirable for economic reasons for a municipal body to confine its activities within the sphere of local government.