without sufficient reason treat the sale as a nullity and fall back on the mortgage as if the exercise of the power was a mere matter of form.

Three joint owners of property mortgaged it to a loan company, and then sold to the plaintiff, who covenanted to pay off the mortgage. The plaintiff sold to the defendant in the same way, taking a similar covenant. The company exercised the power of sale in their mortgage, and one of the original owners became the purchaser at a price sufficient to pay the mortgage and costs.

The purchaser not being willing to carry out the sale, the company did not insist on his doing so, but collected by threats of legal proceedings the arrears and costs from the plaintiff.

In an action by the plaintiff to recover from his vendee, the defendant, the amount thus paid, it was

Held, that he could not recover.

Armour, Q.C., for the plaintiff.

A. Elliott for defendant Tanner.

A. McLean Macdonell for defendant McArthur.

Common Pleas Division.

Div'l Court.] [Feb. 27.

ROCHE *v.* RYAN.

Plan — Registration — Effect of — Vesting of streets in municipality.

In 1886 the plaintiff, the owner of a tract of land within the limits of a town, subdivided it into a number of lots with streets intersecting them, and duly registered a plan thereof. In 1889 the town council had a plan prepared of all the land comprised in the town limits, and embodying the plaintiff's plan, which was duly registered by the corporation in 1890. About September following the plaintiff sold two of the lots to the defendant and two to one M., and shortly afterwards defendant took from the portion of the land laid down on the plan as a street and adjoining his lots a quantity of stone for building purposes; subsequently in the same year the defendant applied to the council to open up the streets, when a resolution was passed referring the matter to the three street commissioners, and at an informal interview with two of the commissioners, the third not having been notified or consulted, verbal leave was given the defendant to take the stone; and afterwards, in 1891, an agreement therefor was entered into with the corporation, the tract up to this time having been fenced in and used for pasturage. In an action by the plaintiff to recover from the defendant the value of the stone removed by him,

Held, reversing the judgment of STREET, J., that the action was not maintainable, for that under the Municipal and Surveyors' Acts by the filing of the plan, and the sale of lots according to Acts abutting on the street, the property in the street became vested in the municipality.

The common law doctrine as to the ownership of the soil of the highway, *ad usque medium filum*, was not under the circumstances applicable.

McCarthy, Q.C., for the plaintiff.

G. H. Watson, Q.C., *contra*.

MACMAHON, J.]

BRUNTON *v.* CORPORATION OF THE TOWNSHIP OF MARIPOSA.

Sale of liquors — Sale by retail — Quantity — Locality—Days named for appointment of agents and declaring the result of polling—Sufficiency of — Notice—Sufficiency—Christmas and New Year's days—Publication on sufficiency.

A law passed by a township council under 53 Vict., c. 56, s. 18 (O.), was entituled a by-law to prohibit the retail sale of intoxicating liquors in the township of Mariposa, and enacted that "the sale by retail of spirituous liquors is and shall be prohibited in every tavern, inn, or other house or place of public entertainment, and the sale thereof is altogether prohibited in every shop or place other than a place of public entertainment."

Held, that the last part of the clause must be read in connection with the previous part so as to limit the prohibition to a sale by retail, which is now put beyond question by 54 Vict., c. 46, s. 1 (O.).

Slavin v. *Corporation of Orillia*, 36 U.C.R. 159, and *re Local Option Act*, 18 A.R. 573, followed.

Held, also, that the quantity of liquor to be deemed a sale by retail need not appear in the by-law, being defined by the statute; that the locality within which the liquor could be sold was sufficiently indicated; and that the want of penalty in the by-law did not invalidate it.