Legal Department

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

Re Allen and Town of Napanee

Counsel for Allen, moved for summary order quashing a resolution of the Town Council that "the Street Committee have instructions to see that the street trees, where necessary, be properly trimmed." The municipal act, R. S. O., ch. 223, sec. 574, sub-sec. 4, relating to the planting and trimming of trees on or adjacent to streets, purports to confer jurisdiction to pass by-laws thereupon to the councils of cities, towns and villages having a population of 40,000 or more. There are no towns and villages in Ontario with such a population. Yet sec. 575 contemplates that by-laws for cutting and trimming and removal of such trees on streets may be passed by towns and villages. Napanee is a town of 3,200 inhabitants. The applicant contended that the resolution was ultra vires. Held, that the proper construction of sec. 574 (4) is that towns and villages may pass by-laws authorizing some officer appointed for that purpose by the council to trim all trees, whether on or adjacent to the streets, whereof the branches extend over the streets. That is to say, power is conferred on the municipality to provide that these trees do not by their growth and extension of branches "obstruct the fair and reasonable use of the thoroughfare." These quoted words are from the tree planting act, R. S. O. ch. 243, sec. 2 (1), and are there applied to the tree itself as first planted, and the section in hand appears to be fairly readable as supplemental to that, so as to provide for the case of a tree rightly planted, and by growth no obstruction as a whole but yet becoming objectionable by its sweep and droop of branch. Taking it that jurisdiction exists, yet the power of general supervision must be exercised by by-law. The power to interfere is conferred by the municipal act, and is to be brought into operation as that act provides by sec. 325. Indeed, section 575 expressly indicates that trimming is to be done under the supervision of a by-law. Waterous v. Palmerston 20 O. R. 411, 19, A. R. 47, 21 S. C. R. 556, referred to. Order made quashing resolution for informality, but, as its validity on the merits is favored, without costs.

Todd v. Town of Meaford.

Judgment in action tried at Walkerton without jury. The claim was for damages sustained by plaintiff by the defendants wrongfully taking certain of plaintiff's lands for the purpose of straightening the Big Head River, thus depriving the plaintiff of the land which he required, or would have in the future required, to meet the needs of his expanding business, and injuring him by increasing the difficulties of access in other ways. The plaintiff had agreed to sell his land to the defendant railway company and to allow them to take immediate possession, without prejudice to him, and subject to the further stipulation that the acceptance of $400 from the company was to be without prejudice to the plaintiff's claim for damages "by flooding (if any) owing to the division of the Big Head River." Held, that neither of the defendants could, in view of this agreement, be held to have been trespassers. The damage anticipated by plaintiff (for the first time in his statement of claim), from his inability to expand his business to the extent he otherwise might have done, were so speculative and uncertain as to be beyond the limits of judicial calculation. Hamilton vs. Pittsburg, 190 Pa. St. 51. The $375 paid into court by defendants was adequate compensation for the land taken and the only damage shown, viz., to plaintiff's rip-rap. Judgment for the $375 in court. Plaintiff to pay costs as if both defendants had appeared by one solicitor, and had been represented by the same counsel at the trial.

McClure v. Township of Brooke; Bryce v. Township of Brooke.

Judgment in appeal by defendants from order of Divisional Court allowing appeal by plaintiffs from order of Meredith, C. J., dismissing their application to have all matters arising in the action referred to the drainage referee as an official referee The actions were brought for alleged injuries to plaintiffs' lands and crops by reason of the construction of certain drains by the defendants and the obstruction by them of certain ditches. Proceedings had also been begun by the plaintiffs under the Drainage Act for such other damages as could be recovered, if at all, only at a trial before the drainage referee under that Act. Meredith, C. J., had been of opinion that the drainage referee was not an official referee, and that there was therefore no power to refer as asked in the absence of a consent. But the Divisional Court had thought that the drainage referee, being an officer of the court, was an official referee, and referred the actions to him, The township now appealed on the ground that a wrong conclusion had been arrived at as to the effect of the statutory provisions. Held, that no one could be an official referee who was not one of the officers named in section 141 (1) of the Judicature Act, or had not been appointed an official referee by the Lieutenant-Govenor under section 141 (2). The drainage referee, while an officer of the court, and holding office by the same tenure as an official referee under section 88 of the Arbitration Act was not an official referee, his powers being defined by section 39. No reference to him could therefore be directed here except as a special referee by consent. Order of Divisional Court reversed, and that of Meredith, C. J., restored with costs.

Re Voters' Lists for 1901, Town of Carleton Place.

Judgment on case stated by the County Judge of Lanark for the opinion of the Court of Appeal or a judge thereof, under R. S. O., chapter 7, section 38.

Questions:—(1) At the Sittings of the court to hear and determine the several complaints of errors and omissions in the said voters' lists, held on the 12th day of November, inst., and adjournment thereof, it was objected that in the notice of complaint the printed "M. F. and"—did not disclose any ground of complaint within the meaning of the Act. Without calling for evidence I expressed the opinion that "M. F." had in connection with voters' lists matters acquired a meaning of "Manhood Franchise," and the word "and" could be treated as surplusage. Was I right?

(2) The notice of complaint, as filed, consisted of fifteen sheets, each in itself in the form No. 6 in the Act, the lists Nos. 1, 2, 3 and 4 being printed on the back of the notice of complaint, only the notice of complaint on the last sheet was filled out and signed by the complainant, but evidence was given that the whole fifteen sheets were attached together as they now appear when the complainant signed the notice of complaint on the last sheet, and handed the whole to the clerk, I expressed the opinion that, considering it my duty to further the franchise while entertaining great doubts, I thought that sufficient. Was I right?

(3) The complainant asked leave to amend if necessary under section 32 of said Act, by making the signed notice refer explicitly to the annexed sheets; I refused the amendment upon the grounds that if any necessity for it the effect would be to confer jurisdiction on myself, and that section 32 can be satisfied in its words by confining it to notices other than notices of complaint. Am I right?

Held, as to question 1, that it must be answered in the affirmative. The Legislature did not intend to bind parties to exact observance of the words of the form. (Section 4.) What is intended is that the list should afford such information of the nature of the qualification of the person named as will enable the other voters to ascertain by inquiry the truth or untruth of the statement. In this instance it cannot be well imagined that other voters or persons who usually interest themselves in the revision of the lists were being misled by the form of statement. The right of a person to be on the voters' list ought not to depend upon a too critical examination of the forms in the schd ule, which are inserted merely as examep