

Province of Ontario.

COURT OF APPEAL.

From Street, J.]

[June 28.

HOPKINS v. HAMILTON ELECTRIC LIGHT CO.

Electric light company—Works—Vibration—Nuisance—Injury to adjoining property—Injunction—Damages—Powers of company—Alienation of land—Private Act of incorporation.

Judgment of STREET, J., 2 O.L.R. 240; 37 C.L.J. 666, affirmed.
 Lynch-Staunton, K.C., and Osborne, for defendants. D'Arcy Tate, for plaintiff.

From Lount, J.]

[June 28.

TOWNSHIP OF GLOUCESTER v. CANADA ATLANTIC R.W. CO.

Way—Road allowance—Obstruction—Railways—Fences—Municipal corporations—Railway committee.

An appeal by the defendants from the judgment of LOUNT, J., reported 3 O.L.R. 85, was argued before OSLER, MACLENNAN, MOSS, and GARROW, JJ.A., on May 6, and on June 28 was dismissed, the court agreeing with the reasons for judgment reported below.

Chrysler, K.C., for appellants. G. F. Henderson, for respondents.

From Rose, J.]

CUSHEN v. CITY OF HAMILTON.

[June 28.

Payment—Recovery back—Illegal license fee.

A municipal corporation passed a by-law providing that (subject to certain exceptions) no butcher should, without being duly licensed, sell any fresh meat in any part of the municipality. The fee was fixed at \$10, and the by-law provided that a penalty of not exceeding \$50 might be imposed by summary prosecution. The plaintiff after some demur took out licenses for two years, but in the third year refused to do so, and upon appeal by him from his summary conviction for a breach of the by-law, the by-law was held to be invalid, and the conviction was quashed:—

Held, in an action brought by him to recover back the fees paid by him, and by other butchers whose rights had been assigned to him, that the fees, having been paid under a claim of right, without fraud or imposition, and without actual interference with the business of the butchers, or compulsion exercised upon them, could not be recovered back.

Judgment of ROSE, J., reversed.

MacKelcan, K.C., and J. L. Counsel, for the appellants. Ridell, K.C., and J. G. Gauld, for the respondent.