

[Chan. Div.]

• NOTES OF CANADIAN CASES.

[Chan. Div.]

plaintiff was incapable of maintaining the action by his next friend.

Hector Cameron, Q.C., for appeal.

Riddell (Cobourg), contra.

CHANCERY DIVISION.

Wilson, C. J.]

[September 21.]

WEST V. PARKDALE.

Municipality—Ultra vires—Performing work outside limits—Trespass.

By 46 Vict. cap. 45 (O) it was provided that the City of Toronto and the Village of Parkdale might agree to construct a subway beneath the several railways which intersect Queen Street at and about the limits between Toronto and Parkdale, with power to expropriate and compensate property owners, etc. By an order of the Governor-General-in-Council passed in pursuance of 46 Vict. cap. 24 the Railway Companies whose railways crossed Queen Street were authorized to construct the subway; and the order recited a previous agreement by the Village of Parkdale to undertake the work. It was agreed between the Village and the Railway Companies that the Village should construct the subway and that the expenses should be shared equally. The village in performing the work destroyed the frontage of the plaintiff's land which was in the City of Toronto.

Held, that the Village of Parkdale were not acting under the Ontario Statute but under the Order in Council, that they could not exceed their power as a municipality and were therefore wrong doers with respect to the work done to the plaintiff's property.

S. H. Blake, Q.C., *Lash, Q.C.*, and *Snelling* for plaintiffs.

C. Robinson, Q.C., *Foster* and *Proctor* for the City of Toronto.

Osler, Q.C. and *J. H. Macdonald* for the Village of Parkdale.

Proudfoot, J.]

[September 30.]

BEATTY V. HALDAN.

Appeal from Master—Ascertaining amount due by administrator pendente lite to an estate—Moderation of his solicitor's costs.

On an appeal from a certificate of the Master in which he held, that under an order

which directed him "to ascertain and state what amount (if any) is properly chargeable by J. H. against the estate of T. W., deceased, in respect of legal proceedings taken by the said J. H. as administrator *pendente lite* of the said estate in the Courts or otherwise," the bills of costs of the solicitor of the administrator should be taxed in order to ascertain the amount due. It was,

Held, that the Master was wrong. That the bills should if necessary be subjected to moderation and not taxation. That moderation is a well understood term, and is a more liberal proceeding than taxation, even as between solicitor and client.

Hoyles, for the appeal.

O'Donohoe, Q.C., contra.

Proudfoot, J.]

[October 2.]

RE MORTON.

Vendor and Purchasers' Act, R. S. O. c. 109—Tax title—Necessary proof—Treasurer's books and returns—Treasurer's certificate.

On an application under the Vendors and Purchasers' Act, R. S. O. cap. 109, to compel a purchaser to carry out a purchase it was shown that the vendor claimed through a tax sale and declined to produce any further evidence of the validity of the tax sale than was shown by Treasurer's deed and what might be obtained from the Treasurer's books, returns and warrants, to which he referred the purchaser.

Held, that the Treasurer's lists of lands in arrear for taxes furnished to the warden would be as valid evidence of the non-payment as the Treasurer's warrant to the sheriff under 16 Vict. c. 182, s. 55, was made by the judgment in *Clarke v. Buchanan*, 25 Gr. 559, and that coupled with the warrant from the warden, there would be no doubt about it and would afford evidence of non-payment up to the time of the sale.

Held, also, that the certificate of the Treasurer that the land was not redeemed is sufficient, and that an affidavit cannot be required from a public officer as to the proper discharge of his duty.

More evidence may be required as between a vendor and purchaser than in a suit where