LEGAL DECISIONS.

In Re Townships of Rochester and Mersea.

Drainage—Branch Drains—Separate Assessment—Amendment of Engineer's Report.

When it is essential for the purpose of draining the area in question a drainage work may include such branch drains as may be necessary, and the main drain and branches may be repaired and inlarged in case of necessity under one joint scheme and joint assessment, a separate scheme and assessment for the main drain and for each branch not being necessary. Under s. s. 3 of s. 89 of The Municipal Drainage Act, R. S. O., c. 226, the drainage referee has jurisdiction, with the consent of the engineer and upon evidence given to amend the engineer's report by cha ging against the townships in question for "injuring liability" assessment erroneously charged against them by the engineer for "outlet liability". Judgment of the drainage referee reversed.

In Re Young and Township of Binbrook.

Municipal Corporations — By-Laws— Voters' Lists—Omission of Classes of Voters—Irregularity—Saving Clause.

A by-law prohibiting the sale of intoxicating liquor in the township, under the provisions of s. 141 of R. S. O., c. 245, was submitted to the vote required by that section, and a majority of 98 votes appeared in its favor. Upon motion to quash the by-law, it was objected that the names of some 80 persons entitled to vote, were omitted from the lists furnished to the deputy-returning officers, and that these persons had no opportunity of voting. The clerk who prepared the lists was under the impression that only those persons were entitled to vote who would be entitled to vote upon money by-laws, and he therefore left out all farmers' sons and income voters. The number of persons entitled to vote at municipal elections was , of whom 78 were farmers' sons and 2 income voters, the remainder being owners and tenants. Only 409 names appeared on the lists given to the deputies; 272 persons actually voted, 185 for the by-law and 87 against it.

Held, following in re Croft and Township of Peterborough, 17 A. R. 21, and in re Bounder and Village of Winchester, 19 A. R. 684, that the names of the farmers' sons and income voters were improperly omitted from the lists.

Held, however, that the omission was not so serious and irregular as to require that the court should quash the by-law.

Under s. 204 of the Municipal Act, the by-law must stand if it should appear to the court "that the election was conducted in accordance with the principles laid down in the act," and that the irregularity did not effect the result.

An election should be held to have been conducted in accordance with the principles laid down in the Act, when the directions of the act have not been intentionally violated, and when there is no ground for believing that the unintentional violation has affected the results, and that was the state of things presented in this case.

The court was bound to assume that all the persons left off the list would have voted against the by-law, but it was not bound to assume that the error had any effect upon the minds of the persons upon the list who voted or abstained from voting, in the absence of any evidence to show that such was the case; and, adding in the 80 votes to the 87, there was still a majority in favor of the by-law. Woodward vs. Sarsons, L. R. 10 C. P. 733, followed.

Thompkins vs Brockville Rink Co.

Where a statute provides for the performance of a particular duty, and one of a class of persons for whose benefit and protection the duty is imposed, is injured by the failure of the person required so to perform it, an action, *prima facie*, and if there is nothing to the contrary, is maintainable by such person, but not where the non-performance is, in the general interest, punishable by penalty. Where, therefore, under authority conferred by sec. 496, sub-sec. 10, of the Municipal Act, a by-law was passed by the council of a city, setting apart certain areas as fire limits where no wooden buildings could be erected, and that buildings erected in contravention thereof might be pulled down and removed by the corporation at the cost of the owner, and a penalty of $50 imposed, the erection of a wooden building within such limits, does not give a right of action to the owner of contiguous property whose property is injuriously affected thereby, and an action, therefore, brought by such owner for the recovery of damages, and claiming the removal of such building and for an injunction, was dismissed with costs.

McLean v. City of Ottawa.

Judgment in action tried at Ottawa, brought to recover damages for injuries sustained by plaintiff, who when walking north on the east side of Banks street, Ottawa, slipped upon a small ridge of ice 3 or 4 inches above the level of the pavement and fell. Held, that defendants are not shown to have ever exercised any control or made any claim to the strip of land to the east of the street line upon which the ice had accumulated; but having regard to the decision in Badams vs. City of Toronto, 24 A. R. 14, that defendants' liability was the same as if the ice had been upon the pavement within their jurisdiction; but, in view of all the circumstances of the case and climatic condition, the defendants could not be said to have been guilty of gross negligence within the terms of R. S. O., c. 223, sec. 606, sub-sec. 2. Action dismissed with costs.

Ashdowne vs. Township of Artemesia.

Judgment in action tried before Falconbridge, J., without a jury at Owen Sound. Action by Frobella Ashdowne, a married woman, against the township corporation for damages for bodily injuries sustained by reason of an accident while driving on a public road, owing to the road being out of repair, as alleged. Held, that the notice of action required by the Municipal Act, R. S. O., c. 223, sec. 606, sub-sec. 3, was mailed within thirty days after the happening of the accident, and was sufficient under the statute. The road in question was at the time of the accident in an unsafe and dangerous condition by reason of the absence of a railing or fence at or near the edge of the embankment. Owing to the exceptional nature of the season at which the accident happened (last winter) the travelled path had gone nearer to the edge than it did in some other winters, but the absence of a railing is a standing source of damage both in summer and winter. There was no other road or path between the one plaintiff used and the foot of the hill, which the plaintiff was bound to use or ought to have used. The accident was not caused by the misbehavior of the horse or the negligence of the driver or any defect in the harness. If, however, any of these grounds of defence had foundation in fact, yet the accident would not have happened to plaintiff if the road had been properly guarded and fenced. The defendants had ample notice of the dangerous condition of the road. Judgment for plaintiff for $200, damages with full costs.

Re Pattullo and Town of Orangeville.

Judgment on motion by Pattullo to vary the finding as to costs upon an award by arbitrators respecting damages sustained by Pattullo from the construction of a granolithic sidewalk on Broadway in front of his property at a higher level than the floor of the building on the land. Held, that sec. 460 of the Municipal Act, under which costs were awarded, gave the arbitrators a legal discretion, and the section should receive the same construction as rule 1130. Award varied by directing corporation to pay all the costs of the arbitration, including the reference back, to be taxed on county court scale, and the arbitrators' fees, costs of award and stenographer's fees. Costs of motion also to be paid by the corporation.

Thompson vs. City of Toronto.

In this case it was decided that to obtain an order under R. S. O., c. 223, as amended by section 41 of 62 Vic. (2), c. 26 (O), for the repair of a pavement on a street which had been laid down as a local improvement, the applicant must be a ratepayer of property abutting on the street, and who has been assessed for the work in question.