

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

grocer, either on her or his order, the account to be opened in her name. Goods were shipped accordingly upon orders of the husband, and on one order of the defendant, and bills were drawn upon the defendant and accepted by her or in her name by her authority. She had separate estate.

Held, HAGARTY, C.J., dissenting, that the plaintiff was entitled to recover.

Per CAMERON, J.—The defendant was liable, being possessed of separate estate, whether the goods were bought by her or by her husband. In the latter case she would be surety for her husband as acceptor of bills drawn upon her for the price of the goods.

Per HAGARTY, C. J.—The goods were bought by the husband, and the liability was his and not the wife's, her name being used merely to shield him from his creditors, and the plaintiff being aware of this, and therefore the defendant was not liable to him.

WHITE V. CORPORATION OF GOSFIELD.

Municipal works—Drains—Non-repair—Action for damage—Mandamus.

The defendants in 1865 passed a by-law for the construction of a drain which passed through the plaintiff's land, and for assessing certain lands, including the plaintiff's, therefor. The drain was commenced in 1866 and completed. In 1873 they passed another by-law for widening and deepening this drain, which was accordingly done. In 1881, they constructed another drain running into the first below the plaintiff's land. The first drain having become out of repair and choked up, the plaintiff's lands were to some extent flooded in the spring and autumn, and the water lay longer than if the drain had been kept properly clear.

Held, affirming the judgment of Hagarty, C.J., (Cameron, J., dissenting), that the plaintiff was entitled to recover against the defendants for their breach of duty in not keeping the drain in repair under R. S. O., ch. 174, sec. 543, and that a *mandamus* should issue to compel the defendants to make the necessary repairs.

Per CAMERON, J.—An action is expressly given by sec. 342 for injury done by such neglect, where the drain serves two municipalities, but in a case like the present, though under sec. 543 the municipality may be compelled by *man-*

damus to repair the drain at the expense of the lands benefitted, no action lies for injury caused by non-repair.

REGINA V. WALSH.

Canada Temperance Act, 1878—Conviction—Hard labour—Proof of Act being in force—Jurisdiction of magistrate—Certiorari—Several offences.

The defendant was convicted of selling intoxicating liquor contrary to the Canada Temperance Act, 1878, upon an information charging him with keeping, selling, and otherwise unlawfully disposing of and bartering liquor. He was adjudged to pay a fine of \$50 and \$5 20 costs, and in default of payment, and of sufficient distress, he was adjudged to be imprisoned in the common gaol at hard labour. A second record of the conviction, bearing the same date as the first, was filed, differing in some minor points from the first, and omitting the adjudication as to hard labour, and adjudging the payment of \$5.27 costs. The proceedings having been removed by *certiorari*,

Held, that the first conviction was bad for want of jurisdiction to impose hard labour, which is not authorized by the Act; and that the second was bad in not following the actual adjudication as to costs, which were, as shown by the magistrate's minute, \$5.20, and not \$5.27.

The Canada Temperance Act does *per se* make the selling of intoxicating liquor an offence. It is only after the second part of the Act has been brought into force by the proceedings indicated for that purpose in the first part, which proceedings cannot be judicially noticed but must be proved, and in the absence of such proof the magistrate acts without jurisdiction.

Held, therefore, that the convictions were bad, for they did not allege that the Act was in force, nor was it proved otherwise, and, therefore, as the jurisdiction of the Magistrate did not appear, the writ of *certiorari* was not taken away by sec. 111 of the Act.

Quare, whether the convictions were not also open to objection on the ground that the information embraced more than one offence, and whether the Magistrate having in this respect disregarded the express directions of the Act 32 and 33 Vict., c. 51, sec. 25, made applicable by