LEGAL DEPARTMENT.

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LEGAL DECISIONS.

Fairbanks vs. Township of Yarmouth.

Railways—Municipal Corporations—Overhead Bridge—Approaches Thereto—Uulawful Incline—Accumulation of Snow—Accident—Liability—Negligence—Want of Repair—Nonfeasance.

The defendant railway company, having obtained the sanction of the defendant municipality to erect an overhead bridge across a highway, made the approaches thereto at a greater incline than required by the Railway Act, 51 Vic., chapter 29 (D.,) and afterwards further increased the incline by raising the bridge. An accumulation of snow resulted from this action of the railway company, against which the plaintiff's cutter was upset, and the plaintiff sustained injuries, for which she brought this action.

Held, that the accumulation of snow, under the circumstances, amounted to a want of repair, and whatever might be the obligation of the railway company as between them and the municipality, it was the duty of the latter (under section 531 of the Municipal Act) to keep the approaches and bridge in repair, and the municipality were liable to the plaintiff. Held, further, that the railway company were also liable to the plaintiff for a misfeasance, having been guilty of an unlawful act in constructing and maintaing the bridge and approaches in direct contravention of the Railway Act, thus causing the obstruction which caused the accident. Held also, per MacMahon, J., that, although the Railway Act is wanting in explicitness in prescribing the duties of a railway company in respect to repairing and maintaining bridges over highways, it is the apparent intention of the act that the railway company should keep in repair not only the bridge, but also the approach to it made necessary by its erection, and the railway company were liable here to the plaintiff for the nonfeasance.

McDonald vs. Dickenson.

Negligence—Nuisance—Highway—Drain Tiles—Master and Servant—Contractor—*Respondeat Superior.*

A township council appointed by resolution two of the defendants, who were members of the council, a committee to rebuild a culvert under a highway within the municipality. These two defendants employed another defendant as overseer of the work and two other defendants to draw drain tiles, which were required for the work, to the place in question. The work was done by the day, and while it was being done the tiles in question, which were of a large size and of a light grey color, were piled on the highway near the culvert. The plaintiff's horse shied when passing the tiles and upset the vehicle and the plaintiffs were injured.

Held, per Burton, J. A., Osler, J. A., dissenting, that the act in which the defendants were engaged being in itself lawful they could be regarded only as servants of the council, and that the maxim *respondeat superior* applied. Held, per MacLennan, J. A., Osler, J. A., dissenting, that leaving the tiles at the side of the highway was not negligence and did not constitute a nuisance, and that no action law. In the result the judgment of Boyd, C., was reserved, Osler, J. A., dissenting.

In re Hay and Town of Listowel.

Municipal Corporations—By-Law—Debentures—Time for Payment—55 Vic., chap. 42, sec. 340 (2.)

A by-law passed for the construction of waterworks and gas or electric light works made the debentures to be issued thereunder payable in thirty years from the date on which the by-law took effect.

Held, that the by-law was bad; for, upon the proper construction of section 340, (2) of the Consolidated Municipal Act, 1892, the time for the payment of debentures for such works as specified in the by-law was limited to twenty years.

Badams et ux vs. City of Toronto.

Municipal Corporations—Negligence—Defect in Sidewalk Beyond Line of Highway.

A city corporation is liable for injuries happening to a person while walking and resulting from the defective condition of a part of a sidewalk constructed by them, extending beyond the true line of the street over adjacent property, so as ostensibly to form a portion of the highway, such defect being caused through the owner of the property having placed on such part of the sidewalk a grating covering an area, and having allowed it, to the knowledge of the municipality, to fall into disrepair so close to the highway as to render travel unsafe.

Foster vs. Village of Hintonburg.

Municipal Corporation—Annual Rate Limited to Two Cents—"School Rate"—Debentures for School House—55 Vic., chap. 42, sec. 356.

The annual amount to pay for debentures issued under a by-law passed for the purchase of a school site and the erection of a school house thereon, comes within "school rates" excluded from the two cents, to which, by section 356 of the Consolidated Municipal Act, 1892, 55 V., chapter 42, the annual rate required to be levied by municipalities is limited.

Regina ex rel. Masson vs. Butler

Municipal Elections—Quo Warranto—Withdrawal of Relator—Intervention—Substitution.

Where the relator in a proceeding in the nature of a quo warranto under the Consolidated Municipal Act, of 1892, desires to withdraw, the court has no power, under the statute or otherwise, to compel him to go on against his will, nor to substitute a new relator. The power given by section 196, is to substitute a new defendant, not a relator.

Quinn vs. Town of Orillia.

Mr. Justice Street has handed out judgment in the above action tried without a jury. Action to restrain defendant from pulling down portions of building put up by defendent in alleged controvention of a fire limit law. The plaintiff was the owner of two small farm buildings connected together and within the limits set out in a by-law of defendants passed for the purpose of fixing fire limits and regulating the erection of buildings within those limits. A fire took place and one of the buildings was partly destroyed. Plaintiff proceeded to replace with wood the portions destroyed. By section 496, sub section 10, of the Municipal Act, 1892, a corporation has power to pass by-laws "regulating the repairing or alteration of roofs or external walls of existing buildings" within the fire limits "so that the said buildings may be made more nearly fire proof." The provision of the by-law passed by the defendants was "that all buildings damaged by fire, if rebuilt or partially rebuilt, shall be made fire proof." Held that this was in excess of the powers of the council and could not be enforced.

Ellis vs. The Town of Toronto Junction.

Municipal Corporations—Police Magistrate—Salary—Reduction of—R. S. O. Chap. 72, Sec. 5, 28.

In 1892 the plaintiff was appointed by the provincial government of its own motion, police magistrate, without salary, (under section 5, chapter 72, R. S. O,) of a town whose population exceeded 5,000. The plaintiff then demanded a salary of $800, as his right under section 2 (b), which was for a time conceded, but in 1894, reduced to $400, and by resolution in 1896 withdrawn altogether by the council.

Held, that the council had a right so to do and section 28, chapter 72, R. S. O. did not apply.

Petman vs. City of Toronto.

Municipal Corporation—Local Improvements—Increase of Cost.

The extension of a street was petitioned for as a local improvement by the resquisite number of owners, and the petition was acceded to by the council and a by-law passed for the purpose, the cost being estimated at $14,500, an assessment for that sum being adopted by the court of revision after notice to the persons interested. After some delay the council purchased the land required at a price much greater than the estimate and passed a by-law levying over $36,000, for the work. No work was done on the ground and no notice of the second assessment was given.

Held, that an opportunity of contesting the second assessment should have been given, and that the by-law was invalid.

Judgment of Rose, J., affirmed.