# Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

### Reg, v. Toronto Public School Board.

Judgment on motion of defendants to quash a conviction of defendants, who were charged with an infringement of by-law No. 2,478 (particularly section 13,) by permitting closets to be filled up under Smead-Dowd system and used in a building contrary to the by-law. The police magistrate for the city of Toronto, though the case seemed clearly within the by-law, refused to convict on the ground that the municipality had in this case sanctioned the violation of the by-law. The defendants were, however, on appeal to sessions, convicted, and, having obtained an order nisi then, made this motion. Held, that the information and complaint in this case being for an offence against a by-law of the city of Toronto, passed under the authority of the municipal act. R. S. O., c. 223, sec 551, the criminal code, part 8, sec. 840, does not apply ; so that the authority, if any, for an appeal to General Sessions from an order of dismissal, must be found in the Ontario Summary Convictio s Act, R.S.O., ch. 90, and "conviction or order," in sec. 7 of that act means one of or against the party against whom the information and complaint is laid. Order as there used does not mean order of dismissal. It is for the Legislature to so construe the word if they desire. The words of sec. 103 of the imperial act 5 and 6 Will. IV., ch. 50, are much stronger in favor of an appeal from an order of dismissal than sec. 7 of the Ontario act, yet in Reg. v. Keepers, etc., of Landon, 25 A. B. D, 357, the court held that they did not include an order of dismissal. Conviction quashed without costs.

### Pedlow vs. Town of Renfrew.

A note of the judgment at the trial of this action was published on page 57, of THE MUNICIPAL WORLD, 1900. It was an action to restrain defendants from interfering with the fence in front of the plaintiff's property on Barr street, in the town of Renfrew. The Chancellor held that the twenty feet of land in question had been sufficiently dedicated by the owners, and accepted and used by the public to create a new highway, and that the plaintiff, in enclosing it with his fence, was encroaching upon the public street. It was contended *inter alia* for appellant that the strip of land in question had not appeared on any plan, and been established by by-law or otherwise assumed for public use as provided by The Municipal Act ; that there was not sufficient evidence of acceptance by the public ; that no public money had ever been expended on this strip, nor statute labor performed, and that the only acceptance of this street by the town was a resolution passed by its council in July, 1895, accepting a street forty feet wide, and not sixty feet wide, and not including the strip in question, neither had any consent of the council ever been given for the laying out of a sixty-foot street, as required by The Municipal Act, 55 Vic., ch. 42, s. 545. The plaintiff appealed to the Court of Appeal, for Ontario, and, after argument, the judgment below was affirmed and appeal dismissed with costs.

### Queen *vs.* Smith.

*Municipal Corporations—By-law—Regulation of Hawkers—R. S. O., c. 223, s. 583, s. s. 14—Proviso—Negativing Exception—Conviction—Quashing—Costs.*

A by law of a county council recited the provisions of sub. sec. 14, of s. 583 of the Municipal Act, R. S. O., c. 223, and that it was expedient to enact a by law for the purpose mentioned in the sub-section ; it then went on to enact "that no person shall exercise the calling of a hawker, pedler, or petty chapman in the county without a license obtained as in this by-law provided"; but the by-law contained no such exception as is mentioned in the proviso to sub. sec. 14, in favor of the manufacturer or producer and his servants.

Held, that the by-law was ultra vires of the council, and a conviction under it was bad.

Held, also, following Regina v McFarlane (1897) 33 C. L. J. 119, that the conviction was bad because it did not negative the exception contained in the proviso, and there was no power to amend it, because the evidence did not show whether or not the defendant's act came within it. The conviction was therefore quashed, but costs were not given against the informant.

### McQuillan vs. Town of St. Marys

*Municipal Coroporation—Action of Negligence—Ice on Sidewalk—Notice before Action—Sufficiency of—R. S. O., chap. 223, sec. 606, sub-section 3.*

This was an action to recover damages for injuries alleged to have been sustained by plaintiff, owing to his slipping on a quantity of snow and ice, in a street in the town of St. Mary's, which the defendants were alleged to have negligently allowed to accumulate. The statutory notice, R. S. O., ch p. 223, sec. 606, sub-sec. 3, given on behalf of the plaintiff, described it as having taken place opposite to a certain shop, whereas, in fact, it took place opposite a different shop about twenty feet further on, on the same side of the street.

Held, that the notice was sufficient, as it gave information enough to enable the corporation to investigate, and that is all that can be called for.

### Ryan vs. Willoughby.

*Contract—Breach—Condition Precedent—Inability to Perform—Municipal Corporations—Resignation of Councillor—Disqualification of Councillor.*

The defendant, who was a municipal councillor, entered into a sub-contract with the plaintiff to do the brick and mason work under the plaintiff's contract with the municipality to build a town hall, that contract providing that the contractor should not sub-let the work or any part thereof without the consent in writing of the architect and municipality, and this consent the plaintiff was to obtain. The municipality refused to consent to the sub-contract on the ground that the defendant's services would be of value in the oversight of the contract.

Held, that there could not be imported into the defendant's sub-contract an agreement to resign his seat as such an agreement to resign a public trust for private gain would be contrary to public policy and illegal, and the defendant was not liable in damages because of the breach of an implied obligation to resign, though his resignation might, as the plaintiff contended, have enabled the plaintiff to fulfil the condition precedent on his part, of obtaining the municipality's consent.

Semble : if the sub-contract had taken effect the defendant would have been, under section 80 (1) of the Municipal Act, R. S. O., chapter 233, disqualified.

Judgment of a Divisional Court, 30 O. R., 411, reversed.

### Horsman *vs.* City of Toronto.

*Taxes and Assessment—Arrears of Taxes - Goods on Premises "Purchased" from Owner—R. S. O., c. 224, s. 135, sub. sec. 4 (b).*

Held, that the goods purchased from a mortgagee of the owner or person assessed were not goods title whereof is claimed by purchase, gift, transfer or assignment from the owner or person assessed within the meaning of s. 135, sub. sec. 4 (b) of the Assessment Act (R. S. O., c. 224) and could not be levied on for taxes in arrear in respect of the premises owned by the mortgagor of the goods.

### Trolleys—Carriages—Right of Way.

The New Jersey Court of Errors and appeals held, in the recent case of Earle vs. Consolidated Traction Company, that trolley cars and ordinary carriages have equal rights upon public streets and crossings, and that the first to reach the crossing has the right to cross over first. In case, however, it appears that the motorman of the trolley does not intend to respect the carriage driver's right of priority, and that the driver cannot, with the use of reasonable prudence, exercise his right, he is guilty of contributory negligence if he fails to wait or turn aside, if he can do so by the use of due care, and thus protect himself from injury.