

per cent. on all moneys advanced by B. over the \$5,000, and A. covenanted, as his orders were filled, and the goods received, to advance in cash to B. 75 per cent of the wholesale trade value of such goods, and for that purpose the said goods were to be invoiced to B. at such value that he, B., could sell them to the best advantage. It was agreed, also, that all goods manufactured at the factory should be sold only by or through the plaintiff.

*Held*, the above agreement constituted B. a factor, not a pledgee, for he had power to sell without regard to any default in payment in the ordinary course of trade.

*Held*, further under the interest that B. had in the goods, and from the nature of the dealings and arrangements of A. and B., that if A. did not repay the advances made to him, or did not deliver to B. goods sufficient to keep his advances protected by a surplus of 25 per cent. of goods at the wholesale trade value, and it became necessary for B. to protect himself against such default, and he could not within a reasonable time have sold to customers, that he could sell by auction, and was not bound to delay until private sales could be made.

*Watson* for the defendant.

*Bain*, Q.C., for the plaintiff.

Ferguson, J.]

[June 23

CAREY V. THE CITY OF TORONTO.

*Vendor and purchaser—Sale according to a plan—Rights of purchaser—Parties.*

The City of Toronto sold certain leasehold building lots by public auction, which building lots formed three sides of a square. A plan of the land was exhibited at the sale, and copies given to the bidders, and the sale was made according to the plan which was incorporated in the contracts of purchase. There was shewn on the plan three lanes running round the three sides of the square, at the rear of the building lots. The plaintiff bought a lot on the south side of the square. M. bought all the lots on the west side of the square. After the purchase M. endeavoured to close up the lane behind the lots on the west side of the square.

*Held*, the plaintiff was entitled to the benefit of the lanes on all three sides of the square, and to a lease in accordance with the plan according

to which he made his purchase; and he had a right to maintain this suit to compel M. to remove fences placed by him in obstruction of the lane behind the lots purchased by him, M., and that without making all the other purchasers at the sale parties.

*S. H. Blake*, Q.C., for the plaintiff.

*C. Moss*, Q.C., for defendant, A. Macdonell.

*McWilliams* for the City of Toronto.

*D. Clarke* for the defendants, the Bennetts.

Proudfoot, J.]

[July 4.

CLARKE V. CORPORATION OF THE TOWN OF PALMERSTON.

This was an application for a mandamus to compel the Corporation of the Town of Palmerston to include in the estimate by-law for 1883, and to levy and collect a cause to be levied and collected the sinking fund, properly leviable for 1883 on all the debenture debt of the Corporation; and to levy and collect the arrears of the sinking fund not levied in former years; or to levy such a rate as would not exceed two cents in the dollars, exclusive of school rates, applying such portion of said rates as should exceed the amount for ordinary expenditure towards the arrears of sinking fund: and to continue the levying and collection of the two cent rate, similarly applying the excess until all arrears of sinking fund should be made up.

*Held*, the order for a mandamus should go for the levy of the rate for the current year, for the proceedings were properly taken against the Corporation, and not the Clerk of the Municipality, notwithstanding sec. 88 of the Assessment Act, R. S. O. c. 180 (Harr. Mun. Man., 4th Ed. p. 692), and *Grier v. St. Vincent*, 13 Gr. 512. For R. S. O. c. 180, s. 88, must be taken in connection with s. 340 of the Municipal Act (R. S. O. c. 174), and the Clerk is not to insert in the collector's roll any sums which the Council has not directed to be levied. The Council would not know how to limit the rates to be imposed to keep within the statutory limit, unless it had all the special rates also before it.

*Held*, however, the mandamus could not include the levy of the arrears, nor the levy of the rates in future years.

The not levying a rate for the sinking fund is