

(3) The assent of the municipal corporation as one of the landowners interested may be shown by resolutions passed by the council directing the engineer to proceed with the work.

(4) The term "owner" as used in the Act means the assessed owner; and a tenant at will may be an owner affected or interested within the meaning of the Act.

(5) The decision of the County Court judge as to matters over which the engineer has jurisdiction cannot be reviewed by the court; and whether the plaintiff were benefited by the proposed work was a matter to be determined by the engineer, and the subject of appeal to the County Court judge.

(6) The mere publication by the engineer, within a year after the affirmance of an award, of a notice that he would let the work be done upon the land of one of the persons affected by the award, and that such letting would take place after the expiry of a year from such affirmance, does not afford any ground for an action of trespass.

Aylesworth, Q.C., and D. B. MacTavish, Q.C., for the plaintiffs.
G. F. Henderson for the defendants.

Div'l Court.]

TURNER v. BURNS.

[June 10.]

Covenant—Construction of—Reasonableness—Certainty—Damages for breach—Evidence—New trial—Refusal of judge to submit question to jury—Non-direction.

The male defendant sold his business of a wholesale and retail confectioner to the plaintiff, and covenanted that he would not, during a limited period, either by himself alone, or jointly with, or as agent for any other person, carry on, or be employed in carrying on, the business of a retail confectioner in the same city which should in any way interfere with the business sold to the plaintiff, and that he would, to the utmost of his power, endeavour to promote the interest of the plaintiff among his (the defendant's) customers. This defendant had carried on his wholesale business in the basement of his premises, and his retail business in the shop above, of which latter his wife, the other defendant, had the management. The business carried on in the shop included the sale of cakes, candy, etc., and the serving of lunches. In the sale to the plaintiff were included an assignment of the lease of these premises, and all the chattels and fixtures, as well as those used in the serving of lunches as in other ways. During the period limited by the covenant, and while the plaintiff was carrying on the business in the same way as the male defendant had previously carried it on and upon the same premises, the defendants began a precisely similar business in a shop in the same street, the shop being leased and the retail business carried on in the name of the wife, and that branch of the business conducted by her as theretofore, while the husband carried on the wholesale business in the basement. The jury found that the retail business was, in fact, that of the husband.

Held, (1) that the serving of lunches was part of the business of a retail confectioner, according to the meaning to be ascribed to those words in the covenant.