the salary, and he is also entitled under the statute to salary to the time of the bringing of the action because his dismissal entitled him to treat the agreements as at an end, and his salary was then in arrear. Held, also, that the agreement of 1894 being valid on its face and having been acted on for several years, the onus of proving that the requirments of sec. 19 had not been fulfilled lay upon the defendants, and they had failed to do so. Appeal dismissed with costs.

Fee vs. Township of Ops.

Judgment on appeal by plaintiffs from judgment by Falconbridge, C. J., dismissing the action. The plaintiffs (man and wife) are the owners of lot 22, in the 4th concession of the township of Ops. and tile-drained their farm, and in 1879 drained into a natural watercourse west of it. In 1881 defendants constructed a drain west of plaintiffs' land and compelled them to contribute money towards its construction, which, plaintiffs' allege, was so negligently done as to destroy their tile drain and injure their land, and they sought damages and a mandamus for the repair and maintenance by the defendants of their drain. It was contended for plaintiffs that, whether the defendants' drain, which was built under a by-law passed in 1879 (see re McLean and Ops. 45 U. C. R., 325), was constructed for the drainage of the tile-drained lands or not, that it had been proved to have been negligently and improperly constructed and maintained, and as a result surface water was thrown on plaintiffs' land ; that having been assessed for and having contributed to the building of the drain, they were entitled to relief if it failed to perform its functions ; that having given the notice required by sec. 73, R. S. O., ch. 226, and having a vested interest in the drain, they are entitled to a mandamus ; and that if the statute of limitations applied at all it affects only the amount of the damages because they are continuing. Held, that Williams vs. the Tp. of Raleigh (1893), A. C., 540, is conclusive against the claim for damages arising from the construction of the drain, the work having been done under the municipal act upon the report of a duly appointed engineer, and no negligence having been shown, and that sec. 438 of the municipal act is a complete answer to the claim for compensation for injuries arising from the construction of the drain. Besides, the plaintiffs' were petitioners for the work, and agreed to an assessment upon their lands in respect to it ; held, also, that the claim for damages for non-repair of the drain and for mandamus is not well founded. As held by the court below, the drain was only intended for taking off the surface water, and was not designed to provide an outlet for tile drainage of the farms intended to be benefitted by its construction. Upon the evidence the filling in of the drain where it has filled in has not increased the flooding, and the fires which swept over that part of the country through which the drain ran have so changed the conditions that it is impossible now to restore it to its original state, and if so restored would be useless. Besides all this, a railway culvert over which respondents have no control, is insufficient to permit the water brought down by the drain to pass through it, and a mandamus should not be granted to compel repair of a drain which will be unnecessary when the new work the respondents have undertaken is completed. Appeal dismissed with costs.

McKinnon vs. McTague.

Judgment in action tried at Berlin brought to recover damages for illegal distress for taxes. Held, that the notice served by defendant Patterson (the collector of taxes,) under subsections 1 and 2, section 134, chapter 224, R. S. O., was insufficient in that there was not written or printed thereon for the information of the ratepayer a schedule specifying the different rates, etc., required by the statute, and that the distress was made before the time of payment had expired, and also that defendant Patterson had not "good reason to believe" that plaintiffs were about to remove the goods before the time for payment expired. No relief was asked against defendant McTague, who is the husband of the owner and urged the distress. Judgment for plaintiff against defendants Patterson and Gillies (bailiff) for $60 damages and costs on High Court scale of action and injunction. Thirty days stay.

Steenson vs. Town of Palmerston.

Judgment in action tried at Guelph. The plaintiff, now the wife of William Steenson, is the widow of Christopher Johnston, who was buried in lot 98, block 1, of the cemetery of the town of Palmerston in 1884. The defendants held the cemetery under sub secs. 8 and 9, sec. 490, ch. 18, of 46 Vict. (O.), now R. S. O., ch. 223, sec. 577. By deed, dated 26th August, 1885, the defendants conveyed to plaintiff lot 98, habendum "to her heirs and assigns to and for her and their sole and only use forever." There are no other terms in the deed. In June, 1888, the defendants caused the body to be removed from lot 98 and buried in some lot which is now unknown, and sold lot 98 to defendant Hyndman, whose deceased wife was buried in it on the 20th of that month, and defendants by deed dated 19th June 1888, similiar in terms to that given by the plaintiff, conveyed the lot to Hyndman, who in June, 1889, erected a monument and put up an iron fence, both of which still remain. This action is brought for damages for trespass and removal of the body of the plaintiff's husband, for a declaration of title and mandamus to compel defendants to remove the body of the wife of the defendant Hyndman and to replace the body of Christopher Johnston. At the trial, it having appeared impossible to discover the whereabouts of the body of the deceased Johnston, the relief sought by mandamus was the defendant undertaking to supply plaintiff with another lot. Held, assuming the deed to plaintiff to be valid, and that it passed the fee, the causes of action are barred by the statute of limitations, the trespass having been committed more than six years before action, and defendant Hyndman having been in possession more than ten years since his erection of the monument and the iron fence which, within the authorities, are acts of ownership. Quaere as to the validity of both deeds under the statute (R. S. O., ch. 223), because they are simply conveyances in fee, without limitation or restriction and, therefore, in violation of its provisions. Action dismissed without costs.

Town of Peterborough vs. G. T. R. Co.

This was an appeal by plaintiffs from judgment of Street J. (32 O. R. 153), dismissing action brought to have it declared that defendants are liable to build and repair the bridge over the creek, as diverted by defendants, where it crosses Smith street, in the town of Peterborough, and to restore the highway to its former state, or so as not to impair its usefulness. The Midland Railway, in 1882, made a cutting across Smith street for the purpose of diverting the creek, and filled in the original b d, providing a culvert still in use, and plaintiffs allege they allowed the cutting to be made without passing a by-law giving permission, but on the agreement between the township of Smith, the town of Peterborough and the company that the latter would build and maintain a proper bridge across the cutting. The land in question has been part of the town since 1894 and the Midla d Railway has been leased by the defendants since 1883. The trial judge held that the alleged agreement had not been proved, and that as the defendants had acted within their rights the plaintiffs' only course was to proceed for compensation under the railway act, and that a mandamus should not be granted in this action. It was contended *inter alia* for plaintiffs that the portion here in question of the Midland Railway was built under 44 Vict., ch. 67 (O.), and did not by the Railway Act of 1879, come under its provisions as to powers, lands and valuation by sub-sec. 2, sec. 2 ; see also Bowen vs. Canada Southern R. W. Co., 14 A. R., 1, and the railway company was, therefore, still liable under sub-sec. 5, sec. 9, R. S. O., ch. 165, to restore the highway to its former state, or to such a state as not to impair its usefulness. This is a condition, and a continuing one, attached to the right to maintain the railway : Van Allen vs. G. T. R., 29 U. C. R., 436. Appeal dismissed with costs.