

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

ment and on covenant, which went to judgment there, and that the costs of exercising the power of sale under a statutory form of mortgage, are made a first charge upon the proceeds of sale R. S. O. p. 997, so that the mortgagee is entitled to them as a matter of contract.

Held, also, that G. O. 465, does not apply where there has been no proceeding in equity as to the costs which could give the Court jurisdiction to put the mortgagee to his election or warrant a disallowance of any of the bills.

Lennox, for plaintiff.

G. W. Lount, for defendant.

VAN EGMOND V. THE CORPORATION OF THE TOWN OF SEAFORTH.

Municipal Act—Drainage—Arbitration—Right to maintain action.

The defendants constructed a number of drains in their town, discharging into a creek running through the lands of the plaintiff, which drains conducted a quantity of brine or salt and refuse from salt manufactories in the neighbourhood into the creek and rendered the water filthy and unfit for drinking, and also corroded the machinery in plaintiff's woollen manufactory; and, having passed a by-law to deepen said creek, threw down plaintiff's fences, entered upon his land and threw up earth from the bed of the creek and left it there.

Held (sustaining the judgment of *PROUDFOOT, J.*), that the drains not being constructed under a by-law the plaintiff was entitled to maintain an action and was not compelled to seek his remedy for compensation by arbitration under the Municipal Act.

Held, also, that the damages for the trespass could be recovered by action, as the corporate powers under the by-law might have been exercised without the commission of the trespass.

Blake, Q.C., and *Holmsted*, for appellant.

Moss, Q.C., and *Garrow*, for respondents.

Boyd, C.]

[Feb. 20.]

RE L. U. C. TITUS, A SOLICITOR.

Misconduct—Striking off the rolls.

W., being about to be tried for a criminal offence, was impressed by T., her solicitor, that she was in great danger, and when consulting about her line of defence, was told by him that there were "other ways besides legitimate ways to manage these things." He subsequently sent her word that he wanted to see her, telling his messenger that he wanted some money "to salt the jury with." This message was delivered, and W., with another witness, called at his office and paid him \$100, when the use of it in that way was talked of in the presence of both. On a subsequent occasion, being sent for again, she paid him another \$100, because he said only three jurors had been fixed with the first \$100.

In the Master's office, on a taxation of T.'s bill, he gave no account of how the money was disbursed, except that he had paid it over to a third person to secure his assistance in the defence, and he was, or pretended to be, unable to say what amount he had received.

On this application to strike him off the rolls, T. denied generally any conversations in reference to jury bribing, and alleged that the money had been paid to a third party to secure his assistance in W.'s defence; but B., the messenger, swore that when he was first sent for W., T. had broached the subject of "salting the jury" to him, and on the second occasion had told him "that three jurors had been fixed all right." W. and the witness who accompanied her on both occasions to T.'s office, swore that on the first, the use of the money in that way with the jury was talked about, and on the second, that T. repeated to them what he had told the messenger—*viz.*: that only three of the jurors had been secured with the first \$100.

Held, that T.'s line of defence was not trustworthy, and that he had not vindicated himself, and an order was made striking him off the rolls.

J. Hoskin, Q.C., for petitioner.

S. H. Blake, Q.C., contra.