

laid down as a local improvement, the applicant must be a ratepayer of property abutting on the street and who has been assessed for the work in question.

*Woods*, for applicants. *Fullerton*, Q.C., for City of Toronto.

Meredith, C.J.] THOMPSON v. BROCKVILLE RINK CO. [July 17.

*Municipal corporations—By laws prohibiting erection of wooden building—Right to maintain action for breach of.*

Where a statute provides for the performance of a particular duty, and one of a class of persons for whose benefit and protection the duty is imposed is injured by the failure of the person required so to perform it, an action, *prima facie*, and if there is nothing to the contrary, is maintainable by such person; but not where the non-performance is, in the general interest, punishable by penalty. Where therefore, under authority conferred by s. 496 s.-s. 10 of the Municipal Act, a by-law was passed by council of a city, setting apart certain areas as fire limits where no wooden buildings could be erected, and that buildings erected in contravention therefore, might be pulled down and removed by the corporation at the cost of the owner, and a penalty of \$50 imposed, the erection of a wooden building within such limits, does not give a right of action to the owner of contiguous property whose property is injuriously affected thereby, and an action, therefore, brought by such owner for the recovery of damages, and claiming the removal of such building and for an injunction, was dismissed with costs.

*Aylesworth*, Q.C. and *Brown*, for plaintiff. *Shepley*, Q.C. and *Buell*, for defendants.

Boyd, C.] IN RE ALEXANDER. [Sept. 1.

*Jurisdiction—Divisional court—Appeal—Order—Surrogate judge—Compensation to executors.*

*Held*, that an appeal lies to a Divisional Court under R.S.O. c. 59, s. 36, from an order of a Surrogate Court judge allowing compensation to an executor under the Trustee Act, R.S.O. c. 129, s. 43.

The sections have become separated in the course of statutory consolidation and revision, but both are of one original (Surrogate Court Act 1858, secs. 20 and 47), and are still in *pari materia*, and are to be read together as forming one subject-matter. The Trustee Act does not make the Surrogate judge a *persona designata* from whom there is no appeal.

*O'Connor*, Q.C., and *Shepley*, Q.C., for the appeal. *C. J. Holman*, contra.

Meredith, C.J., Rose, J.] BROWN v. GRADY. [Sept. 5.

*Infant—Mortgage—Covenant for payment—Approval of master—Mistake—Repudiation—Delay.*

In taking a trustee's accounts before the Master it was found that there