

R.S.O., 1887, c. 44, s. 52, s.s. 5, no doubt enabled the court to make such a decree even in a case like this, where no consequential relief was or could be claimed.

What was asked was a declaration as to a claim which might be made by another or others under circumstances which might or might not happen, and to grant such a declaration would be making a radical change in the rules and practice of the court, which R.S.O., 1887, c. 44, s. 52, s.s. 5, was not intended to do.

*O'Gara*, Q.C., for the plaintiff.

*Snow* for the defendant Gordon.

*Henderson* for the other defendants.

BOYD, C.] [Dec. 5.]

MCCORMICK *v.* TOWNSHIP OF PELEE.

*Municipal corporation—Reparation of highway—Highway washed away by lake.*

Where a highway running along the side of a lake had been eaten away by the action of the water so as no longer to be traversable,

*Held*, that the municipality were not called upon by law to restore it. The municipality were not bound to erect a sea-wall to keep off the action of the water, and without one any ordinary reparation would be ineffectual.

*T. M. Morton* and *J. L. Murphy* for the plaintiffs.

*M. A. McHugh* for the defendant.

BOYD, C.] [Dec. 6.]

BANKS ET AL *v.* THE CORPORATION OF THE TOWNSHIP OF ANDERDON ET AL.

*Municipal corporation—By-law—Separate School.*

A municipal corporation cannot by by-law extend the boundary of a Protestant separate school section into or over an adjoining public school section when the teacher in the latter is not a Roman Catholic.

*Armour*, Q.C., and *Kirkland*, for plaintiff.

*McHugh* and *Murphy* for defendants.

ROBERTSON, J.] [Jan. 2.]

GOULD *v.* ERSKINE.

*Action for seduction—Action brought by mother in life-time of father—Demurrer—Common law right of action.*

Demurrer to statement of claim in action of seduction brought by the mother of the girl

seduced, it being alleged therein that the father was not resident in Ontario either at the time of the birth of the child, or at the commencement of the action; the said demurrer being on the ground that the plaintiff had no right of action, which, if any, was in the father.

*Held*, that in the absence of the father from the Province, the mother, with whom the girl had been living and doing service, had a common law right to bring the action, and this was all that was necessary. The statute R.S.O., 1887, c. 58, is an enabling Act, and does not interfere with the common law right of action.

*Johnston*, Q.C., for the demurrer.

*Hilton* and *McCulloch*, contra.

BOYD, C.] [Jan. 8.]

RE ABBOTT *v.* MEDCALF.

*Mortgage—Power of sale—Notice of sale—Execution creditor.*

In taking proceedings under a power of sale in a mortgage drawn under the Short Forms Act in these words, "Provided that the said mortgagee, on default of payment for one month, may, on giving one month's notice, enter on, and lease or sell the said land,"

*Held*, that execution creditors of the mortgagor come within the scope of the word "assigns," and as such are entitled to notice under power of sale; but only those entitled at the time notice is given need be served. Execution creditors coming in subsequently to the notice given, but before the sale is carried out, are not entitled to be served.

*Worrel*, Q.C., for the vendor.

*Coatsworth* for the purchaser.

### Practice.

C.P. Div'l Ct.] [Dec. 1.]

GRÈME *v.* GLOBE PRINTING CO.

*Security for costs—Libel—R.S.O., c. 57, s. 9—Action frivolous.*

Where an action of libel was brought by one Grème, complaining of statements published in a newspaper, imputing a crime to one Graham, and it appeared that it was stated in the article complained of that no one would believe the charge against Graham, and that in an article published in the same newspaper after the commencement of the action, it was stated that the