

Com. Pleas.]

NOTES OF CANADIAN CASES.

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GRAY V. CORPORATION OF DUNDAS.

Municipal corporations—Sewer connecting with creek—Fouling creek—Liability.

The defendants had a drain on Main Street in the town of Dundas for carrying off the surface water of the street, along and across the street, and then through private property until it reached a creek. Certain screw works were carried on on Main Street near where the drain was. The proprietors of these works obtained permission to connect with the defendants' drain. Complaints being made of the drain being fouled by noxious matter from the works, the proprietors used an old cellar as a reservoir to contain the noxious matter from the works that had been formerly carried off by their drain. The noxious matter from the cellar, it was alleged, filtered through from the cellar into the drain, and was thus carried into the creek. The drain, without the infiltration into it from the cellar, from which it is distant twenty-six feet, would not convey anything injurious into the creek. The plaintiff was a riparian proprietor on the creek, and had a factory thereat, and brought an action against the defendants for the alleged fouling of the waters of the creek, whereby the plaintiff was prevented from using the waters of the said creek for domestic purposes, and for his said factory.

Held, that the action was not maintainable.

Lount, Q.C., for the plaintiff.

Osler, Q.C., for the defendants.

MCGIBBON V. NORTHERN ETC., RY. CO.

Railways—Fire caused from engine—Evidence.

Action of negligence against the defendants in the conduct of their engine, whereby, as alleged, fire escaped therefrom and destroyed the plaintiff's property. It appeared that as the engine passed the plaintiff's stable and combustible manure heap, steam was put on which, it was urged, had the effect of causing a larger quantity of sparks to pass through the netting of the smokestack: but there was no evidence to show that a larger quantity of sparks did escape, or that the fire was caused thereby. It was further urged that the fire was caused from the ashpan; and as evidence thereof a cinder, too large to come from the smokestack, was picked up on the manure heap; but it did not clearly appear whether the cinder was from coal

or wood—the engine burning coal. The fire that broke out in the manure heap was put out, and about five minutes afterwards a fire broke out in a barn adjoining the plaintiff's, and consumed both. No evidence was given of any faulty construction in the engine; but it was shown to be of approved make, with proper appliances to prevent, as far as possible, the escape of fire.

Held (ROSE, J., dissenting), that there was no evidence of negligence to go to the jury: and the case was properly withdrawn from the jury.

Lask, Q.C., for the plaintiff.

D'Arcy Boulton, Q.C., for the defendants.

INTERNATIONAL WRECKING AND TRANSPORTATION CO. V. LOBB.

Salvage—High Court—Jurisdiction—Admiralty rules—Services performed on request—36 Vict. ch. 54. (D.).

The schooner Huron was stranded on the northern shore of Lake Erie. The master telegraphed to the manager of a wrecking company at Detroit for tugs and wrecking apparatus. With their assistance the schooner was rescued and brought into a safe port. This action was then brought in this Court to recover an amount, made up chiefly of *per diem* charges for the tugs and apparatus, which exceeded the value of the vessel.

Held, that the action was a salvage action, and that the admiralty rules as to salvage awards and apportionment thereof, applied, though the action was brought in the High Court; that the maximum salvage award is a moiety of the *res* saved; and that wrecking companies are governed by the law of salvage as well as ordinary vessel owners.

Held, also, that the services were no less salvage because performed upon request.

Kerr, Q.C., and *Moss*, Q.C., for the plaintiffs.

Osler, Q.C., and *R. Gregory Cox*, for the defendant.

CANADA ATLANTIC R. W. CO. V. CAMBRIDGE.

By-law—Bonus—Aid to Dominion Railway—Promulgation—Effect of—Clerk casting vote—Majority of electors—Advertisement—Engineer's certificate.

A by-law was passed by the defendants granting aid to plaintiffs' railway—a Dominion railway. The vote for and against the by-law was equal, and