LEGAL DEPARTMENT.

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Legal Decisions.

BANNON VS. THE CORPORATION OF THE CITY OF TORONTO

This case decides that the power given the municipal corporation under sec. 285. R. S. O. chap. 184. to determine the time during which victualling licenses shall be in force does not confer any power to forfeit such licences, but merely to fix the duration of the license.

The power to create a forfeiture of property, is one which must be expressly given to a corporation by the legislature, and such an extrordinary power is least of all to be infered, where the legisture has provided other means of enforcing by-laws by means of fine and amercement as in this case.

THE QUEEN EX REL CHICK VS. SMITH.

This was an appeal from the order of His Honor C. R. Horne, the county judge of the county of Essex in a "*quo warranto.*" Proceeding commenced at the instance of Thomas Chick to set aside the election of J. A. Smith as councilor for the fifth ward of the town of Windsor. From his honor's judgment, the facts and circumstances of the case appear to have been as follows: The relator sought to disqualify the respondent as councilor for the fifth ward of the town of Windsor, on the ground that at the time of the election he had not the necessary property qualification. The respondent in his oath of qualification, qualified, or sought to qualify, as tenant of the north part of lot 3, part lot 1, west side Windsor avenue, of the value of $1,200 and over, the property was assessed $17.00.

The election was held on the 28th of December 1891, this being the day of nomination, the polling being on the 4th of January, 1892. The roll for 1891 was finally revised on the 18th day of December 1891. The respondent became the tenant of the property on which he sought to qualify, on the 1st day of February 1891, so that he was not assessed on the assessment roll for 1890, which was the last revised roll before the election, for the property on which he took the oath of qualification. The respondent contended that in 1890 he was rated as tenant on the roll for that year, of the west half of lot number 10, north side of Chatham street, farm 81 and 82, for the sum of $2000, and that such property was alienated by him to to his landlord on the 1st day ot February 1891, and that, as he was at the time of the election tenant of the property on which he sought to qualify that he had been duly elected. After the several sections of the statute relating to the subject, his honor decided that under the circumstances the respondent had not at the time of the election complained of, such an estate as would qualify him for the office of councilor, and that he was not duly elected. On appeal it was held by Mr. Chancellor Boyd that the town councilor could qualify under R. S. O. chap. 184, sec. 73, as amended by 51 Vic., chap. 28, sec. 9, since the cesser ot the term of the first leasehold amounted to an alienated by operation of law within the meaning of the statute.

ELLIS VS. CLEMENT.

The use by riparian proprietors of the waters of streams through whose lands they flow must be a reasonable use, and the proprietors so using the waters must restore them to their natural channel before they reach the lands ot the proprietors below them. The defendant in this action in restoring the water of a stream used by him, to its natural channel, did so at such times and in such a manner, that the water froze as it was being restored, and formed a solid mass of ice, completely filling the natural channel, so that the water coming down flowed away from the channel and over the plaintiff's land, and thereby caused it injury. From the evidence it appeared that the cause of the water freezing, as it did, was the times at which, and the manner in which the defendant so restored it, and was a natural result thereof, and it was given in evidence that the plaintiff had remonstrated with the defendant, and had pointed out to him the consequences of his action. It was held that the defendant's use of water was unreasonable, and, as there was no proof to sanction a prescriptive right to restore the water at the times, and in the manner in which the defendant so restored it, he was liable to the plaintiff for the injury he had so sustained; his conduct being wrongful; his persistence in it was malicious; and the injury to the plaintiff, too, an invasion of his rights, and imported damage, whether there was any actual damage or not. It was also held that, even if there was a cause for which the defendant was not responsible, concurrent with the wrongful acts complained of, and contributing to the injury sustained by the plaintiff, the plaintiff would still be answerable for the injury sustained by such wrongful acts for such damages or such portion thereof, as was caused by the wrongful acts complained of.

RE DWYER AND THE TOWN OF PORT ARTHUR.

By section 52 of the Assessment Act, where the assessment in cities, towns, etc., is made by virtue of a by-law passed under that section, in the latter part of the year, such assessment *may* be adopted by the council of the following year. It was held that "may," as used in said section, is permissive only, and that the council of the following year are given the option of having a new assessment.

REDOLBEAR AND THE TOWNSHIP OFBROOKE.

Judgment on summary application by Calvin J. Dolbear and Richard Ansley to quash a drainage by-law of the township of Brooke, passed on 28th June, 1890. This application was not launched until 19th June, '892. By R. S. O., chapter 184, section 571, the time within which such an application must be made is three months. The learned chief justice holds that the application is too late and dismissed it with costs.

HOWARTH VS. TOWNSHIP OF SOUTHWOLD AND M'GUGAN.

Judgment in action tried with a jury at St. Thomas. Action for damages for negligence causing an accident and injury to the plaintiff. The jury found that the placing and leaving of a pile driver hammer on the highway was the cause of the accident. The learned judge holds that damage was by reason of default of the corporation to keep the highway in repair, and therefore that the action not having been brought within three months after the damage had been sustained, the municipality cannot be compelled to pay the sum assessed by the jury. Judgment for the plaintiff against the defendant McGugan for $600 and costs for the defendants the corporation dismissing the action with oosts.

M'DOUGALL VS. VILLAGE OF FENELON FALLS

Judgment on appeal by the defendants from the judgment of the judge of the county court of the county of Victoria dismissing a motion by the defendants to set aside a verdict for the plaintiff in an action for damages for the illegal seizure of a buggy for taxes. Hugh McDougall was the person assessed for the taxes, and the buggy seized was the property of his wife, the plaintiff. The judge below held that the corporation had ratified the act of their collector in seizing the buggy for taxes. The court failed to distinguish this case from McSorley vs. City of St. John, a decision of the Canadian supreme court, ahd held that the defendants were responsible for the acts of their collector. Appeal dismissed with costs.

RE OLIVER AND CITY OF OTTAWA.

This was a motion for a summary order quashing two resolutions of the municipal council of the city of Ottawa receiving and adopting two reports of the comittee of council on works authorizing the building of a bridge called Cumming's bridge, over the Rideau river, which is a bridge that is required by law to be maintained by the city and county jointly, on the grounds that the resolutions are illegal and *ultra vires*, and that the work could not be authorized without a by-law. On behalf of the city of Ottawa, it was objected that the recognizance to prosecute with effect put in by the applicant is not a recogizance at all, not being made to the crown, but to the city corporation, and that the jurisdiction of the court has therefore no proper foundation. This objection was overruled and the argument proceeded on the merits. It was contended on behalf of the applicants, *inter alia*, that there was no power to authorize the construction of a joint work without bringing into operation the machinery provided by the act, and that