point of view a trespasser, and section 17 cannot help him. There is both an excess of jurisdiction and an undoubted disregard for personal rights, justifying the interference of the court; Stephens vs. Moore, 25, O. R., at page 205. Plaintiff may amend as to the invalidity of award if desired. Judgment for plaintiff for $5 damages, and awarding an injunction with full costs of action and motion on High Court scale. Thirty days' stay.

Midland Loan & Savings Co. v. Town of Port Hope.

Judgment on appeal by defendants from judgment of the junior judge of the counties of Northumberland and Durham, in action to recover $302 alleged to have been improperly levied by defendants in respect of plaintiffs' income tax. The plaintiffs were assessed in respect of income at $20,000 for the year 1899, and this assessment was confirmed by the Court of Revision, and again by the county court, the latter holding that it had been agreed between the parties that the assessment should remain at $20,000 for five years. In this action it was held that although the County Judge had jurisdiction to confirm the assessment, notwithstanding the enactment of sec. 8, of the Supplementary Revenue Act, 1899, (62 Vict., 2, O., ch. 8), and that his decision could not be reviewed in this action, yet the assessment is one thing and the collection of taxes another. Upon the confirmation of the assessment the collection of the taxes follows in due course under the methods provided by the Assessment Act, but by section 8 of the Revenue Act, not only is assessment forbidden, but it is made illegal to levy the tax upon income derived from moneys invested, as in this case, outside the particular municipality making the assessment, and this must be deemed a repeal of so much of the Assessment Act as is inconsistent with it, and the prohibition in sec. 8 may well be deemed to meet the cases of assessments made earlier in the year 1899 than the first day of April, on which date the Revenue Act came into force. Held, assuming it to be open to the company to go behind the assessment roll to show want of jurisdiction, that the senior Judge, in confirming the assessment, had jurisdiction to and did determine the amount of the income for which the company were properly assessable, and that what he did did not amount to more than an error in determining the amount of the income properly assessable, that is derived from sources other than those enumerated in sec. 8, and therefore the hypothesis upon which the junior Judge proceeded fails because upon it no tax has been levied on income which the corporation is forbidden to levy a tax on. The court do not express any opinion as to the meaning of the words, "or tax levied," found in the said section. Appeal allowed with costs, and action dismissed with costs.

Ellis vs. Township of Derby.

Judgment in action for the death of the plaintiff's husband by reason of the alleged non-repair of a highway, tried without a jury at Owen Sound. Held, on the evidence and a view of the locus, that the defendant's road at the place where the accident which resulted in the death of the plaintiff's husband, James S. Ellis, happened, was negligently out of repair in the respects set forth in the statement of claim; that such actionable negligence of defendant's was the cause of the accident and injury, and that the accident was not caused by any negligence or contributory negligence of the deceased. Judgment for plaintiff, with damages assessed at $300. $275 for the plaintiff and $25 for the daughter of the deceased, and full costs. Stay of proceedings until 20th September.

Re Martin and Township of Moulton.

Judgment on appeal by W. J. Martin from order of Boyd, C., dismissing motion to quash by-law 380 for closing part of the allowance for road lying between Yonge street and the Wainfleet townline. The Canadian Southern Railway company's track crosses diagonally the appellant's land, dividing it into two parts and there is a farm crossing between them. The part of the lot lying north of the track has not any direct means of access to any highway except the road closed by the by-law. The objections to the by-law are (1) that the road which it purports to stop up is one which the council had no authority to close, unless as a condition precedent to the closing of it there was provided for the use of the appellant another convenient road, or means of access to his lands, and such has not been provided; sec. 629, R. S. O., chap. 223, and (2) that notices required by sub-sec. 1 (a) of sec. 632, of intention to pass the by-law had not been given. Held, applying the test laid down in re McArthur and Township of Southwold, 3 A. R. 295, viz.: "If there is an existing road adjoining the owner's land which would have satisfied the requirements of the law if furnished or provided for the use of such owner in lieu of the highway being closed, then the case is not within the 504th (629th) section;" that the piece of land in question had not adjoining it a road, merely because by means of the farm crossing, access could be had from it to the highway adjoining the other part of the lot; the word "lands" in the section means each lot or part of lot, and they must be contiguous, and where divided, as in this case, each is "lands" within the meaning of the word in the section, and the mere existence of the right of crossing the track—at most an easement—from one parcel to the other, does not alter the case. Allowing the appeal on this ground it becomes unnecessary to consider the second objection. Appeal allowed with costs and by-law quashed with costs.

Thompson vs. Town of Sandwich.

Judgment on appeal by defendants from judgment of County Court of Essex, in favor of plaintiff, in an action by a contractor and builder, for damages sustained owing to alleged improper condition of a dock or wharf, in the town of Sandwich, upon which defendants collect harbor dues. The plaintiff unloaded 34,000 bricks on the wharf, and almost immediately afterwards it broke and the bricks fell into the river and were nearly all lost, and plaintiff alleged that the wharf at the time of the accident was in an unsafe condition of which defendants had notice, and that it had been negligently constructed. Counter claim for negligent and improper user of and injury to the dock. Held, that it would have been sufficient to fasten liability on defendants to show that the dock in question was, where it was in such a position as invited any vessel owner desiring to unload a cargo to do so, if prepared to pay the dock charges which the statute, sec. 562, R. S. O., chap. 223, and by-law passed thereunder, gave the defendants authority to levy: Sweeny vs. Port Burwell Co., 19 C. P., at p. 380; Webb, vs. Port Bruce Co., 19 U. C. R., 615; Mersey Docks vs. Gibbs, L. R., 1 H. L., at pp. 110, 118. But in addition to the implied invitation to unload there was an express contract between the plaintiff and defendants, represented by J. Boismier, the Chairman of the dock committee, for the unloading of the cargo of bricks, which were unloaded and placed in the manner usually adopted at public docks. Appeal dismissed with costs.

Homewood vs. City of Hamilton.

Judgment on appeal by plaintiff from judgment of Rose, J., at the trial at Hamilton, dismissing the action, which was brougt to recover damages for injuries sustained by plaintiff by falling into an open area in a sidewalk, in the city of Hamilton, just in front of a tavern, the area being open for the purpose of receiving kegs of beer. By section 639 of the Municipal Act, there is the right to have an opening in the sidewalk. The plaintiff is a man whose sight is defective. At each end of the opening a keg was placed as a sort of a guard or warning. The plaintiff stubbed his toe against the doorstep near the street and then fell into the hole. The plaintiff contended that the opening was not properly guarded. The defendants asked, in the event of the plaintiff's appeal being allowed, for judgment over against the third party, the owner of the tavern, and for relief as to costs. Held, that the plaintiff is entitled to recover. A person may walk or drive in the darkness of the night on the sidewalks or streets, relying upon the belief that the corporation has performed its duty and that the street or walk is in a safe condition. He walks by faith justified by law, and if his faith is unfounded and he suffers injury, the party in fault