Re Orr vs. Township of Toronto.

Judgment on appeal by defendants from judgment of county court of Peel, in action to continue an injunction restraining defendants from causing water or other matter to flood or flow upon plaintiff's lands and to direct them to close a certain culvert, built by them, across the highway opposite his farm, and for damages. It was contended for defendants that they were under statutory obligation to keep the highway in repair, and in doing the repairs or acts complained of merely performed that obligation ; that the repairs were necessary, that the construction of the culvert providing only for the flow of water accumulated on the west side of the road, was proper, and in its construction they were within their statutory powers, and plaintiff's remedy, if any, was under section 437, et. seq. of the Municipal Act ; that the damages, $100, were excessive, and that both damages and injunction should not have been granted. Held, that semble, this case does not come within the ratio decidendi of Pratt vs. Stratford, 14, O. R., 260 ; 16 A. R., 5, relied on at the bar, but rather within the principle of New Westminister vs. Bridgehouse, 20, S. C. R 520, but it is unnecessary to decide this because the finding below as to defendant's negligence is justified by the evidence and therefore fatal to them ; per Strong, C. J. C., in Derinzy vs. Ottawa, 15 A. R. 712. Held, also that taking into consideration the evidence as to the bringing down of mustard seed, as results of defendant's acts, the damages were not excessive. As to the injunction, the proper course is to suspend its operation for a sufficient time to enable defendants to exercise the statutory power of expropriation and acquire the land to justify their otherwise wrongful act, and such time is extended until May 1 next. With this variation judgment below affirmed with costs and appeal dismissed with costs.

Bogart vs. Township of King.

Judgment on appeal by plaintiff from judgment of Meredith C. J., (32 O.R. 135, dismissing action brought for a declaration that defendants were not entitled to collect a certain sum alleged to be due by virtue of by-law No. 66, passed on the 25th of September, 1897, to raise a loan by the sale of debentures to bonus the Schomberg & Aurora R. W. Co. and for the levying of an annual rate to pay the debentures, and for an injunction, etc. The chief justice held that it was the duty of the township clerk, under section 129 of the Assessment Act, without any further direction, to insert in the collector's rolls the amount with which each ratepayer was chargeable under the by-law and that it was not necessary that the amount levied each year under the by-law should be mentioned in the annual by-law authorizing the levy of sums for ordinary expenditures, and that section 402 of the Municipal Act had not the effect of making it necessary ; (2) that the rate could be levied notwithstanding that none of the debentures had been sold ; (3) that the failure to collect the rate for the first year after the passing of the by law did not cause the failure of the whole scheme. Appellants contended, inter alia, that the debentures not having been issued within one year after the passing of the by-law, that it became ineffective under subsection 3, section 384 of the Act ; that the by-law did not fix a rate, but merely directed a specific sum to be realized, and that the clerk had no power to place a special rate upon the roll without the by-law authorizing him so to do, and that until the debentures were issued there was no debt created, and therefore no power to "assess and levy" under section 402. Held, that the debentures authorized by the by-law have never been issued, that is, delivered or negotiated, and, having regard to section 384 (3), the time has now elapsed when that can be lawfully done. Not having been sold, as was done in Clarke vs. Palmerston, 6 O. R., which is, therefore, distinguishable, or delivered to or placed with a trustee, no one has acquired any right to deal with them, and the defendants might, if they chose, destroy them ; Mowat vs. Castle Co, 34 Ch. D., 58 ; hence, there is no debt and the plaintiff has the right to have defendants restrained from levying upon him the rate under the by-law. Appeal allowed. Judgment to be entered for plaintiff declaring his right in this respect and to an injunction and for repayment, etc. Costs of action and appeal follow the result.

McDonell vs. City of Toronto.

Judgment in action tried at Toronto brought to try the validity of certain assessments made by the defendant corporation on the lands of the plaintiff on Sunnyside avenue, charging them with local improvement rates. Held, that from the time of the passage of by-law 2,206 on January 14, 1889, founded on the engineer's report of July, 1888, to open up the street, the prospective expenses connected with the opening and establishing of that street became a charge on the land especially declared to be benefited by that report, and that it was not necessary, as in the case of ordinary taxes, to take all the preliminary steps required by the Assessment Act, to make them a charge on the land ; these special rates are not "taxes accrued" within the meaning of section 149 of the Assessment Act, but become a charge on the land from the passing of the by-law, and the land charged can be sold in default of payment on demand, and that under distress she is clearly liable to pay these rates since and inclusive of the year 1892 (with interest) for opening the avenue, and that the assessment for these rates does not form a cloud on plaintiff's title to the portion of the land mortgaged to defendant Duncan. Declaration accordingly. Action dismissed with costs.

Sutton vs. Village of Dutton.

Judgment in action tried at St. Thomas, brought for a mandamus to compel defendants to remove a tile drain connecting their sewer on Main and Station streets with a certain well situate within twenty-five feet of plaintiff's land, and for damages for suffering to plaintiff's health, caused by the pollution of the water in the well. Held, that the plaintiff's only cause of action is for the maintenance of a nuisance on adjoining property, whereby her health was injured, and there is practically no evidence upon which a finding might be based that the defendants either permitted the tile drain to tap the sewer or, after being informed of the facts, allowed it to remain, but assuming such to be shown there remains the question whether the plaintiff's health has been affected and there is not evidence of this. See Connacher vs. City of Toronto, 33 C. L. J,, page 340. Action dismissed with costs.

Re Priest and Township of Flos.

Judgment on appeal by the Township of Flos from judgment of Referee under the drainage act, awarding Priest $200 damages caused to his lands and crops owing to the negligent and improper construction of a drainage work in said township, and for not continuing the same to a proper outlet, but not awarding claimant, the Township of Vespra, any damages.

The proceeding was commenced by notice under the act and consolidated upon the reference with one in an action between the same parties. Appeal dismissed with costs.

The circumstances of a recent action against an English municipal corporation (Lambert vs. Lowestoft, 1901, 1 Q. B. 590) are somewhat peculiar. The action was against a municipal body to recover damages for injury sustained owing to a sinking in of the roadway under the defendant's control, occasioned by a defect in a sewer, also vested in the defendants, and for the repairs of which they were liable. The plaintiff's horse, in passing over the road, broke through the crust of the road, into a cavity thus caused, and was injured. The defect in the sewer was caused by rats, and there was no evidence that the defendants had any notice of the defect, and it was held that they were not liable.

Sub-section 6 of section 22 of the Ditches and Watercourses Act, is amended by section 22, of chapter 12, Ontario Statutes, 1901, by adding thereto, the following :

"Or within such period as the judge, on hearing the paaties, may decide to be necessary in order to allow proper inspection of the premises to be made as authorized by the next following subsection."