Legal Department.

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OF OSGOODE HALL, BARRISTER-AT-LAW

Toronto Junction Public School Board vs. County of York.

Judgement in action tried without a jury at Toronto. Action for a declaration that defendants are liable under the provisions of the Public Schools Act to contribute towards the support of the South York County Model School, situated at the town of Toronto Junction. Held, that the plaintiffs are entitled to the declaratian as prayed. Toronto Junction is territorially within the limits of the County of York, but it is a separate town within the provisions of the Municipal Act, and as a municipality is not under the jurisdiction of the County Council. Is Toronto Junction part of the County of York within the meaning of sections 83 and 84 of 1 Edw. VII., chapter 39, for educational purposes? That is to say, for the purpose of compelling the County of York to contribute to the maintenance of its Model School, set apart by the Board of Examiners as one of the Model Schools of the county. The County Board of Examiners is a board appointed by the Municipal Council of the county. That board must have as one of its members the inspector of any town (within the county) separated from the county. That board has jurisdiction within the county as to the subjects (limited in number) with which it can deal. The board can set apart at least one public school in the county as a Model School for the training of teachers. Such a school could be established by the board in a town (within the county), although separated municipally from the county. If the board could do this now it follows that this Model School in Toronto Junction, properly set apart as a county Model School, continues such, notwithstanding the separation of the town municipally from the rest of the county. The word "county" in the Act sometimes must be applied territorially and sometimes municipally. In this case the Model School is a county school, although in a separated town. Judgement for plaintiffs with High Court costs.

Bock vs. Township of Wilmot.

Judgement on appeal by plaintiffs from order of County Court of Waterloo setting aside verdict and judgment entered thereon for $125, in action for damages for injuries sustained by infant plaintiff, S. Bock, 14 years old, and loss occasioned by his father, the plaintiff, D. Bock, by reason of a bank of gravel falling upon the said S. Bock, who was at the time in the employment of one Zimmerman. Bock was directed by Zimmerman, who was liable to do statute labor, to do as instructed by one Cassell, the pathmaster, and it is alleged while so engaged was injured. The jury found in answer to questions that the infant was not guilty of negligence and did not undertake to work in the gravel pit with knowledge of the danger, and did not voluntarily undertake the risk; that the defendants were guilty of negligence, which consisted in the pathmaster allowing the boy to work in the gravel pit. The judge below held that the pathmaster was a fellow-servant with S. Bock; Gilchrist vs. Carden, 25 C. P. 1, Stalker vs. Dunwich, 15 O. R. 344, and defendants were not liable. Held, that under the circumstances the relationship of employer and employed existed between the corporation and the infant. The infant was a servant in husbandry to Zimmerman, and was not hired by the defendants, who had no power to dismiss him, nor was he paid by them, and neither they nor their pathmaster gave any particular order; Rourke vs. White Co., 2 C. P. D. 205, Jones vs. Liverpool, 14 Q. B. D. 800, Donovan vs. Lain, 94 L. T. Tour 436, and the action cannot be maintained under the Workmen's Compensation Act, but at common law the plaintiffs are entitled to recover, and on the findings judgement ought not to have been disturbed. Appeal allowed, with costs here and below.

Lloyd v. Walker.

Judgment on appeal by defendant from judgment of County Court of York in action brought to restrain defendant, the tax collector for the Township of Whitchurch, from selling under a distress warrant for arrears of taxes upon a certain farm lot in that township a quantity of building material, cedar posts, etc., found thereon and admitted to be the property of the plaintiff. One Pegg, the owner of the farm lot, mortgaged it in 1895 to the Independent Order of Foresters, and in July, 1899, the mortgagees in possession made an agreement to sell to plaintiff upon certain terms as soon as they had completed pending foreclosure proceedings. In the meantime, the plaintiff was to have possession, manage the property, etc., make sales, subject to approval of mortgagees, and to render them accounts. Pending the foreclosure proceedings, the plaintiff joined with the mortgagees in making a lease of a portion of the lot to one Kerr. The plaintiff was not assessed for the property, and the taxes were not charged against him by name in the collector's roll. Held, that the plaintiff was not at the time of seizure an "owner" within the meaning of R. S. O., ch. 224, sec. 135, sub-sec. 1 (3). He had no estate in the land, and no possession as agent for the mortgagees, and was only to become entitled to an estate upon the happening of an uncertain event. Per Britton, J.: A mortgagee in possession would be an "owner," and so would a person who went into possession under an absolute agreement to purchase, but the plaintiff is not. Appeal dismissed with costs.

Holden vs. Township of Yarmouth.

Judgment (H). in action tried at St. Thomas brough by the plaintiff for $8,000 damages for injuries received by him and his wife while driving across the Michigan Central R. W. Co's track on Talbot street, near St. Thomas. Plantiff alleges that accident was caused by the non-repair of the township road and the negligence of the railroad's servants. Held that the plaintiff is entitled to damages. The accident was due to some sudden noise of the railroad cars as the plaintiff crossed the tracks, which startled the horse, and to the absence of a necessary railing at that point on the highway. Towns vs. Whitby, 35 U. C. R. 195; Sherwood vs. Hamilton, 37 U. C. R. 410, approved of in Foley vs. East Flamboro', 26 A. R. 43; Bell Telephone Co. vs. Chatham, 31 S C. R. 51, referred to. Damages to male plaintiff, $50 for his own injury, $350 for loss of consortium and service, to female plaintiff $1.200. Judgment accordingly, with costs.

Cushen v. City of Hamilton.

Judgment on appeal by defendants from judgment of Rose, J., in favor of plaintiff in action tried at Hamilton, brought to recover certain money paid to defendants under the provisions of a by-law requiring vendors of certain meats in quantities of less than a carcass to take out a license. The by-law was declared invalid in October, 1898, upon return of an order nisi to quash a conviction of plaintiff under it; Reg. v. Cushen not reported. The trial Judge held, on the facts, that the payment made by plaintiff was not voluntary; Morgan v. Palmer, 2 B & C 729; that it was not necessary to quash the by-law before bringing the action, and not being an action of tort no notice was necessary; Mallot v. Mersea, 9 O. R. 611; that the claims assigned to plaintiff were assignable, and notice in writing under the judicature act of the assignment (sec. 58, sub-sec. 5) was not necessary between the parties, and that plaintiff was entitled to recover. Appeal allowed and action dismissed with costs.

Public School Trustees Unseated.

Judge Chisholm, County Judge of Waterloo, recently delivered a judgment which is of considerable interest to Boards of Public School Trustees. Proceedings had been instituted to unseat two members of the Board of Public School Trustees of the village of Baden, for having had dealings with the board of which they were members. In the first instance