Re Pelot and Township of Dover.

Judgment on motion by Emily Pelot, a ratepayer of the township and an owner of land affected by by-law No. 21, of 1901 for a summary order quashing that by-law which is intituled a by-law to divert part of the Gibbon Road in the township, which by-law was passed on the 21st October, 1901, and was confirmed by a by-law of the county council of Kent, passed on the 7th June, 1902, as required by section 660 of the Municipal Act. The road is used for the purpose of an exit to Big Point Road. The by-law provides for the closing up of a piece of the road and the opening up of a piece in substitution for it. The applicant contended that the by-law was not passed in the interest of the public at large, but at the instance and for the benefit of Poissant and Gore, two land-owners, and also that the by-law was bad because the notices required by statute were not duly given. After a good deal of consideration and with some hesitation the learned judge comes to the conclusion that this by-law was not passed in the public interest, but in the interest of Gore and Poissant, and therefore, improperly passed, and cannot stand. It violates the rule, now so well established, that corporate powers must not be exercised for the benefit of one or two individuals at the cost of others, not necessarily at the pecuniary cost, but must not be so exercised as to put many to unnecessary inconvenience for the manifest advantage of one or two; Pells v. Boswell, S. O. R., 680; Peck v. Galt, 46 U. C. R. 211; Moton v. St. Thomas, 6 A. R. 323; Hewison v. Pembroke, 6 O. R. 170; Vashon v. East Hawkesbury, 30 C. P. 194; Romney v. Mersea, 11 A. R. 712. The by-law is partial and unjust in its operation as between those of the township interested in the road. In the view taken, it is not necessary to consider the question of notice and advertisement of the by-law. The evidence establishes that there was a formal adjournment of the consideration of the by-law from the 30th September to the next meeting of the council which was held on 21st October, 1901. Order made quashing clauses 1 and 2 of the by-law as asked, with costs against the township corporation.

Canada Atlantic R. W. Co. v. City of Ottawa.

This was an appeal by defendants from judgment of Boyd. C. (2 O. L. R. 336), in favor of plaintiffs in an action for an injunction to restrain the defendants from interfering with the construction and operation of the portion of the plaintiffs' railway crossing Bridge street, in the city. Counsel for the plaintiffs opposed the appeal, and relied on the recent judgment of this court in Montreal and Ottawa R. W. Co. v. City of Ottawa, 1 O. W. R. 349 Appeal dismissed with costs, following the case cited.

Luton v. Township of Yarmouth.

Judgment on appeal by defendants, from judgment for $1,750 of Robertson, J, in action for damages for injuries sustained owing to alleged non-repair of a highway. The plaintiff was driving a team of horses, attached to a waggon filled with wood, northward on the road leading north from the village of New Sarum, and when descending Luton Hill, which is a short distance north from Edgeware Road his horses took fright at the noise made by some wood which fell off the waggon and ran over the embankment close to the bridge, which spans the west branch of Catfish Creek. The road becomes narrow as it approaches the bridge, and is rutty, and without railings. Plaintiff's ankles were both broken in the fall and he will be permanently lame from the effects of the mishap. The trial judge found that the roadbed at the top of the hill near the bridge was really 10 feet 5 inches wide, the east portion of the remaining 6½ of its width, consisting of a rut or washout, one foot deep and three feet wide, running 150 feet down the hill, that the road so sloped from the east that almost invariably a loaded wagon going down would slide into the washout; that there was about six feet from the washout a large stone embedded in the road, against which the right wheels of the wagon struck, causing the wagon to slide into the washout, and the sudden drop into it of the left wheels made the wood fall out, and the noise frightened the horses, which ran away, and that the condition of the road was known by defendants. He held that this case was clearly distinguishable from Atkinson v. Chatham, 29 O. R. 518 sub nom. Bell Telephone Co. v. Chatham, 31 S. C. R. 61. Here the causa causans of the accident was not the running away of the horses, but the sliding into the washout of the wagon, owing to the bad and inefficient state of the road. Hill v. New River Co., 9 B. and S. 303, is in point; that the plaintiff's success did not depend on his showing that his horses were not vicious, and that the judgment of the Supreme Court in Bell Telephone Co. v. Chatham, supra, in no way displaced the law declared in Sherwood v. Hamilton, 37 U. C. R 410, and Toms v. Whitby, 35 U. C. R. 194. Held, that the questions presented in this case are purely questions of fact. The weight of evidence involves the degree of credibility to be attached to the statements of the different witnesses, and when such statements are conflicting, much reliance must be placed upon the conclusion at which the trial Judge has arrived in respect to them, and as he has had an opportunity, which this court cannot have, of hearing and seeing the witnesses, and being as it were in the atmosphere of the case at the trial, his conclusion should not be set aside unless it plainly appears to be wrong. There is nothing in the evidence which should justify any interference with the findings of the Judge, and as he believed the evidence for the plaintiff, as to the nature and extent of his injury, that evidence amply warrants the damages awarded. Refer, in addition to the cases cited below, to Lucas v. Moore, 33 U. C. R. 334, 3 A. R. 602. Appeal dismissed with costs.

Re Voters' Lists Act and Township of Hungerford.

Stated case, under section 38 of the Voters' Lists act, submitted by the county judge of the county of Hastings, asking the opinion of the court upon the question whether no ices of complaint were sufficiently served and should be acted upon. A bundle containing the notices in question was, between 9 and 10 o'clock of the evening of the last day for effecting service, placed upon the door-knob of the western outer door of the house of the township clerk, the screen door being shut upon them. The messenger had knocked but none of the inmates had answered. The western door was not used by the family to the same extent as the eastern, and the notices were not found until noon on the day following, when one of the members of the clerk's family carried them to him. W. B. Northrup K. C, objected to the sufficiency of the service. No one in support of it. Held, that the service was legally insufficient. R. S. O. ch. 7 sec. 7 (1) required that to effect service the notice should be left with the clerk himself, or at his residence or place of business at such a place and under such circumstances as to raise a reasonable presumption that it reached his hands within the time. The notices in question did not in fact reach him within the time, and that they should not have done so might reasonably be expected to happen under such circumstances.

Swayne vs. Montague.

Judgment in action tried at Perth assizes before chancellor Boyd. The action was brought for damages to the plaintiff's land and crops by flooding, alleged by him to have been caused by the defendant making a junction of two drains, known as the Carroll and Guthrie drains. Held, that there was in fact no junction. The only act of the defendants which could have given the plaintiff a right to recover against them was the putting in of a new culvert at a place where there had previously been a means of escape for water, and one was necessary. The water found its way from the Carroll drain into a swamp and thence into the Guthrie drain, and the only effect of the culvert was that, by increasing the rapidity, though not the volume of the flow, the amount of water in the swamp was increased for a few days. As to the damage resulting from this increased rapidity of flow there was no evidence. For any damage caused by the Guthrie drain the defendants were not liable. Action dismissed with costs.