

Armour, C.J., Falconbridge, J., and Street, J.]

[Feb. 10.]

MINHINNICK v. JOLLY.

*Fixture—Negotiations for sale—Intention to sever from freehold—No actual severance—Subsequent purchaser of freehold, rights of.*

The mere expression by the owner of an intention to sever a fixture from the freehold and sell it to another even if communicated to one who becomes a subsequent purchaser of the freehold would not operate to convert a part of the freehold (the fixture) into a chattel or to alter its character in any way; and in the absence of any reservation in the conveyance everything attached to the freehold passes to the purchaser. Judgment of Meredith, J., reversed.

*Aylesworth, Q.C., for the appeal. N. W. Rowell, contra.*

Divisional Court.]

EWING v. CITY OF TORONTO.

[Feb. 14.]

*Municipal corporation—Sidewalk—Repairs—Accident—Negligence.*

In a sidewalk on one of the streets of the City of Toronto, there was a trap door leading to a cellar of abutting premises, about eight feet long, but divided in the centre into two parts, and opening therefrom, having three hinges on each half fastened to the door by straps or flaps, which were half an inch above the level of the door, the movable part of the hinge extending an inch or an inch and one sixteenth above the level of the sidewalk, and being of the same length as the width of the flap, and about three-quarters of an inch in width. After nightfall, on a not dark night, the place also being lighted by an electric lamp on the opposite corner of the street, though the plaintiff's body; and the shadow from it to some extent obstructed the light, the plaintiff while walking on the sidewalk, struck his toe against one of the centre hinges, stumbled and fell, injuring himself. The plaintiff was well acquainted with the locality, having passed over the place at least once or twice a day for the previous three years.

*Held*, that there was no liability imposed on the city; for that the existence of the hinges, having regard to the purpose for which they were placed where they were, and the other circumstances of the case, did not constitute a breach of the defendant's statutory duty to keep in repair. *Ray v. Corporation of Petrolia* (1874) 2 C.P. 73, considered.

*John McGregor*, for plaintiff. *Lount, Q.C.*, for third party defendant. *Fullerton, Q.C.*, for corporation.

C. P. Div.]

REGINA v. GRAHAM.

[Feb. 14.]

*Conviction—Removal into High Court by certiorari—Application to take affidavit off files—Costs—Crim. Code, ss. 897, 898.*

The cost referred to in ss. 897, 898 of the Criminal Code are those dealt with by the General Sessions of the Peace, when a conviction or order is affirmed or quashed on appeal to it; but not the costs of an unsuccessful application to a Judge of the High Court to take an affidavit off the files, after a conviction has been moved by certiorari into the said court. After the remo-