LEGAL DEPARTMENT.

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LEGAL DECISIONS.

JARVIS V. TORONTO.

Grant by Council to Reinburse Private Individual for Costs of Litigation—Illegality of.

Judgment on motion by defendants (the corporation of the city of Toronto and the Mayor and Treasurer) to dissolve interim injunction granted by Falconbridge, J., restraining defendants from paying $1,500 to J. T. Johnston to reimburse him the costs incurred by him in an action brought by him, on behalf of all consumers of gas in the city, against the Consumers' Gas Company. The question raised was whether the city council could lawfully make a grant of money to Mr. Johnston for the purpose mentioned. Street, J., I am of opinion that the council cannot do so, for the reason that, as the facts appear before me, the grant of the money means simply the giving away to Mr. Johnston of $1,500 of money of the city. There is no liability to him on the part of the city at all, and the city, after paying it, will stand in no better position with regard to its rights against the Gas Company than it did before doing so. I can find no consideration for the payment of the money, and there is no authority, express or implied, in the Municipal Act (which is their guide) authorizing the council to make a gift of money under such circumstances. . . . If Mr. Johnston had instituted the action upon a promise on the part of the city corporation to indemnify him, it may well be that such a promise would, under the circumstances, have been within their powers, and no one would dispute that it would be simple justice to make it good; but voluntarily to pay him, after the litigation, the costs which he has incurred, without any obligation to do so, would be an act which, if done by an individual, would be one of simple generosity, and which a municipal council, in my opinion, has no authority to do: Dillon on municipal corporations 4th Ed, section 89, 147 (a); Reg. v. Litchfield, 4 Q. B, 893; Kernaghan v. Williams, L. R., 6 Eg. 228. Injunction continued till the hearing, and costs to be dealt with there unless otherwise ordered.

REG. EX REL HARDING V. BENNETT.

Disqualification—Exemption Without Contract—Qualification on Property Subject to School Rates.

Before Street, J.—Judgment on motion in nature of quo warranto to unseat Robt. W. Bennett, elected as alderman for City of London, on the ground of his being interested in a contract with the corporation, and that he lacked the necessary property qualification. The City Council in 1892 passed by the requisite two-thirds vote a by-law exempting the Bennett Manufacturing Company, Limited, for seven years from payment of taxes, except school rates. Though some confusion exists the learned judge thinks there is not a shadow of doubt that when the council passed the by-law there was only one company to which it could apply, and that the partnership existing between defendant and his three brothers, and known as the Bennett Furnishing Company, is that company. But this case is, notwithstanding, clearly distinguishable from Reg. ex rel. Lee vs. Gilmour, 8 P. R., 514, because in the case there is no evidence, either in the by-law or external to it, of any contract with the corporation. It simply grants exemption to the company so long as they employ a certain number of hands, etc. The distinction between an exemption without a contract seems to be provided for in 56 V., chapter 35, section 4, amending section 77 of the Municipal Act, 1892. In this case there is exemption without contract and so no disqualification. The learned judge is further of opinion that respondent was entitled to qualify upon his rating upon the assessment roll of 1895 as joint owner of a freehold estate rated at $10,000, under sec. 86 of the act, the qualification intended by it not being confined to "electors": Reg. ex rel. McGregor v. Ker, 7 U. C. L. J. O. S. 67. The respondent is also qualified under sec. 73, as he has an interest called for by it as under the terms of the by-law the company remained liable to pay school rates, and those rates by sec. 110 of the Public School Act, 1891, must be levied upon taxable property, and by 55 Vic., ch, 60, sec. 4, the city cannot exempt any rateable property from payment of them. Nor is the case affected by the amendment added to sec. 77 by the act of 1893, read with sec. 73, because the respondent does not appear to have any property "exempt from taxation," by which must be meant exception from payment of all taxes. Where property is entirely exempt no person is rated on the assessment roll in respect of it, but where only partly exempt, the owner can qualify upon it as property liable to taxation. With regard to the other properties upon which respondent qualified, the learned Judge holds in favor of relator, but the other qualification being sufficient, he dismissed the motion with costs.

IN RE HODGINS AND CITY OF TORONTO.

Municipal Corporations—Sidewalks, 55 Vic., chapter 42, section 623 (b.)

Publication of an advertisement in a public newspaper having a large circulation in the municipality, stating that the corporation intend to construct sidewalks in certain named districts, is not sufficient notice to a property owner affected by the proposed work.

The procedure to be observed in passing by-laws for the construction of sidewalks considered. Judgment of Street, J., 26 O. R. 480, 15 Occ. N. 177 affirmed.

REGINA V. FLEMING.

Police Magistrate—Salary—Ratepayer of city to which fine payable—Disqualification.

Section 419 (a) of the Municipal Act, 1892, which provides that magistrates shall not be disqualified from acting as such by reason of the fine or penalty, or part thereof, going to the municipality of which he is a ratepayer, includes a police magistrate.

Where a police magistrate, appointed under R. S. O., chapter 172, is paid a salary instead of fees, such salary being in no way dependent on any fines which he may impose, he has no pecuniary interest in the fines, and so is not thereby disqualified. Semble, that there was no disqualification here at common law.

UNION SCHOOL SECTION OF HULLETT V. LOCKHART.

Petition—Award—Effect of when no action taken.

Judgment on appeal by plaintiff's from judgment of Meredith, C. J. (26 O. R, 662), dismissing the action, in which the plaintiffs attacked the validity of the proceedings by which Union School Section No 16 was formed, upon the ground that those proceedings were taken contrary to the provisions of sub-section 11 of section 87 of the Public Schools Act, 54 Vic., chapter 55, and holding that the petition for the formation, alteration or dissolution of a union school section must be in all cases the joint petition of five ratepayers from each of the municipalities concerned, or otherwise the award based upon it will be void abinitio, and also that when the award in such case is that no action be taken the restriction in sub-sec. 11 against new proceedings for a period of five years does not apply—upon this point refusing to follow in re Union School Section East and West Wawanosh, 26 O. R. 463. Appeal dismissed with costs and judgment below affirmed. The full court has followed Meredith, C. J., in preference to the chancellor, and has held that where arbitrations decide to take no action the restriction against new proceedings for five years does not apply.

Mortgage Tax Hurts Both Borrowers and Lenders

In Michigan they tax mortgages; an effort is now being made in Detroit to secure the repeal of the law because it is driving money borrowers away, as money lenders increase the rate of interest on the mortgage sufficient to cover the tax. If any one wants to borrow large sums he can do it several cents cheaper in New York, or some place where the mortgage is not taxed, than he can in Detroit even if money was plentiful here. No other city in the state collects the mortgage tax and in that way Detroit people get the worst of it."

City Assessor Dust says: "The worst feature of the law is that the little fellow who borrows $500 has to borrow here in Detroit, while the big fellow after $100,000 goes to some town where mortgages are not taxed.