Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Rex v. Dungey.

Judgment on motion by defendant for writ of certiorari to remove conviction of said defendant for exposing and offering for sale on the public market of the town of Mitchell, a quantity of meat (dressed beef), unfit for food for man. The information laid by the sanitary inspector of the town, charged that defendant did "expose and offer for sale * * * meat unfit for human food, contrary to the laws and statutes relating thereto." The case came up for hearing on March 6, before the convicting justices, and after taking the evidence of witnesses, (who were also cross examined for defendant), in support of charge, was adjourned until March 14. On that day the justices announced that a case had been made out under the public health act, though not sufficiently serious to warrant a committal for trial under the criminal code, and thereupon all parties agreed to an adjournment to the 19th of March, to enable the defendant to defend if he desired. On the 19th the defendant, by counsel, objected to proceed under the health act, and asked for a dismissal, whereupon the hearing was further adjourned without defendant's consent, for one week, and coming then on again, the case was heard and defendant objected to the jurisdiction under the act, but offering no defence, was convicted and fined $5 and costs. It was contended for the prosecution that as the conviction was under the act the proceedings are not removable, owing to the provisions of sec. 121. For defendant, it was contended that the complaint having been treated as one under sec. 194 of the code, and defendant having been asked to elect for or against summary trial, there was no jurisdiction to dispose of the case under the health act, and Reg, v. Brady, 12 O. R., 358, and other cases were relied on. Held, that though it may have been intended to charge defendant under sec. 194 of the code with an indictable offence in which case scienter must be alleged, the information did not go far enough to warrant such an assumption. All that is necessary under sec. 11 of the by-law pursuant to sec. 122 of the health act is that the party charged offered for sale as food meat, etc., which by reason of disease, etc., is unfit for use and the information sufficiently complies with these provisions. The defendant was not charged with "having knowingly and wilfully exposed," etc., and the mere asking him to elect as to summary trial does not oust the jurisdiction which, in the absence of such a request, the magistrates undoubtedly possessed. Here the proceedings really amounted to a complaint under the act. The accused was given ample opportunity to defend, and his refusal to do so, and his objection to the jurisdiction, is frivolous. If a person voluntarily appears before a magistrate, and a charge is there made against him, it seems that neither information nor summons is necessary; Reg, v. Shaw, 34 L. J. M. C. 169 per Eyre, C. J.; see also Reg, v. Carr, 16 W. R. 137; Taylor, v. Clemson, 11 Cl. and Fin. at p. 642; Reg, v. Preston, 12 Q. B. 825, and Reg, v. Wallace, 4 O. R. 127, and as to costs R. S. O., 1897, ch. 90, sec. 4. The motion must therefore under sec. 121 of the health act be refused, and with costs.

Ottawa Board of Park Management v. City of Ottawa.

Judgment on motion by plaintiffs (heard at Ottawa) for an interim injunction restraining the defendants from using for purposes other than park purposes the land or any part thereof, situate in St. George's Ward, in the city of Ottawa, comprising about 17 1-3 acres, known as "rifle range," and acquired by the plaintiffs for park purposes under the Public Parks Act, R. S. O., ch. 233; and restraining the defendants from interfering with the plaintiffs in the management, regulation and control of such park land; and restraining the defendants from applying permanently such land or any part thereof for the purpose of erecting thereon a contagious diseases hospital. The action was brought by the Board of Park Management of the city of Ottawa against the corporation of the city and George A. Crain, for an injunction merely. Section 104, of the Public Health Act, R. S. O., ch. 248, provides for the erection and maintenance of a contagious diseases hospitals by a municipality. Section 106 provides for a temporary hospital in case of emergency. There is no provision in the act for the expropriation of land to be used in perpetuity, (as was claimed by the notice given under the act). The outlay contemplated was $40,000, which indicated that the building was to be one under sec. 104, and not under sec. 106. Held, that under the restricted powers given to the local board of health, they were seeking to deprive the plaintiffs permanently of the property legally set apart for the purposes of a public park; that the actual or virtual expropriation of the land for the use of a hospital in perpetuity, or during the existence of the substantial building contracted for, is not within the powers conferred by the public health act on the local board and that this radical infirmity attaching to the local board is not overcome by the sanction of the provincial board of health or of the order-in-council. Injunction continued until the trial or further order.

Turner vs. Township of York.

Judgment in action tried at Toronto, brought to recover $2,000 for damages occasioned by the flow of water upon the plaintiff's land—part of lot 10, in the second concession of York, on the south side of townline running east and west—and to compel defendants to restore the road way which plaintiff alleges they have raised at its centre so as to form a dam or impediment to the natural flow of water from the lands to the north and to remove a culvert across the highway, through which pent up water flows on to plaintiff's land.

Held upon the evidence, that the water that came through the sluice-way of the culvert and over the road to the south side of the highway, and on to the plaintiff's land, did not come in any appreciably greater volume after the road was raised and culvert built than it had done prior thereto. Rowe vs. Rochester, U. C. R., 590, is quite different, because there drains were dug for some distance along the highway and stopped in front of plaintiff's land, which was thus overflowed by waters gathered which would otherwise never have reached the plaintiff's land; and that there being no appreciable damages to plaintiff's land caused by defendants, the action should be and is dismissed with costs.

Winterbottom vs. Board of Police Commissioners of the City of London.

Judgment in action at London with a jury, brought to recover damages sustained by plaintiff, a young unmarried woman, who was knocked down and injured by the horses attached to the patrol wagon kept and used by the police force, and driven at the time of the accident by police constable E. Walsh, while on duty. The jury assessed the damages at $1,000, and judgment on motion for nonsuit reserved. Held, after an exhaustive review of the cases on the subject that no legal liability is cast upon defendants: Halford vs. New Bedford, 16 Grey, 927, followed Maximiliam vs. New York, 62 N. Y., at p. 165. The action is unique in England and Canada. There is no case to be found in which a Board of Police Commissioners have been sought to be held responsible for damages occasioned by the negligence of a policeman while in discharge of his duty. Such actions have been brought without success in the United States. See also McGorley vs. St. John, 6 S. C. R., at p. 544 and Beaven on Negligence, 2nd ed., pp. 388, 389; Forsyth vs. Caniff 20 O. R., 478; Wishert vs. City of Brandon, 4 Man., L. R, per Taylor, C. J., at p. 455. This case is easily distinguishable from Hesketh vs. City of Toronto, 25 A. R., 449; see per Burton. C. J. O., at page 451, for the law applicable to the present action.

Here also the wagon and horses belonged to the corporation of London and not to the defendants. Action dismissed with costs.