LEGAL DEPARTMENT.

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LEGAL DECISIONS.

Moncrieff vs. Town of Peterborough et al.

This action for damages was brought by George Moncrieff and his wife, Eliza Moncrieff, against the town for injuries sustained by the female plaintiff on the 16th of March last. The accident took place about 7.30 in the evening and was caused by a trap door covering an approach to the cellerway on Simcoe street leading to the rear of Fairweather & Co.'s store. One of the planks in the trap door had fallen through, leaving a hole into which Mrs. Moncrieff slipped and thereby sustained serious injuries. The action was originally brought against the town. The town then added the Toronto Savings and Loan Co. and A. E. Dixon the owners of the building, and Fairweather & Co, the tenants, as third parties, claiming that the area and the trap door were maintained by the third parties for their own convenience, without the consent of the corporation. The third parties replied that the town had assumed control of the trap door and the sidewalk and had constructed the same in a defective manner contrary to the express instructions of the third parties, and they denied all liability in connection therewith.

After hearing the case Judge Weller delivered the following judgment:

I find the accident did not arise from the opening underneath the sidewalk. It may be the opening might have increased the injuries or it might not. The accident was caused by the plank being out. It is the duty of the corporation to maintain the sidewalks. It may not be their duty to build them. More care would be expected over a place like this. I find at the time the accident occurred the sidewalk was not properly constructed, having regard to the place. It seems to have been constructed less securely than in other places, because the plank was cut in two. The cause of the accident was in the fact of a part of the sidewalk being up, a board being out of its place. There is a defence of contributory negligence. There is nothing to show it, and it is not argued. It is impossible for the town to get rid of its liability. I find that what this lad did was, in addition to the imperfect construction, the cause of the accident. That does not free the town. They should have properly constructed it in the first place and maintained it in the second place. Want of notice is argued. I cannot agree to that. If the defect was patent notice was required. In this case it was patent to no one. No one could see the defect in construction. It was apparently right, but was really all wrong. I reserve the right to extend my views in case of appeal. The town is liable. On question of damages, the damages sustained by the husband were $25, $15, 6.60—46.60. Also something for other damages; this damage I put at $60. The woman's damages are hard to estimate, the pain and suffering and shock, etc. I give her $75. There will be plaintiffs' cost against the corporation. Central company and Dixon are not liable. As against Fairweather, I find it was not an opening placed, made, left or maintained by Fairweather or his servant. He left no opening, though what he did caused the plank to come off in a short time.

Claims of the corporation against the third parties dismissed with costs.—*Review.*

Regina ex rel Ferris vs. Speck.

Municipal Elections — Village Councillor — Property Qualification— Leasehold — Incumbrances— 55 Vic., c. 42, s. 73.

Appeal by the relator from an order of the judge of the County Court of Welland, dismissing a motion to void the election of the respondent as a councillor for the village of Niagara Falls for alleged want of property qualification.

The respondent was duly rated upon the proper assessment roll as tenant of land assessed thereon for $800, which land, with other land owned by the same landlord, which it was admitted was of the value of at least $1,100, was incumbered by a mortgage of $800 having priority to the respondent's lease.

The question turned upon the meaning of section 73 of the Consolidated Municipal Act, 1892, which requires, as to the property qualification, so far as applicable to the case, that a person to be qualified to be elected must have at the time of the election, as proprietor or tenant, a legal or equitable freehold or leasehold, rated in his own name on the last revised assessment roll of the municipality to at least the value thereafter mentioned over and above all charges, liens and incumbrances affecting the same, such value being in the case of councillors of incorporated villages, freehold $200 or leasehold $400.

The County Court Judge was of the opinion that the mortgage was not to be taken into account in ascertaining the value of the respondent's leasehold, as it was not a charge, lien or incumbrance affecting it, within the meaning of sec. 73.

Held, that this view was the correct one. What was meant was that the leasehold interest itself should be the subject of the incumbrance where the qualifying property is a leasehold interest; that is to say, an incumbrance created by the owner of the leasehold interest or operating upon it *qua* leasehold.

Held, also, that the mortgage debt should be apportioned according to the respective values of the two properties included in it if the encumbrance were one within the provisions of section 73. See Moore vs. Overseers of Parish of Carisbrooke, 12 C. B., 661; Barrow vs. Buckmaster, ib. 664.

Regina ex rel. Joanisse v. Mason.

Municipal Elections — County Councillor — Property Qualification—55 V. c. 42, s. 73—Actual Occupation—Partnership Property—Assessment.

An appeal by the relator from an order of Mr. Cartwright, an official referee, sitting for the Master in Chambers, dismissing a motion in the nature of a quo warranto to remove the respondent from the office of a county councillor of the County of Carlton, on the ground of insufficient property qualification.

By section 14 of the County Councils Act, 1896, 59 V. c. 52, the qualification of a county councillor is the same as that of a reeve of a town.

By section 73 (1) of the Consolidated Municipal Act, 1892, 55 V. c. 42, a person to be qualified for election as reeve of a town must have, or his wife must have, at the time of the election, as proprietor or tenant, a legal or equitable freehold or leasehold rated in his own or his wife's name on the last revised assessment roll over and above all incumbrances to at least the value of freehold $600 or leasehold $1,200; but if within any municipality any such person is at the time of election in actual occupation of any such freehold he will be entitled to be elected if the value at which such freehold is actually rated amounts to not less than $2,000, and for that purpose the value shall not be affected or reduced by any incumbrance.

The respondent and three other men were in partnership and were assessed as owners of a saw mill and adjacent land for $7,500. The property was heavily incumbered.

W. H. P. Clement, for the relator, argued that the words "actual occupation" in the proviso to section 73 meant exclusive occupation; also that it was not to be assumed that the respondent had an equal share with the others in the property.

Street J. held that the Statute did not require exclusive occupation and the occupation by the respondent as one of the partners was sufficient, and he must be taken as assessed for one-fourth of the $7,500, and to be in actual occupation of his portion of it. A presumption of equality arises from the assessment. Regina ex rel. Harding v. Bennett, 27 O.R. 314, 16 Occ. N. 121.

An Unconcious Irony.

"I never see that good old motto, 'Honesty is the best policy,'" remarked Senator Sorghum, "without being carried back to my boyhood days."

"It is a grand old motto," replied his friend, "one that it is well to impress early in life."

"Yes. I'll never forget the time I had to pay the smart boy of the school seven cents and a jack-knife to write that line in my copy-book so as to keep me from getting marked below the average in penmanship."—*Washington Star.*