

UNNECESSARY AND DISCORDANT JUDICIAL OPINIONS—NOTES OF CASES.

does the judgment of the Court rest—what is and what is not extra-judicial in each particular judgment—and in the united result which forms the decision of the Court? Consider for instance *McLean v. Bradley*, 2 S. C. R., 535. One question raised was, whether a mining company, having failed in its operations, could sell under the provisions of a Nova Scotia statute, and had sold the goods in question to the plaintiff. The present Chief Justice (then Ritchie J.) held in the affirmative, with him agreed Mr. Justice Strong. But Mr. Justice Henry held, that the statute “only applied to a going concern and could not be applied to the expiring flicker of a bankrupt company.” Ritchie J. held, that the sale of the goods did not require to be under the corporate seal. Henry J. held, that such a sale, if valid, must be under the corporate seal. Henry J. further held, that the statute did not apply to the company because it was not incorporated as a trading company. Strong J. held, that “there was no doubt that the company was one to which the statute was applicable.” There is a plain point on which the decision of all the judges (except Ritchie J.) could be based harmoniously and that is that the plaintiff failed because he complained of the sale of the goods by the sheriff as a conversion and that sale was justified by the order of the Court to sell the goods which had already been seized by the sheriff under a writ of attachment.

The judgment as reported emphasizes the want of harmony in the court, and by consequence weakens the authority of its decisions and sows the seeds of future litigation by the diversity of opinions expressed on points which are left undetermined by the Court, though peremptorily and often diversely passed upon by individual judges.

NOTES OF CASES

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

From Osler. J.]

PALMER V. SOLMES.

Slander—Incest—Special damage—Pleading.

In a declaration in slander by a married woman, the words charged imputed that she had committed incest and adultery with her father, and alleged, as grounds of special damage (1) the loss of the *consortium* of her husband, and (2) the loss of the *society* of friends. *Held*, in demurrer, good, although the second ground was clearly insufficient.

McMichael, Q. C., for plaintiff.

Clute, contra.

SULLIVAN V. CORPORATION OF THE TOWN
OF BARRIE.

Municipal corporations—Defective drainage—Pleading.—R. S. O. c. 174, sec. 491.

To a declaration charging defendants with negligence in the construction of certain drains and sewers, whereby they became choked, and the drainage and sewage matter overflowed into the plaintiff's premises, causing damage, the defendants pleaded that the cause of action did not arise within three months before action: *Held*, on demurrer, plea bad, as sec. 491 of the Municipal Act, R. S. O., c. 174, did not apply to a case of the kind.

Pepler, for plaintiff.

Lount, Q. C., contra.

From Armour J.]

RE HARRIS V. HAMILTON.

Municipal corporations—Market regulations—Power of Provincial legislatures—Definitions of by-law.

A City Council, acting under the authority of R. S. O., cap. 174, sec. 446, passed a by-law prohibiting vendors of “small wares