

cause, and under circumstances which would entitle her by the law of England to a decree for restitution of conjugal rights, first became the law of this province on June 10th, 1857, at which time the jurisdiction over suits for the restitution of conjugal rights was exercisable by the Ecclesiastical Court in England. That court could interfere in the way of restitution only where matrimonial cohabitation was suspended, that is, where either party refused to live with the other without sufficient cause. To a suit for restitution of conjugal rights there was no bar or legal opposition, except cruelty or adultery on the part of the promoters; and the single duty which the court could enforce by its decree in such a suit was that of married persons living together.

And upon the evidence in this case the husband refused to live with his wife without sufficient cause, and she was, therefore, entitled to alimony.

Orde for the plaintiff.

Chrysler, Q.C., for the defendants.

Div'l Court.]

[Dec. 7.

IN RE CUMMINGS AND COUNTY OF CARLETON.

Municipal corporations—Arbitration—Bridges—Approaches—Lands injuriously affected—Compensation—Prohibition—Liability—City and county—55 Vict., c. 42, ss. 391, 530, 532, 535.

Where a bridge over a river, which formed the boundary line between a city and a township, within a county, was erected by the councils of the city and county jointly, and in raising the approaches on the township side certain lands were injuriously affected, for which the owner claimed compensation;

Held, having regard to ss. 530, 532, and 535 of the Municipal Act, 55 Vict., c. 42, that the county, and the county alone, could be compelled to arbitration in respect of such compensation.

Pratt v. City of Stratford, 16 A.R. 5, followed.

Held, also, that s. 391 did not apply to permit an arbitration between the landowner and the city and county together, nor was such an arbitration otherwise provided for by law. Prohibition against proceeding with arbitration.

Decision of BOYD, C., 25 O.R. 607, reversed.

Moss, Q.C., for the city of Ottawa.

H. M. Mowat for the County of Carleton.

Chrysler, Q.C., and *W. M. Douglas* for Cummings.

Div'l Court.]

[Dec. 19, 1894.

IN RE LONDON MUTUAL FIRE INSURANCE COMPANY OF CANADA
v. MCFARLANE.

Prohibition—Division Court—Right to jury—Tort—Contract—Particulars of claim—R.S.O., c. 51, ss. 94, 154.

In an action in a Division Court to recover \$30, the plaintiffs set out their claim in the particulars annexed to the summons, stating that they had paid the defendants \$30 for loss of goods insured against fire; that the defendants in their application covenanted that there was no other insurance on the property, and the policy issued was conditional on the truth of the statements in the application, but at the time of the application and the loss the property was covered by a policy in another company, which was then, and at the time