Legal Department.

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

Board of Education of London vs. City of London.

Judgment in action tried at London, brought mainly to compel the municipal council of defendants to levy on the ratepayers $17,000 for alleged purposes of repairs and improvements to school-houses and school property in the city. At the trial the learned judge expressed the opinion that such relief could not be granted. The plaintiffs then abandoned that claim and asked for judgment upon certain questions of law raised on the pleadings and evidence. The plaintiffs submitted to defendants' council two statements of proposed expenses of schools under their charge, the first on April 2, amounting to $121,100.05, for year ending December 31st, and the second on May 21, amounting to $153,089.56, for twelve months next following May 15, the date of the statement, and these amounts are not disputed except as to the item contained in each of "$17,400 repairs and improvements." The defendants are the corporation of the city of London not the municipal council of that corporation. The plaintiffs are the Board of Education for the same city, and, under section 10, Public Schools Act, and section 4, High Schools Act, have powers of both public and high school trustees, and it is within their power and their duty to repair and keep in order the school-house, fences and other school property, section 62 s. s. 4, section 15 s.s. 2 of those Acts ; to submit an estimate of expenses for next twelve months, section 62 s. s. 9, Public Schools Act ; to apply for money for maintenance and permanent improvements not exceeding $500. under section s. s. 5, High Schools Act The council shall levy, etc., by section 97 (1) of Public Schools Act, and shall levy not exceeding $500 in any one year, etc., by section 33 (1) of High Schools Act. The plaintiffs had been requested by defendants' council to submit their "estimates of their probable receipts and expenditures for the current year, 1900," to the council by March 19. Held, that neither estimate was furnished within the time fixed by the council, and the first estimate was not, as both acts require, for twelve months next following the date of application, nor was either of them in respect of this item such an "estimate" as defendants' council had a right to require, and the plaintiffs were bound to submit under the Public Schools Act. The use of the word "improvement" makes the item more objectionable, as it is of wide import and includes things not authorized by the act to be undertaken without the consent of the ratepayers, and the limit of $500 for "permanent improvements" shows that that is the utmost the board could ask for without such consent. See School Trustees and Sandwich, 23 U. C. R., 639, and other cases as to meaning of the word "estimate," and also sections 277 (1) (a) and (8) 404, 405, 408, 435 (4) and 593 of the Municipal Act. No such "estimate was given, and, though the plaintiffs are an independent corporation, and when acting in good faith and within their powers, in no way subject to the control of the Municipal council, yet the latter has the right and it is also its duty, to take some care that it is not made the instrument by which any excess of the powers of the board is given effect to, by levying for them money which the law does not authorize them to exact, and any ratepayer has this right. In this case, the sum usually required for repairs was suddenly increased from between $2,100 and $2,500 to $17,400, and the council were right in asking for a real estimate, and the board wrong in refusing to give one ; but any question of waiver is not determined because it depends on facts, evidence of which was not given, though, if given, they would not affect the result. Action dismissed with costs.

Re Education Department Act and Separate Schools Act.

Judgment upon the following questions submitted by the Minister for the opinion of the court.—(1) Does property which was owned by a separate school supporter, and so assessed, remain liable for rates for the support of separate schools or separate school libraries or for the erection of any separate school-house imposed under by-laws passed before the time at which the separate school supporter has withdrawn his support from the separate school? (2) If the property does not remain liable in the case mentioned in the preceding question, is the person who has withdrawn his support personally liable? Held, that the first question is to be considered with reference to sec. 61 rather than sec. 47 of the Separate Schools Act, R. S. O., chap. 294. The rate to be levied under a by-law does not form a continuing lien on the property of the separate school supporter at the time when a loan is effected. He may sell, and if not the owner at the time of the yearly assessment, no rate can be imposed in respect of the property. Under section 47 the supporter is relieved, after notice withdrawing his support, as to future rates, but is not exempt as to any rate imposed before withdrawal. In case of rates under section 61, he cannot relieve himself by notice of withdrawal, but remains liable during the currency of the by-law unless he ceases to be resident within the particular section within which the separate school is situate. The first question is, therefore, answered as follows: Property which was owned by a separate school supporter and so assessed for rates imposed under by-laws passed before the time when the supporter has withdrawn, does not remain liable for such rates in the future, unless the property is still owned by him at the time of each assessment, and he resides in the section. But question 2 must be answered as follows: The attempt to withdraw from payments to be made under a by-law under section 61 is nugatory, and the ratepayer who was such when the loan was affected, remains liable for future assessments to the extent of the rateable property he possesses so long as he is resident within the school district.

Lamphier vs. Stafford.

Judgment in action tried at Napanee brought to recover damages for trespass to land in the township of Richmond. The defendant justified the trespass because entry was made under an award by the engineer of the township pursuant to the Ditches and Watercourses Act. Held, that the award and proceedings leading thereto did not comply with the provisions of the Act in the following respects: (1) the work in question is not one of construction within section 33. (2) The ditch on the plaintiff's land does not appear to have any connection with the general scheme, the principal element in which is the main ditch on the boundary road 28 chains distant, nor is it in aid of the person who filed the declaration of ownership and set the proceedings in motion. (3) The notices under section 14 were not given in time. (4) The formalities, e c., required by section 16, were not observed. The award was not made within thirty days. (5) The ditch on the plaintiff's land was not continued to a "sufficient outlet" (section 5) for a definition of which see R. S. O., chapter 226, section 2, subsection 11. Though some of the above provisions are merely directory, particularly so to times and notices, and may be waived (Maisonneuve vs. Roxborough, 30, O. R., 127), yet here the fact is that the plaintiff, who attended the meeting, left it under the impression that the engineer had come to the conclusion that the ditch would have to pass through more than seven original lots (section 5, 1), and that these proceedings were at an end, and she had no opportunity therefore to object, nor to appeal under section 22 and section 24, cannot be held to cover all the defects shown to exist here. The preliminaries under section 28 as to inspection by engineer, etc., were not complied with. It was probably rather a case of enforcing maintenance under section 35 than of letting work on non-compliance with award under section 28, because there was nothing under this award to be done by plaintiff, and, if so, the proper steps were not taken under section 35, and defendant was in any