LEGAL DEPARTMENT.

H. F. JELL, SOLICITOR,
EDITOR.

Legal Decisions.

HODGINS V. CITY OF TORONTO ET AL.

The plaintiff was the owner of lands in the city of Toronto, fronting on a street which was an original road allowance. The Bell Telephone Company (who were party defendants in this action) with the assent, but, without any express resolution or by-law of the city, or any notice or compensation to the plaintiff, cut off branches over-hanging the street from trees growing within the plaintiffs grounds, and also branches off trees growing on the street in front of the plaintiff's grounds, stating that the branches interfered with the use of the wires of a telephone system which they had contracted with the city to maintain. Sec. 3 of the Ontario Tree Planting Act, R. S. O., Chap. 20, had not been brought into force in Toronto. It was held that section 479 of chap. 184, R.S.O., 1887, sub-sec. 20, (see also same section and sub-section of the Consolidated Municipal Act, 1892), applies only when sec. 3 of the Tree Planting Act (R.S.O., 1887, chap. 201) is in force, and that the plaintiff had no title to, nor interest in the street sufficient to put him in a position to complain of the cutting. It was also held that, as the overhanging branches of the trees growing in the plaintiff's grounds were not a nuisance and in no way interfered with the use of the highway, the defendants had no right to cut them. The judgment of the junior judge of the county of York was therefore partly affirmed. Damages awarded plaintiff being reduced by $10.00

GOODERHAM ET AL VS. CITY OF TORONTO.

Section 62, of R. S. O., chap. 152, providing that all allowances for streets surveyed in cities or any part of the same, which have been or may be surveyed and laid out and laid down on the plans thereof, and upon which lots of land fronting upon such allowances for streets have been or may be sold to purchasers, shall be public highways, and streets and commons, is retro-active, and applies to streets laid out on plans made and registered before the passing of the act. A piece of land in Toronto, about twenty acres in extent, was, in 1854, surveyed and laid out in lots and streets, and a plan was duly registered. Lots were sold and conveyed according to the plan, but were afterwards repurchased by the original owners of the piece of land, predecessors in title of the plaintiffs, and the whole piece was, at that time, fenced in and used as a field until 1888, when the city, without passing any by-law, proceeded to open the streets. It was held that the streets shown on the plan were highways, which the city was entitled to open, but that the passing of a by-law was necessary.

ROCHE V. RYAN.

This was an action brought to recover damages occasioned the plaintiff by the defendant having, as alleged, excavated upon, dug up, and otherwise interfered with and obstructed certain streets laid out and described on a map or plan of a part of the town of Smith's Falls. The facts were as follows: Plaintiff was the owner of a parcel of land within the limits of the town of Smith's Falls. He caused it to be sub-divided into small lots and ran streets through it and registered his plan. Two streets, named John and Herbert streets, were laid down on this plan, as intersecting each other. Plaintiffs afterwards sold to defendant two lots on Herbert street at its intersection with John street, and two lots to another party on the corner of these streets. Conveyances of these lots were made and registered. The whole parcel of land so sub-divided remained fenced and enclosed, and was used as a pasture field for about six months after the sales mentioned. Prior to the sales a provincial land surveyor, under instructions from the town council, prepared a plan of all the property comprised within the corporation limits, which plan, signed by the mayor, and sealed with the corporate seal, was duly registered. Their plan embodied the survey made by the plaintiff, and showed the lots and streets laid out by him of the property in question. Shortly after the purchase, and while the whole parcel of land in question remained fenced and enclosed, defendant took from the land, called John and Herbert streets, and from the lots he had purchased from plaintiff, a quantity of building stone. Plaintiff then brought action to recover the value of the portion taken from the streets. Defendant denied plaintiff's right to recover, alleging that the streets were the property of the corporation, whose leave he stated he had obtained. It was held, under the Municipal and Surveyors' Act, by the filing of a plan, and the sale of lots, according to it, abutting on a street, the property in the street becomes vested in the municipality, although they may have done no corporate act by which they have become liable to repair. Plaintiff's action was, therefore, dismissed with costs.

WARD V. CALEDON AND ALGIE V. CALEDON.

These cases were recently decided in the Ontario court of appeal. The plaintiffs Ward and Algie were mill owners on the river Credit, and above their mills was a mill and dam belonging to persons named McLelland, whose dam crossed the river Credit in the line of a concession road of the township of Caledon, at that point the river running nearly at right angles to the concession road. In 1863, one John Clark, owned the McLelland mill and privilege, and in that year the township of Caledon passed a by-law to make further provision for allowing Clark the privilege of erecting and keeping the breastword of a dam where the river Credit crosses the road, for the term of forty years from January, 1864, on the terms that Clark was to build a good and substantial bridge on the breast work, of stated dimensions, with a proper railway on each side, and Clark and his heirs and assigns were to keep the bridge in repair during the forty years, and Clark was to receive from the council $80 to assist him in building the bridge. It was stated that after the McLellands had become the owners of the mill privilege, they obtained from the township of Caledon, leave to continue the use of the highway for the purposes of the dam, and to raise the dam so as to make it capable of holding a larger supply of water than hitherto. It was shown that the pond at the McLelland's dam extended into the highway about forty feet, the roadway over the river and bridge, being that distance from the line of the allowance. On the 13th November, 1889, a portion of the dam under the bridge broke away, and the accumulated water escaping from the pond, carried away the dam of the plaintiff Ward below, and damaged the plaintiff Algie's property below that. The McLelland's dam was shown to have been negligently constructed, and the plaintiffs claimed damages against the corporation of the township of Caledon for the reason that having granted a license to store water on the highway, they were responsible for the negligent manner in which it was stored. The township had the McLellands added as third party defendants, pursuant to R. S. O., 1887, chap. 184, sec. 531, sub-sec. 4, it was held that the license to dam water back upon the highway was (except in so far as it might be a public nuisance affecting travellers on the road) a lawful thing, and that the damage being caused by the negligence of the mill owners the township was not liable, and that such a case is not written. The provisions of R. S. O., 1887, chap. 184, sec, 531, sub-sec. 4, gives to a corporation against which is brought an action to recover damages sustained by reason of any obstruction, etc., on a highway placed by any person other than a servant or agent of the corporation, the right to claim relief over against such person.

NOTES.

The cases of the village of Brighton vs. Austin, and Huson vs. South Norwich reported in the June and July issues of THE WORLD respectively, are in process of consideration by the Supreme Court of Canada. The decisions of that honorable body will in due time be reported in these columns.

The Queen v. McGowan is worthy of the attention of residents of the unorganized districts, and decides that the reeves of municipalities in such districts are, under the legislation relating thereto, *ex officio* justices of the peace in their respective municipalities with power to try alone, and convict for offences, under the Liquor License Act, R. S. O., 1887, chap. 194.