Legal Department.

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

Re Queenston Heights Bridge Co. and Township of Niagara.

Judgment on appeal by the company from the order of the board of the counties of Lincoln, Wentworth and Welland, fixing assessment of the company's property at $40,000 and reducing the assessment of the court of revision from $100,000. The bridge is over the Niagara River, from Queenston to Lewiston, and the company is incorporated under 61 Vic., chapter 114 (D). Appellants contend that the American side of the bridge was constructed after the assent obtained from the State of New York, and the judges should have, therefore, assessed the one-half of the bridge in the Canadian township of Niagara as an independent piece of property; and that (1) neither the franchise, the earning capacity of the bridge nor its actual cost affords the true assessment test, but that the Canadian half of the bridge being real property, covering about three acres of land on the Canadian side, is to be valued at what iron and other material constituting the structure would sell for when separated both from the franchise and the other (American) half of the bridge; Bell Telephone Co. vs. City of Hamilton, 25 A.R., 351; re London Street R. W. Co., 27 A. R., 83, and (2) that section 28 of Assessment Act declares that the assessor shall appraise all property at its actual cash value, as if in payment of a just debt from a solvent debtor, and, therefore, the property in the township should be assessed irrespective of the fact that it is connected with, or forms part of any other system, and should not be valued as a going concern, but at the value which would be placed on it by a creditor who would be willing to take half the bridge in payment of a just debt. The board of judges followed the above cases, but not to the extent contended for by the appellant. They held that the bridge should be assessed at its cost, including the cost of the land, without reference to its franchise, and bearing in mind that the right of the company to the land would go with the bridge, that the statute has in view an honest solvent debtor owing a just debt and a willing creditor calling in a third party to appraise the property as it stands and not after it has been destroyed. It would be dishonest and absurd to stipulate that either the franchise should not go with it or that the purchaser should remove the structure. Suppose the property were being sold to be given or dedicated as a free bridge, what would be its value as in an honest, sensible transfer, with the wish and consent of the parties interested? The cases do not require anything else. A solvent debtor would not consent to hand over his property to his creditors at a price fixed after it had been denuded of all its value. The rule says nothing about a sale and does not contemplate one. Niagara Falls S. B. Co. vs. Gardner, 20 U. C. R., 194, was cited for the township, and it was contended that the principle of ward assessment, adopted under section 18 of the Assessment Act, upon which the Bell Telephone and London Street Railway cases were decided, does not apply, because by subsection 5 of section 2, the word "ward," unless so expressed, shall not apply to a township ward, and section 18 enacts that land shall be assessed in the municipality in which the same lies, and in the case of cities and towns in the ward in which the same lies. Appeal allowed, with costs from the commencement of the controversy, and assessment fixed at $5,000.

Wigle vs. Township of Gosfield South; Rae vs. Township of Gosfield South.

Judgment on appeal by defendants from judgment of the referee under the drainage act. The actions are brought in the High Court for damages to the lands of the respective plaintiffs caused by the alleged negligent construction and maintenance of a drain known as Tap drain number 47, constructed by the township of Gosfield under a by-law passed in 1886, and for a mandamus to compel the construction of a proper outlet to the drain, an injunction restraining defendants from throwing water upon the lands. Upon the references under orders of Meredith, J., the referee awarded $400 damages in the first action, and $300 in the second action. After the completion of the drain an act was passed in 1887, forming out of Gosfield, the defendants, and Gosfield North. Held, having regard to the provisions of that act, and of section 55, of the Municipal Act of 1883, that as soon as the drain in question was constructed by the township of Gosfield it became subject to a continuing liability to persons whose lands might be affected, and this was a liability to which each of the townships of Gosfield North and Gosfield South, upon its erection out of the township of Gosfield, remained subject, as if there had been a union of two townships; the plaintiffs, therefore, should have proceeded against both townships jointly, and not one alone. Campbell vs. York and Peel, 27 U. C. R., 138; Ekins vs. Bowse, 30 U. C. R., 48. This course is also necessary that the provisions of section 95 of the drainage act may be carried out. Appeal allowed and case referred back to referee to add, as a party defendant, the township of Gosfield North, and proceed with the reference. Costs here and below reserved. The court intimate that the parties should make use of the evidence already given as far as possible.

Gilbert vs. City of Hamilton.

This was a motion by defendants to set aside verdict of jury and judgment of county court of Wentworth for $100 entered thereon in action for $200 damages sustained by plaintiff owing to defendants' alleged neglect in constructing and in keeping in repair the sewer on East avenue, between Barge and Barton streets. The plaintiff is the owner of two houses on East avenue, and the sewer becoming choked, the sewage matter was forced up his connecting drain and overflowed on his premises. Appeal dismissed with costs.

Challoner vs. Township of Lobo.

Judgment on appeal by defendants from judgment of Meredith, C J., in action to restrain defendant corporation and defendant Oliver, their contractor, from proceeding with the construction of Crow's Creek drain, to declare invalid by-law 423 for its construction and damages. The Chief Justice held that the petition required by R. S. O., chapter 223, section 3, to support the by-law had not been signed by the majority in number of the resident and non-resident persons (exclusive of farmers' sons not actual owners), as shown by the last revised assessment roll to be the owners of land to be benefited, that the act requires that at the time action is taken by the council by passing the by law at the meeting to be held under section 17, it must have before it a petition signed by the necessary majority, according to the then last revised assessment roll, as provision is made for the withdrawal from and the addition to the petition of names of owners affected, and if then there is a majority the by law may be passed, otherwise the proceedings end with the meeting; and held, also, that the words, "exclusive of farmers' sons not actual owners," did not mean actual owners in fact but as shown by the last revised assessment roll. Appeal allowed with costs and action dismissed with costs.

Re Martin and Township of Moulton.

Judgment on motion to quash by-law 380 of the township of Moulton, for non-compliance with section 629 of the Municipal Act. Held, that the necessity for supplying some other convenient way of access to the land in question, only applies to cases where the only means of access is closed; re McArthur, 3, A. R, 295, nor is the by-law void under section 632. Applicants should be left to collect by the proceedings they threaten or by arbitration, the amount they claim as damages if they have suffered or will suffer such inconvenience as entitles them to compensation, but it is not a case for the summary intervention of the court. Motion dismissed with costs.