ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)
(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent(s)

and

SHAWN CASSISTA

Applicant(s)

NOTICE OF APPLICATION FOR STAY OF PROCEEDINGS (AMENDED)

SHAWN CASSISTA
[redacted]
MISSISSAUGA [redacted]
OFFENCE NOs: TC 284236/284237/284238/
284239/284240
CASE/FILE NO: 3161-999-11-001902

ONTARIO COURT OF JUSTICE
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ONTARIO COURT OF JUSTICE
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BETWEEN:

HER MAJESTY THE QUEEN

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NOTICE OF APPLICATION FOR STAY OF PROCEEDINGS
(AMENDED)

TAKE NOTICE that an Application will be brought by SHAWN CASSISTA the Applicant, before the presiding Justice of the Ontario Court of Justice (Provincial Division), Courtroom #M4, at 950 Burnhamthorpe Rd W on the 22nd day of November, 2013, at 1:30 p.m. or as soon thereafter as the Applicant may be heard, for an Order directing the prosecution of the charges herein (Use Validation Not Furnished by Ministry contrary to the Highway Traffic Act – Section 12(1) (e), Use Plates Not Authorized contrary to the Highway Traffic Act – Section 12(1) (d), Fail to Surrender Permit for Motor Vehicle contrary to the Highway Traffic Act – Section 7(5) (a), Drive While Under Suspension contrary to the Highway Traffic Act – Section 53 and Fail to Surrender Insurance Card contrary to Compulsory Automobile Insurance Act – Section 3(1)) all of which occurred on 28th day of May, 2011 be stayed, pursuant to section 7 of the Canadian Charter of Rights and Freedoms (hereinafter the "Charter").

THE GROUNDS OF THE APPLICATION ARE:

1. That the Applicant's right, to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, as guaranteed by s. 7 of the Charter, have been infringed;

2. That a stay of the proceedings is appropriate and just in the circumstances, as defined by s. 7 of the Charter;

3. Such further grounds and other grounds as the Applicant may advise and this Honorable Court may permit.

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:

1. The Sworn Statement of the Applicant, Sworn on February 22nd, 2013.

2. A motion to stay the proceedings that detail an argument based on the fundamental principles of law, common law and natural law.

3. Jurisprudence-Copies of the Supreme Court decisions: Rex. v. Sung Chong, Re Sanderson and Township of Sophiasburg, Toleff v. Pember, Hodgen, Hydro-Electric Power Commission of Ontario v. County of Grey, Big Point Club v. Lozon, Creig v. City of Merritt and R. v. Pawlowski.

4. Such further and other material as the Applicant may advise and this Honorable Court may permit.

THE RELIEF SOUGHT IS:

1. An Order allowing the Application and granting a stay of proceedings.

November 8th, 2013

Shawn Casissta
[redacted]
Mississauga, ON [redacted]

TO: The Attorney General of Ontario
Constitutional Law Branch
4th Floor
720 Bay Street
Toronto, ON M5G 2K1
Fax: (416) 326-4015

The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, ON M5X 1K6
Fax: (416) 973-3004

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2

SWORN STATEMENT OF SHAWN CASSISTA

I, Shawn Cassista, hereby attest to the following.

1) On or about May 28th, 2011, at TRUSCOTT and AGORA in the city of Mississauga, I was charged with numerous offences:

Use Validation Not Furnished by Ministry,
contrary to the Highway Traffic Act – Section 12(1) (e)
Use Plates Not Authorized,
contrary to the Highway Traffic Act – Section 12(1) (d)
Fail to Surrender Permit for Motor Vehicle,
contrary to the Highway Traffic Act – Section 7(5) (a)
Drive While Under Suspension,
contrary to the Highway Traffic Act – Section 53
Fail to Surrender Insurance Card,
contrary to the Compulsory Automobile Insurance Act – Section 3(1)

2) I was therefore commanded in Her Majesty's name to appear before the Ontario Court of Justice on the 28th day of May 2011, which I did not due to a family crisis. A bench warrant was then issued and I was arrested and detained on July 24th, 2011 and released the following day with a promise to appear. My next court appearance date was then set for August 16th, 2011. On that day I appeared in court in Mississauga and pleaded not guilty to the alleged offenses. I was then provided with a trial date of March 14th, 2012.

3) On the 17th day of February, 2012, I filed a motion to request a dismissal of all the charges based on the grounds that the above said Acts apply to "corporations" only. The proceeding was struck down by the court for the following reason: the Motion was not properly brought before the court. I was then instructed to bring a proper motion before the court at a later time.

4) On the 2nd day of March, 2012, I brought forward a motion to adjourn the trial date as I had just recently received Disclosure and did not have the time to prepare a proper defense. A new trial date was then set for November 7th, 2012.

5) On the 24th day of August, 2012, I brought forward a motion to request further disclosure, and have two (2) motions to grant a stay of proceedings heard or set a date for them to be heard. The presiding justice concluded, without giving me full opportunity to speak, that the Disclosure I had provided to me was satisfactory. She also instructed me to work the motions I was attempting to bring forward into my defense, at trial.

6) On the trial date of the 7th of November, 2012, my first inclination was to clarify whether the Canadian Constitution applies in the courtroom – I asked this for a couple of reasons, one was because I would be addressing Charter issues in my Closing Arguments which I put together based on what the previous Justice of the Peace told me on the 24th of

August, 2012. After a lengthy discussion between the presiding Justice, the prosecutor and myself, it became evident that I was trying to bring forward a Charter challenge within my defense. We agreed that in proceeding in a proper and fair manner of the court process, that I needed to bring forward proper motions before a trial can take place. It was then decided to have the trial adjourned to another date.

7) On 11th day of December, 2012, I had to make another appearance to obtain the next date for the trial. The date was then set for March 8th, 2013.

8) To the facts regarding the event in this matter:

- On the day the event occurred, I was detained by a police officer who ran my plates for no reason whatsoever as I was not breaching the peace or being a danger in any way to the general public.
- When I was detained I did not provide any government documentation that he asked for.
- What I did provide the officer with was a Constructive Notice and Declaration that provided all the information he needed. It provided my status at law, it stated that I reserved "all my rights", that the vehicle I was travelling in was my private property, and much more. It also included a Fee Schedule for remedy if my rights are violated in any way.
- My private property was then seized and I was given five (5) Summons to Defendant slips.

9) It is my understanding that the purpose of the courts is to determine the facts and law. I am being forced into doing things that I would otherwise choose not to do. I'm forced to pay fees for licenses and validation stickers and if I don't, my unalienable right to travel freely upon the road ways is infringed. I am also being forced to provide evidence of a private contract. This matter addresses presumed agreements and commerce in which monies are being extorted from me. It appears that the fundamental principles of law are being greatly ignored. [I will add that no man or women can come forward and claim damages by my actions in my 30 years of travelling in my privately owned vehicles.]

10) It is my understanding that the courts use reason to base their decisions on the facts and law. My actions have indicated nothing more than living free to travel, a God-given unalienable right in a country that recognizes the supremacy of God. This is a natural right that does not require permission (license) or fees.

11) Since, *principia probant, non probantur* ***principles prove, they are not proved*** much of my Defense is also based on the same principles Canada is founded upon. So I attest in this, my Sworn Statement, that I'm not doing anything wrong, but I am being forced into something against my free will and that is an infringement on my liberties.

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit
Whenever there is an interpretation doubtful as to liberty (or slavery), the decision must be in the favor of liberty.

12) Therefore, as a result of the legislated Acts mentioned and the Crown's actions to enforce them, my unalienable rights have been violated and it is for this reason that I have filed this motion/Application, requesting that a stay be granted pursuant to section 7 of the Canadian Charter of Rights and Freedoms.

I swear this statement to be true.

Dated this 8th day of November, 2013 in the City of Mississauga.

Shawn Cassista

[redacted]

Mississauga ON [redacted]

~~SWORN~~ AFFIRMED BEFORE ME: Agnieszka Dubik.
At: City of Mississauga
on the 8 of November 2013.

Agnieszka Dubik.

AGNIESZKA DUBIK, a Commissioner, etc.,
Regional Municipality of Peel, for the
Corporation of the City of Mississauga.

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CASE/FILE NO: 3161-999-10-001902

ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)
(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent(s)

and

SHAWN CASSISTA

Applicant(s)

Motion to Grant a Stay of Proceedings

Grounds for Stay of Proceedings

1) The Defense is motioning this honourable court to stay the proceedings bringing a permanent discontinuance to this matter, based on the grounds that the Crown's claim of the Defendant's obligation to acquire a license (permission) and then be bound by the Highway Traffic Act and the Compulsory Automobile Insurance Act is not in harmony with fundamental principles of law, long upheld rights based on self-evident truths of necessity, defies the natural order of law endowed upon man by his Creator as well as his Common Law Right to travel, and is therefore a violation of his Section 7 Charter right;

2) Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law, and;

3) Whereas Canada is a Common Law country, and;

4) Whereas a man's Common Law Right to own property (such as a transportation vehicle), use that property, and travel unmolested are natural rights, which are incapable of being repudiated, and;

5) Whereas the Canadian Charter of Rights and Freedoms sections 7 states, *"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.";*

6) An individual must act to maintain their life and have the freedom of mobility to pursue happiness and security of the person. Human nature to survive, to be secure in travel, and pursue one's livelihood necessitates an individual to travel freely;

7) As *Jus* is the hidden law of nature, an unavoidable reality that works behind the scenes to dictate the outcome of our behavior, which necessitates one to travel in their own private automobile to get to work to sustain their life; eg: food and shelter;

8) This is the unseen Hand of God and no matter what our law may say is right or wrong, no matter what public opinion demands, no matter how angrily we rebel against its supreme authority, Natural Law transcends our statutes and decrees. Natural law obeys no human legislation and only fools ignore Natural Law as it is always right;

9) *Jus est norma recti; et quicquid est contra normam recti est injuria*, ***Law is the rule of right, and anything that is contrary to the rule of right is an injury.*** (BL4R P996)

10) The necessity to save time, money, pursue one's occupation or trade, happiness, and the feeling of personal security are all prime reasons why the unmolested pursuit to meet their needs takes precedence over any legislation;

11) Life, liberty and property do not exist because men have made laws. On the contrary, it was the fact that these things existed beforehand that caused men to make laws in the first place;

12) It is therefore self-evident to the Defense that the unmolested right to travel using one's own property has existed long before any highway traffic regulations were ever enacted;

13) A man's natural right to travel on the public roads is well clarified as fact in law by the following authoritative source:

- **UNALIENABLE:** *The state of a thing or* ***right which cannot be sold****. 2. Things which are* ***not in commerce, as public roads, are in their nature unalienable.*** *Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government.* ***The natural rights of life and liberty are unalienable.*** (Bouvier's Law Dictionary 1856 Edition)

14) The Defendant has the unalienable right and undeniable necessity to maintain his life. This is a natural right that involves anything necessary to provide for his needs;

15) *Lex spectat naturae ordinem* ***The law regards the order of nature*** (BLR4 P1058).

16) Since man is entirely a dependent being, subject to the laws of his Creator to whose will he must conform, the necessity to travel in one's own private automobile on the highways in order to pursue his trade or occupation or simply to pursue happiness is based on his dependence to provide shelter and food for himself. He must conform to this necessity or perish;

17) Many of our rights arise from necessities. The belief that driving is a "privilege" is erroneous as driving is a necessity in today's modern world. Such a necessity therefore makes it a right. As founded to be self-evident in the maxim, *Necessitas vincit legem.* ***Necessity overcomes the law.*** (BL7 P1660);

18) Universal principles are abundant with reference to self-evident truths surrounding necessities. The Defense invokes the following maxims to guide this honourable court on this matter:

- *Necessitas facit licitum quod alias non est licitum.*
  Necessity makes lawful what otherwise is unlawful. (BL7 P1659)
- *Necessitas quod cogit, defendit.*
  Necessity defends what it compels. (BL7 P1660)
- *Necissitas non habet legem.*
  Necessity has no law (Necessity shall be a good excuse in our law, and every other law.) (BL4R P1182);

19) Justinian said it best: *Omne jus aut consensus fecit, aut necessitas constituit aut firmavit consuetude*; ***Every right is ether made by consent, or is constituted by necessity, or is established by custom.*** (Digest of Justinian 541 AD);

20) The Defense has found Canadian Case Law that directly expresses that the use of the public highways is a fundamental right and not a mere privilege which the state may permit or prohibit;

21) In **Rex. v. Sung Chong [1909], 14 B.C.R 275 (C.A.) 1909 1900-9,** Judge Irving states:

> *"Among the **normal rights** which are available to every British subject **against all the world are**: (1) personal safety and freedom; (2) one's good name; (3) the enjoyment of the advantages ordinarily open to all the inhabitants of the country, e.g., the unmolested pursuit of one's trade or occupation and **free use of the highways**; (4) freedom from malicious vexation by legal process; and (5) **to one's own property**.";*

22) Furthermore in, **Re Sanderson and Township of Sophiasburg [1916], 33 D.L.R. 452 [at p. 456], 38 O.L.R. 249,** the justices Meredith C.J.C.P., Riddell, Kelly and Masten JJ. state:

> *"At common law the right of all persons, including both **vehicles** and pedestrians, to pass over the roadways has been recognized as '...the highest right in highways...' ";*

as well, Justice Hope J recognises and reaffirms this judicial determination in **Big Point Club v. Lozon, [1943] O.J. No. 469**; and

23) In **Toleff v. Pember and Hodgen [1944] O.W.N 604 (H.C)**, the judge ruled that:

> *"At common law and as a member of the public, any individual has the right to the use of the highway under the protection of the law.";*
> and

24) Whereas, in the words of the Ontario Court of Appeal in the case of **Hydro-Electric Power Commission of Ontario v. County of Grey [1924], 55 D.L.R. 339, at p. 344,** Justice Masten J.A states:

> *"The right of the public in the King's Highways has always been jealously guarded by the Courts and is not lightly to be interfered with and* ***—It has long been recognized in the Courts of Ontario and England that the right of the public to free passage along the King's highway is paramount, and cannot be interfered with even by the Crown itself****, but only by Parliament or the legislature. In the event that Parliament or the legislature wishes to limit the public's right to use a highway, such a desire must be* ***clearly*** *expressed through legislation."*

and again, Justice Hope J recognises and reaffirms this judicial determination in **Big Point Club v. Lozon, [1943] O.J. No. 469**; and

25) Further evidence shows that the desire of Parliament or the legislature to limit the public's right to use a highway must be "clearly expressed" with "unequivocal words". In consideration of **Greig v. City of Merritt, [1913] D.L.R. 852 (B.C.Co.Ct.)**, wherein it was stated that:

> *"A statute should be* ***very explicit*** *to take away this right of common enjoyment of the King's highway."*; and

4 of the above cases.

26) In a most recent decision at the Provincial level, Judge A. A. Fradsham recognises and reaffirms in **R v. Pawlowski, [2009]** the judicial determinations made in **Re Sanderson and Township of Sophiasburg [1916]**, **Hydro-Electric Power Commission of Ontario v. County of Grey [1924]**, **Toleff v. Pember and Hodgen [1944]** and **Greig v. City of Merritt, [1913]**;

27) Given the principle that, *Quae communi legi derogant stricte interpretantur*, ***Statutes that derogate from the common law should be strictly construed*** (BL7 P1677); and

28) Once again, in the wise words of Judge Irving in **Rex. v. Sung Chong (1909), 14 B.C.R 275 (C.A.) 1909 1900-09**:

> *"Where a restraint is sought to be put upon any person in respect of the exercise of any of those natural rights* as stated above, *—I think it is the duty of the Court to assume that the legislature did not intend to interfere with them, unless* ***clear and unequivocal words*** *have been used."*

In accord with this case law, the judiciary was specific in stating that clear and unequivocal language must be used in order for the legislator to intend to restrain the rights of free people; and

29) Considering that the **Canadian Bill of Rights** states:

> *"Every law of Canada shall..., be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights"*;

30) It is clear through, not just natural order, but also through legal judgments that use of the roadways is a right long held to be an established custom of every inhabitant against all the world and that no law has clearly expressed with clear and unequivocal words the removal of one's right to the free use of the highways and cannot be interfered with without clearly being expressed through legislation;

31) Then there is the matter of "annual validation stickers – fees" and "Driver's License renewal fees" which are in and of themselves revenue generators which are unlawful as they infringe on one's natural right to **"free"** use of the highways;

32) In **Greig v. City of Merritt, [1913] D.L.R. 852 (B.C.Co.Ct.)**, when Judge Swanson was addressing the purpose of registering and plating motor vehicles, he stated,

> *"The object of such provisions is clearly for the benefit of the public. In the event of the law being violated the offender can be readily identified by the number on his car and brought to justice. The car whilst not an outlaw on the highway is yet without a doubt a very dangerous machine unless under very careful control."*

33) Judge Swanson also goes on to say that,

> *"The statue, containing as it does some drastic provisions affecting one's common law rights and especially so in the matter of the burden of proof, is clearly framed with an eye to the protection of the public, and the question of revenue is I think merely incidental in the Act."*

34) The Defense submits that he would have no problem paying a **fair one-time fee** for the purpose of registering and plating his privately owned automobile for Judge Swanson's reasons above, but not at the expense of continuous fees that infringe on the Defendant's natural right to use the highways "free" of continuous fees;

35) So, with all due respect to the laws of nature and man's unalienable right, it is self-evident to the Defense that the Defendant does not require permission (license) or have to pay fees to exercise the *highest right of the highway*, which he also contributes to the building of through fuel taxes;

36) Furthermore, the Defense submits that in the 30 years of using his private automobile on the highways in North America, the Defendant has done so in a safe and careful manner with no claims of negligence from any other parties;

37) The Defendant has already been unjustly subject to thousands of dollars worth of fees and fines in these years. These issues justify the actions of the Defendant to no longer waive his God-given natural right to use the highway freely;

38) Another law dictionary source defining the word "Unalienable": ***Inalienable**; incapable of being aliened, that is **sold** and **transferred*** (BL4R P1693). That is to say, that the right to travel free on the highway is a paramount right to man, it is ours;

39) As this maxim states, *Id quod nostrum est sine facto nostro ad alium transferri non potest* ***"That which is ours cannot be transferred to another without our act (consent)"*** (BL4R P879);

40) The Defense submits that he has made it clear to the Crown and agents for the Crown of his standing by his actions and his Constructive Notice and Declaration. For *Non refert verbis an factis fit revocatio* ***"It does not matter whether a revocation is made by words or by acts"*** (BL7 P1667)

41) In summary, the Defense has clearly provided numerous lawful reasons for a stay of proceedings in this matter:

- Clearly, there are necessities to which the Defendant has to meet in order to sustain his life, uphold his liberties and protect the security of his person, which in its foundation holds precedence to any Legislation.
- Clearly, there is an abundance of case law that supports **free** use of the highways as part of a common law right.
- Clearly, it is self-evident that man has been endowed by his Creator with unalienable rights that are **not in commerce**, such as the use of public roads.
- Clearly, there is no Act of legislation that expresses, with unequivocal words, the removal of one's **Natural Right** to use the highways.
- Clearly, there are numerous fundamental principles of law that support the argument for **free** use of the highways. Since maxims are universally excepted truths in law, there is and can be no evidence to the contrary;
- Clearly, the Defendant acted in good and clear conscience as his actions are supported by the law and the principles thereof that supersede both of the Acts in question, so…

42) The Defense submits that the Defendant has made it clear on any government documents relating to the Highway Traffic Act, that he has "reserved **all** of his rights" at law;

43) The Crown does not have a lawful claim of right to force a man into a licensing agreement, to grant him "permission" to do something that he is already at liberty to do by the grace of his Creator, Natural Law and principles thereof, that which is the foundation for all of Canada's laws;

44) And since, *Libertas omnibus rebus favorabilior est* ***Liberty is more favored than all things***, this foundation cannot be ignored;

45) Therefore the Defense motions this honourable court to grant a stay of proceedings bringing a permanent discontinuance to this matter, based on the grounds that the Crown's claim that the Defendant is bound by any statutory law or laws that restrict the freedom to travel is not in harmony with **fundamental principles** of law – long upheld rights based on self-evident truths of necessity and freedom, our common law rights and the laws of nature, and therefore is a violation of his Section 7 Charter right.

TAB

4

CONSTRUCTIVE NOTICE
and Declaration

The Crown
Peel Regional Police
Any and all Public Servants/Peace Officers

I, **Shawn-Alan of the Cassista family**, a **conscientious free will man created by God**, with a Temporary Mail Location [redacted]e, city commonly known as Mississauga, region commonly known as Peel, and territory commonly known as Ontario, and am the authorized agent for the legal entity name SHAWN CASSISTA (or any derivations of), do give Constructive Notice and Declare:

1. THAT, I am a Commoner of Common Law status in Common Law Jurisdiction, a jurisdiction of principles in which the nation of Canada was founded upon, and;

2. THAT, **I reserved and continue to reserve all my rights** on any contracts related to statutes such as the Highway Traffic Act, and;

3. THAT, the 2001 Pontiac Montana with the Vehicle Identification Number 1GMDU03E61D233142 is my **private property** and travelling vessel, and;

4. THAT, I have an unalienable right to own that property, and;

5. THAT, possession is nine tenths of the Law, and;

6. THAT, I have exercised and continue to exercise my **unalienable right** to travel the Earth as the *King James version of the Holy Bible, Chapter 1: 26* [which you swore an oath upon] states:

*"And God said, Let us make man in our image, after our likeness: and **let them have dominion** over the fish of the sea, and over the fowl of the air, and over the cattle, **and over all the earth**, and over every creeping thing that creepeth upon the earth.*

7. And THAT, I recognize the people in the Public Sector – who swore an oath of office – only as Peace Officers and Public Servants whose primary goal is to **"serve and protect"**, and;

8. THAT, I am only using the legal identity name, SHAWN CASSISTA, **under private necessity** to sustain and maintain my life via commerce, and that I am **not voluntarily** attached to it permanently as an accessory to Crown property, and;

9. THAT, I have **Her Majesty's permission to use** that Crown owned legal name according to the Vital Statistics Acts of the Canadian Provinces, and;

10. THAT, I am not subject to the prosecution of victimless crimes – specifically those related to the Highway Traffic Act or any other statutory act which is a foreign and inferior jurisdiction to the one I have already declared myself in, and;

11. THAT, it is my God-given right to do commerce (contract) both privately and publicly with whom I choose based on the fundamental principles of law in which **my consent is needed**. Hence, the Maxim in Law: *Consensus facit legem* ***"Consent makes the law."***

I do hereby serve Constructive Notice and state clearly, specifically and unequivocally my **intent to peacefully and lawfully exist** free of all statutory obligations, restrictions and that I maintain all rights at law to trade,

exchange or barter **as a Commoner** and exist without deceptive governance and to do so without limitations, restrictions or regulations created by others and **without my consent.**

FURTHERMORE, I claim that anyone who interferes with my lawful activities after having been served this Constructive Notice and who fails to properly dispute in writing in a point for point format or make lawful counterclaim is breaking the law, cannot claim good faith or colour of right and that such transgressions will be dealt with in a properly convened court *de jure*. If there are any false and/or frivolous claims made by any Public Servant(s) in response to this Constructive Notice, the person(s) **will be held Fully Commercially Liable.**

It is your duty to make aware all appropriate offices and update your public records and computer databases in regards to my status to avoid any unnecessary conflict with any Peace Officers in the future.

All transgressors who violate my God-given unalienable rights will be subject to damages starting a $1,000,000CDN and further costs will reflect the attached Fee Schedule. The fundamental principles of law that the nation of Canada was founded upon also includes the Nuremburg Principle of *"**Following orders is no excuse**" for violating people's human rights.* I ask, "Do we have Remembrance Day and a Charter of Freedoms in this country or have ALL our soldiers died in vain?"

To clarify the purpose of this Constructive Notice: I just**ifyingly** want to enjoy my unalienable right to Life, Liberty and the Pursuit of Happiness. Until your **duty** to "serve and protect" is called upon as a Peace Officer in Common Law jurisdiction, please allow me to exercise my God-given unalienable rights.

If there is any **man** or **woman** who is being unjustly damaged by any of the actions taken on my part or statements herein or if I have erred in anyway, if he/she will inform me by facts, I will sincerely make every effort and amend my ways.

FYI this is the Law: The Canadian Charter of Rights and Freedoms states: *"Whereas the nation of Canada was **founded upon principles** that recognize the **supremacy of God** and the **rule of law**..."*

PRINCIPLE. *A **fundamental**, **well-settled** **Rule of Law**. A **basic truth** or **undisputed legal doctrine**; a given legal proposition that is **clear and does not need to be proved**. A principle provides a **foundation for the development of other laws and regulations**. ~ Free Online Law Dictionary.*

MAXIM. *A **broad statement of principle**, the **truth** and reasonableness of which are **self-evident**. A rule of Equity, the **system of justice that complements the Common Law**. Maxims were originally quoted in Latin. ~ Free Online Law Dictionary.*
Example of a Maxim in Law: *Lex spectat naturae ordinem* ***"The law regards the order of nature."***

UNALIENABLE. *The state of a thing or **right which cannot be sold**. 2. Things which are **not in commerce**, as **public roads**, are in their **nature** unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. **The natural rights of life and liberty are unalienable.** ~ Free Online Law Dictionary.*

*Bouvier's Law Dictionary 1856 states: **"A contract is a law between the parties, which can acquire force only by consent."***

Notice for the Agent is Notice for the Principal;
Notice for the Principal is Notice for the Agent applies under this Notice.

With all due respect,

Per:: _____
For: the legal entity/person of **SHAWN ALAN CASSISTA**
and all derivations thereof / GOVERNMENT OF CANADA/
PROVINCE OF ONTARIO.

Ignoratia excusatur non juris sed facti. ***"Ignorance of fact is excused, but not ignorance of law."***
Govern yourself accordingly.

FEE SCHEDULE
FOR
Shawn-Alan of the Cassista family, Agent
FOR
SHAWN ALAN CASSISTA
FEE SCHEDULE BETWEEN CLAIMENTS
And all those to whom this may apply.

Effective February 5th 2007

This fee schedule is your NOTICE of the applicable FEES and COSTS **Shawn-Alan: Cassista** charges for his time for protection or defending of his lawful property or rights and interests therein, all lawful freedoms and rights in general when he is engaged in any type or otherwise regarding any matter, and for full and timely payment of any and all tort damage.

You the living individual, CORPORATION, employees and/or representatives of, such as Law Firm, person, natural person, Agent or otherwise, agree to the terms and conditions of this FEE SCHEDULE, and each individually and/or collectively accept full responsibility and liability for the charges/fees, described herein in the event you choose to involve and or engage the private party **Shawn-Alan: Cassista** claimant in any matter, tort damage, by default, mistake or otherwise.

Nothing in this Notice or any other agreement/contract, Notice, Fee Schedule, confers or purports to confer on any Third party, any Benefit or any Right to enforce any term(s) of this or any agreement / contract.

Fees/charges for service/costs incurred.

Hourly rate for time, labour, effort(s)	$200.00 per hour
Unlawful Detainment	$1,000.00 per hour
Placed in Handcuffs	$5,000.00 per occurrence
Filing of court claims, defense or other documents	$100.00
Time in court of any kind or jurisdiction	$300.00
Educational Services	$750.00
Travel time and mileage in any matter	$200.00 per hour/$1.00 per mile
Receiving unsolicited/unwanted phone calls	$50.00 per call
Erroneous reports with any Credit Bureau causing restraint/restriction of Trade	$200.00 per dollar demanded by Debtor, equal to the amount of Indebted-ness, mistakenly reported with any and all Credit Reporting Bureaus.

All fees and charges are to be tripled in the event of claimant involvement in any frivolous, vexatious, malicious, unfounded prosecutions or litigation proceedings.

Payment in full is due no later than ten (15) days of receipt of Invoice. Payment must be made payable to SHAWN ALAN CASSISTA. Interest is calculated at 3 percent per month, compounded on all over due accounts.

Other miscellaneous charges may apply, Postage, obtaining Dis-honor non Acceptance Notarial Protests and Certificates, Injunctions, Judgments, Certified mail, air travel, meals, insurance, vehicle rentals, accommodations, collection fees, Bailiff, Lien/Security Interest, Registration fees, legal fees, and other costs incurred, will be billed at cost plus one hundred (100) percent.

We are dealing in commerce and the LAW OF CONTRACT applies. These are binding contracts, please think before you act. Prices, terms and conditions are non-negotiable and subject to change without Notice.

NOTES PR
BADGE #
1749
MAY 28TH 2014

Date _____ ☐ Guilty ☐ Withdrawn ☐ Dismissed

Sentence

OCC # 11-140333.

2001 PONTIAC MONTANA VAN BLUE. VIN # 1GMDU03E61D233142

ACC. DRIVING E/B ON TRUSCOTT. CPIC CHECK ON LIC. PLATES →. STATUS: UNATTACHED. EXPIRED 30 JN 98 R/O: LAUDECCI, JOHN
L0204 40704 20130.
1431 RATCLIFFE BLVD. MISSA
L5G 4H1

ATTEND AT VEHICLE, SPEAK W. DRIVER WILL NOT PROVIDE ANY DOCUMENTS. PROVIDE ME WITH 3 PAGE "CONSTRUCTIVE NOTICE AND DECLARATION." HAS HIS NAME AND STATES HE IS A "FREE WILL MAN.".

PLATES ON VEH. HAVE WHITE APPEARS TO BE A HOMEMADE VALIDATION STICKER APRIL 2012 # 5384956H.

Date _____ ☐ Guilty ☐ Withdrawn ☐ Dismissed

Sentence

FONT & PRINTING ON STICKER IS NOT CORRP. HAS SLIGHTLY JAGGED EDGES

HAD CONVERSATION WITH MALE REGARDING PLATES:

Q. WHOSE PLATES ARE THESE?
A. THEY ARE MINE.
Q. THEY AREN'T REGISTERED TO YOU. WHERE DID YOU GET THEM?
A. I BOUGHT THEM ON THE INTERNET.
Q. HOW LONG AGO.
A. ABOUT A MONTH.

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the order of the Full Court, dated the 21st of April, 1909, in the case reported *ante* pp. 241, 256. Heard by CLEMENT, J., at Chambers in Vancouver, on the 29th of June, 1909.

L. G. McPhillips, K.C., for the insurers: The award of the arbitrator is *ultra vires*, in that it provides that the whole of the $1,500 is to be paid in sums of $10 per week "unless said applicant should not so long live." The only power of the arbitrator was to order this payment during incapacity (*b.* of 3, First Schedule) and subject to the right of review (9 of First Schedule); and a point of this nature could probably not be raised in an issue. Further, the rules made by the Lieutenant-Governor in Council, as they appeared in the Gazette, 1904, pages 353 and 1,164, are *ultra vires* insofar as they provide for the procedure under section 6 of the Act (the section under which the application was brought). The only authority in the Act for making the rules is sections 2 and 5 of the Second Schedule. Section 5 merely refers to appearance by a party other than the parties to the arbitration; and section 2 refers only to the rules respecting the decision of questions between the applicant and the respondent and not to questions between the applicant and an insurance company; and the first two lines of the schedule provide that the provisions of that schedule shall apply for settling any matter which under this Act is to be settled by arbitration. And section 6 does not provide that the question as to whether the respondent is entitled to a sum of money from the insurer is to be settled by arbitration.

S. S. Taylor, K.C., for the applicant: Section 6 of the Act in itself provides that the question of whether the respondent was entitled to any money from the insurers should be decided by an application to a judge of the Supreme Court as distinguished from an action in the Court; and therefore authorizes a judge to order an issue.

CLEMENT, J.: The rules made under section 6 are *ultra vires*, and section 6 in itself, apart from the rules, does not authorize me to order an issue. Any right which the applicant might have under this section as against the Insurance Company must be

decided in an action commenced by writ of summons in the ordinary way. I, however, reserve the question of costs until after the decision in any action to be brought, provided that if no action be brought within three months this application shall stand dismissed with costs.

Application dismissed.

CLEMENT, J. (At Chambers)

1909

June 29.

DISOUEDI v. SULLIVAN GROUP MINING CO.

SULLIVAN v. MARYLAND CASUALTY CO.

REX v. SUNG CHONG

FULL COURT

1909

June 7.

REX v. SUNG CHONG

Municipal law—By-law regulating hawkers—Construction of—Validity—Regulation and prohibition—Difference between—Vancouver Incorporation Act, 1900, Cap. 54, Sec. 125, Sub-Sec. 110.

Where a municipal by-law was passed prohibiting hawkers and peddlers of vegetables and similar products from pursuing their calling throughout the municipality during certain hours on market days:—

Held, *per* HUNTER, C.J., dissenting, that the by-law was regulatory and not prohibitory in its provisions and therefore *ultra vires* the Council.

Per IRVING, J.: The by-law in question was not authorized by the statute.

Per MORRISON, J.: A statutory power to pass by-laws regulating a trade does not authorize the prohibition of such trade or the making it unlawful to carry on a lawful trade in a lawful manner.

APPEAL from the decision of CLEMENT, J., at Vancouver, on the 17th of September, 1908, dismissing an application for a writ of *certiorari* removing into the Supreme Court a conviction of the defendant for an infraction of the Market By-law, No. 630, of the City of Vancouver. Section 4 of the by-law, on which the conviction was had, reads:

Statement

"No peddler shall peddle any dairy produce (except milk) or garden or field produce or fruit in any part of the City before the hour of 10 o'clock on any market day as defined in section 2 hereof, and no person other than a consumer, buying for his own use, shall buy, or bargain for any goods exposed in the market before the said hour of 10 o'clock."

The appeal was argued at Victoria on the 15th and 19th of January, 1909, before HUNTER, C.J., IRVING and MORRISON, JJ.

Farris, for appellant (defendant): A by-law must be strictly construed against the municipality: *Re Taylor and Winnipeg* (1896), 11 Man. L.R. 420; *Re Brodie and the Corporation of Bowmanville* (1876), 38 U.C. Q.B. 580. The legislation in question is only as to market days, which would appear as if it was the interest of the market and not that of the public which was concerned.

[HUNTER, C.J.: We cannot presume bad faith as to governmental bodies.]

No, but we must see if the legislation is reasonable, and they are not reasonable in attempting to restrain a person from doing a lawful thing in a lawful manner.

[*Per curiam*: It is plain that sub-sections 64 or 66 of section 125 are not intended to apply. The question, then, is had the Council power under sub-section 110, relating to hawkers, to pass this by-law?]

The question is what power had the council to regulate—

[MORRISON, J.: Prohibit.]

Partially prohibit and partially regulate. The Court must be satisfied that there is a substantial prohibition on the individual pursuing his business or calling: *O'Dea* v. *Crowhurst* (1899), 63 J.P. 424.

J. K. Kennedy, for respondent Corporation: The intention of the by-law is to prevent the forestalling of the market, and in doing so, the Council is decidedly within its powers.

Farris, in reply: The by-law should state in terms that the intention was to prevent forestalling.

Cur. adv. vult.

7th June, 1909.

HUNTER, C.J.: I think the by-law impugned may be supported under sub-sections 68 and 110 of section 125 of the Incorporation Act.

It was argued that a prohibition on a peddler from peddling garden produce before 10 a.m. on market days was not an en-

of *Municipal Corporation of City of Toronto* v. *Virgo* (1896), A.C. 88. It was there held that a by-law which purported to be passed under the regulating powers possessed by the City of Toronto, and which prohibited peddlers from plying their trade at all on certain streets was in reality *pro tanto* prohibitory, and therefore to that extent *ultra vires*, but I am unable to see how it can be quoted as an authority in support of the proposition that a by-law which allows peddling during certain hours and forbids it during certain hours, can be said to be prohibitory and not regulatory. In fact Lord Davey says, at p. 93:

"No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order."

I would dismiss the appeal.

IRVING, J.: In my opinion we should upset this conviction on the ground that the fourth clause of the by-law is *ultra vires* of the powers conferred upon the City of Vancouver.

There are two sub-sections (if at all) under which this clause 4 can be upheld, *viz.*: sub-section 63, "for establishing markets and stock yards and for regulating the same"; and sub-section 66, "for preventing or regulating criers and vendors of any vegetables, etc., from practising their calling in any public markets, public sheds and vacant lots, and the streets and lanes adjacent to the market." The Legislature by section 66 expressly authorized the Council to prevent and regulate criers from practising their calling in the streets and lanes in the City adjacent to the market. If it was intended that the City should have the power that they profess to exercise by this clause 4 of the by-law, the words "adjacent to the market" would be wholly unnecessary.

The question is not absolutely plain, but in such a case as the present, which restrains or limits a man's right to carry on his trade in the ordinary way, we ought to be satisfied that the right has been taken away from him before we uphold any by-law to that effect.

Among the normal rights which are available to every British subject against all the world are (1) personal safety and freedom;

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(2) one's good name; (3) the enjoyment of the advantages ordinarily open to all the inhabitants of the country, *e.g.*, the unmolested pursuit of one's trade or occupation and free use of the highways; (4) freedom from malicious vexation by legal process; and (5) to one's own property.

Where a restraint is sought to be put upon any person in respect of the exercise of any of these natural rights, I think it is the duty of the Court to assume that the Legislature did not intend to interfere with them unless clear and unequivocal words have been used.

In this case there is an interference with the right of the peddler to carry on his business at the hour he thinks best suited for peddling, and there is also an interference with the right of the citizen to purchase in (to him or her) the most convenient market.

I would quash the conviction.

MORRISON, J.: The City of Vancouver passed a by-law to regulate their market, section 4 of which reads as follows [already set out.]

For an infraction of this section of the by-law the defendant was fined, and the matter is brought before us by *certiorari* proceedings.

One of the grounds upon which this by-law is sought to be quashed is that the provision in question is unreasonable. A very effective answer to this ground of objection is found in the course of the decision of Lord Hobhouse in *Slattery* v. *Naylor* (1888), 13 App. Cas. 446 at pp. 452-3, where in part he says that in determining whether or no a by-law is reasonable it is material to consider the relation of its framers to the locality affected by it, and the authority by which it is sanctioned. And then his Lordship goes on to point out that where the Legislature has taken the precaution to ensure that the Council represents the feelings and interests of the community for which it makes laws; that, if it is mistaken, its composition may promptly be altered; that its by-laws shall be under the control of the supreme executive; and that ample opportunity shall be given to criticize them in the Legislature; then there should be strong reluctance shown before questioning the reasonable character of

by-laws made under such circumstances, and there should be doubt whether they ought to be set aside as unreasonable by a Court of law unless it be in some very extreme case. And again in *Hanrahan* v. *Leigh-on-Sea Urban Council* (1909), 1 K.B. 78 L.J., K.B. 238 at p. 241, Walton, J., says:

> "We must construe these by-laws (sanitary) according to their plain sense, without regard to the consequences, the Legislature having assumed that the local authorities would act in a reasonable manner."

But assuming that the provision is a reasonable one, yet the point is raised that it is *ultra vires* the Council because it is a prohibition and not a regulation of the business of hawkers.

Mr. *Farris* laid stress upon Lord Davey's observation upon certain authorities cited in *Municipal Corporation of City of Toronto* v. *Virgo* (1896), A.C. 88, that all through them the general principle may be traced that a municipal power of regulation or of making by-laws for good government without express words of prohibition does not authorize the making it unlawful to carry on a lawful trade in a lawful manner.

Here the appellant was prohibited during a certain period from plying his trade at all as in the *Virgo* case. The continuity of the trade's existence was broken.

Lord Davey goes on to say that the real question is whether under a power to regulate and govern hawkers, etc., the Council may prohibit, there being no question of any apprehended nuisance; and he continues (p. 93):

> "No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order."

There is no question of nuisance or maintenance of order here, the provision in my opinion being solely for the protection of the market. It seems to me therefore that the Council have no power to restrict the appellant as they have done in the lawful exercise of his business.

I would allow the appeal.

Appeal allowed, Hunter, C.J., dissenting.

Solicitor for appellant: *J. W. De B. Farris.*
Solicitor for respondent: *J. K. Kennedy.*

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COUNTY OF WENTWORTH v. HAMILTON RADIAL ELECTRIC R. CO. AND CITY OF HAMILTON.
Brodeur, J.

Nobody will dispute hat the City of Hamilton is now bound to look after the maintenance of that highway. But it is also entitled to receive all the rents which might be due in connection with the use of that highway. The rent, according to the law, is apportionable where the lessee ceases to have possession of the demised premises, provided this is not due to unlawful eviction by the lessor; thus it is apportionable where the lessee is evicted from part by a person lawfully claiming under title paramount: Halsb. Laws of England, vol. 18, p. 484.

It seems to me that the action by the County of Wentworth for the recovery of the rent and for the use of the road in question is not well founded and the judgment of the Court of Appeal which dismissed that action should be confirmed with costs.

The appellant has contended and argued that the Municipal Board had illegally and unjustly, in their order, dealt with regard to the payment of a portion of the good roads debentures issued by the County of Wentworth. I did not deal with that question because I consider that it had no bearing on the issues raised by the plaintiffs.

Appeal allowed.

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Re SANDERSON AND TP. OF SOPHIASBURGH.

Ontario Supreme Court, Appellate Division, Meredith, C.J.C.P., Riddell, Kelly, and Masten, JJ. December 14, 1916.

HIGHWAYS (§ I—7)—DEDICATION AND ACCEPTANCE—RESOLUTION—QUASHING.

The question whether a dedicated highway has been accepted by a municipality cannot be determined upon a motion to quash the resolution relative to the highway for illegality.

[The Municipal Act, R.S.O. 1914, ch. 192, secs. 282, 283, 432, considered.]

tatement.

APPEAL from the judgment of Middleton, J., dismissing with costs a motion by James N. Sanderson to quash a resolution of the Municipal Council of the Township of Sophiasburgh directing the removal of obstructions from what was said to be a public road in the village of Northport. Varied.

The judgment appealed from is as follows:—

MIDDLETON, J.:—These proceedings began as an originating notice for the purpose of quashing a resolution of the Municipal Council of the Township of Sophiasburgh directing the removal of certain obstructions from what is said to be a public road connecting Division street and DeMill street, along the water front in the village of Northport.

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It was suggested that, in view of the conflicting statements appearing in the affidavits filed, the case was a proper one for trial upon oral evidence; and I, therefore, availed myself of the provisions of Rule 606(1),* and directed that the questions arising upon the motion should be tried before me upon oral evidence at Picton. The hearing has accordingly been had.

The sole question raised is whether there had been any dedication of the way in question.

Northport is a small village in the county of Prince Edward, on the south shore of the Bay of Quinté. Many years ago, a large quantity of barley used to be shipped at this point, but now comparatively little shipping business is conducted from the port. Morden street is the main road through the village. It is some six chains from the bay front. Running north from it to the bay are two parallel streets, DeMill street on the west and Division street on the east. These are about 150 feet apart. Both of these streets are exceedingly narrow, and consist of little more than a waggon track leading from the main road to the water's edge. For very many years a passage has existed along the bay front, so that vehicles driving down one street cross over and pass up the other, this being far easier than turning.

The land fronting upon the lake consists of lots 4 and 6, according to a registered plan dated October, 1866. These lots are described as running to the water's edge. The title to both is now vested in Mr. Sanderson, the applicant. He acquired lot number 6 in 1901 and lot number 4 in 1903.

Opposite lot number 4 for a great many years there was erected a dock, extending some little way into the waters of the bay. This consisted of cribwork filled in with earth and stone, and afforded a landing place for boats plying upon the bay. The dock has since been extended and improved, and upon it are now erected a freight-shed, coal-shed, warehouse, and store, all owned by Mr. Sanderson.

It is not easy to determine with accuracy where the original shore-line was, as no doubt some filling-in has taken place in front of the land as it originally was. This was done long since.

*606.—(1) The Judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case may require, or may give such directions as he may think proper for the trial of any questions arising upon the application.

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A plan, exhibit 8, purports to shew the situation. It was drawn at a time when the water was low. A pencil-mark has been placed upon it shewing the approximate high water level, but I think that this does not indicate any normal high water level, but the point which may have been reached when the water was abnormally high.

According to this plan it appears, and I think is rightly shewn, that the warehouse partly overlapped DeMill street. Weigh-scales have been erected on the applicant's land, and teams reaching the wharf or departing from it pass through the narrow space between the scales and the water's edge. I had a view of the premises, and the situation is very well shewn in a photograph, exhibit 10, which shews the arch over the weigh-scales and the building designated upon the plan as "the store" at the end of the warehouse. The other photographs are not of any great assistance.

Twenty-four years ago, the warehouse was 52 feet south of where it is now situated. It was then moved north, and a store erected at its southern end. Before this, the travelled road between DeMill and Division streets passed south of that building. Since then, the travelled road has passed through the place formerly occupied by the southern end of the building.

For half a century or more this road has been freely used by the public. Nearly all the business calling for travel down Division street or DeMill street was connected with the shipping at the wharf. The wharf was always the private property of the applicant and his predecessors in title. For the purposes of their business they encouraged and facilitated traffic, and interposed no objection to the user of the road in question. I do not mean that there were not isolated periods of time in which there were obstructions on the road. Timber was piled there about the time the warehouse was being altered and extended. A portable saw-mill was operated, and during this temporary occupation the belting probably extended across the place where the road now is, but any one who desired travelled across the unoccupied land and circumvented these obstructions as best he could. The travel naturally followed a more or less defined trail across the land, south of the buildings, till they were moved north, and then in part across the former occupied site.

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Quite recently the applicant erected a framing for a shed, obstructing the use of this road. The municipality, contending that there had been dedication, removed this framing, on the authority of the resolution in question, which, being under seal, is equivalent to a by-law. The applicant, denying the right of the municipality, refused to participate in any way in the removal, and the timbers placed upon the way were drawn to an adjacent lot, where they are now. The applicant's right to them is undisputed.

There is some evidence that statute-labour was performed upon the way in question. As usual in cases of this kind, it is not easy to determine from conflicting statements exactly where this work was done; but I think the fair presumption from the evidence is that it was not confined, as suggested by the applicant, to that small portion of land forming part of DeMill street.

Nevertheless I do not think that the statute-labour performed upon the lands in question was sufficient to bring the case within sec. 432 of the Municipal Act, R.S.O. 1914, ch. 192, for it cannot be said that statute-labour was usually performed upon the road. I, however, think that the conduct of the owners from time to time amounted to a dedication, or intention to dedicate, as it might more accurately be called, within the definition of Lord Ellenborough in *Rex* v. *Lloyd* (1808), 1 Camp. 260, 262: "If the owner of the soil throws open a passage, and neither marks by any visible distinction, that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public."

In Ontario, as the highway is vested in the municipality, it is necessary to find an assent on the part of the municipality to the dedication. This assent may be presumed from the expenditure of public money upon the road, but it may be shewn in other ways; and I think the resolution now in question, which, being under seal, is, as already said, equivalent to a by-law, amounts to such an assent on the part of the municipality; and that, no matter what the status of the road might have been before the passing of that resolution, the resolution amounts to an unqualified acceptance by the municipality of the road as a highway, with all its consequent obligations as to maintenance and repair.

I am not troubled by the uncertainty as to the location of the

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road. Originally it ran south of the building; but, when the building was moved north 25 years ago, travel followed the more convenient route, crossing what had been originally partly covered by the building, and this use for 25 years has been reasonably constant and well-defined.

Some pretence has now been made of grading the road by the municipality, and this appears to me sufficiently to indicate the situs of the way.

The motion therefore fails, and must be dismissed; and I suppose costs should follow the event, unless the municipality can see their way to waive them, which they may well do if the applicant accepts this judgment.

E. G. Porter, K.C., for appellant.

E. M. Young, for the township corporation, the respondents.

Meredith, C.J.C.P.

MEREDITH, C.J.C.P.:—It is difficult for me to understand how the appellant could have thought, in this case, that the question whether the place in question is or is not a highway could be well-settled, or indeed determined in any manner, upon an application made under the provisions of the Municipal Act respecting the quashing of by-laws "for illegality;" and that was, and is, the only substantial question involved in these proceedings, so taken.

The resolution in question in no sense purported to create a new highway, or any new rights of any character; it in no sense affected the appellant's title or rights; and was in no way illegal. It was no more than any one claiming a right might do.

The increased rights in, and powers and duties respecting, highways, which the municipalities have, may tend to make many persons forgetful of the fact that the highest right in highways is the right of the public to travel over them, and that the rights conferred and duties imposed upon municipalities respecting them, are so conferred and imposed mainly in such public interests; and that, accordingly, indictment for obstructing, or indictment for failure to keep in repair, a highway, is the most effectual, as it was at one time the common way of determining the rights of those concerned in such cases as this.

The appellant's motion to quash ought to have been dismissed on these grounds; but it was not, and the parties, apparently without objection by any one, went through a long investigation

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RE SANDERSON AND TOWNSHIP OF SOPHIASBURGH.
Meredith, C.J.C.P.

of the question of highway or no highway; and eventually the motion was dismissed, on the ground that the way in question is a highway.

All that was, in my opinion, wrong and ineffectual: but it might prejudicially affect the appellant when, if ever, the question of highway or no highway may come up for determination in an effectual manner; and so it is but fair, to him, for me to say that I am unable to agree in the finding that the place in question is a highway.

All that the respondents rely upon, as making it a highway, is dedication of it as such by the owners, or an owner, of the land upon which the way is, land which was admittedly at one time private property. No question arises as to acceptance of the dedication; if there were a dedication, there was plainly acceptance in the use which the public have made of the way for many years.

If it were a case of such use simply, there might be little difficulty in reaching the conclusion that that use was sufficient circumstantial evidence of a dedication. But this case is not at all like that. In this case it was practically necessary that the owners of the dock and warehouse, at the one end, and the owners of the blacksmith-shop, at the other end, of this way should have, for their own private uses, such a way; so that there is at least as much reason for finding, upon this circumstance alone, that the way was a private one, as for finding that it was a public one: and these additional circumstances seem to me to make it impossible to find that the respondents have proved the dedication upon which alone they now rely: until quite recently the respondents made no claim to jurisdiction over the way, nor ever performed their statute-imposed duty to keep all highways within the municipality in repair, in any manner, upon it, through all these years it has been, according to their present contention, a highway; logs were put upon it and other uses made of it by the owners of land, which would have been indictable offences if it were a public way; for years a warehouse stood at one end of it, and was removed only to bring it nearer to the dock; from time to time the owners of the land have been erecting a breakwater and filling in the land behind it, over which this way passed, a work which the respondents should have done if the way were a high-

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way, and a work which the land-owners would hardly have done if the way were not a private way; although the land changed hands several times, during all these years no deed that was made of it contains any exception of, or reference to, the way in question, although they contain covenants for title which would have been broken, and would have made the grantors answerable in damages for the breach, if the way had been dedicated by them; and there is no contention that there is any kind of evidence of any expressed dedication, written or verbal, or of any kind of expressed intention to dedicate.

I feel obliged to say this much, although it binds no one, in order to set off the prejudicial effect of the judgment appealed against, although it can have no binding effect upon any one: and I feel obliged to add too: that it seems to me to be pitiable that so much money should be wasted in law costs, over this way, when the same money would, perhaps, buy the way in question or one near to it, and put an excellent coat of "metal" upon it.

The order dismissing the motion to quash must stand, but stand upon different grounds: and without costs here or in the High Court Division.

Riddell, J.

RIDDELL, J.:—The appellant is owner of adjoining lots 4 and 6 (in part) in the village of Northport, bordering on the Bay of Quinté and situated in the ancient township of Sophiasburgh. Along the north end of these lots, near the waters of the bay, was a road frequently used for passing from the street on one side of these lots to the street on the other. The township asserted that this road, or at all events a strip of land close thereto, was a public highway—the township council passed a resolution on the 13th October, 1915, "that the overseer be instructed to notify James N. Sanderson to remove at once all obstructions from what has been used as a public road connecting Division street and DeMill street along the water front in the village of Northport. After proper notice, if the obstruction be not removed, the overseer to move the same." On the 16th October, the road overseer served a notice on the appellant "to remove at once all obstructions from what has been used as a public road connecting Division street and DeMill street along the water front in the village of Northport."

The appellant served a notice of motion to quash the resolution, on the grounds: (1) that the land affected by the resolution was his private property; (2) that the resolution was void, as the exercise of such powers required a by-law; and (3) that it was void as dealing with "what has been used as a highway," and not with a "highway." This notice was served supposedly under Rule 605: the disposition of the motion appears from the judgment appealed from. [The learned Judge then quoted the first three paragraphs of the reasons for judgment of MIDDLETON, J., *supra*.]

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Riddell, J.

An order was made, after a trial, dismissing the motion with costs: the owner Sanderson now appeals.

I think the appeal cannot succeed, but am unable to agree in the reasons.

The sole power given to the Courts to quash a by-law (including therein a resolution) is found in the provisions of the Municipal Act, R.S.O. 1914, ch. 192, secs. 282, 283:—

"282. In this Part 'by-law' shall include an order or resolution.

"283. The Supreme Court . . . may quash the by-law, in whole or in part, for illegality."

This resolution is not illegal—there is nothing illegal in any one asserting a claim, however ill-founded—nothing illegal in serving a notice asserting an ill-founded claim: *Ball* v. *Carlin* (1908), 11 O.W.R. 814, at pp. 816, 817, and cases cited. (*Ball* v. *Carlin* was approved by the former Common Pleas Division in a case in which I sat, the name of which escapes me.)

The obvious course for Sanderson to pursue was to wait until something was actually attempted to interfere with his rights (for the resolution might be a mere *brutum fulmen*), or, if he really feared interference, to bring an action for a declaration etc. I think the motion should have been dismissed in the first instance.

Moreover, the motion is said to be under Rule 605. I cannot see how it could be fairly thought to come under that Rule—there is no contract or agreement to construe, and the rights of the parties could not be considered as depending "upon undisputed facts and the proper inference from such facts." There was therefore no power in the Court to determine these rights under Rule 605 in a summary way: I think that my learned brother should have dismissed the application on that ground,

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The provisions of former Con. Rule 941, now Rule 606 (1), are not intended to substitute another form of trial for the regular form in order to determine the rights of the parties and give a judgment thereon, but only to determine some question "arising upon the application" in order to dispose of the application. For example, an inquiry might possibly be made under this Rule to determine whether there were really any facts in dispute and the like. But, it being plain, as it was, that there were facts *bonâ fide* in dispute, this Rule does not permit an investigation to determine what the facts are. The investigation, I think, was not justified by the Rules, and the result of the investigation was to shew that Rule 605 had no application, and the Court had therefore no power to adjudicate upon the rights of the parties in this way.

The conclusion having been reached that the motion to quash should have been dismissed, any decision on the merits would be *obiter*. I may say, however, that I have come to a different conclusion from my learned brother Middleton, and am of opinion that dedication has not been proved.

I would dismiss the appeal, but would award no costs either here or below.

Kelly, J.

KELLY, J.:—Without expressing any opinion on the question of whether these proceedings were properly instituted by originating notice, I rest what, in my opinion, should be the result of this appeal on one ground only. Whether they were properly brought or not, there remains the other question—was it open to the appellant to attack the resolution of the township council, which merely directed that he be notified to remove obstructions from the land which the council said had been used as a public road, under pain of consequences set forth in the resolution? Merely passing a resolution declaring that the land has been used as a public road or on the assumption that it is a public road, does not make it such, and I know no reason why the resolution should be declared illegal (a ground which would justify its being quashed) simply because it is insufficient to accomplish what it aims at accomplishing. I think it aimed at establishing the lands referred to as a public road. In that view the order appealed from—an order dismissing the motion to quash—is not improperly made, and so an appeal against it should not succeed.

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But that, to my mind, does not determine the question as to whether the lands referred to are a public road, and it is not before us for determination. If it were necessary for us to dispose of that question, I would have difficulty, on the evidence, in arriving at a conclusion favourable to the respondents.

The circumstances warrant the refusal of costs to either party, either of the appeal or of the proceedings in which the order appealed against was made.

Masten, J.

MASTEN, J.:—I agree that this appeal should be dismissed; but I desire to guard myself against expressing any view that such a resolution as that in question cannot properly be attacked by originating notice (see Rule 10 (2)). Neither do I desire to express any opinion on the question as to whether a determination pro or con respecting the validity of the resolution in question would operate as a final and conclusive judgment on the issue as to whether the lands in question had become a public highway by dedication.

Meredith, C.J.C.P.

MEREDITH, C.J.C.P.:—Appeal allowed; but motion to quash by-law dismissed on other grounds.

No costs in either Court. *Judgment accordingly.*

MORAN v. NORTH EMPIRE FIRE INS. CO.

ALTA.
S. C.

Alberta Supreme Court, Appellate Division, Scott, Stuart, Beck, and Walsh, JJ. January 13, 1917.

1. INSURANCE (§ III E—85)—CONDITIONS—"JUST AND REASONABLE"—OCCUPANCY.
A condition in a policy vitiating it if the insured premises becomes vacant or unoccupied, contemplates vacancy or desertion of the building in its ordinary undestroyed condition, and not after it had been rendered untenantable and unfit for occupation by fire; otherwise the condition is neither just nor reasonable under sec. 72 of the Alberta Insurance Act.

2. INSURANCE (§ III E—100)—CONDITIONS—OTHER INSURANCE—ASSENT.
The insurer's assent to subsequent insurance may be inferred from knowledge and a course of conduct.

Statement.

APPEAL by plaintiff from a judgment of Hyndman, J., dismissing an action upon a fire insurance policy. Reversed.

J. C. Rand, for appellant.

A. H. Clarke, K.C., for respondent.

Stuart, J.

STUART, J.:—The plaintiff was the owner of a rooming and boarding house in Redcliff. On June 10, 1914, the defendant company issued to the plaintiff an insurance policy on the building to the amount of $2,000. The defendants had already issued a prior policy on the same building for $2,000 and the Western

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HIGH COURT OF JUSTICE.

THE MASTER.

26th SEPTEMBER 1944.

TOLEFF v. PEMBER AND HODGEN.

Highways—Right of General Public to Use—Recovery for Injury—Immateriality of Fact that Plaintiff Using Highway without Complying with Licensing By-law.

A motion by the plaintiff to strike out part of the statement of defence.

The action arose out of an automobile accident, in which an automobile, owned by the defendant Hodgen and operated by the other defendant, struck the plaintiff's peanut wagon, which was then standing on a street in Toronto. The part of the statement of defence now attacked was an allegation that the plaintiff had himself been negligent, in that "he occupied a position in the roadway in the course of selling merchandise without any legal right to conduct business on the said roadway."

The motion was heard by The Master (G. D. Conant, K.C.) in chambers at Toronto.

I. A. Vannini, for the plaintiff, applicant.

M. L. Martyn, for the defendants, *contra*.

The Master [after setting out the pleading attacked]:—The law regarding the position of persons using the highways without complying with Motor Vehicles Acts or The Highway Traffic Act, R.S.O. 1937, c. 288, is very succinctly stated in the headnote to *City of Vancouver v. Burchill*, [1932] S.C.R. 620, [1932] 4 D.L.R. 200 (in which all the earlier cases are cited) as follows: "At common law and as a member of the public any individual has the right to the use of the highway under the protection of the law . . . This principle should not be taken to have been altered in the Motor-vehicle Act [British Columbia], except by express words or by necessary intendment . . . The whole scope of the Act is to prescribe certain requirements for those using the highway with motor vehicles, and to impose certain penalties upon the offenders; it does not provide that they will not be entitled to recover damages, if the damages are suffered while they are infringing the Act." To this may be usefully added the observation of Hogg J. in the later case of *Webster et al. v. Gelinas*, [1941] O.W.N. 371 at 372, [1941] 4 D.L.R. 495, that "a breach of a provision of the Act [The Highway Traffic Act, Ontario] must be a proximate cause of the

injury complained of to render a person liable for damages . . . a defendant may be responsible in damages because of a violation of a section of the statute, if there is negligence and the violation causes or partially causes the accident."

Counsel for the defendant has argued, however, that the situation is different where a peanut wagon is involved. It is common ground that the Toronto Board of Police Commissioners, in the exercise of powers vested in it under The Municipal Act, R.S.O. 1937, c. 266, has passed a by-law to regulate and license hawkers and pedlars, which includes peanut vendors, and that the plaintiff did not hold a licence as required by the by-law at the time of the accident. I am unable to see that there is the slightest difference between a motor vehicle and a peanut wagon in the application of the principles above quoted from *City of Vancouver v. Burchill* and *Webster et al. v. Gelinas*. A peanut vendor under the law has just as much right on the highway as a motorist. If he had his wagon and operated on the highway without the licence required by the Police Commissioners' by-law, he may be subject to the penalties prescribed by the by-law. But such failure to obtain the necessary licence does not give the defendants any right to run him down, nor does it offer any excuse for or defence of the defendants' negligence if, in fact, the defendants were negligent to such extent and under such circumstances as to make them responsible for the accident and the plaintiff's damages.

An order will go that paragraph 6(a) of the statement of defence be struck out, with leave to the defendant to amend the statement of defence within ten days. Time for reply extended ten days from this date or after amended statement of defence delivered. Costs to the plaintiff in the cause.

Order accordingly.

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can be looked at. This contains the provision relied upon by the company so far as this branch of the case is concerned. That which would fall to be rejected would be the provisions of the original policy.

The second branch of the argument is based upon the provisions of subsec. 5, as amended in 1915 by the addition of the words "and is expressed to be" before the word "limited." The effect of this amendment has been misunderstood, and in more than one case the section is referred to as though it required the statement in the application to be expressed to be material to the contract. That is not so. What is required is that the provision avoiding the contract by reason of any misrepresentation in the application should be expressed to be limited to statements that are material to the contract.

Eliminating words not material to the understanding of the section, it reads "No contract of insurance shall be made subject to any condition that it shall be avoided by reason of any statement inducing the contract unless such condition is and is expressed to be limited to statements material to the contract." Further provisions of the statute are that no contract shall be avoided by reason of the inaccuracy of any statement inducing the contract unless the statement is material to the contract, the question of materiality being one of fact, notwithstanding any admission that may be made by the insured. This section is concerned alone with the effect of statements made by the insured in the application for insurance. Such statements are not to avoid the policy unless they are material, and every condition calling for the avoidance of the policy by reason of the untruthful statement in the application must be expressed to be limited to cases in which the misrepresentation is in fact material. Plainly this statutory provision has nothing to do with the case in hand. Having arrived at the conclusion that the condition found in the agreement for the continuance of the policy affords a complete defence to the plaintiff's claim, for the insured was then in a condition which no stretch of imagination could describe as a sound condition physically, I refrain from discussing other defences raised.

MASTEN, J.A.:—I agree with the conclusions reached by my Lord and by my brother Middleton. While my brother Rose, as trial Judge, very properly discusses at length all the facts and arguments brought before him, I understand his judgment to be founded in the end on the single ground discussed in the judgment of my brother Middleton and agreed in by my Lord. I prefer to leave over the consideration of the other questions discussed by

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the trial Judge and on the argument here until it becomes necessary to decide them, and to found my judgment on the decisive question above mentioned.

In respect to it I concur in the reasons which have been given below and by the other members of this Court and have nothing to add.

SMITH, J.A.:—I concur in the result reached by my Lord and the other members of the Court. I am of opinion that the terms of the contract must be gathered from the original policy and the renewal receipt combined. The latter provides that the original policy is to continue in force "provided that the assured upon the life first mentioned above is in sound condition mentally and physically except as stated in said policy." There are no exceptions stated in the policy. The assured, as was clearly established, was not in a sound condition physically at the date mentioned, that is the date of the renewal. I am of opinion that the proviso in the renewal receipt was binding on the assured and is not affected by the provisions of the statute and amendment relied on by the appellant, for the reasons stated by my brother Middleton. I also agree with what is stated by my Lord in reference to the letter of the 26th July, 1922.

The proviso in the contract affords a complete answer to the appellant's claim. I deem it is unnecessary to deal with the other questions raised.

Appeal dismissed with costs.

[APPELLATE DIVISION.]

1924. March 7.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. COUNTY OF GREY.

Highway—Hydro-Electric Power Commission of Ontario—Placing Poles and Wires on Highway—Necessity for Consent of Municipal Corporation—Power Commission Act, R.S.O. 1914, ch. 39, sec. 10, subsecs. 1, 2, 2a (5 Geo. V. ch. 9, sec. 5).

The Hydro-Electric Power Commission of Ontario have no right, either by virtue of the Power Commission Act, 1915, 5 Geo. V. ch. 19, sec. 5, or otherwise, without the consent of the municipal corporation controlling a highway, to place poles and wires upon the highway.

Construction and explanation of the provisions substituted by sec. 5 for those of sec. 10, subsecs. 1 and 2, of the Power Commission Act, R.S.O. 1914, ch. 39.

The intention of the Legislature to enable any public body to invade the province of another public body if not clearly expressed will not be implied.

1924.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. COUNTY OF GREY.

APPEAL by the plaintiffs from the judgment of ROSE, J., at the trial of the action on the 28th May, 1923, in so far as the judgment was against the plaintiffs. The action was brought to recover $2,764.63 for expenses and work in connection with the removal of poles, wires, etc., from a highway. By consent of the defendants judgment was given for the plaintiffs for $400, without costs, and as respects any further demand the action was dismissed with costs.

February 21. The appeal was heard by LATCHFORD, C.J., MIDDLETON, MASTEN, and ORDE, JJ.A.

I. B. Lucas, K.C., for the appellants, argued that the Commission had the right under the Power Commission Act, 1915, 5 Geo. V. ch. 19, sec. 5, to place their poles in the highway. All the prerequisites of the Act had been complied with, so it was just the construction of the section and nothing else that was in question here. The learned trial Judge had said that the Commission could put the poles along, but not in, the highway. The word "lands," counsel submitted, included highways.

W. S. Middlebro', K.C., for the defendants, respondents, contended that there was no power in the Commission to place their poles in the highway. "Lands" did not include a highway, and a highway could not be expropriated. The word "thereon" in subsec. 1 of sec. 5 refers to lands.

March 7. LATCHFORD, C.J.:—The only question arising in this appeal is, whether the Hydro-Electric Power Commission of Ontario had the right to place their poles and wires on a highway in the defendant municipality without the consent of the municipal corporation.

The Commission, being a creature of the Legislature, has no powers except such as are conferred by statute, either expressly or by necessary implication. It is conceded that the right to expropriate a public highway does not exist unless granted by sec. 5 of the Power Commission Act, 1915, being ch. 19 of 5 Geo. V., which repealed subsecs. 1 and 2 of sec. 10 of the Power Commission Act, R.S.O. 1914, ch. 39, and substituted therefor new subsections. The statute of 1915, by sec. 3, repealed also clause (*b*) of sec. 8 of R.S.O. 1914, ch. 39.

The amendments of 1915 enlarge the powers previously granted to the Commission, by enabling it, under the new subsec. 1 of sec. 10, to acquire or expropriate, whenever authorised by the Lieutenant-Governor in Council, "such lands" as well as "such . . . easements in lands as may be required for the purpose of constructing . . . lines of wires, poles . . . as the Commission may determine, through, over, under, along or across any . . . public highways." Subsection 2 merely prescribes the mode in which the powers conferred by subsec. 1 may be exercised in respect of such lands as the Commission may acquire.

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Subsection 2*a* has reference only to the factors to be considered in arriving at the amount proper to be fixed as compensation for lands taken and for damages to lands necessarily resulting from the exercise of the power of expropriation.

Reverting to sec. 10(1), it is plain that the power of expropriation conferred is in terms limited to lands and easements in lands. Public highways are in a sense "lands," but they are very much more. Lands and easements in lands may, when reserved for certain specified purposes, be entered upon and taken possession of to enable the Commission to construct its lines of poles and wires through, under, over, along or across public highways, but no power is conferred to expropriate public highways.

The power of expropriation is in any case such an interference with the right of property that it should not readily be implied. Still less should it arise by inference against the right and duty of a municipality to the ownership of its highways and its obligation to maintain them in repair, and against the interests of the public at large. Upon careful consideration, I am unable to find the slightest ground for the implication that the power claimed has been vested in the appellants.

I therefore think this appeal should be dismissed with costs.

MIDDLETON, J.A.:—Counsel agree that this appeal turns entirely upon the true construction of the statute. I think that the learned trial Judge has arrived at the right conclusion. Eliminating words not now material, the section gives the Commission the right to purchase or expropriate lands or easements in lands for the purpose of constructing pole-lines to transmit electricity along or across "any lands and premises" or public highway.

A public highway is in one sense "lands," but it is plain that it is not intended to be included in that expression in this statute, and Mr. Lucas does not so argue, but his contention is that the mention in the section of the transmission of electricity by the Commission along public highways indicates the intention of the Legislature that it should have this power.

The Hydro-Electric Power Commission is a public body, rightly entrusted with wide powers to be exercised for the public good, but the municipal corporation is also a public body, and I think the principle to be gathered from *Shawinigan Hydro-Electric Co.* v. *Shawinigan Water and Power Co.* (1912), 45 Can. S.C.R. 585; is

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that the intention of the Legislature to enable any public ... invade the province of another public body must be ... expressed and will not be implied.

If it is the view of the Legislature that the Commission ... have the right to construct pole-lines upon public highways ... doubt an amendment to the statute will be made. At pres... Commission stands in precisely the same position as an ordi... company authorised to construct pole-lines, and, under sec. 6... of the Consolidated Municipal Act, 1922, must obtain a by-l... the municipality before undertaking any work on the high... permission being granted "on such terms and conditions ... council may deem expedient." It is for the Legislature to ... whether the Commission is to have the right to erect pole... upon any street or road of its selection without the local muni... pality having any voice in the matter; and, further, whether, ... such right being asserted and the line being erected, the Com... sion, representing the users of power or the local municipal... should bear the expense of changes necessary by reason of imp... ments in the highway. The function of the Court ends when ... found that in the statutes as they stand no such power exists.

I should add that I am aided in arriving at this conclusion by the fact that the contrary view would enable the Commission not only to construct a pole-line along a street or road, but also to ... the street or road, making compensation to the municipality ... without any compensation to the owners of land abutting on the street or road. It is not likely that the Commission would do this, but the question is one of the powers conferred.

The appeal should be dismissed with costs.

MASTEN, J.A.:—On the argument before us it was agreed between counsel and stated to the Court that all matters in controversy in this action had been adjusted and settled between the parties subject to the opinion of the Court on one point only, namely, whether sec. 5 of the Power Commission Act, 1915, conferred upon the plaintiffs power to plant their poles and string their transmission-lines along highways whenever an order in council has been passed pursuant to the provisions of subsec. 1 of sec. 10 of the Municipal Act, as enacted by sec. 5, and without reference to or agreement with the municipal corporation controlling the highway. This was the only matter discussed in argument or presented to the Court for its determination. Section 5 of the Power Commission Act of 1915 reads as follows:

"5. Subsections 1 and 2 of section 10 of the Power Commission Act are repealed and the following substituted therefor:

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"(1) Whenever the Commission has been authorised by the Lieutenant-Governor in Council to exercise any of the powers set ... in clause c of section 8 the Commission may acquire by purchase, lease or otherwise, or without the consent of the owners ... tenant or other persons interested therein, enter upon, take possession of, expropriate, and use such lands and such rights or easements in lands as may be required for the purpose of constructing, ... maintaining and operating thereon lines of wires, poles, conduits or other conductors or devices, with all other plant, appliances and equipment required therefor to transmit, distribute, supply or furnish electricity at such voltage as the Commission may determine, through, over, under, along or across any lands and premises, public highways or public places, streams, waters, watercourses, or any bridge, viaduct or railway.

"(2) The powers mentioned in subsection 1 may be exercised without any prerequisite or preliminary action or proceeding and without any other sanction or authority than is conferred by this Act, and shall include the right to take, acquire or retain possession for such time as the Commission may deem proper, and under agreement with the owner or person interested, or without his consent, of such lands or of such estate, right, title, privilege, easement or interest in, over, upon, or in respect of or relating to any land as the Commission may seem desirable or expedient.

"(2a) Whenever the Commission acts or has acted under the authority conferred by subsection 1, compensation shall be made to the owners or persons interested for the lands taken and for all damage to land necessarily resulting from the exercise of the powers granted to the Commission by that subsection, and in fixing such compensation regard shall in all cases be had to the value of the lands taken or to the nature and extent of the estate, right, privilege, easement or interest which the Commission decides to take and acquire in, over, upon or in respect of the lands, as the case may be, and the compensation shall be based thereon."

Under this statute the plaintiffs claim authority to plant their poles in and string their wires along the King's highways of Ontario, as of right, without any permission, express or implied, from any municipal body, notwithstanding the fact that the title to the highway is vested in the municipal corporation (county or township as the case may be) and notwithstanding the fact that the municipal corporation is under legal obligation to maintain the highway in repair.

The plaintiffs contend that the statute in question, supplemented by the order in council mentioned in subsec. 1, gives them

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absolute power in the premises without concurrence of any one and without any expropriation, actual or proposed.

I am of opinion that the statute above quoted does not confer upon the plaintiffs the power claimed by them. It has long been recognised in the Courts of Ontario and England that the right of the public to free passage along the King's highway is paramount and cannot be interfered with even by the Crown itself, but only by Parliament or the Legislature. I refer in this connection to the recent decision of this Court in *Code* v. *Jones and Town of Perth* (1923), 54 O.L.R. 425, and to the earlier cases therein mentioned. This view of the law is not in controversy in the present appeal, but I mention it in order to bring into bolder relief the fact that the right of the public in the King's highway has always been jealously guarded by the Courts and is not lightly to be interfered with. There is no question but that the Legislature of Ontario can by statute modify or abolish that right; but, if it is to be modified and the rights of the public curtailed or affected, the will of the Legislature must be unequivocally expressed.

Turning then to a consideration of the section above quoted, subsec. 1 gives to the Commission power (1) to acquire and (2) to enter upon, take possession of, expropriate and use, such lands and such rights or easements in lands as may be required by them for transmission of their electrical current.

The section plainly indicates that the powers conferred by this subsection are for the purpose only of acquiring by agreement or by expropriation *in invitum* the lands required. I am unable to find in the statute any words adequate to confer on the plaintiffs power to maintain their poles on the highway, save and except in conjunction with *bonâ fide* action on their part to acquire the right from the municipality controlling the highway, and the *bonâ fide* intention to acquire the right, either by agreement or by expropriation, seems to me to be a prerequisite to the exercise of the powers conferred.

But it is said that subsec. 2 covers this point, and enables the plaintiffs to take possession without any preliminary permission or antecedent intention to acquire such possession and without any other sanction or authority than is conferred by the statute.

But, in my view, the power given by this subsection is predicated upon a *bonâ fide* intention to acquire from "the owner or person interested" a title to the lands or easement in question, and does not come into operation except as ancillary to the exercise of the powers conferred by subsec. 1.

Moreover, the words of subsec. 2 appear to me to be inapplicable to the facts of this case, because inapt for conferring on the Commission a power to infringe on the paramount right of the general public to a free and unimpeded use of the King's highway.

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Subsection 2a directs compensation to be paid to the owner or person interested and prescribes the basis for its computation.

It emphasises and confirms the view that this group of subsections relates exclusively to the acquiring of lands and easements from private persons, for how can compensation be made to all the subjects of his Majesty entitled to the use of a highway?

It is true that the legal estate in the highway is vested in the municipal authority, but only as a trustee for the public, and the "persons interested" are all his Majesty's subjects, both in and outside the county of Grey, whose right of free passage is by this means interfered with.

The practical result will most clearly appear by a concrete example. If the absolute right asserted by the plaintiffs were conceded to exist, they might erect, in the middle of the intersection of King and Yonge streets, Toronto, one of their towers such as exist through the country, and thus practically block the whole traffic at that corner.

In seeking to ascertain its true interpretation, the statute here in question may be viewed from another standpoint.

If the contention of the appellants is upheld, the effect is that the Hydro-Electric Commission is entitled to enter on and use in perpetuity the property of another without his consent or agreement and without paying compensation. That is confiscation, and in the particular case in review the fact that the right infringed or confiscated is the right of the general public enhances rather than diminishes its objectionable character. The Court leans against an interpretation of the statute which authorises confiscation. (See Maxwell, 6th ed., p. 501, and cases there cited.)

Legislation will not be construed as interfering with existing rights unless a clear intention to do so can be gathered from the language used: *Regina* v. *London and North Western Railway Co.*, [1899] 1 Q.B. 921, at p. 944. See also *Commissioner of Public Works (Cape Colony)* v. *Logan*, [1903] A.C. 355, at p. 363, followed in *Minister of Railways and Harbours of the Union of South Africa* v. *Simmer and Jack Proprietary Mines Ltd.*, [1918] A.C. 591.

These considerations lead me to the conclusion that there is not in the words of sec. 5 any such clear and unequivocal expression of the will of the Legislature as to induce this Court to hold that it was intended to grant, even to a great semi-public body like the plaintiffs, an autocratic power to interfere without compensation or agreement with what has always been held as a sacred right of the

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public, namely, the free and uninterrupted passage of all his subjects over the King's highways.

Whether that shall be done or not it is for the Legislature to say, but until they express such an intention in language that is unmistakable I for one would be unwilling to infer that they so intended.

The appeal should be dismissed with costs.

The present appeal was expressly confined by counsel for the appellants to a determination of the powers conferred by sec. 5 of the Power Commission Act of 1915, and my observations must be understood as limited to a construction of that section. They have no bearing on the powers conferred on the Commission by other sections of the Act.

ORDE, J.A., concurred.

Appeal dismissed with costs.

1924. March 7.

[APPELLATE DIVISION.]

EATON v. BRANT.

Receiver—Equitable Execution—Interest of Execution Debtor in Land Conveyed to Housing Commission—Ontario Housing Commission Act, 1919, 9 Geo. V. ch. 54, secs. 12(b), 14(3), 16(1)(c)—Scope and Purpose of Act—Execution Act, R.S.O. 1914, ch. 80, sec. 34.

Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset which the creditor cannot reach unless aided by the exercise of the equitable jurisdiction of the Court—the creditor cannot by this process reach a kind of asset not exigible under legal execution.

Holmes v. *Millage*, [1893] 1 Q.B. 551, and *Harris* v. *Beauchamp Brothers*, [1894] 1 Q.B. 801, followed.

By the Execution Act, R.S.O. 1914, ch. 80, sec. 34, that which is exigible under a writ of *fi. fa.* is land which may be conveyed by the execution debtor without the assent of any other person.

The execution debtor's interest in land conveyed by him to a Housing Commission and made subject to an agreement between him and the Commission, under the Ontario Housing Act, 1919, 9 Geo. V. 54, whereby he agreed to purchase the land from the Commission, paying for it in monthly instalments, and covenanted not to assign the agreement without the consent in writing of the Commission, was *held*, not to be reachable under a receiving order.

APPEAL by the plaintiff from an order of the Judge of the County Court of the County of Ontario, dated the 28th December, 1923, refusing to appoint a receiver and to direct the sale of the interest of the defendant in certain lands, by way of equitable execution.

App. Div. 1924. EATON v. BRANT.

March 4. The appeal was heard by LATCHFORD, C.J., MIDDLETON, MASTEN, and ORDE, JJ.A.

Gideon Grant, K.C., for the appellant, argued that the defendant was in the position of a mortgagor, that he was the owner of the lands, and that the conveyance to the Housing Commission was only a scheme to get money to build a house on the land: *Canadian Mutual Loan and Investment Co.* v. *Nisbet* (1900), 31 O.R. 562; 39 Cyc. 1661; *Smith* v. *Cowell* (1880), 6 Q.B.D. 75.

T. K. Creighton, for the defendant, respondent, contended that the conveyance to the Commission was not merely a pretext, but a real conveyance. The very object of the Ontario Housing Act, 1919, was to make the consent of the Commission necessary to the alienability of this kind of a home. If the receivership order were granted, the receiver could take in execution future payments for 20 years, which was unthinkable: *Re Asselin and Cleghorn* (1903), 6 O.L.R. 170.

March 7. The judgment of the Court was read by MIDDLETON, J.A.:—On the 23rd May, 1922, the plaintiff obtained judgment in the County Court of the County of Ontario for $4,476.80 and costs. A writ of *fi. fa.* was on that day issued and placed in the hands of the sheriff for execution. The sheriff certifies that, if called upon to return the writ, his return will be "nulla bona."

It appears that in 1912 the judgment debtor acquired certain lands now in the city of Oshawa. On the 25th June, 1919, he conveyed these lands to the Housing Commission of the Municipal Corporation of the Town of Oshawa for the nominal consideration of $1. On the 10th May, 1920, an agreement was entered into between the Housing Commission and the judgment debtor, under the provisions of the Ontario Housing Act, 1919, 9 Geo. V. ch. 54, by which the judgment debtor agreed to purchase the lands in question from the Commission for the price of $3,000 with interest at 5 per cent., payable in 240 monthly instalments of $20 each. The agreement provides, *inter alia*, that the purchaser will "not assign this agreement without the consent in writing of the Commission or of the director."

By the Housing Act, 1919, sec. 12(*b*), it is provided that the Commission may lend money to the owner of lands for the purpose of erecting a building thereon. The scheme contemplated by the Act, as indicated by sec. 14(3), is that the person borrowing shall convey his property to the Commission and shall then become a purchaser from the Commission under an agreement of sale for the amount of the loan, the form of the agreement to evidence his rights being subject to the approval of the director, and which shall,

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to escape liability on the plea of the qualified privilege enjoyed by the press under English law (defence of justification and fair comment), can only do so by establishing the truth of the imputations, the good faith and honesty of his comments, and the seasonableness of the publication in the public interest.

Appellate Courts will reduce the amount of an assessment for damages, resulting from a quasi-offence, only when it is so excessive as to be repugnant to the understanding of a reasonable person.

The judgment below in favour of plaintiff was affirmed.

LAVERGNE, J., dissented as to the facts.

CROSS, J., dissented as to the amount of damages, favouring a reduction of same.

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GREIG v. CITY OF MERRITT.

Yale County Court, British Columbia, Judge Swanson. May 15, 1913.

AUTOMOBILES (§ II—100)—*Operating without license—Defect in highway.*]—Trial of action for damages for injuries to a motor car alleged to have been caused by the car striking an obstruction, a water-pipe, lying in Nicola road in the city of Merritt on December 26, 1912.

A. D. Macintyre, for the plaintiff.
M. L. Grimmett and *J. A. Maughan*, for defendant.

JUDGE SWANSON:—The plaintiff, who is an experienced motorist, was driving his motor car, a new six-cylinder, high-power De Winton No. 6, along the trunk road leading from Merritt to Coutlee. The road was in good condition, being slightly rutted and with a little mud on it. The plaintiff's car was lighted with powerful electric headlights, throwing a wide band of light across the road, and some 75 or 80 feet ahead of the car. The plaintiff is a resident of Merritt, and familiar with its roads. The municipal corporation had been laying iron pipes along Nicola road preparatory to installing a water supply system for the city. The water-pipes were unloaded a few days previously by a teamster, being thrown off his rig in the usual way to the side of the road, some of them to a distance of three feet from the travelled or metalled portion of the road. The water-pipe in question, which the plaintiff says his left hind wheel struck, was 18 to 22 inches from the metalled portion of the roadway, which was some nine feet in width and in good condition. The plaintiff says that after crossing the Nicola bridge he threw out his clutch and put on his brake, as there is a drop going down the approach to the bridge, and that he

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was going at only 7, 8 or 9 miles an hour when he struck the water-pipe, which lay diagonally to the roadway as shewn on sketch exhibit 1. The tire, a very large firestone non-skid tire, costing $119.50, he claims was gashed by the impact with the pipe, cutting through the inner tube, the metal rim of the left hind wheel striking the end of the pipe, and making a dint in it about one-half inch deep running back about four inches, leaving a bright shiny surface on pipe the size of a twenty-five-cent piece, and upending the pipe as the car passed over it. The pipe in question is twenty feet long, diameter six inches, about one-eighth of an inch in thickness, weighing about 180 pounds. The plaintiff's car was not registered and licensed as required by the Motor Vehicles Act, R.S.B.C. 1911, ch. 169, sec. 9. He says he did apply for a license for this car for 1912, a circumstance which is not borne out by the superintendent's letter, exhibit 2, and which I do not think is reasonable as he had only received the car on December 24, just seven days before the license would expire, even if it were possible to obtain the license at once. As the application in writing for a license has to be forwarded to the superintendent of police at Victoria, who has to issue the license, it would be just about possible to have the license issued at the same time as it would by effluxion of time expire. At any rate plaintiff had no license for the car at the time of the accident, nor do I believe his statement that he endeavoured to procure a license for the year 1912.

Section 9 of the Motor Vehicles Act says:—

> No person shall have, drive or use a motor on or along any highway, unless such motor has been registered and licensed pursuant to this Act, etc.

It is claimed by the counsel for the municipality that as the plaintiff had no license for the car at the time of the accident the plaintiff was running his car in contravention of the statute, in other words that he was making an unlawful use of the highway, and that he cannot recover for any injury to his car arising from any defect in the highway. At the trial I was inclined to think that this did not disentitle the plaintiff to recover, as the statute should be very explicit to take away a person's common law right of passing and repassing along the King's highway. But on further consideration I must hold that the objection is fatal to the plaintiff's action.

Does this section make the use of the highway under the circumstances an unlawful one?

It is to be noted that the prohibition is against the use of the motor which is not registered and licensed. The object of the statute is to place motors on a different footing from that of ordinary vehicles. The point is a new one as far as I have been able to investigate the matter. "The Court is bound in the administration of the law to consider every act to be unlawful,

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which the law has prohibited to be done": *Cannan* v. *Brice*, 3 B. & Ald. 179, Best, J.; *Bensley* v. *Bignold*, 5 B. & Ald. 335. It is true that a statute may impose a penalty for a special and limited purpose only as for the protection of the revenue without intending any further prohibition. I do not think, however, that the sole or indeed the principal reason in the statute for requiring registration and licensing of motors is to secure revenue. There is, I think, a peculiar significance in the fact that the motor must be registered. To secure registration under sec. 11 the applicant must sign an application form which contains full particulars as to the make of the car, and as to the garage or place where the car is kept, with the name in full of the owner, the applicant. When a license is issued, sec. 25 of the Act requires that the motor shall have attached at the back the number of the license, the figures being four inches in height and displayed in a conspicuous place at the back. And now by a more stringent provision of the amending Act of 1913 a specially designed number plate must be displayed on the front and one at the back of the car. The object of such provisions is clearly for the benefit of the public. In the event of the law being violated the offender can be readily identified by the number on his car and brought to justice. The motor car whilst not an outlaw on the highway is yet without doubt a very dangerous machine unless under very careful control. The statute, containing as it does some drastic provisions affecting one's common law rights and especially so in the matter of the burden of proof, is clearly framed with an eye to the protection of the public, and the question of revenue is I think merely incidental in the Act. Such a provision as sec. 9 is therefore on a very different footing from such a provision as sec. 8 of the Trades Licenses Act, which prohibits one from engaging in certain trades or occupations without having taken out a license under penalty for such an offence. To succeed in such an action as this for damages against a municipality the person using the highway must be lawfully using it. See Biggar's Municipal Manual (1900), p. 833. Sir Wm. Ritchie, C.J., in *Town of Portland* v. *Griffith* (a case in which the plaintiff failed), 11 Can. S.C.R. 333 at 338, says: "It is quite clear from this that the plaintiff was not walking or passing along the street nor in the language of the second count travelling thereon, nor in the language of the third count lawfully using the street in the way streets are provided to be kept in repair, namely, for the passing to and fro of citizens and subjects." It has been held that if cattle are not allowed by law to run at large upon the highway the owner cannot recover damages for injuries to them caused by a defect in the road, for the reason that the cattle are not lawfully upon the highway. See Judge Denton's treatise on "Municipal Negligence respecting Highways," p. 45.

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Falconbridge, J., held in *Ricketts* v. *Village of Markdale*, 31 O.R. 180, that a child using a highway merely for the purpose of play is putting it to an improper use, and cannot recover for injuries while so using it due to obstructions on the highway. This decision was reversed by the Divisional Court, 31 O.R. 610. Chancellor Boyd at p. 615 says:—

> In the matters foregoing there may be regulations or there may be restrictions according to local requirements, but the permission to be on the streets is assumed unless the particular by-law prohibits. So as to children: a child who is found begging or wandering about at late hours in any street may be taken in charge by the constable: ch. 259, sec. 7. And children are not to be in the streets at night-fall if the municipality enacts the curfew-bell by-law. So it is recognized that children are in the habit of riding behind waggons, etc., and that they amuse themselves by coasting or tobogganning on the streets. I deduce the conclusion that children may play on the highways when there is no prohibitory local law, and where their presence is not prejudicial to the ordinary user of the street for traffic and passage.

The inference from the learned Chancellor's words is that if there were a curfew-bell by-law in force in the municipality in question, and if the child was playing on the highway during the prohibited hours when it was injured there would have been no cause of action against the municipality, as under such circumstances the child would be making an unlawful use of the highway. I think this is the principle which I must apply in dealing with sec. 9 in question. See also *Harrison* v. *Duke of Rutland*, 62 L.J.Q.B. 117, where the Court of Appeal held the plaintiff a trespasser on the highway and accordingly disentitled to recover from the defendant. Similarly there is no right to race on the highway, and one doing so is making an unlawful use of the highway and cannot recover for injuries incurred through defects in the highway. See Halsbury's Laws of England, vol. 16, par. 16, and foot-notes; *Dovaston* v. *Payne*, Smith's Leading Cases (11th ed.), vol. 2, p. 160.

The question of non-feasance does not I think arise here. If the municipality is liable at all it is for misfeasance in placing the water-pipe in the position it was in at the time of the accident. But under the circumstances I am unable to say that the municipality is guilty of misfeasance. The obstruction was not on the metalled or travelled portion of the road, but from 18 to 22 inches away from it. In *Tait* v. *New Westminster*, 18 W.L.R. 470, Judge Howay held the municipality liable for injuries to the plaintiff's car through collision with a water-pipe which projected a foot at least into the travelled portion of the highway. In the case at bar the travelled portion of the highway was in good repair and there was no occasion for the plaintiff to leave it. The evidence shews that the plaintiff after

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crossing the bridge "straddled the ruts," as it was put, having his left hand wheels some 18 or 20 inches off the travelled way, and went in a straight line from the bridge, and hit the pipe. The curve in the road I find to be 15 or more feet beyond the place of accident. However, I do not think the plaintiff was obliged by law to keep strictly on the travelled way, the ordinary route of travel, as the "public right extends over the whole width of the highway and not merely over the *via trita*": Smith's Leading Cases, vol. 2, p. 166. Crompton, J., in *R.* v. *U. K. Electric Telegraph Co.* (1862), 31 L.J.M.C. 166, approves of the direction to the jury of the trial Judge, Martin, B.:

> The public are entitled to the use of the entire of it as a highway (between fences) and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers: Beven on Negligence, 3rd ed., pp. 356-7.

The plaintiff had powerful electric headlights which he says threw a band of light 75 or 80 feet in front of his car. I must draw the inference from the evidence that he saw the pipes strewn along the side of the highway, or should have seen them, including the pipe in question, if he had been keeping a proper lookout. The defendant municipality in placing the pipes along the roadway was doing a lawful thing, and doing it, I think, in a reasonably careful manner. I do not find as a fact any negligence in the municipality. In determining whether a highway is in repair it is necessary to take into account the nature of the country, the character of its roads, the care usually exercised by municipalities in reference to such roads, the season of the year, the nature and extent of travel, the place of the accident and the manner and nature of the accident: Harrison, C.J., in *Castor* v. *Tp. of Uxbridge* (1876), 39 U.C.R. 113 at 122. See also similar observations by Armour, C.J., in *Foley* v. *Tp. of East Flamborough* (1898), 29 O.R. 139 at 141. The road in question is practically a country road running between Merritt and Coutlee. It is in an outlying portion of Merritt and only a fair amount of travel passes over it, being in quite a different category from that of a road in a populous city. Under the circumstances I think the road in question was kept in a proper and reasonable state of repair. The municipality is not an insurer against accidents upon its highways. Its duty is discharged by making its streets reasonably safe.

> Traffic on the highway cannot be conducted without exposing those whose persons and property are near it to some inevitable risk, and those who go upon the highway may well be held to do so subject to their taking upon themselves the risk of injury from that inevitable danger: Blackburn, J., in *Fletcher* v. *Rylands* (1866), L.R. 1 Ex. 265 at 286.

As to obstructions on highways some of which have been held to make municipalities responsible and others not, see Denton, Municipal Negligence, pp. 76 to 82.

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I find as a fact (which I think is a reasonable and proper inference from the evidence) that the plaintiff was guilty of contributory negligence in driving his car at an excessive rate of speed. There was no one present at the time of the accident except the plaintiff. He says he was going at from seven to nine miles an hour. I am unable to accept that testimony as conclusive of the rate of speed as I am fully of the opinion that if he were going at that slow speed, with his powerful lights he must have seen the pipe in due time, and would be easily able to avoid it if he were exercising reasonable care. The extraordinary nature of the accident, especially the injury to the pipe, seems to me entirely incompatible with such evidence. I do not think that such a serious dint in the water-pipe, which was described by one of the witnesses, Mr. Gordon, as if it had been hit with a sledge, could have been made by the car hitting it and passing over it at such a slow speed as alleged by the plaintiff. I think the nature of the injury to the tire and to the water-pipe, and the fact that the pipe was upended and went down with a ringing sound, as described by the plaintiff, are only compatible with the inference, which I draw from these facts, that the car was being driven at an excessive rate of speed. The speed at which a vehicle is being driven is material to the question of liability: Halsbury, vol. 21, p. 413. Apart therefore from the consideration of the effect of the non-compliance with sec. 9 of the Motor Vehicles Act in my opinion the plaintiff has contributed to his own injury and has accordingly lost his right of action.

There will be judgment for the defendant municipality, dismissing the plaintiff's action with costs.

Judgment for defendants.

IMPETT v. IVES.

Yale County Court, British Columbia, Judge Swanson. May 17, 1913.

BROKERS (§ II B—12)—*Real estate agents—Sufficiency of services.*]—Action to recover $325 commission on the sale of a fruit farm at Penticton by plaintiff for defendant.

Clayton, for plaintiff.
Tunbridge, for defendant.

JUDGE SWANSON:—I find that it was in consequence of the efforts put forth by the plaintiff through himself and his go-between Docker that Ferrier was brought into the relationship with defendant of purchaser and vendor. In the view I take of it the plaintiff succeeded in finding a purchaser for the