The appeal was heard by Moss, C.J.O., Garrow, Maclaren, and Magee, JJ.A.

F. E. Hodgins, K.C., for the appellants.

J. H. Rodd, for the respondent.

Moss, C.J.O.:—The award in this matter appears to me to be quite in conformity with the facts and the law.

Through the action of the council, by means of the by-law in question, the claimant has been deprived of one most important means of access to and from her premises, the existence of which was a material factor in their value. The injury which she sustains in consequence is not one which she suffers in common with the general public. On the contrary, it appears that a special value attached to the premises by reason of their proximity to or relative positions with the highway—part of Tecumseh road—which has been closed up.

The case of Re Shragge and City of Winnipeg, 15 W.L.R. 96, to which we were referred by counsel for the corporation, was decided upon its own special facts and circumstances. The learned Chief Justice who rendered the decision in that case was of opinion that it fell within the rule declared in The King v. McArthur, 34 S.C.R. 570. Here the facts bring the case within the line of cases referred to by the learned Chief Justice of the Exchequer, as well as many others which have been determined in our own Courts.

The appeal fails and should be dismissed with costs.

Magee, J.A., gave reasons in writing for the same conclusion. He cited Chamberlain v. West End, etc., R.W. Co., 2 B. & S. 617; Metropolitan Board of Works v. McCarthy, L.R. 7 H.L. 243; The King v. McCarthy, 34 S.C.R. 570.

December 19th, 1910.

Re CITY OF STRATFORD AND TOWNSHIPS OF SOUTH EASTHOPE AND DOWNIE.

Municipal Corporations—Drainage—New Drain to Empty into Old Drain—Sufficiency of Outlet—Evidence—Report of Engineer — Reversal by Drainage Referee — Restoration by Court of Appeal—Assessment for Outlet Liability.

Appeal by the Corporation of the Township of South Easthope from the judgment of the Drainage Referee setting aside the report of John Roger, an engineer, made under the provi-