poses with these purposes may be rejected by a simple majority vote.

Held, also, that an application under sec. 35 may be rejected by the council, although no formal by-law relating to the purposes of the application is before the council, and the meeting at which the rejection takes place has not been called for the special purpose of considering such a by-law.

Per MACLENNAN, J.A. *Quære*, whether a township comes within the Act.

Decision of BOYD, C., reversed.

Moss, Q.C., and *D. J. McIntyre*, for the appellants.

Hudspeth, Q.C., and *Watson*, for the respondents.

[Dec. 22, 1888.

Re CLARK AND THE CORPORATION OF THE TOWNSHIP OF HOWARD.

Municipal corporations — Drainage Acts—By-law for repair of old drain—Assessing land benefited.

On the 21st September, 1868, a by-law was passed by the Township Council under the provisions of the Municipal Act of 1866 (29 & 30 Vic., c. 51, ss. 261, 282) for the construction of (among other drains) the M. drain, and the drain was thereupon constructed. On the 11th December, 1883, the Township Council passed a by-law for repairing and cleaning this drain, and directed that the amount required for this purpose should be assessed and levied on the lands assessed for the original construction of the drain. On the 21st September, 1886, another by-law was passed to change, in accordance with the report of an engineer, the assessment made for the original construction of the M. drain, so as to enable the assessment for repairing and cleaning the drain to be made more equitably, and the assessment for repairing the drain was adopted. This assessment for repairing and cleaning the drain was limited to the lands assessed for the original construction of the drain, although the engineer in his report pointed out that large tracts of land not assessed for the original construction of the drain were now benefited by it.

Held, that the provisions of the Act of 1869 (32 Vict., c. 45, s. 17), as to maintenance and repair (now R.S.O., c. 184, s. 583 (1), are not retroactive, and do not apply to drains constructed before the date of that enactment, and that therefore the Township Council had no power to pass the by-law in question.

Decision of ROBERTSON, J., affirmed on other grounds.

Pegley and *Mills*, for the appellants.

Wilson, for the respondents.

[Dec. 22, 1888.

THE CORPORATION OF THE TOWNSHIP OF NOTTAWASAGA *v.* THE HAMILTON AND NORTH-WESTERN RAILWAY COMPANY.

Railways—Agreement to erect and establish stations—Admissibility of oral representations to vary written agreement—Res adjudicata.

By agreement bearing date the 19th day of May, 1873, the defendants, in consideration of a bonus of $300,000 granted to them by a section of the county of Simcoe, of which the township of Nottawasaga forms a part, covenanted with the plaintiffs to (among other things) "erect, build and complete good and sufficient and suitable station buildings for passengers and freight," at five certain places within the township; to "establish at each of the places hereinbefore mentioned regular way stations;" and to "well and sufficiently keep and maintain the said five stations above mentioned with all such suitable, necessary and proper buildings as the business done, or capable of being done, at the said stations respectively may require for seven years after the trains shall have commenced to run on the said road, and (to) undertake to do the passenger and freight business of the county at said stations."

By a further agreement, bearing date the 25th day of May, 1878, the defendants, in consideration of a bonus of $20,000 granted to them by the plaintiffs, covenanted with the plaintiffs to "erect, build and complete good and sufficient and suitable station buildings for passengers and freight on the line of the said railway at the several places following in the said township"—the places being specified—and to "establish at each of such places regular way stations." This agreement provided that the route of the line of the railway through the township, as defined in the former agreement, might be deviated from to such an extent as to admit of the stations