

SECOND DIVISIONAL COURT.

DECEMBER 23RD, 1918.

*RE LABUTE AND TOWNSHIP OF TILBURY NORTH.

Municipal Corporations—Drainage—Complaint of Ratepayer to Council as to Condition of Existing Drain—Resolution of Council Requiring Engineer to Make a Survey of the Drain and Report—Adoption of Survey and Report—By-law Passed to Carry Report into Effect—Report Going beyond Repair of Drain—Ratification by Council—Municipal Drainage Act, R.S.O. 1914 ch. 198, secs. 75, 77.

An appeal by the township corporation from an order of the Drainage Referee quashing a drainage by-law passed by the township council on the 8th May, 1918.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

J. H. Rodd, for the appellant corporation.

O. L. Lewis, K.C., for Claude Labute, a land-owner affected by the drainage scheme, upon whose application the order appealed from was made, the respondent.

RIDDELL, J., read a judgment in which he said that at a meeting of the township council on the 17th September, 1917, one Holland complained of the bad state of repair of the Macklem creek drain and asked the council to have it repaired. The council instructed the clerk to write to an engineer named Newman to make a survey of the drain and report. This engineer made a survey and reported to the council on the 16th February, 1918, a scheme for new work and new assessments; his report was adopted by the council, and the by-law in question was passed to carry it into effect.

The Referee's order quashing the by-law proceeded on the ground that the resolution authorised the engineer simply to report a scheme to repair the drain—it did not give him authority to vary the assessments or treat the work as a new work. The Referee followed his own decision in *Gibson v. West Luther* (1911), 20 O.W.R. 405.

Assuming that that case was good law, it did not apply here. There was no specific instruction to the engineer to report on the repair of the drain. The resolution was "to make a survey of the same," i.e., of the drain, "and report." The council had the right to require a report of the most extensive character without any petition or complaint from any one (Municipal Drainage Act,