

exercise in regard to the adoption, rejection or modification of the report of a surveyor appointed under sec. 569 to examine the locality and make plans, etc., and if the report is adopted the Council is liable for the consequences following from any defect therein.

*Held* also, that the Council, by the manner in which the drainage work was executed, was guilty of a breach of the duty imposed on it by sec. 583 of the act, to preserve, maintain and keep in repair such work after its construction.

The work having been constructed under sec. 583 of the act, C. was not entitled to a mandamus to compel the municipality to make necessary repairs to preserve and maintain the same, the notice required by that section not having been given. If the work had been done under sec. 586 notice would not have been necessary.

*Per* Strong and Gwynne, JJ.—C. was not entitled to the statutory mandamus, but it could be granted under the Ont. Jud. Act (R. S. O. 1887, c. 44).

*Held*, also, that though sec. 583 makes notice a necessary preliminary to the liability of the municipality to pecuniary damage suffered by a person whose land is injuriously affected by neglect or refusal to repair, the want of such notice did not divest C. of his right of action nor affect the damages awarded to him.

Appeal allowed with costs and judgment of

Ferguson, J., restored, except as to mandamus.

*Christopher Robinson, Q.C., & Douglas, Q.C., for appellants.*

*Wilson, Q.C., for respondents.*

British Columbia.]

June 28, 1892.

CAMERON V. HARPER.

*Executor—Action against—Legacy—Trust—Claim on assets—Charge on realty.*

T. H. and his brother were partners in business, and the latter having died, T. H. became by will his executor and residuary legatee. A legacy was left by the will to E. H., part of which was paid and judgment recovered against the executor for the balance. T. H. having encumbered both his own share of the property and that devised to him, one of his creditors, and a mortgagee of the property, obtained judgment against him and procured the appointment of receivers of his estate. E. H. then