

FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

***SPRATT v. TOWNSHIP OF GLOUCESTER.**

Municipal Corporations—Drainage—Construction of Works—Statutory Authority—Injury to Land—Action—Remedy by Proceedings for Compensation—Municipal Drainage Act, sec. 98—Municipal Act, secs. 325, 326 (1)—Limitation of Actions—Raising Level of Road—Closing of Culvert—Depth and Width of Drain Exceeding Provision of By-law—Effect of—Remedy.

Appeal by the plaintiff from the judgment of the Drainage Referee dismissing an action to recover damages for injury caused by the flooding of the plaintiff's land, alleged to have been caused by the construction by the defendants, the Municipal Corporation of the Township of Gloucester, of certain drainage works. The action was referred to the Drainage Referee.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

F. B. Proctor, for the appellant.

F. H. Chrysler, K.C., for the defendants, respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that all of the works, the effect of which, as the appellant contended, was injuriously to affect his land, were constructed under statutory authority, and no action lay for the recovery of any damages resulting from their construction. Corporation of Raleigh v. Williams, [1893] A.C. 540, was conclusive as to this, and also as to the only remedy of a land-owner whose lands had been so affected being to seek compensation under the statutory provision which is now, though somewhat changed in form, sec. 98 of the Municipal Drainage Act, R.S.O. 1914 ch. 198, and what is now sec. 325 of the Municipal Act, R.S.O. 1914 ch. 192; and any such claim is now barred by sec. 326 (1) of the latter Act.

Another question was, whether the claim of the appellant based upon the raising of the level of the base-line road and the closing up of a culvert, which at one time passed under it, was maintainable.

The ground upon which counsel rested this claim was, that, assuming that the respondents had the right to raise the level of the road, even if the raising of it had the effect of preventing the surface-waters that would otherwise have escaped across the road from taking that course, they had no right to bring down waters from the upper lands by means of their drains and to place what was in effect a dam upon the roadway, and thereby prevent