

## COURT OF APPEAL.

JUNE 28TH, 1912.

TOWNSHIP OF ORFORD v. TOWNSHIP OF ALD-  
BOROUGH.

3 O. W. N. 1517, O. L. R.

*Drains—Outlet Liability—Municipal By-law—Jurisdiction of Town-  
ship Council—Municipal Drainage Act, s. 3, s-s. 3, 4, s. 77.*

COURT OF APPEAL held, (*per* GARROW, J.A.), that s. 77 of the Municipal Drainage Act as to "repairing upon report" covers the repair and improvement of an existing drainage system with an insufficient outlet and that such work can be initiated by report without petition.

Effect of 6 Edw. VII. c. 37, s. 9, upon the decisions of *Sutherland Innes v. Romney*, 30 S. C. R. 495; *Orford v. Howard*, 27 A. R. 223 and *Rochester v. Mersea*, 2 O. L. R. 435, discussed.

That where an unimportant natural watercourse becomes incorporated in an artificial drainage system, it loses its identity and adjoining lands lose their immunity from liability for up-keep.

*Re Elma v. Wallace*, 2 O. W. R. 198, and *McGillivray v. Lochiel*, 8 O. L. R. 446, distinguished.

Appeal from judgment and report of Drainage Referee dismissed with costs.

An appeal by the township of Orford from a judgment of the Drainage Referee, dismissing with costs an application to set aside a by-law passed under the provisions of The Municipal Drainage Act, and based upon the report of G. A. McCribbon, O.L.S., assessing and charging the sum of \$3,225, against the lands and roads in the township of Orford in respect of a proposed drainage work in a natural creek or watercourse, known as Kintyre creek, in the township of Aldborough.

The appeal to the Court of Appeal was heard by HON. SIR CHARLES MOSS, C.J.O., HON. MR. JUSTICE GARROW. HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, and HON. MR. JUSTICE MAGEE.

M. Wilson, K.C., for the appellants.

C. St. Clair Leitch, for the respondent.

HON. MR. JUSTICE GARROW:—The facts are very fully set out in the judgment of the learned Referee, in the course of which he said:—

"Dealing with the question of whether or not the old outlet of the Pool drain is sufficient, I am satisfied as the