

Reports and Notes of Cases.

Province of Ontario

SUPREME COURT—APPELLATE DIVISION.

Full Court.]

[49 D.L.R. 476.]

HUDSON & HARDY v. TOWNSHIP OF BIDDULPH.

Statutes—Claim against township for injury to sheep—Dog Tax and sheep Protection Act, R.S.O. 1914, c. 246—Act repealed by 8 Geo. V. c. 46—Cause of action arising before repeal—Effect of repeal—Damage assessed by corporation—Application for mandatory order to award—Appeal.

The repeal of a statute does not affect the rights of complainants which arose before such repeal, but the prerogative writ of mandamus cannot be awarded in an action to enforce the rights in question. On a proper application the complainants are entitled to a mandamus to the members of the Township Council ordering them to make the necessary inquiry and award under the statute (R.S.O. 1914, c. 246, s. 18.)

[*Rich v. Moncton Board of Health* (1912), 2 D.L.R. 866; *Eastview Public School Board v. Township of Gloucester* (1917), 40 D.L.R. 707, referred to.]

T. G. Meredith, K.C. and W. R. Meredith, for appellants.

J. McEvoy for respondents.

ANNOTATION FROM 49 D.L.R.

Mandamus.

By A. D. ARMOUR, of the Ontario Bar.

Before the present Rules of Practice and Procedure came into force, a writ of mandamus might be obtained in either of three ways:—(1) The High Prerogative Writ, granted only upon motion made in Court; (2) By Statutory Writ, granted summarily on motion under R.S.O. 1877, c. 52, s. 17, and later under former Rules 1091-1093, and (3) Under R.S.O. 1877, c. 52, s. 4, and later under former Rules 1081 and 1082, in any action. The first mentioned form of writ was described by Lord Mansfield in *Re v. Barker* (1762), 1 Wm. Bl. 352, 96 E.R. 196, as "a prerogative writ, flowing from the King himself, sitting in this Court (King's Bench) superintending the police and preserving the peace of this country; and will be granted wherever a man is entitled to an office or a function and there is no other adequate legal remedy for it." The writ issued out of the King's Bench Division as a matter of the Sovereign's grace and discretion when the applicant had a right to