

engineer should be procured recommending a plan to be adopted for carrying out the drainage scheme, which the council had been petitioned to undertake: and the decision proceeded upon the ground that as the council acting in good faith had accepted the engineer's plan and carried it out, persons whose property was injuriously affected by the construction of the drainage work must seek their remedy in the manner prescribed by the statute.

In the case at bar the work was not done under a by-law and the appellant corporation was not required as a preliminary to doing the work to have a plan prepared by an engineer. The engineer employed was but the agent of the corporation and for his acts it is as responsible as if the work had been done without the intervention of an engineer.

The appeal must be dismissed with costs.

HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS agreed.

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HON. MR. JUSTICE MIDDLETON.

JUNE 27TH, 1913.

MCPHERSON v. FERGUSON.

4 O. W. N. 1564.

*Land Titles—Action for Possession — Purchase from Sheriff—Defendant Mentally Incompetent—Judgment Reserved—Appointment of Guardian to be Made—1 Geo. V. c. 20.*

MIDDLETON, J., refused to give judgment in an action for possession of certain lands until a guardian or committee should be appointed for defendant who appeared in person and who was plainly mentally incompetent.

Action to recover possession of certain lands.

M. J. O'Reilly, K.C., for the plaintiff.

The defendant in person.

HON. MR. JUSTICE MIDDLETON:—This action came on before me at the sittings in Hamilton. I heard the evidence at length, and it is quite clear that no defence was disclosed.

The land in question was sold by the sheriff under a *fi. fa.*, and the plaintiff became the purchaser on the 16th of May, 1903. The defence upon the record is that prior to