

Held, also, by the majority of the Court, that the grant to plaintiff's husband was in fee simple, and he had such seizin that dower would attach.

Appeal dismissed with costs.

W. B. Ritchie, for appellants.

Drysdale, for respondents.

Ontario.]

June 28, 1892.

WILLIAMS V. TOWNSHIP OF RALEIGH.

Municipal Corporation—Exercise of Municipal Powers—Municipal Act (R. S. O. 1887) c. 184, ss. 483, 569, 583, 586—Drainage of flooded lands—Lands injuriously affected—Remedy—Arbitration—Mandamus—Notice.

Certain lands in the Township of Raleigh were drained by what were called The Raleigh Plains drain and Government Drain No. 1. The rate-payers petitioned for further drainage under the Mun. Act (R. S. O. 1887, c. 184), and a surveyor was directed, under sec. 569 of the act, to examine the locality, make plans and report if and how the drainage could be effected. In pursuance of his report the municipality caused a number of drains to be constructed leading into the Raleigh drain and Government Drain No. 1, with the result that the additional volume of water proved too great for the capacity of the latter, which overflowed and flooded the adjoining lands of C., who brought an action for the damage thereby occasioned. The matter was referred to a County Court judge who reported the facts in favor of C., and against the contentions of the municipality, and estimated the damages at \$850. Ferguson, J., affirmed this finding and also ordered a mandamus to issue under sec. 583 of the act. The Court of Appeal reversed this decision, holding that the only remedy for the damage to C.'s land was by arbitration under the statute, and that he was not entitled to a mandamus.

Held, reversing the judgment of the Court of Appeal, that the right infringed by the municipality being a common law right and not one created by the statute, S. was not deprived of his right of action by sec. 483 of the act, which provides for the determination by arbitration of a claim for compensation for lands injuriously affected by the exercise of municipal powers.

Held, further, that the Municipal Council had a discretion to