

his promise was subsequent to his employment and without consideration. It was held by all the Judges, trial and appellate, that it was at least contemporaneous, and, he having undertaken the work and having done it negligently, with damage resulting to the plaintiffs, the principle of *Coggs v. Bernard*, 2 Ld. Raym. 999, applied, and the defendant was liable.

Here the agency was denied by the statement of defence, in the reasons of appeal, and in the argument before us. . . . The only agency of the defendant as regards the plaintiffs that I can find in the evidence is the undertaking to forward to the insurance company in Toronto the application which the plaintiffs had signed; and this he fully performed.

According to the evidence, the defendant did not claim to be an insurance expert; and it is abundantly clear that the plaintiffs did not deal with him as such, or even rely upon his opinion in any way. . . .

Having come to the conclusion that there was no agency or undertaking on the part of the defendant towards the plaintiffs, as alleged by the latter, and no breach of duty and no actionable negligence, it becomes unnecessary to consider the second question, as to the propriety of the settlement made by the plaintiffs with the insurance company, or indeed anything subsequent to the forwarding of the application by the defendant to the company.

Appeal allowed with costs, and action dismissed with costs.

MEREDITH, J.A., was of the same opinion, for reasons stated in writing.

OSLER, J.A., was also of the same opinion, for reasons to be stated in writing.

Moss, C.J.O., and GARROW, J.A., concurred.

DECEMBER 31ST, 1909.

RE TOWNSHIP OF DOVER AND TOWNSHIP OF CHATHAM.

Municipal Corporations—Drainage Scheme—Municipal Drainage Act, sec. 75—Petition—Necessity for—Alteration of Outlets—Original Assessments, Interference with—Necessity for By-law—Compliance with sec. 5—Consent of Railway Company—Dominion Railway Act, secs. 250, 251.

Appeal by the Corporation of the Township of Dover from the judgment of a Drainage Referee affirming the report of an engineer