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COURT OF APPEAL.

DECEMBER 22ND, 1911.

\*RE JOHNSTON AND TOWNSHIP OF TILBURY EAST.

*Municipal Corporations—Drainage—Township By-Law Authorising Raising of Money to Pay for Work already Done—Absence of Previous Report by Engineer—Work Done without Authority of By-law—Failure to Observe Directions of Municipal Drainage Act—Motion by Ratepayer to Quash By-law—Estoppel—Discretion.*

Appeal by James Johnston from an order of the Drainage Referee dismissing the appellant's application to quash a by-law passed by the township council.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

O. L. Lewis, K.C., and W. E. Gundy, for James Johnston, the appellant.

M. Wilson, K.C., and J. G. Kerr, for the Municipal Corporation of the Township of Tilbury East, the respondents.

GARROW, J.A.:—The by-law was finally passed on the 26th September, 1910, and was intituled "a by-law for the repair and maintenance of the Forbes drainage works in the township of Tilbury East, and for borrowing on the credit of the municipality the sum of \$7,599 for completing the same." The by-law, however, as its numerous recitals shew, was not intended to provide for doing any work under it, but solely for the purpose of recouping the respondents in respect of work already done and paid for by them, under the circumstances hereafter appearing. . . .

\*To be reported in the Ontario Law Reports.