nor should it be the misfortune alone, of the defendant. He is not responsible for the plaintiffs' delay in bringing the action, and is only defending himself as best he can against claims, many of them stale, which he contends are unfounded, a contention which, to judge by the largely reduced amount allowed by the Master, was not without support.

It is also unfortunate for the plaintiffs' case upon the item in question that the fact of the leaves missing from the letter-book synchronises so completely with the absence from their letter files of any letter from Mr. Murphy reporting what he had done at Ottawa. Such a letter must, as Mr. C. J. McCarthy seemed to think, have been written. And, if produced, it would have told the tale, either in support or in condemnation of what the defendant has sworn.

Anglin, J., was of the opinion that the instructions to Mr. Murphy did not authorise him to make the agreement. It is not necessary expressly to dissent upon this point, agreeing as I do with that learned Judge in his other conclusions. If, however, it had become important, I would, I think, have reached a different conclusion upon that point. I am at present unable, under all the circumstances, to read the exceedingly extensive powers, "the widest powers" they are called, conferred upon Mr. Murphy, as restricted in the way they seemed to be to Anglin, J. But it would serve no useful purpose to pursue this view further at present.

The appeal should, in my opinion, be allowed, with costs here and in the Divisional Court, and the order of Anglin, J., restored.

MOSS, C.J.O. MACLAREN, J.A., and SUTHERLAND, J., concurred; SUTHERLAND, J., giving reasons in writing.

MEREDITH, J.A., dissented, for reasons stated in writing. He agreed with the decision of the Divisional Court.

MARCH 8TH, 1911.

McLAUGHLAN v. TOWNSHIP OF PLYMPTON.

Municipal Corporations — Drainage — Repair of Old Drain — Agreement with Land-owner—Injury to Land—Trespass —Leave and License—By-law—Sufficiency of Outlet.

Appeal by the plaintiff from the report of the Drainage Referee.