

without a jury at London on the 8th and 9th October, 1912, in favour of plaintiff for \$700 damages and costs.

The reasons for judgment are fully reported in (1913), 23 O. W. R. 974.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

J. C. Elliott, for appellant.

P. H. Bartlett (Scandrett), for respondents.

HON. SIR WM. MEREDITH, C.J.O.:—The learned trial Judge found that the work which was done by the appellant corporation and which, according to the contention of the respondent, caused damage to his land was defective in that the road was not carried to a sufficient height east of the cover, and that the ditch on the north side of the road, which the corporation constructed, led the water to the east and caused the two breaks in the road between the cove and the hill through which the water came which caused the damage to the respondent.

There was evidence to support these findings, and therefore to fix the appellant corporation with liability for the damage caused to the respondent's land.

There was evidence also, we think, to warrant a finding that the appellant corporation stopped up a water course which crossed the highway through which the waters at flood time passed, and that the result of this was to cause an accumulation of the waters to be penned back and ultimately to break through the embankment and cause damage to the respondent's land, and that was an actionable wrong.

The appellant's counsel argued that as a competent engineer was employed to design the works which it constructed, and they acted on his advice, no action lay, but that the respondent's remedy was to seek compensation under the municipal Act, and in support of his contention counsel cited and relied on *Williams v. Raleigh*, 1893, A. C. 540.

That case is clearly distinguishable. The work in question was a drainage work, and was constructed under the authority of a by-law of the council. It was a preliminary requisite to the passing of the by-law that a report of an