

G. S. Kerr, K.C., and G. C. Thompson, for the plaintiff.
W. T. Evans, and S. H. Slater, for the defendant.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—No by-law was passed by the township authorizing defendant to do the work complained of. There was not even an agreement duly signed, or executed between defendant and the township. There was only what was termed a meeting of council, on the ground when a verbal resolution was put, and declared to be carried.

The action is not against the township, and the arbitration clauses of the Municipal Act, have no application.

Plaintiff has suffered, and will suffer damage by deprivation of access, and injury to fruit trees by excessive drainage.

But (especially in view of the fact that plaintiff's fence seems to be 23 or more feet on the road allowance) I think the question of damage, if any, should form the subject of a reference to the Master.

Some witnesses swore that the value of plaintiff's property, has been enhanced by what defendant has done.

Judgment for plaintiff with an injunction restraining defendant from further excavating, or removing earth.

All questions of costs, and further directions, reserved until after Master's Report.

Thirty days' stay.