

Per BURTON, J.A. : That there was no power of withdrawal, and that in any event the question whether there had been withdrawal or not was for the council.

Per OSLER and MACLENNAN, JJ.A. : That there was a power of withdrawal, but that the plaintiff was estopped from maintaining the action, his conduct having been such as to induce the council to believe that their jurisdiction was not contested.

Judgment of the Queen's Bench Division reversed.

Idington, Q.C., for the appellant.

J. B. Rankin for the respondent.

From C.P. Div.]

[June 30.

COUNTY OF LINCOLN *v.* CITY OF ST. CATHARINES.

Municipal corporations—Road.

Under the legislation relating to the Queenston and Grimsby Road and the city of St. Catharines, that city is not liable to pay to the county of Lincoln any part of the expenditure of the latter in connection with that road.

Judgment of the Common Pleas Division affirmed.

S. H. Blake, Q.C., and J. C. Rykert for the appellants.

Aylesworth, Q.C., and F. W. Macdonald for the respondents.

HIGH COURT OF JUSTICE.

Practice.

Court of Appeal.]

[June 30.

RATLE *v.* BOOTH.

Reference—O.J.A., s. 101—Assessment of damages—Discretion—Appeal.

The right of the trial judge to refer the question of damages, as a question arising in the action, under s. 101 of the Judicature Act, is indisputable, at all events as a matter of discretion, and subject to review; and it is for the party objecting to the reference to show that the discretion has been wrongly exercised.

And where, in an action for damages for injury to the plaintiff's land on the bank of a navigable river, and to his business as a boatman, by the acts of the three several defendants, who owned sawmills higher up on the stream, in throwing refuse into it, it appeared that the plaintiff's title to relief and the liability of the defendants had been established in a former action, and the trial judge heard the case only so far as to satisfy himself that the plaintiff had established a *prima facie* case on the question of damages, and directed a reference to assess and apportion them among the defendants, reserving further directions and costs;

Held, that there was no miscarriage, and the discretion of the trial judge should not be overruled.

McCarthy, Q.C., and A. F. Sinclair for the appellants.

Moss, Q.C., for the respondent.