and did not operate as an accord and satisfaction.

Decision of the Queen's Bench Division affirmed.

Robinson, Q.C., and *Bigelow* for the appellant.

Osler, Q.C., for the respondent.

IN THE MATTER OF ROBERTSON AND THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF NORTH EASTHOPE.

Municipal corporations — Drainage by-law — Petitioners for — R.S.O., c. 194, ss. 292, 293, and 569.

A petition of landowners under 46 Vict. c. 18, s. 570 (R.S.O., c. 184, s. 569), for the construction of drainage works, must include a majority of all the persons found by the engineer to be benefited by the proposed works, and not merely a majority of the persons mentioned in the petition itself.

Unless the petition is signed by such majority the Council have no jurisdiction, and a by-law founded on a petition not signed by such majority is void, and cannot be upheld, even though valid on its face.

If the petition is not signed by such majority the opponents of the by-law are not restricted to the mode of objection given by ss. 292 and 293 of the Act of 1883 (R.S.O., c. 184, ss. 291 and 292), but are entitled to attack the validity of the by-law on this ground, by application to quash, even after an unsuccessful appeal to the Council.

Where a Council know that the majority have not signed, though no evidence to prove this fact is given by the opponents of the by-law, it is just as much their duty not to pass the by-law as if its insufficiency had been proved after the most elaborate investigation at the instance of persons opposed to it, and they have no right to impose upon the opponents of the by-law as a term for refusing to pass it, and any condition as to payment of expenses theretofore incurred.

The decision of STREET, J. (reported 15 O.R. 423) reversed.

Lash, Q.C., and *J. E Harding*, for the appellants.

Idington, Q.C. for the respondents.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Divisional Court.] [March 7.

LEWIS *v.* BRADY.

Assessment and taxes — Distress for taxes — Legal assessment — Delivery of roll to collector — Appointment of collector — Declaration of office — Demand of taxes — R.S.O., c. 193, ss. 12, 120, 132, 133.

The defendant, as collector of taxes of a village for the year 1886, on the 9th January, 1888, seized goods of the plaintiff as a distress for taxes assessed against the plaintiff upon the assessment roll for 1886. The plaintiff brought this action of replevin to recover the goods so seized.

(1) *Held*, upon the evidence, that it was not shewn that the plaintiff was not duly and legally assessed for the taxes in respect of which the distress was made.

(2) S. 120 of the Assessment Act, R.S.O., c. 193, provides that the clerk shall deliver the roll to the collector on or before the 1st day of October, or such other day as may be prescribed by a by-law of the local municipality; but no by-law was passed, and the roll for 1886 was not delivered by the clerk to the defendant until about the 1st of January, 1887.

Held, that the provisions of s. 120 were directory, and not imperative; and the omission to deliver the roll within the prescribed time had not the effect of preventing the collector from proceeding to collect the taxes mentioned in the roll as soon as it was delivered to him, or of rendering such proceedings invalid.

(3) S. 132 of the Act provides that every collector shall return his roll to the treasurer on or before 14th December in each year, or such day in the next year not later than 1st February, as the council may appoint; and s. 133 provides that in case the collector fails to collect the taxes by the day appointed, the council may by resolution authorize the collector or some other person in his stead to continue the levy and collection. On 12th December, 1886 (before