

RIDDELL, J.

DECEMBER 17TH, 1914.

*RE HARPER AND TOWNSHIP OF EAST FLAM-
BOROUGH.

Municipal Corporation—By-law—Motion to Quash—Approval of By-law by Railway and Municipal Board—Municipal Act, R.S.O. 1914 ch. 192, sec. 295 (4)—Subsequent Setting aside by Board—By-law Standing Approved when Notice of Motion to Quash Served—Estoppel.

Application by J. C. Harper to quash a by-law passed by the township council, the counterpart of the by-law in question in *Re Fowler and Village of Waterdown*, ante 309.

The motion was heard by RIDDELL, J., in the Weekly Court at Toronto.

J. G. Farmer, K.C., for the applicant.

W. T. Evans, for the township corporation.

RIDDELL, J.:—This is an application to quash a by-law of East Flamborough: the particulars are set out in the judgment of Mr. Justice Latchford in *Re Fowler and Village of Waterdown* (1914), ante 309.

The notice of motion to quash having been served, it was discovered that the by-law had been approved by the Ontario Railway and Municipal Board; and, when the motion came on before the Chancellor, he enlarged it that the applicant might apply to the Board to have the by-law set aside. He did so with effect, and the by-law was set aside accordingly. The motion came on before me; and on objection taken that the notice of motion was served when the by-law was inexpugnable by reason of the provisions of the Municipal Act, R.S.O. 1914 ch. 192, sec. 295 (4), I enlarged the argument that counsel might consider the point.

Argument was renewed and completed to-day.

The objection is, that, as the right of a plaintiff must be determined as of the teste of the writ: *Cornish v. Boles* (1914), 31 O.L.R. 505, 521; *Northern Electric and Manufacturing Co. Limited v. Cordova Mines Limited* (1914), 31 O.L.R. 21, 238, 243; so the rights of an applicant on such a motion as the present must be determined as of the day of the service of

*To be reported in the Ontario Law Reports.