

MUNICIPAL DEPARTMENT

LEGAL DECISIONS AFFECTING MUNICIPALITIES.

TOWNSHIP OF WIGLE VS. GOSFIELD.—The Court of Appeal, composed of Justices Moss, Osler, MacLennan, Garrow and MacLaren, at Osgoode Hall, Toronto, recently gave judgment in this case, which has been in the courts for the past seven or eight years. The facts of the Wigle Creek cases are as follows:—On the first of June, 1897, eight actions were brought against the township of Gosfield South claiming damages caused by No. 47 Tap Drain, constructed by Gosfield Township before its division into Gosfield North and Gosfield South, and claiming a mandamus to compel the township to construct a proper outlet to Tap Drain No. 47 and an injunction restraining the township from throwing water upon the plaintiffs' lands. Prideau Wigle and Mary H. Rae brought their actions in the High Court of Justice and Philip Wigle, Jonas Wigle, Alvin Wigle, Joshua Adams, E. A. Pulford and Theodore Wigle sued in the County Court of Essex. The whole eight actions were referred for trial to Thomas Hodgins, K.C., then Drainage Referee, who tried them on different dates running from March, 1898, to April, 1900. By his judgment he awarded Prideau Wigle \$400; Mary H. Rae \$300; Philip Wigle

\$40; Jonas Wigle \$38.70; Alvin Wigle, \$102; Joshua Adams \$115; E. A. Pulford \$75, and Theodore Wigle \$70 together with costs of the actions, all to be paid out of the general funds of Gosfield South. Gosfield South appealed from the judgment of Mr. Hodgins to the Court of Appeal, which gave judgment on the 2nd of March, 1901, holding that Gosfield North was a necessary party to the action and referring it back to the Referee to add Gosfield North and to proceed with the reference. Gosfield North was added according to the judgment and the cases came on again for hearing before Mr. Rankin, K.C., who had succeeded Mr. Hodgins as Drainage Referee, and Mr. Rankin, after hearing the further evidence submitted, gave judgment on the 30th of August, 1902, by which he increased the damages in some instances and in addition decided that the plaintiffs were entitled to an injunction to restrain both townships from continuing the damage to the plaintiffs' land. Both townships appealed from Mr. Rankin's report and their appeal was heard by the Court of Appeal on the 29th of April, 1903. Judgment was given by the Court of Appeal on the 5th of January, 1904, whereby the Court holds that both townships are jointly liable for such damages as the plaintiffs are entitled to, but that the plaintiffs are not entitled to the damages claimed by the actions and are only entitled to the damages sustained for the two years prior to the 10th of September, 1901, when Gosfield North became a party to the actions. The Court decides that the plaintiffs are not entitled to any injunction against the

townships to prevent the use of the drain for their waters and refers the action back again to the Referee to ascertain the proper amount of damages payable. The parties are ordered to pay their own costs of the appeals. The Court recommends that the parties make an adjustment without the further intervention of the Referee.

OSBORNE VS. TOWN OF MIDLAND.—W. Lajdlaw, K. C., for plaintiff, appealed from judgment of Meredith, C.J., dated 17th June, 1903. The action was for damages and for an injunction enjoining the defendants from continuing a certain drain in its present condition. Drains had been put down by the defendants on King and Victoria streets, in the town of Midland. The plaintiff was a merchant, and his premises were drained by the drains so put down, and he alleged that when the drain was put down on Victoria street the joining with the one on King street was done in an improper manner, and resulted in the plaintiff's premises being flooded, causing considerable damage to goods stored in his cellar. The defendants denied that they were under any obligation to keep the drain in question in repair, and that the damage was caused by the plaintiff's own defective drainage connection, and also that the damage was caused by an extraordinary and excessive rainfall, against which the defendants could not be expected and are not bound to provide. Meredith, C.J., dismissed the action with costs. Finlayson, for defendants, opposed appeal. Appeal dismissed.

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