

The petition was referred to a civil engineer, who prepared a report, plans, specifications, and an assessment of the lands in the townships of Nepean, Goulbourne, March, and Huntley, and in the villages of Spotsville and Carp, which, in his opinion, would be benefited by the proposed work.

The corporations of the townships of Goulbourne and Huntley both appealed to the Drainage Referee, who dismissed Huntley's appeal, and in part allowed the other.

Huntley now appealed to the Court of Appeal.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

E. D. Armour, K.C., and W. J. Kidd, for the appellants.

F. B. Proctor and A. H. Armstrong, for the respondents.

The judgment of the Court was delivered by GARROW, J.A., who, after setting out the facts, said:—The river as it is, with its slight fall, is no longer efficient to carry away and dispose of the waters which, by nature, and artificially by means of drains, come to it, without backing up and overflowing, and thereby causing injury to the low lands up stream in Huntley and March. The drainage area to the east in the township of Huntley is very narrow and of little consequence, but to the west the land slopes for several miles towards the river, which is the natural outlet for the drainage of the last mentioned area, either directly or by means of several smaller streams or watercourses which, passing through the area, empty into the river. These streams . . . have sufficient fall and current to carry to the river the drainage waters which, by means of the various drains which have been constructed along their several courses, fall into them, and no difficulty arises until the river is reached.

Acting upon the impression that the drainage, directly and through the medium of these streams, is not carried to a sufficient or satisfactory outlet, the engineer assessed the lands in the last-mentioned area using these streams for their immediate outlet, for outlet liability, while other low lands in the township were also assessed for benefit.

The real difficulty in the case grows out of the circumstances of the lands so assessed for outlet, the contention being that, as they are comparatively high lands, they have already a sufficient outlet, and do not need and will not use the proposed new outlet.