ment was pronounced after the expiration of more than thirty days from the hearing, contrary to the provisions of sec. 48 of the Act.

This motion was heard by MEREDITH, C.J.C.P., in Chambers, on the 18th November, 1910.

H. S. White, for the applicants.

W. Proudfoot, K.C., for Rowland.

MEREDITH, C.J., was of opinion, as to the first objection, that the judgment or order of the 28th September should be treated as a nullity. He expressed no opinion with regard to the second objection, as to which the argument for the respondent was that the apportionment should be made by the clerk under sec. 55 of the Municipal Drainage Act.

The third objection was based upon sec. 48 of the Act, which is: "At the Court so holden the Judge shall hear the appeal, and may adjourn the hearing from time to time, but shall deliver judgment not later than thirty days after the hearing."

Speaking of this, the learned Chief Justice said:—

It is, perhaps, difficult, in view of the decisions, to be absolutely sure of what the proper construction of the statute is. The strongest case that can be invoked in favour of the motion is In re Township of Nottawasaga and County of Simcoe, a decision of the Court of Appeal, reported in 4 O.L.R. 1. The question there arose upon a provision of the Assessment Act . . . that "the judgment . . . shall not be deferred beyond the 1st day of August next after such appeal." It was held that compliance with that provision was imperative, and that after the 1st August the County Court Judge was functus. . . . Then . . . there is the case . . . more applicable to the case in hand . . . Re McFarlane v. Miller, 26 O.R. 516, where the question arose upon the Ditches and Watercourses Act, and the language of the provision under consideration (sub-sec. 6 of sec. 22 of 57 Vict. ch. 55) was: "It shall be the duty of the Judge to hear and determine the appeal . . . within two months after receiving notice. . . ." It was held that that was not an imperative provision having the effect of making the Judge functus after the expiry of the two months. . . .

[The Chief Justice then referred to the words of sec. 48, now under consideration.]

I think these words are directory only. . . . The provision ought to be treated as directory only, if the language used permits, when the consequence of treating it as imperative would be that, owing to no fault of the appellant, by the inaction of the