

Stonehouse drain in the townships of Plympton, Enniskillen and the village of Wyoming.

The by-law set out the report of the engineer of the corporation of Plympton, wherein he recommended the work to be done, and assessed the costs in different proportions against the three corporations respectively. In his said report he spoke throughout of the drain as constituting all one drain, whereas it consisted of at least two drains built at different times and for different purposes.

Held, that the by-law must be quashed.

Held, also, that the persons affected were entitled to have the engineer's judgment when assessing them, upon the true state of facts, because he might have assessed the lands of one of the three townships lower had he made his estimate upon the basis that the drain in it was not a part of the original system, but was itself a separate original drain, designed to carry off only the natural soakage, and not the volume brought upon it at times by the drain in another of the three townships, and the same applied to the council who had to act upon his report.

Aylesworth, Q.C., and *Shaunessy*, for the plaintiff.

Shepley, Q.C., and *Cowan*, for the defendants.

STREET, J.]

[May 7.]

IN RE DAVIS TRUSTS.

Trustee—Removal—Summary application.

The Court has no power upon a summary petition, or otherwise than in an action, to remove a trustee in invitum.

D. Macdonald, for the petitioner.

G. G. S. Lindsey, for the trustee.

Province of Nova Scotia.

SUPREME COURT.

EN BANC.]

[May 18.]

MCSWEENEY v. REEVES.

Meaning of "Effectually prosecute appeal"—Appeal being dismissed the judgment below revives—Amendment of order for judgment by C.C.J.

Plaintiff having recovered judgment in the County Court against S., the latter appealed and furnished a bond with defendants as sureties, as provided by Acts, 1889, ch. 9, sec. 45. It was conditioned "that if the said S. shall effectually prosecute his said appeal and respond, the judgment to be finally given thereon, then, etc., etc." On appeal the same was dismissed, and an order was taken that the appeal be dismissed and that S. pay the costs thereof. S. paid the costs but not the judgment affirmed. Plaintiff now brought action against the bondsmen, defendants.