

local assessment or to prevent drainage to any lands or roads it is deemed expedient to change the course of such drainage work or make a new outlet for the whole or any part of the work or otherwise improve, extend, or alter the work," the council . . . may undertake the work.

These words are very large, but not too large for the accomplishment of the very desirable purpose aimed at by the Legislature, and they should not in my opinion be narrowed by the construction for which the appellant contends.

The remaining objection, of the insufficiency of the proposed outlet, is a question of fact depending upon the evidence, and was determined against the appellant by the learned Referee. The learned Referee in the course of his judgment points out the importance in this case of a personal inspection which he had made. Whether or not his conclusion upon this objection was affected by the inspection does not, I think, appear, but however that may be, while the finding is not in some respects entirely satisfactory, I am not convinced that it is erroneous. And I reach this conclusion with the less regret because the objection does not appear in the written notice of objections served by the appellant which contains some 13 other objections. If it had, it is quite possible that further and more satisfactory explanations would have been forthcoming.

Upon the whole, the appeal in my opinion fails, and should be dismissed with costs.

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HON. MR. JUSTICE BRITTON.

JUNE 28TH, 1912.

MOSIER v. RIGNEY.

3 O. W. N. 1564.

*Will—Testamentary Capacity—Absence of Undue Influence—Proof of Will in Solemn Form in Surrogate Court—Action in High Court.*

BRITTON, J., dismissed action without costs to set aside a will made by testator a few hours before his death on ground of want of testamentary capacity.

An action to set aside the will of the late John Bowman, tried at Kingston without a jury.

J. A. Hutcheson, K.C., for the plaintiff.

J. L. Whiting, K.C., for the defendants.