completed in March, 1902, but he contends that this permanent dam was responsible for the flood's duration for an additional week in that year. Held, that plaintiff has failed to prove that the permanent dam was a factor either in causing or prolonging the flooding of his lands in 1902, the trial Judge finds that defendants have established that the temporary dam was built and maintained by the contractor for the purpose of making the Severn River navigable from Sparrow Lake down to Ragged Rapids, in order to enable him to bring in his supplies and materials more cheaply and more expeditiously, and could serve no other purpose, and that the temporary dam's proximity to the main dam was merely accidental. Held, further, that the temporary dam cannot be regarded as part of the undertaking itself, which the municipality obtained statutory authority to construct. It was not part of that which the contractor was employed to erect. For these reasons the trial Judge holds that plaintiff has failed to establish any liability of defendants for the injuries which plaintiff sustained in 1900 and 1901. As to the year 1902, however, the trial Judge holds that the situation was entirely changed, and that the defendants, and they alone, are responsible for the maintenance of the temporary dam in that year. Held, further, that if the temporary dam when it passed from the possession of the contractor into that of the defendants, did not so change its character as to become part of the works which the statute authorized and empowered them to construct, even if the temporary dam should be held to be part of the undertaking authorized by the statute, its maintenance would only be lawful if without injury to others. Held, that, for the foregoing reasons judgment should be entered for plaintiff for $75 for damages sustained in the year 1902. Prior to its transfer to High Court, plaintiff to be entitled to costs of this action upon the District Court tariff. Subsequent to such transfer, having regard to all the circumstances, especially to the fact that upon the determination of the questions involved in this action the rights of a number of other parties depend, plaintiff to have his general costs on the High Court scale, except the costs incurred in his unsuccessful attempt to prove that the main dam caused or contributed to the injuries in respect of which this action was brought. Saunders v. Toronto (1899), 26 A.R. 276; Penny v. Wimbledon (1899), 2 Q.B. 72; (1898), 2 Q.B. 212; London v. Truman (1885), 11 A.C. 45; Hammersmith v. Brand (1868), 1 L.R., 4 H.R. 171; C. P. R. Co. v. Ray; (1902) A.C., 535, 545, and Managers of Metropolitan Asylums v. Hill (1881), 6 A.C., 203, referred to.

WIGLE v. TOWNSHIP OF GOSFIELD SOUTH.

Appeal From Judgment of Referee—Compensation for Injury to Land by Water—Limitation of Action for Damages—Injunction.

Judgment on appeals by defendants, the corporation of the Township of Gosfield South and the corporation of the Township of Gosfield North from the judgment of the drainage referee, awarding plaintiffs compensation for injurious affection of lands by the diversion of water by a drain. Held, that the damages awarded are such as are to be borne jointly by defendants. At the time when the drainage works were constructed there was no power in the municipality to provide for compensation to the owners for injuries of the nature complained of, but that has now been provided for by 2 Edw. VII., chapter 32. The damages are not to be put on the basis of lands taken, in which case there would be compensation once for all, but the injury is in its nature recurrent, and such as that successive actions or claims for the damages sustained from time to time may be brought. As to the limitation, the case is governed by section 93, as introduced into The Drainage Act by Edw. VII., chapter 30, section 4, inasmuch as the proceeding is to be deemed as taken on 10th September, 1901, when Gosfield North became answerable in these proceedings by submitting to the service upon them and appearing to defend, and the claim can only extend to injury or damage suffered within two years next before that date. The award of damages made by the referee cannot stand, for it is made upon evidence of injuries sustained during more than six years preceding the inquiry. No attempt was made to distinguish the damages which occurred in the last two years, and it is impossible to do so upon the evidence as it is. The matter to be referred back to the referee. No costs to any party of either of the appeals. It would not be proper to award an injunction against the continuance of the drain, and the facts do not support a present claim for any other injunction. The parties ought to make an adjustment without the intervention of the referee.

BIGGART v. TOWN OF CLINTON.

Injury from Defective Sidewalk—Failure to Give Notice of Accident—Lack of Reasonable Excuse.

Judgment in action tried without a jury at Goderich. Action to recover damages for injuries sustained by falling on the sidewalk on Victoria street, owing, it is alleged, to the negligence of defendants in permitting the sidewalk to become in a defective and dangerous condition. No notice of the accident was given to defendants until the 5th of July, 1902. One excuse offered by the plaintiff for not giving notice in time was that until she consulted her solicitor on the 5th of July, she was not aware that any notice was necessary. The other excuse was that when her son had fallen some time before and was injured she had gone to the council and had got nothing, and she did not "feel like" going to the council again. Held, that there was no reasonable excuse, within 3 Edw. VII., chapter 18, section 130, sub-section 5, for not giving the notice. No notoriety was given to the accident which happened to plaintiff, and the defendants had no knowledge of it. Action dismissed, but without costs.

BURYING GROUND CANNOT BE LEGALLY SOLD FOR TAXES.

An action was recently brought by Col. W. W. White of Guelph to recover damages for trespass to part of lot 65 on the west side of Edward street, Arthur. The plaintiff purchased the lot for taxes. The defendant has taken gravel from it at the instance of the trustees of St. Andrews church, Arthur. Gravel was valued at about $80.00

The church trustees were also parties defending the case. They counter claimed, asking that the plaintiff's deed be set aside on the ground that it was void. One of the principal objections to the plaintiff's tax deed was, that the land was a burying ground formerly attached to the Free Church, in Arthur, and could not therefore be assessed or sold for taxes.

County Judge Chadwick delivered judgment holding that the land was a burying ground and deciding that such it was exempt from taxation and that the tax sale was void He, therefore, set aside the tax deed and directed judgment to be entered for the defendant and for the church trustees dismissing the plaintiff's action with costs to be paid by the plaintiff both to the defendant Connery and to the church trustees.

The electors of Seaforth recently carried by a majority of three a by-law authorizing the issuing of debentures to the amount of $19,000 for the purpose of purchasing the electric lighting plant in that town.