

therefore, the landlord is not entitled to any priority, but must, in respect of his debt, rank ratably with the other unsecured creditors.

Appeal allowed with costs.

CLUTE, J.A., agreed, stating reasons in writing, and referring to *Tew v. Traders Bank of Canada*, 19 O. L. R. 74.

MACLAREN, J.A., also agreed.

DIVISIONAL COURT.

DECEMBER 15TH, 1909.

MANDLEY v. TOWNSHIP OF MONCK.

Municipal Corporations — Ditches and Watercourses—Construction of Road Ditches by Corporation—Liability for Flooding Lands in Neighbourhood — Ditches and Watercourses Act — Award of Township Engineer—Jurisdiction—Damages.

Appeal by the plaintiff from the judgment of BRITTON, J., 14 O. W. R. 65, dismissing the main part of the plaintiff's claim in an action brought to have it declared that certain awards made under the Ditches and Watercourses Act were null and void, and for damages for wrongfully causing water to be discharged upon the plaintiff's premises; for an injunction restraining the defendants from continuing to flood the plaintiff's land; and for a mandamus requiring the defendants to construct a ditch to carry the water to a proper outlet.

BRITTON, J., gave judgment for the plaintiff for \$40 without costs.

The appeal was heard by MULOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

O. M. Arnold, for the plaintiff.

A. Mahaffy, K.C., for the defendants.

The judgment of the Court was delivered by CLUTE, J., who, after setting out the facts, said that the evidence was quite sufficient to support the findings of the trial Judge; and proceeded:—

Although the plaintiff initiated the proceedings for both awards, and did not appeal therefrom or apply for reconsideration or to have the same enforced, he seeks now to disregard the provisions of the Ditches and Watercourses Act, and all that has been done thereunder, and brings this action for the relief which he might have sought under the Act. I am of opinion that he cannot do so. . . .