

HON. MR. JUSTICE SUTHERLAND.

JANUARY 24TH, 1913.

MARTIN v. MIDDLESEX COUNTY.

4 O. W. N. 682.

Water and Watercourses—Improvement of Highway—Closing of Cove—Injury to Plaintiff's Land by Flooding—Defective Work—Action—Arbitration—Amount of Damages.

SUTHERLAND, J., gave judgment for plaintiff for \$700 and costs, in an action against a municipal corporation for damages to plaintiff's lands, by reason of the closing up of a natural watercourse and the neglect to provide sufficient other means for the escape of the water in the spring freshets, whereby plaintiff's lands were overflowed and seriously injured.

Action for damage to plaintiff's lands caused by defendants' negligence.

P. H. Bartlett, for the plaintiff.

J. C. Elliott and W. D. Moss, for the defendants.

HON. MR. JUSTICE SUTHERLAND:—Under and in pursuance of 7 Edw. VII. ch. 16, "An Act for the Improvement of Public Highways," the municipal corporation of the county of Middlesex passed a by-law No. 601, dated the 6th December, 1907, under which they designated certain roads as those to be assumed as of April 1st, 1908, and improved in that county, and amongst others, "the highway known as the 5th concession of the township of London." No other by-law as to the work in question was passed.

The plaintiff is the owner of the north-east part of lot No. 1 in the 4th concession of the said township, containing 50 acres, lying to the south of said road.

In and prior to the year 1907 there had been a wooden bridge spanning the river Thames in the line of the said highway or road, at a point a little west of the westerly line of the plaintiff's land. The road, up to that time, was apparently not a very good one, and was simply raised a little above the level of the lands on either side thereof which were low-lying as they approached the east end of the bridge.

On the north side of the road and opposite the westerly portion of the plaintiff's land there was a considerable tract of such low-lying land, through which a couple of water courses had been formed by the waters of the river when they overflowed its banks in spring freshets, and which commenced near the easterly bank of the river, some distance north of the