

BOYD, C.]

[Oct. 23.]

FITZGERALD v. CITY OF OTTAWA.

*Municipal corporations—Drainage—Added territory—Old drain—Liability for overflow.*

When the plaintiff's land was part of a township, he and his neighbours had, with the permission of the township authorities, constructed a box drain in the highway to carry surface water therefrom. After the locality had become part of the defendants' territory, this drain collapsed, and the earth covering it acted as a dam, which penned back the water upon the plaintiff's land. The defendants' engineer then made a cut which carried away the water for a time. This, however, became filled up, and the water again came on the plaintiff's land. He notified the defendants, but they did not remedy the matter until after substantial injury was done.

*Held*, that they were liable.

*Held* for the plaintiff.

*O'Gara, Q.C.*, for the defendants.

ARMOUR, C.J., and STREET, J.]

Nov. 27.

REGINA v. MADDEN AND BOWERMAN.

*Criminal law—Evidence—Statement of prisoner in previous proceeding—Privilege—56 Vict., c. 31, s. 5 (D.).*

Crown case reserved.

The prisoners were indicted under s. 394 of the Criminal Code for a conspiracy to defraud. Upon their trial, evidence was offered by the Crown, and received, of a statement made by one of the defendants upon oath, in a prosecution before a magistrate in which this defendant was the complainant and gave evidence on his own behalf. The statement was made upon cross-examination of this defendant in the proceedings before the magistrate.

The question submitted for the opinion of the court was whether evidence of the statement was properly received, having regard to s. 5 of 56 Vict., c. 31 (D.), an Act respecting witnesses and evidence, which provides: "No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence."

*Held*, that, as the defendant did not, so far as the case showed, assert his privilege before the magistrate, the evidence was receivable.

*J. R. Cartwright, Q.C.*, for the Crown.

*George Wilkie* for the prisoners.