

SECOND DIVISIONAL COURT.

MARCH 19TH, 1919.

## \*SIMPKIN AND MAY v. TOWN OF ENGLEHART.

*Municipal Corporations—By-law—Water Supply of Town—Public Utilities Act, secs. 9, 26, 27, 45—Municipal Act, secs. 399 (70), (72) — Ratepayers — “Consumers” — Drawing Water from Hydrants in Streets.*

Appeal by the defendants from the judgment of LOGIE, J., 15 O.W.N. 398.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, LATCHFORD, and MIDDLETON, JJ.

J. M. Ferguson, for the appellants.

R. T. Harding, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., delivering the judgment of the Court at the conclusion of the hearing, said that, in the interests of public health, the law permitted the municipality to require that all ratepayers, tenants and occupants, residing in the limits of the corporation should use for drinking and domestic purposes the water supplied by the corporation and no other; and the municipality did so, by by-law, providing also for the punishment of any contravention of such by-law.

The plaintiffs admittedly came within the provisions of the by-law.

The municipality also required by by-law, as they had power to do, that all consumers of water not directly abutting water mains or services should pay certain low water rates, and that all persons abutting the water mains or services should pay a higher rate.

The plaintiffs were persons not “directly abutting water mains or services,” and were rated as such.

But they said that they were not “consumers” and so could not be rated.

The by-law, however, compelled them to be consumers: they were by law “compelled to ‘use’ . . . the water supplied by the corporation,” and no other; and so were plainly intended to be included in the word “consumers,” whether they actually consumed much or little or none. They were in the eye of the law consumers, and could not escape from paying for their rights in this public benefit, by setting up that they were offenders against the law: if in truth they really were.

The case was not one in which it would be practically impossible for the plaintiffs to obey the law; if it were, rates would not be imposed until the water should be brought near enough to be used as the law required.

The appeal should be allowed and the action dismissed.