

while the bill or the resolution on which it was founded was before the House which is not allowable.

*Robinson, Q.C., Osler, Q.C., and H. Symons* for the plaintiff.

*F. E. Hodgins* for the defendant.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ROYD, C.

[Oct. 13.]

IN RE STEPHENS AND TOWNSHIP OF MOORE.

*Municipal corporations—Drain constructed out of general funds—Maintenance and repair—Assessment of lands benefited—By-law—Petition—55 Vict., c. 42, ss. 569, 586—Complaints as to assessment—Court of Revision—Notice—Service—S. 571 (2)—Irregularities—Lands “to be benefited”—Policy of drainage legislation—Interference by court.*

A township council has power under s. 586 (2) of the Consolidated Municipal Act, 55 Vict., c. 42, to maintain and repair a beneficial drain, originally constructed out of general funds, at the expense of the local territory benefited, by passing a by-law to that effect without a petition therefor.

And although such a by-law referred to lots “to be benefited,” and so appeared to contemplate prospective advantages, it did not bring the work within the category of drains to be constructed under s. 569 of the Act.

Application to quash the by-law in question being made by several persons, who among them owned one of the lots assessed, alleging that they were not benefited by the original drain and could not be by its continuance and repair, and that the amount charged against their lot was not duly apportioned among them;

*Held*, that they should have applied to the Court of Revision for relief; and not having done so, and the work having all been done and the benefit of it enjoyed, this court would not interfere to declare the by-law invalid.

*Held*, also, having regard to s. 571 (2), that the applicants had sufficient notice of the by-law, service having been effected upon a grown-up person at the house where they all lived as members of one family.

*Held*, also, that upon this application the court would not inquire what other persons were not served who were not seeking relief, nor consider irregularities or errors in the assessment of such others.

It appeared on the face of the by-law that the drain in question was an old one, constructed out of general funds, and out of repair; and although the assessment was referred to as on the property “to be benefited,” yet the same clause spoke of it as “upon the property benefited”;

*Held*, that the by-law was not bad in its face.