Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Vanderlip vs. the Township of Grantham.

We are indebted to Mr. L. S. Bessey, clerk of the township of Grantham, for the following report of this case:

This case was tried at the Lincoln assizes on the 29th inst., by Chief Justice Falconbridge, without a jury. Mr. Brennan, County Crown Attorney, appeared for the plaintiff. J. C. Rykert, K. C., appeared for the defendants.

The plaintiff claimed damages to the amount of $2,000, and costs and compensation, for injury to his land (lot 5 in 4th concession of Grantham), and for the loss of his crops, owing to the defendants permitting a large body of water to find its way to his land from the southern side of the township, instead of having the greater portion taken in another direction. There is, and has been for the last forty years or more, a deep ditch on the east side of plaintiff's f rm, extending from the Niagara stone road, northerly to part of plaintiff's farm, through which it crosses by a channel, to the north end of his lot, and thence to the eight-mile creek. The water, prior to the purchase by the plaintiff of his farm, had worn away to a considerable extent the said ditch and it encroached upon the farm now owned by the plaintiff. When the plaintiff purchased the land ten years ago, he was aware that the ditch had been widened and insisted upon the owner allowing him an extra quantity of la d at the north end of his farm in lieu of that taken by the ditch, which was done. The plaintiff failed to show in his evidence that his farm was really damaged by the water coming from the south and the value of the crops destroyed did not exceed $20 during the twelve years.

The defendants' council contended :

1. That the original owner of the land from whom the plain iff purchased, consented to, and in part assisted in having the ditch made alongside of and through the farm.

2. That the plaintiff purchased with full knowledge of the fa t that the water naturally flowed in the direction of ditch.

3. That no greater quantity of water was brought down the ditch (or natural water course) than usual.

4. That there was no negligence on the part of the defendants or their officials shown.

5. That the damage to the plaintiff's farm or his crops was not appreciable, and quoted the case of Turner vs. the County of York lately tried before Mr. Justice MacMahon in Toronto.

6. That, as a matter of fact, the officials of the township had actually diverted a large quantity of water in other directions, both earth and water which originally found its way down the natural water course or channel through the plaintiff's land.

His lordship dismissed the action with costs.

Township of Warwick vs. Township of Brooke.

Judgment on appeal by defendants from judgment of the drainage referee, setting aside a report of defendant's engineer upon the construction of the McDonald or Flat Creek Drain. It was contended, inter alia, for appellants (1) that the referee in computing the number of persons who had signed the petition for the drain erred in refusing to count certa n persons whose names were on the petition, who appeared by the last revised assessment roll, to be owners of lands benefited in the drainage area, because upon the evidence, outside the roll, they were not actual owners, but farmers' sons, and that such evidence should not have been received ; (2) that the roll for the year 1898, and not 1897, should have been used ; (3) that even if the petition was not sufficiently signed the work was a drainage work which defendants were authorized to carry out, under the Municipal Act, section 75. The court were unanimous in not differing from the view taken by the referee on the merits, and in thinking that there is much in the recent judgment of the supreme court of Canada, in Sutherland-Innes vs. Township of Romney, which would make it difficult to sustain the report of the engineer on which the defendants proposed to found their drainage by-law. Held, per Armour, C. J. O., that evidence was admissible to show that farmers' sons, not actual owners, who were not shown on the roll to be farmers' sons, but were shown to be owners, were, in truth, farmers' sons and not actual owners ; that having regard to the provisions of the Municipal Drainage Act, no person can be held to be an owner within that Act, unless he is seized of an estate in fee simple in the land of which he claims to be the owner. See per Strong, C. J. S. C., in McKillop vs. Logan, 29 S. C. R , 702, as to meaning of owner in the Ditches and Watercourses Act. The referee has power to so determine under sub-section 3, section 89 of the Drainage Act, and rightly received the evidence, and also that the petition having been received and acted on by the council of Brooke on June 13, 1898, and the roll for that year finally passed by the court of revision on May 30, 1898, such roll could not be said to be the last revised assessment roll under sub-section 11, section 2 of the Assessment Act, until the expiration of the time within which an appeal might be made to the county judge, and that time is five days from the date (July 1st in each year) limited for the final revision by the court of revision, and therefore in this case, the proper roll was that of 1897, not that of 1898, and also that the council did not profess to act of their own motion under section 75, but only on petition under section 3, and it cannot be assumed that they ever would have acted otherwise than by petition. Held, per Osler, J. A. (Moss and Lister, JJ. A., concurring) that up to the year 1874 the authority of a council to entertain a petition depended upon the fact of ownership of the lands by the petitioners and that the assessment roll was not the final test or conclusive of that fact. Review of the changes made from time to time since 1866 in the clause in question. Since the consolidation in 1877, however, the language of the clause (section 3 (1), R. S. O., chapter 226) has remained practically as it now is, and though it is clear beyond peradventure that the assessor neglected his duty in preparing the roll relied on as supporting the petition and by-law, putting in as owners, persons whose only rights were as farmers' sons, etc., yet he must be assumed to have done his duty, and these persons must be regarded as qualified petitioners, that is, owners, and not excluded as farmers' sons, and the assessment roll on which a council is required to act, if they act at all, is conclusive upon the question of the status of petitioners, and the referee erred in admitting the evidence. The legislature must have meant to give some effect to the assessment ro l by referring thereto in successive Acts from R. S. O., 1877, hitherto in uniform phraseology different from that which had been used in earlier Acts on the same subject. It is not unreasonable to hold that the legislature meant what it said, for opportunities of dealing with the question of ownership are afforded on appeals to the court of revision and to the county judge. An inquiry is not open in the case of farmers' sons any more than in the case of other persons. The section takes the roll as finally revised, and gives effect to it, and it is conclusive for the purpose of conferring jurisdiction upon a council to entertain a petition. Appeal dismissed with costs.

The county court case of Wm. I. Olmsted against the city of Hamilton for $200 damages for injuries received by being thrown from his bicycle through an alleged hole in the pavement on King street east was tried by Judge Snider. The defence attempted to prove that the accident occurred through a collision. The Judge gave judgment for the plaintiff for $100, and the city will try to hold the Kraemer-Irwin Paving Company liable for the amount under its contract with the city.