

The Master asked whether the provision in the will was valid, and if not, whether the applicant was entitled to be registered as owner free from the condition.

W. A. Skeans, for the applicant.

F. W. Harcourt, for infants interested.

BOYD, C.—In my opinion, the restriction attempted to be imposed by the testator on the power of alienation is void, but, owing to the contrary decision in *O'Sullivan v. Phelan*, 17 O. R. 730, effect can not be given to this judgment, and the question must be referred to a Divisional Court. I express no opinion as to whether or not the question is *res judicata*.

BOYD, C.

NOVEMBER 19TH, 1902.

TRIAL.

SWAYZIE v. TOWNSHIP OF MONTAGUE.

Municipal Corporation—Drainage—Flooding Private Lands—Culvert—Increase in Rapidity of Flow of Water—Cause of Action.

Action for damages to the plaintiff's land and crops by flooding, alleged by him to have been caused by the defendants making a junction of two drains, known as the Carroll and Guthrie drains.

BOYD, C.—There was in fact no junction. The only act of the defendants which could have given the plaintiff a right to recover against them was the putting in of a new culvert at a place where there had previously been a means of escape for water, and one was necessary. The water found its way from the Carroll drain into a swamp and thence into the Guthrie drain, and the only effect of the culvert was that, by increasing the rapidity, though not the volume, of the flow, the amount of water in the swamp was increased for a few days. As to the damage resulting from this increased rapidity of flow, there was no evidence. For any damage caused by the Guthrie drain the defendants were not liable.

Action dismissed with costs.