

CHALLONER v. THE TOWNSHIP OF LOBO AND
GEORGE OLIVER.

1901

*Nov. 7, 8,

1902

*Mar. 12.

*Drainage—Qualification of petitioner—“Last Revised Assessment Roll”—
R. S. O. (1897) ch. 226—Costs of non-appealing party.*

Judgment appealed from (1 Ont. L. R. 156, 292) affirmed.

APPEAL from the judgment of the Court of Appeal for Ontario (1) reversing the judgment of the trial court (2), and dismissing the plaintiff's action with costs.

The action was to restrain the corporation and their contractor from constructing a drain under authority of a by-law and, in the trial court, Meredith C. J. decided in favour of the plaintiff (2). On appeal by the corporation to the Court of Appeal for Ontario, this judgment was reversed (1), that court holding that the “last revised assessment roll” governing the status of petitioners in proceedings under the Drainage Act, was the roll in force at the time the petition was adopted by the municipal council and referred to the engineer for inquiry and report, and not the roll in force at the time that the by-law was finally passed.

* PRESENT:—Taschereau, Sedgewick, Girouard and Davies JJ.

[Mr. Justice Gwynne was present at the hearing but died before judgment was delivered.]

(1) 1 Ont. L. R. 156, 292.

(2) 32 O. R. 247.

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The contractor (Oliver) had been made a party to the appeal in the Court of Appeal for Ontario (1) and appeared at the hearing but did not himself appeal. On motion, subsequently made, the Court of Appeal for Ontario held (2), that the effect of allowing the appeal of the corporation with costs did not give the contractor any costs on such appeal.

The present appeal was by the plaintiff (Challoner), both defendants being made respondents.

Aylesworth K.C. for the appellant.

Shepley K.C. and *Macbeth* for the respondent, the Township of Lobo.

Burbidge for the respondent, Oliver.

After hearing counsel for the parties, the court reserved judgment and, on a subsequent day, dismissed the appeal with costs against the appellant in the issue before the Supreme Court of Canada with the corporation but without costs to the respondent Oliver.

The following reasons for judgment were delivered.

TASCHEREAU J.—This is an appeal from the judgments reported at pages 156 and 292 of the first volume of the Ontario Law Reports. The majority of the court are against the appellant. If the result had depended on my conclusions, I would have been inclined to adopt the view of the case taken by Meredith C.J. at the trial as reported (3). However, a dissent would not help the appellant.

The appeal is dismissed with costs against the appellant on the issue before this court with the Township of Lobo, but without costs in this court to the respondent Oliver.

(1) 1 Ont. L. R. 156.

(2) 1 Ont. L. R. 292.

(3) 32 O. R. 247.

SEDGEWICK, GIROUARD² and DAVIES JJ. were of opinion that the appeal should be dismissed for the reasons given by Mr. Justice Osler in the Court of Appeal for Ontario.

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Appeal dismissed with costs to respondent, the Township of Lobo, but without costs to respondent Oliver.

Solicitors for the appellant: *Meredith & Fisher.*

Solicitors for the Township of Lobo, respondent: *Macbeth & Macpherson.*

Solicitors for the respondent, Oliver: *Stuart, Ross & Bucke.*
