

# After Four Days Hearing Judgment Given in Action of Sheardown vs. Village

No Damages Allowed Plaintiff But Defendant Pays Court Costs

The case of John Sheardown vs. The Village of Richmond Hill was heard before Mr. Justice Godfrey last week and lasted from Monday afternoon until Friday noon. The proceedings were ended then when His Lordship intimated that the case never should have come to court and expressing the opinion that it should be settled without further evidence being given. No damages were allowed the plaintiff but the court costs were assessed to the village.

The members of Richmond Hill Municipal Council met in special session Tuesday evening and heard from the town solicitor, Mr. B. B. Jordan, an exhaustive review of the case and an explanation of the order of the court.

The claim of Mr. Sheardown, the Plaintiff, was that the Defendant Corporation had wrongfully allowed the waste water and other liquid substances originating from the Village sewage system to flow through an open ditch on his lands and brought action against the Corporation of the Village in the sum of \$5000.00 for damages and for an injunction restraining the Defendant Corporation from using the drain through the Plaintiff's lands.

The Defence of the Corporation was that this drain was a natural watercourse which had been in existence for a long time and that if Mr. Sheardown had suffered any damage he was the author of his own misfortune in allowing the watercourse to become blocked, and refused to permit the Corporation to enter upon his land and clean it out.

The Corporation also set up that if sewage was entering the watercourse it was not with its authority or permission.

Much evidence was taken on behalf of the Plaintiff to show that there never was a watercourse through his land and that it was only since about 1929 that a drain had existed which was dug out and man made. Previous to that time the Plaintiff never had any trouble as there was no ditch or watercourse on his land. Witnesses on behalf of the Plaintiff, gave evidence to establish the Plaintiff's contention that a watercourse had never existed and that water other than surface water was now reaching the land of the Plaintiff.

The case for the Defence commenced on Thursday and evidence was given to establish that a natural watercourse DID EXIST AND HAD EXISTED FOR AT LEAST 60 YEARS and that there had been a deep ditch through the Plaintiff's property for all that time in which the water had flowed during the years both previous to and following the Plaintiff's ownership of the lands until the Plaintiff had allowed it to become clogged and refused to permit the Defendant Corporation to enter on his land and clean the watercourse out.

The Defendant Corporation did not get an opportunity to call witnesses on other points because his Lordship intimated (after four full days of hearing evidence) that the case should not have come to Court and expressed his opinion that it should be settled without further evidence being given.

His Lordship considered, from the evidence given on behalf of the Plaintiff, that the Defendant Corporation was permitting sewage to reach the lands of the Plaintiff. The right to connect with the watercourse for purposes of disposing of wash water or any other fluid of the nature of sewage has never been granted to any citizen either by resolution of Council or By-law and if any person is permitting wash water or other fluids of a sewage nature to enter the water course it would appear to be without the consent or approval of the Municipal Council. However His Lordship did

not desire to hear further evidence so that part of the Defendant's case was not heard.

The Judgment of the Court was that the Plaintiff be granted an injunction restraining the Defendant Corporation from depositing water and sewage on the lands of the Plaintiff on the north side of Centre Street, Richmond Hill without making provision for the removal of said water and sewage from the said lands.

The injunction is to be held in abeyance for two months and during the two months the Defendant Corporation has the right to enter upon the lands of the Plaintiff and do whatever in their opinion is necessary to correct the difficulty.

The Plaintiff's claim for damages was not allowed and that part of his claim relating to the land on the south side of Centre Street was dismissed.

An injunction is an Order of the Court directing some person or persons to discontinue something that has been done or permitted, or to refrain from doing something that is contemplated.

By this case the Defendant Corporation has established that the watercourse is, and has been, a natural watercourse and has obtained the right, that is the Court's direction, to enter upon the lands of the Plaintiff and open the said watercourse and do what they consider necessary to rectify the situation which the Plaintiff complained of.

The Plaintiff was not allowed any damages for injury to his lands and buildings nor for the inconvenience which he claimed he suffered by reason of obnoxious odours and was directed by the Court to give every assistance in his power to the Defendant Corporation in their effort to correct the situation and not to again order the workmen of the Village off his land while they were employed in the work of opening the watercourse through his land and correcting the situation.

Although the case for the Defendant Corporation was only heard in part the Corporation has gained an important judgment namely — that a Natural Watercourse does exist and runs through the land of the Plaintiff which the Plaintiff must submit to and that the Plaintiff was not entitled to damages for any injuries which he claimed to have suffered.

The Costs of the Court are always in the discretion of the Judge and in this case His Lordship directed that the Court Costs be paid by the Corporation apparently considering that the Corporation was permitting sewage to enter the watercourse because it was set up in the Plaintiff's evidence that such a condition existed. If citizens had not illegally allowed wash water and other fluids other than surface water from cellar drains to enter the watercourse even Court costs might not have been allowed.

The Village Corporation of Richmond Hill passed a very important Bylaw in 1874 which is still in force and which authorizes the entrance into and inspection of "Any dwelling house, cellar, yard, vacant lot or premises," or "privy," "gutter, drain," and where anything is found to exist that the Health Officers may deem prejudicial to health at once to notify the party or parties who own or occupy the premises to remove the same and if it is not removed within 24 hours proceedings may be taken against the party or parties so offending.

The following is the complete judgment handed down in the case by His Lordship Justice Godfrey:

**JUDGMENT**  
By consent I direct Judgment be entered for the Plaintiff against the Defendant for an injunction restraining the Defendant from depositing water and sewage on the lands of the Plaintiff being part of Lot 338 on the north side of Centre Street in the Village of Richmond Hill without making provision for the removal of said water and sewage from the said lands.

This injunction is not to be effective for two months from this date and during said two months the Defendant shall have the right to enter upon said Plaintiff's lands and do such things and perform such works as in their opinion is necessary to abate the said nuisance.

The Defendant shall pay the Plaintiff's costs. The Balance of the Plaintiff's claim is dismissed without costs.

J. M. GODFREY.

## Social and Personal

Miss Edith Warwick of Toronto was the guest of Miss Follett on Sunday last.

Mr. William Mylks Jr. of Ottawa spent over the week-end with his parents, Mr. and Mrs. W. H. Mylks here.

Plan to attend the Afternoon Tea and Baking Sale to be held by St. Mary's Anglican Church W. A. on Saturday, Sept. 23rd in the church basement.

A meeting to discuss the forming of an orchestra and musical society was held in the Presbyterian Manse, Richmond Hill, last Tuesday evening. Mr. P. A. Drury presided. The next meeting will be held at the same place Friday, September 29th. All instrumentalists are welcome.

Miss Evelyn Follett has been in Mitchell this week speaking in the interests of the Woman's Missionary Society of the United Church.

### D. M. CHAMNEY NAMED SCHOOL TRUSTEE

At a meeting of the Richmond Hill public school board this week D. M. Chamney was appointed as trustee taking the place of the late Robert Endean.

### HUGGINS-FRISBY

At Oshawa, on Saturday, Sept. 16, 1939, by pastor R. C. Eastman of the Pentecostal Assembly, Beatrice Malena, only daughter of Mr. and Mrs. Alvin A. Frisby of Victoria Square to Mr. Elmer Clarence Huggins, Victoria Square, eldest son of Mrs. Arthur Butt of North Oshawa.

### HIGH SCHOOL FIELD DAY

The local High School is holding its annual Field Day Wednesday, Sept. 27th at the school grounds. The following Wednesday, Oct. 4, the North York field meet will also be held at the local campus. Contestants from the schools of Newmarket, Markham, Aurora and Richmond Hill will compete.

### NAME MORGAN BAKER TO GOOD ROADS BODY

Morgan Baker, M.P.P., for North York, was appointed as a member of the Toronto and York Good Roads commission at a meeting this week. He succeeds the late Senator Frank P. O'Connor.

The chairmanship, which was held by Senator O'Connor, will be taken over by Dave Spence, M.P. for Parkdale, formerly vice-chairman.

### NOTICE

The auction sale of the property of William J. Moses, advertised for Friday, Sept. 22nd, has been cancelled by order of the Commissioner for Agricultural Loans.

### CARD OF THANKS

Mr. C. J. Robeson desires to thank his many friends for fruit, flowers, letters, cards and kind inquiries during his illness in Brockville Hospital.

### WEDDING

#### MASON-DOUGLASS

Miss Helen Mary Douglass, daughter of Mrs. Douglass and the late Richard A. Douglass, of Toronto, and Dr. Walter J. Mason, son of Rev. Ralph S. Mason and Mrs. Mason, of Richmond Hill, were married last Saturday afternoon in St. Barnabas' church, Chester. The father of the bridegroom officiated, assisted by Rev. F. E. Powell, and Mr. Lovick was at the organ. W. B. Douglass gave his sister in marriage. She wore a jacket gown of linen blue velvet, made in bustle effect, with matching velvet hat, and carried a cascade of bouvardia, lily-of-the-valley and rubrum lilies. Miss Jean Howie, her attendant, wore a frock of ashes-of-roses taffeta with fuchsia velvet hat and carried fuchsia gladioli petals and rubrum lilies. Dr. Herbert S. Mason was groomsmen, and Dr. James Langstaff and John Millyard were ushers. The reception was held at the home of the bride's cousins, Mr. and Mrs. H. L. Steele, Elderwood drive. Mrs. Douglass was gowned in hyacinth blue lace, with royal blue felt hat and corsage of roses and pink bouvardia. Mrs. Mason wore navy blue velvet with matching hat. Mrs. Steele wore fir tree green with black hat, and each had a corsage of roses and bouvardia. On their return from the southern states the bride and bridegroom will live in Richmond Hill. The bride travelled in a queen's blue suit, mink-trimmed, and matching hat.

No official should be too much impressed by the cheers of the people. Look what they cheer in Europe.

## Victoria Square

Ting, Ting, Ting. How those bells do ring. Congratulations are in order for Ross Middleton now of Toronto, formerly of this town, also to Mr. and Mrs. Huggins (nee Beatrice Frisby). We wish for them all a long and happy wedded life.

All roads in this community lead to Victoria Square Hall on Saturday night. What for? Ask your next door neighbour, then come mother, father, son and daughter. Don't forget, ladies please provide lunch.

Mr. and Mrs. Rummey have left on a trip to Saskatchewan to visit Mrs. Rummey's sister. They will be gone about a month.

Don't forget the Mission Circle meeting at the home of Miss Bonnie Robertson on Friday evening, Sept. 22nd.

The executive of the Centre North Presbytery Y.P.U. met in Victoria Square church on Tuesday evening to make the final plans for our Schools of Methods, which commence on Tuesday evening, Sept. 26th at 8 o'clock in Trinity United Church, Newmarket. Let all who can possibly go, do so in the interest of our own local union.

Rally Sunday is supposed to be celebrated on Sunday, September 24. Let's go to Sunday School that day and get started early for the fall term.

Some folks in neighbouring communities are asking when is Victoria Square fowl supper. Perhaps we will be able to announce that later, but at present the date is unknown.

This community wish to express their sympathy to the family of the late Anthony Gardener in their loss of a father and husband.

Mr. and Mrs. Ernest Caseley attended the 100th anniversary services of Thornhill United Church last Sunday, Mr. Caseley's former home town.

Keep in mind the W.A. supper Friday evening, Sept. 29th. A good program is being prepared including a half hour play by our own local young people.

Last Sunday evening's program at the Y.P.U. proved to be a delightful meeting, the speaker of the evening being Miss Evelyn Follett of Richmond Hill. She spoke on the importance of signing your signature in the business world, and that it was just as important in the Christian world. We should be ready to make sacrifices, to enlist in the army of Christ. Miss Viola Avison is to be congratulated on securing such an interesting speaker.

Now that exhibition is over, we will be looking forward to the country fall fairs. Markham will be in two weeks time. Have you those Institute exhibits ready? Is there anything you could show individually? It is the effort of each blade of grass that makes the meadow green, so it is the effort of each individual that makes these little country fairs a success.

Miss Stella Heise of Grantham, Pennsylvania, was a week-end visitor of her father, Mr. Levi Heise.

Mr. and Mrs. Wilson Colby, Betty and Lloyd of Kitchener, Mrs. Broad, Blake and Arthur of Uxbridge were guests of Mr. and Mrs. Fred Fiegel last Sunday.

Sunday guests of Mr. and Mrs. Harry Bennett were Mr. and Mrs. William Chinnery, Jack and Jean of Yorkdowns Golf Club.

On Thursday Mrs. Troyer visited with Mrs. Margaret Haig.

Mr. and Mrs. Harold Mortson and Mrs. Annie, Gordon and Miss Ethel Mortson took tea with Mr. and Mrs. Herb Smith, Headford on Sunday evening.

Messrs. John and Ike Williamson have returned to Pickering College to take up their studies for another year.

We are glad to learn that Mrs. George Dennis who has been sick is feeling much better.

### WILLOWDALE

The opening of the Toronto Conservatory of Music Branch, at 53 Parkview, Willowdale, is creating considerable interest in this district.

This branch will be staffed with some of Toronto's finest teachers. Mr. Melecci, branch principal, will teach piano, organ and theory. Miss Olive Fenwick, successful local teacher will also teach piano. Miss Alison Sutcliffe from Metropolitan Opera Co. ballet will teach classical dancing for children. Phyllis Patterson, elocution; Mrs. Croskery, soloist, will teach vocal. Frank Blachford, violin. Luigi D'Urbane, world famous band master will teach all band instruments, with the intention of organizing a band in this community.

Mr. Melecci will be glad to advise anyone, at anytime, regarding their musical education.



## DANCE

Saturday, Sept. 23rd  
CEDAR BEACH GARDENS  
MUSSELMAN'S LAKE

Jack Crayford and his Orchestra featuring June Carr in the vocals

# ROYAL THEATRE AURORA

SHOWS START AT 8 p.m. & 10 p.m. SATURDAYS & HOLIDAYS  
7:30 & 9:30 DAYLIGHT SAVING TIME

TODAY, THURSDAY, SEPTEMBER 21  
LEW AYRES - LIONEL BARRYMORE - LARAINE DAY in  
"CALLING DOCTOR KILDARE"

Another interesting and well played chapter in the life of the young interne. Interesting and amusing, the human nature of the characters giving it a pleasant warmth.

FRIDAY & SATURDAY, SEPT. 22 - 23 TWO FEATURES  
TEX RITTER - HORACE MURPHY LOUISE MASSEY in  
"WHERE THE BUFFALO ROAM"

A Western melodrama with songs  
MELVYN DOUGLAS - LOUISE PLATT in  
"TELL NO TALES"

A swiftly paced suspenseful mystery melodrama

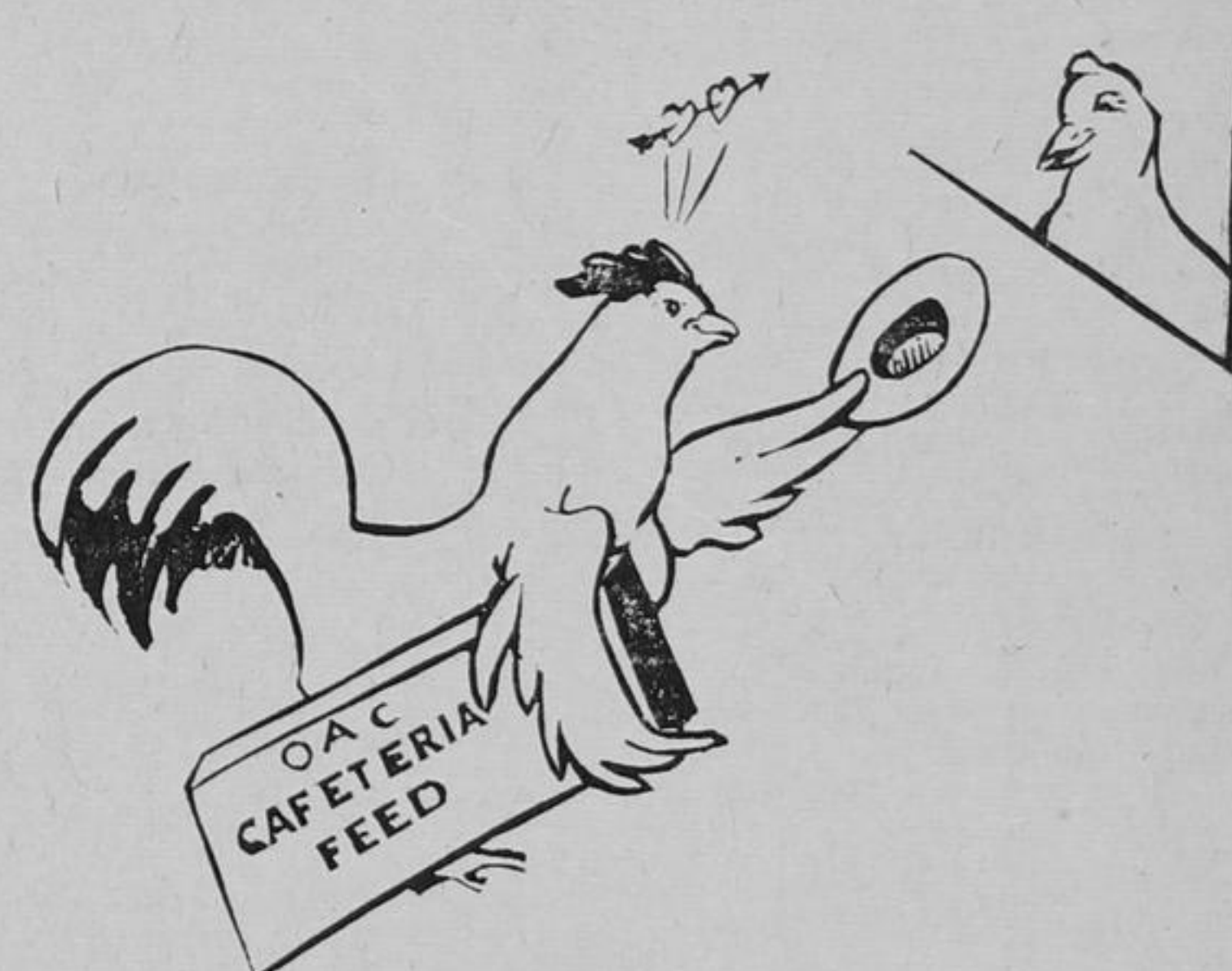
MONDAY & TUESDAY, SEPTEMBER 25 - 26  
BETTE DAVIS - GEORGE BRENT - HUMPHREY BOGART in  
"DARK VICTORY"

One of the most beautiful love stories that has ever come to the screen. Here is a drama of tender emotions, a deeply touching story of a man's devotion and a woman's affection that stands out like a mountain above anything yet produced.

WEDNESDAY & THURSDAY, SEPTEMBER 27 - 28  
EDWARD ELLIS - ANN SHIRLEY - LEE BOWMAN in  
"A MAN TO REMEMBER"

This is a tale of a country doctor who has made many sacrifices for his patients and for the community in a long life of service. We can recommend it very highly. It is a rarely beautiful, completely enjoyable event in the films.

## The Way to a Chicken's Heart Is Through it's Gizzard



Mr. Rooster knows what Miss Pullet likes. Why not treat YOUR favourite chickens to a real helping of O.A.C. Cafeteria Laying mash and watch their egg production soar.

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## SPECIALS

1931 FORD 1/2 ton Light Delivery ..... \$215.00  
1929 DeSOTO Sedan, perfect condition ..... \$135.00  
1929 DURANT Coupe ..... \$75.00

SPECIAL THIS WEEK

"Lions Top Dressing", 1/2 pint tins ..... 50c.  
42" Rubber Matting, per yard ..... \$1.25

"SHOP AT THE PARIS"

Complete Stock of  
New and Used Auto Parts, Accessories  
and Tires for all makes of  
cars and trucks

## Home BAKING Sale

Afternoon Tea

ST. MARY'S

Anglican Church  
Saturday, Sept. 23rd

3 p.m.

AUSPICES OF WOMEN'S  
AUXILIARY

Afternoon Tea 25 Cents