

(Sittings in Banc, before LORD COLERIDGE in
JUSTICE GROVE.

Timber
May 2nd 1882
CH

IN THE MATTER OF THE COMMISSIONERS OF SEWERS FOR
THE DISTRICT OR "LEVEL" OF FOBING, IN THE
COUNTY OF ESSEX.

This was a case which raised a question of some interest with reference to the liability of owners of land on low levels for the repairs of sea walls to keep out the sea. It was an application by a gentleman, the owner of some land in Essex, bordering on the sea, and who has been put to an expense of more than £10,000 (much exceeding the value of his land), for the repairs of a sea wall rendered necessary by a great storm and an extraordinary incursion of the sea, to compel the Commissioners of Sewers to make a rule to reimburse him by assessment on all the owners of lands on the same "level." The applicant, a gentleman of the name of Abbott, had purchased his land with the knowledge of a liability on his part to keep the sea wall which protected it from the sea in repair, and down to the time of the storm he had done so. On the 14th of January, 1881, there was a survey on behalf of the Commissioners, and a report made that the wall was in proper repair. On the 18th of January occurred the great storm which will be well remembered, and also a high tide and an overflow of the sea, which swept away part of the sea wall, and the consequence was that repairs were required which had cost £10,000 and more—that is, it was stated, "several times the value of his land." The Commissioners of Sewers had made an order upon him to repair. He, at their last spring meeting, had requested them to make a rate on all the owners of the level to equalize and distribute the burden, which they had refused to do, thus leaving Mr. Abbott to bear the whole expense of the repairs for the protection of the district, though far exceeding the value of his own land.

Mr. CHANNELL, on the part of Mr. Abbott, applied for a writ of *mandamus* to the Commissioners to make a rate to assess the owners of land on the level, and also a *certiorari* to bring before the Court the order made upon him to repair. He cited the case on Commissioners of Sewers in the 10th part of "Lord Coke's Reports," and a case in this Court in Lord Tenterden's time ("the King v. the Commissioners of Sewers for Essex," and "Barnwall and Cresswell's Reports"), and urged that it was only just that the whole expense of repairs required to protect all the lands of the district and rendered necessary by an extraordinary storm should not be thrown on the owner of the land on the sea, but should be borne by the whole of the proprietors, and that this Court had jurisdiction to direct the Commissioners of Sewers to make a rate so to assess the entire district. He adverted to the case of "Hudson v. Tabor," some years ago, in the time of the late Lord Chief Justice—the last case on the subject of sea walls—in which this Court held that an action against the owner of land on the sea for not repairing would not lie, and the Court said the remedy was to obtain a Commission of Sewers to assess the expense on the whole district, and the Court of Appeal upheld the decision. It was admitted that the appellant was bound to keep the sea wall in ordinary repair, but it was submitted that the expense of repairs rendered necessary by an extraordinary storm should be borne by the landowners of the district.

LORD COLERIDGE, after adverting to the authorities cited, said the owner of the land on the sea seemed to be liable to make the repairs (which was admitted), but that the remedy was to apply to assess the district, and so the Court granted a rule *nisi*.

MS to look for end of this case