

The cases of *The London and North Western Railway Company v. Bradley*, 15 Jur. 639; *Clothier v. Webster*, 12 C. B. N. S. 790; and many others of the same nature might be added, shew that where the statute confers the power to do the act complained of, and directs that compensation shall be awarded in a particular manner, the special mode of procuring that compensation must be pursued, which is in this case by arbitration, and not by suit.

If, however, the defendants have done their work so negligently and unskillfully, that by reason thereof the plaintiff has sustained special damage, he may, notwithstanding the statute, still maintain an action for redress in respect of the special damage accruing from the negligence. *Lawrence v. The Great Northern Railway Company*, 16 Q. B. 643; *Imperial Gas and Coke Company v. Broadbent*, 5 Jur. N. S. 1319; and many other cases including those in 15 Jur. 639, and 12 C. B. N. S. 790, before cited. And it may be that the plaintiff does complain of negligence and unskillfulness on the part of the defendants in carrying out their authorized works; for he states that the defendants left the water on his land so conveyed there, "instead of causing the same to flow northerly in a ditch along the west side of the road to a natural water course situated within twenty chains northward of the culvert before mentioned, as it was the duty of the defendants to have done in the proper and lawful construction of the said road."

It is not necessary, however, to consider this further, as it was not raised either in the court below or in this court, and is not material in my view of the case on the other points; but I feel it right to call attention to the matter, as it may yet be necessary to consider it in some other case if it should arise for adjudication.

In my opinion the appeal should be allowed, and a nonsuit be directed to be entered in the court below.

MOWAT, V. C., concurred in the conclusion at which the Chief Justice of the Common Pleas and Mr. Justice Adam Wilson had arrived.

Per Cur.—Appeal dismissed with costs. [Richards, C. J., A. Wilson, J., and Mowat, V. C., dissenting.]

QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., Q. C., Reporter to the Court.)
IN RE DOHERTY AND THE CORPORATION OF THE
TOWNSHIP OF TORONTO.

Common Schools—Loan by township to school section—C. S. U. C. ch. 64, sec. 35.

A township corporation passed a by-law, reciting that by section 35 of the Upper Canada Common School Act, authority is given to township councils to collect by special rate in school sections that had become indebted to them by loan, and that a certain section had borrowed of the municipality \$400, due at different days; and enacting that there should be levied in the section by the collector of the municipality the sum of \$262, to meet a certain portion of said loan.

The by-law was quashed, for, (among other objections,) the statute referred to gives no such authority; and if it did, it requires provision to be made for levying the whole sum borrowed.

The money was said to have been lent out of the Clergy Reserve funds of the township, and 27 Vic., ch. 19, was referred to as authorizing it, but that statute was passed after the loan.

[Q. B., E. T., 1866.]

Robert A. Harrison, during last Michaelmas Term obtained a rule nisi, calling upon the cor-

poration of the township of Toronto to show cause why by-law No. 185, of that municipality should not be quashed for illegality, with costs.

The by-law was in the following words:—

By-law No. 185.

To levy a certain sum on school-section No. 11, in Toronto township, for the purpose of meeting a certain loan made to that corporation on the 27th December, 1862.

Whereas by the 35th clause of the Consolidated Statutes of Upper Canada, chapter 64, authority is given to township Councils to raise, levy and collect by special rate on school sections that have become indebted to them by loan. And whereas school section No. 11 did on the 27th of December, 1862, by resolution bearing date the 27th of December, 1862, borrow of this municipality the sum of \$400, on the above condition, bearing interest at the rate of six per cent. per annum. And whereas the same was granted in two sums of \$200 each, one due on the first day of January, 1865, and one on the first day of January, 1866. Wherefore the corporation of the township of Toronto enacts, that there be raised, levied, and collected from the ratable property of school-section No. 11, in this township, in addition to all other rates and assessments for the current year, the sum of \$262, which said sum shall be collected by the collector of this municipality, and paid over to the treasurer, to meet a certain portion of said loan made to the school-section No. 11, on the 27th December, 1862, amounting to the sum of \$400 and interest, due on the first day of January, 1865. Passed August 19th, 1865.

(Signed)

JAMES E. RUTLEDGE, *Town Clerk.*

SAMUEL PRICE, *Town Reeve.*

On the application affidavits were filed for the purpose of shewing the illegality of the proceedings of the trustees and the municipality antecedent to the passing of the by-law, but as the judgment is rested upon defects in the by-law itself, it is unnecessary to notice such objections.

The objections made to the by-law were—1st. That the corporation had no authority to lend the moneys of the township to the school-trustees. 2 That section 35 of the U. C. Common School Act conferred no such authority as that recited in the by-law; and 3, If it did, the by-law should have provided for levying a sum sufficient to pay off the whole of the principal and interest, and not merely a sum to cover a portion of the principal and interest.

During this term *M. C. Cameron*, Q. C., shewed cause.

Robert A. Harrison supported the rule.

MORRISON, J., delivered the judgment of the court.

The by-law professes on its face to have been passed under the authority of 35th section of the Common School Act, ch. 64 Consol. Statutes U. C. On referring to that section it enacts, that a township council may grant to the trustees of any school section, on their application, authority to borrow any sums of money necessary for the purposes above mentioned (in sec. 34) in respect to school sites, &c., and in that event shall cause to be levied in each year upon