

BAGGS V. CITY OF TORONTO.

owner of the property may take such measures as he deems expedient to keep surface water off from him or turn it away from his premises on to the street; and, on the other hand, the municipal authorities may exercise their powers in respect to graduation, improvement and repair of streets without being liable for the consequential damages caused by surface water to adjacent property."

The principle is well settled, that a corporation is not liable to an action for consequential damages to private property or persons unless it be given by statute, where the act complained of was done by it under and pursuant to authority conferred by an Act of the Legislature, and there has been no want of reasonable skill in the execution of the power: *Mersey Dock Cases*, 11 H. of L. Cases, 713. Adjoining property owners are not entitled of legal right, without statutory aid, to compensation for damages which result as an incident or consequence of the exercise of this power by the municipality by authority from the legislature. If we examine the statutory provision made by our legislature when conferring the many extensive powers vested in municipal corporations, and which provisions direct how and under what circumstances compensation is to be made to persons injuriously affected by the exercise of those powers, we will find them as follows, section 486 of 46 Vict. chap. 18, Ontario, enacts: "Every Council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken, or used by the corporation in the exercise of any of its powers, or *injuriously affected by the exercise of its powers*, due compensation for any damages (including cost of fencing when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work, and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act." Compensation is here provided in respect of all acts by which lands are *injuriously affected*. These words, however, have been held, by a long series of decisions of the highest authority, to embrace only such damages as would have been actionable if the work causing it had been executed without statutable authority. *Re Collins v. Water Commissioners of Ottawa*, 42 U.C.R. 378; *Re Penny*, 7 Ell. & B. 660; *Rickett v. The Metropolitan R. R. Co.*, L. R. 2 E. & I. Appeals 175; *Buccleuch v. The Metropolitan Board of Works*, L. R. 5 E. & I. App. 418; *McCarthy v. The Metropolitan Board of Works*, L. R. 7 E. & I. App. 245.

The law largely regards surface water as a common enemy (as Lord Tenterden phrases it), which every proprietor may get rid of as best he may

and as said by Mr. Dillon in the passage before quoted by me: "The owner of the property may take such measures as he deems expedient to keep surface water off from him, or turn it away from his premises on to the street; and, on the other hand, the municipal authorities may exercise these powers in respect to graduation, improvement and repair of streets without being liable for the consequential damages caused by surface water to adjacent property." Had the defendants raised the grade of this road without statutory authority, they would not then have been liable for the interruption of the flow of the surface water, there being no right of action before the passage of the Act directing compensation to be made in cases where lands were injuriously affected. Under the decisions last referred to, no legal claim for damages can be successfully established or maintained. In *McCarthy v. The Metropolitan Board of Works*, above cited, Lord Hatherly uses the following language: "I believe the rule to be a sound one, that wherever an action might have been brought for damages, if no Act of Parliament had been passed, the case is brought within the class of cases in which a property is injuriously affected within the meaning of the Act." And Lord Penzance in the same cases thus clearly expresses his conclusion: "It may reasonably be inferred that the Legislature, in authorizing the works and thus taking away any rights of action which the owner of land would have had if the works had been constructed by his neighbour, intended to confer on such owner a right to compensation co-extensive with the right of action of which the statute had deprived him; but on no reasonable grounds, as it seems to me, can it be inferred that the Legislature intended to do more, and actually improve the position of the person injured by the passing of the Act."

I have examined with care the cases cited to me by Mr. Heighington, but I can find in them no authority which in the least impeaches these doctrines. I am, therefore, compelled to hold that the plaintiff has not established before me any claim for damages resulting from the acts of the defendants in raising the grade of Lippincott Street, for which, under the cases, he is entitled to recover against them any sum whatever.