

Per KILLAM, J., dissenting, that the facts, although showing an immediate delivery by Ryan to defendant within the meaning of s. 2 of the Bills of Sale Act, R.S.M., c. 10, did not warrant the conclusion that there had been the actual change of possession necessary to satisfy that statute, which must be such a change of possession as is open and reasonably sufficient to afford public notice thereof, as expressly provided in the corresponding Ontario Act, and therefore that the plaintiff's chattel mortgage was entitled to prevail over defendant's title.

*Culver*, Q.C., and *Dubuc* for plaintiff. *Howell*, Q.C., and *Mathers* for defendant.

Felt Court.]

FOSTER v. IANSDOWNE.

[Feb. 9.

*Municipality—Negligence in exercising statutory powers—Right of action—Arbitration—Municipal Act, s. 665.*

Appeal from the decision of a County Court giving the plaintiff a verdict for \$144 damages in an action against the defendant municipality for injury claimed to have been caused to the plaintiff's land and crops by the negligent and wrongful construction of a ditch by the corporation, in consequence of which water, diverted from its natural course and collected in the ditch, overflowed upon the plaintiff's land. The principal ground relied on for the defendants was that the plaintiff could not recover by action, but must avail himself of the provisions of the Municipal Act s. 665, to obtain relief.

*Held*, following *Geddis v. The Proprietors of the Bann Reservoir*, 3 A.C. 430; *Queen v. Selby Dam Drainage Commissioners* (1892) 1 Q.B. 348; *The Mersey Docks Trustees v. Gibbs*, 1 L.R. 1 H.L. 93; and *Atcheson v. Portage la Prairie*, 9 M.R. 192, that an action will lie against a corporation for doing what the Legislature has authorized, if it be done negligently so as to cause damage to the plaintiff, the recovery by arbitration being confined to any damages necessarily resulting from the exercise of such powers; and it makes no difference that the corporation exercised proper care in the selection of its servants and agents, if they acted within the scope of their employment. *Raleigh v. Williams* (1893) A.C. 540, distinguished.

The ditch in question had been constructed under a by-law simply authorizing the expenditure of money upon it.

*Held*, that such a by-law could not make lawful an act causing damage by flooding private lands.

*Metcalfe* and *E. E. Sharpe* for plaintiff. *Perdue* and *James* for defendants.