

recorded in their minute books, in which, however, it is stated that the ditch was ordered by the board of health.

Defendants were clearly trespassers in throwing this deleterious matter upon plaintiff's land, unless they can shew a clear statutory power entitling them to commit a trespass in abating the nuisance, and absolving them from liability for having committed it. It is almost needless to say that no such authority is to be found in any Act.

If they were guilty of maintaining the nuisance, as they undoubtedly were, the board of health had power, after due notice to them, to order them to abate it, and, in default of their obeying the order, then to have it done at defendants' expense. But if in abating the nuisance they commit a trespass there is nothing in the Act absolving them from the consequences.

In any event I can find no evidence of any valid order by the board of health to defendants for the doing of any work.

Defendants have sought to shew that the refuse which escaped as far as plaintiff's land was too inconsiderable in quantity to have affected the health of his cattle.

I think it is shewn that at certain seasons refuse from the factory sufficient to have affected plaintiff's cattle was carried through the drain dug by defendants to plaintiff's land; there is evidence of sickness in the cattle which might have been caused by this refuse. In these circumstances, I do not think plaintiff is called on to prove (which would be, in fact, impossible) that the sickness did actually arise from that cause.

I think, therefore, that defendants are liable.

I assess the damages at \$200, and I order that defendants be restrained from permitting any injurious matter to escape from the highway to plaintiff's land, and from permitting or causing to flow upon plaintiff's land, by way of the said ditch or otherwise from the highway, any water or other liquid or solid matter which would not naturally have reached it.

Defendants must pay the costs of the action.