

cheques were shown to have been given on the authority of the chairman of the ward committee.

Held, that this was not sufficient evidence of the adoption of the work by the council.

Held, further, that the work was wholly *ultra vires* of the council of the municipality, and that the municipality was therefore not liable for the acts of its agents wholly beyond the scope of their authority.

The learned judge found that the ditch had been negligently and improperly constructed, but that the defendants were not liable, and entered a non-suit.

Cooper, Q.C., for the plaintiff.

J. D. Cameron and James for the defendant.

KILLAM, J.]

[April 25.]

JOHNSTONE v. HALL.

False representation—Damages for—What constitutes a "clean" farm—Measure of damages.

This was an action to recover damages for fraudulent representations, whereby the plaintiffs were induced to lease the farm of the defendant at a very high rental. The representations proved were that it was a good farm, and well ploughed; that it was dry, and clear of noxious weeds, and that it was a "clean" farm. The learned judge found as a fact that, except for the weeds and a small wet spot, the farm was a good farm; but he found that in the summer before the lease was entered into a great many weeds grew on the farm, of which defendant was aware. Plaintiffs sowed the land with seed purchased from defendant, which had been grown upon it the year before, and probably contained seeds of weeds. The only point as to which the judge deemed it necessary to reserve judgment was as to the proper measure of damages which the defendant should be ordered to pay.

Held, that, upon the evidence, the representations made were false and fraudulent in the sense necessary to entitle the plaintiff to recover, and that the rules as to the proper measure of damages in such a case is the one adopted by the English Court of Appeal in *Peck v. Derry*, 37 Ch.D. 591, namely, to ascertain the difference between the price paid and the actual value to the plaintiff at the time of the contract. The market value is not to be considered in such a case; and if, notwithstanding the existence of weeds to an injurious extent, the bargain had been profitable to the plaintiffs, they would have been entitled to no damages; and, on the other hand, even if the crops had been destroyed by some other cause, the plaintiffs would still have been entitled to receive the same amount of damages.

In accordance with this principle, the true question was held to be, Was the farm when taken worth the rental which the plaintiffs agreed to pay; and if, by reason of the existence of the seeds and roots of weeds, it was worth less, how much less was it worth?

Damages were allowed on this principle at one dollar per acre for the cultivated land for each of the two years for which plaintiffs took the land, making, in all, \$496.