

corner of farm B., is a small parcel of land upon which a cheese factory has been in operation for a number of years. A drain from the cheese factory leads into the ditch at the side of the highway. A few years ago complaint was made to the provincial board of health by plaintiff and others using the highway that the whey and other refuse from the cheese factory had collected in and formed a stagnant pool on the highway close to the cheese factory, and in front of farm B., which was dangerous to the public health. This complaint was referred to defendants, who sent their road commissioner to investigate it. He seems to have thought that the way to abate the nuisance was to turn it upon the neighbouring land-owners. The owner of farm B. refused to permit a drain to be made for the purpose of carrying it upon or through his premises. The local board of health is said then to have given directions that the pool on the highway should be drained at the expense of the municipality south through farm B. to a watercourse of small size leading through plaintiff's farm A., from which his cattle were in the habit of drinking. The consent of the owner of farm B. to this arrangement was procured by the payment to him of \$10, which defendants paid, and the ditch was dug at the expense of defendants by their own road commissioner, although the work is carefully stated in their books to have been done by direction of the board of health. There is no evidence of any notice to any one of any contemplated action by the board of health, nor any minutes or written evidence whatever of the action alleged to have been taken by the board.

The result is that the refuse from the cheese factory has been ever since carried, at certain seasons of each year, from the cheese factory to the highway, and thence along the ditch cut for the purpose, through farm B., into plaintiff's watercourse, which has been sensibly polluted in consequence. Plaintiff alleges that a number of his cows drinking from the stream have been made sick and have died in consequence. There is evidence that refuse from a cheese factory would cause the sickness noticed in plaintiff's cattle.

Defendants deny that they made the ditch in question from their highway, and they say that, if they did make it, they did so by order of the local board of health, and are not responsible.

The construction of the ditch or drain from defendants' highway to plaintiff's watercourse was undertaken by defendants' own officer, and was paid for by defendants under special resolutions of the council of the municipality, duly