

under the joint jurisdiction of those townships, as provided by the Municipal Act, 3 Edw. VII. ch. 19, sec. 622 (O.) The statement of claim alleged that the corporation of the township of Dereham unlawfully constructed drains along the said highway, whereby large quantities of water had been brought on to plaintiff's lands and injured them. It further alleged that at certain seasons water was brought by said drain to plaintiff's land with such velocity that it overflowed the drain on the highway in front of his lands, and discharged thereon and injured them. Plaintiff claimed damages and an injunction.

Defendants moved to have the corporation of the township of Bayham added as defendants.

J. E. Jones, for defendants.

R. C. H. Cassels, for plaintiff.

THE MASTER:—The motion was made in reliance on sec. 610 of the Municipal Act, the contention being that the action was instituted by plaintiff "by reason of default in keeping the highway in repair," and that therefore the action must be brought against both municipalities.

Affidavits have been filed on both sides bearing on the question whether the corporation of the township of Bayham were in any way concerned in the construction of the drain in question. These are conflicting, and therefore it would seem that the motion must be disposed of on the pleading. In *Imperial Paper Mills v. McDonald*, ante 412, 472, it was said by the Chancellor: "There must be a very clear and a very strong case made to induce the Court to introduce a new defendant against whom the plaintiff does not wish to proceed."

Unless, therefore, this action is one "for default in keeping the highway in repair," the motion must fail at the present stage. This would not prevent a different disposition at the trial. It might there be shewn, for some reason, that the corporation of the township of Bayham should be a party. But I am unable to see that the action is one for non-repair. There is no such allegation in the statement of claim. How can the damage sustained here be said to be caused by non-repair, any more than if the township of Dereham's agents or servants had kindled a fire on the highway which, through their negligence, had spread to plaintiff's land and destroyed his crops?