HON. MR. JUSTICE CLUTE says *(Continued)*

damage to anyone; but an action does lie for doing that which the Legislature has authorized, if it be done negligently, and I think that if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of their powers."

In Thompson v. Bradford Corporation et al. (1915), 3 K.B. at p. 13, McClelland v. Manchester was distinguished, and it was held that where the post office authorities had removed a pole and filled in a hole, shortly afterwards the corporation threw the road open for traffic, the defendants were liable; the corporation upon the ground that they were altering the character of part of an old road—that when they threw it open for public use it should be reasonably safe for the purposes for which it was intended to be used; the post office authorities, upon the ground that having done, perhaps voluntarily, a piece of work, they did it negligently. Ballbache, J., said: "If a person does a piece of work negligently, although he need not have done it at all, he is liable for the consequences of his negligence. If he undertakes to do it, he must do it with reasonable care, and the post office authorities appear to have neglected their duty in that respect, and on that simple ground, apart from the statute, it seems to me they are liable."

In re Brown v. City of Toronto, 36 O.L.R. at p. 189, the Official Arbitrator awarded damages for injuries to the plaintiff's land for the erection and maintaining upon and under the street upon which the land abutted, a public convenience. The Appellate Division, equally divided in opinion as to the right of the landowners to recover under section 325 of the Municipal Act, and the award for compensation was, in the result, affirmed. This section, 325 (1) of the Municipal Act, expressly provides that where land is injuriously affected by the exercise of any of the powers of a corporation under the authority of the Act, the corporation shall make due compensation where it is injuriously affected by the exercise of such powers, for the damages necessarily resulting therefrom. In such a case (2) the amount of compensation, if not mutually agreed upon, shall be determined by arbitration. It may be, probably is the fact in the present case, that a portion of the damages suffered by the plaintiffs necessarily resulted from the exercise of such powers, and so it might to that extent be a subject matter for arbitration, and it was urged by counsel for the city that the plaintiffs could only recover that portion of the damage occasioned by the negligence (if any) of the defendant. I am not of that opinion. Where, as here, the plaintiff has a right of action, and it is impossible to say what proportion, if any, of the damages necessarily resulted from the exercise of such powers, in that case the remedy is not confined to arbitration. The case is not within subsection (2). The appropriate remedy is by action where full damages may be recovered.

Compensation for injurious affection was first provided in the Municipal Act of 1873, section 373; re Yeomans and Wellington (1878), 43 U.C.R. 522, affirmed (1879), 4 A.R. 301.

Where no land has been taken the words "injuriously affected" are limited to loss or damage under the following heads:

(1) Damage or loss must result from an act made lawful by the statutory powers.

(2) The damage or loss must be such as would have been actionable for statutory powers.