

Falconbridge, C.J.K.B., Street, J.]

[Mar. 6.

LAWRENCE v. TOWN OF OWEN SOUND.

Trespass—Compensation—Powers of trial judge—Costs.

The Municipal Act R.S.O. 1897, c. 223, s. 47, applies only to actions brought to recover damages "for alleged negligence on the part of the municipality."

In an action against a municipality for damages for diverting water upon the plaintiff's land by the construction of a ditch without any proper by-law authorizing the work,

Held, that s. 47o did not apply as the plaintiff's claim was for trespass and not for negligence and that the trial judge had full power over costs. Judgment of FERGUSON, J., affirmed.

Shepley, K.C., for appeal. *J. H. Moss*, contra.

Province of Quebec.

KING'S BENCH (APPEAL SIDE).

Lacoste, Bosse, Blanchet and Hall, JJ.]

[Dec. 23, 1902.

ANGERS v. MUTUAL RESERVE FUND LIFE ASSOCIATION.

Mutual insurance—Principles of, discussed—Assessment of members—Acceptance of contract—Repudiation—Delay—Waiver—Estoppel.

The plaintiff (respondent) took out two policies of insurance in the appellant company, one in 1885, and the other in 1887, and he paid his premiums up to 1898. He then refused to pay the premiums and his policies were declared forfeited. He thereupon brought suit claiming the repayment of the moneys he paid in, with interest, amounting to \$6,509.51. He alleged that he was induced to become a member of the Association by the false representations made by its directors and agents in prospectuses and circulars and that the company continued to deceive him in the same manner up to 1898, at which time he discovered the fraud and refused longer to make the payments. The company denied the false representations and set up as a defence that the plaintiff respondent accepted the contract as made, and acquiesced in it by not repudiating it within a reasonable time.

Held.—This being a mutual company each member agrees to indemnify co-members in proportion to the guarantee that he receives from them, and in this lies its difference from insurance on the level premium plan. As each assessment depends upon the aggregate