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

follow same, and in departing therefrom created the nuisance complained of. The works as now established and operated were not authorized by Statute and under the facts and circumstances in this case the defendants cannot rely upon the Statute as an answer to the plaintiff's claim.

The general rule of law is that if the thing complained of through an act, which would otherwise be actionable, be authorized by Statute, then no action will lie in respect of it if it be the very thing that the Legislature has authorized.

See the Corporation of Raleigh v. Williams et al. (1893), A.C. at 543; East Fremantle v. Annois, (1902), A.C. at 213; Faulkner v. City of Ottawa, 41 S.C.R., at pp. 190-213.

In this latter case it was held, Idington and Duff, JJ., dissenting, that damages being claimed for flooding of the plaintiff's premises by water backing up from the sewer, the city was not liable, where it was shown that the standard there adopted was recognized as sufficient to meet the requirements of good engineering, and is the standard adopted by the cities of Canada and the United States. It is said by Duff, J., one of the dissenting Judges: "that the principle is equally applicable to persons and bodies acting under legislative authority for their own profit and to public bodies exercising powers conferred upon them for the public benefit. In both cases, where the authority is in general terms merely, it may be inferred from the general scope and provisions of the Statute that the powers conferred are not to be exercised to the prejudice of private rights. This was the view taken of the Statute under consideration by the House of Lords in the Metropolitan Asylum District v. Hill, and of that construed by the Privy Council in Canadian Pacific Railway v. Parks (1899), A.C. 535. It is nevertheless entirely a question of the true meaning of the Statute."

He refers to Lord Halsbury's statement of the law in Westminster Corporation v. London & North Western Railway Co. (1905), A.C. 426, where he said: "Assuming the thing to be within the discretion of the local authority, no court has power to interfere with the mode in which it has exercised it. When the Legislature has confided the power to a particular body with a discretion how it is to be used, it is beyond the power of any court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorized."

Upon this passage Duff, J., observes that this must be read subject to important observations, that is to say, that in the absence of some provision (either expressed or clearly implied) to the contrary, it must be taken that in carrying out works authorized by a Statute, or in exercising powers conferred by a Statute, you are not to act negligently and you are to act reasonably, that is to say, you are to prosecute the work or you are to exercise the power, as the case may be, in such a manner as not to do unnecessary injury to others. Lord Macnaghten, at p. 430, said: "It is well settled that a public body invested with statutory powers such as those conferred upon the corporation, must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first."

McClelland v. Manchester Corporation (1912), 1 K.B. at p. 118, where Lush, J., said, quoting Lord Blackburn, in Geddis v. Proprietors of Bann Reservoir, 3 App. Cases, at p. 455: "It is now thoroughly well established that no action will lie for doing that which the Legislature has authorized, if it be done without negligence, although it does occasion