

THE
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No. 4

DIVISIONAL COURT.

OCTOBER 21ST, 1912.

MOORE v. CORNWALL.

4 O. W. N. 145.

*Drains — Open Ditch in Highway — Overflow on Plaintiff's Land
— Seepage — Injunction — Damages — Costs.*

Action for an injunction and \$300 damages in respect of an alleged nuisance caused by defendant corporation in that they permitted certain waters sometimes of an offensive character to flow from and seep through an open drain on the highway on to plaintiff's lands, thus ruining his crops. Defendants denied that any waters came from their drain on to plaintiff's lands and alleged another source.

Co.Ct.JUDGE dismissed action with costs.

DIVISIONAL COURT, *held*, that upon the evidence plaintiff's allegations had been proven and that he had therefore shewn a good cause of action.

Smith v. Eldon, 9 O. W. R. 963, followed.

Appeal allowed and injunction granted, damages fixed at \$200 with costs of appeal and trial on County Court scale if plaintiff consent, if not, reference to County Court Judge and question of costs reserved.

Review of authorities as to municipal negligence for damages caused by flooding, etc., by Lennox, J.

An appeal by the plaintiff from a judgment of the County Judge for the United Counties of Stormont, Dundas, and Glengarry.

The appeal to Divisional Court was heard by HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE KELLY, and HON. MR. JUSTICE LENNOX.

C. H. Cline, for the plaintiff.

R. Smith, K.C., for the defendant municipality.

HON. MR. JUSTICE RIDDELL:—The plaintiff is the owner and occupier of lot 7, south of Ninth street, in the town