

There being no evidence of negligence on the part of the plaintiff or his servants, I give judgment for the plaintiff for \$40 and costs, and dismiss the defendant's counterclaim with costs including the costs of the commission to take his evidence at Midland.

Province of Manitoba.

COURT OF APPEAL.

Howell, C.J.M., Richards, Perdue,
and Cameron, J.J.A.]

[15 D.L.R. 229.

KENNY v. RURAL MUNICIPALITY OF ST. CLEMENTS (No. 2).

Municipal corporations—Liability for damages—Failure to provide sufficient outlet for ditch—Backing up of water.

Held, 1. A rural municipality is answerable in damage for a failure to provide a sufficient outlet for a ditch opened by it adjacent to the plaintiff's land, by reason of which water backed up and inundated the land so as to destroy the fertility thereof, and render it useless for cultivation.

Kenny v. Rural Municipality of St. Clements, 4 D.L.R. 304, affirmed on this point; see also *McGuire v. Township of Brighton*, 7 D.L.R. 314.

2. Damages should be awarded for the flooding of agricultural lands by the construction of a municipal drainage ditch of too small capacity, on the basis of the diminished value of the property affected, and should be assessed in one lump sum for all time; the judgment should not be limited to damages for the deprivation of the use of the soil for a limited period with a reservation to the landowner of his remedy for further damages in the event of the municipality not remedying the defect in the meantime.

R. M. Dennistoun, K.C., and *G. T. Baker*, for defendants. *F. Heap* and *R. B. Stratton*, for plaintiff.