

road which they thought required it. This was done. The jury have not found but have negatived negligence in digging the drain. The usual flow of the water along this drain has widened and in some parts perhaps deepened it, but there has been no act by either township since 1893 of active interference with the drain. It is alleged, and found by the jury, that the drain has not been kept open, and that this has the effect of flooding plaintiff's land, but does no damage.

Plaintiff acquired this land in 1897 from the former proprietor, Moss, who had laid by and seen the work done without objection, thinking that it would do more good than harm.

Plaintiff brings his action against the township of Dereham alone: though it was objected at the trial that Bayham should have been made a party as being in joint occupation of the road. The complaint is two-fold: first, that the access of plaintiff to the highway is cut off by the ditch, which has now become in places very wide and deep; and second, that his land is flooded by the water brought down by this ditch.

The jury found on the first branch of the case that there was an undue interference by the construction of the ditch with plaintiff's right of access to the town line road, and assessed the damages at \$50.

The trial Judge laid down the law to the jury in terms to which, as at present advised, I cannot accede, in view of such cases as *McCarthy v. Village of Oshawa*, 19 U. C. R. 245, and *Williams v. City of Portland*, 19 S. C. R. 159. Nor can I agree that a photograph offered to shew the general appearance of the work cannot be admitted without the production of the photographer who took the negative.

But, in the view I take of the case, it is not necessary to consider these matters. The work done by defendants was clearly work within the authority given them by the statute; the township corporation were not tort-feasors; no negligence is proved; the right, if any, of plaintiff is for compensation under sec. 437; and the Court has no jurisdiction. I had occasion to consider many of the cases in *Smith v. Township of Eldon*, 9 O. W. R. 963, and many others are referred to in Biggar's Municipal Manual under secs. 437 et seq.

Moreover, no right of action or for compensation is found in this plaintiff. Everything done by defendants was done years before he became owner of the property, and the