

I think the order appealed from was right, and that the appeal should be dismissed with costs to the respondent in any event.

BRITTON, J.

MARCH 13TH, 1902.

TRIAL.

BIBBY v. DAVIS.

Public Health—Board of—Contagious Disease—Engaging Physician to Attend—Liability to Pay—Medical Health Officer not Personally Liable—Mandamus—R. S. O. 1897 ch. 248, secs. 33, 48, 66.

Action against defendant Dainard as medical health officer and the other defendants as the local board of health of the township of Euphrasia, tried at Owen Sound with a jury.

S. G. McKay, Owen Sound, for plaintiff.

I. B. Lucas, Owen Sound, and W. H. Wright, Owen Sound, for defendants.

BRITTON, J.—The plaintiff, a physician, seeks to recover \$560 for attendance on a smallpox patient for 56 days at \$10 a day, value of clothing, articles, etc., destroyed by order of the board. Upon the answers of the jury and the whole case, I find that there is no personal liability on the part of the defendant Dainard. He is not a member of the board: see secs. 33, 48, and 66, R. S. O. 1897 ch. 248. Plaintiff is entitled to recover for 25 days at \$7 a day and \$6.90 for clothing destroyed. The jury found 25 days a reasonable time, and, as the bargain made with defendant Fawcett was for \$7 a day as long as the board required his services, it should pay not only for the 12 days plaintiff was actually in charge of Smith, but for the 15 days he was in quarantine afterwards; but I see no authority for allowing against the board the value of property which ought to have been destroyed but was not destroyed: see sec. 100. The jury found that all ought to have been destroyed, and fixed the value at \$30. In the absence of any specific evidence as to a larger value, I fix it at \$6.90. The articles not destroyed belong to plaintiff, and he may take them. Judgment accordingly for plaintiff, less \$83.90 paid into Court, and for High Court costs. The order for mandamus to the board to sign an order to the township council for the amount must also be granted. It is a case where within the authorities the relief by mandamus may properly be termed ancillary relief: see *Ward v. Lowndes*, 28 L. J. Q. B. 265; *Worthington v. Hutton*, L. R. 1 Q. B. 63; *Webb v. Commissioners*, L. R. 5 Q. B. 642. The board have no funds,