

Province of Ontario.

COURT OF APPEAL.

From Robertson, J.]

[Oct. 2.]

HUFFMAN T. TOWNSHIP OF BAYHAM.

Municipal corporation—Highway—Obstruction—Negligence—Damages.

A milk-stand built on a highway by an adjoining proprietor and projecting slightly over the travelled way is such an obstruction as to constitute want of repair within the meaning of the Municipal Act, and when such an obstruction exists for three years and the municipal corporation having jurisdiction over the road in question take no steps to have it removed they are liable in damages for an accident caused by it. *Castor v. Unbridge* (1876) 39 U.C.R. 113, considered and approved.

Quantum of damages for death of a child discussed.

Judgment of ROBERTSON, J., varied.

Oster, Q.C., and T. G. Meredith for appellants. *D. J. Donahue and W. E. Stevens* for respondents.

From Drainage Referee.]

[Nov. 11.]

CAWTFORD T. TOWNSHIP OF ELLICE.

Drainage—Mandamus—Notice—Damages—Drain insufficient.

To entitle a person who or whose property is injuriously affected by the condition of a drain to a mandamus for the performance of such work as may be necessary to put the drain in proper condition the notice required by s. 73 of the Drainage Act, R.S.O., c. 226, while not necessarily in technical form, must be so clear and precise that the municipality can decide whether the complaint is well founded or frivolous, and must be one which the municipality would be justified in acting upon under sub-s (a) of that section.

A letter referring to defects in the drain, and suggesting steps to be taken, but not calling upon the municipality to do specific work, is not sufficient. The notice by which proceedings are initiated in Court cannot be regarded as a notice under s. 73. Judgment of the Drainage Referee affirmed.

A person who or whose property is injuriously affected by the condition of a drain is entitled to recover from the municipality charged with the duty of maintaining it such damages as he sustains by reason of its non-repair, whether caused by the flooding of his land by the waters of the drain, or by its failure to carry off the water which came upon the land in the course of nature. Judgment of the Drainage Referee reversed.

J. P. Maber, Q.C., for appellants. *M. Wilson, Q.C.,* for respondents.