Hon. Mr. Justice Hodgins says:

I agree with my brother Clute in his analysis of the evidence in this case. This sewage disposal work may have been done and maintained in the way described therein under the pressure of necessity and with every desire to minimize its unpleasant results. But while recognizing this, the Court is bound to enquire why the provisions of the Public Health Act were not followed; or, if followed, why that fact was not properly proved.

I regard that Act (R.S.O. 1914, ch. 218, sec. 94) as intended to modify the usual powers of a municipality with regard to a system of sewage or of sewage disposal by making the approval of the Provincial Board of Health a prerequisite to their exercise. Before that approval is given, the Board is charged with the duty of ascertaining whether the system "is calculated to meet the sanitary requirements of the inhabitants of the municipality and as to whether such system of sewerage is likely to prove prejudicial to the health of the municipality, or any other municipality likely to be affected thereby."

It is also empowered to make suggestions and impose conditions in regard to the construction of the system "or the disposal of sewage therefrom as may be deemed necessary or advisable in the public interest."

The work cannot be proceeded with until approved of, and no change in the construction of the system or disposal of the sewage therefrom is to be made "without the previous approval of the Board."

While the Board may modify or alter the term and conditions which it has laid down as to the disposal of the sewage, its decision, while standing, is final and the duty of giving effect to it is directly laid on the municipal corporation itself as well as on its officers.

This very reasonable and extremely simple method of proceeding puts the responsibility upon the Provincial Board of Health, where it properly belongs. It supplies the corporation with an answer to complaints, because the statute declares it to be the duty of the corporation to give effect to the decision of the Board. There is also eliminated the need for considering whether the corporation has adopted the best system, because the exact proposals are required to be set out on plans and specifications which the Board may modify, and the execution of which may be subject to conditions imposed by the Board in the public interest.

It is not to be presumed that the Provincial Board of Health would proceed with its enquiry without some notice to those immediately concerned from the point of view of health— or [illegible] execution of the plans so approved prevent the work being one [illegible] done in the exercise of the powers of the corporation.

The provisions of sec. 97 of the Public Health Act impose the further duty of such proper repair "as may be necessary for the protection of the public health." In this respect want of repair was proved sufficient to justify the judgment under appeal.

Having failed to comply with these provisions, the appellants cannot in my judgment rely upon statutory authority justifying the acts complained of.

I think the appeal should be dismissed, but the time for abating the nuisance should be extended till the 1st of March, 1919.