

*Held*, that there was no watercourse which plaintiff had any right to have kept free and clear of obstruction for the benefit of her land, and that her action must be dismissed with costs. A watercourse has been defined to consist of bed, banks and water, and while the flow of the water need not be continuous or constant the bed and bank must be defined and distinct enough to form a channel or course that can be seen as a permanent landmark on the ground, and according to the evidence such do not exist in this case.

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Full Court.] RE TAYLOR AND CITY OF WINNIPEG. [Dec. 11, 1897.

*Municipality—By-laws—Dairy inspection—Ultra vires.*

Appeal from judgment of Dubuc, J., noted 33 C.L.J. 580, dismissed with costs except as to paragraphs 17 and 22 of the by-law in question.

*Held*, that a vendor of milk could not be required to state where he obtained the milk he has sold or is about to deliver as required by pp. 17, because his answer might subject him to the cancellation of his license, and the other penalties provided for by the 24th and 28th paragraphs of the by-law, or to permit a sample or samples of any milk being delivered or intended to be delivered to any customer in the city to be taken for examination as required by the 22nd par. under the penalties provided for in the by-law in case of refusal, because no provision was made for compensation for what might thus be taken; and that the by-law in those respects was ultra vires.

*Mathers*, for applicant. *I. Campbell*, Q.C., for city of Winnipeg.

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Full Court.] FOSTER v. LANSDOWNE. [Dec. 11, 1897.

*Municipality—Negligence in exercising statutory powers—Right of action—Arbitration—Pleading.*

This was an appeal from the judgment of Dubuc, J., noted 33 C.L.J. 579, overruling a demurrer to the statement of claim herein, which alleged that the defendants by constructing in a negligent and improper manner a ditch for drainage purposes had caused the plaintiff's land to be overflowed with water whereby he had suffered damages, but did not allege that any by-law had been passed by the council of the municipality authorizing the construction of such drain.

The Municipal Act apparently gives no authority to the council to execute any such drainage works without first passing a by-law providing for it.

*Held*, that it is doubtful whether s. 665 of the Municipal Act does not confine the remedy to arbitration, and prevent a party from resorting to an action in case of damage resulting from the exercise of the statutory powers of the municipality in the construction of drainage works whether negligence be alleged or not, but that it was unnecessary to decide that question, as the statement of claim in this case did not show that there had been any by-law to authorize the work in question, and the Court could not assume that there