

warranted where the original assessment was sufficient to cover the cost, and the fact that the contractors were unable to do the work could only be explained on the assumption that the amount was insufficient; the decree to be further varied by striking out the provision as to outlets, and to direct a mandatory injunction to issue requiring defendants to complete the drain to the width and depth and in the manner provided by the said plans and specifications, or providing some substitution therefor under the statute, reserving leave to plaintiffs to apply for further relief as occasion may require if the work is not proceeded with as directed.

Under s. 583 of the Mun. Act, a *mandamus* only issues where one of two municipalities bound to repair refuses to do so after notice. In such case *mandamus* is a remedy in addition to an action by the owner of property injured by such refusal. Damage from neglect after notice is conclusive evidence of negligence.

The section has no reference to a case in which the drainage work has never been fully completed.

The township of S. could not claim pecuniary compensation for negligence causing injury to private land or even causing a general nuisance. Its right to such compensation is confined to cost of repairing and restoring roads washed away by floods caused by such negligence.

Appeal allowed with costs and cross-appeal dismissed.

Meredith, Q.C., for appellants.

Pegley, Q.C., for respondents.

June 28, 1892.

Ontario.]

PENMAN MFG. CO. v. BROADHEAD.

Contract—Manufacture of patented articles—Substitution of new agreement for—Evidence.

B. was the patentee of a machine called the Windsor Loom, for making skirtings, etc., and in 1884 she entered into an agreement with the defendant company to supply them with the looms on which they were to manufacture the goods and pay a royalty of one cent a square yard thereon, the minimum of such royalty to be \$50 a month. The patent of B. was to expire in 1891. Prior to this agreement, in 1882, B. had granted to P., the head of the defendant company, a license to manufacture blankets under another