

LENNOX, J., in a written judgment, said that, with the consent of the municipal council, the plaintiff provided for the drainage of the cellar by connecting weeping tiles therein or thereunder with such system of drainage or sewage works as the municipality had theretofore provided for that part of the town. It was obviously a defective system, and the burden of the defence was that the pipes which the defendants had installed were intended to carry off only such surface-water as should accumulate or fall upon the streets under which they passed, and that these pipes were put in only in connection with and as part of certain street paving works—that the defendants had not yet provided any general sewage or drainage system for that part, if any part, of the town.

The jury found in favour of the plaintiff and assessed his damages at \$1,000.

Counsel for the defendants submitted that the Court had no jurisdiction to try the action; that the plaintiff's remedy was compensation under the Municipal Drainage Act, the Municipal Act, or the Local Improvement Act; citing *Burke v. Township of Tilbury North* (1906), 13 O.L.R. 225, and *Bank of Ottawa v. Township of Roxborough* (1908), 11 O.W.R. 320, 1106. Neither of these cases was of any assistance in determining the point raised. The learned Judge was unable to see that the general jurisdiction of the Court to redress wrongs was excluded by the provisions of the statutes referred to.

This action and a County Court action for the same alleged wrongs came before a Divisional Court of the Appellate Division, and that Court ordered that the County Court action be stayed in the meantime, and that this action should be tried at the sittings of this Court at Sandwich commencing on the 4th March instant, at which it was tried, and the costs of the County Court action should abide the event. It might be that the question of jurisdiction was not specifically referred to. But the question should have been raised before the Divisional Court, if at all.

The failure to raise it would not, of course, confer jurisdiction; but it was almost farcical that it should be held in abeyance until the trial and then be effective. There was at least sufficient doubt to make it desirable that the question should be settled by the Divisional Court, if counsel for the defendants had faith in their contention.

There should be judgment for the plaintiff for \$1,000 with costs.