

the water brought into the defendants' ditch from the farm drains, and that the inference to which I have referred ought not to be drawn, I am of opinion that the defendants, nevertheless, are liable, because this water would not and could not have been brought to and discharged on the plaintiff's land but for the ditch they are maintaining, and they are in a position physically to prevent the discharge of this water by stopping the connection of the farm drains with their ditch.

Assuming that it was established that the water which caused the injury was brought down partly by the defendants and partly by the others for whose acts they are not answerable, the principle of such cases as *Thorpe v. Brumfitt*, L. R. 8 Ch. 656, and *Blair v. Deakin*, 57 L. T. N. S. 526, applies, as far at all events as the granting of an injunction is concerned.

I would vary the judgment, however, as to the terms of the injunction awarded, by making it one restraining the defendants from continuing to bring the foreign water down to the injury of the plaintiff, and I would suspend the operation of the judgment for one year to enable the defendants to do this.

With this variation, the judgment should be affirmed and the appeal from it dismissed with costs.

MACMAHON, J.:—I agree.

TEETZEL, J., was of opinion that the plaintiff was *prima facie* entitled to redress under *Rowe v. Township of Rochester*, 29, U. C. R. 590, *McArthur v. Town of Strathroy*, 10 A. R. 631, and many other authorities.

He referred to the contention that the excess water was largely accounted for by the fact that several owners north of the plaintiff had utilised the defendants' ditch as an outlet for their tile drainage, without the defendants' express consent, and that, therefore, the case came within *Gray v. Corporation of Dundas*, 11 O. R. 317; and said that, in his opinion, the proper decision of this case was not affected by the Dundas case. He referred to *Darby v. Corporation of Crowland*, 38 U. C. 33, and *Ostrom v. Sills*, 24 A. R. 526, 27 S. C. R. 485; and said that by allowing the owners of the tile drains wrongfully to discharge their surface water into the defendants' ditch, and by permitting the same to be carried upon the plaintiff's land, when they had the right physically to prevent it, the defendants became liable as joint wrongdoers with such owners; and upon principle and the authority of *Charles v. Finchley Local Board*, 23 Ch. D. 767, the defendants were liable to the plaintiff.

He therefore agreed in the result arrived at by MEREDITH. C. J.