

substantive right, directly applicable to the facts and circumstances which here appear.

It would, perhaps, have been better if the Legislature had expressly made the words which I have quoted from sub-sec. 4 applicable also to the previous sub-section. To have done so would at least have saved some rather hair-splitting arguments upon the subject to which the Courts have had from time to time to listen. There is, upon the face of things, no good reason why injuring liability should stand upon one foundation and outlet liability upon another and a different one. It must surely often happen that certain sections or lots in a drainage scheme are liable for both. . . .

[Reference to the judgment of Lister, J.A., in Township of Orford v. Township of Howard.]

It is not, in my opinion, necessary in this case to discuss the general question of the riparian right of drainage into natural watercourses for the purposes of agriculture. The facts in the cases of *Re Township of Elma* and *Township of Wallace*, 2 O.W.R. 198, and *McGillivray v. Township of Lochiel*, 8 O.L.R. 446, . . . were very different.

Fleming creek and Kintyre creek, both, although small, entitled in strictness to be called watercourses, long ago lost their natural condition and became part of an artificial drainage system created under the drainage laws of the Province. The law permits that to be done. And, when it is done, the part of the system which was once a natural watercourse is entitled to no particular immunity, under the law, over the other parts which are purely artificial. The whole must operate so as to discharge the waters which it gathers at a proper and sufficient outlet. The law, at least, aims at affording complete relief from the common enemy, and not merely a nominal or paper relief, or the relief of one section of the locality at the expense of another. And, until this main object is secured, I see nothing in the Act pointing to the finality upon which so much of the argument was based. . . .

[Reference to sec. 77 of the Act.]

The words are very large, but not too large for the accomplishment of the very desirable purpose aimed at by the Legislature; and they should not, in my opinion, be narrowed by the construction for which the appellants contend.

The remaining objection, of the insufficiency of the proposed outlet, is a question of fact, depending upon the evidence, and was determined against the appellants by the learned Referee. The learned Referee, in the course of his judgment,