

of which the plaintiff now complains. The flooding is and has been such as to seriously interfere with the use of the lands as a market garden, and many fruit trees have been killed or injured. Water also now finds its way into the cellar of plaintiff's residence.

The evidence, not of one witness, but of a number, both as to the manner in which the defendants collected and discharged the water, and also as to plaintiff's sustaining substantial damage, is unmistakable. The condition of which the plaintiff complains, and the damage, are continuing; he is not debarred by lapse of time, as has been contended by defendants, from bringing action.

The law as to liability for interfering with the natural flow of surface water, and causing it to overflow on other lands, is dealt with in such authorities as Angell on Water-courses, 7th ed. 133 (sec. 108j); Gould on Waters, 3rd ed. 539 and 540 ((sec. 266) and 545 (sec. 271).

If the proprietor of the higher lands alters the condition of his property, and collects surface and rain water thereon on the boundary of his estate, and pours it in concentrated form and in unnatural quantity on the lands below, he will be responsible for all damage thereby caused to the possessor of the lower lands. Addison on Torts, 5th Eng. ed. 247.

A railway corporation has no right, by the erection of embankments, construction of culverts, or the digging of ditches, to collect or discharge unusual quantities of surface water upon adjoining lands. Gould, 3rd ed. 551.

Defendants contend that, not only as to the surface water which is directed towards the ditch in plaintiff's lands, but also as to the water which they brought on to their own premises and then discharged in the same direction, they are not liable; that by the terms of their act of incorporation and by the provisions of the Railway Act, they are within their rights in disposing of the water as they do dispose of it, in carrying on the operations of their business.

I am unable to accept this broad proposition, that because they have been given certain powers in furtherance of the objects for which they were incorporated, they have the right so to carry on these operations as, under such circumstances as appear here, to cause damage to others.

The law as laid down in *Rylands v. Fletcher*, 3 H. L. Cas. 330, applies to this case. In his judgment in that case, Lord Chancellor Cairns quotes with approval from the judgment