

In 1906 the plaintiff purchased lot 24 in the 13th concession of the township of Enniskillen, from one Hugh McCorkingdale, who had previously owned it for a number of years. This lot abutted upon the boundary-line between the townships of Enniskillen and Plympton. The Tait drain was in the defendants' township, and was repaired by the defendants in 1894. The plaintiff's lot, or McCorkingdale's, as it then was, was at first assessed for \$100, being \$80 for benefit and \$20 for outlet; but an agreement was made between McCorkingdale and the defendants, and his lot was dropped from the assessment, upon his undertaking to take away the water himself. The water crossed the town-line through a culvert then in the highway, and passed into the lands of McCorkingdale at a low spot adjoining the highway.

In 1907 another complaint was made to the council that the Tait drain was out of repair, and the council was requested to have it repaired in accordance with the Drainage Act. An engineer, instructed by the council, made a report in which he recommended some changes. This report was adopted and the work done, including the carrying of the drain through the plaintiff's land.

The plaintiff objected while the work was in progress, and finally on the 20th September, 1909, filed and served upon the defendants notice of action under the Drainage Act. The allegations upon which he relied were (without reference to any by-law or other authority) that the defendants constructed the drain in question, which brought down and discharged large quantities of water upon the plaintiff's lands; that the defendants had from time to time deepened, widened, and enlarged the drain, and brought down additional water thereto, thereby greatly increasing the volume and velocity; that the waters complained of were brought out of the natural course, and but for the drainage would not have come upon the plaintiff's lands, by reason whereof the plaintiff's lands had been flooded, his crops destroyed, his use and enjoyment of the lands interfered with, and the lands injuriously affected, and the value diminished. And he claimed: (1) \$1,000 compensation; (2) \$500 as damages; (3) an injunction; (4) a mandamus to compel the defendants to carry their drainage works to a proper and sufficient outlet; and (5) other relief.

The defendants in general terms denied the plaintiff's allegations; set up the agreement as leave and license; that the work was done, without negligence, under by-laws which authorised what had been done; and that the plaintiff did not file and serve his notice of claim within two years.