

circumstances are such that the relief could not lawfully be granted, and that, that being so, there could be no relief, either upon petition or report—in view of the fact which we have here of an intervening watercourse. Such an argument would have had some show of virtue and even of authority (see *In re Township of Rochester and Township of Mersea*, 2 O.L.R. 435) under the old and narrower construction of sub-sec. 3 of sec. 3 of the Municipal Drainage Act, by reason of the absence from it of the words “either directly or through the medium of any other drainage work or of a swale, ravine, or creek or watercourse,” which are in sub-sec. 4. The “any means,” in sub-sec. 3, did not, so it was held, include a “swale, ravine, creek, or watercourse”—always, it seems to me, an excessively narrow construction. But, if it be granted, as it apparently is, that the relief required could be obtained on petition, the objection seems utterly to vanish. What is proposed is not the construction of a new drainage work, but merely the repair and improvement of an established system, which experience has proved is defective, in that lands and roads along its course are being flooded from year to year by the overflow of waters for which that system provides no adequate or sufficient escape. Such a case seems to me very clearly to fall within the express provisions of sec. 77 of the Municipal Drainage Act, as to “repairing upon report.”

In considering such cases as *Sutherland-Innes Co. v. Township of Romney*, 30 S.C.R. 495, and *Township of Orford v. Township of Howard*, 27 A.R. 223 . . . it should be remembered that this section, which is old sec. 75, was very materially amended after both these decisions, by 6 Edw. VII. ch. 37, sec. 9, so as to be made expressly to apply to the case of the better maintenance of a natural stream, creek, or watercourse, which had been artificially improved by local assessment or otherwise in the same manner and to the same extent and by the same proceedings as are applicable to the better maintenance of a work wholly artificial. The effect of this amendment is very wide. It destroys at one blow the value of much that was said in *Sutherland-Innes Co. v. Township of Romney*—never in some respects an entirely satisfactory decision: see per Armour, C.J.O., in *In re Township of Rochester and Township of Mersea*, 2 O.L.R., at p. 436; it restores the authority of *Township of Orford v. Township of Howard* as an exposition of sub-secs. 3 and 4, which had been shaken by the *Sutherland-Innes* case; and, quite apart from these, and from all the other cases decided before the amendment, it apparently gives a new and