

Williamson's lands further down the stream. The northerly part of Scrimger's land is about 14 acres in extent, is within the limits of the town of Galt, the remainder of it being in the township of North Dumfries. None of Williamson's land is within the town limits. Adjoining Scrimger's lands on the east is the land of McKenzie, also running southerly from the limit of the town to and across Moffat's Creek. Scrimger is also the owner of or interested in a lane running easterly from his other lands through McKenzie's lands to Elgin street (or St. George road). The course of the sewer or drain, the construction of which was begun before this action, is southerly from the town limits through McKenzie's land to the creek, a distance of about 2,500 feet. It passes through or under this land of Scrimger's. Plaintiffs use the water of the creek for purposes connected with their lands, Williamson being engaged in dairying, and for that purpose keeping cows on his lands (about 170 acres in extent), and Scrimger being a farmer. For many years Williamson has leased to another party a part of his lands not far distant from his westerly boundary for use in obtaining ice for commercial purposes, the lessee having the right to dam the creek; the lease has still several years to run.

The object of the proposed sewer or drain is to collect the surface water from an area of the town about 140 or 150 acres in extent, and to carry it to and discharge it into Moffat's Creek, and defendants have attempted to shew that if their project be carried through it will not subject plaintiffs to conditions to which they have a right to object, contending that the sewer, if constructed, will carry towards the creek only what under present conditions flows towards or into it, the general grade of the land in the locality being in that direction. That proposition is far from being substantiated. There is a marked difference between leaving the surface water from the area intended to be drained to find its own way over or through soil of the character found here, and collecting and passing it through the sewer or pipe to the point of discharge at the creek, without the possibility of escape in its course, by percolation, absorption or other means, of objectionable and dangerous matter. This is borne out by the evidence of competent witnesses, whom I unhesitatingly believe, who say that the character of the soil between the area intended to be drained and the creek is very open, gravelly and porous, in which, by natural