and was born in Austria; that her father still resided in Austria; and that she had resided in Canada since the year 1911. She was still an Austrian subject. In Canada she had been pursuing her ordinary calling, that of a domestic servant; and there was no evidence to shew that her conduct entitled her to be deemed an alien enemy.

In these circumstances, being merely the subject of a sovereign with whom His Majesty is at war does not constitute her an alien enemy, and her mere nationality does not deprive her of her civil right to maintain an action in our Courts.

Judgment should be entered for the plaintiff for $500 with costs.

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MASTEN, J. MAY 13TH, 1918.

## JEFFRIES v. CITY OF TORONTO.

*Municipal Corporations—Drainage—Unlawful Interference with Natural Watercourse—Flooding Plaintiff's Premises—Cause of Flooding—Inference of Fact—Finding of Trial Judge—Undertaking to Remedy Difficulty by New Drain—Damages.*

Action for damages for interference by the defendants with a natural watercourse, whereby the plaintiff's cellar was flooded and her premises and person damaged.

The action was tried without a jury at a Toronto sittings.
S. W. McKeown and J. W. McCullough, for the plaintiff.
Irving S. Fairty, for the defendants.

MASTEN, J., in a written judgment, said, after stating the facts, that, on the evidence and on his observation of the locus, he was of opinion and found as a fact that the immediate cause of the flooding of the plaintiff's cellar was the interference by the defendants with the natural watercourse.

This conclusion could not be absolutely demonstrated, but was an inference depending upon the inherent probabilities. As was said by Earl Loreburn, L.C., in Richard Evans & Co. Limited v. Astley, [1911] A.C. 674, at p. 678: "Any conclusion short of certainty may be miscalled conjecture or surmise, but Courts, like individuals, habitually act upon a balance of probabilities."

Whether these injurious results would have been obviated if that part of the watercourse lying directly to the east of the