

its way onto the adjoining and lower lands of the plaintiff, causing excessive moisture, of which the latter complained.

The defendant argued that he had a perfect right to use his lands in any manner not prohibited by law, and that his neighbor owning lands which were lower and naturally servient to his own, was obliged to receive the escaping water. The plaintiff points out that this water is no part of the natural discharge, nor a matter of which he had any warning at the time of purchase, but an increase in the volume of water sent down by adding waters artificially brought to the higher land.

The text writers show that the owner of upper lands may improve his drainage in such a way as to hasten the escape of waters from his land, but without increasing the volume of waters sent down; and even here the owner below may complain if the rapid discharge cause a marked or sudden disturbance below. Held that to discharge waters brought by man to the higher level is an aggravation of the natural servitude, such that the owner of the servient tenement may recover damages and have an order for abatement of the nuisance. Judgment for plaintiff.—39, S. C. R., 103.

### ESCAPING VAPORS—NUISANCE TO PROPERTY.

**Tipping vs. St. Helens Smelting Company.**—The defendants carried on the business of a copper smelting company and had had works erected and in operation for several years in the County of Lancaster, England, when the plaintiff purchased some 1,300 acres of an adjoining estate. The plaintiff had seen the works and chimneys nearby when making the purchase, but thought then that they were not causing any trouble or inconvenience. Later he found they were and brought this action alleging that the escaping fumes permeated the air to the injury of trees, shrubs, fruit, and even persons upon his property.

The defendants relied on the fact that their works were already in operation at the time the plaintiff came to the locality, and that the whole neighborhood was studded with tall chimneys, and that such works were a necessity in that locality.

The court disposed of the argument seriatim. It makes no difference that the plaintiff came to an existing trouble unless the defendants had by long continuance acquired a prescriptive right to continue such work, which is not the fact in this case. The answer that there are many others is no sufficient answer, for it does not make the particular one complained of any less a nuisance. The argument that such work is a necessity in this particular county and locality has some weight, for in such localities these things are unavoidable and must be encouraged; thus what would be considered a nuisance by smoke in an open country could not be considered such in e.g., the town of Shields, where an additional factory creates no nuisance but only adds infinitesimally to the volume already afloat. But even this argument has undoubted limits and when the business complained of causes sensible injury to the property of any particular person, that person will have a right of action. Persons in such localities must not stand on extreme rights but be willing to waive trifling inconveniences for the benefit of the general community. Every circumstance must be regarded and taken into consideration from a reasonable standpoint; but every man must so use his own property as not to injure that of his neighbor. Held that in this case the injury was not trifling but such as to sensibly depreciate the use and enjoyment of the plaintiff's land and residence.

Judgment for plaintiff.—(1865), 11, H. L. C., 642.

This is a leading case on the subject of nuisance, and it appears from applying it to the facts in the case that it would be no answer for the owner of the dominant tenement to say that his icehouse was there and discharging water before the plaintiff purchased the lower lands. The injury did not exist until the plaintiff took actual occupation, and the lower lands or wished to make such use that the water would be a detriment to his property.

### ENGINEERING SOCIETIES.

**CANADIAN RAILWAY CLUB.**—President, L. R. Johnson; Secretary, James Powell, P.O. Box 7, St. Lambert, near Montreal, P.Q.

**CANADIAN STREET RAILWAY ASSOCIATION.**—President, E. A. Evans, Quebec; Secretary, Acton Burrows, 157 Bay Street, Toronto.

**CANADIAN INDEPENDENT TELEPHONE ASSOCIATION.**—President, J. F. Demers, M.D., Levis, Que.; Secretary, F. Page Wilson, Toronto.

**CANADIAN SOCIETY OF CIVIL ENGINEERS.**—413 Dorchester Street West, Montreal. President, J. Galbraith; Secretary, Prof. C. H. McLeod. Meetings will be held at Society Rooms each Thursday until May 1st, 1908.

**QUEBEC BRANCH OF THE CANADIAN SOCIETY OF CIVIL ENGINEERS.**—Chairman, E. A. Hoare; Secretary, P. E. Parent, P.O. Box 115, Quebec. Meetings held twice a month at Room 40, City Hall.

**TORONTO BRANCH OF THE CANADIAN SOCIETY OF CIVIL ENGINEERS.**—96 King Street West, Toronto. Chairman, C. H. Mitchell; Secretary, T. C. Irving, Jr., Traders Bank Building.

**MANITOBA BRANCH OF THE CANADIAN SOCIETY OF CIVIL ENGINEERS.**—Chairman, H. N. Ruttan; Secretary, E. Brydone Jack. Meets first and third Friday of each month, October to April, in University of Manitoba.

**ENGINEERS' CLUB OF TORONTO.**—96 King Street West. President, J. G. Sing; Secretary, R. B. Wolsey. Meeting every Thursday evening during the fall and winter months.

**CANADIAN ELECTRICAL ASSOCIATION.**—President, N. W. Ryerson, Niagara Falls; Secretary, T. S. Young, Canadian Electrical News, Toronto.

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**AMERICAN SOCIETY OF MECHANICAL ENGINEERS.**—29 West 39th Street, New York. President, H. L. Holman; Secretary, Calvin W. Rice.

### SOCIETY NOTE.

#### American Institute of Electrical Engineer.

The Executive Committee of the Toronto Section of the A.I.E.E. has arranged an excursion to Niagara Falls, Ont., on Saturday, September 19th, via N.N. Company steamer, and Niagara Belt Line, leaving Toronto at 7.30 a.m. and leaving Niagara Falls at 5.15 p.m. The party is invited to visit the properties of the three Canadian Power Companies and programme for the day is being arranged. Round trip tickets good for two days, \$2. W. G. Chace, Secretary Toronto Section.

The "Scientific American" calls attention to an extraordinary appearance in the heavens all over the continent which appeared during the period of drought and thunderstorms of middle August. It describes it as having a spiral and curling appearance, which from its intensity in places made the Galaxy or Milky Way across the heavens invisible. No explanation is made of its appearance except to disassociate it from the aurora borealis or from electrical storms, as no disturbance was reported on the wires. Nor did it appear to be in connection with the magnetic pole. In Nelson the astronomical reporter of the "Daily News" mistook the appearance for the smoke of a forest fire conducted upwards by a warm upward current of air into the upper regions of the atmosphere. This explanation although given elsewhere, is not accepted by the "Scientific American" which points out that the smoky appearance was luminous.