

comes from land to the east and north of defendant's furrowed field from which field the water complained of flows. The water from last mentioned field is of comparatively small quantity. The fact that the defendant plowed in the direction he did, and for the reasons he gave, makes a strong *prima facie* case in his favour. Defendant desired to get rid of water. If the flow was to the north as plaintiff says, why should defendant not accelerate its flow in that direction.

I do not accept the theory that defendant had any thought of diverting water in case of the outlet, or to save his land there. He plowed so as to have the water flow on the line and in the direction of least resistance, and that was not the northerly direction, but the westerly. There is no dispute about the law applicable to this case—defendant's counsel admitted the contention of plaintiff's counsel as to the law. The questions are wholly questions of fact. I have considered the professional evidence—and have gone over the measurements and the sketches filed. The weight of evidence, as to height of land—and the direction of natural flow from the particular field of defendant is in favour of defendants' contention. There are other parts of defendant's land—which to some extent—would shew the flow more northerly.

The action must be dismissed.

The attitude taken by the defendant when objection to the furrows and the opening under the fence was made by Anderson—representing the owners of this lot 10, and his attitude since warrant my relieving the plaintiff to some extent of the costs of the defence. Had the defendant reasonably discussed the matter with Anderson or with the solicitor, it is quite likely that litigation would have been avoided.

On the 25th August, 1910, Anderson wrote to the defendant. The defendant replied on the 27th August denying liability which was quite right, but threatening to hold Anderson as representing the Walker estate for defective fences, etc. It was such a letter as was calculated to annoy the plaintiff—to whom this letter was reported.

The defendant appeared to be somewhat arbitrary and aggressive.

The action will be dismissed with costs payable by plaintiff to defendant—which costs I fix as so payable by plaintiff at \$100.

Thirty days' stay.