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HON. MR. JUSTICE KELLY.

MARCH 10TH, 1914.

SCRIMGER v. TOWN OF GALT.

6 O. W. N. 75.

Municipal Corporations—Construction of Sewer—Draining of Surface Water—Pollution of Stream—Increase of Flow—Rights of Riparian Owners—Evidence—Estoppel—Consent—Injunction.

KELLY, J., held, that an owner of land has no right to rid his land of surface-water or superficially percolating water by collecting it in artificial channels and discharging it through or upon the land of an adjoining proprietor, or into a natural watercourse, thereby polluting the same or increasing the flow, and a municipal corporation has no greater rights in this respect than a private landowner.

Action for an injunction restraining defendants from constructing or maintaining a sewer or drain from the easterly part of the town of Galt in a southerly direction to what is known as Moffat's Creek, and from bringing water into the creek in excess of the natural flow; from injuriously affecting plaintiffs' rights in respect of the water of the creek, and from laying down a drain across the lands of plaintiff Scrimger, and for a mandatory order compelling defendants to remove tile or other material from that land.

P. Kerwin, for plaintiffs.

R. McKay, K.C., and Dalzell, for defendants.

HON. MR. JUSTICE KELLY:—Questions are here involved which are common to both plaintiffs; the joinder of the plaintiffs has neither embarrassed nor delayed the trial, and I see no reason for giving effect to defendants' plea that they are improperly joined.

Moffat's Creek runs in a westerly direction and discharges into the Grand river, its course being through plaintiff Scrimger's lands, which lie a short distance west of the line of the proposed sewer, and also through plaintiff Wil-