

to the line fence, cutting through the bottom of the fence thus facilitating the flow of water westerly upon plaintiff's land. The plaintiff says he has already sustained damage and will suffer more unless the defendant be restrained by injunction.

The ditches complained of are simply plow furrows. The ditches and dams were made, defendant says, in due course of good farming to protect the growing wheat from water resting upon the land and from the effect upon the stock by the water freezing there in the fall. Of course the defendant has no right to do damage to his neighbour merely to protect his own crop. I mention the facts—as the charge of digging ditches and constructing dams, is hardly sustained by the evidence.

The claim is for damages and injunction.

In Court the plaintiff admits that no damage has so far been sustained. None whatever and the claim for damages was abandoned. Therefore, even if the plaintiff is right in his contention as to flow of water and its diversion by the defendant, the injunction as to future acts by the defendant of the same or similar character to those complained of, should be refused, and the plaintiff left to recover damages, if any, in an action at law—I am not attempting to formulate any general rule as to granting or refusing injunctions. No doubt where a trespass has been committed and is being continued and where damage is being done the Court will interfere and restrain further trespass. Here, no damage and the plaintiff is asking for general relief and protection, not against any particular thing such as obstruction in a stream, or continuing an open ditch, but that the defendant be restrained from committing in future any trespass by causing surface water to flow upon plaintiff's land. Under such circumstances an injunction should not be granted.

I am also of opinion that the plaintiff fails upon the main grounds of his action. He alleges that the defendant willfully and wrongfully diverted water from its natural course and turned it upon plaintiff's land. Why should the defendant desire to do this? The plaintiff suggests as a reason that the natural outlet was the north-east corner, and that the quantity of water finding its outlet there was so great that it was eating into defendant's land, and to reduce the quantity, the defendant by these furrows diverted a part. The fact is, and I so find upon the evidence that the larger quantity of water, finding its outlet at the north-west corner,