

construction of the drain itself. That is not this case. This case is for my present purposes identical with *Wigle v. Gosfield*, 7 O. L. R. 32. There it was held that the damages in a case such as this are re-current and not only may but must be paid for as sustained from time to time, each claim for damages within a period of two years before action brought. Therefore I am satisfied that the plaintiff is entitled to claim for such damage as he has sustained by reason of the defect in the original construction of the drain within two years of the time of the bringing of the action, and his claim being confined to the year 1912, is in time.

The difficulty in my mind is that there seems no doubt whatever but that the damage caused to the plaintiff was in part the result of this original defect in construction and in part the result of the non-repair of the drain, which has avowedly become defective and out of repair since the time of its completion.

In the year 1907 and again in the month of February, 1908, the plaintiff caused notice to be served upon the township council but in each of these notices his complaint was as to the method of construction, he being always satisfied that the drain was not of sufficient capacity to carry the water past his lands. He did not at any time notify the township of any lack of repair and there is no evidence that anyone else notified the township of any lack of repair.

My understanding of the present section 80a, of the Municipal Drainage Act, is that it is the duty of the land owners along the course of the drain to keep track of its state of repair, and that when any one finds that the drain is becoming out of repair to such an extent that he as an owner may reasonably anticipate damage to be caused to him, it is his duty then to notify the council of the lack of repair and of the probability of damage.

The council is not obliged in this respect to watch a drain from month to month, and the council does not become liable in pecuniary damages to any owner of land whose property is subsequently injuriously affected by reason of non-repair unless and until after service by or on behalf of such owner of a notice in writing describing with reasonable certainty the lack of repair which it is anticipated may subsequently cause damage to the owner. It seems to me that the intention of the Legislature is clearly expressed. The new section of the Act may work a hardship in an occasional case such as referred to by Mr. Makins, but my experience