

jured as to put them beyond being saved, and others have been injured almost to the same extent, or to such an extent in any event as to render it highly improbable that they can be saved.

It was argued for the defence that the plaintiff was inactive in protecting his property; that when the increased flow of water came he took no means of having it carried off his lands, and that, therefore, any damage which he has sustained has been increased by reason of his own inactivity. It is true he took no steps for protection. I think, however, that this is accounted for by the character of his neighbours' lands into and through which the ditch is carried, and of the lands where the ditch discharges.

From the evidence and from a view of the locality which I made at the request of counsel for both parties, these lands are all low-lying, and there would be great difficulty in doing what would be necessary to carry the increased quantity of water through and away from plaintiff's lands. Moreover, it was pointed out by more than one witness that while so large a quantity of water is being discharged on to these lands, it is practically impossible to clean out the ditch or to remove the water-cress and other vegetable matter which has grown there since December, 1910.

Taking all the facts into consideration, I estimate the damage sustained by the plaintiff at \$1,525.

Judgment, therefore, will be in his favour for that sum, and for an injunction restraining defendants from permitting the water, other than surface water by natural flow, from their premises and works, to come upon and overflow plaintiff's lands. Plaintiff is also entitled to the costs of the action.

The judgment, so far as it relates to the injunction, should not, I think, issue for, say, four months, so that the defendants may have ample time to make provision for properly taking care of the water and removing the cause of the trouble. This, however, is to be without prejudice to any proceedings by the plaintiff for the recovery of any damage that he may in the meantime suffer.