

the owners to *cultivate the land*, the design of this Act, as expressed in sec. 3, is to enable them the *better to cultivate* the same.

It will be further observed that sec. 17 of this Act, unlike sec. 13 of cap. 199, does not confine the liability of municipal corporations to cases where they would be benefited by the constructions of the ditch or drain, but places them in the same position as individual owners. It will therefore be seen that the arguments of the learned Chief Justice, in the above case, would be of no force in an action brought under this statute.

In *McGillivray v. Millin*, 27 U. C. R., p. 62., the facts were as follows: The plaintiff owned land south of, and higher than the defendant's land, and the surface water in the spring and fall drained off in a channel of no definite width from the upper part of his lot to the lower, and thence to defendant's land, into a pond from which no exit was proved, and which with the rest of the low land, was usually dry from April to November. The plaintiff had dug a ditch to facilitate the drainage through his own land, and defendant three or four years ago had allowed him to plow a furrow in his land, with the same object. This the defendant afterwards obstructed, and the plaintiff sued. It was held that there was no right of action, for he was not a riparian proprietor, and there was no proof of any easement, and there was no natural drainage at the spot obstructed until the ditch was dug there. It was intimated by the Chief Justice, that the proper remedy was under the "Ditches and Watercourses Act."

See also *Murray v. Dawson*, 19 U. C. C. P. p. 314.

Where there is not a natural watercourse, the proper remedy is under the provisions of this Act.