

It would, perhaps, have been better if the Legislature had expressly made the words which I have quoted from sub-sec. 4 applicable also to the previous sub-sec. To have done so would at least have saved some rather hair-splitting arguments upon the subject to which the Courts have had from time to time to listen. There is upon the face of things no good reason why injuring liability should stand upon one foundation, and outlet liability upon another and a different one. It must surely often happen that certain sections or lots in a drainage scheme are liable for both. In *Orford v. Howard*, Lister, J., apparently with the concurrence of the other members of the Court, held that the amendment of sub-sec. 4, by the introduction of these words had had the effect of also enlarging the meaning of sub-sec. 3, a conclusion fortified and put beyond question by the subsequent amendment, which while not primarily directed to sec. 3, is directed to another and a minor phase of the same subject-matter.

The second and third objections which are somewhat related, may perhaps be conveniently considered together.

It is not, in my opinion, necessary in this case to discuss the general question of the riparian right of drainage into natural watercourses for the purposes of agriculture. The facts in the cases of *In re Elma & Wallace*, 20 W. R. 198, and *McGillivray v. Lochiel*, 8 O. L. R. 446, to which counsel referred, and upon which he relied, were very different. Fleming creek and Kintyre creek, both, although small, entitled in strictness to be called watercourses, long ago lost their natural condition, and became part of an artificial drainage system created under the drainage laws of the province. The law permits that to be done. And when it is done the part of the system which was once a natural watercourse is entitled to no particular immunity under the law over the other parts which are purely artificial. The whole must operate so as to discharge the waters which it gathers at a proper and sufficient outlet. The law at least aims at affording complete relief from the common enemy, and not merely a nominal or paper relief, or the relief of one section of the locality at the expense of another. And until this main object is secured I see nothing in the Act pointing to the finality upon which so much of the argument was based. Section 77 provides that "Whenever for the better maintenance of any drainage work constructed under the provisions of this Act or any Act respecting drainage by