

Bringing hot and foul water, as the defendants did, from the factory, they must keep it there, at their peril; and this is the rule as to what Lord Cairns denominates "the non-natural use" of the defendants' premises, whether the thing brought there "be beast or water or filth or stench." *Rylands v. Fletcher*, L. R. 3 H. L. 330. As said in *Tenant v. Goldwin*, Salk. 21, 361: "He whose dirt it is must keep it that it may not trespass."

To send down polluted water is always actionable. *Hodgkinson v. Ennor*, 32 L. J. Q. B. 231; 8 L. T. 451; *Womersley v. Church*, 17 L. T. N. S. 190; *Reeve v. Toronto*, 21 U. C. R. 60; *Matthews v. City of Hamilton*, 6 O. L. R. 198.

And the parties may be enjoined. *City of St. John v. Baker*, 3 N. B. Eq. 358; *Ballard v. Tomlinson*, 29 Chy. D. 155.

The plaintiff is not called upon to shew actual damage. *Crossley v. Leighton*, L. R. 2 Chy. 478.

The plaintiff need not have any property in the water until it actually comes upon his land, and it matters not whether it comes visibly, as by overflow, or invisibly by seepage underground. *Ballard v. Tomlinson*, above; where the whole question of pollution is fully considered.

A laboured effort was made, and much time taken up, to shew that Fly creek chokes up and blocks this drain, and that the condition of Fly creek at high water accounted for the flooding of the plaintiff's land. Perhaps it did to some extent; but does it matter at all? The defendants argue that the creek overflows and the water spreads out west and reaches the plaintiff's land. Does it alter the situation if it does? A municipal corporation is not allowed to collect water and bring it down to the plaintiff's land without providing a proper outlet. *City of Indianapolis v. Lawyer*, 38 Ind. 248; *Weese v. Mason*, 39 Am. Rep. 135; *Burford v. Grand Rapids*, 53 Mich. 98.

Having brought this dangerous thing down to the plaintiff's land, the defendants were bound to keep it under control and carry it safely on to a proper outlet. It cannot affect the question of their liability whether they poured it directly from their drain or emptied it into an already full reservoir where of necessity, as the defendants claim, it would overflow upon the defendants' land.