

some earth upon the manure, making what plaintiff calls a dam. He also ploughed a furrow running westerly from point C. This was the beginning of the trouble. . . . In the autumn of 1902 defendant did further work on the ground. . . . He put straw to fill up what he calls "the hollow," and he filled up a couple of furrows. He made a ditch from a point on his own land to the line fence, between his land and plaintiff's. He cut a rail out of the line fence, dug the ditch under the fence, and took out the bottom rail. . . . He cut through a grass covered bank at the bottom of the fence. . . . making a ditch, as he admits, of 6 inches deep, and he then went upon plaintiff's land and continued the ditch upon her land to a furrow, a distance of about 3½ feet.

Defendant had no right to dig through this bank and go upon plaintiff's land. Plaintiff was and is entitled to the natural protection which is furnished as against surface water by the deposit upon her own land of silt and earth carried down by spring and autumn freshets.

No actual damage has been done to plaintiff's land by the water alone. All the damage proved is that from bringing down seeds of wild mustard, etc.

I think the \$25 paid into Court by defendant is sufficient to cover all damages.

Plaintiff is wrong in her contention that the surface water did not naturally flow upon her land. . . . The defendant had a right to do what he did as to ploughing and digging on his own land. It was only good husbandry. . . . Upon the evidence I conclude that no more water was by defendant caused to flow upon plaintiff's land than did flow in the years prior to 1898, except to the small extent of the digging done and trespass committed in the autumn of 1902.

As it is a case in which plaintiff is entitled to recover only as to a specific act, and as no further trespass is threatened, it is not a case for injunction.

Under the circumstances, I think the judgment should be without costs. . . .

The \$25 to be paid out to plaintiff in full of damages.