

the fouling of the water of the river without shewing that the fouling is actually injurious to him." See also *Wood v. Waud*, 3 Ex. 748.

I have dealt with the case as though the town was a riparian proprietor. No doubt, it is in one sense, as the stream crosses King street, but what is complained of is, the bringing of filth from the lands of those who are not riparian proprietors and depositing this in the stream. No riparian proprietor could justify this: *Ormerod v. Todmorden Joint Stock Mill Co.*, 11 Q.B.D. 155.

Then it is said others foul this stream. This affords no answer: *Crossley v. Lightowler*, L.R. 2 Ch. 478. No case was made on the evidence for more than nominal damages, so I award \$1 damages and an injunction restraining the defendants from in any way polluting the stream in question by discharging or permitting to be discharged through the drain in question any sewage or other foul or noxious matter.

The defendants must also pay the costs.

STONESS V. ANGLO-AMERICAN INSURANCE CO.—RIDDELL, J.—
DEC. 29.

Fire Insurance—Interim Receipt—Issue by Agent—Company not Declining Risk and not Issuing Policy—Insurance in Force until Determination of Head Office Notified—Loss Payable to Mortgagee—Assignment of Mortgagee's Claim—Negligence of Agent—Indemnity—No Damage Shewn.—Action on a fire insurance contract. The property (a building) alleged to be insured was destroyed by fire on the 21st April, 1911. There was no formal application for the insurance. The Westport Manufacturing Company, lessees of the building from the plaintiff, corresponded with the defendants' agent at Kingston, and that agent received from the company \$40, and signed and issued a receipt therefor, to the plaintiff, as for an insurance for 12 months from the 23rd December, 1910, stating that, "subject to approval at the head office and to the conditions of the policies of the company," the plaintiff "is insured until the determination of the head office is notified." The loss, if any, was made payable to Clara Galbraith, mortgagee. The agent was solicitor for the mortgagee, and as such retained the receipt. The agent informed the defendants of what he had done. The defendants did not refuse the risk, nor did they issue a policy. The