

G. H. Watson, K.C., and H. F. Hunter, Bowmanville, for defendant.

BRITTON, J.—Plaintiff and defendant are the owners of adjoining farms. Plaintiff says that the surface water flowing over defendant's land, if left to itself, would flow southerly over defendant's own land to a natural watercourse and on to Lake Ontario, and complains that defendant has obstructed the water in its natural course and so diverted it that it flows upon plaintiff's land to her damage.

This is a case in reference to surface water. No water-course has been established within the decision in *Beer v. Stroud*, 19 O. R. 10. The water does not flow in such a channel as to create riparian rights, within the ordinary acceptation of these words.

The evidence does not shew any collection of water by defendant at the point marked A. on plaintiff's plan. The natural flow of the surface water from points north and north-westerly of point A. is south and south-easterly to point A., and then on to B. and C., then crossing to plaintiff's land. . . . This is established by the weight of evidence of persons knowing the locality and by the measurements made on the ground. . . . It is established that for years prior to 1898 the bulk of the water left defendant's land at point C. and followed the course indicated by the dotted line to the east and south. This was surface water, and, according to *Ostrom v. Sills*, 24 A. R. 526, plaintiff had a right to keep it off her land. She did not build any dam or erect any barriers against this water, but her fence was there, and at the bottom of the fence and against it dirt collected, silt accumulated, and grass grew, forming an obstruction, so that year after year, less water proportionately flowed upon her land. That, however, continued to be the course of the larger part of the surface water in spring freshets until 1898. In 1897 defendant had his land to the south of point C. "seeded down," and in the spring of 1898, owing to a bank of snow and ice against the line fence from B. to C., the water forced its way south on defendant's land, making a small channel for itself through defendant's seeded field. In 1899 the water again went that way, making this channel deeper, or making what defendant calls a "big ditch." Some water went that way in the spring of 1900. In the autumn of 1900 defendant ploughed his south field, and so obliterated the "big ditch." In the spring of 1901 defendant drew a load of manure and put it upon the land just below point C. to prevent the water going south, and he put