

the flow of water accumulating on John street on to and along these streets towards the river. The learned Judge also found that the plaintiff had suffered substantial damages as the result of the defendants' negligence—damage which would have been much reduced had they responded promptly and reasonably to the plaintiff's earlier complaints.

A proprietor higher up cannot collect and concentrate surface-waters and pour them in unusual quantities upon the lands of an adjacent proprietor: *Ostrom v. Sils* (1897-8), 24 A.R. 526, 539, 28 Can. S.C.R. 485.

Increasing the velocity or quantity of surface-water makes a municipal corporation liable: *Malott v. Township of Mersea* (1885), 9 O.R. 611.

While a municipality may improve and must repair the highways, it may not in any manner collect vagrant waters and discharge them on the lands of others: *Simm v. City of Hamilton* (1919), 16 O.W.N. 1.

Having wrongfully collected the water, the defendants were under obligation to keep it in control and not allow it to flow upon the plaintiff's lands.

This was not a case where what happened was done without negligence or lawfully under the authority of a statute, and the plaintiff was entitled to proceed by action and was not confined to compensation under the arbitration clauses of the Municipal Act: *Meredith and Wilkinson's Canadian Municipal Manual*, pp. 22, 23; *Malott v. Township of Mersea*, *supra*.

Sections 331 and 460 of the Municipal Act, pleaded by the defendants, had no application to limit the time for commencing the action; nor was the plaintiff's claim barred by the Limitations Act.

It was not possible, upon the evidence given at the trial, to determine the quantum of damages.

There should be a judgment for the plaintiff for an injunction and damages, to be ascertained by the Local Master at Ottawa; the plaintiff's costs to and including the trial to be paid by the defendants; further directions and costs of the reference reserved until after the Master's report.