

POPULAR TALKS ON LAW

THE LAW OF SURFACE WATER.
By Walter K. Towers, A. B., J. D., of the Michigan Bar.

There are times when rain is treasured. There are times, in most localities, when rain falls all too abundantly—so rapidly that the earth cannot take it up. The passage of surface water and the efforts made to turn it into fixed channels or block its passage, give rise to not a few legal disputes between the owners of adjoining lands. What the law knows as "surface waters" are those which spread themselves over the surface of the earth without following any distinct and fixed channel.

The rainfall which comes upon a person's property is his own and he may retain it there for his own uses. So it is that if the surface water is deemed of value to the landowner he may retain it and his neighbor, over whose land it would otherwise have drained, has no legal cause of complaint. This applies only to surface water and not to fixed and definite watercourses of any character, which are differently regarded.

But if the surface water is not a valuable thing to be carefully retained and treasured the question arises as to what means may be taken to dispose of the water which sweeps down the slopes after heavy rains. May Andrews ditch the surface water that gathers on his land and discharge it onto Baker's property, when if left to its natural course the slope of the land would have carried it onto Collins' farm? If Andrews in no way interferes with the course of the surface drainage may Collins build a dike which will prevent the surface water from running from Andrew's property onto his own?

Different states answer these and kindred questions in different ways. There are two principal rules which are followed in deciding these questions. One rule is technically known as the "civil law rule," and is followed in such states as Illinois, Michigan, Ohio, Pennsylvania, California, Iowa, Alabama, Georgia, Kentucky, Louisiana, Maryland, North Carolina and Texas. Under this rule the owner of the land which is higher, has a right, as against his neighbor whose land is lower, to have the surface water drain off in the natural manner without obstructions. Thus Collins, whose land adjoins Andrew's must receive the surface water which naturally flows from Andrew's land in times of rain and melting snow, and he has no right to erect any obstructions against it which will prevent its flowing from the higher land.

Other states have adopted what is known as the "common law rule." Among these are: New York, Massachusetts, Indiana, Minnesota, Missouri, Virginia, Washington, Kansas, Maine, Connecticut, Vermont, New Hampshire, Arkansas, Nebraska, New Jersey, New Mexico, Oklahoma and South Carolina. This rule regards surface water as a common enemy and allows each landowner to cope with it to his own advantage. Thus the owner of the land which is lower may protect his own property against the surface water, even though in doing so he prevents it coming on his land and causes it to be forced back on his neighbor's from which it was accustomed to flow with the land in its natural state. It is usually held in these states, however, that where a well-defined gully has been worn in the soil by the frequent running of water in the same place this may not be dammed up in such a way as to flood a neighbor's land. And in all cases due regard must be had for the property rights of the neighbor and nothing must be done which will unnecessarily injure his land.

In cities where the common law rule prevails, and even in cities in most states following the civil law rule, by special exception, the owner of a lot may grade it to the proper level, whatever the effect upon the drainage of surface water. But it is usually required that each lot owner care for his own surface water and ar-

range to conduct it into sewers or gutters. In states where the common law rule prevails a railroad in building its embankment, while it must provide culverts etc., for regular watercourses, need not make special provision for surface water, as a general rule. In the states following the civil law rule the railroad must make preparations for the passage of all surface water in its natural manner providing culverts and drains in all places where water would normally pass.

One who by artificial means wishes to conduct the surface water that gathers on his property away from its natural course must see to it that no greater burden is cast upon the land at lower level than there would be under normal conditions. Neither may he divert the water and discharge it on the neighbor's land at some new point. Only such drains may be made as good husbandry requires and no greater damage may be done to the lower land than would be under normal conditions. The surface water may be hastened on its way without doing a legal wrong, as long as the way is not changed from the one which nature has fixed. Of course, the right to drain water across another's land through artificial channels may be secured by purchase, or grant, or long-continued custom under a claim of right, when it becomes a property right and may be held as such.

One may not collect the surface water in an artificial basin and discharge it upon his neighbor's land in greater volume than it would ordinarily flow. One may collect surface water in ditches on his own land and drain it into watercourses which are its natural outlet, if the discharge is not beyond the capacity of the watercourse. Unless there is some municipal regulation forbidding it the owner of a lot may drain the surface water into street or alley. Special drainage laws sometimes provide special regulations to govern the drainage of surface water.

When overflows come by reason of heavy rain or melting snow one is not, ordinarily, responsible for the injuries which happen to a neighbor's property from surface water rushing from his land. But if one causes the course of drainage to vary from the normal he may become liable for the injury. Thus, if he allows water to accumulate in an excavation, as a cellar, and then drains it onto a neighbor's land he is responsible for any injury which this may cause.

One must care for the water which falls on the roofs of his buildings, and see to it that it does not flow onto the adjoining property in an unnatural manner, else he will be liable for any injury caused. Thus, if a building is close to the line gutters and rain spouts must be provided of a sort to handle ordinary rains and reasonable care must be taken to keep them in proper condition. For the results of overflows caused by extraordinary rains or unforeseeable happenings the owner is not responsible.

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AN IDEAL IDLE IDYLL

When the cauliflower's calling,
And the hall of fame is hauling;
When the Pyrenees are peering through
the goggles all agog;
When the rubber stamp is rubbing,
And the substitute is sabbing,
Then the atmosphere is fearing lest
the poly is a wog.

When the insincere are sinning,
And the window sill is winning,
And the cribbiribins are cheering soft
above the sky;
Then the dictionary's ailing,
And the underwear is wearing,
And the Hiawatha highly hieing higher up
on high.

Take a shot at composition
Of this gentle disposition—
(When the scrambled eggs are ambling
faster than the ransom ran)—
To write it wrightly make it sprightly,
Nighly, lightly and contritely;
For the canopy can do it if the canny
candle can.

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I'm going for help."
"Wait a minute. I'll go with you."
Harper's Magazine.

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