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**2016 Edition**

# Surface Water in Connecticut

A Guide to Resources in the Law Library

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## Introduction

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- **Surface waters:** “those casual waters which accumulate from natural sources and which have not yet evaporated, been absorbed into the earth, or found their way into a stream or lake. The term does not comprehend waters impounded in artificial ponds, tanks or water mains.” [Taylor v. Conti](#), 149 Conn. 174, 178, 177 A.2d 670 (1962).
- “**Surface water**’ is a term which has been defined or used variously. A few of the definitions embody statements which would imply that it is a term appropriate to be applied to all fresh water upon the surface of the earth, not ponded, which is not that of a watercourse. Other authorities while giving a definition which affords no logical foundation for such a broad use of the term, act upon the assumption that all nonponded fresh water is either surface or stream water. The better and more generally stated definitions, and those which permit a consistent application productive of just results, confine surface water within more definite limits.” [Thompson v. New Haven Water Co.](#), 86 Conn. 597, 603, 86 A. 585 (1913).

# Section 1: Between Private Landowners

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to actions against private property owners who alter flow of surface water causing injury to owners of adjacent property.

## **DEFINITIONS:**

- **Common enemy doctrine:** "briefly stated, is that the owner of land may repel or divert surface water from its land on to that of another." [Page Motor Co. v. Baker](#), 182 Conn. 484, 487, 438 A.2d 739 (1980).
- **Rule of reasonable use:** "the landowner, in dealing with surface water, is entitled to take only such steps as are reasonable, in light of all the circumstances of relative advantage to the actor and disadvantage to the adjoining landowners, as well as social utility." [Page Motor Co. v. Baker](#), 182 Conn. 484, 488-489, 438 A.2d 739 (1980).

## **FORMS:**

- 2 [Connecticut Civil Practice Forms](#) (2004).  
Form 104.6. Injunction against interference with flow of surface water. See [Figure 1](#)
- 1A [Am Jur Pleading and Practice Forms Adjoining Landowners](#) (2014).  
§ 154. Complaint, petition, or declaration - Storm water discharged onto plaintiff's land - House damaged
- 24B [Am Jur Pleading and Practice Forms Waters](#) (2011).  
§ 228. Complaint, petition, or declaration—  
Concentration and injurious discharge of surface water—By adjoining landowner—  
Negligent maintenance of inoperative drainage system  
§ 248. Motion—By landowner—For temporary restraining order—To enjoin adjacent landowner from discharging water onto property
- *Cause of Action for Damage Caused by Diversion of or Change in Flow of Surface Water*, 48 [COA 2d](#) 397 (2011)  
§ 50. Sample complaint  
§ 51. Sample complaint for damages and injunctive relief due to obstruction and diversion of stream by levee
- *Proof of Landowner's Unreasonable Interference With Surface Water Drainage*, 87 [Am Jur Trials](#) 423 (2003).  
§ 29. Complaint by lower landowner seeking relief for upper owner's acceleration and increase in

volume of surface waters discharged onto lower land

§ 30. Complaint by upper landowner seeking relief from lower landowner's obstruction of natural drainage by erection of earthen embankment

**JURY INSTRUCTIONS:**

- *Proof of Landowner's Unreasonable Interference with Surface Water Drainage*, 87 [Am Jur Trials](#) 423 (2003).  
Model Jury Instructions  
§ 46. Rule of reasonable use  
§ 47. Liability for unreasonable alteration of surface water drainage—Augmenting natural drainage  
§ 48. Determination of "unreasonableness" of Defendant's conduct as question of fact

**CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [JMS Newberry, LLC v. Kaman Aerospace Corporation](#), 149 Conn. App. 630, 90 A.3d 249 (2014). "The record supported the trial court's finding that the plaintiff failed to present any evidence that would establish that the defendants were maintaining an alteration that diverted surface water off their property; although the complaint attributed the increased flow of water across the plaintiff's property to the unnatural grading of the defendants' property, there was no evidence in the record that the defendants' property had been altered so as to discharge water off of their property in a different course than its natural flow, the evidence submitted by the defendants conclusively established that neither they nor their predecessor had altered the property, and affidavits of the plaintiff's expert fell short of establishing material issues of fact concerning whether the defendants were maintaining an unnatural grade on their property or diverting surface water off of their property."
- [Hurlburt v. DeRosa](#), 137 Conn. App. 463, 49 A.3d 249 (2012). "The court concluded that the plaintiff failed to present sufficient evidence to establish his right to enforce the drainage easement because he failed to present evidence that a natural watercourse was on the defendants' property or had ever been on the defendants' property. Our careful review of the record supports the court's determination."
- [Walton v. New Hartford](#), 223 Conn. 155, 162, 612 A.2d 1153 (1992). "In their appeal, the Parsons claim that the trial court improperly concluded that the plaintiffs had granted to the Parsons a license, rather than an easement, to use the plaintiffs' property. We disagree."
- [Ferri v. Pyramid Construction Company](#), 186 Conn. 682, 686, 443 A.2d 478 (1982). "In *Page Motor*, this court substituted the reasonable use doctrine for the first branch of the rule of *Tide Water Oil*. We announced that

a repelling landowner would no longer enjoy immunity in dealing with surface water. Instead, we held (pp. 488-89) that, in dealing with surface water, the landowner would be 'entitled to take only such steps as are reasonable, in light of all the circumstances of relative advantage to the actor and disadvantage to the adjoining landowners, as well as social utility.' In increasing the possible liability of a landowner repelling surface waters, we did not address, and certainly did not diminish, the existing liability of a landowner diverting surface water under the second branch of the rule of *Tide Water Oil*."

- [Berin v. Olson](#), 183 Conn. 337, 439 A.2d 357 (1981). "The fact that the court awarded damages does not preclude the plaintiff from receiving injunctive relief. See Taylor v. Conti, supra (award of both damages and injunctive relief); 42 Am.Jur.2d, Injunctions 40, p. 780; 5 Clark, Waters and Water Rights 458. "For over one hundred years in this state, we have recognized the general power of equity to afford relief by injunction and damages for injury caused by a nuisance created by the unreasonable conduct on one's own property of an otherwise lawful activity. [Citations omitted.]" Nair v. Thaw, 156 Conn. 445, 451-52, 242 A.2d 757 (1968) (award of money damages and injunction restraining certain activity of the defendant)."
- [Page Motor Co. v. Baker](#), 182 Conn. 484, 488, 438 A.2d 739 (1980). "We now feel that the inflexibility of the old rule [common enemy doctrine], as correctly reported by the trial referee, should be modified so as to allow some reasonable latitude. By way of dictum, we are now inclined to adopt what some jurisdictions have termed the reasonableness of use rule."
- [Falco v. James Peter Associates, Inc.](#), 165 Conn. 442, 446, 335 A.2d 301 (1973). "Moreover, one who maintains such an alteration in his land [causing an increase in volume of surface water which flows onto the land of others], though it was created by his predecessor in title, may, after a request to remove it, be held liable for the continuing injury."
- [Taylor v. Conti](#), 149 Conn. 174, 177, 177 A.2d 670 (1962). "A landowner cannot use or improve his land so as to increase the volume of the surface waters which flow from it onto the land of others, nor can he discharge surface waters from his land onto the land of others in a different course from their natural flow, if by so doing he causes substantial damage."
- [Chase v. Tusia](#), Superior Court, Judicial District of Windham at Putnam, No. CV 04-4000354-S (May 8,

2007) (43 Conn. L. Rptr. 688). “Surface water cases first abandoned the law of property in favor of the law of torts in *Basset v. Salisbury Mfg. Company*, 43 N.H. 569 (1862)... While under the law of property, water dripping from an overhanging eave was actionable, the law of torts, which governs surface water, requires the water to do damage before a right of action accrues.’ *Street v. Woodgate Condominium Assoc.*, Superior Court, judicial district of Middlesex at Middletown, Docket No. CV 01-096955 (January 13, 2004, Gordon, J.)”

- *Agnello v.* CV 00-0273689-S (Oct Urbano, Superior Court, Judicial District of New Haven at New Haven, No. 24, 2002) (2002 WL 31501032). “The court finds that the defendants' actions violated the second branch of the *Tide Water* test. The defendants improved their land and caused the water to impermissibly flow upon the plaintiffs' property.”

**WEST KEY NUMBERS:**

- **WATER LAW**
  - V. Diffuse Surface Waters
    - #1161. What are surface waters
    - #1162. Rights, duties, and liabilities in general
    - #1163. Rights to capture, own, or use surface water
    - #1164. Rule of reasonableness in general
    - #1165. Obstruction or repulsion of flow in general
    - #1166. Common enemy doctrine; right to avoid surface waters
    - #1167. Right to have natural drainage maintained
    - #1168-1173. Drainage or discharge
    - #1174. Persons liable
    - #1175-1182. Easement of drainage
    - #1183-1187. Transfer of easement or other right of drainage
    - #1188. Abandonment, forfeiture, or other loss of right or privilege of drainage
    - #1189. Pollution
    - #1190. Rain water and eaves drip
    - #1196. Rights of action and defenses in general
    - #1197. Economic loss as grounds
    - #1198. Nuisance
    - #1199. Preliminary injunction
    - #1200-1211. Proceedings and relief
    - #1212. Review
    - #1213. Costs and attorney fees

**DIGESTS:**

- [Dowling’s Digest](#): *Waters*  
§ 5. Surface water

**ENCYCLOPEDIAS:**

- 1 [Am. Jur. 2d](#) *Adjoining Landowners* (2016).  
§ 35 Water, Snow or Ice Precipitating onto Adjoining Premises

78 [Am. Jur. 2d Waters](#) (2013)

III. Particular Types of Waters or Water Bodies

D. Surface Waters

§§ 189-190 In general

§§ 191-199 Drainage; Interference with natural flow

§ 191 Common-enemy doctrine

§ 192 Civil law rule

§§ 200-210 Application of general rules;  
circumstances affecting rights and liabilities

§§ 211-216 Remedies and actions

VI. Liability for Water-related Injury or Damage

A. Property Damage

1. In General

§ 395 Generally

§ 396 Overflow resulting from obstruction by debris or  
waste

§ 397 Overflow from wells

§ 398 Injury resulting from defect in artificial  
underground drain, conduit, or pipe

§ 399 Matters affecting liability; defenses

§ 400 –Act of God as causative factor

- 93 [C.J.S. Waters](#) (2013).

Surface water

§§ 247-251. In general

§§ 252-256. Rights, duties, and liabilities

§§ 257-265. Natural flow or drainage and obstruction  
thereof

§§ 266-274. Artificial drainage and obstruction thereof

§§ 275-279. Creation and transfer of easement or  
right of drainage

§§ 280-291. Actions for damages

§§ 292-296. Injunction

- *Proof of Landowner's Unreasonable Interference With Surface Water Drainage*, 87 [Am Jur Trials](#) 423 (2003).
  - I. Legal background
  - II. Rules governing interference with surface water drainage
  - III. Application of rules to particular forms of interference
  - IV. Defenses
  - V. Damages and other relief
  - VI. Elements of proof
  - VII. Model pleadings
  - VIII. Proof of upper landowner's unreasonable change in surface water drainage
  - IX. Model jury instructions
- *Unreasonable Alteration of Surface Drainage*, 109 [POF 3d](#) 403 (2009).
- *Cause of Action for Damage Caused by Diversion of or*

*Change in Flow of Surface Water*, 48 [COA 2d](#) 397 (2011).

- Martin J. McMahon, J.D., Annotation, *Liability for diversion of surface water by raising surface level of land*, 88 [ALR](#) 4<sup>th</sup> 891 (1991).
- Francis M. Dougherty, J.D., Annotation, *Extinguishment by Prescription of Natural Servitude For Drainage Of Surface Waters*, 42 [ALR](#) 4<sup>th</sup> 462 (1985).
- Janet Fairchild, J.D., Annotation, *Modern Status Of Rules Governing Interference With Drainage Of Surface Waters*, 93 [ALR](#) 3<sup>d</sup> 1193 (1979).

### **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 2 Joel M. Kaye et al., [Connecticut Civil Practice Forms](#) (4<sup>th</sup> ed. 2004).  
*Authors' Comments* following Form 104.6
- Douglass B. Wright et al., [Connecticut Law of Torts](#) (3rd ed. 1991).  
§ 17. Connecticut decisions on trespass
- 2 James H. Backman and David A. Thomas, [A Practical Guide to Disputes Between Adjoining Landowners – Easements](#) (2001).  
§ 13.04. Neighboring landowner disputes arising from uncontrolled surface waters on private property
- Jon W. Bruce and James W. Ely, Jr, [The Law of Easements and Licenses in Land](#) (2001).  
§ 5:37. Special-purpose prescriptive easements
- A. Dan Tarlock, [Law of Water Rights and Resources](#) (2015).  
§ 3:11. Waters subject to riparian rights  
§ 3:12 — Surface waters  
§ 3:13. — Diffused surface waters  
§ 3:14. — — Ownership of diffused surface waters
- David H. Getches, [Water Law in a Nutshell](#) (2009).  
Chapter 7. Diffused surface waters
- Cora Jordan and Emily Doskow, [Neighbor Law](#) (2014).  
Chapter 15. Water
- Robert E. Beck and Amy K. Kelley, [Waters and Water Rights](#) (2009).
- Robert E. Beck, [Waters and Water Rights](#) (1991).  
§ 4.05(b). Diffused surface waters  
§ 6.02. Categories of surface water

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Patricia A. Ayars, Comments, *The Flow of Surface Water Law in Connecticut*, 14 Connecticut Law Review 601 (1982).
- B Clifford Davis, *The Law Of Diffused Surface Water In Eastern Riparian States*, 6 Connecticut Law Review 227 (1973-74).

## Section 2: From Public Roads or Ways

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to actions against the State or municipalities for damage caused by drainage of surface waters

### **DEFINITIONS:**

- "The common-law rule provides that a person cannot gather surface water on his or her own land in an artificial volume and turn it onto a neighbor's land in an increased volume to the neighbor's injury. This rule also applies to governmental agencies engaged in highway maintenance. [General Statutes of Connecticut] Section 13a-138 (a) limits the liability for such water diversion only where the party charged with maintaining the highway complies with the statute by draining the water in a manner that causes the least damage to the affected land." [Hutchinson v. Town of Andover](#), 49 Conn. App. 781, 786, 715 A.2d 831 (1998).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015).
  - Chapter [97](#). Municipalities: General Provisions.
    - § [7-147](#). Regulation of obstructions in waterways
Chapter [98](#). Municipal Powers
    - § [7-148](#) (2016 supp.)(c)(6)(B)(ii, iv) Scope of municipal powers
Chapter [238](#). Highway construction and maintenance

  - § [13a-138](#). Highways may be drained into private lands
  - § [13a-138a](#). Limitation on actions for drainage damage

Chapter [439](#) Department of Energy & Environmental Protection. State Policy.

  - § [22a-6u](#). Notification requirements re discovery of contamination of soil or water. Exceptions. Content of notice. Acknowledgement of receipt. Posting of notice. Civil penalty. Forwarding of notice.

### **FORMS:**

- 2 [Connecticut Civil Practice Forms](#) (2004).
  - Form 104.6. Injunction against interference with flow of surface water. See Figure 1
- 24B [Am Jur Pleading and Practice Forms Waters](#) (2011).
  - § 226. Complaint, petition, or declaration—  
Concentration and injurious discharge of surface water—By state agency
  - § 229. — By county highway
  - § 230. — By highway drainage ditch
  - § 231. — By street drain

## **LEGISLATIVE:**

[OLR](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- Paul Frisman, Drainage from State Highways, Connecticut General Assembly. Office of Legislative Research, Report No. [2002-R-0609](#). (July 1, 2002).  
"You asked who is responsible for correcting flooding problems when the discharge of water from a state highway culvert flows onto private property in a wetlands area. You specifically asked about the responsibility, if any, of the Department of Transportation (DOT) in a particular instance."
- [Herasimovich v. Town of Wallingford](#), 128 Conn. App. 413, 421, 17 A.3d 502 (2011). "Specifically, the plaintiffs claim that the court improperly concluded that the parties intended the term 'surface water' to include both precipitation falling on Highland Avenue and water that naturally flows off of property adjacent to Highland Avenue. The plaintiffs argue that the parties intended the meaning of the term 'surface water' to be limited solely to precipitation falling on Highland Avenue."
- [Boyne v. Town of Glastonbury](#), 110 Conn. App. 591, 598, 955 A.2d 645 (2008). "In the present case, even if we assume that § 13a-138a does not limit expressly a cause of action under § 13a-138(b), the most suitable limitation period is the fifteen year period provided by § 13a-138a. Section 13a-138, in general, authorizes municipalities to drain water from public highways into or through the land of another under certain circumstances. A cause of action for a violation of § 13a-138 does not change significantly by pleading circumstances that violate subsection (b) rather than circumstances that violate subsection (a)."
- [Johnson v. Town of North Branford](#), 64 Conn. App. 643, 650, 781 A.2d 346 (2001). "Section 13a-138a serves as a limitation on actions for drainage damages brought pursuant to § 13a-138. Section 13a-138a provides in relevant part that '[n]o action shall be brought by the owner of land adjoining a public highway ... for recovery of damage of such property ... by reason of any draining of water into or through such land by any town, city, borough or other political subdivision of the state pursuant to subsection (a) of section 13a-138, but within fifteen years next after the first occurrence of such drainage, except that if such drainage first occurred prior to October 1, 1981, no such action shall be brought after October 1, 1986.'"
- [Hutchinson v. Town of Andover](#), 49 Conn. App. 781, 785, 715 A.2d 831 (1998). "Our Supreme Court has said that the statute 'permits drains to be built only when

*necessary, and if there is a reasonable alternative course open, that course must be taken.*' (Emphasis added.) *Postemski v. Watrous*, 151 Conn. 183, 188, 195 A.2d 425 (1963). Here, there is no dispute that it is necessary for the town to divert some water onto the plaintiffs' land and the only issue is which system will cause the least damage to the land."

- [Hillman v. Greenwich](#), 217 Conn. 520, 521-522, 587 A.2d 99 (1991). "The plaintiff, Howard B. Hillman, brought an action for damages and injunctive relief against the defendant, the town of Greenwich, alleging that unlawful and unreasonable drainage of surface storm water by the defendant had damaged the plaintiff's property."

**WEST KEY NUMBERS:**

- *Highways*
  - #120. Drainage
    - (.5). In general
      - (1). Power and duty as to drainage
      - (2). Rights and remedies of abutting owners in general
      - (3). Injunction
      - (4). Damages and actions therefor
      - (5). Drainage districts
- *Municipal Corporations*
  - Torts. Defects or obstructions in sewers, drains, and water courses
    - #835. Obstruction or diversion of flow of surface water
    - # 845. Actions for injuries

**ENCYCLOPEDIAS:**

- 39 [Am. Jur. 2d](#) *Highways, streets and bridges* (2008).
  - § 123. Interference with surface waters
  - § 124. Preventing flow from adjoining land
  - § 125. Discharge of collected surface water
- 93 [C.J.S.](#) *Waters* (2013).
  - Surface water
    - § 263. Construction and maintenance of railroad. Generally
    - § 264. Crossing a gully, ravine, or natural depression
    - § 265. Effect of grant of right-of-way and condemnation
    - § 273. Artificial drainage and obstruction thereof. By railroad company
- *Proof of Landowner's Unreasonable Interference With Surface Water Drainage*, 87 [Am Jur Trials](#) 423 (2003).
- *Governmental Liability For Injury To Landowner's Property From Road Construction Activities On Neighboring Land*, 65 [POF](#) 3d 311 (2002).

- *Recovery Under Property Insurance For Loss Due To Surface Water, Sewer Backup And Flood*, 48 [POF](#) 3d 419 (1998).
- *Unreasonable Alteration Of Surface Drainage*, 109 [POF](#) 3d 403 (2009).
- Michael A. Rosenhouse, J.D., *Municipal Liability for Damage Resulting from Obstruction or Clogging of Drain or Sewer*, 54 [ALR](#) 6th 201 (2010).

### **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 2 Joel M. Kaye et al., [Connecticut Practice Book Annotated](#) (4<sup>th</sup> ed. 2004).  
*Authors' Comments* following Form 104.6
- 18A Eugene McQuillin, [The Law of Municipal Corporations](#) (2012).  
Chapter 53. Municipal liability for torts  
§ 53.170. Surface water. In general  
§ 53.171. Surface water; definitions  
§ 53.172. Liability for public improvements;  
"common enemy" rule  
§ 53.174. Statutory provisions affecting recovery  
§ 53.175. Casting surface water on private land
- David H. Getches, [Water Law in a Nutshell](#) (2009).  
Chapter 7. Diffused surface waters  
§ III B. State control of use of diffused surface waters
- [Restatement of the Law Second, Torts](#) (2008).  
§§ 841-848. Interference with the use of water ("Riparian rights")

### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Patricia A. Ayars, *Comments, The Flow of Surface Water Law in Connecticut*, 14 *Connecticut Law Review* 601 (1982).
- Clifford Davis, *The Law Of Diffused Surface Water In Eastern Riparian States*, 6 *Connecticut Law Review* 227 (1973-74).

Table 1: Cause of Action

<b>Cause of action for damage caused by diversion of or change in flow of surface water</b> 48 COA 2d 397 (2011)	
<b>PRIMA FACIE CASE</b>	
§ 12	Elements
§ 13	—Negligence
§ 14	—Nuisance
§ 15	—Trespass
§ 16	Duty to control flow of surface water
§ 17	Breach of duty
§ 18	—Proof
§ 19	Harm to plaintiff or plaintiff's property
§ 20	Proximate causation
<b>DEFENSES</b>	
§ 21	Absence of duty
§ 22	Absence of duty by drainage easement, license, or servitude
§ 23	Absence of breach
§ 24	—Compliance with statute or governmental directive
§ 25	Intervening cause of harm
§ 26	—Plaintiff's failure to take precautions to prevent harm
§ 27	—Act of God or other natural occurrence
§ 28	Sovereign immunity
§ 29	Absence of privity of contract
§ 30	Statute of limitations
§ 31	Laches
§ 32	Misleading representations; equitable estoppel
§ 33	Collateral estoppel or res judicata
<b>PARTIES</b>	
§ 34	Parties who may bring action
§ 35	Persons potentially liable
<b>Practice and Procedure</b>	
<b>PROCEDURAL MATTERS</b>	
§ 36	Single or multiple cause of action
§ 37	Jurisdiction

§ 38	Limitations; time for bringing action
§ 39	Pleadings
<b>PROOF</b>	
§ 40	Plaintiff's proof
§ 41	—Proof of harm
§ 42	Defendant's proof
<b>REMEDIES AND RECOVERY</b>	
§ 43	Equitable relief
§ 44	—Type and scope of equitable relief
§ 45	Compensatory damages
§ 46	—Measure of damages
§ 47	Punitive damages

Figure 1: Form 104.6

FORM 104.6

**Injunction Against Interference with Flow of Surface Waters**

**COMPLAINT**

1. The plaintiff is the owner of a certain piece or parcel of land, with the appurtenances thereto, situated in the city of \_\_\_\_\_, and bounded and described as follows: *[here insert description]*. On the premises he has a large garage in which he stores and repairs automobiles.

2. The defendants are the owners of a contiguous piece of land which abuts the above mentioned property of the plaintiff on the south, which premises are described as follows: *[here insert description]*.

3. Abutting the above described premises of both parties to the east is and for a long time has been a railroad right of way on which are constructed tracks upon an embankment higher than the lands of the parties.

4. The natural slope of land across the premises of both parties is from the northwest to the southeast.

5. Prior to the construction of the railroad a small stream or watercourse ran across the land of the plaintiff and away to the east over the land now occupied by the railroad but by reason of the building of the embankment it was deflected to the west and has ever since run in a definitely defined and marked course across the land of the defendant.

6. The change was made more than fifteen years before the occurrences hereafter stated and ever since the plaintiff has enjoyed and asserted the right to have the water in this watercourse pass off over the defendant's land, and the use of the watercourse over the defendant's land for that purpose has been open, continuous, uninterrupted, with the knowledge and acquiescence of the defendant and his predecessors in title and adversely to him and them.

7. Beginning on or about *[date]* the defendant has filled in the land on his premises for the entire distance it abuts upon the land of the plaintiff until it is higher than the land of the plaintiff, and has filled in the channel of the watercourse and wholly obstructed it.

8. As a further result of the filling in of his premises by the defendant, he has caused the surface water which falls upon it, instead of flowing away to the south as it normally would, to flow northerly upon the land of the plaintiff, and thereby has greatly increased the volume of surface water coming upon the plaintiff's premises,

and has so filled his land as to cause the surface water coming upon the plaintiff's premises to flow thereon not in a natural diffused manner but in several well defined channels, which bring upon the plaintiff's premises dirt and silt and wash channels through it.

9. As a result of the filling of his land by the defendant the waters coming to the plaintiff's premises from the north and surface water falling thereon and on the defendant's premises accumulate upon the plaintiff's premises and remain standing thereon to a considerable depth and create a nuisance and a condition dangerous to the maintenance of the plaintiff's structures now on the premises, and these conditions and the deposits of dirt and the channels on the plaintiff's land caused by defendant's acts seriously impair the plaintiff's beneficial use of his premises.

The plaintiff claims

1. An injunction requiring the defendant to reopen the channel of the watercourse and against placing obstructions therein.
2. That the defendant be enjoined from interfering with the natural flow of the surface waters coming onto the plaintiff's land.
3. Damages.

Notes

(P.B.1963, Form 349; P.B.1978, Form 104.6.)