

File No. 25993

Baltimore, February 17, 1920.

MEMORANDUM

In Re Water in Cellar, 4201 Old Frederick Road.

13499

Section 892 of Farnham, Waters and Water Rights, Volume 3, Page 2619, states the proposition that

"Surface water is a parcel of the estate, which may be used by the owner of the property on which it falls, and he has no right to have it flow off over lower property except along natural drains. Conversely, he is not bound to take any active steps to take care of the water or prevent its flowing onto the lower property if the laws of gravity carry it there. Even if the water comes upon his property in a foul state, a landowner is not bound to prevent its passing off on to lower property."

One of the cases cited to this proposition is that of *Mirkil vs. Morgan*, 134 Pennsylvania, 144, 19 Atlantic 628, holding that,

"A landowner is not liable for the percolation of water from his premises from natural causes, and not the result of any act of commission or omission on his part."

Section 893 of the same Works states that the great weight of authority holds that the flow of water along natural channels may be increased by artificial means without incurring liability.

"Therefore, the owner of the upper property may improve it for any purpose for which he desires to use it and may construct channels to hasten the flow of the water, if it is not diverted from its natural flow."

Section 896, the Author says:

"As was seen in a former section there is no duty on the part of the owner upon whose property water falls to care for it so as to prevent its flowing into adjoining property. Upon the same principal the owner of the land, unless his property has become a nuisance, cannot be compelled to drain it for the benefit of his neighbor."