

Conversely, a substantial number of states have adopted the “Civil Law” rule which places the burden on all land owners “to permit the natural flow of surface waters onto and from his land, uninterrupted and unaltered”. Am Jur 2nd Waters S121 (Alabama, Georgia, Illinois, Kansas, Louisiana, North Carolina & Tennessee).

BASIC RULES

As stated in Louisville & N.R. Co. v. Hays (1883) 79 TN 382 11 Lea 382, the Tennessee Supreme Court made very clear its adoption of the “Civil Law” rule as to surface waters and channelized surface waters in the following terms:

All lands, therefore, are of necessity burdened with the servitude of receiving and discharging all waters which flow down to them from lands on a higher level ... if the owner of lower lands interposes artificial impediments on the way of the natural flow of the water through or across his lands, and by doing so causes the higher lands to be flooded, he is responsible for damages ... So, if the proprietor of higher lands alters the natural condition of his property and collects surface and rain waters together ... and pours it in concentrated form and in unnatural quantities upon the land below, he will be responsible for all damages. It (the principle just recited) embraces rain and surface water, as well as running streams.

The adoption of the “Civil Law Rule” and the court’s persistent adherence to it has been consistently repeated and maintained in the state. Louisville N.R. Co. v. Mossman (1891) 16 SW 64, 90 TN 157, Garland v. Aurin (1899) 53 SW 940, 103 TN 555; Tyrus v. Kansas City Ft S & M.R. Co. (1905) 86 SW 1074, 114 TN 579; Ancimate NO & TP Ry Co. v. Roddy (1915) 179 SW 143, 132 TN 568; Davis v. Louisville & NR Co. (1922) 244 SW 483, 147 TN 1; Talley v. Baker (1926) 3 TN App 321; Wilson v. Louisville & NR Co. (1930) 12 TN App 327; Slaten v. Mitchell (1939) 124 SW 2d 310, 22 TN App 547; Griffith v. Hunt (1956) 291 SW 2712, 200 TN 133; Woodlawn Memorial Park v. L & N Ry Co. (1972) (Dist. Ct., TN) 377 F. Supp 932; TVA v. Hughes 1967 (DC TN) 278 F Supp 733, 408 F zd 619. Butts v. City of Fulton (1977) 656 SW 2d 879.

To this authors knowledge there is no precept of the law in Tennessee that is as clearly defined or more fervently held than the concept of liability for drainage damage. The “property owner” who causes damages by disturbing the natural flow of water IS LIABLE.