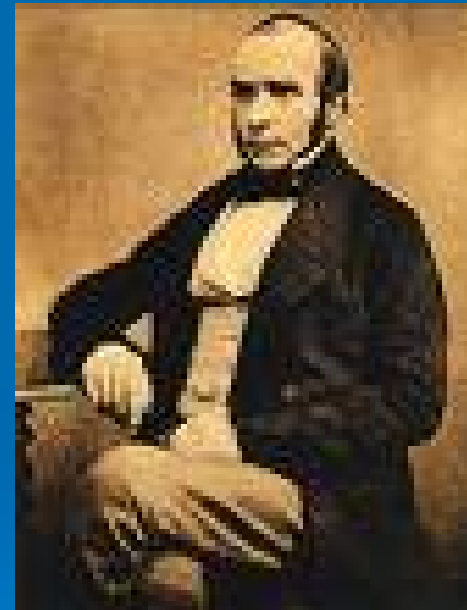


A Legal History of *Wellness*

Jamie Benidickson
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6 November 2006



Dr. John Snow and the Cholera Map



Getting a handle on legal intervention



A Hole in the Ground

Scene One: Mrs. Welsh's Farm


Scene Two: Standing By the Well

Scene Three: The Water Commission Office

Scene Four: Madoc: The Courtroom



Dramatis Personae

- Mrs. Welsh the Landowner
 - J. Fraser Well-driller
 - Plumber Hailstone
 - Inspector Coe
 - Police Constable Chapman
 - Crown Attorney Pringle
 - Director Watt
 - Commission Counsel Landis
 - The Judge
- 

Groundwater Law: 1843

“... in the case of a well sunk by a proprietor in his own land, the water which feeds it from a neighboring soil does not flow openly in sight of the neighboring proprietor, but through the hidden veins of the earth beneath its surface;...therefore... there can be no ground for implying any mutual consent or agreement ...between the owners of the several lands beneath which the underground springs may exist, which is one of the foundations on which the law as to running streams is supposed to be built.”

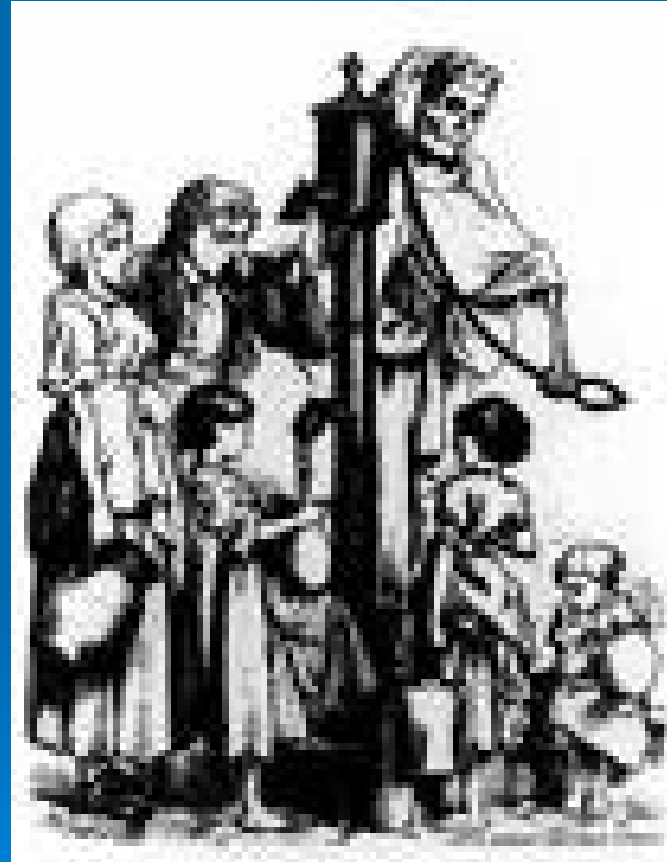
Acton v. Blundell (1843)

“we think the present case... falls within that principle, which gives to the owner of the soil all that lies beneath its surface... and that if, in the exercise of such a right, he intercepts or drains off the water collected in underground springs in his neighbor’s well, this inconvenience to his neighbor... cannot become the ground of an action.”

Smitten Rocks



Unknown danger



Source Protection circa 1900

“...it shall be unlawful for any person to knowingly deposit any dead animal or nauseous substance in any source, standpipe, or reservoir from which water is supplied to any city or town...”

Alabama, 1896-7

“The throwing or dragging of dead animals, or animals in a dying condition, into any running stream or other body of water in this state is a misdemeanor”

Arkansas, 1894

More dead dogs

“If any person throw, or cause to be thrown, any dead animal into any river, well, spring, cistern, reservoir, stream or pond, he shall be imprisoned..”

Iowa, 1897

“Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop...”

California, 1901

Closing Some Gaps

Whoever...poisons, defiles, or in any way corrupts the waters of any well, spring, brook, lake, pond, river, or reservoir used for domestic purposes for man or beast ... whether the same be frozen or not... shall be punished...”

Maine, 1891

The bottom of the slide features several concentric, light blue circular ripples that resemble water droplets or stones thrown into a pond, set against the dark blue background.

Canadian counterparts

“...making impure... any tank, well, spring, water hole, reservoir, or other source of water.”

Calgary by-law, 1907



Ontario Public Health Act, 1906

“No sewage, domestic or factory refuse, excremental or other polluting matter of any kind whatsoever, which, either by itself or in connection with other matter corrupts or impairs or may corrupt or impair the quality of the water of any source of public water supply... or which renders or may render such water injurious to health, shall be placed in or discharged into the waters...”

Passing the Test

Small-scale studies in Ontario consistently find that a high proportion of the private drinking water wells tested are contaminated with bacteria, nitrates and other dangerous substances

ECO Annual Report:2005-06, 53



Getting Deeper into the Subject



Clearances

“The site of a new well shall be separated by at least the clearance distance required by Ontario Regulation 403/97 (Building Code) from a leaching bed system or other sewage system... including a sewage system that has not been constructed but for which a building permit has been issued.”

Ontario Wells Regulation, s. 12 (1)

B.C. Ground Water Protection Regulation

Code of Practice:

- Construction
 - Identification
 - Reporting
 - Testing
 - Maintenance
 - Alteration
 - Closure
- 
- The bottom right corner of the slide features a decorative graphic of several concentric circles, resembling ripples on water, rendered in a lighter shade of blue against the background.

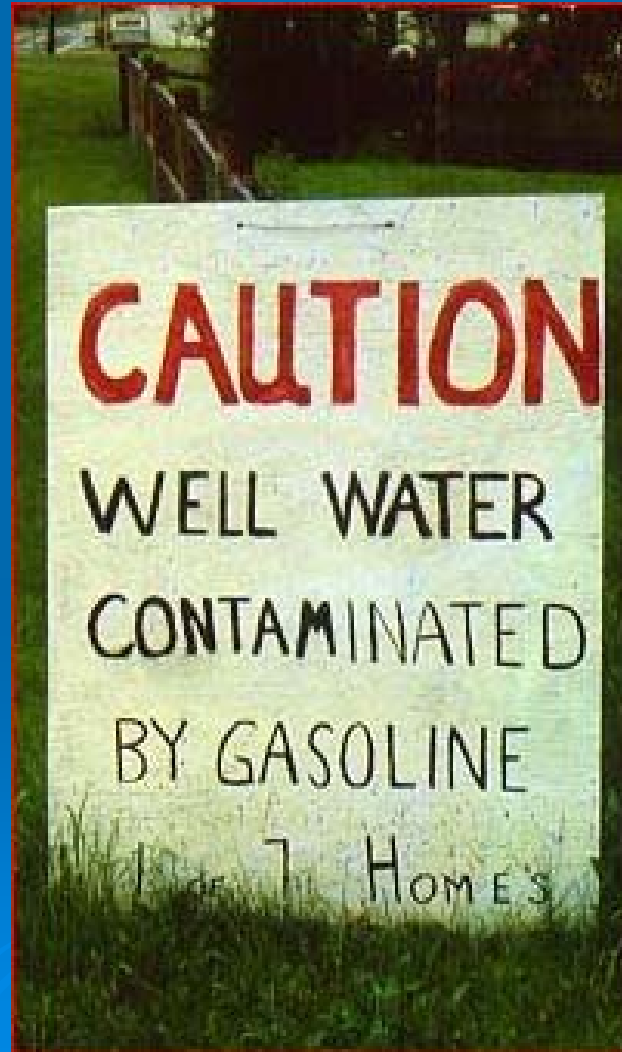
Is it ok to take a picture?

“No person shall site, locate, drill, construct, cover, reclaim, service, monitor, deepen, operate, complete, equip, disinfect, recondition, test or maintain a water well ... except in accordance with this Regulation.”

Water (Ministerial) Regulation
Alberta Reg. 205/1998

The background of the slide features several concentric circles of varying shades of blue, resembling ripples on water, positioned in the lower right and bottom center areas.


Accidents happen



Manitoba Private Water Well Audit

- Drinking water standards appropriate to protect public health?
- Use of private well water quality information to advise public on well water?
- Effective management of Bacteriological Water Testing Subsidy Program?

Manitoba Audit Cont'd

- Timely and appropriate responses to bacterial well water contamination?
 - Appropriate management of well driller licenses?
 - Owner-driller compliance with water well standards?
- 

Connecting the Dots

“Most of the rural population relies on groundwater from privately owned well systems. While such well owners are responsible for their own well, the underground aquifer is a resource for the benefit of all citizens and must be protected.”

Manitoba Auditor General's Office

Altering the Built Environment



Environment Commissioner of Ontario

“A chorus of criticism... a long list of shortcomings”

- Well inspection team dismantled in 1990s
- Well records data management
- Construction of “dug wells”
- Mandatory abandonment
- Regulatory Status of pre- August 2003 Wells

A Legal Historian's Observations on Wellness

Acton v. Blundell 150 years later

The Dead Dog Menace 100 years later

Mrs. Welsh's Farm 50 years later



A little vigilance goes a long way

“Hailstone wants to receive a current plumber’s code, the last one he received was from the Department of Health in 1947. Inform [inspector] of where plumber should get code.”