

Then as to the other witnesses for the defence, there are few of them who do not on some important point corroborate the plaintiff or his witnesses, or conflict with other evidence for the defence. For instance, the defendants' engineer swore that the bank at the lowest point was twelve inches high, and this would be sufficient to retain the water; but Henry Williams, who examined it on three different occasions, says "there was not much water, it might have been two or three inches deep, but the top of the water, I should say, would be on an average of two or three inches below the top of the bank"; or, in other words, from four to five or six inches deep, all told.

A persistent effort was made to ridicule and discredit the evidence which traced the source of the water on the plaintiff's land by shewing that steam was frequently rising from it and that there were disagreeable odors at times; but this evidence was in the end clearly corroborated by John Green, an engineer in the furniture factory, who shewed that the water-closets of the factory emptied into this drain, that water of high temperature was discharged into it, that in the winter he found that this drain was not frozen, and that little frogs were wintering there.

Charles Lant, the defendants' general superintendent of works, testified that when the ditch was cleaned out in June, 1911, the depth was increased from two to four inches, and that after that, there was from three-quarters of an inch to an inch and a quarter of water in it, and that the water could then rise six or eight inches without overflowing. This gives a total depth, when cleaned out, of, say, eight inches, and of from four to six inches before cleaning out. Yet, until this evidence was given, there was no pretence by the defence that six or even eight inches would be a sufficient depth to prevent an overflow.

Referring to this, and to the fact that the engineer had sworn to a depth of one foot at the lowest point, his Honour the trial Judge said: "I see the most violent conflict in this case. A number of reputable citizens have sworn to a certain state of facts which your engineer has worked out theoretically as impossible. I am not going to find out the particular reasons why these things occur. The engineers have agreed that if the ditch was flooded it would overflow. It seems to be a ditch that would very easily overflow, and a number of reputable witnesses have sworn that it did overflow."