

The evidence satisfied me, and I find as a fact, that the overflow into the plaintiffs' cellar was from the Wilson street drain, and that it was caused by the increased quantity of water emptying into it from the other drains, which had been constructed by the defendants since 1904, and which it was incapable of discharging.

Part of the cost of the Wilson street drain was levied upon the property in question by a frontage tax.

It is further shewn in evidence that the traps directed to be put in by the city did not prevent the overflow of the drain in case of storms, as it was shewn that on the same occasion another cellar was flooded where the trap had been put in. The fall from the premises in question to the city drain was $3\frac{1}{2}$ feet, so that by-law No. 705 would not apply, as they were recommended only where the bottom of the cellar or basement is less than 2 feet from the top street sewer.

On the day in question the rainfall to 7 o'clock was 67-100 of an inch and from 7 to 10 was 1 80-100. The evidence shewed that while the rain on the occasion in question was a heavy rainfall, it was not unusual, as in 1903 and 1905 there had been heavier rainfalls within the same length of time.

I think this case is distinguishable from *Faulkner v. City of Ottawa*, 10 O. W. R. 807, both as to the quantity of the rainfall and in the fact that after the construction of the 15-inch drain on Wilson street, the outlet of that drain was reduced to 14 inches, and there were other sewers or subsidiary drains led into it, and that, owing to the additional quantity of water led into it by these drains, the discharge was insufficient.

I find the defendants guilty of negligence in thus conducting into their drain a quantity of water which it was incapable of discharging, and that this negligence was the direct cause of flooding the plaintiffs' cellar, causing the damage complained of.

I direct judgment for the plaintiffs, with a reference to ascertain the amount of damages, and that judgment be entered for the amount so found, with costs of action and of the reference. Counsel having agreed to name a referee, if this is not done before the judgment issues, I will name a referee on application.