

All this water finds its way to and through the same pipe. Tests made by plaintiff's witnesses shew a much greater flow than that shewn by defendants' witnesses. There is no doubt, however, that even if the evidence of the latter be taken, an appreciable quantity is carried towards and on to the travelled road.

The tests were made a short time prior to the trial. In the winter season the quantity of water is increased, as then the pipes flowing into the ashpits are allowed to run continuously or almost so, in order to prevent them from freezing.

For many years there has existed on Herkimer avenue, between 600 and 700 feet south of the travelled road, a culvert from which an open drain runs easterly through plaintiff's lands and through the lands of other owners to the east thereof. The land adjacent to this drain, and also the lands to the east of it, are low-lying.

Defendants, when building the travelled road along the southern limit of their property, constructed a small stone culvert under the roadway at the head of Herkimer avenue. The water which flowed from the defendants' lands through the pipe under the tracks and on to the travelled road exceeded the capacity of this culvert, and part of it overflowed the road from north to south, injuring the surface of the roadbed. The township authorities enlarged the culvert so as to carry all the water under the roadway.

Complaints having been made that this water was overflowing the lands to the west of Herkimer avenue, the defendants in December, 1911, of their own accord, and without any authority from the municipality, dug out and deepened an open ditch on the west side of the roadway on Herkimer avenue, from the travelled road to the culvert opposite plaintiff's lands.

From the time the water began to flow from the standpipes and ashpits, part of it got on to and overflowed plaintiff's lands. The opening and deepening of the Herkimer avenue ditch enabled it to flow more freely and in greater volume to and through the Herkimer avenue culvert; and from that time the quantity which overflowed plaintiff's lands was increased. Before the water from the standpipes and ashpits found its way into the ditch through plaintiff's lands, that ditch was of sufficient capacity to carry off all the water flowing in that direction, and there was none of the trouble