

sewer be tapped in the town without a resolution of this council, and all connections must be made under the direction of the town engineer, at the parties' expense." I find further that, as a matter of fact, this resolution was never acted upon; that there never was a resolution of the council in regard to connections made with the drain down, at all events, to 1903; that the practice was that the property owners desiring connections had the drains dug; and that the city had an oversight of what was done by their engineer. There was no direct evidence as to what took place in connecting the premises in question with the Wilson street drain, but from the general practice, and from the evidence, I infer, and find, that the usual practice was followed, and that the connection was made with the assent and approval of the city authorities.

It does not appear that the by-laws above mentioned ever came to the notice or knowledge of the plaintiffs or their landlord. After 1903 the sewerage system of the city was considerably extended, and drains were constructed connecting with the 14-inch drain on Wilson street, at the corner of Wilson and Cumberland, of much greater capacity than the 14-inch drain. One expert said that the drains thus emptying into the 14-inch drain were more than 7 times the capacity of the 14-inch drain. At all events, the drains so connected were more than double its capacity. It was explained by the city engineer that the system of storm drains had been put in since 1903, largely covering the area of the sanitary drains. He admitted, however, that when these became stopped up, the catch basins would overflow and so increase the drain on Wilson street. The Wilson street drain had originally been constructed 15 inches, but in the year 1904, 250 feet of drain in the water being the outlet of the Wilson street drain was taken up, and the 14-inch drain put down in its place, with a grade of one to 500 feet. The grade of the drains emptying into Wilson street was very much higher.

It was established beyond all doubt that the Wilson street drain was not sufficient to carry off the water which emptied into it, in case of heavy rains, and, on the occasion in question, it was shewn that one Benson, a witness, having occasion to go into the man-hole of this drain, saw that it was flooded and incapable of carrying away the water and that it flooded another cellar on the same occasion.