

struction of the embankment would not have been the subject of arbitration.

On the western part of the southern portion of the plaintiff's land, the whole surface has been removed for the purpose of using the clay to make bricks. This has resulted in cutting down the top of the high land by about eight feet. The water from this land would naturally flow to the north, seeking the ravine; but a ditch has been constructed which intercepts this water before the ravine is reached. As the excavation of the clay progressed from time to time, this ditch was lowered; and it is now much below what is said to have been an original natural water-course draining the water to the west.

When this ditch neared Paradise road—the water flowing in a westerly direction—a channel some years ago existed through a high bank on the plaintiff's land east of the road. The course of this channel has recently been changed—it is said because of some small cutting made to enable teams to drive up on to the plaintiff's land for the purpose of obtaining some earth to be used in repairing the road; and the water now passes through a channel three or four feet deep, cut through this bank where the teams passed, and is discharged on the surface of the road.

In the spring of 1912, this water had cut a channel across the road and was flowing into the ravine west of Paradise road. This water flowing across the road made the place most dangerous to passers-by; in fact, quite impassable. The city officials being notified, men were sent to the place. They had some suspicion that the water had been intentionally diverted across the road. This was denied by the sons of the plaintiff. It appears that part of the bank beside the road had fallen into the channel along the roadside where the water would otherwise have gone. All that was done by the city officials was to remove this obstructing earth, so that the water continued to flow, as it would otherwise have done, down the side of the roadbed, and to repair the roadbed. When opposite the building in question, the water made for itself a channel down the bank, and did the damage.

I fail to see that by removing this fallen earth and by filling in the channel cut across the road, the defendants were guilty of any misconduct. Since this occurrence, a box drain has been placed in the road. This conducts the water across the road, and the water flows into the ravine west of the embankment. This has prevented the occurrence of any further injury.

To me the case seems plain. The water in question was the