

quenching and cooling the burning coal and hot ashes which are discharged from the locomotives before they are taken into the roundhouse on returning from their "runs" or trips.

These yards were established comparatively recently; and before the defendants acquired them there was running easterly and westerly, along the north limit of the lands now occupied by the tracks, a public road known as the second concession line. This road has been closed, and has been taken by defendants as part of their yards; and the travelled road above referred to, running along the southerly limit of the tracks, was built by defendants, and is now used in substitution for the second concession road. Running southerly from the travelled road, and from a point therein about south of the defendants' stand-pipes, is another public road known as Herkimer Avenue.

On the east side of Herkimer avenue, and running southerly from the travelled road, are plaintiff's lands, which are known as part of the west half of lot 10 in the first concession of the township of Thurlow. Part of these lands has been used by the plaintiff and his predecessors in title for market garden purposes, and part as meadow land and pasture; other parts being an orchard.

For their purposes, and particularly for use in their stand-pipes and ashpits, defendants draw water from the river nearby. From December, 1910, the escape of waste water from these pipes and pits has been directed towards and discharged through a pipe laid southerly under the tracks until it reaches the travelled road at a point about the westerly limit of Herkimer avenue. The surface water from several acres of defendants' lands is also directed to and through this same pipe.

The quantity of water so brought upon the defendants' lands and discharged on to the travelled road has been variously estimated, but, taking it at the lowest estimate placed on it by witnesses for defendants, who made a test thereof, the amount is very considerable, as it must be when we consider that at least fifty locomotives run into the roundhouse each 24 hours, and that water is used for each of these in the ashpits. In addition to this it was shewn that there is considerable leakage from the stand-pipes, and that water escapes when the locomotive tanks are being filled.