

may have been there in the first spring as due to defective construction and not non-repair, in the ordinary sense of the term. If he suffered damage not only in the spring and fall but at different times throughout the summer of 1909, and he did, it was by reason of defective construction and he would have suffered probably more damage from the same cause in the year 1912 than in the year 1909, because the year 1912 was a wet year. I know there was a great deal of evidence about the unusual condition of 1912, but there was no evidence that the conditions were so extraordinary as to make that year other than a very wet season, just the kind of season that brings about the construction of many of the drains of the province.

Even as I speak now I am under difficulty as to just how much of the total, \$450, to apply to each cause, but I am satisfied that the bulk of the trouble was caused by the original construction. Looking at the plaintiff's particulars I find that there is serious damage, for instance, to lot 17 in the 11th concession, a lot which is altogether outside of the drainage area and as to which the township, by the means of this drain, had no business to bring down one drop of water, if the matter is forced to a logical conclusion. Part also of lot 16, one would say pretty nearly one-half of it, is outside the drainage area, and there again very substantial damage was caused according to the plaintiff's story.

On the whole I do not think I am going very far wrong if, of the \$450 which my mind has reached, I fix \$350 as due to defect in original construction. In doing so I realise much difficulty, but I am thoroughly satisfied on the evidence that this man has suffered substantial damage because of the defect in the original construction of the drain. In the result, he is entitled to judgment for the sum of \$450 and to his costs of the action. Costs on the scale of the County Court; no set-off.

The township costs as between solicitor and client together with the damages and costs payable to the plaintiff may be chargeable to the new drainage work which is now being launched.

The plaintiff will pay to the clerk \$8 as for his two days' attendance and will affix the sum of \$8 in stamps to these reasons, and charge these amounts as portions of his disbursements. A 30 days' stay will be granted.