

MIDDLETON, J.,

APRIL 18TH, 1913.

OLLMAN v. CITY OF HAMILTON.

Municipal Corporations—Liability for Flooding Land—Construction of Ditch—Natural Watercourse—Surface Water—Costs.

Action for damages for flooding the plaintiff's land, tried before MIDDLETON, J., without a jury, at Hamilton.

W. M. McClemon, for the plaintiff.

S. F. Washington, K.C., for the defendants.

MIDDLETON, J.:—Mrs. Ollman, the plaintiff, has a life estate in about five acres of land, in Hamilton, upon which she carries on business as a brick-maker. The property is bounded by Macklin street, King street, Paradise road, and Hunt street; the latter not being opened out; and, according to the plans, is crossed by Athol street and Dufferin street. A deep ravine extends across the north-west portion of the land and to the west.

In the summer of 1911, a building was erected in this ravine, almost immediately opposite Paradise road where it crosses the ravine. This building contained the machinery for the manufacture of bricks, a furnace-room, and drying-room; the furnace and tunnels to carry the heat to the drying-room being some seven or eight feet below the level of the soil at the bottom of the ravine: the floors of the machine-room and of the drying-room being on a level with the surface of the soil there.

In the spring of 1912, water from the thawing of the snow upon the plaintiff's own land and the unopened streets which she uses for her own purposes, together with some water from Macklin street and possibly from King street where these streets adjoin her property, flowed through a ditch upon the lands and was emitted upon Paradise road just about at the bank of the ravine, flowed down the slope of the road a short distance, and then re-entered the plaintiff's own land and flooded the buildings at the bottom of the ravine, doing considerable damage. It is for this that the action was brought.

Some five or six years ago, an endeavour was made to grade Paradise road where it crosses the ravine. The crests of the hills were cut down, and the earth therefrom was used to construct an embankment at the lowest place. No complaint is made of this; and any injury that was sustained from the con-