

and that the suction thus created gradually undermined the old sand-box and caused it to cave in, thus creating the hole. Mr. Morningstar, on the other hand, is not certain whether the hole is upon the exact cite of the old sand-box. His idea is that, owing to the capacity of the sewer being insufficient in times of freshets, large quantities of waters are forced out upon the street through the man-holes, that other large volumes of water, carried down by a drain from the east end of the town, which have no proper means of escape, because of the old sewer which formerly carried them on to the lake being blocked, are also driven to the surface, and that the waters, thus accumulated and carried to this point by the defendants, "swirl around the corner and bore holes;" and he accounts in this way for the existence of this hole.

Upon the theory of the witness Johnson, or upon that of Morningstar—one or other of which I think must be correct, and I incline to accept the very clear recollection of Johnson—the existence of this hole was a direct result of sewer works of the defendant corporation. Their duty was to guard against and remedy any defect in the highway thus created at the risk, in the event of failure, of being held guilty of misfeasance. While I do not wish to be understood as holding the view that the judgment at the trial may not be supported on the ground on which it was put by the learned trial Judge, it seems to me so clearly sustainable upon the ground which I have stated that I have not thought it necessary to further consider the matter.

I would therefore dismiss the defendants' appeal with costs.

FALCONBRIDGE, C.J.:—I agree in the result.

CLUTE, J.:—While not dissenting from the view of my brother Anglin, I am of opinion that the appeal fails for the reasons given by the trial Judge.