

When the plaintiff started to build, he intended the brick foundation-wall to go to the boundary of his property; and, to enable this to be erected, without any colour of right he excavated the soil of the street and the alley some distance beyond his property-line. On the alley side some soil fell in and had to be removed, and, when the wall was built, he filled in earth in this excavation. This earth, lacking cohesion when wet, exerted very substantial pressure inward upon the wall, which was not fully hardened, and which lacked weight and support, and so it fell. The cause was satisfactorily given by the defendants' witnesses.

Assumption street was graded downward from the lane from the point where the alley entered it; and the alley, now paved, was then unpaved, and sloped to the street from a point about 50 feet from the street line. Where the kerb was cut away to afford an entrance to the alley from Assumption street, there seemed to be a hollow in the pavement which caught the rain as it fell and which was imperfectly drained, but this was not the cause of the so-called "rush of water." In the heavy rain there was water in the lane upon the surface from the natural drainage and from the roof of the shed and barns. This, no doubt, settled into the soft earth of the excavation in the lane, unlawfully made by Holland, and was ample to accomplish the result. There was no great flood, just an ordinary heavy thunder-shower.

Action dismissed with costs.

MIDDLETON, J.

DECEMBER 17TH, 1918.

*ANDERSON v. TOWNSHIPS OF ROCHESTER
AND MERSEA.

Highway—Nonrepair—Traveller in Motor-vehicle Killed—Vehicle Skidding and Sliding into Ditch at Side of Travelled Road—Negligence of Municipal Corporations—Absence of Fence or Guard—Ditch Constructed for Drainage Purposes under Legislative Sanction—Responsibility of Municipality—Negligence of Driver of Vehicle—Husband of Person Killed and Plaintiff in Action for Damages for Death—Evidence.

Action for damages for the death of the plaintiff's wife in an automobile accident, caused, as the plaintiff alleged, by the negligence of the defendants in regard to the condition of a highway forming the boundary between the two townships.