

lumber were flooded. He complained again to the railway agent, who sent his men to remove the obstruction. East of Frank street, the water was considerably above the pipe and only 2 inches lower than the sidewalk. They found the water at the west end of Scott's shed lower than at the east end, and concluded that the obstruction was under this shed. The coal was removed by the railway men and Scott's men, and it was found that the flooring and stringers had dropped down and had broken the pipe. The coal and the broken flooring were cleared out by 3 o'clock in the afternoon, and the water began to go down. By the next morning, the water had entirely subsided.

The railway men were of opinion that the obstruction under Scott's shed was the cause of the flooding of the plaintiff's premises. . . . They judged that the water west of the shed was about 18 inches lower than on the east side. The removal of the coal proved that they were right in their belief that there was an obstruction under the shed; but they were manifestly mistaken in their idea that this obstruction was the cause of the flooding of the plaintiff's premises. The measurements and levels taken at the time by the witness Manigault, a civil engineer of the town, shewed that at the height of the flood the water on the plaintiff's premises was two and a half feet higher than at the east end of Scott's shed; and there is no evidence to the contrary. All the evidence for all parties is to the effect that the land between Metcalfe street and the shed was not flooded, and that the open ditch east of the shed did not overflow, while east of Metcalfe and Frank streets it was entirely flooded, and rose to within 2 inches of the top of the sidewalk.

It is proved by the plaintiff and not contradicted that the stakes that the railway company had from time to time placed at the mouth of the pipe east of Frank and Metcalfe streets were not there for a week before the flood. The evidence is not clear as to the exact time of the subsidence of the flood. . . .

The defendants Scott and Ellis produced two civil engineers, who examined the premises and who heard the evidence. They gave expert evidence in corroboration of that of Manigault, that there must have been some obstruction in the pipe or culvert under the street. I do not see that expert evidence was necessary to prove this, if the uncontradicted evidence of Manigault as to the levels is true, unless the law of gravitation was suspended, or unless it is not true that water will, if unobstructed, find its own level. If this pipe or culvert of 20 inches diameter was not obstructed, but the water had a free flow, then it could