

The jury, in answer to questions, found that the appellant was guilty of all these four acts of negligence, and they also found, in answer to other questions: (1) that the appellant in laying its pipes in Belleville avenue did not use the best known mode of construction; (2) that the fault in this respect was not putting down the pipes below the frost line; (3) that there was a better and safer mode of construction than that adopted known to the appellant; (4) that the appellant did not use all possible care to prevent injury from the use of these pipes; (5) that the fault in this respect was "improper inspection;" (6) that the injury and damage sustained by the respondent were not the result of accident, but of negligence of the appellant; and (7) that the negligence of the appellant caused the injury and damage.

The jury were unable to answer and did not answer the 6th question—"What caused the break or opening in the gas pipe on Bellevue avenue, near plaintiff's residence?"

All these findings were attacked by counsel for the appellant on the argument before us, but their main contention was, that judgment should not have been entered for the respondent because of the failure of the jury to answer the 6th question, especially as, it was argued, there was nothing to support the finding that expansion joints should have been used.

We are of opinion that there was evidence which, if believed, warranted the findings of the jury, and that a finding as to which of the negligent acts of which the the jury found the appellant guilty was the cause of the injury and damage of which the respondent complains, was not necessary to entitle him to have the judgment entered for him.

There was, no doubt, evidence which, if believed, would have warranted the jury's coming to the conclusion that it was not necessary to put the pipes down below the frost line, and that it was not necessary where they were laid above that line to use expansion joints; but the jury, as they had a right to do, preferred to that evidence the evidence to the contrary which was adduced by the respondent. . . .

It is plain, I think, that the jury's difficulty as to the 6th question was that, according to the theory of the appellant, the pipe the breaking of which permitted the gas to escape could not have been broken by the action of frost, but was broken by heavy traffic on the street; while, according to the theory of the respondent, the break was occasioned by the frost; and the jury were unable to determine which of these theories was the right one, but were of opinion that the break was caused either by