

at any time succeeded in carrying the waters (and I mean the waters at the time of flood or in heavy rains when drains are needed) from the Cullerton land. Witnesses differ somewhat as to the cause of this. One particularly intelligent witness thought a mistake had been made in not carrying the water down a natural watercourse which exists to the west of the present course. Several others thought that the difficulty was occasioned by the bend on the Cullerton lot 16. My understanding of the evidence of Mr. Rogers, the engineer in charge, was that the difficulty was caused by an obstruction in the drain on the Gloor lot, a short distance below the Cullerton property. On the whole, if I were forced to accept one version in preference to the others I would naturally accept that of Mr. Rogers. In any event his theory in that regard is of the utmost importance to the parties in this case. I find that he made proper calculations and provided a drain of proper capacity, assuming that the soil conditions were what I might call normal.

If it had not been for the fact, as afterwards discovered, that there was a bed of quicksand on the Gloor property and that the course of the drain happened to run through that bed of quicksand, the dimensions of the drain, the capacity of the drain, would have been sufficient. Mr. Rogers frankly concedes the existence of that bed of quicksand and the drain running through it, and that the capacity of the drain was not sufficient; although in this connection we must understand that the capacity, or lack of capacity, was not so much a question of cubic contents as a question of gradient. The best evidence of Mr. Rogers's opinion is the fact that quite recently he has brought in another report to the council which is before me now and in which he says that owing to the long stretch of flat lands from stake 90 to stake 137, which caused the current in that portion to become sluggish, it is obvious that the deposit of sediment in said portion would be great. He then points out how he proposes to widen the drain from stake 50 to the outlet, covering the plaintiff's property in that section, and to increase the gradient very materially. He does not specifically mention quicksand but he tells us in the box that that was a very serious element in the matter, that he knew of its existence before he took over the work from the contractor, but that he did not think it proper to make any change in his plans, notwithstanding the fact that he then