

I fail to see that by removing this fallen earth and by filling in the channel cut across the road, the municipality was guilty of any misconduct. Since this occurrence a box drain has been placed in the road. This conducts the water across the road, and the water flows into the ravine west of the embankment. This has prevented the occurrence of any further injury.

To me the case seems plain. The water in question was the drainage of the plaintiff's own land, augmented by some slight flow of surface water from King and Macklin streets, confined in this ditch constructed by the plaintiffs themselves, and allowed by them to flow on to Paradise road. All that the city did in the spring of 1912, was to remove the earth that had fallen and to fill the excavation that had been made, so that the water which the plaintiff had thus brought on the road would flow in its natural course either down the road or back into the ravine on the plaintiff's land.

The action will be dismissed. Costs must follow the event if they are demanded. In view of the fact that the city officials might well have constructed the box drain in the first instance, and might well have made a ditch which would have carried the water beyond the building, the city will probably see its way clear not to exact costs.

There is a counterclaim and a counterclaim to the counterclaim on the record. No evidence was given as to these matters, and as to them there will be no order and no costs—and this will not prejudice the rights of either party as to these matters.