

HON. MR. JUSTICE BRITTON:—The facts as I find them, upon the evidence, are that in the year 1900, the husband of the plaintiff, and the then owner of the land in question, was anxious to have the road improved, and to that end presented, or was instrumental in having presented, to the council of Widdifield, a petition for that purpose. The petition was not produced—and we have very little evidence, and that, in the main, from plaintiff's husband—of what was really done by the township. The township did employ Baldwin to do some work upon the road mentioned. He started to work at the southerly end of a culvert across the Trout Lake road—and from that point constructed a road ditch running easterly—some rods and stopping at a point not far from the land of the plaintiff in respect to the flooding of which she complains. This ditch did divert the water that flowed southerly through the culvert—and caused it to flow easterly. The ditch did not extend to, or carry the water to any sufficient outlet—and the water, after leaving the ditch, did, in part at least, flow on plaintiff's land. There was no evidence of the capacity of the ditch—but it was sufficient as far as it was constructed. There was no sufficient evidence to establish the existence of any creek—properly so called—all the water that was diverted was surface water. I find that all the water so diverted would, had the road ditch not been made, have flowed upon lot 19, and would in great part have found its way to the place where plaintiff complains of the flooding. The levels taken by the surveyor, called for the defendants, establishes that. The plaintiff's land is low. One witness spoke of the plaintiff's small acreage as a basin. The evidence for the plaintiff was mainly that of herself—and her husband. They were no doubt sincere—but I cannot accept their evidence against that of others who could see no difference, or no difference worth considering, between the years when water flowed from the higher part of lot 19, and the years since the construction of the road ditch. The whole money expended by the defendants in 1900, was the amount paid to plaintiff's husband, and amounted to only \$6.40. The money was not expended under any by-law, but was lawfully expended in the improvement of a road the municipality was bound to maintain. I find the defendants were not guilty of any negligence.

The husband, then owner of the land evidently, at the time the work was done—did not think his land would be damaged by water brought to it from the easterly end of the