

at the trial, in favour of the plaintiff as against the appellants, but dismissing the action as against the defendant Mills; the plaintiff did not appeal as to Mills.

The plaintiff was the owner of a lumber-yard and several buildings adjoining the Strathroy station of the defendant railway company. The defendant Mills was the owner and the defendant Scott the lessee of a coal-shed in the same neighbourhood; and the action was brought to recover damages for the flooding of the plaintiff's property, arising from obstructions in a drain passing through the parties' respective properties.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

T. G. Meredith, K.C., for the appellant Scott.

D. L. McCarthy, K.C., for the appellant railway company.

J. M. McEvoy, for the plaintiff, the respondent.

The judgment of the Court was delivered by MACLAREN, J.A.:— . . . The railway track at Strathroy runs east and west. The plaintiff's lands which were flooded adjoin the station grounds on the north. On the railway side of the boundary-line, the defendant company has a drain which conveys the water from the right of way westward to the river. It was constructed with a galvanised iron pipe, 20 inches in diameter, which runs close to the plaintiff's southern boundary, then passes under Frank and Metcalfe streets at their intersection, and 130 feet farther westward runs under the defendant Scott's coal-shed. The top of the pipe is slightly below the surface of the ground. It was originally a continuous tube for the distance above-mentioned, but for some time before the flood in question it had been out of repair—two sections of over 100 feet each adjoining the plaintiff's land having been taken up, leaving an open ditch there about 2 feet deep; a third section, of about 40 feet, east of Scott's shed, being in the same plight. In ordinary high water, the mouth of the pipe or culvert under Frank and Metcalfe streets was often blocked by pieces of lumber, bark, and other refuse, and the railway men from time to time cleaned these out, and drove in stakes to prevent them going into the pipe.

In the latter part of March, 1913, there were two floods, of which the plaintiff complained to the railway agent, and the obstructions then at the mouth of the pipe were removed and missing stakes replaced. On the 3rd April, there was an unusual rainfall. The next morning, the plaintiff's land, buildings, and