

File No. 7858 Continued.

OPINION.

To the south and east of Jenkins Lane, and running parallel with it, is the Jenkins Run sewer, and from a point on Jenkins Lane, just east of Cromwell street, a box drain runs to, and connects with this sewer. The box drain was originally built by the Kennedy Estate, and I understand from Mr. Atwood, who represents the Estate, that the trustees admit it still belongs to them.

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The box is supposed to carry into the sewer the surface drainage from Jenkins Lane, which consists, not only of the drainage from Jenkins Lane, itself, but also of additional drainage which runs into Jenkins Lane from adjacent streets, and particularly from Twenty-second street. I understand from Dr. Bosley's letter that this box is broken, choked up, and in need of repair; and, I am also informed by Mr. Atwood, that in any event the box is too small to take care of the surface water which is brought to its mouth. Mr. Fendall seems to coincide in this view. The consequence is that the box overflows into the cellars and yards of Numbers 1, 3, 5 and 7 Jenkins Lane. Under these circumstances, Dr. Bosley has notified the estate to repair and reconstruct the box, and to repair and reconstruct the surface drainage.

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Mr. Atwood, on behalf of the estate, contends that the reason why the box is insufficient is because the grading and paving of the neighboring streets has caused a greater amount of drainage to flow down Jenkins Lane than formerly was the case, and thus more water accumulates at the mouth of the box drain than the box drain is able to take care of. This increased flow, Mr. Atwood says, is purely surface water, and since it comes from public streets, he contends that the city must provide for it.

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I find that while the grading and paving of the streets has undoubtedly increased the flow, and while these streets are public, still the grading and paving was all done by the Kennedy Estate at a time when that estate owned the streets; the city neither fixed the grade, nor did the paving; but after this was all done by the Kennedy Estate, then, the City Engineer, on March 21st and 30th, 1901, established the grades in conformity with the grades already established by the Estate. Mr. Fendall tells me, that in many respects he did not approve of these grades, but inasmuch as they were already established, he simply adopted them; then, the streets being already thus graded and paved, were conveyed to the City, and became public.