

File No. 10001 Continued.

OPINION.

7695

nuisance by laying a drain pipe; this pipe ran from the alley in the rear of the North side of Thomas Avenue Westerly in the bed of Westwood Avenue to another alley which runs parallel with Thomas Avenue, between Westwood Avenue and Presbury Street. The pipe then runs South through this last mentioned alley to Presbury Street, and then West to the culvert under the Western Maryland Railroad's tracks; from this culvert it empties into a natural stream, which has always run Westerly to Peck's Branch.

7696

After this, Boston Fear built houses on Presbury Street West of the Western Maryland tracks and North of the stream, and in order to bring the property in the rear to grade, and to open Braddish Avenue, and also to prevent the stream from overflowing, he piped the stream along its natural course for a distance of about two hundred feet, beginning about sixty-six feet West of the culvert. After this, therefore, the sewer emptied, as formerly, into the culvert; then ran along the open course of the stream for sixty-six feet, which then, in turn, emptied into the pipe built by Boston Fear, for a distance of two hundred feet, and then ran in the natural bed of the stream to Peck's Branch. Boston Fear's pipe was laid about three years ago.

7697

The result of this situation was that a nuisance existed in the open stream between the culvert and the Boston Fear pipe, and about a year ago the Health Department notified the Western Maryland Railroad to abate this nuisance, by piping the open sixty-six feet of stream. This was, accordingly, done and after this the drainage, of course, emptied from the culvert into the Western Maryland pipe, then into the Boston Fear pipe, and was then carried along the open bed of the stream to Peck's Branch.

7698

The nuisance now exists in the gully West of the Boston Fear drain. The drainage always did run through this gully, and has never been diverted in any way, - the pipe simply enclosed the stream in its natural bed, and I was entirely in error in thinking that the nuisance was caused by any diversion of the sewer or stream. In other words, the owner of the property upon which the nuisance exists did not bring