

KELLY, J.

FEBRUARY 20TH, 1918.

\*SMITH v. ONTARIO AND MINNESOTA POWER CO.  
LIMITED.

*Water—Erection of Dam in River—Maintenance and Use Causing  
Injury to Owners and Occupants of Land—High Water-level  
—Neglect to Use Means to Reduce—Liability of Company  
Controlling Operation of Dam—Damages.*

Five actions were brought against the Ontario and Minnesota Power Company Limited and the Minnesota and Ontario Power Company, the plaintiffs being Matthew H. Smith, Seth Smith, Narcisse Gagne, Peter Foster, and John Tighe, to recover damages for injuries to their respective properties by the acts of the defendants.

The plaintiffs alleged that the defendants erected and maintained a dam across Rainy river between the town of Fort Frances, Ontario, and the city of International Falls, Minnesota; that this dam impeded and interfered with the natural flow of the waters of Rainy lake, discharging through Rainy river, and maintained the level of the water in the lake above its normal height; that this dam was constructed and maintained without any legal authority and in direct violation of the provisions of the Ashburton Treaty, 1842; that, during the autumn of 1916 and the succeeding winter, and in the summer of 1916, and down to the time of the commencement of these actions, the defendants by means of the dam unlawfully held back the waters of Rainy river and Rainy lake until they reached an unduly high level, and in consequence these waters were raised to and maintained at so high a level that the properties of the respective plaintiffs were either destroyed or seriously damaged; that the plaintiff in each action was deprived of the use of his buildings and prevented from carrying on his usual trade or occupation; and that, even if the defendants had the right to maintain the dam, they maintained it in such a negligent manner as to cause the loss and damage referred to.

The actions were tried together, without a jury, at Fort Frances.

C. R. Fitch, for the plaintiffs.

A. J. Andrews, K.C., and F. M. Burbidge, for the defendants.

KELLY, J., in a written judgment, set out the history of the dam and the facts established by the evidence in detail.