

by the construction by the defendants of a dam upon the Mattabitchewan river.

By instrument dated the 29th May, 1909, the Crown leased to the Mines Power Limited a water power location upon the river in question, the limits of which are defined upon the plan attached thereto. These limits do not include the plaintiffs' mining locations. The lease was granted pursuant to Statute 61 Vict. ch. 8, and the regulations passed pursuant to the Act. It contains a clause—13—providing that the lessee shall not, by virtue of the lease, have power to overflow or cause to be overflowed any lands other than those demised, and providing that if any such lands are overflowed or damaged the Crown shall be in no way responsible for damage done to the owners. It also confers the right to flood any Crown lands along the river and its expansions.

Prior to the granting of this lease, the mining claims in question had been located; the discovery being in the case of four of the claims, March, 1908, and in the case of the fifth claim, May, 1908. The working conditions were duly complied with in the case of each of these claims; and on the 4th March, 1912, certificates were issued by the Mining Recorder shewing that the requirements of the Mining Act had been fully complied with.

The main work done on these claims was the sinking of a small shaft near the surface of the water of Bass lake. When the dam was erected by the defendants it raised the water forty feet. It is admitted that the water was not raised to an amount exceeding that authorized by the lease. As a consequence of the raising of the water, the work that had been done upon the mining claim was completely lost. The plaintiffs were entitled to obtain a patent for their claims, but did not do so, because this involved the payment of the Government charge; and it is said that they refrained because of the complete destruction of all real value in the claims by the flooding.

The Mining Act recognizes a mining claim as a property right. It is true that this right is in a sense inchoate; but upon compliance with the requirements of the statutes it ripens into a full title; and I think that the destruction of the value of the mining claim, although the title is inchoate, is an injury for which an action will lie. The