

PARRY SOUND LUMBERING CO. V. FERRIS ET AL.

ARDAGH, CO. J.—This is an application under the above statute to acquire portions of the lands of certain parties residing on the shores of Lake Lorimer, in the District of Parry Sound. The applicants have large saw-mills at the mouth of the Seguin River, into which river the waters of Lake Lorimer eventually discharge after passing through and forming a creek called Still Creek, and two smaller lakes. The object of the applicants is to store up a supply of water in Lorimer Lake, turning it into a large reservoir, by erecting a dam where Still Creek leaves the lake. Indeed, the dam has already been erected, and raises the water to about the height of eight feet above the level of the lake, thus flooding the lands of those parties who reside on the shores. The surplus water it is proposed to use as occasion requires, whenever the natural flow of the Seguin River may prove insufficient for the working of applicants' saw-mills.

Out of some thirteen persons affected by this flooding, the applicants have obtained grants of the right to flood from ten; of the remaining three (who are made defendants in this application) one of them, Mr. John Bell, is a resident of the United States, and does not appear to have had any notice of these proceedings. The other two, Francis B. Ferris and Edward Bell, appear and oppose the application.

Viva voce evidence has been taken on both sides, the necessary formalities and preliminary steps required by section four of the Act appear to have been regularly complied with and taken by the applicants. The maps filed show clearly what amount of land is required to be submerged—some 200 or 300 acres altogether. But of this only a comparatively small portion belongs to Ferris and Bell, some 20 acres or thereabouts.

The reasons for making this application are thus stated by Mr. David Beatty, a surveyor, called by the applicants. In his evidence he says:—"The company manufacture lumber, having a mill on the Georgian bay. Lake Lorimer communicates with the Georgian Bay. It is an offshoot of Seguin River, and would be a sort of reservoir in dry seasons; this would increase the lumbering facilities, and would be likely to prevent the necessity of shutting down the mill. The company does a large business, and employ 150 to 200 men, some of whom are thrown out of employment when the mill shuts down.

This industry benefits the country about there. I speak from experience; it circulates money, and working men are able to find employment and live in Parry Sound. There are scores of men who would not be in that country, nor could live in it, but for the lumbering industry."

Another witness, David S. Miller, says:—"The P. S. L. Company have large works at Parry Sound; they benefit the country by affording a better market for produce; they were shut down last summer for want of water, as I was told, which prevented less money from being in circulation. (He evidently intended to say 'more money.') Raising this lake would keep up the supply."

The next witness called, Thomas McGown, says:—"The Company's power is supplied by the Seguin River, of which Lorimer Lake is a tributary. The company has been a benefit to the country. Farmers get a good price for all they raise. They employ 150 men. To keep a head of water up in this lake would be an assistance. They have spent a good deal of money in building reservoirs. Lack of water and some trouble with the Guelph Company caused a stoppage of water last fall."

Upon this evidence it is argued by Mr. Plumb, for the applicants, that I ought to make the order mentioned in sect. 7 of the Act. That sect. reads, "If such judge is of opinion that the allowance of such application will conduce to the public good, and is proper and just under all the circumstances of the case, he shall make an order describing the lands affected thereby, and empowering such persons to exercise the said powers or such of them as he may deem expedient, for such time and for such terms and conditions as he may determine."

At the close of the "plaintiffs" case, Mr. Strathy, for the defendants, took several objections. (1) That the Act never contemplated making a reservoir of this sort 20 miles away. (2) That these being free grant lands the wives of these "defendants" ought to be made parties, inasmuch as under the Free Grant Act (R. S. O. chap. 24), the wife of a grantee or locatee is entitled, on his death, to the same right or interest that he had, and, by sect. 15, every such wife must be one of the grantors in any deed of alienation by her husband to render the same valid. (3) That as to Bell's land, for which no patent has yet issued, the owner cannot be com-