

JANUARY 26TH, 1914.

## \*SMITH v. NORTHERN CONSTRUCTION CO.

*Negligence—Destruction of Fishing-nets in Waters of Stream by Tug and Boom of Logs—Side Channel—Lawful Setting of Nets—Fisheries Act, R.S.C. 1906 ch. 45, sec. 47, sub-secs. 2 and 4—Duty to Use Care where Nets Unlawfully Set—Acts Amounting to Negligence—Findings of Jury—Absence of Finding that Negligence Found was Cause of Destruction—Finding by Appellate Court—Judicature Act, 1913, sec. 27, sub-sec. 2.*

An appeal by the defendant company from the judgment of the Judge of the District Court of the District of Rainy River, in favour of the plaintiff, upon the findings of a jury, in an action for damages for the destruction of the plaintiff's fishing nets by the negligence of the defendant company, as the plaintiff alleged.

The appeal was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, JJ.A., and LENNOX, J.

C. A. Masten, K.C., for the appellant company.

G. H. Watson, K.C., for the plaintiff, the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The respondent is a fisherman, having a license from the Provincial Government to fish with gill nets in the waters of Red Gut Bay, in the district of Rainy River, and he brings the action to recover damages for the loss sustained by him owing to his nets having been destroyed, as he alleges, by the negligence of the appellant.

The appellant was engaged in towing "a large boom of logs or saw timber and ties" upon the waters of the bay, and was using for that purpose "a tug or steam vessel known as an alligator," and in the process of towing and warping, "in addition to the usual methods of propulsion," a large steel cable and anchor were attached to a tree or other solid object upon the land, and the cable was wound up by steam power upon a drum on the alligator, and in that way the alligator and her tow were hauled along.

It is alleged in the statement of claim that "this method of

\*To be reported in the Ontario Law Reports.