

The Ontario Weekly Notes

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No. 7.

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

APRIL 23RD, 1918.

*OSHAWA WATER COMMISSIONERS v. ROBSON
LEATHER CO. LIMITED.

*Reference—Order Directing—Water Unlawfully Taken—Waiver of
Tort—Implied Contract to Pay for Water—Ascertainment of
Amount and Value—Reference of Whole Action—Judicature
Act, sec. 65 (c).*

An appeal by the plaintiffs from an order of FALCONBRIDGE, C.J.K.B., referring the action for trial to an Official Referee, under sec. 65 (c) of the Judicature Act.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and Hodgins, J.J.A., and MIDDLETON, J.

R. T. Harding, for the appellants.

M. H. Ludwig, K.C., for the defendants, respondents.

The judgment of the Court was read by MIDDLETON, J., who said that the plaintiffs complained that the defendants unlawfully and fraudulently connected pipes with the plaintiffs' water system and took large quantities of water therefrom for use in their tannery. The plaintiffs waived the tort, and claimed for the water at 11 cents per hundred cubic feet, or \$37,725.42. The defendants said, in effect, that on several occasions, when they found their own water-supply unsuitable for their purposes and when their own waterworks were out of repair, they used water for their tannery from the plaintiffs' service-pipe, but not to the extent claimed, and they submitted to pay what should be found due, raising several

* This case and all others so marked to be reported in the Ontario Law Reports.