

tions and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage from the shores of Lake Superior to the Pigeon river as now actually used shall be free and open to the use of the citizens and subjects of both countries." The whole object of this clause was the advantage of those desiring to pass along the waters or the portage—there was no intention to take care of the rights of land-owners or others near the route, and such persons could not appeal to the Treaty. It was said that if the "water communications" had been left open the damage to the plaintiffs would not have occurred; but the damage did not arise from interference with the plaintiffs' right to pass along the water communications. Reference to *Gorris v. Scott* (1874), L.R. 9 Ex. 125.

The Dominion Parliament, under sec. 91 (10) of the British North America Act, has jurisdiction over navigation, and so has jurisdiction to cause or allow any act or work within the Dominion for the advantage of navigation; this dam was considered such a work, and the Dominion had jurisdiction in the premises. The Dominion Act respecting the defendant company, 4 & 5 Edw. VII. ch. 139, required that the plans should be submitted to the Governor-General in Council, and they were submitted accordingly, but explicitly under the general Act, R.S.C. 1886 ch. 92, secs. 1 to 9 of which gave power to the Governor-General in Council to approve such a work as the defendants'. The order in council of the 19th September, 1905, was valid; it was based upon the proposition that "a clause in the Act of incorporation of the company makes all damages to lands caused by their works a charge to be borne by them." The defendants could not be allowed to retain the advantage of an order in council if procured by a misstatement of fact. The words quoted should be read as a condition imposed on the defendants or a limitation of their powers. The order in council was never intended to give the defendants the right to do damage to lands without paying for it, and the words did not necessarily import such power.

The defendants had no power to damage land without paying compensation; but that consideration was not sufficient to dispose of these actions.

All but two of the plaintiffs were mere squatters on land of the Crown in Ontario, and their rights could not prevail against the Crown. The agreement of the 9th January, 1905, gave the defendants permission to flood the "lands . . . the property of the Crown in Ontario under the control and administration of the Government of Ontario and . . . no permission is given . . . to overflow or cause to be overflowed any lands not the property