

in effect asked here is the same thing, namely, that while the express companies have put in a competitive tariff with the postal authorities under which they will compete up to five pounds weight, we are asked to take the five-pound limitation off and make them embark in the carriage of a class of traffic that the postal authorities do not attempt to carry at all. We are alive to the disturbance that this result may have on the business of the book-dealers and others who had the use of this facility. We are alive also to the inconvenience that it may subject them to, that has been spoken of, in the way of tying up separate packages, and the like. But it is a situation that we cannot deal with. The express company is within its right in limiting itself to five pounds. We have no authority to extend it, and in the result the application of the booksellers must fail, and this section D will remain as it was settled, and as it now stands in the classification effective on the 1st of March of this year.

HON. MR. JUSTICE BRITTON.

JUNE 1ST, 1912.

BALDWIN v. TOWNSHIP OF WIDDIFIELD.

3 O. W. N. 1348.

Drains — Construction of Road Ditch by Municipality — Flooding Lands—Action for Damages—No Negligence Shewn.

BRITTON, J., dismissed an action by plaintiff for damages arising from alleged flooding of her lands by negligence of defendants in diverting a stream into a ditch of inadequate capacity to carry off the water, on the ground that no negligence had been shewn, but the dismissal was without costs.

Action by plaintiff Eliza, or Elizabeth, Baldwin, owner of part of the S.E. $\frac{1}{8}$ of lot 19, concession B. of the township of Widdifield, containing 4 $\frac{95}{100}$ acres, to recover damages.

Her cause of action, as stated in the statement of claim, was that defendant township, about the year 1899, diverted the water from a certain stream or creek, which ran across another part, than the plaintiff's, of this lot 19, and for the purpose of carrying off the water, so diverted, constructed a ditch running easterly along the old Trout Lake road—which ditch was entirely unfit and inadequate for the purpose intended, and so the water flowed from it over the plaintiff's land to her damage.

Tried at North Bay, without a jury.

G. L. T. Bull, for the plaintiff.

G. H. Kilmer, K.C., for the defendants.