

*lands the right of floating timber down all streams which were naturally floatable for some portions of their course, though at certain points obstructions existed which were only overcome by improvements effected by the owner of the land on either side at his own cost.*

*Judgment of Supreme Court of Canada (5 L. N. 393) reversed.*

PER CURIAM. In this case the now respondent as plaintiff, filed in the Court of Chancery, Ontario, on the 4th May, 1880, a bill of complaint, and appellants, as defendants, filed an answer on the 11th August, 1880. Issues of fact were raised, and evidence was heard at great length before Vice-Chancellor Proudfoot, who, on the 16th December, 1880, pronounced this judgment:

"1. This Court doth declare that those portions of the three streams referred to in the plaintiff's bill of complaint, where they pass through the lands of the plaintiff, described in the said bill, when in a state of nature were not navigable or floatable for saw-logs and other timber rafts and crafts down the same, and doth order and decree the same accordingly;

"2. And this Court doth further declare that the plaintiff is entitled to the user of those portions of the said streams where they pass and flow through the lands of the plaintiff in the said bill of complaint described, and to the improvements thereon, freed from the interruption, molestation, or interference of the defendants or either of them, or their or either of their servants, workmen, or agents, and doth further declare that the defendants have no right to the user of such parts of the said streams for the purpose of driving timber and saw-logs, and doth order and decree the same accordingly.

"3. And this Court doth further order and decree that a writ of injunction be awarded to the plaintiff, perpetually restraining the defendants, their servants, workmen and agents from interfering with the plaintiff's user of the said streams where they pass through the lands of the plaintiff, described in the said bill, and of the improvements erected on the said streams, and restraining the defendants from using such parts of the said streams and the said improvements for

the purpose of driving their timber and saw-logs."

This decree was brought by appeal before the Court of Appeal of Ontario, and, on the 8th July, 1881,—

"It was ordered and adjudged by the said Court that the said appeal should be, and the same was allowed without costs; and that the bill of complaint of the said Peter McLaren, in the Court below, be, and the same is hereby dismissed without costs except in so far as the costs of the appellants (the defendants in the Court below) have been increased by reason of the motion for an interlocutory injunction, and except their costs of appeal to this Court from the order granting such interlocutory injunction, and as to such excess and costs of appeal, the same are to be paid by the respondent to the appellants forthwith, after taxation thereof."

This order was brought by appeal before the Supreme Court of Canada, and, on the 28th November, 1882, it was ordered by that Court,—

"That the said appeal should be, and the same was allowed, that the said order of the Court of Appeal for Ontario should be and the same was reversed, and that the decree of the Court of Chancery of Ontario, dated the 16th day of December, 1880, should be and the same was affirmed.

"And this Court did further order and adjudge that the said respondents should pay to the said appellant the costs incurred by the said appellant, as well in the said Court of Appeal for Ontario as in this Court."

It is from this last order that the present appeal is brought.

There are some things not now in controversy, which it is better to state before examining the allegations in the bill and answer.

The waters which drain from a considerable tract in Upper Canada collect so as to form a river called the Mississippi, which flows down to and into the River Ottawa. There is no controversy as to the Mississippi below a point in the township of Dalhousie called High Falls.

The lie of the country above that point is shown by a map (Exhibit G) prepared by the plaintiff below (now respondent), and