

waters, and remained there unused, though at all times in condition to be used, for more than two years, when she was destroyed by fire, the policy having been kept in force.

*Held*, per BURTON, C. J. O., and OSLER, J. A., that the risk did not attach the meaning of the policy being that the vessel was insured during the season of navigation only while in commission.

*Held*, per MACLENNAN and MOSS, J. J. A., that the phrase in question was used merely to limit the risk geographically, and that the risk did attach.

In the result the judgment of ARMOUR, C. J., in favour of the plaintiffs, was affirmed.

*W. Nesbitt and R. McKay*, for appellants. *McCarthy*, Q. C., *W. M. Douglas*, and *MacInnes*, for respondents.

From Armour, C. J.]

[Nov. 15.]

TOWNSHIP OF LOGAN v. TOWNSHIP OF MCKILLOP.

*Ditches and watercourses Act—57 Vict. c. 55 (O.)—Owner—Appeal from award—Service of notices—Deepening ditch.*

Per OSLER and MOSS, J. J. A., BURTON, C. J. O., contra. Where in proceedings under the Ditches and watercourses Act, 57 Vict. c. 55 (O.), a declaration of ownership has been made and filed by the person initiating the proceedings, any objection to his status as owner must be brought before, and decided by, the County Judge; the effect of section 24 being that the award when made cannot be impeached on such a ground. *York v. Township of Osgoode*, 24 O.R. 12; 21 A.R. 168; 24 S.C.R. 282, distinguished.

Per MACLENNAN, J. A., BURTON, C. J. O., and MOSS, J. A., contra. A person in possession of land under a lease with an option to purchase, no default having occurred, is the owner of the land within the meaning of the Ditches and watercourses Act, 57 Vict. c. 55 (O.), and as such entitled to join in initiating proceedings thereunder.

Per OSLER, MACLENNAN and MOSS, J. J. A. Where land affected by a proposed work is vested in several persons as devisees in trust, none of them living upon the land, service of notice of proceedings under the Ditches and watercourses Act upon one of them for all is sufficient; at any rate sections 23 and 24 cure any objection of this kind.

Per OSLER, MACLENNAN and MOSS, J. J. A. Sec. 36 of the Act applies where a ditch has been completed and a new arrangement is necessary in regard to its maintenance; it does not apply where a ditch is being deepened or extended, and for work of that kind the two years' limitation is not in force.

In the result the judgment of ARMOUR, C. J., was reversed, BURTON, C. J. O., dissenting.

*Garrow*, Q. C., for appellants. *Shepley*, Q. C., for respondents.

From Divisional Court.]

MILLER v. LEA.

[Nov. 15.]

*Action—Assault—Criminal prosecution—Civil remedy.*

The civil right of action to recover damages for assault is not taken away by the criminal prosecution and dismissal or punishment of the offender, unless