

defendants' works beyond others of the public, and hence have established no right to relief.

As a consequence, it is unnecessary to express any opinion as to the very interesting questions of law so fully discussed here and in the Courts below.

The appeal should, in my opinion, be allowed, and the action dismissed, with costs of the action and of the appeal to the Divisional Court and of this appeal to the defendants.

HODGINS, J.A.:—Evidence of the disappearance of the old Talbot road, part of which formed the southern boundary of the respondents' lot, naturally predisposes the mind to accept as a result its submergence by the waters of Lake Erie. This, coupled with the view of the learned trial Judge, has compelled a careful scrutiny of the evidence, an analysis of which appears in the reasons given by my brother Magee.

It seems impossible to escape from the conclusion to which he has come, that the respondents have failed to prove what is essential to their case, namely, that the waters of the lake have so encroached upon this particular lot, that the appellants' works now stand upon it.

The utmost that can be said is, that the respondents have created an atmosphere of doubt, while, in an action such as this, certainty is absolutely necessary.

The appeal should, therefore, be allowed, and the action dismissed.

MEREDITH, C.J.O., and MACLAREN, J.A., concurred.

*Appeal allowed.*

MAY 12TH, 1914.

SNIDER v. CARLTON.

CENTRAL TRUST AND SAFE DEPOSIT CO. v. SNIDER.

*Will—Construction—Legacy to Niece—General Devise of Lands in Ontario—Lands Standing in Name of Testator in which Niece Claims Half Interest—Niece not Put to Election—Declaration of Niece's Right to Half Interest—Trust—Promise to Devise Land to Trustees.*

Appeal by the plaintiffs in the second action, the American executors of Thomas A. Snider, deceased, also defendants in