

I am of opinion that the appeal should be allowed and the judgment below varied by striking out from the 2nd paragraph thereof all the words from "other than" to the end, and by inserting the word "not" in the 3rd line of the 3rd paragraph between the words "is" and "entitled:" and striking out all of the said paragraph after the words "lot 41" in the 4th line of the said paragraph.

The plaintiffs are entitled to their costs on the County Court scale, both in this Court and the Court below—the judgment below may, if necessary, be amended accordingly.

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DIVISIONAL COURT.

JANUARY 27TH, 1911.

ISHERWOOD v. ONTARIO AND MINNESOTA POWER CO.

*Water and Watercourses—Navigable River—Interference with Natural Flow of Water—Injury to Owner of Saw-mill—Riparian Owner—Justification under Statutory Authority—4 & 5 Edw. VII. ch. 39 (D.)—Agreement with Provincial Government—6 Edw. VII. ch. 132 (O.)—Pleading—Amendment—Navigable Waters Protection Act, R.S.C. 1906 ch. 115—Navigation—Powers of Dominion Parliament—Findings of Jury—Damages.*

Appeal by the defendants from the judgment of the Judge of the District Court of Rainy River, upon the findings of a jury, in favour of the plaintiff, in an action to recover the damages sustained by him in consequence of his saw-mill, situate on the banks of the Rainy river, having been shut down owing to the flow of the waters of the river having been interfered with by the defendants.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and SUTHERLAND, JJ.

Glyn Osler, for the defendants.

W. H. McGuire, for the plaintiff.

The judgment of the Court was delivered by MEREDITH, C.J.:—The mill is situate below a dam which the defendants have built across the river, and upon the argument before us they justified their interference with the natural flow of the river under an Act of the Parliament of Canada, 4 & 5