

Department of Crown Lands, in dealing with owners of the shore or arising because of their ownership thereof, are not interfered with by this judgment.

There should be no costs of the action or counterclaim between the plaintiff and the original defendants. The judgment annulling Gauthier's license of occupation should be set aside, and the action as to him dismissed with costs.

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NOVEMBER 3RD, 1913.

\*McDOUGALL v. SNIDER.

*Water and Watercourses—Overflow of Mill-pond—Injury to Neighbouring Property—Opening of Flood-gates—Evidence—Absence of Negligence—Heavy Rainfall—Act of God—Proper Precautions—Grounds for Apprehension—Cause of Action—Prima Facie Liability for Escape of Water.*

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Waterloo, after trial without a jury, dismissing an action brought in that Court to recover damages for injury to the plaintiff's land and other property by flooding.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

M. A. Secord, K.C., for the plaintiff.

R. McKay, K.C., for the defendant.

The judgment of the Court was delivered by MEREDITH, C. J.O.:—The respondent is the owner of a mill, operated part of the time by water power, and, for the purposes of it, his predecessor in title constructed, and the respondent had for many years maintained, a mill-pond, in which the waters of a small stream are collected and from which they are led to the mill through a raceway at the entrance, to which are gates for controlling and regulating the flow of the water, and the water is returned to the stream in the ordinary way by means of a tail-race. The appellant is the owner of a lot which lies contiguous to the stream and below the dam, and upon it he has erected a house in which he lives with his family, a stable, and some outbuildings.

\*To be reported in the Ontario Law Reports.