

of the King's Bench from whose order it is sought to bring the appeal, is reported to have expressed some diffidence in reaching his conclusion, gives ample ground for granting the leave.

Costs of the application to be disposed of on the appeal.

HON. R. M. MEREDITH, C.J.C.P.

SEPTEMBER 22ND, 1913.

NIAGARA NAVIGATION COMPANY v. TOWN OF
NIAGARA.

5 O. W. N. 46.

Way—Highway—Claim of Municipal Corporation that Certain Lands were—Dedication — Evidence as to Unsatisfactory — Statutory Appropriation as Harbour—Trespass—Damages—Costs.

MEREDITH, C.J.C.P., *held*, in an action for trespass upon lands claimed by defendants to be a public highway that there was no sufficient evidence of dedication as such and that in any case the lands in question had been appropriated for harbour purposes by statute.

Action for trespass. Defendants in reply alleged that the lands upon which they were alleged to have trespassed were part of a public highway.

W. C. Chisholm, K.C., and A. E. Knox, for the plaintiffs.

A. C. Kingstone and F. Aylesworth, for the defendants.

HON. R. M. MEREDITH, C.J.C.P.:—Two important questions are involved in this litigation: (1) whether the place in question ever was a highway, and, if so, (2) whether it has ceased to be such by reason of the exercise of the power conferred by an Act of Parliament.

The difficulties involved in the first question are much greater than they ought to be, by reason of the lack of evidence regarding the original laying out of the locality in question into lots and ways.

If one have regard only to the ground itself and any work upon it, the evidence is altogether against the defendant's contention—altogether against any motion that the very place in question ever was a way of any kind. By reason of its low lying character it was not suitable for a road; and has never been used as such. On the contrary, in earlier days, the way, of which the defendants contend it is a continuation, was always fenced off from it by a close board fence, with a gate only in it, used to "shoot" logs