

2. There is nothing in the Act under which the added defendants were incorporated which confers upon them any right to flood private property unless they have first taken the steps authorized by the Act for expropriating the property or settling the compensation to be paid for flooding it, which these defendants had not done.

3. Nor were the defendants assisted by ss. 15 and 16 of R.S.O. c. 140, for, even if the dam was erected before the plaintiff's purchase of his property from the Crown, there was nothing to shew that the price he paid was reduced in consequence.

4. But s. 1 of R.S.O. c. 142, places the public advantage of allowing lumbermen to use rivers and streams as highways for carrying their logs to a market, above the private damage and inconvenience which may necessarily be caused to individual riparian proprietors by their doing so; and the original defendants were not liable for any damage sustained by the plaintiff by reason of their having, during any spring, autumn, or summer freshet, caused damage to the plaintiff by using or repairing or maintaining any dam necessary to facilitate the transmission of their timber down the stream.

5. The rights given to persons desiring to float their own timber down a stream should not, however, be extended to companies incorporated for the purpose of making a profit by improving streams and charging tolls to lumbermen desiring to use them; and this view is strengthened by s. 15 of R.S.O. c. 194.

The action was dismissed as against the original defendants; and judgment was given for the plaintiff against the added defendants for \$142, but without costs, the defendants having paid that amount into Court.

O. M. Arnold, for plaintiff. *W. L. Haight*, for defendants.

Falconbridge, C.J. K.B., Street, J., Britton J.]

[July 12.

McINTYRE v. TOWN OF LINDSAY.

Negligence—Liability for non-repair of highway.

Appeal by plaintiff from judgment of County Court of Victoria dismissing the action as against the town corporation with costs. Action against the town corporation and the Lindsay Gas Co. to recover damages for injuries sustained by plaintiff by stepping into a trench dug by the defendant company along the streets of the town, under the authority of a special by-law of the defendant corporation. The defendant company had agreed to indemnify the corporation for all damages which might arise therefrom, and to warn the public of the danger by lights, etc. The corporation were repairing their sidewalk at the point in question at the same time, and, in passing at night, the plaintiff, in going round the barrier constructed by the defendant corporation around their repairs, fell into the trench and was injured. There were no lights put up by either defendant to warn the public of the danger.