

THE
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING JULY 31ST, 1902.)

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STREET, J.

JULY 11TH, 1902.

TRIAL.

NEELY v. PETER.

Water and Watercourses—Injury to Land by Flooding—Claim for Damages—Summary Procedure—Costs of Action—Erection and Maintenance of Dam—Liability of Owners—Tolls—Liability of Lumbermen Using Dam.

Action by the owner of land upon a river against the original defendants for flooding such land by a dam. At the trial it appeared that the dam was the property of an improvement company incorporated under the Timber Slide Companies Act, R. S. O. ch. 194, and that the original defendants had used it for the purpose only of floating logs down the river; and the improvement company were added as defendants.

O. M. Arnold, Bracebridge, for plaintiff.

W. L. Haight, Parry Sound, for defendant.

STREET, J., held, that, although (as decided in *Blair v. Chew*, 21 C. L. T. Occ. N. 404) a plaintiff is not bound to proceed summarily upon a claim such as this, under R. S. O. ch. 85, but has a right to bring an action in the ordinary way, yet, in the absence of any good reason for not proceeding under the special Act, a plaintiff who brings an action should not be allowed the costs of doing so.

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.