

For injury to his boats they contended that they were in no way liable. They alleged that such damage, if any, was caused by the flooding of the slip in which the boats lay, not by water which flowed into it from the north, through a culvert, but by water which flowed south of the embankment in a westerly direction and into the slip at the mouth, or from the property lying to the east.

The attempt of the defendants to shew that the damage was caused not by their bridge, but by natural causes, such as the accumulation of frazil on a line north of the bridges, failed. It was based wholly on theory.

Upon the argument of the appeal, much criticism was directed to the statement made at the trial by counsel for the plaintiff to the effect that the defendants had settled a claim for similar damages by one Allen, whose coal-yard lay east of the slip in which the plaintiff wintered his boats. It was also urged that, in his address to the jury, the plaintiff's counsel made statements calculated to prejudice and influence them against the defendants and prevent a fair trial of the action.

In the opinion of the learned Judge, the statements objected to were not of such a character as prevented a fair trial of the action: *Sornberger v. Canadian Pacific R.W. Co.* (1897), 24 A.R. 263, and the cases there cited, especially *Bradlaugh v. Edwards* (1861), 11 C.B.N.S. 377.

There was no miscarriage of justice; and, the damages being reasonable, a new trial should not be granted.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

APRIL 2ND, 1918.

DIAMOND v. WESTERN REALTY LIMITED.

*Vendor and Purchaser—Agreement for Sale of Land—Cancellation by Vendor—Evidence—Waiver of Right to Cancel—Counterclaim—Money Lent.*

Appeal by the plaintiff from the judgment of BRITTON, J., 12 O.W.N. 226, dismissing the action and directing judgment to be entered in favour of the defendant the Western Realty Limited on its counterclaim for \$400.