

consider fair and just under all the circumstances would be \$10,000, which if it errs at all, as it probably may seem to do, to the minds of the next appellate tribunal, errs, I think as I believe we all do, on the side of being generous to the plaintiff.

The plaintiff should have the costs up to and inclusive of the trial, and there should be no costs to either party of the motion in the Divisional Court or of this appeal.

COURT OF APPEAL.

JUNE 28TH, 1912.

MANN v. FITZGERALD.

3 O. W. N. 1529.

Ejectment—Action in—Peninsula in Lake—Survey—Road Allowance—Crown Patent—Paper Title.

An action of ejectment in which plaintiff sought to recover a parcel of land known as Deihl's point, a peninsula extending into Cameron Lake, physically connected with lot 26, con. 10, Fenelon, but lying in front of lot 25. There is an allowance for road between lots 25 and 26, and this, if extended across the bay behind the peninsula, would cross it at a narrow frontage. Plaintiff contended that the water line should be followed quite regardless of directions, and thus the whole peninsula would be included.

MIDDLETON, J., 20 O. W. R. 848; 3 O. W. N. 488; 1 D. L. R. 26, *held*, that the more natural thing to do was to follow the water's edge to where the road allowance extended across the bay intersects the shore of Cameron Lake at the western side of the peninsula and then turn easterly. The effect of this was that the peninsula situate in front of lot 25 and partly in con. 9 and partly in con. 10 is not patented. Taking that view as to what passed by the patent plaintiffs had no paper title to the lands in question, nor had defendants any title. Action dismissed with costs.

COURT OF APPEAL dismissed appeal from above judgment with costs.

An appeal from a judgment of HON. MR. JUSTICE MIDDLETON, 20 O. W. R. 848; 3 O. W. N. 488; 1 D. L. R. 26.

The appeal to Court of Appeal was heard by HON. SIR CHARLES MOSS, C.J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, and HON. MR. JUSTICE MAGEE.

E. D. Armour, K.C., and A. D. Armour, for the plaintiffs.

R. J. McLaughlin, K.C., for the defendant.

HON. MR. JUSTICE MAGEE:—The land in question is the outer end of a peninsula projecting from the front of broken lot No. 26 in the 10th con. of Fenelon township,