

MCDougall v. Town of New Liskeard—Lennox, J.—Nov. 16.

*Water—Unlawful Obstruction of Stream by Dams—Right of Lower Owner to Flow of Water—Mandatory Order for Removal of Obstructions—Injunction—Damages—Agreement—Expropriation.*—The plaintiff, the owner of land in the township of Harris, in the district of Temiskaming, used as a dairy farm, brought this action to restrain the defendants from diverting the water of a stream and for damages and other relief. The action was tried by LENNOX, J., without a jury. The learned Judge said that the water in question was a constant stream or water-course, with defined banks throughout, and a visible source, which the defendants had unlawfully diverted by dams and other appliances and applied to their own use. Before these dams were erected, this water always flowed to and over a portion of the plaintiff's land, and it would still flow there at all times and seasons of the year but for the acts of the defendants. It was a large stream of excellent spring water and valuable to the plaintiff. The defendants had not been guilty of an intentional wrong. At the time they erected the dams, they were mistaken as to the boundary of the plaintiff's land. It was essential to them to have this water, or a portion of it, for the use of the town, and it was now proposed to acquire this right by agreement with the plaintiff or by expropriation proceedings. Judgment for the plaintiff for \$150 damages, a mandatory order directing and compelling the defendants to remove the dams in question and all obstructions, upon their land, to the regular and accustomed flow of the water to and upon the plaintiff's land, and a perpetual injunction restraining them from obstructing the flow of the water in question to the plaintiff's land; and for the costs of the action. If the defendants allow the plaintiff to tap the water supply at their dam, under the direction and supervision of their engineer, by a two-inch pipe, and to carry this pipe across their land, and to the land of the plaintiff, and to draw such water as he requires through this pipe for the next six months, and upon payment of the damages awarded and the costs when taxed, the entry of judgment will be stayed for six months. If expropriation proceedings are taken, any damages sustained by the defendant subsequent to the 16th November, 1914, will be proper to be taken into account by the arbitrators. The right is reserved to the defendants to apply for further delay, if due diligence is observed in the meantime, and further time is required. In any event there will be a stay for 30 days. The plaintiff in person. F. L. Smiley, for the defendants.