

objections to the judgment appealed from being directed to that part of it which dealt with lot 8, and the formal judgment makes no express reservation in respect of lots 9 and 10.

On the new trial, Mr. Rose, for the plaintiff, claimed the right to have his whole claim for damages to the three lots heard. To this Mr. Porter objected, contending that the new trial must be limited to lot 8, as there never had in fact been any appeal by the plaintiff against the former judgment in respect of lots 9 and 10, and the Divisional Court did not in fact consider that portion of the judgment on appeal.

Subject to Mr. Porter's objection, and without prejudice to his contention that the plaintiff was precluded by the former judgment in respect of lots 9 and 10, I took the evidence offered by Mr. Rose as to the three lots.

In my opinion, the plaintiff is precluded from now claiming in respect of lots 9 and 10; but, if I am wrong in this view, I am still of opinion that the plaintiff cannot recover as to lots 9 and 10, for the reasons given in my former judgment, and for the further reason that, looking at the plan, it appears that, when the deed from Peter McGill to the Marmora Foundry Company, referred to in my former judgment, was executed, and at the present time, the whole of the westerly halves of lots 9 and 10, except not more than 15 acres, was actually submerged by the waters of Crow Lake, so that the only land which would be affected by the proposed dam would be the easterly halves of said lots and the south-easterly 15 acres of the west half of lot 9; so that, I think, the lands which are actually flooded by the construction of the dam are fairly embraced within the description "south-east parts of lots numbers 9 and 10 in the third concession," etc.

To avoid, however, the necessity for a further reference to ascertain damages, in case it should be held that the plaintiff is entitled to recover in respect of lots 9 and 10, I have, subject to Mr. Porter's objection, fixed the damages which the plaintiff would, in that event, be entitled to recover.

For the reasons set forth in my former judgment, the plaintiff is entitled to have damages assessed since the 14th November, 1902, being the six years before action, and until the 7th July, 1911, the date of the hearing at Marmora.

Having personally viewed the premises and heard the witnesses as to damages, and making allowances for damages done by flooding prior to the first mentioned date, in respect to which the plaintiff's claim is barred by statute, and for damage occasioned by flooding within the prescriptive rights of the defen-