

MEREDITH, C.J.C.P.

NOVEMBER 26TH, 1920.

DAVIES v. CANADIAN NORTHERN ONTARIO R.W. CO.

Water—Damming Waters of River by Railway Bridge and other Works and Obstructions—Injury by Flooding to Riparian Owner up-stream—Destruction of Bricks in Course of Manufacture—Liability—Damages—Injunction.

Action for damages for injury caused to bricks, which the plaintiffs were making in their brickyards in the valley of the Don river, in Toronto, by the spring flood waters of that river, in 1920, dammed back by a bridge of the defendants which spans the river, upon the defendants' land adjoining the plaintiffs' land on the down-stream side of it.

The action was tried without a jury at a Toronto sittings.

M. H. Ludwig, K.C., for the plaintiffs.

D. L. McCarthy, K.C., and R. A. Reid, K.C., for the defendants.

MEREDITH, C.J.C.P., in a written judgment, first considered the question of damages, and, sitting as if he were a jury, assessed them at \$8,000.

Upon the question of liability, he said, the whole case depended upon whether the flooding of the plaintiffs' goods and kilns was caused by the defendants, and, if so, to what extent, if not altogether. At the trial it became common ground that the water which caused the plaintiffs' injury was backed up from the defendants' down-stream and lower lying land, and the question was, what was it that caused the "back-water?"

Upon the whole evidence, it seemed plain that there were three different causes, each causing a part, viz.: (1) the defendants' tracks, cars, buildings, and other structures; (2) the defendants' bridge across the bed of the river; and (3) the other artificial obstructions in the river and valley below the defendants' land. Two-thirds of the extent of the wrong done by these three causes was attributable to the defendants' obstructions and one-third to the obstructions farther down. For, at the least, the injury actually caused by the defendants they should be held liable. The plaintiffs could not in this action recover damages for any part of that one-third injury and loss. The case was not at all like one against joint wrongdoers; indeed, no wrong may have been done to the plaintiffs in respect of the down-stream obstructions.