

damages suffered by them, but have refused to allow any compensation for the year 1900, and set up that the damage alleged to have been sustained is the result of the situation of plaintiffs' land, and that any payments made to present plaintiffs, or other riparian proprietors, were made for the sake of peace, and not intended as admission of any liability to pay same. The trial Judge held that defendants had not the right to cause water to flow on plaintiffs' lands other than the natural flow of Wiltzie creek, or to so control or manage the dam or outlet of Charleston lake as to cast more than the natural flow of water upon plaintiffs' lands, and granted a perpetual injunction, and awarded damages to plaintiffs.

G. H. Watson, K.C., for defendants.

R. T. Walkem, K.C., for plaintiffs.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

GARROW, J.A.—By the order of the Judge of the County Court of Leeds and Grenville, made in 1886, under R. S. O. 1877 ch. 114 (R. S. O. 1897 ch. 141), without notice to plaintiffs, the defendants were given permission to build a dam at Charleston lake outlet, the top of which shall be four feet above the level of an old dam. Fearing a flood, in June, 1900, the defendants opened the dam gates, and removed several of the top logs, and released a quantity of water into Wiltzie creek, which overflowed on plaintiffs' lands. The defendants, in my opinion, were not justified in doing this under the order of the Judge. The plaintiffs were not parties to the proceedings upon which the order was obtained, and the defendants had no right whatever to cause a discharge of the water into the creek to the injury of plaintiffs. The damages were properly assessed, but there is no evidence to shew that the trespass will be continued or was done maliciously, and an injunction is not necessary: *Ellis v. Clemens*, 21 O. R. p. 231-2.

Appeal allowed as to injunction; otherwise dismissed with costs.

Walkem & Walkem, Kingston, solicitors for plaintiffs.

E. H. Britton, Kingston, solicitor for defendants.

C. A.

JUNE 28TH, 1902.

McGARR v. TOWN OF PRESCOTT.

*Municipal Corporation—Highway—Non-repair—Sidewalk—Damages.*

Appeal by defendants from judgment of FERGUSON J., ante p. 53.