

to the damages occasioned by flooding in excess of the extent to which the defendants were entitled by prescription when their new dam was constructed."

From this judgment defendants in the four cases appealed to a Divisional Court.

The Divisional Court judgment was given on the 14th March, 1911, 18 O. W. R. 595.

That judgment re-opened the *McGrath Case*—so McGrath was placed in the same position as the plaintiffs in other three actions.

The judgment of the trial Judge was varied by directing that the Referee should determine the extent of the easement acquired by the defendants, upon the evidence already given—and such further evidence, if any, as any party may adduce upon the reference.

The learned trial Judge undertook the reference. In other words, he continued the trial—no objection was taken to this—in fact it was the wish of all parties, and with the consent of all that the learned Judge should see the defendants' dam—the plaintiff's lands and the streams of water which it is alleged occasioned the damage.

The *McMillan Case* was not tried with the others at Belleville. The record was entered for May sittings in March, 1910—and at that sittings jury notice was struck out but time was postponed to autumn non-jury sittings, 1910, at Belleville. It stood until spring sittings, 1911, and then adjourned until 4th July, 1911—to be tried with the others—or to be dealt with upon the reference. On the 4th August, 1911, judgment was given for \$80. On the 5th August, 1911, judgment was given in the other cases—for damages as follows:

McGrath, \$110; T. Cain, \$250; M. Cain et al., \$600; Bonter, \$65.

The judgment in the *McGrath Case* is reported, 19 O. W. R. 904, and the other cases follow.

From these judgments appeal is now taken by the defendants. The reference was really a trial of the *McMillan* claim, but from what took place with his consent and consent of the defendants his case may be considered with the others. The reference was a new trial as to McGrath. The position then is this:—Liability of the defendants has been found by the trial Judge, and this liability has been affirmed by a Divisional Court. The only question is as to amount to each plaintiff, if any amount can be ascertained.