

Plaintiff's ranch lay to the east of defendant's ranch, west of which the Fourth of July Creek flowed in a southerly direction into the United States. In 1889, the plaintiff obtained a water record for agricultural purposes and under s. 41 of the Land Act then in force constructed a ditch over land which was since purchased by defendant. By an extension of the ditch into the United States the water was turned back into the original stream and from a point below a ditch was run by one Peone, the owner on the American side, and plaintiff by tapping Peone's ditch ran the water back to his ranch on the Canadian side. This diversion around through the United States was caused by an elevation over which it was impossible to run the water. In the County Court, SPINKS, Co. J., dismissed plaintiff's action for damages for interference with the ditch:—

Held, per HUNTER, C.J., and MARTIN, J., on appeal, that the fact that a ditch constructed in intended compliance with s. 41 of the Act runs partly into the United States does not of itself prevent it from being a good ditch within the meaning of the Act.

Held, also, per IRVING, and MARTIN, JJ., applying *Martley v. Carson* (1889) 20 S.C.R. 634, that the plaintiff's water record was valid.

Appeal allowed, IRVING, J., dissenting.

S. S. Taylor, K.C., for appellant. Sir C. H. Tupper, K.C., for respondent.

Full Court.] WILSON v. CANADIAN DEVELOPMENT CO. [April 25.
Carrier—Special contract—Variation of, by bill of lading—Carriage of goods—Owner's risk.

Appeal from judgment pronounced by CRAIG, J., in the Territorial Court of Yukon in favour of the plaintiff for \$28,855.85 and costs.

The defendant company as a common carrier in June, 1899, contracted with the plaintiff, a Dawson merchant, to carry for him from Puget Sound and British Columbia ports general merchandise, the rates being according to tariff annexed to contract. Three of the terms of the contract were: "Date of shipment—Throughout season of 1899. Consignees—T. G. Wilson, Dawson City. Quantity—Exclusive contract for season of 1899." Annexed to the contract was the freight tariff, giving the rates to be charged on the different classes of goods "with guaranteed delivery of shipments during the season of 1899." The company decided not to receive after August 20 any more freight with guaranteed delivery during 1899, and so notified one Pitts, a wholesaler of Victoria, of whom the plaintiff was a customer.

Pitts afterwards shipped goods to Dawson consigned to the "Canadian Bank of Commerce, notify T. G. Wilson," and received from the company bills of lading marked with a special condition thus: "This shipment is