

Province of Ontario.

SUPREME COURT, APPELLATE DIVISION.

First Divisional Court.]

[February 1st, 1921.

PAMMENT V. THOMPSON.

Trespass—Marsh lands—Trapping muskrats—Crown grant—Lands covered with water—Metes and bounds—Inlet area—R.S.O., ch. 262—Possession—Enclosure.

An appeal by the defendant from the judgment of Meredith, C.J.C.P., in favour of the plaintiff, after trial of this action together with *Pamment v. Mather*, at Cobourg Fall Assizes, without a jury, on the 10th and 11th November, 1920.

William Pamment, the owner in fee simple of broken lots 17 and 18, in the second concession of the Township of Monaghan, in the County of Northumberland, part of which is marsh land adjacent to the waters of Rice Lake and the Otonabee River, in the spring of 1920 put up notices, pursuant to sec. 23 R.S.O., ch. 362, on the boundaries of his said lands, forbidding hunting or trapping thereon. The defendant, disregarding the notices, set traps and took muskrats on said lands, alleging that they were not enclosed, and that the terms of the Crown grant were not such as to give to plaintiff such exclusive possession as to preclude defendant from trapping thereon. The plaintiff claimed damages and a declaration of his rights.

D. W. Dumble, K.C., and Frank M. Field, K.C., for the plaintiff.

F. D. Kerr (Peterborough), for the defendant.

MEREDITH, C.J.C.P., delivering judgment, said:—

When anyone takes that which does not belong to him he is very likely to be doing something which is dishonest; and if he does anything that is dishonest it is very likely that he is breaking the law and must pay for it sooner or later.

Now everyone should know that wild animals in a state of nature when killed belong to the owner of the land upon which they are killed, no matter who kills them, unless he has parted with his right to them in some way.

These young men, who are defendants in these two actions, killed and took wild animals in a state of nature on and from Whittington's and Pamment's marshes—marsh is a term which everyone quite well understands—marshes are everywhere and the legal rights in respect of them have been dealt with so there can be no doubt about the law, for instance in a case not many years ago in the Ontario Court of Appeal—I forget the plaintiff's name—the City of Toronto were the defendants.