

Glyn Osler, for the plaintiffs.

G. H. Watson, K.C., for the defendants the Rainy River Lumber Company and the Shelwin Company.

R. B. Henderson, for the defendants the Rat Portage Lumber Company and the Northern Construction Company.

MIDDLETON, J.:—Further consideration has confirmed my view, expressed upon the argument, that no case has been made which would warrant the granting of an interim injunction. The plaintiffs' rights are by no means clear, and there can be no doubt that the defendants have for years used the water in the manner contemplated. I fear that any injunction will necessarily occasion the defendants greater injury than the plaintiffs will sustain between the present time and the trial. I cannot say that the plaintiffs have shewn that the balance of convenience is in favour of the injunction; and, when the right asserted is denied, and there can be no question as to the *bona fides* of the dispute, the rule is against interference, unless the injury done to the plaintiff is clearly greater, if in the end he should be found to be right, than the injury to the defendant by an injunction, if in the end he is found to be right.

On this motion it would be quite out of place for me to attempt to consider the merits. When once satisfied that there is a real question to be tried, I ought not to interfere with the ordinary course of litigation, save in cases where a *modus vivendi* can be suggested which is on the whole advantageous.

The plaintiffs may amend as they desire; and, if a trial can be had with advantage at an earlier date than that fixed for the Fort Frances sittings, no doubt some arrangement may be made to meet the convenience of the parties.

Costs in the cause.

RIDDELL, J.

JANUARY 5TH, 1912.

RE SIMPSON AND VILLAGE OF CALEDONIA.

Municipal Corporation—By-law Requiring Closing of Shops during Certain Hours—Powers of Council—R.S.O. 1897 ch. 257, sec. 44—Power to Pass By-law without Petition under sub-sec. 2—Effect of Presenting Unnecessary Petitions—Refusal of Court to Interfere with Exercise of Constitutional Functions by Municipal Councils.

On the 26th October, 1911, the Council of the Village of Caledonia passed a by-law that all shops within the village, be-