

based on the allegation that in 1912 the waters of Frog creek, a tributary of Rainy river, overflowed its banks and flooded the plaintiff's lands adjacent to Frog creek, and that this was caused by the penning back of the waters of Rainy river and Rainy lake by the defendant company's dam at Fort Frances; the claim against the defendant Backus was abandoned.

The action was tried without a jury at Fort Frances.

H. A. Tibbetts, for the plaintiff.

A. J. Andrews, K.C., and F. M. Burbidge, for the defendants.

KELLY, J., in a written judgment, said that it was agreed by counsel at the trial that, if liability were found, damages should be assessed down to the time of the trial, subject to what might be determined as to the proper disposition of costs, having regard to the time when the action was commenced.

The learned Judge found that the defendants were liable for the injury to the plaintiff's land, for the reasons stated in the Smith case, ante; but was unable to accept the plaintiff's estimate of his damage.

Judgment for the plaintiff against the defendant company for \$250, with costs on the County Court scale, without set-off.

LENNOX, J.

FEBRUARY 20TH, 1918.

SHANNAHAN v. BROWN.

Sale of Goods—Conditional Sale—Lien-note—Default in Payment of Instalments—Seizure of Goods—Sale within 20 Days—Non-compliance with Conditional Sales Act, sec. 8—Claim for Deficiency—Conversion—Nominal Damages—Wages—Evidence—Fraud—Costs.

Action for damages for breach of contract. Counterclaim by the defendant for the balance alleged to be due under the contract, \$434.11, and for wages, \$30.96.

The action and counterclaim were tried without a jury at Toronto.

J. T. Loftus, for the plaintiff.

William Proudfoot, K.C., for the defendant.

LENNOX, J., in a written judgment, said that the defendant was the owner of a manufacturing business and of machinery