

Their Lordships' judgment was delivered by

HON. MR. JUSTICE RIDDELL (25th October, 1912):—  
Most of the material facts are mentioned in my learned brother's written reasons for judgment; it may be well to supplement his statement in one or two particulars.

The lease to the defendants read "demise and lease . . . all and singular, that certain parcel or tract of land and land covered by water . . . more particularly described as follows and designated, as water power location R. L. 450, composed of land and land under the water," here follows a description, and the document proceeds, "together with the right to hold and maintain the waters in the Bass lakes and the Mabitchewan river and tributaries to a height of not more than forty feet above the high water mark at the ordinary stage of the water in First Bass lake . . . and the right to overflow any Crown lands along the shore of said Mabitchewan river and its lake expansions and tributaries, which may be overflowed by the raising and maintaining of the water to the said height."

Clause 13 reads:—

"13. The said lessees shall not have the power or authority under these presents to overflow or cause to be overflowed any land or lands other than those hereby demised; and it is distinctly understood and agreed that should any lands other than those hereby demised be overflowed or damaged, the Crown or the Government of Ontario shall in no wise be responsible for damage done thereto to the owner or owners thereof."

It is admitted that to raise the water to the 40-ft. level would necessitate an overflow of the plaintiffs' claims to a depth of 10 feet.

It is argued that the "lands . . . hereby demised, mentioned in clause 13, are simply the water power location R. L. 450, specifically mentioned and described in the operative part of the deed; and effect was given to this in the trial Court. But in the operative part of the deed an express right is given to overflow Crown lands, and if the "lands hereby demised" were only the location, there would be a repugnancy. It is, of course, necessary to read the deed so as to give effect to every clause; and that can be done by considering the deed as leasing for the purpose