

HON. MR. JUSTICE KELLY:—The happenings which gave rise to this action took place in the township of Burton in the district of Parry Sound.

Plaintiff in 1911 became the owner of part of broken lot No. 34 (containing six acres) and the south-east part of broken lot No. 35 (containing seven acres), both in the 14th concession of the township of Burton, "saving and excepting on said lot No. 35 the right of way of the Canadian Northern Ontario Railway, and also an allowance of one chain in perpendicular width along the shore of the Magnetawan river, as contained in the original patent from the Crown."

The part of lot 34 referred to is defined as all the part of that lot lying south of the right of way of the Canadian Northern Railway, and the part of lot 35 as that part along the south of the Magnetawan river adjoining the aforesaid part of lot 34 south of that river.

The South Magnetawan river flows in a southerly or south-easterly direction along the westerly side of lot 35, and a bay or inlet from the river lies to the south of the parts of lots 34 and 35 owned by the plaintiff, his land being separated from the waters by the one chain reserve above mentioned.

In 1911 plaintiff built on his portion of lot 35 (lot 35 lies to the west of lot 34), a substantial house to be used as his summer residence, and to the front a wharf; and also, before the commencement of the trouble resulting in this action, a boat house; and on the westerly bank of the river opposite his residence, an ice house. His evidence is that he expended about \$4,000 in the purchase of the lands, erecting and furnishing his buildings, and for his boats and launches.

Defendants are the holders of a license from the province of Ontario for the year ending 30th April, 1912, to cut timber on certain lands; in the township of Mackenzie (upstream from the plaintiff's lands).

Several miles above plaintiff's lands, the Magnetawan river divides into two branches known respectively as the North and South Magnetawan. The latter flows past plaintiff's lands. Defendants' operations of cutting timber were carried on above the point where the river so divides, and in former years they floated their logs down the North Magnetawan river.