

October is not such laches as prevents defendants from asserting their right to the orders now in appeal. No costs were incurred by either party during this interval. It is said that these orders will prevent a trial at Welland in November. This may be so; I cannot say. Even if so, I do not think it an answer to defendants' application. Defendants are not to blame because plaintiff left the jurisdiction; they cannot compel his return; they ask what it seems to be the practice of the Court to grant as against absent plaintiffs.

I think the orders were properly made, and the appeals fail. Costs to defendants in any event. If plaintiff desires, the time for giving security may be extended.

The following cases were cited: Bertudato v. Fauquier, 22 Occ. N. 34, 38 C. L. J. 79; Sharp v. Grand Trunk R. W. Co., 1 O. L. R. 200; Small v. Henderson, 18 P. R. 314; Hatley v. Merchants Despatch Co., 11 P. R. 9; S. C., 10 P. R. 253; Hollingsworth v. Hollingsworth, 10 P. R. 58; Codd v. Delap, 15 P.R. 374; Tanner v. Weiland, 19 P.R. 149.

OCTOBER 17TH, 1906.

DIVISIONAL COURT.

CUDAHÉE v. TOWNSHIP OF MARA.

*Ditches and Watercourses Act — Award — Reconsideration—
Construction of Ditch—Charge for Engineer's Services—
Letting Work—Breach of Contract—Reletting.*

Appeal by defendants from judgment of senior Judge of County Court of Ontario restraining defendants from taking proceedings for recovery of the amount charged against plaintiff's lands by reason of the construction of a ditch under the provisions of the Ditches and Watercourses Act.

D. Inglis Grant, Orillia, for defendants.

R. D. Gunn, K.C., for plaintiff.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by