

FALCONBRIDGE, C.J., held that neither of the defendants could, in view of the agreement, be held to have been trespassers. The damages anticipated by plaintiff (claimed for the first time in his statement of claim) from his inability to expand his business to the extent he otherwise might have done, were so speculative and uncertain as to be beyond the limits of judicial calculation. *Hamilton v. Pittsburg B. & L. E. R. Co.*, 190 Pa. St. 51, and *The Queen v. Fowlds*, 4 Ex. C. R. 1, referred to. The \$375 paid into Court by defendants was adequate compensation for the land taken and the only damage shewn, viz., to plaintiff's rip-rap. Judgment for the \$375 in Court. Plaintiff to pay costs as if both defendants had appeared by one solicitor and had been represented by the same (two) counsel at the trial.

BRITTON, J.

JANUARY 6TH, 1903.

TRIAL.

SMITH v. CAREY.

Parliamentary Elections—Ontario Election Act—Penalties—Voting without Right—Knowledge—"Wilfully"—Neglecting to Take Oath.

Action for penalties under the Ontario Election Act. The defendant had until about six months before the election resided in the electoral division of the county of Frontenac. He then sold his place there and moved into the city of Kingston. Believing that he was not on the voters' list at his old residence, he presented himself for registration, and was registered as a manhood suffrage voter in the city. He consented to act as agent for Mr. Shibley, one of the candidates for the electoral division of the county of Frontenac, and as agent received a certificate authorizing him to vote at the polling subdivision where he was to act "instead of the Bath Road polling subdivision," this being the first intimation he had had of the fact that he was on the township voters' list. Under the authority so received he, after taking the oath of secrecy only, voted at the subdivision where he was acting as agent, doing so in the presence of his friends and acquaintances and ignorant that residence was requisite to entitle him to so vote. By reason of this fact, he was now proceeded against for three penalties: (1) under sec. 168 for \$100 for voting, knowing that he had no right to vote, being a non-resident of the electoral district; (2) under sec. 181 for \$200 for wilfully voting without being qualified, not being resident; and (3) under sec. 94 (5) for \$400 for having voted without having taken any oath of qualification, having received from the returning officer a certificate, upon the allegation that he was an agent.