

846; 1 O. W. N. 1133, and formal judgments were taken out accordingly declaring:

(2) That the defendants had wrongfully caused the waters of Crow River, etc., to overflow the lands of the plaintiffs.

(3) This Court doth declare that the defendants through themselves and their predecessors in title have by continuous user during the twenty years immediately prior to the commencement of this action acquired an easement by prescription to pen back and flow the waters of Crow River, etc., over and upon the said lands of the plaintiff to the extent and for the period during each year exercised and enjoyed by them with the old dam in the main channel and other dams then used by them in the three eastern channels in the condition they were in during the five years immediately preceding the building of the new dam in 1893, but this Court is unable to define either the limits upon the plaintiffs' land to which this right to flow has accrued or the length of time each year that such flooding could be maintained."

(4) That the waters do not flow away so quickly as they did before the improved dam of the defendants.

(5) That the plaintiff is entitled to damages from six years before the teste of the writ, "but in ascertaining such damage no allowance shall be made for any damage for flooding the plaintiffs' land occasioned by the defendants or others in exercising the right of driving logs down Crow Lake or Crow River under the Revised Statutes of Ontario (1897), chapter 142, section 1.

(6) That the defendants pay said damages.

(7) Reserving the question of the amount of damages to be ascertained by Hon. Mr. Justice Teetzel or a referee to be appointed.

(8) Reserving leave to apply for injunction.

(9) Further directions and costs reserved until after damages ascertained.

An appeal was taken to Divisional Court, 18 O. W. R. 595, 2 O. W. N. 887, which directed the *McGrath Case* to be opened up and retried. The other three cases were struck out of the judgment in the third clause, all the words "but this Court is unable, etc.," to the end of the clause. In the written reasons for judgment it was said (18 O. W. R. at p. 597): "the Referee will determine the extent of the ease-