

# NORFOLK NEWS

## ARMBROKEN IN ACCIDENT

### Fred Cunningham Injured While Unloading Apples at Simcoe

OTHER SIMCOE NEWS

Simcoe, Oct. 1.—While unloading barrels of apples at the Norfolk Fruit Growers' storehouse, near the west side depot, yesterday at 6 o'clock, Fred Cunningham, son of one Ross, had the misfortune to sustain a broken left arm and a dislocation of the wrist. The horses attached to the wagon were frightened, and turning short, overturned the wagon. Cunningham was caught among the barrels.

Two years ago he had a fracture of the other arm, while on a trip out West. The young man was driven out home by one Asgarman R. Coy. He lamented, most of all, his disappointment, at not being able to take his place in the platoon's box at the team course and Tosterville boys' try conclusions with a Simcoe aggregation. The ladies played ball at Waterford fair last week, but to-day only had wood from a recent pioneer days. The district has always boasted of a ball team, and to-day showed still have the old score book showing but two defeats in some thirty-seven games with St. Thomas, Tillsonburg, Woodstock, Ingersoll and Brantford, and they boast of never having been vanquished at home but once, and that by Woodstock, when the northern town had a real team.

### DR. MINNES LOSES APPEAL TO COURT

#### Judge Rules Fishermen May Pass in Boats Over His Water-Lot

DECISION IS GIVEN

##### Litigation of Eleven Months Closely Watched by Sportsmen

(From our own correspondent.)  
Simcoe, Oct. 1.—His Honor Judge Bales has just handed out his finding in the appeal against a J. P.'s decision given in favor of the complainant, given in November, 1917, after two days sitting. Dr. McInnis, President of the St. Williams Preserving Company secured a verdict against James Ferris and Ad. Dabold charged with trespass on his water-lot.

The appeal case came up at the Division Court here early in September and the whole day was occupied in taking evidence. Argument was heard a fortnight later and occupied another day.

### A \$15 Water Lot.

Some years ago, Dr. McInnis purchased from the then Hurly Government a water franchise extending 660 feet cut into the lake at St. Williams and abutting on a frontage of 2772 feet of muskrat parties owned and partly controlled by him. Ferris and Dabold claimed the right to pass over this water in boats although it was partially enclosed with posts and wire.

H. P. Innes, K. C., had the case for the appellants, and J. Porter for respondent.

W. A. Lamport of Toronto attended with a watertight brief, on behalf of interested Torontonians. Part of the sinews of war necessary to carry on the appeal came from Buffalo. The case was watched by innumerable quarters of the splendid wild sportsmen about Lake Erie Bay known to sportsmen for one hundred miles in any direction.

### Famous Pass over the Rockies

WHEN Sir George Simpson, in 1841 made his overland journey around the world, in the interests of the Hudson's Bay Company, no region impressed him with its sublimity and wild grandeur more than the ridge of the Rockies between the prairies and the Upper Columbia Valley. The pass by which he crossed this ridge still bears his name and is used by a few of the more adventurous tourists, but still more by Alpine climbers with ambitions to scale Mount Assiniboine, a pyramidal monarch of nearly 20,000 feet high. The description of this pass across the Great Divide is contained in the journal written by Simpson. After crossing the Bow following one of its tributaries which is evidently Healy Creek near Banff to the southeast of Mount Brett, he says: "We were surrounded by peaks and crags, on whose summits lay perpetual snow, and the only sounds which disturbed the solitude were the crackling of prostrate branches under the tread of our horses, and the roaring of the stream as it tumbled down its rocky course."

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## ARMY NEWS

Information late against his clients on the grounds that the lands which they were accused of were not therein described, neither were they described in the conviction.

Neither does the information charge an offence against the game laws.

There was no proof that the defendants went upon any lands whatsoever, belonging to Dr. McInnes or occupied by him.

The evidence is that the defendants went in a boat upon navigable water over certain lands.

See Rex vs. Lansing 14 O.W.R. p. 1097.

There was no evidence that the land was enclosed.

There was not sufficient evidence regarding notice forbidding hunting and shooting. There was no evidence of location of the boundary line of the water lot.

See section 25 of the Game Act and Rex vs. Lansing 14 V.W.R. page 197.

Boundary line posts must not be confused with posts containing sign boards.

The complainant cannot be held as owner because there is reservation of navigation. Rex vs. Lansing 14 O.W.R. page 1097.

There is no suggestion that notice to hunt or shoot was given either in writing or verbally.

Notice must be given by either owner or occupant. Andrew McInnes is not the owner or the occupant within the meaning of the act. He lives at St. Williams.

There is no proof that the notices were maintained at or near the boundary line to have any right to navigation. There were no notices on the shore line and none on the west line. There was no evidence that the men did any shooting, and they do not claim to have any right to shoot over the property in question.

## MRS. NORMAN KEYS

Second daughter of Mr. Frank Denton, K.C., of Toronto, who died suddenly in Ottawa with pneumonia, having been ill only a few hours. She had been married only nine months.

The patent of the water-lot contained this usual reservation in such grants: which reservation is worded as follows: "Saving, excepting and reserving nevertheless unto us, our heirs and successors, the full use, passage and enjoyment of, over and upon, all navigable waters that shall or may hereafter flow on or under, or be passing through any part of the said waters or land hereby granted as aforesaid."

The complainant induced evidence which he contended established that the water-lot was enclosed within the meaning of said act, and that notice had been given to the defendants to the public, not to trespass thereon.

The defendants entered the water-lot in boats in pursuit of game, or fishing upon the water-lot, and they denied that they had any intention of hunting or fishing on complainant's lands, and I accept their evidence as to that.

Their case is that they were there as of right upon navigable waters; that they had gone upon the water-lot in coming from hunting grounds, and which they had a right to go, and over which the complainant claims no right of ownership or occupation; that they were using a right of passage which they claimed is a right to go over all navigable waters, and over these waters, in which the right has been reserved as set out in the patent. They claim no right to hunt or fish on the water lot or other lands of the complainant, but frankly state that they have exercised and desire to exercise in common with others, the right to go in going to and from their landing places to points in the deeper waters of Lake Erie outside of the said water-lot.

There may be room for doubt, that the complainant had fulfilled the requirement of the said act, enabling him to successfully contend in the view I take of the case I need not, nor have I determined this point.

Magistrate had no jurisdiction. There is raised by the accused, a claim of right which I find to be a bona-fide claim and which I do not think the magistrate had jurisdiction to try, nor can it be determined by the court.

Assuming that the property was enclosed, then comes to be decided the question of the right to cross the water-lot in the course of navigation. There is involved the effect of the reservation which I have recited, and what rights the public have of navigation notwithstanding that the Provincial Legislature has declared it to be a penal offence to go upon such waters with shooting implements. Rex vs. Russell Lansing, 14 O.W.R. is authority for the proposition that a claim of right was in question, where the defendant was convicted of trespassing over land covered by water in pursuit of game. I have no doubt what is said in Rex vs. Harron 3 O.W.N. 1107, in regard to Rex vs. Lansing, and in the Harron case the defendant set up a claim of right to hunt and fish on the prohibited land, and the honorables Mr Justice Middleton found there was no bona-fide claim to such a right, and no reasonable ground of recovery, but that he had no reasonable foundation," as was the case in Corwall vs. Saunders, 3 E. & S. 311.

The point is referred to in many cases and see Rex v. Stirling, 4 B & S. 308, Paley on Convictions 5 Ed. p. 146 et seq.

The complainant's case is not strengthened in my view by the decision in Fitzsarrage (Lord) v. Parrell 1898 2 ch. 139, to which I have been referred since the argument. In that case the defendant claimed the right to enter upon the foreshore of the plaintiffs' wharf to shoot wild fowl thereon. It was held that the defendant had no such right to hunt there, but that he had the right to land there with gun and ammunition, and to take up his stand on the shore, and to shoot wild fowl thereon.

There was no evidence upon which I could find that their claim was not bona-fide and I am unable to say that "there was no color or show of recovery for it, but that it had no reasonable foundation," as was the case in Corwall vs. Saunders, 3 E. & S. 311.

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# WATCH

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CHAPTER 2  
Ruth is Disturbed  
Curtis's C  
Ruth's luncheon was had a very upsetting All the afternoon marks occurred, and then absent minded, La Monte wondered had been unpleasant, absence of Ruth being to do so. Ruth-Ms. Mandel and his son that Brian objects in the shop.  
So it was known a ready—she thought. Ruth decided that taken Mollie to dinner sae couldn't say so, to what he did when. But it was rather disagreeable to how intimate with this Mollie King own to herself that attractive. "Fascinating had called her. Brian closely if Mrs. a dinner and Mollie also watch Mollie K. "A penny for your pocket!" Mr. Mansel elbow smiling down at stood here for ten minutes moved a music. "Oh excuse me Mr. flushed with embarrassment took the papers he has plans he had brought the restoration of his house.  
"Thinking of that you told me you were he asked with a question. "No—but I really move, and I haven't have for the lovely things I have to how intimate returned with more her manner than she played. She had been of the apartment, th



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