

*J. Unger, for Defts., Cross.*

844 rise and full during certain times of the year, is that right. A. Sure.

Q. When the level of the lake was at its lowest point, was there— A. I cannot understand you.

Q. When the level of the lake was at its lowest point, was there any shore between the waters edge and the west side of the road. A. Do you mean dry sand through there.

Q. Yes. A. Yes.

Q. That was when the water was at its lowest.

A. Yes, along down when it was low.

845 Q. When the water would rise, it ran through into the portion of the land that lies east of the road. A. Yes, sir.

Q. Was that right. A. Yes, sir.

Q. Underneath the road were culverts in different locations was that right. A. Yes, sir.

Q. So that when the water went down to its lowest level— A. Do you mean culverts in under the road.

Q. Yes. A. I do not know of any.

846 Q. Then you say there were not any. A. It went into Green Lake, what was left went in there.

Q. Do you know there was a dam at Lily Lake, was that right. A. At Lily Lake a dam.

Q. Yes. A. No, sir, I never knew there was no dam upon Lily Lake or anybody else.

Q. You are not familiar with the dam that was built there by the East Creek Electric Light and Power Company. A. Yes, I know where that is.

Q. That dam raised and lowered the waters of the lake. A. Yes.

Q. Was that right. A. Yes.

*J. Unger, re-called for Defts., Direct.*

Q. When the level was at its lowest point that is down to the regular level of the lake. A. There was no dam in Lily Lake, that I ever saw down there. 847

Q. Where is the dam. A. There was a dam down below, a stone dam down below there, that was built before, I was a child.

Q. Could you show us upon this map, this map here. A. Why, I do not know any more about a map than you do about the Bible.

Q. Do you know anything about the Bible. A. Well, I have known there was a Bible book, I never ran across it. 848

Adjourned to January 10th, 1947 at 10  
A. M.

*V. R. Folmsbee, for Defts., Cross.*

1048 Q. You mentioned in your direct examination a level of 1542 feet. A. Yes, sir.

Q. Can you describe what that level is. A. Yes.

Q. What is it. A. That is the level fixed upon the United States Geological Survey map of 1542 feet based upon a survey said to be made in 1901, participated in by the State of New York. I happen to have that Geological Survey map.

1049 Q. That happens to be the level of that height above sea level. A. I do not know what it is. It is 1542 feet, whatever it is supposed to mean.

Q. You do not know whether that is sea level or not. A. No, sir.

Q. You heard Mr. Schamberger yesterday testify that the right to flood under this map, Plaintiff's Exhibit 15 was to be 1545. A. To flood where, to flood upon my lot 303, they can go to 1545 and no further.

Q. 1545. A. This other land up there is not stopped by 1545, can go just as far as they want to.

*V. R. Folmsbee, for Defts., Cross.*

1054

Mr. Dennison: All right, it won't do any hurt.

The Court: Received in evidence.

Mr. Belkin to Witness:

Q. Mr. Folmsbee, I show you photostat certified by the Clerk of Fulton County of a map and atlas filed in the County Clerk's office of Fulton County in 1905 at page 111, and ask you if you see Canada Lake and Green Lake upon that. A. I see Canada Lake and I see Green Lake.

1055

Q. You see the roadway running along the easterly shore of Canada Lake across the outlet of Green Lake. A. I do.

Q. Do you notice upon that map the words, designating 1542? A. Yes, sir.

Q. That is upon Canada Lake. A. That is right.

Q. That atlas was in 1905. A. I have worked upon that atlas many times.

Q. It is a pretty correct atlas. A. It was for the purpose for which I used it.

*Testimony of G. Durey, read for Defts., Re-cross.*

ber Company was his place taken by some one else. A. Yes, sir, it was. 1081

Q. And who succeeded him. A. A man by the name of Dempsey.

Q. And did he immediately move into this cottage. A. He immediately moved into the cottage.

Q. And did he stay there for some time after that. A. He stayed there for a long while.

Mr. Calderwood to Witness:

Q. Do you recall if that Dempsey was Edward Dempsey. A. Ed Dempsey. 1082

Q. Do you know whether he is living or dead. A. I don't know. I haven't seen him in six or eight years.

RE-CROSS EXAMINATION by Mr. Taylor:

(Paper produced and marked for identification Plaintiff's Exhibit No. 24.)

Q. Mr. Durey, the Plaintiff's Exhibit 24 is an agreement made by Nelson H. Anibal and several other cottage owners around Canada Lake in which they request the Durey Land and Lumber Company to erect a dam upon this land and across the outlet. Was that dam ever erected. A. I don't know if—there was a dam there before the Durey Land and Lumber Company ever went in business. There was a dam there as long as I remember. I remember the dam being repaired but I can't remember any building until the Power Company went on and built a dam. 1083

Q. Is that dam in running condition now. A. Yes, it is.

*B. H. Slade, for Defts., Direct.*

1084 Q. And it is still used to— A. That is the outlet of the lake, you mean.

Q. Yes. A. Yes.

Q. It is still used to hold water back in Canada Lake. A. I would say it is used as a power dam.

Q. Just where was that dam located. A. At what we call Stewart's Landing; that is at the outlet of Canada Lake.

1085 Q. Is there another little lake in there before you get to the dam. A. Yes. Where I live is on Green Lake and beyond Green Lake is Canada Lake, and from Canada Lake we run into Lily Lake and from Lily Lake into what we call the outlet, but there was marsh all down there to the dam, really makes another lake of it.

Mr. Belkin: I offer in evidence certified copy of agreement made between Nelson H. Anibal and sixty-two other persons with the Durey Land and Lumber Company which has been recorded in the Fulton County Clerk's office upon February 21, 1913 in Volume 136 at page 468.