

June 1914

fol 1.

New York Supreme Court.

Essex County.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Edward Punge, Plaintiff

against Affidavit.

Irving C. Newton and Mortimer Y. Merriss, Defendants.

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State of Ohio,

County of ss.

Edmund O. Luthy, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, and is Secretary-Treasurer of the Eagle Lake Property Owners' Association, at Eagle Lake, Ticonderoga, N.Y. where deponent has a cottage opposite Charles Island, and has spent the summer seasons at said lake for ^{about} the last 22 years, and ~~had a cottage~~ for 11 years.

That in August last, Alexander Rice Mc. Kim, inspector of docks and piers of the New York Conservation Commission, visited Eagle Lake and went in a launch with deponent and other members of the said local association to inspect the dam at the outlet of said lake and all fishing conditions there generally.; that said inspector, after a careful examination of the said dam, told deponent and several other members of said association who were present at the time, that what was needed to increase the supply of pike and bass in Eagle Lake was the construction of a new crib of concrete, in place of the one of logs and planks which was then holding up the waters of Eagle Lake about 3 1/2 feet higher than ~~are at present~~ said inspector also stated that the

plank spillway then in use, was too narrow to carry off the waters properly in times of high water, and that this circumstance at such times caused the pike and other fishes, frequenting the marshes in the vicinity during the spring spawning time, to be swept over said dam by the rush of waters and into the shallow brook below, from whence they could not return to said lake.

That said inspector farther stated at that time that the new concrete structure would have more than four times greater discharging margin or space than the then existing spillway in said log crib had, which would enable it to handle any amount of water that might come down said outlet, and maintain a uniform and constant water level in said lake.

deponent farther says that there has been a strongly constructed dam of stones and rocks extending across the outlet of Eagle Lake from two sloping hills, for upwards

of Fifty (50) years last past, same having been first used to furnish power for a saw mill, and later, in connection with the separation of iron ore; that upwards of Twenty-One (21) years ago, one, Isaac Harris, of Brooklyn, N.Y., a cottage owner on Eagle Lake, purchased Lot 41, paradox tract, Ticonderoga, N.Y., upon which lot said dam was and still is located, strengthened said existing dam and ~~thereon~~ made various improvements therein, permanent in nature, ^{and with the consent of the property owners} thereby raising the waters of Eagle Lake about four feet above their natural level and enabling said Harris to land his boats conveniently at his boat house, so that they would float freely over shallows and reefs in front of his said cottage. ^{Since the establishment & maintenance of said level of the lake, the property owners built their riparian structures on a level with said established level.}

That deponent, ~~in common with all other riparian property owners at Eagle Lake~~ has erected at considerable expense during the past 10 years a large boat house, extensive piers and various buildings on the shore of said lake, in front of Ednet Lodge, his said residence, in confident reliance upon the height of water which had been continuously maintained in said lake by said Isaac Harris during his lifetime then by his widow and of late by The Farmers Loan and Trust Company, as trustee, for a period of more than twenty-one years last past, and

down to November, 1913, when said defendants newton and Ferriss, who ^{had} ~~had~~ previously purchased said Lot 41 of said Trust Company, as trustee, for some unexplained reason and without any notice whatever to deponent or any member of said Association, removed the said log crib, about 12 feet in width, in the centre of said dam, and thereby allowed the waters of Eagle Lake to be lowered fully 3 1/2 feet below their average level that had been maintained by the so called "Harris Dam" for more than 20 years previous to that time.

That, as the direct result of said act, of said defendants, newton and Ferriss, deponent is now unable to float his row boats into his boat house or to use same for bathing purposes, as he formerly was wont to do, but deponent must now ^{reconstruct or} move his said boat house from its present position, and be also compelled to ~~tear down~~ and rebuild some forty feet or more of docks and landing places along his shore front, ^{pull} pull out old logs and stumps now exposed by the lowering of said waters.

That, owing to the foregoing facts in connection with the said lowering of said waters, it is likely that malarial and other conditions will at once develop and prevail at said lake, making it impossible for deponent and his family to continue longer to reside there, as they have previously done for many years in perfect health and comfort, unless said defendants at once repair said dam and restore the former water level at Eagle Lake.

That the expense to defendants for a restoration of said dam to its former condition, would not entail upon them an expense of more than \$100., while the damages to deponent's property cannot be estimated; that of his said riparian ~~damaged~~ boat house, dock and landings being fully 700 ^{to} \$ 200. dollars.

Sworn to before me this

day of June, 1914

Notary Public,
County.

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