

Co., the former owner, to M. and N. The deeds contained no special grants or reservations of easements.

In May, 1897, a dam erected by defendant for the purpose of storing up water for the supply of his mill was carried away, and the water, released by the breaking of the dam, with a large quantity of logs, came down the river with great force and carried away the dam of plaintiff's mill, which was situated a short distance below that of plaintiff.

To the action brought by plaintiff to recover damages for the injury done, defendant counter-claimed damages for the backing up by plaintiff's dam of water on defendant's land in such a way as to interfere with the effective operation of defendant's mill.

The evidence showed that from 1872 until 1875 the two mills were operated by the Nova Scotia Land and Manufacturing Co., but that, in 1875, the dam of the Pulp and Paper Mill was carried away, and was not rebuilt down to the time of the sale by the mortgagees and the purchase by plaintiff.

*Held*, that there was no continuous easement apparent and visible to anyone inspecting the property.

*Held*, also, that nothing was to be assumed in plaintiff's favour from the existence at the time of the purchase by him of a small portion of the framework of the old top of the dam.

*Held* (per RITCHIE, J., following *Rylands v. Fletcher*, L.R. 1 Ex. 279, 3 H H. 330) that a millowner who causes water to be stored up by the erection of a dam is responsible for its safe-keeping.

*W. B. Ross*, Q.C., and *H. McInnes*, for defendant (appellant). *R. L. Borden*, Q.C., and *R. E. Harris*, Q.C., for plaintiff (respondent).

Full Court.]

MILLER v. CORKUM.

[May 15.

*Trespass to land—Death of plaintiff—Survival of action, R.S., c. 113, s. 1—Order requiring plaintiff's executrix to appear and obtain leave to carry on proceedings, O. 17, R. 8.*

On the 30th January, 1897, M. commenced an action of trespass against defendant claiming damages for various acts of trespass, including the erecting and maintaining of fences.

On the 20th July, 1897, M. died, having appointed G. his sole executrix. On the 8th March, 1898, counsel for defendant applied under O. 17, R. 1, and obtained an order, permitting him to sign judgment for his costs of defence, when taxed, in the event of the failure of G. to appear within twenty days after the service of the order, and obtain leave to continue and proceed with the action.

G. failed to appear, having been advised that the cause of action was not one that survived and that it was not necessary for her to do so; but ultimately an application was made to the learned judge, on behalf of G., to rescind and set aside the order, and for a stay of proceedings.