

DIVISIONAL COURT.

MAY 23RD, 1912.

T. CAIN v. PEARCE CO.  
M. CAIN et al. v. PEARCE CO.  
BONTER v. PEARCE CO.  
McGRATH v. PEARCE CO.  
McMILLAN v. PEARCE CO.

*Water and Watercourses—Mill Privileges—Dam—Flooding  
Lands—Prescription—Damages—Costs—Appeal.*

Appeals by the defendants from the judgments of TEETZEL, J., in these five actions.

The judgments (except in the McMillan case) are reported in 2 O.W.N. 1496, 1498.

The appeals were heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

E. F. B. Johnston, K.C., and E. G. Porter, K.C., for the defendants.

H. E. Rose, K.C., for the plaintiffs.

RIDDELL, J.:—These are all actions for damages for overflowing lands. The four first-named were tried before Mr. Justice Teetzel at Belleville in March, 1910; that learned Judge gave written reasons for his judgment (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) "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 plaintiffs 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 plaintiffs are entitled to damages