

plan, and as the result of the partition deed and by purchase there was for a number of years a common ownership in Robert Cockburn of the "store" lot and lot A, which are contiguous.

On 19th February, 1881, Robert Cockburn, by deed under the Short Forms Act, conveyed lot A to A. F. Gault, the plaintiff company's immediate predecessor in title, which deed contained the following: "Subject to all conditions for the support of the dam, raceway, etc., as stated on plan registered and in deed from the original proprietors of the dam to the said Robert Cockburn."

During 1881 and 1882 plaintiff company and Gault expended a large amount of money in erecting woollen mills upon lot A and adjoining lots and in constructing a large raceway across these lots, the westerly side of which, according to the evidence, is only some 17 feet from the south-east corner of defendant's proposed building.

Robert Cockburn was aware of these expenditures and of the construction of the new raceway and of a channel that was blasted from the mouth of the raceway to the bed of the river, and made no objection, and after these expenditures had been made, namely, on the 31st July, 1883, he conveyed to plaintiff company water lots 4, 5, 7, and 8, according to said plan, and subject to the terms and conditions indorsed thereon. . . . [Reference to *Bailey v. Clark*, [1902] 1 Ch. 649, and cases cited.]

The manifest scheme and design of the original proprietors was not only to develop a water power system for their own use, but to sell lots on either side as sites for industries, which would use the power on the conditions indorsed on the second plan, and that the pond or reservoir should be tributary or appurtenant to each water lot, and that the land above the dam should, so long as the mill privileges were utilized, be subjected to the flooding as shewn on the plan. It could not, I think, have been contemplated by any person when plaintiff company acquired their titles that this land represented as being flooded would be available for building sites or that the area of the pond should be materially curtailed or used for any other purpose. . . .

It was contended on behalf of plaintiff company that their right to flood defendant's lot in common with the rest of the pond area, as shewn on the second plan, is given by an implied grant, if not an express grant, under the extended scope of the conveyances to them effected by sec. 4 of R. S. O. 1897 ch.