

*Held*, that they were entitled to such lien in respect of the taxes, but not for the insurance premiums.

Judgment declaring the mortgages void as against the plaintiffs, and a cloud upon the title of their lands, but providing for a lien in favor of defendants for moneys paid for taxes, and tax sale redemption.

*Ewart*, Q.C., and *Andrews*, for plaintiffs. *Mulock*, Q.C., for defendants.

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Full Court.] *BERTRAND v. CANADIAN RUBBER COMPANY.* [Dec. 6, 1897.

*Fraudulent preference—Insolvent circumstances—Intent to prefer.*

Judgment of *KILLAM*, J., noted 33 C.L.J. 550, affirmed with costs.

*Tupper*, Q.C., and *Phippen*, for plaintiff. *Hough*, Q.C., and *Richards*, for defendant.

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Bain, J.]

*WILTON v. MURRAY.*

[Dec. 6, 1897.

*Watercourse—Drainage—Right to obstruct flow of water.*

The plaintiff's claim was that a watercourse ran through her land into and across the defendant's land, and thence into a gully or slough on the defendant's land, which finally emptied into Long Lake; and that for some years past the defendant had obstructed the flow of water in this watercourse by building a dyke or embankment across it on his own land, the effect of which had been to throw the water back upon and overflow the plaintiff's land. And the prayer was that the defendant might be ordered to remove the obstruction this made, and be restrained from continuing it.

Most of the land in the neighborhood is low and flat, and the natural drainage of the plaintiff's land, and of several of the farms to the south and west, is by the alleged watercourse above referred to. The easterly part of the plaintiff's quarter section thus spoken of is high land, but along the westerly part of it there is what is called a depression extending through the quarter section from south to north, crossing into defendant's land and continuing through it till it reaches the slough or gully above mentioned. The fall in the level of this depression from the south line of the plaintiff's land to its lowest level, where it crosses into the defendant's land, is very slight, and at that point the depression has a width of about 300 feet. There is no continuous flow of water through it, but every spring the rain and melted snow from the lands south and west of the plaintiff's land, and from the higher parts of her own land flow or drain into it, and covering it to a depth of six inches or more, according to the season, gradually pass off, in the absence of obstruction, across the defendant's land into the slough. In the high water there is a perceptible northerly current for a few days, and the height of the water on the slope of the depression, and the general course of its flow are defined by the rubbish deposited along the edge of the current, but the position of this line of rubbish varies from year to year, according to the height of the water. Apart from this there was no evidence of the existence of any banks or edges of a channel through which the water flows, and in some years the plaintiff has cultivated portions of this depression right up to her western line.