

that the plaintiffs having failed to do this, lost all rights that they might have had against shareholders in the old company

*R. E. Harris*, Q.C., for plaintiffs. *J. McGilivray*, *H. McInnes* and *H. Mellish*, for defendants.

Full Court.]

MOORE v. RITCHIE.

[March 13.

*Trespass to land—Interference with dam and flow of break—Evidence of plaintiffs' title held insufficient.*

Plaintiffs claimed to be lessees and in possession of a water course running through a pond in the vicinity of the town of L., and as such entitled to the flow of the brook and the use of a dam at the pond to regulate the flow of water in connection with the working of a grist mill, situated upon a lot of land owned by plaintiffs further down the stream. In an action by plaintiffs against defendants, claiming damages for opening the dam and interfering with the flow of water, and an injunction, it appeared that plaintiffs' claim, as lessees, was based upon a resolution passed August 12th, 1895, at a meeting of the "proprietors' committee" of the township of L. There was no evidence to shew who the persons were who called themselves the "proprietors' committee" at that time, nor how, or when, or by what authority the "proprietors' committee" was appointed. The township grant, which bore date Nov. 26, 1764, under which both parties claimed, shewed that the township contained 200 rights or shares of 500 acres each, of which only 157 appeared to have been granted at the time.

It appeared from the grant that, before it was issued, a division was made, but none was proved, and it was impossible to say whether the land covered by the brook passed under the grant or was included in the ungranted shares or rights. Evidence was given, however, to shew that from the first the grantees had assumed to control the management of the brook and that from time to time they had passed resolutions for that purpose, but no authority was shewn for these proceedings and it did not appear that the grantees had any.

*Held*, assuming that the original grantees had authority to so deal with the brook and pond, that, in the absence of evidence that their rights were transferred to the persons who, in 1895, assumed to exercise such authority, no right or title to the brook, pond, or dam passed to the plaintiffs, as lessees or otherwise, and they must fail in their action.

*F. B. Wade*, Q.C., and *H. A. Lovett*, for appellant. *J. A. McLean*, Q.C., for respondent.