

the second part covenants and agrees to and with the said party of the first part, his heirs and assigns, not to interfere in any way with the water power of the said party of the first part at Campbellford."

Robert Cockburn died in 1894, having made no conveyance of any part between the east wall of the Bogart building and the centre or original bank of the river. In 1895 his representatives sold a strip 20 feet in width, lying to the east of the building, to one Gibson, the then owner thereof, and in the spring of 1896 the defendant made an agreement with the daughter and devisee of Robert Cockburn to purchase for \$150 the land now claimed by him, and during that year entered upon the lot and deposited a quantity of stone, whereupon the plaintiff company served a notice upon him forbidding him making any obstruction whatever in front of their mill property, or in any way interfering with their water privilege, and threatening proceedings.

Nothing further was done . . . by defendant, and he did not obtain the conveyance . . . until 28th, December, 1901, when he obtained a quit claim deed, the property therein described being 60 feet by 24 feet, adjoining immediately to the east the 20 feet strip previously conveyed to Gibson. The quit claim deed contains the following reservation: "Reserving thereout the right to raise the dam at Campbellford one foot and subject to all rights of all other parties who have purchased or are interested in any lots on the bank of the river Trent and the water power at Campbellford."

In September, 1903, defendant commenced to build upon this 60 x 24 feet plot, by depositing thereon a quantity of earth and sand to raise the surface above the water, and began to construct a stone wall around the entire lot as the foundation for a store, and before action had built this wall between two and three feet high, and it is in reference to this that the injunction is sought.

When constructing the dam, the proprietors, presumably for the purpose of enlarging the area and capacity of the pond, removed a large quantity of earth down to the rock on the west side from the original natural bank or margin of the river to a point within about 50 feet of George street, and extending from the dam to a point about 70 feet above the bridge, and embracing defendant's lot. This area . . . was not a part of the original river bed . . . but is now part of the bed of the pond. . . .

After developing their water power scheme, the proprietors sold off various water lots in accordance with the second