

Graham, E.J.]

LORRAINE v. NORRIE.

[Jan. 7.

Watercourses — Riparian rights — Obstructions — Abatement of nuisance — Assault in course of — Costs.

Where one of two riparian proprietors on opposite sides of a river, for the protection of his land against the current, erected structures known as "wing dams," extending for some distance into the bed of the river, the effect being to raise the height of the water at the outer ends, and to increase the velocity of the current, and to deflect it against the land of the opposite proprietor.

Held, that the latter was entitled to recover damages for the injury to his land, and to an injunction for the removal of the structures causing the injury.

Quare, whether a party lawfully entering upon the land of another for the purpose of abating a nuisance but committing acts of excess in overcoming the resistance of the owner does not thereby become a trespasser ab initio.

W. B. A. Ritchie, K.C., and H. McKenzie, K.C., for plaintiff.
J. J. Ritchie, K.C., and S. D. McLell. i, K.C., for defendant.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

SCHRAGGE v. WEIDMAN.

[Nov. 28, 1910.

Conspiracy in restraint of trade — Criminal combination — Illegal contract — Crim. Code, s. 498, s.-ss. (b) and (d).

Appeal from judgment of MATHERS, C.J., noted, vol. 46, p. 510, allowed with costs.

Held, RICHARDS, J.A., dissenting, that, although the agreement in question was one which, to a certain extent, tended to prevent or lessen competition, it was one which, at common law, would be enforceable between the parties, because its provisions were not unreasonable in their restraint of competition, and therefore such restraint should not be held to be "undue" within the meaning of sub-s. (d) of s. 498, of the Criminal Code.

Rex v. Clarke, 14 Can. Cr. Cas. 46; *Wampole v. Karn*, 11 O.L.R. 619, and *Rex v. Elliott*, 9 O.L.R. 648, distinguished. *Nor-*