MASTEN, J., read a judgment in which he stated the facts. In 1903 or 1904, Charlotte O. Halliday owned and occupied (along with her husband) lot 14 in the 3rd concession of Colborne, and Joseph Naegele was the owner of lot 13, the adjoining lot. Francis Naegele, one of the plaintiffs, was the son of Joseph, and at the time lived with his father on lot 13. In 1903 or 1904, an oral agreement was made between the plaintiff Francis Naegele and the Hallidays whereby the former was licensed to put in an hydraulic ram at a spring situate on the Halliday's lot and by means of the ram to convey water from the spring to the farm buildings on the Naegele farm. The ram was put in and used for the conveyance of water from 1903 or 1904 until the 29th September, 1911, when John Halliday signed a writing by which he agreed "to lease hydraulic water privilege on part of lot 13 . . . for 49 years to Frank Naegele . . . and also privilege of making any repairs on said privilege without damage to crop and also that undersigned to have privilege of using waste water to be taken by him to his property."

On the 11th August, 1912, Joseph Naegele died, devising all his lands to his wife and after her death to his son Francis. In April, 1915, Francis, having then become the owner, made an agreement for the sale of his farm to his co-plaintiff, Pitblado, who was in possession. On the 17th April, 1915, Charlotte O. Halliday conveyed lot 14 to the defendant, who, in May, 1915, prevented the further use of the ram and of the water, whereupon this action was brought.

The learned Judge said that it was of the essence of an easement that a dominant tenement be specified, and that the grantee of the easement shall have an estate or interest in the dominant tenement at the time of the grant: Rymer v. McIllroy, [1897] 1 Ch. 528. There cannot be an easement in gross; and the interest of the plaintiffs under the agreement was not an easement.

Neither could the arrangement be construed to be a lease, for it is of the essence of a lease that the lessee acquire the exclusive possession of the leased premises: Watkins v. Milton-next-Gravesend Overseers (1868), L.R. 3 Q.B. 350; Glenwood Lumber Co. v. Phillips, [1904] A.C. 405. No exclusive possession of the Halliday farm was acquired by Naegele.

Reference to Ward v. Day (1863), 4 B. & S. 337; Stockport Waterworks Co. v. Potter (1864), 3 H. & C. 300.

The written agreement of September, 1911, was to be construed as relating to the existing ram and pipes and to their then use for the supply of water to lot 13. What the plaintiff Naegele acquired