

BRITTON, J.

OCTOBER 29TH, 1904.

TRIAL.

MAUGHN v. GRAND TRUNK R. W. CO.

*Water and Watercourses—Railway—Riparian Proprietors—
Diversion of Water—Sale of Water—Injury to Riparian
Proprietor below—Injunction—Declaration of Right—
Damages.*

Plaintiff was the owner of part of lot 2 in the 1st concession from the bay in the township of York. On this land was a pond, fed by a natural stream flowing from the north. Defendants' line of railway crossed this stream in the township of York. Some years before action defendants erected a pumping station and plant on the bank of this stream, on the northerly side of their right of way, and interfered with the natural flow of the stream, and diverted water therefrom, putting the water into their tanks, and using it not only for their own purposes, for their locomotives, but selling it to the corporation of the village of East Toronto, and supplying that village and its inhabitants with water for fire protection and domestic and other purposes. This diminished the flow of water to plaintiff's pond, and the water in the pond, by reason of the diversion of water from the stream, became stagnant and foul, to plaintiff's damage; and he brought this action for an injunction and damages in respect of the diversion.

I. F. Hellmuth, K.C., and D. W. Saunders, for plaintiff.

W. R. Riddell, K.C., for defendants.

BRITTON, J.—The evidence shews beyond doubt that plaintiff's right to the flow of this stream has been interfered with by defendants. The case seems wholly covered by authority: *McCartney v. Londonderry and Lough Swilly R. W. Co.*, [1904] A. C. 301. This case overrules *Earl of Sandwich v. Great Northern R. W. Co.*, 10 Ch. D. 707; but, even if the latter case was authority, defendants could hardly hope to succeed, as here the water taken was largely not for defendants' own purposes, and the quantity taken was more than a reasonable quantity.

Defendants as riparian proprietors have no right to use the water of this stream, to the prejudice of plaintiff, to