

ply to the learned Judge, but must do so promptly. If a reference is directed, it will be at the peril of costs. A. Bicknell and B. H. L. Symmes, for the plaintiffs. J. E. Jones and V. H. Hatlin, for the defendants.

JESSOP V. CADWELL SAND AND GRAVEL CO.—KELLY, J.—JUNE 21.

Land—Injury to by Operations on Neighbouring Land—Water Lots—Assessment of Damages.]—Action by a fisherman, the owner of a lot on the Detroit river in the town of Sandwich, for an injunction and damages in respect of injury to the plaintiff by the defendants' operations upon neighbouring lots. The action was tried without a jury at Sandwich. The learned Judge read a judgment in which he set out the facts with great care. He said that the plaintiff was entitled to succeed on the principle of *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330. His damages, including amongst other things the loss of benefit for two years from a small ice harvest, and other matters consequent upon the disturbance of his business by the acts complained of, should be assessed at \$725. This includes \$320, the estimated expense of removing from the surface of his land, which was under the water, the deposit of earth and other material which had improperly been allowed to escape from the defendant's land. This last item is subject to the right of the defendants to have a reference as to the amount; on such reference both parties to be entitled to offer evidence. Judgment for the plaintiff for \$725 damages and for the injunction asked, with costs, except costs of the reference referred to, if such reference be required by the defendant. Further directions and costs of the reference reserved. T. Mercer Morton, for the plaintiff. J. H. Rodd, for the defendants.

DAVISON V. FORBES—LENNOX, J., IN CHAMBERS—JUNE 22.

Appeal—Leave to Appeal from Order of Judge in Chambers—Importance of Questions Involved—Doubt as to Correctness of Order—Rule 507 (3) (b).]—Motion by the defendant Forbes, under Rule 507, for leave to appeal to a Divisional Court from the order of SUTHERLAND, J., ante 358, dismissing the said defendant's application to stay proceedings upon the reference directed by the judgment of KELLY, J., 9 O.W.N. 22, affirmed by a Divisional Court, 9 O.W.N. 319, pending an appeal by the said defendant to the Supreme Court of Canada. LENNOX, J., set out the facts