

HON. MR. JUSTICE BRITTON.

OCTOBER 18TH, 1912.

WALKER v. WESTINGTON.

4 O. W. N. 136.

Water and Watercourses — Diversion of Surface Water by Adjoining Owner — Trespass — Injunction — Damages — Costs.

Action by one co-owner against the owner of adjoining lot for an injunction restraining the throwing water upon plaintiff's land and for damages. At trial plaintiff abandoned his claim for damages admitting that so far no damage had been sustained.

BRITTON, J., *held*, that as no damage had been shewn (the plaintiff only asking for general relief and protection, not against any particular thing, such as obstruction in a stream or continuing an open ditch, but that defendant be restrained from committing in future any trespass by causing surface water to flow upon plaintiff's land) an injunction should not be granted.

That upon the evidence plaintiff failed upon the main ground of his action, viz., that defendant wilfully and wrongfully diverted water from its natural course and turned it upon plaintiff's land.

Action dismissed with costs fixed at \$100, plaintiff's conduct before action warranted some relief to plaintiff from payment of costs.

Tried at Cobourg, without a jury.

F. D. Boggs, for the plaintiff.

J. B. McCole and J. F. Keith, for the defendant.

HON. MR. JUSTICE BRITTON:—The plaintiff is one of the tenants in common, owners of lot 10 in the 8th concession of the township of Hamilton.

The defendant is the owner of the adjoining lot 9. The plaintiff alleges that the surface water which flows over defendant's land is of a very considerable quantity, especially in times of spring freshets, and other freshets, and this water if not interfered with, would flow northerly over the land of the defendant and on to a natural water way or outlet on its way to Rice Lake. This outlet is at the north-west corner of defendant's land. The complaint is that in the year 1910 the defendant with the intention of stopping the surface water, referred to, from flowing in a northerly or north-westerly direction, divided it and caused it to flow upon the lands of the plaintiff. The plaintiff charges that the defendant did this, by digging upon his own land a series of ditches, and constructing a series of dams. The plaintiff further charges that the defendant again in the fall of 1911 in aggravation of former wrongful acts, again dug ditches and again placed obstructions, this time making his ditches westerly