

10 . . . to such heights and extents as the said company may . . . deem necessary to flood back the same," etc. This right was given to the successors and assigns of the company, and by a series of conveyances is now vested in the defendants, and, although not expressly mentioned in the subsequent conveyances, I think that, on the proper interpretation of the Act respecting the Law and Transfer of Property, R. S. O. 1897 ch. 119, sec. 12, this right passed under the various conveyances.

Then in the conveyance to the plaintiffs' predecessor in title, some seven years after the above conveyance, is an express reservation of the above right to the foundry company and its successors. . .

To the extent, therefore, of his claim in reference to lots 9 and 10, the claim of the plaintiff McGrath must be dismissed.

As to lot 8 . . . evidence might be given of the damages caused by the waters being backed up, beyond the injury to the soil itself, such as washing it entirely away.

There will, therefore, be a reference to ascertain the damages of the first three plaintiffs in respect of all their lands . . . and the damages of the plaintiff McGrath in respect of lot 8.

Upon the reference no claim or allowance for damages must be made for any flooding upon the plaintiffs' lands occasioned by the defendants or others exercising the right of driving logs down Crow river, under sec. 1 of ch. 142, R. S. O. 1897 . . . See *Neely v. Peter*, 4 O. L. R. 293.

In respect of the claim for damages, the defendants pleaded the Statute of Limitations, but erroneously cited R. S. O. 1897 ch. 72, sec. 1, sub-sec. 1 (8), instead of ch. 324, sec. 38 (3); and the defendants, if they desire, may . . . amend their defence accordingly.

Subject to the above, the damages to be ascertained upon the reference will be confined to the damages occasioned by flooding in excess of the extent to which the defendants were entitled by prescription when their new dam was constructed.

If the parties cannot agree upon the limitations of that easement, the same will be ascertained by the Referee. . . .

Having once ascertained the limitation of the defendants' prescriptive rights, the Referee may be able to fix with some certainty the damages which the plaintiffs have suffered through the excessive use latterly assumed by the defendants. . . .

Having regard to the great delay of which all the plaintiffs have been guilty, and to their failure to establish their contention, that the defendants raised the height of their dam, and to the fact that, in my opinion, the injuries sustained by the plain-