

ment would be under high water, and they intended unless restrained, to deposit the bulk of the waste in the river bed in the pool just under the upper falls.

Held, following *Bickett v. Morris* (1886), L.R. 1 H.L. (Sc.) 47, that if there is reasonable prospect that the undertaking of the defendant corporation will produce any damage to the lower riparian owner, then there is a right of action, although no actual injury is shewn to have resulted from it. Injunction continued, and plaintiffs to recover costs of action.

Macneill, K.C., for plaintiffs. *Bodwell*, K.C., and *P. E. Wilson*, for defendant.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] MUMFORD v. ACADIA POWDER CO. [March 4.
Judgment in former suit—Bar to subsequent suit—Setting aside and re-hearing—Evidence.

To an action for work done, labour performed, etc., defendant pleaded a previous action by plaintiff in the County Court for the same cause of action, in which, the cause coming on for trial and no one appearing for plaintiff, it was ordered that he take nothing by his action and that the same be dismissed with costs.

Held, that the judgment entered was a complete defence to the action and that the judge of the County Court was in error in treating the plea as a preliminary objection merely and in going on and hearing evidence on the merits.

Seemle, that while the judgment in the first action until set aside operated as an estoppel the proper course for plaintiff to have adopted, as pointed out in *Vint v. Hudspeth*, 29 Ch. D. 322, was to have applied to the judge who heard the cause to set aside the judgment and for a re-hearing.

Held, that the writ of summons in the previous action, being specially indorsed, was proper evidence for the Court that the previous judgment embraced the same claim as that now sued for.

Kenny, for appellant. *J. J. Power*, for respondent.

Full Court.] IN RE MACKINLAY. [Sept. 5
Will—Construction—Residuary bequest.

Testator by his last will after providing for his wife during her lifetime and setting apart a sum of money to be invested