

WATERCOURSE—UNDERGROUND SPRINGS—INTERFERENCE WITH FLOW OF WATER—
MALA FIDES—INTENTION TO EXTORT MONEY.

In *Bradford v. Pickles*, (1895) 1 Ch. 145, we find that the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.) have been unable to agree with the judgment of North, J., (1894) 3 Ch. 53 (noted *ante* vol. 30, p. 716). In the view of the Court of Appeal the Act relied on by the plaintiffs had not the effect of prohibiting the defendant from doing anything he was legally entitled to do, independently of the Act; and the defendant had a legal right to interrupt the water percolating underground through his land to the plaintiff's springs, and the court held that it was immaterial that in doing so he was actuated by an intention of compelling the plaintiffs to purchase his land, or the right to secure an uninterrupted flow of water to their springs. Smith, L.J., points out that although the civil law deemed an act, otherwise lawful in itself, illegal if done with a malicious intent of injuring a neighbour, and that principle had been adopted in the law of Scotland, yet that it had never found a place in English law. The maxim *sic utere tuo*, etc., he appears to consider inapplicable, because an adjoining owner has no property in or right to subterranean percolating water until it arrives underneath his soil, and that therefore no property or right of his is injured by the abstraction or diversion of percolating water before it arrives under his land.

VENDOR AND PURCHASER—CONDITION LIMITING COMMENCEMENT OF TITLE—PRIOR
TITLE NOT TO BE OBJECTED TO—OBJECTION TO PRIOR TITLE AS SHOWN ALIUND—
APPLICATION BY PURCHASER FOR RETURN OF DEPOSIT—VENDORS AND PUR-
CHASERS ACT, 1874 (37 & 38 VICT., c. 78)—(R.S.O., c. 112, s. 3).

In *re National Provincial Bank v. Marsh*, (1895) 1 Ch. 190, a purchaser applied under the Vendors and Purchasers Act (see R.S.O., c. 112, s. 3) for a return of his deposit. He had purchased under a condition of sale which stipulated that the title should commence with a conveyance dated in 1869, and that the prior title "shall not be required, investigated, or objected to." The purchaser refused to complete on the ground that he had discovered *aliunde* that the grantor of the deed of 1869 had only a life estate, and that consequently the vendors could not make a title in fee. North, J., held that the condition precluded the purchaser from objecting to the title of the grantor in the deed of 1869, and though possibly the court might refuse