

tation of the same claim. The learned Judge said that, upon the material before him, it appeared that the Referee had exercised a wise discretion which ought not to be interfered with. Appeal dismissed with costs. Glyn Osler, for the appellants. H. E. Rose, K.C., for Parker. W. R. Smyth, K.C., for the liquidator.

PINDER V. SANDERSON NEWMAN AND HOUGH—FALCONBRIDGE,
C.J.K.B.—FEB. 9.

Trespass—Injury to Neighbouring Premises by Water—Burden of Proof—Cause of Injury—Undertaking to Repair Wall—Dismissal of Action.—Action for damages for injury to the plaintiff's premises by water brought thereon by reason, as alleged, of the defendants using a large quantity in their business as liverymen upon their premises adjoining the plaintiff's premises and not providing proper means of escape. The learned Chief Justice viewed the premises and directed certain experiments and tests to be made and applied. The evidence, he said, was extremely contradictory, and all that he could say at the end was, that the plaintiff had not succeeded in satisfying the onus of proof to shew that he had appreciably suffered from the defendants' wrongful acts. It is quite true (the Chief Justice continued) that, as a result of the extraordinary and violent test made on the 2nd December, when 30 odd Imperial gallons of water were discharged in five or six minutes against or near the defendants' cracked wall adjoining the hydrant, some water leaked through into the plaintiff's cellar; but the circumstances then were very exceptional, and such as could not exist under ordinary conditions. The dampness in the plaintiff's cellar is more attributable to the lie of the land, the damp strip between the buildings, the percolation arising therefrom, and water falling from the roofs. On the defendants undertaking (if they have not already done so) forthwith to repair the defect in their wall mentioned above, the action will be dismissed without costs. This judgment deals only with the state of affairs existing on the 3rd December last, and is without prejudice to the plaintiff's position if hereafter, by reason of the plaintiff's hopper becoming out of repair, or through any other wrongful act or default of the defendants, the plaintiff should consider that he has suffered actionable damage. A. C. Kingstone, for the plaintiff. G. F. Peterson, for the defendants.