

cession of Grattan, together with all the water powers thereon, with the right or easement to dam, divert, enjoy and otherwise use the waters of the Constant creek for mill purposes as they saw fit, and in and prior to the grant imposed upon the grantees the duty to erect, maintain and operate on the said lands a grist and saw-mill. And they alleged that before said grant and continuously since the same the defendants and their predecessors in title maintained and operated the mills as they were bound to do and as they required the right to do by virtue of their said grant, and in enjoying the said lands and in operating the said mills, they have for more than thirty years prior to the commencement of this action dammed, diverted, enjoyed and otherwise used the waters of the said creek as of right. The defendants further say that at the time complained of the defendants were and are now possessed of mills on the said lands the occupiers thereof for more than forty years before this action enjoyed, as of right and without interruption, the right of damming and diverting or using the water of the said stream and the working of the said mills, and the acts complained of were a user of the defendants of the said right. The defendants further allege that they are entitled to dam, divert and enjoy or otherwise use the waters of the said creek by virtue of their natural rights as riparian owners by virtue of the rights expressly and impliedly granted to their predecessors in title by Crown grant in or about the year 1854, and by prescriptive right at common law, and by prescriptive right under the provisions of the Revised Statutes of Ontario, ch. 133, and by reason of their rights and easements so acquired deny that the plaintiff has any cause of action and his action is barred. They further deny that they have committed a breach of the provision of R. S. O., ch. 142, and that if they have the plaintiff has no cause of action in respect thereof. The defendants further deny the rights and jurisdiction of this Court to try the matters in issue.

The grant to Duncan Ferguson, the defendants' predecessor in title of lots Nos. 7, 8 and 9 in the second concession of Grattan, is dated 8th June, 1859, and contains no special grant in respect of the water power or the building of the mill, and expressly reserves to the Crown "the free uses, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under, or be flowing through or upon any part of the said parcel or tract of land hereby granted as aforesaid."