

created by law or contract. The plaintiffs claimed to have a right to enjoy their land free from invasion of filth or other matter coming from any artificial structure on land adjoining. The defendant put up on his own land an artificial erection, and by means thereof communicated upon his own land a quantity of water much larger than could or would have been collected if he had used his land in the natural way. He then raised his artificial structure some feet higher, and this subsequent raising caused damage to the plaintiffs. The plaintiffs showed that their own land was damaged, and claimed that the defendant was using his land in an unnatural way.

Held, that the defendant by erecting this dam for the purpose of accumulating water in the way he did was making an unusual or extraordinary use of his land and of the water. Having so collected this body of water by this extraordinary user, and having injuriously affected the plaintiffs' property, the defendant violated that rule of law which will not permit anyone, even on his own land, to do an act lawful in itself, which being done in that place, necessarily does damage to another. But for the defendant's act in accumulating water no mischief would have accrued, and he is liable for the resulting damage.

Davis, Q.C., for plaintiff. *Wilson*, Q.C., for defendant.

Walkem, J.] B. C. CANNING CO. v. CHU LAI. [March 19.
Practice—Arbitration—Commission to take evidence.

This was an action commenced by a writ of summons issued out of the Supreme Court, and the parties afterwards agreed to submit the matters in dispute to arbitration, and an arbitrator was appointed. After the evidence was all in, except that of one witness in California, the arbitration was adjourned in order that the plaintiffs might produce the witness before the arbitrator. The plaintiffs now applied for leave to issue a commission for the examination of the witness in California.

Held, that as the questions in dispute had been submitted to arbitration the court had no jurisdiction to make the order asked for. Summons dismissed with costs.

Moresby, for plaintiffs. *Luxton*, for defendants.

Walkem, J.] ALDOUS v. HALL MINES. [March 23.
Mineral Acts—Adverse claim—Affidavit verifying.

This action was tried in Nelson. In 1894 the plaintiff's husband located the mineral land in dispute in her name and as her agent; he also took out a mining license for her and has kept it renewed ever since. As her agent he now brings this adverse claim on an affidavit of verification made by himself. The affidavit was objected to, on the ground that it should have been made by the plaintiff herself.

Held, that according to sec. 14 of the Mineral Act of 1892, as amended by sec. 10 of the Mineral Act of 1893, an affidavit made by any person other than he one making the adverse claim is insufficient.

Section 2326 of the Revised Statutes of the United States and amendment of 26th April, 1882 compared. Claim dismissed with costs.

Wilson, Q.C., for plaintiff. *E. P. Davis*, Q.C., for defendants.