

Gore, [1901] 1 Ch. 834; Gale on Easements, 7th ed., p 99 et seq.; Hamelin v. Bannerman, [1895] A. C. 237.

It was contended by defendant that, even assuming that plaintiff company had acquired the easement claimed, defendant had a right to make a reasonable use of his land, and that the proposed building was not unreasonable and did not appreciably affect plaintiff company's rights.

I think the evidence established that during a considerable portion of each year defendant's land was entirely flooded, the water ranging from a few inches to 4 feet in depth on the east, and 3 feet on the west side; but at other seasons, during low water, a large portion was dry.

Finding, as I do, that defendant has invaded a legal right of plaintiff company, in the face of warning, and in view of the reservation in their favour contained in his own deed, I do not think I should hesitate to accept the evidence of plaintiffs' witnesses as to injurious effect, rather than the evidence of defendant in support of his effort to have the maxim "de minimis non curat lex" applied.

The evidence in respect of the damage was somewhat conflicting, and consisted chiefly of expert opinion.

I think the weight of it shews that the appropriation and use by defendant exclusively of an area 60 feet by 24 feet, so near the intake of plaintiff company's raceway, will cause appreciable permanent injury to the enjoyment of their property; and I do not think damages would be an adequate compensation, and therefore an injunction should be granted, not only restraining defendant from proceeding with his building, but requiring him to remove the material already deposited, within six months, and that he should pay the costs of plaintiff company, with right to set off the \$100 above awarded.

CARTWRIGHT, MASTER.

DECEMBER 22ND, 1903.

CHAMBERS.

KIRK v. CITY OF TORONTO.

Jury Notice—Action against Municipal Corporation—Non-repair of Street—Judicature Act, sec. 104—Delay in Moving—Costs.

The statement of claim alleged that on 16th May, 1903, plaintiff was injured by negligent use of a steam roller on St. Alban street, in the city of Toronto. The roller was owned