

defendant in any event. If consent was not filed, appeal to be allowed with costs.

Brewster, Muirhead, & Heyd, Brantford, solicitors for plaintiffs.

Kelly & Porter, Simcoe, solicitors for defendant.

MARCH 15TH, 1902.

DIVISIONAL COURT.

HALL v. ALEXANDER.

*Easement—Dominant and Servient Tenement—Covenant by Original Grantor—Discharge of Snow and Water from Roof of Dominant Tenement—Duty of Owner of.*

Wheeldon v. Burrows, 12 Ch. D. 31, followed.

Appeal by defendant from judgment of junior Judge of County Court of York granting an injunction and damages. The plaintiff is the owner of house No. 18 Classic avenue in the city of Toronto, and the defendant is the owner of the adjoining house, No. 20, and ice and snow and water are discharged from his house on to the side entrance to plaintiff's house. One Turner formerly owned the land and built and sold the two houses (18 and 20) thereon, selling first to the defendant's predecessor in title. The trial Judge held that at the time of the severance of the properties the eave on the projection of the house of defendant was in existence, and shewed that it was contemplated that the water should be carried off in that way, and that as to the snow and ice, the law will not permit a land owner to create easements of a novel character, and annex them to the soil so as to bind it in the hands of future owners, and that such an easement as here claimed was not unknown: Goddard on Easements; and that there was no evidence to shew that an easement had been established either expressly or impliedly.

G. H. Watson, K.C., for defendant. The conveyance from Turner contained a clause giving the "right and privilege and use of the projection of the roof of the house (No. 20) as at present constructed over and above that part of lot 47 immediately to the east of the house," and a covenant for quiet and undisturbed enjoyment of the projection as at that time constructed, and that the grantor upon a sale of the other portion of land should reserve the right to the projection.

E. E. A. DuVernet and W. W. Vickers, for plaintiff.