

ONT.

H. C. J.

1912

MEMO.

DECISIONS.

this motion, fixed at \$20—making a total of \$12,200. J. B. Clarke, K.C., for the applicant. J. J. MacLennan, for the plaintiff.

#### WEBER v. BOWMAN.

*Ontario High Court, Sutherland, J. February 10, 1912.*

WATERS (§ 11 D—95)—*Dam—Obstruction of Stream—Flooding Lands — Damages — Injunction.*] — Action by a farmer against a miller for damages for the obstruction of the waters of a stream flowing through the plaintiff's land, and for an injunction. The learned Judge finds, upon the evidence, that the dam constructed by the defendant in 1911 is higher than either of the former dams existing at or near the locus of the defendant's dam. He also finds that the plaintiff's lands have, since the erection of the dam by the defendant, and in consequence of its being higher than the former dams, been subjected to a greater quantity of water than would naturally come there; and that, in consequence, the plaintiff has suffered damage. The damage was confined to 7 or 8 acres of land, worth about \$6 an acre. Judgment for the plaintiff for an injunction restraining the defendant from obstructing the flow of the stream to such an extent as to overflow the land mentioned, and for damages assessed at \$25, subject to a reference, if either party objects to that amount; in which case the costs of the reference will be in the discretion of the Master. The plaintiff to have his costs of the action on the County Court scale without any right of set-off to the defendant. A. B. McBride, for the plaintiff. W. M. Cram, for the defendant.

#### RICHARDS v. CARNEGIE.

*Ontario Divisional Court, Boyd, C., Latchford, and Middleton. February 12, 1912.*

TRESPASS (§ 1—5)—*Damages—Right to Possession—Landlord and Tenant.*]—An appeal by the plaintiff from the judgment of the County Court of the County of Bruce, dismissing an action for damages for trespass alleged to have been committed by the defendant upon lands demised to the plaintiff. The judgment of the Court was delivered by Boyd, C., who said that, having read the evidence, he thought the Judge made a right disposition of the case by dismissing it. The whole claim was of a trumpery kind, at most being for some possible damages that the plaintiff might have sustained by not engaging in gathering ashes to put in an ash-heap on the premises for thirteen days. There was no evidence that there were any ashes to be gathered during that time, or that the plaintiff could have