

WALKER v. WESTINGTON—BRITTON, J.—OCT. 18.

Water and Watercourses—Diversion of Surface Water by Adjoining Owner—Trespass—Injunction—Damages—Costs.]—Action by one of the co-owners of lot 10 in the 8th concession of the township of Hamilton against the owner of the adjoining lot 9 for an injunction against throwing water upon lot 10 and for damages. At the trial, the plaintiff abandoned the claim for damages, admitting that so far no damage had been sustained. BRITTON, J., said that, no damage being shewn, and the plaintiff asking for general relief and protection, not against any particular thing, such as obstruction in a stream, or continuing an open ditch, but that the defendant be restrained from committing in future any trespass by causing surface water to flow upon the plaintiff's land, an injunction should not be granted. The learned Judge was also of opinion, upon the evidence, that the plaintiff failed upon the main ground of his action, viz., that the defendant wilfully and wrongfully diverted water from its natural course and turned it upon lot 10. The questions were wholly questions of fact. Action dismissed with costs fixed at \$100. The learned Judge said that the defendant's conduct before action warranted the relief of the plaintiff from the payment of some portion of the costs. F. D. Boggs, K.C., for the plaintiff. J. B. McColl and J. F. Keith, for the defendant.
