

Province of Nova Scotia.

SUPREME COURT.

Ritchie, J.]

DEAL v. CROOK.

[Nov. 1902.

Trespass to land—Riparian proprietor—Conveying timber and lumber on stream.

Plaintiff was owner of land bounded on one side by a stream, above tidewater, not navigable. Defendant was a lumberman, and, in order to assist his operations in driving logs down stream, erected a permanent dam, one end of which rested on plaintiff's land. To an action claiming damages, defendant pleaded, inter alia, that the entry complained of was a reasonable use of the land, and was authorised by R.S.N.S. (1900) c. 95, "Of the conveying of timber and lumber on rivers, and the removal of obstructions therefrom," and amending acts.

Held, 1. The erection of the dam was a trespass and could not be justified under R.S. c. 95, or under the acts of 1902 c. 33, no commissioner having been appointed for the stream in question, or for the river into which it ran.

2. Sec. 15 of c. 95, which gives the right to construct dams necessary to facilitate the floating of logs down streams during freshets, is subject to the provisions of s. 6, which require the assent of the owner of land entered upon to be obtained, and can only be constructed to apply to temporary erections, and not to permanent erections such as the one in question.

3. Sec. 17 of c. 95, as amended, only gives the right to enter for the purpose of driving or removing logs, and not for the purpose of making erections.

4. As plaintiff had failed to prove any substantial damage, there should be judgment in his favour for \$5 damages and costs.

Russell, K.C., and *Power*, for plaintiff. *Notting*, for defendant.

Full Court]

IN RE McDONALD.

[Jan. 17.

Will—Construction—Life estate—Power of disposition—Effect of.

Testator, by his will gave to his wife, C. M., the use, rents, and proceeds of all his remaining real estate, personal property, mortgages, notes, etc., for her own use during her lifetime. At the death of his wife he devised the house and contents to A. M., for her own use and benefit during her lifetime; and at the death of A. M., he devised to his nephews