

1926
*Feb. 2.

DOMINION TEXTILE COMPANY (DE- } APPELLANT;
FENDANT) }

AND

DAME M. L. SKAIFE (PLAINTIFF) RESPONDENT.

Appeal—Jurisdiction—Interlocutory judgment—Inscription in law—Final judgment—Supreme Court Act, R.S.C., c. 139, s. 2 (e).

In an action for damages by the owner of certain land which he alleged had been flooded by the illegal raising of the level of the water in an adjoining lake, the defendant company denying any liability pleaded in justification that the dams and constructions existing from 1835 or replaced since had approximately the same elevation and that certain work done by its predecessors in title had in fact prevented the waters from raising to their normal height. The plaintiff filed an inscription in law asking that these allegations be struck from the plea. Judgment maintaining the inscription was affirmed by the appellate court.

Held that the judgment appealed from was a "final judgment" within the meaning of par. e of s. 2 of the Supreme Court Act.

MOTION by way of appeal from a decision of the Registrar of the Supreme Court of Canada refusing to affirm jurisdiction. Motion granted with costs.

The plaintiff claims to be the owner of lands in the township of Magog, in the province of Quebec, abutting on Lake Memphremagog and complains that the defendant company, as owner of certain dams at the outlet of the lake, has by its use and maintenance, injured her property by flooding and undermining the bank of the lake, and claims over \$2,000. The plaintiff seeks an injunction as well as damages. The defendant company, besides denying all the plaintiff's allegations except its ownership of the dam, sets up in paragraphs four and five the following pleas:

4. That dams or constructions at the point in question have existed since the year 1835, and have moreover existed at the same elevation since the year 1882, the dam erected in that year having been carried away in 1915. The said dam or construction was replaced by a temporary dam erected in the same year which was replaced by the present dam in the year 1920 and 1921, all of which dams or constructions had approximately the same elevation.

5. So far from having caused the waters in the said lake to rise beyond their normal and usual height, defendant's autorus, by means of removing certain obstructions from the outlet of the said lake, and enlarging its sluice openings, prevented the waters in the said lake from rising to their normal height at times of freshets.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

The defendant also by other pleas alleges that the plaintiff owing to the situation of the land in question, and by her own neglect, is herself the author of the damage in question, and finally by paragraph 9 claims that the action is prescribed. The plaintiff inscribed in law against paragraphs four and five, alleging that they did not constitute in law valid reasons in support of the defendant's conclusion, asking for the dismissal of the plaintiff's action and on other grounds. The matter of inscription came up before a judge of the Superior Court who maintained the inscription in law and ordered the two paragraphs struck from the defence. The defendant company appealed to the Court of King's Bench and the judgment of the trial court was affirmed.

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The defendant company, having appealed to this court, made a motion before the Registrar for an order affirming the jurisdiction of the court to entertain the appeal. The Registrar having refused to grant the order, the defendant company made a motion before the court by way of appeal from that decision.

The Supreme Court of Canada, after hearing counsel, granted the motion with costs and affirmed its jurisdiction to entertain the appeal, holding that the judgment appealed from was a "final judgment" within the meaning of par. e of s. 2 of the Supreme Court Act.

Motion granted with costs.

Aimé Geoffrion K.C. for motion.

A. C. Casgrain K.C. contra.
