

THE following affidavit was filed by the defendants in support of intended motion :—

Affidavit of W. H. Watt.

I, William Hogg Watt, of Wanganui, in the Province of Wellington, merchant, make oath and say,—

1. On the fourth day of April last passed I was served with a true copy of the writ and declaration in this action, a copy of which declaration marked "A" is hereunto annexed (but which said copy writ is not in my possession), and on the eleventh day of April last past I was served with a copy writ of injunction, a copy whereof is also hereunto annexed marked "B."

2. At the time of the service of the said writ and declaration I held, and still hold, the office of Mayor of the said Town of Wanganui.

3. "The Municipal Corporations Waterworks Act, 1872," has been duly brought into operation in the Borough of Wanganui by an Ordinance of the Superintendent and Provincial Council of Wellington passed in the twenty-sixth session of the said Council, and being numbered three of the Acts of the said session.

4. The said Virginia Waters are situate within a "district" which, I am advised and believe, was, before the commencement of any waterworks by the defendants, duly taken within the meaning of the said "Municipal Corporation Waterworks Act, 1872," for the purpose of the water supply of the said Borough of Wanganui; the waterworks complained of by the plaintiff in this action were, until restrained by the injunction of the Supreme Court, being carried out under and pursuance of the powers vested by the said Act in the Council of the said Borough of Wanganui.

5. The Virginia Water mentioned in the declaration is a small lake situate partly on the land claimed by the plaintiff in the declaration and partly upon other land not the property of the plaintiff nor in her possession.

6. Some time since a portion of the waters of the said Virginia Water were, under the powers conferred by the said Act, conducted from the said lake through a certain aqueduct to the said Borough of Wanganui for the supply of the inhabitants thereof with pure and wholesome water.

7. By reason of such water supply to the said borough the said Virginia Lake has lately become much lowered from its usual and proper level, so that watering-places theretofore used by persons having lawful right so to do were taken away and interrupted, and the waters of the said Virginia Water had become insufficient to supply the lawful requirements of the said borough, and also to supply such watering-places.

8. In order to restore the said lake to its proper level, and thereby render it sufficient for the supply of the said Borough of Wanganui with water, and also for the purpose of preventing injury to the persons entitled to the water-rights and easements aforesaid, the defendants obtained from me leave and license to divert a sufficient portion of the waters of Westmere Lake, which is a piece of water situate upon lands my property, into the said Virginia Water, to restore and keep the original level thereof.

9. The waters of the said Westmere Lake are pure and wholesome, and of good quality.

10. The Council of the said Borough of Wanganui, upon obtaining my leave and license so to divert the Westmere Lake, caused the specifications to be prepared and the tenders to be called for mentioned in the fifth paragraph of the plaintiff's declaration.

11. In pursuance of the said call for tenders a contract was, on the twenty-seventh day of March, one thousand eight hundred and seventy-seven, made by the said Council with one James Donovan.

12. The said works would, I am informed and believe, have taken about sixty days to execute, and it would have been necessary to complete the execution thereof before any water could have been introduced from Westmere Lake into Virginia Water by the defendants.

13. The influx of water from the one lake into the other was and is intended to be duly regulated so as to keep the waters of the said Virginia Water to their proper and original level and no more.

14. It is not necessary, for the purpose of constructing any part of the proposed aqueduct, or of constructing any of the proposed works, to enter upon the lands in possession of and claimed by the plaintiff, nor will the said aqueduct or works, or any part thereof, be constructed upon any portion of the said lands.

15. I do not believe that the said regulated supply would or will cause, or is at all likely to cause, any damage or injury whatever to the plaintiff in or to the said Virginia Water, but, on the contrary, the said regulated supply would preserve uninjured the water-rights and easements of the plaintiff, as the same had existed before the level of the said Virginia Water had been lowered as hereinbefore mentioned.

16. The continuance of the said injunction is causing injury to the Borough of Wanganui and to the contractor who has contracted with the defendants for the making of the said aqueduct from Westmere Lake to Virginia Water.

17. No Crown grant has yet been issued to any person of the said Sections numbered respectively 16 and 17, in the Wanganui District, in the Provincial District of Wellington, in the plaintiff's declaration mentioned.

W. H. WATT.

Sworn at Wanganui aforesaid, this twenty-eighth day of May, 1877, before me,—

SAML. S. FITZHERBERT,
A Solicitor of the Supreme Court of New Zealand.

AFFIDAVITS of Jane Hair, F. M. Betts, and H. H. Travers, filed for the purpose of showing cause.

Affidavit of Plaintiff.

I, Jane Hair, of Wanganui, in the Provincial District of Wellington, widow, swear,—

1. I am the plaintiff in this action.