

He cannot be deprived of that right, except by Legislative authority, duly exercised.

If his land fronts on tidal waters, and access thereto is obtainable by the user of such waters, no mere license or permission from the Crown to another, to obstruct that user, can be sustained; and any plea to that effect is bad.

The right to continue such an obstruction cannot be acquired by the Statute of Limitations, because there can be no presumption of a grant.

Remedy for personal loss sustained by obstruction to such right may be materially affected by party's presumed acquiescence, or silence with knowledge.

Such an obstruction inflicting private injury cannot be justified by the allegation that the obstruction itself is a public benefit; nor is the remedy lost by the allegation that the private injury is merged in the greater public wrong.

In such cases the Crown acts for the public, the individual for himself.

The description "having a frontage of 40 feet, more or less, on Store Street, and running back to the harbour," is sufficient to include all land within the parallel side lines, extending from Store Street to the harbour or bay, according to the curvature of the shore line, up to which the tide flows.

*Seemle*, the Crown could not, in British Columbia, at the time the titles herein were originated (*viz.*, in 1858), or at any time since, by subsequent license, legalize any addition to, or the continuance of an obstruction which it had not the power to authorize in the first instance; and any leave or license to that effect would be inoperative.

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1892

April.

Drake, J.

PEATT v. RHODE.

(2 B. C. 159.)

*Water Course—Ditch—Drainage—Injunction to Prevent Apprehended Injury—Quia Timet Action.*

Where a person is commencing lawful operations for the purpose of enabling him to utilize his own property, the mere fact that such operations may be injurious to another is not enough to induce the Court to interfere by injunction. There must at least be proof not only of imminent danger, but also that the damage, if it comes, will be irreparable.

The owner of land may make use of any natural water-courses on his property for the purpose of improving its drainage, and if damage arising from the increased flow of water ensue to another proprietor it is *damnum absque injuria*.

Remarks on the nature of *quia timet* actions.

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1902

Nov. 25.

Full Court.

IN RE SMITH AND THE RIVERS AND STREAMS ACT.

(9 B. C. 329.)

*Rivers and Streams Act, s. 12—"Party Interested" Right to Appeal.*

A "party interested" who may, if dissatisfied, appeal from the judgment of the County Judge under s. 12, means one who was a party to the proceedings before the Judge appealed from.