

water and riparian rights. (2) That the statement of the respondent when withdrawing the location plans that the embankment was constructed on their own lands was untrue, but even if the respondents had title to the said lands it had no right to construct its railway without approval of the route map by the Minister and the location plans by the Board. (3) That the applicants' lands and business had been damaged and injured by the wrongful and illegal acts of the respondent. (4) That there was no necessity for the embankment and no reason existing why a means of access inward and outward should not have been left. (5) That the respondent must leave an opening in the embankment at least 30 feet wide.

Rochester v. Grand Trunk Pac. Ry. Co., 13 Can. Ry. Cas. 421.

[Affirmed in 15 Can. Ry. Cas. 306.]

#### ROUTE AND LOCATION PLANS—OBSTRUCTION TO NAVIGATION.

Where a railway company, in the professed exercise of its powers as a railway company and without the approval of the route by the Minister and of the location plans and works by the Board, has constructed a solid filling across navigable waters, the Board, under the provisions of ss. 230, 233, coupled with subss. (h) and (i) of s. 30 of the Railway Act, 1906, has jurisdiction to order the demolition of the works so constructed. [Rochester v. Grand Trunk Pacific Ry. Co., 13 Can. Ry. Cas. 421, affirmed.]

Grand Trunk Pacific Ry. Co. v. Rochester, 15 Can. Ry. Cas. 306, 48 Can. S.C.R. 238.

#### SURFACE WATER—DEFLECTING AND DIVERTING—INJURY TO ADJOINING LANDS.

A defendant railway company is liable for damage caused to the plaintiff, an adjoining owner, by deflecting and diverting the course of the surface water so as to make it flow over the plaintiff's land, and for bringing water on the defendant's own lands and then discharging it on to the plaintiff's land, to his injury; and the statutory powers, in furtherance of the objects for which the defendant company was incorporated, do not, by implication or otherwise, empower it so to carry on its operations as to cause damage to adjoining owners by deflecting or diverting such surface waters to the injury of adjoining lands. [Rylands v. Fletcher, L.R. 3 H.L. 330, applied.]

Niles v. Grand Trunk Ry. Co., 15 Can. Ry. Cas. 73, 9 D.L.R. 379.

#### WATER AND WATER RIGHTS—DAMS.

Statutory powers of expropriation in the incorporating statute of a power company are to be strictly construed so as not, by mere general words authorizing expropriation for the damming of a river, to deprive the public of rights theretofore existing unless a clear legislative intention to abrogate public rights is disclosed in the statute. (Per Ritchie, J.)

Miller v. Halifax Power Co. (N.S.), 13 D.L.R. 844.

#### NATURAL WATERCOURSE—DEFECTIVE CULVERT—OBSTRUCTION OF FLOW.

The construction of a culvert by a power company in a negligent manner, whereby it interferes with the flow of a natural watercourse, giving rise to the flooding of the abutting lands, will render the company liable for damages occasioned thereby. [L'Esperance v. Great Western Ry. Co., 14 U.C.Q.B. 173, distinguished.]

McCrimmon v. British Columbia Elec. Ry. Co., 19 Can. Ry. Cas. 329, 24 D.L.R. 368.

#### NONTIDAL STREAM—OBSTRUCTION OF NAVIGATION—RAILWAY BRIDGE.

The Fraser River in its upper waters, although nontidal, is a common Can. Ry. L. Dig.—54.