in the information, that the warrant was void, and that the defendant was liable as a trespasser for the apprehension of the plaintiff under the void warrant, there being evidence of interference by the defendant in the apprehension.

Held, that the information sufficiently imported that the plaintiff had uttered the forged note, knowing it to be forged, to give the magistrate jurisdiction, and therefore the warrant was not void, and the action for trespass was not maintainable.

Semble, that, if the offence were not sufficiently laid in the information to give the magistrate jurisdiction, and the warrant were void, the action of malicious prosecution would nevertheless lie.

M. G. Cameron for the plaintiff.

Garrow, Q.C., for the defendant.

Div'l Court.] [March 3.

ARTHUR *v.* GRAND TRUNK RAILWAY CO.

Water and watercourses—Diversion of watercourse by railway company—Remedy—Compensation—Arbitration clauses of Railway Act, 51 Vict., c. 29 (D.)—Plan—Riparian proprietors—Infringement of rights—Cause of action—Damages—Permanent injury—Definition of watercourse—Permanent source—Surface water—Misdirection—New trial.

By s. 90 *(h)* of the Railway Act of Canada, 51 Vict., c. 29, a railway company have power to divert any watercourse, subject to the provisions of the Act; but in order to entitle themselves to insist upon the arbitration clauses of the Act, they must, having regard to ss. 123, 144, 145, 146, and 147, show upon their registered plans their intention to do so.

Every proprietor on the banks of a natural stream has the right to use the water, provided he so uses it as not to work any material injury to the rights of other riparian proprietors; but so soon as he uses it in such a way as to diminish the quantity or quality of the water going on to the lower proprietors, or to retard or stop its flow, he exceeds his own rights, and infringes upon theirs, and for every such infringement an action lies.

Sampson v. *Hoddinott*, 1 C.B.N.S. 590, and *Kensit* v. *Great Eastern R.W. Co.*, 27 Ch.D. 122, followed.

The defendants built an embankment which entirely cut off the plaintiff's access to the water of a stream by diverting it from his farm

Held, that it was the fact of the defendants having diverted the watercourse, not the fact of the plaintiff having sustained damage from their doing so, that gave him his cause of action; and the proper mode of estimating the damages was to treat the diversion as permanent, and to consider the effect upon the value of the farm that the permanent abstraction of the water would have.

McGillivray v. *Great Western R.W. Co.*, 25 U.C.R. 69, distinguished.

The alleged watercourse was a gully or depression created by the action of the water. The defendants disputed that any water ran along it, except melted snow from higher land, and rain water after heavy rains, flowing over