

## WATERS.

Power of Dominion Parliament to regulate Provincial foreshore and harbour, see Constitutional Law.

Damage caused by waters, see Nuisance.

## NAVIGABLE RIVER—RIGHTS OF RIPARIAN OWNERS—OBSTRUCTION—DAMAGES.

(1) A riparian owner on a navigable river is entitled to damages against a railway company although no land is taken from him, for the obstruction and interrupted access between his property and the navigable waters of the river, viz., for the injury and diminution in value thereby occasioned to his property. (2) The railway company in the present case, not having complied with the provisions of 43 & 44 Vict. (Que.), c. 43, s. 7, subs. 3 & 5, the appellant's remedy by action at law was admissible. 12 Q.L.R. 205, reversed.

Plon v. North Shore Ry. Co., 14 Can. S.C.R. 677.

[In this case the Privy Council affirmed the judgment of the Supreme Court. See 14 App. Cas. 612. At p. 614, it is stated that Strong, J. dissented from the judgment of the Court. This is an error: Strong, J. concurred with the majority of the Court in allowing the appeal. See Bigaouette v. North Shore Ry. Co., 17 Can. S.C.R. 363. Applied in Montreal v. Montreal Brewing Co., 18 Que. K.B. 405; referred to in Audet v. Quebec, 9 Que. S.C. 342; Ontario & Quebec Ry. Co. v. Vallières, 36 Que. S.C. 358; relied on in Sandon Water Works and Light Co. v. Byron N. White Co., 35 Can. S.C.R. 321; applied in Chaudière Machine & Foundry Co. v. Canada Atlantic Ry. Co., 33 Can. S.C.R. 14; The Queen v. Barry, 2 Can. Ex. 348; Saunby v. London Water Commissioners [1906] A.C. 110; Vancouver v. Can. Pac. Ry. Co., 23 Can. S.C.R. 17; Water Commissioners of London v. Saunby, 34 Can. S.C.R. 659; approved in Arthur v. Grand Trunk, 22 A.R. (Ont.) 89; distinguished in Clair v. Temiscouata Ry. Co., 37 N.B.R. 614; followed in Barter v. Sprague's Falls Mfg. Co., 38 N.S.R. 216; Bigaouette v. North Shore Ry. Co., 17 Can. S.C.R. 363; Smith v. Public Parks Board, 15 Man. L.R. 258; referred to in Banatyne v. Suburban Rapid Transit Co., 15 Man. L.R. 19; Barter v. Sprague's Falls Mfg. Co., 38 N.B.R. 216; Can. Pac. Ry. Co. v. Parke, 6 B.C.R. 14, 16; McArthur v. Northern & Pacific, etc., Ry. Co., 17 A.R. (Ont.) 86; Wood v. Atl. & N.W. Ry. Co., 2 Que. Q.B. 355; relied on in The King v. McArthur, 34 Can. S.C.R. 577; Winnipeg v. Toronto Gen. Trusts, 19 Man. L.R. 427.]

## DIVERSION OF WATER—ORDER OF RAILWAY COMMISSION.

The direction by the Board of work to be done and its approval of plans and of the tariff of rates as provided by the Railway Act, 1906, is a condition precedent to the right to maintain an action confessoire by the owner of higher lands against a railway company with a federal charter, owner of the lower lands, to compel it to receive water diverted thereto and for damages for its refusal to do so.

Blais v. Grand Trunk Ry. Co., 39 Que. S.C. 236.

## ACCESS TO HARBOUR—CONSTRUCTION OF EMBANKMENT—RIPARIAN RIGHTS.

Application by landowners that in case the respondents' plans were filed for approval, authorizing the respondent to construct a solid embankment across the entrance to Market Cove, the rights of the parties located thereon should be protected. The respondent had already by the construction of a solid embankment cut off all access from the harbour of Prince Rupert to all points around the cove or bay:—Held (1), that these applicants by taking leases of lots abutting on the cove acquired access to the