

Province of British Columbia.

SUPREME COURT.

Full Court.]

HORNBY v. NEW WESTMINSTER SOUTHERN RAILWAY COMPANY.

*Railway—Water and watercourses—Flooding of adjoining land caused by construction of railway embankment—Damages—Negligence—B.C. Stat. 1887, c. 36.*

The plaintiffs were the owners of land having a slope and natural drainage towards the sea. The defendants under authority of an Act of Parliament had constructed a line of railway through this land (which was then owned by the plaintiffs' predecessors in title) and had thereby cut off the ditches which had been constructed on the lands in question for the purposes of drainage. The defendants for the purpose of protecting their line cut a ditch parallel with the embankment on which the line was built, and cutting across the ditches on the plaintiff's lands which thereafter emptied into the defendants' ditch. The defendants constructed a flood gate for their ditch, and the flood gate being insufficient to carry off the water accumulated in the defendants' ditch, the plaintiffs' lands were flooded.

*Held*, that under the defendants' special Act (incorporating section 16 of the Railway Clauses Consolidation Act, 1845) the construction of the embankment and ditch were authorized by the Legislature and that the plaintiffs could not complain of the flooding of their lands caused by the construction of the embankment.

*Held*, also (reversing the judgment of IRVING, J.), that no duty or obligation was imposed on the defendants to see that the plaintiffs had an outlet through their ditch for the water which collected on their lands.

*Wilson*, Q.C., and *Reid* for appellant. *Davis*, Q.C., and *Corbould*, Q.C., for respondents.

Martin, J.]

DUNLOP v. HANEY.

[August 11.

*Mineral Acts—Adverse proceedings—Overlapping—Measurements—Abandonment and re-location—B.C. Stat. 1898, c. 33, s. 11.*

Action (tried at Vancouver) under the Mineral Acts to establish plaintiff's title to the Legal Tender mineral claim which it was alleged was overlapped by the boundaries of the Pack Train and Legal Tender or its re-location the Legal Tender Fraction mineral claim.

*Held*, that in adverse proceedings if the plaintiff wishes to attack the defendant's title he must attack it while proving his own title and wait till