

a statutory right had been given to land-owners to take and use water for irrigation and to discharge or run off the surplus water, and water so discharged had been shown to have damaged the railway. The reasoning of the British Columbia Court is referred to as follows:

"Their Lordships think that the judges of the Supreme Court were right in considering the crucial question in this case to be whether the Columbia legislation, which they had to construe, was, as between the person using the powers hereby conferred and the owners of the adjacent lands, imperative or merely permissive. They examined the leading authorities bearing upon the point and their conclusions, as expressed by *Drake, J.*, was:—"The difference in the present case is that there is no direction that irrigation waters should be used, but only a permission to use them; but the permission to use implies a legal right of use which will bar an action for damages where the use has been non-negligent."

"Their Lordships proceed to say:—

"The proposition is somewhat too broadly stated. Whenever, according to the sound construction of a statute, the Legislature has authorized a proprietor to make a particular use of his land, and the authority given is, in the strict sense of law, permissive merely, and not imperative, the Legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law right of others—the leading authorities in the law of England upon this question, which, though not numerous, are of considerable weight, are *Managers of Metropolitan Asylums District vs. Hill*; and *London, Brighton & South Coast Railway Co. vs. Truman*."

"In the result Their Lordships reversed the judgment and advised His Majesty to grant an injunction restrain-