LEGAL NOTES.

[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

IMPAIRMENT OF LIGHT.

Simpson vs. T. Eaton Co.—The plaintiff was the owner of house No. 46 Albert Street, Toronto, holding the same by continuous title running back to 8th November, 1871, at or about which time the house was erected. In 1906 the defendant Company, having purchased lands immediately adjoining to the west, proceeded to erect a warehouse, and the plaintiff brought action, claiming the right to enjoy access of light as it was enjoyed on the 8th November, 1871, and to restrain defendants from interfering with same. The defendants contended that the access of light had not been interfered with to any actionable extent.

Evidence showed that the erection of the warehouse had not caused the loss of tenants nor necessitated reduction of rent, and that no business was interfered with, as the house was a dwelling-house only. True, some of the windows were darkened, but not to any considerable extent, and sufficient light still came through for the occupants of the house. The court found that the erection of the new building had not resulted in any material impairment of light. As the obstruction has caused **no substantial damages** by reason of discomfort or inconvenience, the plaintiff's only hope of success is on the ground of loss of rent. But the rent has not been reduced. Action dismissed. 10, O.W.R., 215.

RIGHTS OF A RIPARIAN OWNER.

When a man buys land on the bank of a river or lake what rights does he acquire in the soil forming the bed of the river? Has he any greater rights than the general public who navigate the stream, and, if he has, do those rights amount to ownership of the soil beneath, or do they merely entitle him to certain benefits that may be reaped from the adjacent water, over and beyond the right of navigation?

Keewatin Power Co. et al. vs. Town of Kenora.—The Keewatin Power Company had obtained a grant from the Crown of certain lands near the town, on the west bank of the Winnipeg River, and the Hudson's Bay Company, joint plaintiffs, held the land similarly situated on the east bank, when the town instituted proceedings for the expropriation of the lands of both companies. In neither case did the Crown patent make any mention of the bed of the river, which, though not large, was a navigable stream. The plaintiffs brought action to restrain the expropriation proceedings, but finally consented to the town acquiring the properties, but asked for a declaration of certain rights which they asserted in the bed of the watercourse, and in the water power which might be developed, and they sought to prevent the town from carrying on works designed for the development of such water power.

It has heretofore been considered law that the river bed of navigable streams remained vested in the Crown unless the patent expressly granted the same to the locatees; and it transpired in this case that the town of Kenora had, in 1905, and subsequent to the patents to both plaintiff companies, obtained a lease from the Ontario Government of the bed of the watercourse in question. Such was the position when the opinion of the courts was sought; and the trial judge, basing his judgment on the distinction between navigable and non-navigable streams, held that the companies owned the soil to the margin of the stream, and they did not own the soil beyond, forming the bed of the river, but had only limited rights as being the riparian owners.

The Court of Appeal has now decided that the question is not one as to whether the stream is navigable or not, but as to whether the stream is tidal or non-tidal. They conclude upon the law and upon the construction of the instruments in evidence that the plaintiff companies **are entitled to the soil forming the bed of the stream** to the middle thread, each one on his own side. Judgment delivered accordingly. 11, O.W.R., 266.

The Ontario Legislature in 1792 (and most of the other Provinces have since) enacted that the Common Law of England should apply here unless and until some statute is passed to the contrary. Now, the Common Law was formulated in England, where streams are mostly small and insignificant, whereas inlets of the sea are numerous, and the distinction thus came to be tidal and non-tidal.

Our courts have been somewhat slow to apply the English precedents, inclining to hold that some different rule must be found to govern in the case of our great inland waters. However that may be, the present case stands out clear-cut and strong; and if a man buys land on the margin of Lake Superior or the St. Lawrence River, he owns the adjacent river bed to the middle of the stream, unless the patent expressly reserved the river bed to the Crown, or other reasons be shown. The decision clears up a mooted point as to the present state of our law.

Where the stream is small and non-navigable, there never has been any doubt; the riparian owner has always held the river bed. Where the stream becomes navigable, he is **prima facie** owner of the soil, but prima facie only, for the contrary may be shown; and where the waters become tidal a similar presumption exists in favor of the Crown; i.e., the soil beneath is presumed to be vested in the Crown until the riparian owner clearly proves that it was included in the grant to him. Thus it appears that the grantee along the lake front may take not only the sand or stone that washes up on the shore, but may follow out and use whatever he can recover from below the water. When a case comes up affecting the Great Lakes or such a river as the St. Lawrence, questions of public safety, commerce and defence will arise, and one of the judges feels constrained to remark that there is little doubt a distinction will be drawn; but at present there is no decision to that effect, and they stand in the same category as all other inland waters.

ENDANGERING LIFE BY FAILURE TO MAINTAIN A BRIDGE—COMPANY IS CRIMINALLY LIABLE.

King vs. Union Colliery Company.—The defendant corporation held a charter under the laws of British Columbia for the purposes of owning and operating coal mines. Their principal point of operation was situated at Union, B.C., and from there they ran a tramway about ten miles to the wharf at Nanaimo, where their coal was shipped. Upon this tramway they used locomotives, and had for some years been carrying passengers as well as freight, although their charter said nothing of any power or right to carry passengers. In the course of the ten miles the railway crossed the River Trent by means of a trestle and a Howe truss bridge, erected some years prior, and having a span of 133 feet. Such was the condition of affairs on 18th August, 1897, when a train in crossing the bridge broke through, and some six or seven persons on board were dashed to death below.