

DIARY FOR NOVEMBER.

1. Sun.....23rd Sunday after Trinity. All Saints' Day
2. Mon.....O'Connor, J., Q.B., died 1887.
3. Tues.....1st Intermediate Examination.
5. Thur.....2nd Intermediate Examination. Sir John Colborne, Lieut.-Governor U.C., 1838.
7. Sat.....Battle of Tippecanoe, 1811.
8. Sun.....24th Sunday after Trinity.
9. Mon.....Prince of Wales born, 1941.
10. Tues.....Court of Appeal sits. Solicitors' Exam.
11. Wed.....Barristers' Examination. Annual Fees to Law Society due. Battle of Chrysler's farm, 1813.
12. Thur.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1898.
13. Fri.....A. Wilson, 6th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Sat.....Falconbridge, J., Q.B.D., 1887.
15. Sun.....25th Sunday after Trinity. M. C. Cameron, J., Q.B., 1876.
16. Mon.....Michaelmas Term begins. H.C.J., Q.B.D., and C.P.D. sittings begin.
19. Thur.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D., 1887.
21. Sat.....J. Emsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
22. Sun.....26th Sunday after Trinity.
24. Tues.....Battle of Fort Duquesne, 1754.
25. Wed.....Marquis of Lorne, Governor-General, 1878.
27. Fri.....Frontenac dies at Quebec, 1698.
29. Sun.....1st Sunday in Advent.
30. Mon.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMabon, J., C.P.D., 1887.

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [Sept. 17.

THE QUEEN v. MALCOLM.

Injurious affection of property by construction of public work—Obstruction of access—Right to compensation—Waiver.

The defendant was the owner of a dwelling-house and property fronting on a public highway. In the construction of a Government railway, the Crown erected a bridge or overhead crossing on a portion of the highway in such a manner as to obstruct access from such highway to defendant's property, which he had theretofore freely enjoyed.

Held, that the defendant was entitled to compensation under the Government Railways Act and the Expropriation Acts.

Beckett v. The Midland Railway Company, L.R. 3 C.P. 82, referred to.

The defendant, and a number of other persons interested in the manner in which the crossing was to be made, met the Chief Engineer of Government Railways and talked the matter over with him. The defendant, who does not appear to have taken any active part in the discussion, and the other persons mentioned, wished to have a crossing at rail level,

with gates; but the Chief Engineer declining to authorize such gates, it was decided that there should be an overhead crossing with a grade of one in twenty. Subsequently the defendant signed a petition to have the grades increased to one in twelve, as the interference with access to his property would in that way be lessened. The prayer of the petition was not granted.

Held, that by his presence at such meeting the defendant did not waive his right to compensation.

W. F. Parker for plaintiff.

J. J. Ritchie for defendant.

THE QUEEN v. BARRY ET AL.

Injurious affection of land—Construction of a railway siding on a sidewalk contiguous thereto—Measure of damages.

Where lands are injuriously affected, no part thereof being taken, the owners are not entitled to compensation under the Government Railways Act, 1881, unless the injury (1) is occasioned by an Act made lawful by the statutory powers exercised; (2) is such an injury as would have sustained an action but for such statutory powers; and (3) is an injury to lands or some right or interest therein, and not a personal injury or an injury to trade.

The construction of a railway siding along the sidewalk contiguous to lands, whereby access to such lands is interfered with and the frontage of the property destroyed for the uses for which it is held (in this case, for sale in building lots), is such an injury thereto as will entitle the owner to compensation.

Quere: Whether the rule that compensation in cases of injurious affection only must be confined to such damages as arise from the construction of the authorized works, and must not be extended to those resulting from the user of such works, is applicable to cases arising under *The Government Railway Act 1881*.

W. F. Parker for suppliant.

Ross, Sedgewick & McKay for respondents.

[Sept. 21.

ARCHIBALD v. THE QUEEN.

Contract—Construction—Implied promise—Breach thereof.

The suppliant had a contract to carry Her Majesty's mails along a certain route. In the