

far as that resulted from the passing of trains. *Re Bireley and Toronto, Hamilton and Buffalo R. W. Co.*, 33 C.L.J. 473; 28 O.R. 468, considered. Judgment of FALCONBRIDGE, J., affirmed.

*Robinson, Q.C.*, and *Chisholm*, for appellants. *Osler, Q.C.*, and *D'Arcy Tate* for respondents.

From Boyd, C.]

LEWIS v. DOERLE.

[May 5.

*Will—Charitable devise—Trust for benefit of citizens of the United States of African descent.*

A devise of lands in Ontario by a testator dying in 1891, in trust "to promote, aid, and protect citizens of the United States of African descent in the enjoyment of their civil rights" is a charitable devise and void, and the fact that the trust is to be executed in a foreign country makes no difference. Judgment of BOYD, C., 33 C.L.J. 394; 28 O.R. 412, affirmed.

*W. Barwick*, for appellants. *W. Cassels, Q.C.*, for respondent.

From Rose, J.]

[May 5.

DRAKE v. SAULT STE. MARIE PULP AND PAPER COMPANY.

*Water and watercourses—Interference with navigation—Private right of action.*

The plaintiff was a fisherman living on a small farm fronting on, and about three miles from the mouth of a navigable stream flowing into Lake Superior. He was in the habit of using a sail boat to go from his house to his fishing grounds in the lake, and was also sometimes employed by neighbors to bring to them in this sail boat supplies and provisions. The defendants brought large quantities of timber down the stream and kept it in booms at the mouth so that for the whole summer access to the stream was cut off.

*Held*, that the plaintiff had sufficient special interest to enable him to maintain an action for damages. Judgment of ROSE, J., affirmed.

*Wallace Nesbitt*, for appellants. *A. C. Maddonell*, for respondents.

From Drainage Referee.]

[May 5.

THACKERAY v. TOWNSHIP OF RALEIGH.

*Drainage—Land injuriously affected—Appeal to Court of Revision—Claim for damages—Sufficiency of notice—Filing notice—Arbitration.*

Under the drainage clauses of the Municipal Act of 1892, a landowner who is injuriously affected by a drainage work and who is assessed for part of the cost, is not bound to appeal to the Court of Revision for the allowance to him of damages to be set off against his assessment; he has his remedy by arbitration or action. Whether such a claim is made by application for arbitration or by action is immaterial; in either event the Drainage Referee has jurisdiction to deal with it. The provision of sub-sec. 3 of s. 93 of the Drainage Act, 1894, requiring a copy of the notice of claim to be filed with the