

therefore, the terms of the charter, the House of Lords (Lords Halsbury, Robertson and Lindley) held that the rights of the parties inter se as opposite riparian proprietors were governed by the general law applicable to running streams, whereby every riparian proprietor has a prima facie right to the ordinary use of the water flowing past his land; and, apart from rights acquired by prescription, one owner cannot interfere with the rights of another riparian proprietor; and that any prescriptive rights must be measured by the extent of their actual enjoyment, and that to the extent only to which those prescriptive rights had been actually enjoyed by the plaintiffs were they entitled to any preferential user of the waters of the stream. The decision of the Court below was therefore reversed.

CONTRACT—CONSTRUCTION—“WHOLE OPERATION OF ITS RAILWAY”—PERCENTAGE OF EARNINGS.

Montreal Street Railway Co. v. Montreal (1906) A.C. 100 was an action brought by the City of Montreal to recover a percentage of earnings of the defendants' railway under a contract which provided for the payment of a percentage on their earnings from the whole operation of their railway, and the question at issue was whether or not the contract extended to earnings of the railway beyond the city limits. The case occasioned great diversity of opinion in the Courts below, five judges, including a majority of the Supreme Court of Canada being of opinion that it extended to earnings beyond the city limits, and six being of the contrary opinion. The Judicial Committee of the Privy Council (Lords Davey, James and Robertson and Sir Andrew Scoble) adopted the view of the majority and reversed the judgment of the Supreme Court. Their Lordships, looking at the contract as a whole, being of opinion that it was intended to be confined to “lines of railway for conveyance of passengers in the city.”

MUNICIPALITY—DRAIN BECOMING INSUFFICIENT—NEGLIGENCE—EXERCISE OF STATUTORY POWERS.

Hawthorn v. Kannuluik (1906) A.C. 105 demands a brief notice. It was an appeal from the Supreme Court of Victoria. The action was brought against a municipality for damages caused by the flooding of the plaintiff's land, owing to the insufficiency of a sewer provided by the defendants. The defendants, in pursuance of statutory powers, had taken over the care