tion of the bridge, but may do so from the use of it; and it is apparent that if the railway had never been completed, or if no disturbance had taken place by its carrying traffic which otherwise would have come to his bridge, the appellant would not have been injuriously affected, or entitled to compensation at all" (L. R., 4 P. C., p. 120).

It might well have been determined in that case, upon the principle of the *Hammersmith Railway Co.* v. *Brand*, (for their Lordships thought the English authorities in point) that the plaintiff had no right to compensation. But there was another English authority of the *Queen* v. *Cambrian Railway Co.*, afterwards overruled, (see L. R., 6 Q. B. 422, and 2 Q. B. Div. 224), which induced them to assume, for the purposes of their judgment, that the claim to compensation might possibly be capable of being maintained. The principle on which they proceeded was, that the ascertainment and payment or tender of compensation, before executing the works, could not reasonably be held, on the construction of the statute under which that railway was made, to be a condition precedent, in cases in which "injuries might happen subsequently to the building of the railway, and as an unforeseen consequence of the works." "It is not reasonable," they said, "to suppose that the Legislature intended that the company should, *in cases like these*, be subject to actions as wrong-doers, and to the legal liability of having their works stopped, because compensation had not been first made to all persons injuriously affected by the consequences of their operations" (L. R., 4 P. C., pp. 119, 120). They thought, however, that the condition (expressed in the same terms as those of the Quebec Act of 1880) might properly be held precedent as to the taking of lands for making the railway. If so, it is difficult to deny to the same words, used *uno flatu* as to the taking of lands, and as to the exercise of powers causing damage to lands not taken, the same operation and effect, as far as the nature of the case will allow. It is true, that there are expressions in the judgment delivered in *Jones* v. *Stanstead Railway Co.* which might seem to restrict the condition precedent to lands taken, as distinguished from lands injuriously affected. But their Lordships are not satisfied that it was intended to lay down a proposition wider than that necessary for the particular case.

Their Lordships will, in the present case, advise Her Majesty to act upon the more recent decision of this tribunal; the consequence of which is that they must hold this action to have been properly brought, on the ground that the appellants did not take the steps necessary, under the Act of 1880, to "vest" in them "the power to exercise the right, or do the thing," for which, if those steps had been duly taken, compensation would have been due to the respondents under the Act. This relieves their Lordships from the necessity of considering whether, if the condition were not precedent, when the company have failed to do what they ought to have done, in order to have the amount of compensation settled under those provisions of the Act which they alone can put in force, and in a case to which sect. 9, sub-sect. 37, is not applicable, the landowner to whom indemnity is due would be bound, instead of bringing an action, to proceed by way of *mandamus* to the company to give notice, make an offer, and appoint an arbitrator, with a view to arbitration under the Act,—a point on which there are observations at the end of the judgment in *Jones* v. *Stanstead Railway Co.*, which ought not, in their Lordships' opinion, to be held conclusive, if that question should hereafter arise. It is also unnecessary to consider whether the objection "that the only remedy the appellants had was by arbitration, under the statute, and not by action," was taken in sufficient time.

Their Lordships do not in this case proceed upon the assumption that the consent of the Lieutenant-Governor and Council of Quebec was not duly given to the use made by the Railway Compony of the foreshore of the river St. Charles for the construction of their works. If it were necessary to determine that point, the facts would appear to their Lordships rather to justify the presumption, that all necessary consents of all the public authorities of the Province were given; and any other view would seem to be inconsistent with the first recital in the