

able precautions. He apparently never attempted to establish his position by lunar observations or other modes known to navigators. It cannot, therefore, be said that he took reasonable precautions.

It has been argued that the masters of the vessels engaged in sealing cannot be expected to be scientific navigators, and to be able to ascertain their position with accuracy. This is no doubt true, but when owners entrust valuable property to men without the necessary qualifications the responsibility is theirs, and if they choose to run this risk they cannot relieve themselves by pleading want of knowledge in their servants.

I therefore adjudge the "Viva" and her equipment to be forfeited, and allow her the same relief on payment of £400 and costs within thirty days.

*Davie, Pooley & Luxton*, for the Crown.

*Rodwell & Irving*, for the ship.

## SUPREME COURT.

DRAKE, J.]

[Jan. 31.

CANADIAN PACIFIC R. CO. v. PARKE AND PINCHARD.

*Reasonable use of legal right detrimental to others.*

The defendants were by right of pre-emption owners of Lot 561, Group 1, Kamloops Division of Yale District. They recorded 300 inches of water and used it in irrigating their fields. Without irrigation the farm of the defendants was worthless, owing to the arid character of the soil and the height at which it was situated. The railway runs along the east bank of the Thompson River contiguous to the land of the defendants. The defendants irrigated land on a high bench above the railway. The soil was of a porous quality, consisting of gravel underlying a slight deposit of sandy loam, and below the gravel was a bed of silt. At a point on the banks of the Thompson, above and below the plaintiff's line, a large slide was formed by water percolating through the soil and causing the earth to slip. This slide was continually moving towards the river, forcing the rails out of position.

The jury found that the substantial cause of the injury done to the plaintiffs' railway was the water brought on to the lands by the defendants for irrigation purposes; and on that finding, the plaintiffs moved for judgment, asking that the defendants be restrained from further damaging the plaintiffs' line by irrigating the lands in question.

*Held*, that the Legislature in authorizing the bringing of water on the lands for agricultural purposes must be taken to have contemplated the mischief which might arise from a reasonable use of such power, and to have conceded it: *National Telephone Company v. Baker* (1893), 2 Ch. 186.

Injunction refused and plaintiffs' action dismissed.

*Davis, Q.C.*, for plaintiff.

*Wilson, Q.C.*, for defendants.