

the Quebec Act of 1880, was lately considered by the Judicial Committee in the case of the *Corporation of Parkdale v. West*, (12 App. Ca., p. 602). In that case certain railway companies had lowered the roadway of a public street in front of the plaintiff's property at Toronto, so as to deprive him of the access to the street which he had previously enjoyed; and it was held to be a condition precedent of the right to exercise, as against him, the powers of the Act, that the company should have taken the prescribed means of ascertaining the compensation due the plaintiff, and have paid, tendered, or deposited the amount of such compensation, which they had not done; and under those circumstances, the execution of the work was held to be unlawful, and to give the plaintiff a right of action for damages. The nature of the injury done in the present case was similar, with the difference only that there the access obstructed was to a street, here to a river. In both cases alike, the damage to the plaintiff's property was a necessary, patent, and obvious consequence of the execution of the work.

That authority appears to their Lordships to be in point, unless there is some sufficient reason why they should not follow it. It has been suggested that it is in conflict with an earlier decision of this tribunal, in *Jones v. Stanstead Railway Company* (L.R., 4 P.C., p. 98), and that the point did not require determination in the *Parkdale* case, in which no maps or plans had been deposited, and the execution of the works of the Railway Companies was, on that ground, clearly *ultra vires*.

The Lords of the Committee who decided the *Parkdale* case thought the decision reconcilable with *Jones v. Stanstead Railway Co.*; and, although it is true that the other ground mentioned might have been sufficient to dispose of that appeal, both points were taken in the argument, and the judgment was pronounced upon both. The words of section 9, sub-sections 11 and 28, of the Act by which the present case must be governed, are the same as those of the corresponding Act on which the *Parkdale* case depended; they deal, *uno flatu*, with compensation for

land taken, and for damage to land not taken; and it cannot be denied that their natural *prima facie* import is to make the ascertainment, and payment, tender, or deposit of compensation a condition precedent of "*vesting in the Company the power*," in the one case to take "possession of the land," and in the other to "exercise the right, or "to do the thing for which the compensation "shall have been awarded or agreed upon." Their Lordships find it very difficult to say that these words operate as a condition precedent in the one case but not in the other, at least when the damage to land not taken is (as in the present and in the *Parkdale* case) a necessary, patent and obvious consequence of the construction of the works. It may well be that if the statute gives a right to compensation for damage of a different kind, which, at the time when the company had to give its notices and take the other necessary steps to enable it to execute its works, could not be foreseen, a different rule must be applicable, by necessary implication from the provisions, on the one hand entitling the landowner to compensation, and authorizing, on the other, the construction of the works. It could not be meant, in such a case, to nullify those provisions, against either the landowner or the company, by making them dependent upon impossible conditions. But it does not follow that conditions, precedent according to their natural import, should not be held to be such as to all those matters to which their application, as conditions precedent, is reasonably practicable.

This does not appear to their Lordships to be contrary to anything really decided in the case of *Jones v. Stanstead Railway Co.* The Judicial Committee had to deal in that case with a claim of the same kind which the House of Lords, in *re Hammersmith Railway Co. v. Brand*, determined to be incompetent under the English Acts; a claim to compensation for deterioration in value of a bridge over the river Richelieu belonging to the plaintiff, by reason of the company having carried their railway across that river by another bridge near the plaintiff's. "This injurious effect" (said their Lordships) "does not arise necessarily from the construc-