

TITLE TO LAND.

Jurisdiction of Division Courts.
—See DIVISION COURTS, 4.

TRESPASS.

See MALICIOUS ARREST AND PROSECUTION, 2—NEGLIGENCE, 3—SALE OF GOODS—TIMBER.

TROVER.

See SALE OF GOODS.

UNDUE INFLUENCE.

See PRINCIPAL AND AGENT, 2.

ULTRA VIRES.

See CONSTITUTIONAL LAW, 2—MUNICIPAL CORPORATIONS, 7.

VERDIOT.

General.—See MASTER AND SERVANT, 2.

WAIVER.

See PUBLIC SCHOOLS.

WARRANT.

See MALICIOUS ARREST AND PROSECUTION, 2.

WATER AND WATERCOURSES.

Diversion of Watercourses by Railway Company—Remedy—Compensation—Arbitration Clauses of Rail-

way Act, 51 Vict. ch. 29 (D).—*Plan—Riparian Proprietors—Infringement of Rights—Cause of Action—Damages—Permanent Injury—Definition of Watercourse—Permanent Source—Surface Water—Misdirection—New Trial.*—By sec. 90 (h) of the Railway Act of Canada, 51 Vict. ch. 29, a railway company have power to divert any watercourse, subject to the provisions of the Act; but in order to entitle themselves to insist upon the arbitration clauses of the Act, they must, having regard to secs. 123, 144, 145, 146, and 147, shew upon their registered plans their intention to divert.

The defendants built an embankment which entirely cut off the plaintiff's access to the water of a stream by diverting it from his farm:—

Held, that the diversion, not the damage sustained therefrom, gave him his cause of action; and the proper mode of estimating the damages was to treat the diversion as permanent and to consider its effect upon the value of the farm.

McGillivray v. Great Western R. W. Co., 25 U. C. R. 69, distinguished.

The alleged watercourse was a gully or depression created by the action of the water. The defendants disputed that any water ran along it, except melted snow and rain water flowing over the surface merely. The plaintiff contended that there was a constant stream of water, only, if ever, ceasing in the very dry summer weather:—

Held, per STREET, J., that without a permanent source, which, however, need not necessarily be absolutely never failing, there cannot be a watercourse; and that, as the attention of the jury was not expressly called to the difference in effect between the occasional flow of sur-

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