

The Legal News.

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EXCHEQUER COURT OF CANADA.

Burbidge, J. }
September 17, 1891. }

THE QUEEN v. BARRY et al.

Injurious affection of land—Construction of a railway siding on a side-walk contiguous thereto—Measure of damages.

Where lands are injuriously affected, no part thereof being taken, the owners are not entitled to compensation under The Government Railways Act, 1881, unless the injury (1) is occasioned by an act made lawful by the statutory powers exercised, (2) is such an injury as would have sustained an action but for such statutory powers, and (3) is an injury to lands or some right or interest therein, and not a personal injury, or an injury to trade.

The construction of a railway siding along the side-walk contiguous to lands whereby access to such lands is interfered with, and the frontage of the property destroyed for the uses for which it is held (in this case for sale in building lots), is such an injury thereto as will entitle the owner to compensation.

Quære: Whether the rule that compensation in cases of injurious affection only must be confined to such damages as arise from the construction of the authorised works, and must not be extended to those resulting from the user of such works, is applicable to cases arising under The Government Railways Act, 1881.

Burbidge, J. }
September 21, 1891. }

THE QUEEN v. FISHER.

Interference with public right of navigation—Injunction to restrain—Jurisdiction of Exchequer Court—Right to authorize such interference since the union of the Provinces—Position of Provincial Legislatures with respect thereto—Right of Federal authorities to exercise powers created prior to the Union.

An information at the suit of the Attorney-General to obtain an injunction to restrain defendant from doing acts that interfere with and tend to destroy the navigation of a public harbor is a civil and not a criminal proceeding, and the Exchequer Court has concurrent original jurisdiction over the same under 50-51 Vict. c. 16, s. 17 (d).

(2) A grant from the Crown which derogates from a public right of navigation is to that extent void unless the interference with such navigation is authorized by Act of Parliament.

(3) The Provincial legislatures, since the union of the provinces, cannot authorize such an interference.

(4) Wherever by act of the Provincial legislature passed before the Union, authority is given to the Crown to permit an interference with the public right of navigation, such authority is exercisable by the Governor-General and not by the Lieutenant-Governor of the Province.

Burbidge, J. }
September 21, 1891. }

ARCHIBALD v. THE QUEEN.

Contract—Construction—Implied promise—Breach thereof.

The suppliant had a contract to carry Her Majesty's mails along a certain route. In the construction of a Government railway the Crown obstructed a highway used by the suppliant in the carriage of such mails, and rendered it more difficult and expensive for him to execute his contract. After the contract had been fully performed by both parties the suppliant sought to maintain an action by petition of right for breach thereof on the ground that there was an implied undertaking on the part of the Crown in making such contract that the Minister of Railways would not so exercise the powers vested in him by statute as to render the execution of the contract by the suppliant more onerous than it would otherwise have been.

Held, that such an undertaking could not be read into the contract by implication.