

Justice Ramsay dissented from the judgment in appeal. (See 9 Leg. News, 218.)

The judgment of their Lordships was delivered by

THE EARL OF SELBORNE:—

The appellants in this case are a Canadian railway company, against whom an action was brought by the respondents, tanners at Quebec, in October, 1883. The respondents carried on their business upon riparian land belonging to them, which had a frontage of considerable length to the St. Charles, a tidal navigable river within the limits of the harbor of Quebec. The appellants in 1883 made their railway upon the foreshore of that river, by means of an embankment, extending along the entire length of the respondents' frontage, not, however, taking any part of the respondents' land; and in this embankment they left one opening, 15 feet wide and 12 or 13 feet high, opposite to the tannery, through which the river was accessible at low tides and at some (but not all) high tides. With that exception, they cut off all access to the water from the respondents' land, which, before those works were executed, was always accessible for boats at high water along its whole frontage. The appellants also made another opening, just outside the boundary of the respondents' land, and opposite to the end of a public street, through which the respondents might, except at certain high tides, have found access by means of that street to the water. No compensation or indemnity was paid or offered by the appellants to the respondents; who brought their action, complaining that they had been unlawfully shut out from their access to the river, and asking for damages, and that the company might be compelled to demolish and remove the obstruction.

On the 26th of March, 1885, Mr. Justice Casault, of the Superior Court of Lower Canada, gave judgment for the plaintiffs, not ordering the demolition or removal of the railway company's works, but giving \$5,500 as damages for the permanent deterioration and diminution in value of the plaintiffs' land, independently of the trade carried on upon it. On appeal, the Court of Queen's Bench for Lower Canada, by a majority of four out of five judges, reversed that judg-

ment. The grounds of reversal, as stated on the face of the order, were: that the company had not taken any part of the plaintiffs' land, nor caused it any physical damage ("dommage matériel"), but "had only by constructing their railway between the plaintiffs' property and the river, deprived them of the power, which they had previously had, of communicating freely with the river, and of the advantages of the navigation for the purposes of their business; and that this power of access to the river was not an exclusive advantage, but, on the contrary, might be exercised by all the Queen's subjects, and conferred upon the plaintiffs no more than indirect advantages, without giving them the right to an indemnity for the loss of those advantages."

The plaintiffs appealed to the Supreme Court of Canada, which, on the 20th of June, 1887 (also by a majority of four out of five judges), reversed the judgment of the Court of Queen's Bench, and restored and affirmed that of the Superior Court of Lower Canada. The present appeal to Her Majesty-in-council is from that judgment.

It appears clear to their Lordships that the judgment of the Court of Queen's Bench, which the Supreme Court reversed, could not be maintained upon the grounds assigned for it, unless the rights which belong by the law of Lower Canada to the owners of riparian lands, on the banks of a river which is not navigable, are denied to them when the river is (as in this case) navigable and tidal. Unless that proposition can be established, what was said by Lord Cairns in the case of *Lyon v. Fishmongers Co.* (1 App. Ca. 671) must be as true and as applicable in Quebec as in England. Distinguishing the public right of navigation from the rights belonging to the owner of the riparian land, as such, His Lordship said: "When this right of navigation is connected with an exclusive access to and from a particular wharf, it assumes a very different character. It ceases to be a right held in common with the rest of the public, for other members of the public have no access to or from the river at the particular place, and it becomes a form of enjoyment of the land and of the river in connection with the land, the disturbance of which may