

Held, 1. The recital was clearly a declaration by Parliament that the work it authorized was a work for the general benefit of Canada within sub-s. 10 (c.) of s. 92 B.N.A. Act, and that the powers granted by s. 2 thereof made the work authorized, a work or undertaking extending beyond the limits of the Province within sub-s. 10 (2.) and therefore excluded it from the jurisdiction of the Legislature of the Province.

2. The power given to make the terminus of a canal in the words "above or south of the Whirlpool" did not restrict the company to the selection of a point about or near the Whirlpool and that to construe them that a point two and one half miles south of it was not within the language used would be to construe them as if they had been above and south.

3. As the average depth of the canal was seventeen and one half feet the company were within their rights in claiming to expropriate one hundred yards in width under s. 8 of the Dominion Railway Act, R.S.C. c. 109, made applicable to the company by s. 29 of their own Act. 50 & 51 Vict. c. 120 (D.).

4. The company had not abandoned their work as the time for completion had been extended for six years from July 7, 1900, by 63 & 64 Vict. c. 113 (D.). Judgment of BRITTON, J., affirmed.

H.S. Osler, K.C. and *Britton Osler*, for the appeal. *Walter Cassels, K.C.*, and *F.W. Hill*, contra.

From Osler, J.A.] CLERGUE v. PRESTON. [June 29.
Vendor and purchaser—Offer to sell—Purchaser pendente lite—Certificate of lis pendens—Registration—Specific performance—Delay—Damages.

An appeal and cross appeal from the judgment of OSLER, J.A., reported sub. nom. *Clergue v. McKay* 39 C.L.J. 528, dismissed with costs.

Watson, K.C., for defendant's appeal. *James Bicknell, K.C.*, for plaintiff's cross appeal.

From Boyd, C.] IN RE McCRAE AND VILLAGE OF BRUSSELS. [June 29.
Municipal Corporations—Local improvement by-law—Personal service of notice—Waiver—Court of Revision.

It is a fatal objection to the validity of a municipal by-law authorizing a work as a local improvement, that notice of the intention of the council to undertake the work was not given to the owners of the properties benefited thereby, by personal service, etc., as provided by s. 669 (1a) of the Municipal Act, 1903.

Seemle, that an owner might waive such notice; but held, that in this case there was no conduct amounting to waiver.

Seemle, also, that while the direction of the statute (s. 64 of the Assessment Act, R.S.O. 1897 c. 224), that the members of the Court of