

British Columbia.]

[Feb. 20.]

CITY OF VANCOUVER v. CANADIAN PACIFIC R.W. CO.

44 Vict., c. 1, s. 18—Powers of Canadian Pacific R.W. Co. to take and use foreshore—B.C. Statutes 49 Vict., c. 32, City of Vancouver—Right to extend streets to deep water—Crossing of railway—*Jus publicum*—Interference with—Injunction.

By section 18, 44 Vict., c. 1, the Canadian Pacific Railway Co. "have the right to take, use, and hold the beach and land below high-water mark in any stream, lake, navigable water, gulf, or sea, in so far as the same shall be vested in the Crown, and shall not be required by the Crown to such extent as shall be required by the company for its railway and other works as shall be exhibited by a map or plan thereof deposited in the office of the Minister of Railways."

By 51 Vict., c. 6, s. 5, the location of the company's line of railway on the foreshore of Burrard Inlet, at the foot of Gore avenue, Vancouver city, was ratified and confirmed.

The Act of Incorporation of the city of Vancouver vests in the city all streets, highways, etc., and in 1892 the city began the construction of works extending from the foot of Gore avenue, with the avowed object to cross the railway track at a level and obtain access to the harbour at deep water.

On an application for an injunction to restrain the city corporation from proceeding with their work of construction and crossing the railway;

Held, affirming the judgment of the court below, that the *jus publicum* of every riparian owner to get access to and from the water at his land is subordinate to the rights given to the railway company by statute on the foreshore in question, and, therefore, the injunction was properly granted.

Per KING, J.: When any public right of navigation is interfered with, it should be maintained and protected by the Attorney-General for the Crown.

Appeal dismissed with costs.

D. McCarthy, Q.C., and Hamersley for appellant.

Robinson, Q.C., for respondent.

BURBIDGE, J.]

[Feb. 19.]

KUYPER v. VAN DULKEN.

Trade mark—Registered and unregistered mark—Jurisdiction of court to restrain infringement—Exactness of description of device or mark—Use of same by trade before registration—Effect of—Rectification of register.

(1) The Exchequer Court has no jurisdiction to restrain one person from selling his goods as those of another, or to give damages in such a case, or to prevent him from adopting the trade label or device of another, notwithstanding the fact that he may thereby deceive or mislead the public, unless the use of such label or device constitutes an infringement of a registered trade mark.

(2) In such a case the question is not whether there has been an infringement of a mark which the plaintiff has used in his business, but whether there has been an infringement of a mark as actually registered.

(3) When any one comes to register a trade mark as his own, and to say to the rest of the world, "Here is something that you may not use," he ought to make clear to every one what the thing is that may not be used.