

work, then also there is no case for compensation; established by *Brand's* case, L. R. 4 H. L. 171. iii. Loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto, is not by itself a proper subject for compensation; established by *Ricket's* case, L. R. 2 H. L. 175. iv. The obstruction, by the execution of the work, of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation; *Chamberlain's* case, 2 B. and S. 617; *McCarthy's* case, L. R. 7 H. L. 243." Lord O'Hagan and Lord Blackburn declare the present case undistinguishable from *McCarthy's* case; they also express entire concurrence with Lord Selborne. Lord Blackburn declares that it is not easy, and that to his mind it was not possible, altogether to reconcile the above mentioned decisions of the House. He concurred, however, in the decision of the other Lords as regards the present case. He says, as to *Ogilvy's* case, "I think the ground on which both the Lord Chancellor (Cranworth) and Lord St. Leonards decided in *Caledonian Ry. Co. v. Ogilvy*, 2 Macq. 229, was that no compensation is given for damages occasioned by the works of the company, if the thing done was one for which, if done without any statutable power, no action could have been maintained, however certain it may seem that it would never have been done but for the creation of the company, which, notwithstanding Lord Westbury's strong opposition, is, I think, now settled to be correct law. Next, that though an action would have lain for the thing done, yet no compensation is given unless the ground of action would be that lands, or some interest in lands, was injuriously affected, which also is, I think, now settled law, and they thought that the pursuer could not have maintained an action at all, or, if he could, that it would have been an action in respect of personal loss or inconvenience, and not an

action in respect of an injurious affection of his land or house." Speaking of *McCarthy's* case, L. R. 7 H. L. 243, he says:—"I think this decides that the right of access by a public way to land, is a right attached to the land, and that if an obstruction to the public right of way occasions particular damage to the owner or occupier of that land by diminishing its value, the action which he might bring for that particular damage would be an action for an injury in respect of the land;" and he adds, "Now I do not dispute that an obstruction to a highway may be so distant from lands that no one could reasonably find that the lands were appreciably damaged by the obstruction, but I think it unnecessary to try to give a definition of that distance; it is enough to say that in this case the distance is not too great."

PROPER MODE OF DEALING WITH RECORDED CASES.

There is a *dictum* of Lord Selborne on this point, at p. 275, which seems noticeable; he says, "The reasons which learned Lords who concurred in a particular decision may have assigned for their opinions, have not the same degree of authority with the decisions themselves. A judgment which is right, and consistent with sound principles, upon the facts and circumstances of the case which the House had to decide, need not be construed as laying down a rule for a substantially different state of facts and circumstances, though some propositions, wider than the case itself required, may appear to have received countenance from those who then advised the house."

The next case requiring notice is the last in this number of the appeal cases, viz., *Mussoorie Bank v. Raynor*, p. 321.

WILL—PRECATORY TRUSTS.

In this case it appeared that a testator made his will thus: "I give to my wife the whole of my property, both real and personal, including" [government promissory notes, bank shares, a house, plate, money, furniture, carriages, horses, etc.] "feeling confident