

employed at the time of her seizure in contravention to 54-54 Vic. ch. 19, sec. 1, subsec. 5.

Appeal allowed with costs.

McCarthy, Q. C., & Eberts, Q. C., for appellants.

Hogg, Q. C., for respondent.

February 20, 1894.

THE CORPORATION OF THE CITY OF VANCOUVER v. THE CANADIAN
PACIFIC RAILWAY COMPANY.

British Columbia.]

44 Vic. c. 1, sec. 18—*Powers of Canadian Pacific R'y Co. to take and use foreshore*—*B. C. Statutes, 1886, 49 Vic. c. 32, City of Vancouver—Right to extend streets to deep water—Crossing of railway—Jus publicum—Interference with—Injunction.*

By section 18, 44 Vic., 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 Vic., c. 6, sec. 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 &c., and in 1892, the city began the construction of works extending from the foot of Gore Avenue, with the avowed object to cross the railroad 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 railroad 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., & Mr. Hammersley for appellant.

Robinson, Q. C., for respondent.