

deposit, cut away the shelving bank of Dry Lake and rendered it inaccessible for cattle.

Held, Fitzpatrick, C.J., dissenting, that cutting away the bank at this place without providing another suitable watering-place with a proper way leading thereto was an unwarranted interference with the rights of F., and the fact that the company purchased the land for the purpose of digging marl did not give them a right to extinguish F.'s easement of passage for his cattle.

Appeal dismissed with costs.

Tilley, K.C., and *Northrup*, K.C., for appellants. *Mikel*, K.C., for respondent.

Province of Nova Scotia.

COUNTY COURT.

Forbes, J.]

REX v. HATT.

[27 D.L.R. 638.]

Notice of appeal from summary conviction—"Party aggrieved"—Who may appeal.

A notice of appeal given under Cr. Code, sec. 750, by the person convicted and which shews on its face that he appeals as such from the summary conviction made against him, need not specifically state that he is the "person aggrieved" (Cr. Code, sec. 749).

2. *Highways—Removing obstruction—Fence placed by municipal authority.*

The defendant charged under Cr. Code, sec. 530, with breaking down a fence erected across a road which had been a public highway, may set up in answer that the proceedings by which the Municipal Council purported to order the diversion of the highway and the closing of that portion thereof were irregular and invalid, and on its so appearing is entitled to have the charge dismissed by reason of his lawful right to remove the obstruction.

McQuarrie v. St. Mary's, 17 N.S.R. 497, referred to.

Arthur Roberts, for defendant, appellant. *D. F. Matheson*, for prosecutor, respondent.

ANNOTATION ON THE ABOVE CASE FROM D.L.R.

The sections of the Criminal Code specially dealing with notices of appeal in summary conviction matters are secs. 749 and 750.