

Province of British Columbia.

SUPREME COURT.

Full Court.]

[Jan. 20.

LAIDLAW v. CROW'S NEST SOUTHERN RY.

Railways—Fire on right of way spread to adjoining property—Condition of right of way—Origin of fire—Burden of proof.

Fire was seen smouldering in a dry stump on a high bank, about level with an engine smoke stack, on defendant company's right of way. Evidence was given that one engine passed the place ten hours and another six hours previously. Evidence also went to shew that the right of way contained inflammable material, and that there were other fires, whose origin was unknown, in the vicinity of the right of way. The fire in question was first seen by some of plaintiff's workmen, when it was insignificant in extent, and the weather was calm, but the wind rising, the fire spread and burnt plaintiff's mill property and a large extent of timber area.

Held, on appeal (affirming the finding of IRVING, J., at the trial, dismissing the action), that there was no evidence to connect the setting of the fire by sparks from the defendant company's engines.

S. S. Taylor, K.C., and *Lucas*, for plaintiff, appellant. *MacNeill*, K.C., for defendants, respondents.

Clement, J.]

[Feb. 9.

BISHOP OF NEW WESTMINSTER v. VANCOUVER.

Property injuriously affected—Lowering grade of street—Right of owner of abutting property to take arbitration proceedings—Vancouver Incorporation Act, 1900, s. 133, sub-ss. 5 and 9.

The owner of property abutting on a street, the grade of which has been lowered by the corporation, is entitled to take arbitration proceedings to determine whether such property has been injuriously affected.

L. G. McPhillips, K.C., for applicant. *J. K. Kennedy*, for corporation.