

DOMINION LAW REPORTS

BRITISH COLUMBIA EXPRESS Co. v. GRAND TRUNK PACIFIC R. Co.

Judicial Committee of the Privy Council, The Lord Chancellor, Lord Buckmaster, and Lord Atkinson. October 15, 1918.

IMP.
P. C.

WATERS (§ 1 C—52)—OBSTRUCTION OF NAVIGATION—BRIDGE—ACTION-ABILITY.

The construction of a low level bridge across a navigable river, without providing necessary facilities for navigation, does not give rise to an action for wrongful obstruction to navigation, if, in fact, the bridge is not the real cause of non-user of the river for navigation.

[*Grand Trunk Pacific R. Co. v. B.C. Express Co.* (1916), 38 D.L.R. 29, 55 Can. S.C.R. 328, affirmed.]

APPEAL from the judgment of the Supreme Court of Canada reversing the judgment of the Court of Appeal for British Columbia, (1916), 27 D.L.R. 497, in an action for damages for unlawfully obstructing navigation by the construction of a low level bridge. Affirmed.

Statement

The judgment of the Board was delivered by

LORD BUCKMASTER:—In the view their Lordships take of this case, the only question that arises for determination is whether a bridge built by the Grand Trunk Pacific R. Co. (who are respondents on the appeal), over the Fraser River in the Cariboo District of British Columbia, known as Dome Creek Bridge, Mile 142, caused such special and peculiar injury to the appellants as to entitle them to maintain an action for an injunction and recovery of damages against the respondents. The appellants are a company incorporated by special Act of the Legislature of British Columbia, with, among other objects, that of conducting passenger and freight service on the Fraser River. In pursuit of this purpose they constructed, in the year 1912, at a cost of \$65,000, a steamer specially designed for traffic on the upper part of the Fraser River between Fort George and Tête Jaune Cache, and built a warehouse for the goods at Tête Jaune Cache. The state of the river only permitted a seasonal use of these upper reaches. In ordinary circumstances the season would commence in May and end towards the latter part of August, and then again, in favourable conditions, would open towards the end of September and continue until the end of October. In 1913 the season opened on

Lord
Buckmaster.