

B.C.]

[Dec. 9, 1910.]

VANCOUVER, VICTORIA & EASTERN RY. CO. v. McDONALD.

Railway—Right of way—Expropriation—Delay in notice to treat—Property injuriously affected—Compensation—Mandamus.

The approval and registration of plans, etc., of the located area of the right-of-way, under the provisions of the Railway Act, and the subsequent construction and operation of the line of railway along such area, do not render the railway company liable to mandamus ordering the expropriation of a portion of the lands shewn within such area which have not been physically occupied by the permanent way as constructed. FITZPATRICK, C.J. and DAVIES, J., dissenting.

Appeal allowed with costs.

Ewart, K.C., for appellant. G. E. Martin, for respondent.

Exch. Court.]

[Dec. 23, 1910.]

CAP ROUGE PIER CO. v. DUCHESNAY.

Prescription—Interruption—Acknowledgment of title—Uncertainty.

The appellants claimed prescriptive title of a part of the bed of a small river on which D., the respondents' auteur, was a riparian owner. D. had leased lands on the banks of the river to the appellants which, it was alleged, included the property in dispute. In answer to the claim of prescriptive title the respondents produced, as their only evidence of interruption of prescription, a letter from the appellants to D. enclosing a cheque in payment of "use of your interest in Cap Rouge River this year," indorsed by D. acknowledging receipt of the funds "with the understanding that the navigation of the river is not to be prevented."

Held, reversing the judgment appealed from, 13 Ex. C.R. 116, GIROUARD and IDINGTON, JJ., dissenting, that as D. had an interest in other portions of the river, the memorandum was too indefinite to serve as an interruptive acknowledgment defeating the title claimed by the appellants. Appeal allowed with costs.

G. G. Stuart, K.C., for appellants. Flynn, K.C., and Paquet, for respondents. Arthur Fitzpatrick, for Trans. Railway Commissioners.