
 FAIRBANKS *v.* THE QUEEN.

1895

Petition of right—Public work—Injury to property by—Obstruction of canal—Use of canal.

*Feb. 19.

*May 6.

APPEAL from a decision of the Exchequer Court of Canada (1) in favour of the Crown on a petition of right.

The appellant, claiming to be owner of the Shubenacadie Canal in Nova Scotia, brought suit by petition of right to recover damages from the Crown for expropriating part of his property in construction of public works and for obstructing the use of the canal. The learned judge of the Exchequer Court, without deciding as to the title of appellant, which was disputed, held that expropriation had not been proved and refused damages for obstruction on the ground that the canal was not open for traffic. The judgment included a declaration that appellant was entitled, whenever it should be so opened and the traffic obstructed by the public work, to have the obstruction removed.

The Supreme Court affirmed the judgment of the judge of the Exchequer Court.

Appeal dismissed with costs.

The appellant in person.

Parker for the respondent.

*PRESENT :—Sir Henry Strong C.J., and Fournier, Taschereau, Gwynne and King JJ.