

LOWER CANADA.—In Appeal, 1834.—NEWTON et al.
Appellants, and Roi, Respondent.

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Accession to a lot of ground situate upon the borders of the River St. Lawrence, by alluvial deposits, belongs to the riparian proprietor.

REID, CHIEF JUSTICE.—This is an *action négatoire* by which the appellants, plaintiffs in the court below, complain that the respondent, defendant in the action, their neighbour, claims and exercises a right of way and passage over and upon two certain lots of ground belonging to them as described in their declaration: and further that the said defendant hath made openings in his buildings having a direct view upon the property of the appellants: and also that he hath erected a gallery with stairs, which encroach upon the said property; and thereupon concluding that the said lots of ground be declared free and clear of the said servitude, and the said defendant forbidden to exercise the same in future: and further that the said openings, be closed up, and the said gallery and stairs removed.

To this action the respondent put in a plea of peremptory exception, containing various points of defence, namely, denying the right and title of the appellants to the extent of ground they claim, and the validity of the letters patent they set out to convey to them that extent of ground, setting up a right to the same by a title in himself, alledging that the ground in question was a public street, and open as of right all to the King's subjects, and had been used by the respondent as a common passage for forty years: that the public had and have a right to a communication by and through this ground as it adjoins a navigable river: and lastly claiming a right by prescription, founded on a possession of thirty years, and a continued use of a free and open passage thereon.