

Sup. Ct.

Ct. Ap.]

NOTES OF CANADIAN CASES.

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of the railway bridge built over the Richelieu river and the railway track belonging to appellant's company within the limits of the town of St. Johns, are exempt from taxation under section 326 & 327 of 40 Vict. ch. 29, P. Q.

(2) That a warrant to levy rates upon such property for the years 1880-83 is illegal and void, and that a writ of injunction is a proper remedy to enjoin the corporation to desist from all proceedings to enforce the same.

As to whether the clause in the Act of Incorporation of the town of St. Johns, P. Q., extending the limits of said town to the middle of the Richelieu river, a navigable river, is *intra vires* of the legislature of the Province of Quebec, the Supreme Court of Canada affirmed the holding of the court below that it was *intra vires*.

Appeal allowed with costs.

Church, Q.C., for appellant.

Rohidoux, Q.C., for respondent.

COURT OF APPEAL.

RATTE V. BOOTH.

Riparian proprietor—Navigable stream—Reservation in Crown grant—Statute of Limitations.

A certain water lot on the river Ottawa was granted by the Crown to A. The description in the patent covered the lot and two chains distant from the shore, but there was a reservation of "all mines of gold and silver, the free uses, passage, and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found in or under, or be floating through or upon any part of the said parcel of land hereby granted." A. granted to P. the lot with certain exceptions, but including the part covered by water, and P. in 1867 granted to the plaintiff, part of the lot down to and bounded by the water's edge. The plaintiff had been on the place on contract for purchase for a year before the conveyance, and had built a dwelling-house and a boat-house floating wharf, the latter extending at the time sixteen feet outwards from the bank into the stream, and being afterwards enlarged so as to extend forty feet into the stream. By means of this wharf the plaintiff carried on

business as a letter of pleasure boats, and brought this action complaining of injuries to his business, and to him as a riparian proprietor by the deposit of refuse from the defendant's mills in the water in front of his land, hindering access from his wharf to the actually navigable part of the river, and fouling the waters of the stream upon or in contact with his land.

It was contended that the plaintiff had no title as a riparian proprietor, as P. owned the portion of the water lot outside of the plaintiff and could bar him from access to the river, and also that the reservation in the patent was repugnant to the rest of the grant, which should be read as giving the whole lot there specified.

Held (affirming the judgment of the Chancery Division, 11 O. R. 491) BURTON, J.A., dissenting, that the plaintiff was entitled to recover damages for the injuries complained of.

PER HARTY, C.J.O., and OSLER, J.A.—For the purpose of this suit the plaintiff is to be regarded as a riparian proprietor. How can wrong-doers in no privity with P. raise the question of his right to block the plaintiff from the water. The Crown, owning the bed of this navigable river, could grant a portion thereof, reserving the public right of user, which is the meaning of the reservation in the patent.

PER PATTERSON, J.A.—The terms of the reservation in the patent do not point to the public right of navigating the waters. The patent cannot be construed as reserving the use of the waters in any sense, or for any purpose different from the reservation of the mines; and the mines cannot be treated as reserved for the public benefit except in a sense foreign to the present discussion. The public right to the use of navigable waters is the right of each individual, and stands on a different footing—it does not come by grant from the Crown, but is a paramount right to be curtailed only by act of the legislature. A public easement cannot be the subject of an exception in favour of the grantor. If the exception were construed as perpetuating the *jus publicum*, it would be repugnant to the grant in its operation under the statute 23 Vict. ch. 2, s. 35, and would be void. The true reading of the patent is that the reservation touching navigable waters is applicable only to the