Per BOYD, C. The effect of the patent is to convey the dry land and the land covered by water two chains out, subject to the rights of the public in the Ottawa as a navigable river. As to the land bordering on the water the plaintiff is a riparian proprietor, and has the right to have the water in front of him open for all navigable purposes, and to enjoy it free from from extraordinary impurities. Even if the land under the water is vested in the plaintiff's grantor he could not derogate from his grant to the water's edge by polluting, filling up, or otherwise cutting off his grantee from the beneficial enjoyment of the river, still less can the defendants be protected in their wrong-doing.

The grant to the patentee of the river-bed two chains out carries, as parcel of it, the water thereon, so that the bed, the bank, and the water are vested as private property in the patentee, subject to the servitude of a common public right of way for the purposes of navigation.

The term "navigable waters" in the patent is to be construed as referring to water of such a depth and situation as is, according to the reasonable course of navigation in the particular locality, practically navigable. The patentee may rightfully use and occupy the land covered by water, but only so much as will not interfere with the public easement; but every encroachment on the water will be at his peril if it is proved that he is guilty of a public nuisance.

There was no evidence to shew that the plaintiff's structure (boat-house) is a nuisance; and whatever may be the nature of the plaintiff's title or occupancy of the water, it is enough that his possession and business are, as against the public, legitimate in order to entitle him to recover as against a wrong-doer.

Even if the plaintiff's place of business was proved to be a nuisance because it invaded the navigable waters of the river, it does not follow that that disposes of the plaintiff's claim for an injunction and damages, as he might well invoke the maxim, *Injuria non excusat injuriam.*

Per FERGUSON, J. There is nothing either on the face of the conveyance to the plaintiff, or in the surrounding circumstances at the time of its execution, to indicate that the grantor intended, if intention could now be of any consequence, to reserve to himself the part of the lot under the water, or any right or title to it The contrary would rather appear, from his being in possession at the time, and having a boat-house situated as the present one is.

By the conveyance to the plaintiff he obtained title to the lands in the stream embraced in the two chains from the bank, but subject to the right of navigation expressed in the patent.

What the plaintiff has done is no nuisance, nor is it shewn that he has caused any injury to navigation, and he is entitled to redress for the grievances of which he complains. Even if the plaintiff is not the owner of the land under the water, he is entitled to redress for the injuries he has sustained as a riparian proprietor merely. *Ratté* v. *Booth*, 491.

WAYS.

Sidewalk.]—*See* MUNICIPAL LAW, 1.