

Sup. Ct., N.B.] BURKE v. NILES—BECHERVAISE v. GT. WESTERN R.W. Co. [Eng. Rep.]

ch. 21, sec. 49; 4 Bac. Abr. 85; Angell on Watercourses, secs. 44, 56, 57, 157, 158. The exception of the "mines and minerals" showed that it was the intention of the Crown to grant the soil.

RITCHIE, C. J., delivered the judgment of the court (after stating the grants under which the parties claimed)—The principal questions arising in this case are: 1st. Whether the plaintiff's grant extends to the margin of the lake, or was limited to the stake described as standing on the bank? 2nd. Whether the plaintiff, as the riparian proprietor, was entitled to any accretion from the lake in front of his own land? and 3rd. Whether the grant to the defendant conveyed the soil of the lake or merely the water?

In Angell on Watercourses, sec. 26, it is said: "If a boundary is described as running to a monument standing on the bank, and from thence running 'by the river,' or 'along the river,' it does not restrict the grant to the bank of the stream; for the monument in such case is only referred to as giving the direction of the line to the river, and not as restricting the boundary on the river." And in *Robinson v. White*, 42 Me. 218, it is said that although the monuments are described as standing on the margin or bank of the stream, the grant carries the title of the grantee to the centre of the river, unless its terms clearly denote an intention to stop at the margin. The same principle is applicable here as to highways. Thus it has been held, that where a piece of land adjoining a highway, is conveyed by general words, the presumption of law is, that the soil of the highway, *usque ad medium filum*, passes by the conveyance, even though there is a plan annexed which would appear to exclude it: *Berridge v. Ward*, 10 C. B., N. S. 400; *Lord v. Commissioners of Sydney*, 12 Moo. P. C. 497. See also *Reg. v. The Board of Works, Strand*, 4 B. & S. 526. We think the intention of the Crown was, that the lake should be one of the boundaries of the plaintiff's grant, and that the words "bank or edge" were intended to express the same thing, and that they mean the margin of the lake—thus extending the grant down to the water's edge, and not leaving a strip of ungranted land or beach between the margin of the lake and the top of the bank where the highland commenced. The words "edge" and "margin" are synonymous terms, and therefore we think the words of the grant cannot be satisfied unless it is extended to the margin of the lake.

This involves another question—whether the plaintiff's grant is limited to the margin of the lake as it existed at the date of the grant, or whether it will also include any land formed in front by gradual and imperceptible accretion? In Angell on Watercourses, sec. 59, it is said that "if a navigable lake recede gradually and insensibly, the derelict land belongs to the adjacent riparian proprietors." The learned judge's direction to the jury was in accordance with that rule.

Then as to the effect of the defendant's grant. Whatever doubt, if any, there might be as to what would be conveyed by the word "lake" in a grant, the subsequent words of the grant in this case, whereby the mines and minerals are excepted, evidence a clear intention, on the part

of the Crown, to convey the soil of the lake to the defendant.

Whether the place where the assault was committed was the defendant's land or not, the assault, or at least a part of it, was entirely unjustified according to the defendant's own account of it; therefore the plaintiff would be entitled to retain the verdict for the damages assessed on the third count; but unless he consents to confine the verdict to that count, we think there ought to be a new trial.—*American Law Register*.

ENGLISH REPORTS.

COMMON PLEAS.

BECHERVAISE v. THE GREAT WESTERN RAILWAY COMPANY.

Practice—Interrogatories—17 & 18 Vict. c. 125, s. 51.

In an action against a railway company to recover damages for personal injuries sustained by a passenger in consequence of an accident occurring to the train in which he was travelling, the Court disallowed interrogatories, asking the defendants whether what the train had come into collision with, was under their care; the application for leave to administer the interrogatories being made before declaration, and without any special affidavit showing the necessary relevancy of the information sought.

[19 W. R. 229.]

The plaintiff, before declaring, applied to Byles, J., at chambers, for leave to administer interrogatories to the defendants, on an affidavit which simply stated that he sued to recover damages for injuries sustained while travelling on the defendants' railway, through the negligence of the defendants' servants. Byles, J., allowed part of the interrogatories only.

Michael now moved to vary the order of Byles, J., by rescinding so much of it as disallowed the interrogatories in question, on the following affidavit of the plaintiff:—

1. "On Nov. 25, 1869, being at Great Malvern, I paid the fare to an official of the Great Western Railway Company for, and obtained a ticket entitling me to travel as a third-class passenger from Great Malvern to New Milford, in the county of Pembroke.

2. "I took my seat in a third-class railway carriage, forming part of a train belonging to the Great Western Railway Company, and which left Great Malvern at or about 6.34 in the evening.

3. "The train, proceeding on its way, arrived at Hereford at or about 7.20 p. m.

4. "The train left Hereford at about half-past seven p. m., and, shortly after leaving the station at Hereford, came into violent collision with something; but, owing to the darkness of the evening and great confusion prevailed, I was and am totally unable to state what it was the train came into collision with.

"I am advised and believe I shall obtain material benefit in this cause by ascertaining by means of interrogatories with what the train so came into collision."

The interrogatories sought to be administered were as follows:—

1. "Were the defendants on the 25th November, 1867, carriers of passengers, and as such did they profess to carry, or were they in the