

Exch. Ct.]

NOTES OF CASES.

[Chan. Cham.

grants of the bed of the great lakes is recognized by Act of Parliament.

Although the exercise of the prerogative of the crown to grant a several fishery in waters where the tide ebbs and flows is restrained by Magna Charta, still the right of Parliament in its wisdom, in the exercise of its paramount control in the interest of the public, and as the exponent of the voice of the nation, as regards all property, to authorize such grants there equally as in waters above the ebb and flow of the tide is undoubted. I speak here of the Parliament of the United Kingdom, and the like power over all subjects, placed by the B. N. A. Act, under the control of the Parliament of Canada, is vested in that Parliament. As regards then the particular river in question, above Price's bend, notwithstanding that it may be true that it is subject to a servitude to the public for a common right of passage over its waters (as to which I express no opinion, inasmuch as the determination of that point is unnecessary in the case before me); but assuming the river to be subject to such servitude, still, the river there partakes not of the character of a navigable or public, but of a non-navigable or private river in the sense in which these terms are used in law, and the public have no common right of fishing therein.

* * * * It cannot admit of a doubt that the descriptions of boundaries in every one of the letters patent which have been produced, include and convey to the several grantees of the land therein respectively described, the soil and bed not only of all the streams and rivers which flow into the Rivers St. John's and Nashwaac, but also of the River Miramichi. * * * * It must be concluded as not admitting of a doubt, that every grant which had been made, prior to the 5th of November, 1835, of land lying within the limits of the description of the track described in the letters patent of that date, passed and conveyed to the several grantees of such land without exception, the bed and soil of the Miramichi river, as well as the beds and soil of all the rivers and streams flowing into the St. John and Nashwaac, in accordance with the

general presumption and rule of law, where the lands granted abutted on any of the said rivers. * * * *

The only construction which, in accordance with the above principles, can, in my judgment, be properly given to the letters patent of the 5th November, 1835, is—that the exception therein affects the Miramichi river, only in the same manner, and to the same extent as it effected the rivers and streams therein mentioned, namely, all those falling into the Rivers St. John and Nashwaac, and consequently that the exception is limited to the bed and soil of the Miramichi river, as it is to the bed and soil of the said other rivers and streams, namely opposite to the lands which had previously been granted on the banks of the river. * * * * It follows that the Miramichi river, where the lands granted to the N. S. and N. B. Company abut upon it, is excluded from the operation of the Fisheries Act, 31 Vict., c. 60, for there an exclusive right of fishing had passed to the company, their successors and assigns by the letters patent, of the 5th November, 1835.

CHANCERY CHAMBERS.

The Master, }
Proudfoot, V.C. }

[Oct. 2.

DARLING V. DARLING.

Cross interrogatories—Where filed—G. O.

221.

Where a foreign commission issues on the Master's certificate under G. O. 221, cross interrogatories should be filed in the office of the Clerk of Records and Writs, and where they were filed by a defendant in the Master's office instead, and notice of filing given, but by accident the commission issued without them, an application made on the return of the commission executed, to suppress it, was refused, with costs. On appeal, Proudfoot, V.C., upheld the Master's judgment.

J. B. Thompson for applicant (defendant W. Darling).

Barwick contra.