

submerged by the waters of the river, and on the second plan as being within the area of the pond created by the dam. The lands owned by plaintiff company are shewn on said plan as lots A, B, and 1 to 8, inclusive; and plaintiff company acquired title to all these lands through various conveyances, as the same originally stood in Kirchoffer and the Cockburns.

Robert Cockburn in his lifetime, under deed of partition and otherwise, became the individual owner of lots A (except a small portion off the north-west corner thereof), 4, 5, 7, and 8, also a lot described on the second plan as "store" lot, which adjoined lot A immediately to the north. . . . The first conveyance of this lot, under the subdivision, was that of the 27th December, 1865, a deed from James Cockburn and Kirchoffer to Robert Cockburn, in which it is described as being the "corner lot at the south-west end of said bridge, fronting on George street," lying between George street and the river, and having a frontage of 80 feet on George street towards the west, the northerly limit being Tice street and the bridge, so far as it extends over that parcel, the easterly limit being the river, and the southerly limit being a line drawn parallel with the northerly limit a distance of 80 feet therefrom.

With considerable hesitation, I think this conveyance vested in Robert Cockburn not only that parcel of apparently dry land marked on exhibit 2 as "store" lot which lay between George street on the west and the actual waters of the river, shewn on the plan, but also the land under the water for the width of 80 feet, right to the middle thread of the river, assuming the river to have been non-navigable. . . . *Micklethwaite v. Newlay*, 33 Ch. D. 133, *Massawippi v. Reid*, 33 S. C. R. 457. And assuming the river to have been navigable, the said conveyance would vest in Robert Cockburn the title up to the line of the original bank of the river, which, from the evidence of old residents, was, in my opinion, at least 160 feet east of George street, and a considerable distance beyond defendant's lot.

By deed of 3rd May, 1880, Robert Cockburn conveyed to Dr. Bogart that portion of the lot having a frontage of 80 feet on George street by a depth of 50 feet, the easterly limit being described as "the foundation or easterly wall of the building now upon said parcel," and there is the following at the end of the description—"Reserving the right to the party of the first part, his heirs or assigns, to raise the dam one foot." And, though the deed is not executed by the grantee, it contains the following clause: "The said party of