

Exch. Ct.]

NOTES OF CASES.

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dent to the ownership of the beds and soil covered by such waters, or otherwise * * *

[After reviewing the nature, condition and title of the particular property in question, and referring to a number of cases, the learned Judge continued.]

The principles to be deduced from all these cases seem to be that—in the estimation of the common law all rivers are either navigable or not navigable; and rivers are only said to be navigable so far as the ebb and flow of the tide extends. Rivers may be navigable in fact, that is, capable of being navigated with ships, boats, rafts, &c., &c., yet be classed among the rivers not navigable in the common law sense of the term, which is confined to the ebb and flow of the tide. Rivers which are navigable in this sense are also called public, because they are open to the public use and enjoyment freely by the whole community, not only for the purposes of passage, but also for fishing, the crown being restrained by *Magna Charta* from the exercise of the prerogative of granting a several fishery in that part of any river. Non navigable rivers, in contrast with navigable or public, are also called private, because although they may be navigable in fact, that is capable of being traversed with ships, boats, rafts, &c., &c., more or less, according to their size and depth, and so subject to a servitude to the public for purposes of passage, yet they are not open to the public for purposes of fishing, but may be owned by private persons, and in common presumption are owned by the proprietors of the adjacent land on either side, who in right of ownership of the bed of the river, are exclusive owners of the fisheries therein opposite their respective lands on either side to the centre line of the river. *Magna Charta* does not affect the right of the Crown, nor restrain it in the exercise of its prerogative of granting the bed and soil of any river above the ebb and flow of the tide, or granting exclusive or partial rights of fishing therein as distinct from any title in the bed or soil, and in fact, crown grants of land adjacent to rivers above the ebb and flow of the tide, notwithstanding that such rivers are of

the first magnitude, are presumed to convey to the grantee of such lands, the bed or soil of the river, and so to convey the exclusive right of fishing therein to the middle thread of the river opposite to the adjacent land so granted. This presumption may be rebutted, and if by exception in the grant of the adjacent lands the bed of the river be reserved, still such reservation does not give to the public any common right of fishing in the river, but the property and ownership of the river, its bed and fisheries remain in the crown, and the bed of the river may be granted by the crown, and the grant thereof will carry the exclusive right of fishing therein; or the right of fishing exclusive or partial may be granted by the crown to whomsoever it pleases, just as any person seised of the bed of a river might dispose thereof. This right extends to all large inland lakes also, for although in their case the same presumption may not arise as does in the case of rivers, namely that a grant of adjacent lands conveys *prima facie* the bed of the river, still the prerogative right of the crown to grant the beds of rivers above the ebb or flow of the tide, not being affected by the restraints imposed by *Magna Charta*, cannot be questioned, for all title of the subject is derived from the crown, and so if a bed of a river or right of fishing therein be reserved by the crown from a grant of adjacent lands, the right and title so reserved remains in the crown in the same manner as it would have vested in the grantee, if not reserved, and is not subject to any common right of fishing in the public, for as was said by Lord Abinger, in *Hull v. Selby Ry Co.*, 5 M. & W. 327, as all title of the subject is derived from the crown “the crown holds by the same rights and with the same limitations as its grantee.” So in *Bloomfield v. Johnson*, 8 I. L. R. C. L. 68 it was held that a grant by the crown of a free fishery in the waters of Lough Erne did not pass a several or exclusive right of fishery therein, but only a license to fish on the property of the grantor, and that the several fishery remained in the crown subject to such grants or license to fish as it might grant. In old Canada the right of the crown to make such