

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

against trespassing on his half water lot, which vessels passing to B.'s wharf knocked down. Subsequently in the same year A. drove certain piles into the soil of his own half lot, ostensibly as a foundation for certain buildings for boat houses, and was proceeding to drive others which would have had the effect of obstructing the passage to B.'s wharf. B. met this by moving vessels to and from his wharf, and finally by mooring vessels to his wharf and extending into the waters on A.'s half lot thus preventing A. from driving more piles.

In trespass by plaintiff, B. claimed, first, an easement by prescription and non-existing grant to the owners of the fee, whose lessee, Taylor, who erected said wharf, was over A.'s half lot to the extent necessary to allow vessels to pass to and from his wharf and to lie up there; secondly, that the waters covering said water lot were navigable waters, part of Lake Ontario and Toronto Harbour, and that the wharf was a construction within the law for the purpose of enabling the use of the harbour and the safe and useful navigation of said water, and that the act of A. was a wrongful interference and an obstruction of the use of the said navigable waters which B. was entitled to and did abate.

Held, 1. The waters covering said lot 17 were part of the navigable waters of Lake Ontario, and the same law was applicable thereto as in the case of tidal waters in the absence of a valid grant, the soil being vested in the Crown, subject to the *jus publicum* of navigation. 2. That the Act 23 Vict. c. 2, sec. 35, R. S. O. c. 23, sec. 47 gives authority to the Crown to grant water lots, and the grant of water lot 17 by the description of "land covered with water" was valid under these enactments, and sufficient to pass to the grantee and his representatives the soil and the *jus publicum* for navigation and the like in the water which could be built upon, filled up or otherwise dealt with as might be thought proper. 3. That so long as A.'s water was unenclosed or unoccupied any one might pass over or across it without being liable to be treated as a trespasser, and an easement such as that claimed could not therefore be acquired. 4. That the claim to an easement was not founded upon an enjoyment *nec clam, nec vi, nec precario*, and could not be sustained. 5. That the evidence showed that the user of the plaintiff's water lot was not "as of right," and the finding of the jury was

warranted by the evidence. 6. That neither the erection of the wharf nor its long use nor the erection of the elevator showed such a claim of enjoyment as of right as to satisfy the statute. 7. That in any event the claim was of an easement in gross and therefore invalid. 8. That the verdict should have been against the defendants, in any event, because they were not making use of the waters for the purpose of trade and commerce where they anchored the vessels upon the lot. 9. The patent to the City of Toronto of the water lots confirmed by the Esplanade legislation gave to the owners of water lots the right to fill in the lots and turn them into land.

COMMON PLEAS DIVISION.

Rose, J.]

[Jan. 15.]

REGINA V. YOUNG.

Brewers—Sale of liquors manufactured.

Held, that brewers licensed to manufacture under a Dominion license are licensed to sell by wholesale the liquor manufactured by them in places other than that named in the license.

Cattanach, for the motion.*Delamere*, contra.

Divisional Court.]

[Jan. 3, Feb. 3.]

STUART V. MCKIM.

Garnishment—Money in hands of Speaker—Form of issue.

The defendant, a member of the Legislative Assembly, received a sum of money from a person as an inducement or bribe to influence him in his course in the Assembly, which he handed to the Hon. Charles Clarke, the Speaker of the Assembly, to await the action of the Assembly with regard to the alleged bribery. The plaintiff, a judgment creditor of the defendant, issued an attaching order attaching all debts due from, or accruing due from the said Clarke to the defendant, claiming that the money so handed to him became a debt payable to the defendant.

[January 3.]

The Court (GALT, J. dissenting), without expressing any opinion on its merits, directed an