

and made other improvements and additions to utilize their water power. The effect of the dam was to flood their land on either side of the river for a considerable distance above the dam, at a much greater height than it had been naturally.

Until 1869 no express authority had been obtained from the Crown to thus intercept and pen back the waters of the river, but on the 9th December of that year a patent or license was issued to the owners whereby they were authorized to maintain the dam with the works and erections thereto belonging.

I think the effect of this license was to vest in the said parties the use and control of the waters of the river as against the Crown, subject to non-interference with navigation, etc., as therein provided.

If the river Trent was a navigable river—as to which there was no evidence except what might be inferred from the two patents—of course the title to the land in the bed of the river would still be in the Crown: *Attorney-General v. Perry*, 16 C. P. 329. In *Kirchoffer v. Stanbury*, 25 Gr. 413, the late Chancellor Spragge, dealing with this very water privilege, in speaking of the reservation in the original patent, says (p. 416): “Not a very accurate mode of reservation—it would, however, probably operate, though the waters only are reserved, as a reservation of the bed of the river.”

It is not necessary for me to decide this question, as I am satisfied from the evidence that the original bed of the river did not extend as far west as defendant's land. The building proposed by defendant, therefore, not being on the original bed of the river and in no way an interference with the original navigability of the river, nor the free access to the shore, nor upon property ever dedicated, as I find, to the public, the Crown has no interest in this suit, and the defendant has not infringed any public right, and I direct the action, so far as it respects the Attorney-General, to be dismissed with costs, which I fix at \$100, to be paid to defendant by plaintiff company, who were responsible for the action as constituted. . .

On 8th May, 1865, the Cockburns and Kirchoffer caused to be registered “a plan of the water lots south of the bridge and of the river frontage lots north of the bridge in the village of Campbellford, and on 31st December they caused a more detailed plan of said lots to be registered, upon which are indorsed conditions and specifications respecting the enjoyment of water privileges by the lot owners. On both these plans the lands now claimed by defendant, and upon which the building in question is being erected, were shewn as being