

So that the whole question in this case is whether the muskrats which these defendants took were killed upon and taken from the plaintiff's land. One of the defendants says that five of them were killed upon and taken from Pamment's marsh; the other defendant says ten, of the two hundred that he took, were taken and killed upon Pamment's marsh. Until this year, apparently, the plaintiff did not object to hunters going upon his land and taking game; and so it may be that if he had not given notice to these defendants they ought not to be held answerable to him in damages; it may be that, under those circumstances, it ought to be considered he had given a tacit consent, a tacit license, to hunt. But there is nothing of that kind now applicable. The plaintiff put up notices, which these defendants saw, forbidding hunting; and more than that told each of them that they must not trespass upon his land. But they did in defiance of his rights a thing that was very unwise to do. They knew the plaintiff owned that farm. Now they come here with a legal pretence that his patent does not cover his marsh, the marsh that they call Pamment's marsh, a marsh that everyone calls Pamment's marsh; and the marsh that they call Whittington's marsh and that everybody else calls Whittington's marsh. It does seem to me to be idle to contend that the reservation in the patent of the "inlet" which has been called by some Steamboat Creek extends not only to Steamboat Creek but to the whole of these marshes, over more than a quarter of all the lands that were patented to the plaintiff Pamment and to Whittington or their predecessors in title. The lands are clearly defined in the Crown grant and in the deeds to these farmers, and the lines in question run plainly from the adjoining farms back to the river both north and south. They cannot go to the river if the contention made for these defendants is right; because the "inlet," including these marshes, intervenes and prevents. What was meant by that reservation is perfectly obvious. The Otonabee River was or was to become a navigable river a backwater in that river which is now called by some "Steamboat Creek" might become very useful for navigable purposes, a place where a boat might run in out of the current and be moored. Uses might be made for very obvious purposes of the navigable waters of the inlet, but beyond that a reservation would have been senseless. Its navigability extends up from the river only from 150 to 250 yards according to the different views of the different witnesses; and yet it is contended that the Crown rights extend up all through these marshes to high water mark a thing that seems to me to be without reason, taking away nearly half of Whittington's farm, according to the acreage and according to measurement of the land, that is, accord-