

With deference, I have no doubt myself on that subject, and some of the Ontario Judges had not in cases before them, but doubts did arise in the old provinces of Canada, and a statute was passed to settle the question.

When one finds in Nova Scotia that since 1784 (there were these grants in *Esson v. Wood* in the nineties), such water lots have been granted impliedly subject of course to the public right of navigation, he might almost take it for granted that it was legal to do so. Some of the wharves have stood law suits carried even to the Privy Council (*The Chase*. Young's Adm. Dec. page 113). I cannot distinguish between Crown lands covered with water and those not covered with water.

Strong, J., said in *Wood v. Esson*: "The grant to the plaintiffs by the Provincial Government in 1861 was valid and operative to pass the title to the soil of the harbour included in the grant, but although the grant was effectual for this purpose, and the plaintiffs had a valid title under it, that did not justify any erection upon the land granted having the effect of obstructing the navigation of the harbour."

In *Attorney-General v. Perry*, 15 U. C. C. P. 331, Richards, C.J., said: "In this country the practice has obtained in towns and cities for the Crown to grant land covered with water, and generally to the owner of the bank when adjacent to a navigable stream, and grants so made have never been cancelled for want of power in the Crown to make the grant. The right of the grantee to build wharves and warehouses for the more convenient and profitable enjoyment of the water lots so granted has never been successfully contested so far as I am aware of."

In *Warin v. London Loan Co.*, 7 O. R. 724, Wilson, C.J., said: "The Crown in this country has long exercised the right of granting water lots. But that right being doubted, the 23 Vic. c. 2, s. 35, enacted that whereas doubts have been entertained as to the power vested in the Crown," etc.

Coming to the second question as to whether the erection is a public nuisance, in *Cunard v. King*, 43 S. C. R. 88, the locality in the harbour was apparently a narrow passage in this harbour called the "Narrows."

Anglin, J., says: "The circumstances in evidence, the narrowness of the channel opposite the appellant's lands, &c., make it practically certain that the Crown would refuse