

Q. B. Div.—Com. Pleas.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

perty insured was not an assignment within the meaning of such condition.

Appeal dismissed with costs.

Lash, Q.C., for appellants.

Hannington, for respondents.

QUEEN'S BENCH.

Wilson, C.J.]

REGINA V. CHAYTER.

Held, electroplated ware not jewellery within 48 Vict. ch. 40, s. 1, and a conviction for selling same unlicensed was therefore quashed, though the fine had been paid.

Foster, Q.C., for motion.

COMMON PLEAS DIVISION.

WILSON V. LOUCKS.

Pleading—Statement of claim—Sufficiency—Municipal Act—Closing up road.

A statement of claim set out that the plaintiff was the owner of certain land being part of an original road allowance granted and conveyed to him by the corporation, a township; that previous to the execution of the deed by the said corporation by a by-law which had been duly passed by the said council, in accordance with and under the authority of the Consolidated Municipal Act, 1883, the said municipal council had authorized the said corporation to sell the said parcel of land, and to convey the same to the purchaser thereof; that the said by-law was afterwards confirmed by a by-law duly passed by the municipal council, in accordance with the provisions of the said Act.

Held, on demurrer, good; that it being alleged that the by-law authorizing the sale was duly passed in accordance with the Act, it must be assumed that all the requirements of the Act have been complied with, and it is not necessary to pick them out and allege performance of each in detail.

Watson, for the plaintiff.

MacInnan, Q.C., for the defendant.

CHANCERY DIVISION.

Divisional Court.]

[March 6.]

RATTE V. BOOTH.

Riparian proprietor—Reservation in patent of rights of navigation—Ownership of land covered with water—Navigable waters—Nuisance—Damages—Injunction—48 Vict. c. 24 (O.).

The judgment of *PROUDFOOT, J.*, reported *ante*, p. 23, reversed.

Per BOYD, C.—The effect of the patent is to convey the dry land and the land covered by water two chains out, subject to the rights of the public in the Ottawa as a navigable river. As to the land bordering on the water the plaintiff is a riparian proprietor, and has the right to have the water in front of him open for all navigable purposes, and to enjoy it free from extraordinary impurities. Even if the land under the water is vested in the plaintiff's grantor he could not derogate from his grant to the water's edge by polluting, filling up, or otherwise cutting off his grantee from the beneficial enjoyment of the river, still less can the defendants be protected in their wrong doing. The grant to the patentee of the river bed two chains out carries as parcel of it the water thereon, so that we have to this extent the bed, the bank and the water, vested as private property in the patentee, subject to the servitude of a common public right of way for the purposes of navigation.

The term "navigable waters" in the patent is to be construed as referring to water of such a depth and situation as is, according to the reasonable course of navigation, in the particular locality practically navigable. The patentee may rightfully use and occupy the land covered by water, but only so much as will not interfere with the public easement; but every encroachment on the water will be at his peril if it is proved that he is guilty of a public nuisance. There is no evidence to show that the plaintiff's structure (boathouse) is a nuisance, and whatever may be the nature of the plaintiff's title or occupancy of the water, it is enough that his possession and business are as against the public legitimate in order to entitle him to recover as against a wrongdoer. Even if the plaintiff's place of business