

The mortgages, by the Inland Navigation Company to Starr, Stairs and Black, were foreclosed and sold, and the property conveyed by the Sheriff of Halifax County to Samuel Gray and John Stairs, 18th June, 1862, and these persons on 9th December, 1862, declared that they held the property in trust for The Lake and River Navigation Company, to which Company they conveyed on 1st May, 1867. This Company was formed under a Statute of the Province called "An Act for the Incorporation and Winding up of Joint Stock Companies," the declaration of the shareholders, and other documents, preliminary to the organization forming part of the case. 110

The Lake and River Navigation Company conveyed all the property to Lewis P. Fairbanks, by Deed of April 1st, 1870.

On the 31st May, 1876, Lewis P. Fairbanks assigned under the Insolvent Act of 1875 to the Plaintiff and Appellant, who afterwards became creditors assignee of his 20 estate and effects.

The Deed from Richard Tremaine to the Shubenacadie Canal Company of 13th April, 1841, page 82, conveys the land on either side of the stream, and recognizes the fact that the stream and its bed were conveyed by the Deed of R. and J. Tremaine 120 already referred to.

The Deed from the Executor of Hartshorne to Hobin, dated 23rd May, 1848, page 83, shews that on the Hobin lot, referred to in the evidence, and also the locus occupied under lease by Stanford under whom Defendant claims, a reservation of the stream was made. The same circumstance appears from the Deed, Mitchell to Stanford, of 1st June, 1847, in relation to the Hobin lot being the adjoining lot to the one in dispute, Mitchell having acquired it from Hobin subject to the same reservation (see page 85), and Stanford afterwards acquired it and occupied it (line 87.) The conveyances to Falconer, and the agreement between Falconer and the Inland Navigation Company (pages 86-88) conveyed the rights to the locus which he had derived from Hartshorne, 130 and secured the right to that Company to build and continue the dam referred to in the evidence, &c.

Reasons in Support of the Appeal.

1st. The Plaintiff proved a documentary title to the locus; the Defendant failed to prove any such title.

2nd. The Plaintiff also proved prior possession, which, coupled with his documentary title, threw upon Defendant the onus of establishing a title to the locus, either by documents—which he failed to prove—or by possession. In respect of the latter claim his defence failed for the following reasons: