

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.]

CITY OF HULL v. SCOTT.

[April 27.

*Constitutional law—Navigable waters—Arm of river—Possession—Title.*

By the law of the Province of Quebec, as by the law of England, no waters can be deemed navigable unless they are actually capable of being navigated.

An arm or inlet of a navigable river cannot be assumed to be either navigable or floatable in consequence of its connection with the navigable stream unless it be itself navigable or floatable as a matter of fact.

The land in dispute forms part of the bed of a stream, called the Brewery Creek, which was originally a narrow inlet from the Ottawa River, dry during the summer time in certain parts, and whose waters passed over certain lots shewn on the survey of the Township of Hull, and granted by description according to that plan to the defendants' auteur, in 1806, without any reservation by the Crown of those portions over which the waters of the creek flowed. Under that grant, the grantee and his representatives have ever since had possession of the lands on both sides of the creek and of the creek itself. The erection, during recent years, of the public works constructed in the Ottawa River for the improvement of navigation and in the interest of the timber trade, have caused its waters to overflow into the creek to a considerable extent at all seasons of the year. In 1902, the City of Hull obtained a grant by letters patent from the Province of Quebec of a portion of the bed of the creek, as constituting part of the Crown domain, and brought the present action au petitoire, for a declaration of title, the Attorney-General intervening for the province as warrantor.

*Held*, affirming the judgment appealed from (Q.R. 24 S.C. 59):

1. That as the Brewery Creek was neither navigable nor floatable in its natural state, the subsequent overflow of the waters of the Ottawa River into it could not have the effect of altering the natural character of the creek.

2. That, as there was no reservation of the lands covered with water in the original grant by the Crown in 1806, the bed of the creek passed to the grantee as part of the property therein described, whether the waters of the creek were floatable or not.

3. That the uninterrupted possession of the bed of the creek by the grantee and his representatives from the time of the grant with the assent