

RIPARIAN PROPRIETOR—NAVIGABLE RIVER—WATER POWER ARTIFICIALLY CREATED,
SALE OF.

Hamelin v. Bannerman, (1895) A.C. 237; 11 R. April 19, was an appeal from the Court of Queen's Bench of the Province of Quebec, but involves a question of law of general interest. The vendors of land on the banks of a navigable river, who were also the owners of a water power derived from a pool or reservoir formed by the erection of a dam across the channel of the river, sold with the land a quantity of water power equivalent to fifty horse power, "to be taken from the water power and dam" of the vendors. The deed contained no reservation of the power to the vendors in priority to the purchasers. The water fell short, and became insufficient to supply the power needed by the vendors and the purchasers, and the latter brought the present action, claiming that it was diverted by the defendants to their own use, and the plaintiffs claimed a declaration that they were entitled to the power sold to them in priority to the defendants or their tenants. The defendants, among other things, contended that the river being a navigable one its water could not be the subject of commerce. The court below decided against this contention, and this was the point on which the appeal to the Privy Council turned. There was a provision in the deed to the effect that if through any leakage, or damage to the dam, or want of repair thereto, there should be loss of power, the purchasers should have no claim for any damages, provided the dam were repaired within a reasonable time, and during that time the vendors might withdraw the supply of water from the purchasers if absolutely necessary. The Judicial Committee (Lords Watson, Hobhouse, Macnaghten, and Morris, and Sir R. Couch) agreed with the court below, holding that, notwithstanding the river was navigable, there was nothing to prevent the vendors from acquiring by artificial means a water power as appurtenant to their land, which they could sell along with and as appurtenant thereto; and even if the vendors could not acquire a valid right to this power as against the public, they could not nevertheless for that reason dispute the right of their vendee to it on any such ground; and there being no reservation of any prior right to the power in favour of the vendors, the purchasers were entitled to the power which they had purchased, in priority to the vendors or their tenants, in the event of the supply of water being insufficient for