

found in or under, or be flowing through or upon any part of the said parcel of land hereby granted." J. A. afterwards granted the said water lot to A. R., but the description in the deed only went to the water's edge.

In an action by A. R., against some owners of saw-mills on the river above his lot to prevent them from throwing sawdust, slabs, etc., into the river to his detriment in the use of his water lot, it was

Held, that the Ottawa River is a navigable stream in fact, and a riparian proprietor as such would, therefore, only be entitled to the water's edge. The reservation in the patent still leaves that part of the river a navigable stream, and does not convey an exclusive right to the grantee of the Crown, and being such, the conveyance to the water's edge would not carry the right further than to that edge. It is only by the special grant that a title passed to the two chains, and still left the river with all its characteristics of a navigable stream. Any structure on the water, even if erected for twenty years, would be an interference with the free use of the river reserved by the Crown, and the right to do so could not be acquired in that way. The action was therefore dismissed.

Cassels, Q.C., for the plaintiff.

Gormully, for the defendants, Bronson and Weston.

McCarthy, Q.C., and *Christie*, for the other defendants.

Proudfoot, J.]

[Nov. 18, 1885.]

SCHRADER V. LILLES.

Agreement—Cigarmakers' union—Consideration—Restraint of trade—Penalty—Liquidated damages.

By agreement, dated May 27th, 1885, certain members of a Cigar Manufacturers' Association, after reciting that it had been agreed that they "should become severally bound to one Schrader in the sum of \$500 as liquidated and ascertained damages in case any of them shall at any time during the continuance of this agreement, either directly or indirectly, buy or sell any cigars marked or branded with the labels of the Cigarmakers' Union, or shall use or allow to be used in connection with the manufacture of cigars by him, any Cigarmakers' Union labels, or any label sanctioned by the Cigarmakers' Union, or any label in any way

indicating that his cigars have been manufactured by union men, or shall permit or allow any Cigarmakers' Union, or any union, or any set of men, to compel him to hire or employ union men only, or to dismiss any employé," went on to covenant, each for himself, that "he will, in case he shall at any time hereafter violate any of the foregoing stipulations by buying or selling cigars marked or branded with the labels of the Cigarmakers' Union, etc. (as in above recital); he shall immediately pay to the said Schrader the sum of \$500, the intention being that in case of a violation of all or any of the stipulations, provisoes or conditions aforesaid by any of them, he, the said party so offending shall immediately forfeit and pay to the said Schrader the full sum of \$500 because of his so offending, as liquidated and ascertained damages (and not as a penalty); the intention also being that the entire sum of \$500 shall be the amount of the ascertained and liquidated damages of any violation or breach whatever of any of the stipulations, provisoes or conditions aforesaid on the part of any one of the said " (covenanting parties).

Held (1), that the mutual obligations imposed by the contract constituted a sufficient consideration.

(2) That the agreement was not invalid as in restraint of trade and contrary to public policy.

(3) That the plaintiff was entitled to recover the sum named in the agreement as liquidated damages.

Divisional Court.]

[December 3, 1885.]

IN RE CLEATOR.

Will, devise—Estate in fee tail or fee simple—Vendor and purchaser—R. S. O. c. 109.

M. C. by her will devised as follows: "First I give and devise to my grandson, J. C., the farm . . . to have and to hold the same, and every part thereof, for and during his natural life and, after his death, to the heirs of his body, should he leave any such heirs surviving, and in the event of his leaving no such heirs, then the same and every part thereof is to be divided as fairly and equally as may be amongst . . . to have, and to hold the same to them, their heirs and assigns forever; but my will