

corporation of the city of St. John, who are the conservators thereof, and who have certain rights of fishing therein for the benefit of the inhabitants of the city.

(2) Notwithstanding such ownership of the harbour by the corporation of the city of St. John, and their rights therein, the Attorney-General of Canada may file an information in this court to restrain any interference with or injury to the public right of navigation or fishing in such harbour.

(3) By the Act of Assembly of the Province of New Brunswick, 8 Vict., c. 89, s. 16, incorporating the defendants, they were prohibited from throwing or draining into the harbour of St. John any refuse of coal-tar or other noxious substance that might arise from their gas works, under a penalty of £20.

*Held*, that the remedy so provided was cumulative, and that while the repeal of the provision might relieve the defendants from the penalty prescribed by the Act, such repeal would not legalize any nuisance they might commit by throwing or permitting to drain into the harbour the refuse of coal-tar or other noxious substance that might result from the manufacture of gas at their works.

(4) *Seemle*: That while an exemption granted by the Minister of Marine and Fisheries under s.s. 2 of 31 Vict., c. 60, s. 14, may be a good defence to a prosecution for the penalty therein prescribed, it would not afford a good answer to an information to restrain any one from throwing any poisonous or deleterious substance into waters frequented by fish if the act complained of constituted an injury to or interference with some right of fishing existing in such waters.

(5) By the Act of Assembly of the Province of New Brunswick, 40 Vict., c. 38, authority was given to the defendants to construct a sewer, with the sanction of the Governor-General of Canada (which was obtained), from their gas works to the harbour for the purpose of carrying off the refuse water from such works. It was further provided by the Act that the drain should be laid under the supervision of the common council of the city, and that no discharge therefrom should take place or be made except upon the ebbing of the tide, and at such times during the ebbing of the tide, as the common council should direct. After the drain was constructed it appeared that at times tar had been suffered to escape with the refuse water through the drain into the harbour, but that the discharge of refuse water, when separated from the tar, had not been injurious to the fisheries carried on in the harbour.

Under these circumstances, the court granted an order restraining the discharge of tar and other noxious substances through the drain by the defendants, and further restraining them from allowing any discharge therefrom, except at the ebbing of the tide, and at such times during the ebbing of the tide as the common council of the city of St. John might direct.

*Held*, that whilst the Legislature of New Brunswick could not at the time of the passage of the Act of the Assembly, 40 Vict., c. 38, legalize such an interference with or injury to the right of navigation or fishery as would amount to a nuisance, they could authorize the construction of a drain to carry the refuse water from the defendants' works to the harbour, and, so long as the discharge of such refuse water through the drain did not amount to a nuisance,