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SARAH ELIZABETH LEAMY AND OTHERS (SUPPLIANTS) ..... APPELLANTS; *May 17, 18. *Nov. 7.

AND

HIS MAJESTY THE KING (RESPONDENT) ..... RESPONDENT;

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC... INTERVENANT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Rivers and streams—Navigable waters—Floatability—Ownership of beds —Grant of Crown lands—Conveyance of bed of navigable waters— Title to land—Art. 400 C.C.

In the Province of Quebec, a river which, owing to natural obstructions, is capable only of floating loose timber (*flottables à bûches perdues*), in portions of its course may, at least from its mouth upwards until some such obstruction is reached be navigable and subject to the rule of law applicable to navigable waters. As the river in question for several miles from its mouth upwards to a point where its course is obstructed by rapids is in fact capable of being utilized for the purposes of navigation the bed of the stream for that distance forms part of the Crown domain. (Art. 400 C.C.)

Without express terms to that effect a Crown grant, made in 1806, of township lands in the territory now comprised in the Province of Quebec did not pass title to the grantee in the bed of navigable waters within the area described in the letters patent of grant. Idington J. dissented on the ground that the language of the letters patent in question was intended and was sufficiently explicit and comprehensive to convey to the grantee the bed of the navigable waters included within the limits of the description of the lands granted.

The judgment appealed from (15 Ex. C.R. 189), was affirmed, Idington J. dissenting.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur JJ.

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APPEAL from the judgment of the Exchequer Court of Canada(1), dismissing the suppliants' petition of right with costs.

The circumstances of the case are stated in the judgments now reported.

The arguments on the appeal were heard on the 25th and 26th of May, 1915, and judgment was reserved On the 17th of June, 1915, the Attorney-General for the Province of Quebec applied to the Supreme Court of Canada for leave to intervene in the appeal and to be heard as a party asserting a claim to the lands in question; permission was granted for the filing of the intervention and the appeal was subsequently re-heard on the issues therein raised. By the judgment now reported it was considered that, as the intervenant, in the factum filed on the intervention, had asked that the judgment of the Exchequer Court of Canada should be affirmed and the appeal dismissed it was unnecessary to determine, on this appeal, the respective rights in the lands of the Province of Quebec and of the Dominion of Canada. The appeal was dismissed with costs and it was ordered that there should be no costs allowed to any party on the intervention.

Aylen K.C. for the appellants cited *Maclaren* v. *Attorney-General for Quebec*(2); *McBean* v. *Carlisle*(3); *Hurdman* v. *Thompson*(4); *Attorney-General for Quebec* v. *Scott*(5), at page 615; *Watkinson* v. *McCoy*(6); *McPheters* v. *Moose River Log-Driving Co.*(7); *Perry* v.

(1) 15 Ex. C.R. 189.
(2) (1914) A.C. 258 at p. 264.
(3) 19 L.C. Jur. 276.
(4) Q.R. 4 Q.B. 409.
(5) 34 Can. S.C.R. 603.
(6) 63 Pac. Repr. 245.
(7) 5 Atl. Repr. 270.

Wilson(1); *Dixson* v. *Snetsinger*(2), at p. 243; *Graham* v. *The King*(3); and *Davidson* v. *The Queen*(4).

Chrysler K.C. for the respondent cited *Attorney-General for British Columbia* v. *Attorney-General for Canada*(5); *The Queen* v. *Moss*(6), at page 328; *Attorney-General for Quebec* v. *Scott*(7), at page 612; *Tanguay* v. *Canadian Electric Light Co.*(8); "B.N.A. Act, 1867," sec. 108, item 5, Sch. 3; and referred to "Documents relating to the Constitutional History of Canada, 1791-1818," published by the King's Printer for Canada, in 1914, page 13 and pages 61 *et seq.*

It was also argued that prescription had been acquired in virtue of long possession by the Crown.

Belcourt K.C. for the intervenant, cited *Lord Advocate* v. *Weymss*(9), at page 66, and *Gann* v. *Free Fishers of Whitstable*(10).

The bed of the Gatineau River, wherever navigable or floatable, is vested in the King in the right of the Province of Quebec, with the exception only of those portions thereof which, by virtue of the provisions of the "B.N.A. Act, 1867," may have become vested in the Dominion of Canada. We refer to the Quebec statute 6 Geo. V., ch. 17, inserting the following in the Revised Statutes of Quebec, 1909, after article 1524.—"1524 (*a*). Whatever may have been the system of Government in force, the authority which in the past has had the control and administration of public lands in the territory now forming the Province

(1) 7 Mass. 393.
(2) 23 U.C.C.P. 235.
(3) 8 Ex. C.R. 331.
(4) 6 Ex. C.R. 51.
(5) (1914) A.C. 153 at p. 169.
(6) 26 Can. S.C.R. 322.
(7) 34 Can. S.C.R. 603.
(8) 40 Can. S.C.R. 1.
(9) (1900) A.C. 48.
(10) 11 H.L. Cas. 192, at p. 206.

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of Quebec or any part thereof, has always had the power to alienate or lease, to such extent as was deemed advisable, the beds and banks of navigable rivers and lakes, the bed of the sea, the seashore and lands reclaimed from the sea, comprised within the said territory forming part of the public domain."

The intervenant submits that the evidence abundantly warrants the finding of the learned trial judge that that part of the Gatineau River which borders on lots 2 and 3 was at the date of the letters patent, and is now, navigable and floatable according to the law and jurisprudence on the question; and that the appellants have not established a title through Philemon Wright, assuming that the latter ever acquired any title thereto.

THE CHIEF JUSTICE.—This is a petition of right brought by the appellants to have it declared that they are the owners, and as such entitled to the possession of the bed of the River Gatineau within the boundary lines of lots 2 and 3 in the 5th range of the Township of Hull in the Province of Quebec.

The petition was dismissed by Mr. Justice Audette on two grounds (*a*) that the River Gatineau at the point in question is navigable and was so at the time the grant relied on by the appellants was made; (*b*) that the bed of the river was not included in the grant.

A river must surely be navigable if it is in fact navigated and I do not understand how it could be successfully contended that the River Gatineau is not, as it crosses the lots in question, "navigable and floatable." The appellants do not seriously dispute the finding of the trial judge to that effect. In their factum here they boldly take this position:—

Whether the Gatineau River, in the locality of the lots in question, is navigable or unnavigable, floatable or unfloatable,

the ownership of the bed passed by the grant to their "auteur," Philemon Wright, and *McBean* v. *Carlisle* (1), is referred to. No one disputes or puts in question the point decided in that case. In Quebec a right of servitude in favour of the public undoubtedly exists for certain purposes over all streams, whether navigable or not. The question we have to decide, however, relates not to the use of the water, but to the ownership of the bed of the stream, and at once the distinction must be made between rivers which are navigable and those which are not. The beds of non-navigable and non-floatable streams are the property of the riparian owner *ad filum aquæ* (*Maclaren* v. *Attorney-General for Quebec*(2)), and pass with the grant of the *ripa*. On the other hand, from the very earliest days the courts of Quebec have held, and it is by the law of that province that this case must be decided, that the title to land which forms the bed of a navigable river can only be acquired by an express grant.

By French law the beds of all navigable rivers were deemed to be vested in the King as a public trust to subserve and protect the public right to use them as common highways for commerce. (Art. 400 C.C.) In France the King by virtue of his proprietary interests could grant the soil so that it should become private property, but his grant must be express (*In re Provincial Fisheries*(3), at page 527), and, in all cases, made subject to the paramount right of public use of the navigable waters which he could neither destroy nor abridge (Proudhon, "Traité du Domaine Public," Vol. 3, No. 734). As under the French law the beds of navigable streams were vested in the King of France

(1) 19 L.C. Jur. 276. (2) [1914] A.C. 258; 46 Can. S.C.R. 656.
(3) 26 Can. S.C.R. 444.

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(*Fisheries Case*, 26 Can. S.C.R. 444), that title passed to the King of England by right of conquest. The laws of a conquered country remain in force unless and until they are altered and therefore the Crown now holds those lands upon the same trusts as before.

Since Confederation the title to beds of navigable rivers has been vested in the Crown in right of the province but the authority to legislate regarding the public right of navigation is, by the "British North America Act, 1867," assigned to the Dominion Parliament as coming within the subjects of trade and commerce and navigation which are among those enumerated in section 91 as within its exclusive authority.

In the United States courts it has been held that the power conferred upon the Federal Congress to regulate commerce extends not only to the control of the navigable waters of the country and the lands forming the beds thereof for the purposes of navigation, but also to authorizing the use of the beds of the streams for the purpose of erecting thereon piers, bridges and all other instrumentalities of commerce which, in the judgment of Congress, may be deemed necessary or convenient. The doctrine is very clearly stated in *Stockton* v. *Baltimore and New York Railroad Co.*(1).

It follows, therefore, that any legal title which might have become vested in a private individual must be subject to the same public trust and, therefore, subordinate to the rights of navigation and to the power of Parliament to control and use the soil in such navigable rivers, whenever the necessities of commerce and navigation demand. The right of Parliament to regulate trade and commerce and navigation

(1) 32 Fed. Rep. 9 at p. 11.

remains unaffected by the question as to whether the soil of the shore submerged is in the Crown in the right of the province or in the owner of the shore.

Mr. Justice Brodeur refers to the opinion of Sir L. H. Lafontaine in the "Seigniorial Case" to the effect that the grant by the Crown of the bed of a navigable river must be made in express terms. It is not to my knowledge that the opinion so expressed has ever been doubted.

The letters patent in this case make no reference to a river, and the diagram attached to the grant has nothing to indicate that the Crown or the grantee had any knowledge of the fact that the River Gatineau crossed the lots in question. In these circumstances, the petition of right must fail on the short ground that the River Gatineau, being a navigable stream at the locus in question, was not included in the grant which is silent with respect to it. The appeal should be dismissed with costs and there will be no costs on the intervention.

See Pothier and Troplong as to *défaut de contenance.*

DAVIES J.—The substantial questions raised upon this appeal were two: First, whether the appellants were entitled to a declaration as prayed that they were vested as proprietors with all those portions of the bed of the Gatineau River within the boundaries of lots 2 and 3 in the 5th range of the Township of Hull, Province of Quebec, as described in the Crown grant of 3rd January, 1806, whereby the Township of Hull was created.

For the purposes of this appeal, I assume the correctness of the findings of the trial judge that the suppliants had all the right, title and interest in the

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lots in question possessed by their original *auteur*, Philemon Wright, senior, under the said grant.

The second question, necessary to the determination of the first, was whether or not the Gatineau River was a navigable one from its mouth to Ironsides, just above which the first rapids and falls obstructing navigation begin? It is within this part of the river that the plaintiffs' claim is made.

In my judgment, the evidence shews conclusively that the river was a navigable one as far back as the memory of living witnesses went and was largely used as such by the great lumbering firm of Gilmour & Co. for about fifty or sixty years or more. The distance from its mouth to Ironsides is some four or five miles. The evidence places that fact of navigability beyond reasonable doubt.

Then comes the question—if that portion of the river in question, which embraces the locus in dispute, was navigable when the grant passed, did or could the grant operate to convey a title to the grantee in the river bed?

The boundaries of the Crown grant are general but no doubt cover and embrace this river bed and if such a grant could legally convey that part of the navigable four or five miles of the river to the grantee, as claimed, it no doubt did so.

Finding, as I do, however, the river from its mouth up to the rapids to have been a navigable one, I reach the conclusion that such navigable portion of it was not and could not be conveyed by the grant.

If the bed of such portion of the river as was navigable was intended to be conveyed express words to that effect would be necessary to be used, assuming the bed of a navigable river could be conveyed at all by the Crown without legislative authority.

In the case of the grant before us no such express words are used nor is the river referred to at all in the grant or shewn at all upon the plan to which the description refers. It is conceded that no legislative authority for the grant existed. The contention of the suppliant is, however, that without express words and in the absence of legislative authority the Crown cou'd by such general words as are used in the grant pass the title in the bed of a navigable river flowing through the lands granted.

It is the civil law and not the common law which governs in this case and the test of navigability is not a tidal but a practical one, namely—as a fact, is the river at the locus in dispute a navigable one? And, as I have held, its navigability for all practical purposes is unquestionable for four or five miles up from its mouth.

I cannot but think that this action was brought by the suppliants on a misunderstanding of the decision of the Privy Council in the case of *Maclaren* v. *The Attorney-General of Quebec*(1).

That case merely decided (1) that the general descriptions of the townships there in question, being bounded by the river, were not varied by the references to the posts and stone boundaries in the detailed descriptions (2) that the River Gatineau being one down which only loose logs could be floated was not a part of the Crown domain within article 400 of the Civil Code and that the appellant's lands on either side of the river extended *ad medium filum aquæ.*

Mr. Aylen attempted to apply the second finding of the Judicial Committee not only to the locus there in dispute but to the entire length of the river including

(1) [1914] A.C. 258.

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the navigable part of it below Ironsides which embraces the locus in dispute in this appeal.

The river beyond Ironsides, in its upper reaches, may not be navigable but one down which loose logs alone could be floated but, in my opinion, that fact and the legal consequences which flow from it cannot affect the four or five miles from its mouth to Ironsides the evidence with respect to which shewed conclusively that it was navigable for loaded barges, steamers and other kinds of river craft and was, as a fact, while the Gilmour lumbering company carried on their operations for a period covering fifty or sixty years, so navigated.

That portion of the river between its mouth and Ironsides is crossed by two bridges—one is a drawbridge to pass vessels through and the other a bridge of the Canadian Pacific Railway Co. 80 feet high and under which vessels passed. The booms and river improvements, which consist of piers, 1 to 12, running up the river from its west to its east side in a slanting direction, passed to the Dominion Government under section 108 of the "British North America Act, 1867."

In the case of the *Attorney-General of Quebec* v. *Fraser*(1), this court, of which I was a member, held that the River Moisie, in the Province of Quebec, for four of five miles up from its mouth till it reached the "falls," was a navigable river and, for that reason, a grant of lands bounded by the banks of that river did not convey to the grantee the bed of the river *ad medium filum aquæ*. In a summary of our holdings in that case formulated at the end of the reasons for the judgment of the court, delivered by Girouard, J., we say:—

(1) 37 Can. S.C.R. 577.

That the legal effect of the language of the patent with respect to the bed of the river, and the fishing rights therein, depends upon the determination of the question whether the Moisie at and in the four or five of its miles covered by the patent is navigable or floatable within the meaning of the law of Quebec, and that, adopting the test of navigability laid down by the Privy Council and hereinbefore quoted, we concur with the findings of the trial judge, and which findings are not questioned in the judgment of the court of appeal, that such river at such locality and from thence to its mouth, is so navigable and floatable.

That judgment was subsequently appealed to the Judicial Committee, *sub nomine Wyatt* v. *Attorney-General of Quebec*(1).

In their judgment, which affirmed the decision of this court, their Lordships approved of and incorporated in their reasons the summary of the judgment of this court including the part above quoted. The facts with respect to the navigability of the rivers Moisie and Gatineau a few miles up from their mouths and their non-navigability beyond that for nearly 200 miles are very similar and, in my opinion, the judgment of the Privy Council in *Wyatt* v. *Attorney-General of Quebec*(1) is very much in point on the disputed question in this case if it is not conclusive.

The result of that is to hold that the navigability of some miles of a river from its mouth, which is found and held, and the legal consequences which flow from that finding cannot be affected by the fact that, higher up, the river becomes, by reason of falls and rapids, unnavigable and capable only of carrying floating logs.

In the reasons for the judgment of their Lordships of the Privy Council in the *Maclaren Case*(2) delivered by Lord Moulton, his Lordship was most careful to define exactly what was being decided. He says, at page 274 of that case:—

(1) (1911) A.C. 489.

(2) [1914] A.C. 258.

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But this is not all. The rights of the public in the River Gatineau are not in any way put in issue in this case. The parties to this appeal are substantially at one on the question of the private ownership of the bed of the River Gatineau. The only difference between them is as to which of two private owners possesses it. The appellants contend that the portion of the bed of the river which is in question passed to their predecessors in title, by the grants to Caleb Brooks in 1860 and 1865, and that to William Brooks in 1891. The respondent contends that it passed to the defendants under the grant to them in 1899. Neither party, therefore, sets up a title in the public. So far as the River Gatineau is concerned the decision of this case will do no more than decide whether or not the language of certain existing grants was sufficient to pass particular portions of that bed, or whether, after such grants were made, they still remained in the hands of the Crown so that it had power to grant them by a later grant.

Now it is attempted to apply some general observations made as to the River Gatineau being a navigable river or not to the entire river, including the locus near its mouth.

It does not seem to me that there was any intention on the part of the Judicial Committee to lay down any such rule as that contended for or to overrule or in any way call in question the previous decision of their Lordships with respect to the Moisie River being navigable for four or five miles from its mouth while above that, for nearly 180 miles, navigation was stopped by the falls and rapids of the river.

Lord Moulton, after saying that speaking generally no substantial help is obtained by the decided cases in Quebec as to navigable and floatable rivers until the appointment of the Seigniorial Commissioners under the Act of 1854 to settle the value of the Seigniorial rights which were then about to be abolished, says that the decisions of those Commissioners were

of the highest authority as to the law then prevailing in Lower Canada to which an almost authoritative sanction has been given by statute. He further says:—

Turning to these seigniorial decisions and the judgments of the individual judges which accompany them, one cannot find any specific

reference to the status of the beds of rivers which were only "*flottables à bûches perdues.*" But, on the other hand, one finds clear statements that the seigniors became by their grant proprietors of the non-navigable rivers which passed through the fief subject to legal servitudes and to the *ad medium filum* rule.

His Lordship held that these decisions and the subsequent case of *Boswell* v. *Denis*(1),

> justified their Lordships in regarding the answers to the seigniorial questions as meaning that rivers were not floatable in the legal sense of that term if they were only so *à bûches perdues*,

and that their Lordships approved of the decision of this court in *Tanguay* v. *Canadian Electric Light Co.*(2), where the precise point was so decided.

For the purposes of this case I conclude that the decisions on the seigniorial questions referred to by Lord Moulton with commendation and approval decided the law in Quebec to be that grants from the Crown did not without express words in them pass the beds of navigable rivers to grantees. In such a case as the grant before us purporting to convey certain lots of the Township of Hull through which the River Gatineau flowed and in which grant no reference at all was made to the river, the bed of the river for the four or five miles from its mouth where the river was navigable did not in my judgment pass to the grantee.

A third question was raised whether the possession of the Crown for so long a period as that proved, evidenced by the construction and maintenance of the twelve blocks or piers built upon the bed of the river and connected together by logs or booms, did not bar the plaintiffs' claim. In my opinion it did.

Re-stated shortly, my opinion is that a river such as the Gatineau, nearly 180 miles in length, may be in fact and in law navigable for miles from its mouth and

(1) 10 L.C.R. 294. (2) 40 Can. S.C.R. 1.

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until the falls or rapids are reached which prevent further navigation while it may not be navigable above those obstructions.

That in the case of *Attorney-General of Quebec* v. *Fraser*(1) the point was so decided, and on appeal to the Privy Council was affirmed, and that by virtue of the civil law of Quebec in order to pass the bed of a navigable river from the Crown to the grantee express words and statutory authority must be shewn.

Lastly, the plaintiffs' claim in this case is barred by the Crown's possession of the bed of the river as proved by the evidence.

The appeal, therefore, should be dismissed with costs but no costs on the intervention.

IDINGTON J. (dissenting).—The appellants by petition of right sought to have it declared that under and by virtue of a grant on 3rd January, 1806, from the Crown to one Philemon Wright, of lots 2 and 3 in the 5th range of the Township of Hull, in what is now the Province of Quebec, he acquired the bed of the Gatineau River so far as running through the said lots as part of said grant, and that they by a series of transfers by way of conveyance, devise and inheritance, have acquired same. They claimed that respondent had taken and withheld same, or parts thereof, by means of structures erected in the river and booms so connected therewith for the purpose of retaining in store, temporarily or for long periods, logs, rafts and other material; and by the operation of the various devices in question has deprived them of sand and gravel of great value, and otherwise of the profits derivable from the ownership of said property.

(1) 37 Can. S.C.R. 577.

The respondent admitted the letters patent in question issued on said date, but denied apparently everything else and put appellants to the proof and further alleged that the Gatineau River where it flows through said two lots is and has always been a public navigable river and that the soil and bed of the said river is the property of respondent and not of appellant.

The learned trial judge suggested that the title to relief should be first tried and if any legal damages suffered, then a reference should be directed to determine the measure thereof.

He found the appellants had in fact acquired whatever title the original grantee had in said lots but in law he held that the grant in question did not pass any title to the bed of the stream.

The correctness of this latter holding must turn first upon the power of the Crown to make the grant and next upon whether in law the terms used therein are sufficiently clear to carry in them the intention to convey the bed of the stream free from any public right such as of navigation.

The power of the Crown so to grant must turn upon the nature of its title to such waste domains which it became seized of by statute or otherwise as result of the cession of 1759, and be subject to such restrictions, if any, as existed at the time in question.

I should feel reluctant to cast a possible doubt upon titles dependent upon the grants of the Crown by holding that the prerogative had been so limited in the scope of its authority by reason of what French law or custom may be found to have imposed upon the prerogative of the French Crown.

In so far as anything in question herein may depend upon the royal prerogative, the measure thereof I

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take it must be that recognized by English law as determining the same and, in the language of Lord Watson in the case of *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* (1), at page 441,

> the prerogative of the Queen, when it has not been expressly limited by local law or statute, is as extensive in Her Majesty's colonial possessions as in Great Britain.

I may in adopting this opinion be permitted to add that I incline to think there are cases in which the prerogative may extend further in some colonies than it now may in England.

In some colonies the limitations imposed by statute, applicable to England or Great Britain only, may not be suitable to local colonial conditions even if English law so far as suitable thereto may have been introduced.

In measuring the rights acquired in Quebec before the cession from the French Crown, article 400 of the Code may be of value so far as respects the law of that earlier period.

In such cases whatever impliedly failed by French law to pass to the grantee must be presumed to have been preserved to the Crown and to have passed to the English Crown. In that sense the opinion of the learned judges of the Seigniorial Court must be always held of great value relative thereto.

What, however, we now have to deal with is of an entirely different nature. It arises out of the grant by the English Crown of part of the waste lands of the Crown, in Quebec, in 1806—sixty years before the Civil Code was enacted.

The result may or may not differ from a fair consideration of what might have been the effect of a

(1) [1892] A.C. 437.

similar grant if made by the French Crown before the cession. It conduces, however, to a clear conception of what we have to deal with herein to bear in mind that it is English and not French law which we have to consider and that article 400 C.C., so much relied upon, cannot help us herein.

To prevent misapprehension it may be observed that from the time article 400 C.C. came into force, in 1866, as part of the Civil Code, the Crown having assented thereto may be possibly bound thereby as to subsequent grants unless so far as expressly or impliedly modified by later legislation. I express no opinion upon that. All I am concerned with just now is to eliminate what to my mind is obvious error leading to confusion on a subject where there is so much apt to confuse, even when we have eliminated all that we possibly can which tends to mislead. And I may here observe that in the numerous cases I have referred to in the course of this inquiry, the only formally expressed reason I have found advanced for applying the test of French law in this regard is that assigned by the late Mr. Justice Gwynne in the case of *Dixson* v. *Snetsinger*(1), at page 242, when he quotes and relied upon 14 Geo. III. whereby it was enacted

> that in all matters of controversy relative to property and civil rights resort shall be had to the laws of Canada as the rule for the decision of the same.

I fail to see how that provision for the decision of rights in controversy between subject and subject relative to questions touching their property and civil rights can touch or measure the prerogative rights of the Crown relative to the Crown domain.

(1) 23 U.C.C.P. 235.

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It is elementary that unless the Crown is reached by express words or necessary implication in any statute its rights or prerogatives are not affected thereby.

There is no such expression in the statute in question. Indeed there is much in the statute forbidding such implication, to say nothing of section 9 which provides that section 8 which confers said right shall not be extended to any lands that had been granted or should thereafter be granted by His Majesty to be held in free and common soccage.

I am not concerned with the outcome thereof. It might well be that where lands were granted and any dispute arose relative to them between subjects of the Crown their rights might be determined by French or other law, yet the rights of the Crown to deal with that ungranted would not be affected by any such rule.

I do not quarrel with the result of the decision in *Dixson* v. *Snetsinger*(1), which seems to have been rightly decided.

The rebuttable presumption of law which gives the riparian grantee of lands *ad filum aquæ* as his boundary might well be held in reason and common sense rebutted when such a claim is confronted by the facts involved when attempted to be applied to such a river as the St. Lawrence.

Fortunately we need not pursue that inquiry. The exigencies of this case are not such as to call therefor.

It is the range of possible activity of the English Crown in law over the waste lands thereof in an English colony which we have to deal with

(1) 23 U.C.C.P. 235.

and whether or not the limits thereof are to be taken from what we find in relation thereto governing its action in England in regard to inland rivers, does not seem to me to make any practical difference for the purposes of this case.

The Gatineau River is far from tidal waters. The limitations upon the powers of the Crown in regard to tidal waters may therefore at once be eliminated from our consideration.

I think the law upon the subject may be accepted as expressed in Coulson & Forbes on the Law of Waters, at page 515 (3rd ed.), as follows:—

> The public right of navigation may exist in non-tidal as well as in tidal waters; and where it does so exist, the principles of law which have been stated with regard to tidal waters will equally apply.
>
> But in the case of non-tidal rivers, the right of passage does not exist as a public franchise paramount to all rights of property in the bed, but can only be acquired by prescription, founded on a presumed grant from the owners of the soil over which the water passes. It would not, therefore, appear to extend *primâ facie* to a right of passage over the whole of the navigable channel, as in the case of tidal rivers, but to be strictly limited to the extent of the right granted or user proved.

I assume that the law is thus correctly stated and hence a grant of the soil as well as right to fish might have been made by the Crown if possessed thereof in an inland river though navigable. Such I take it are the implications in the foregoing statement just quoted.

The doctrine laid down in the cases of *Malcomson* v. *O'Dea*(1), and *Gann* v. *The Free Fishers of Whitstable*(2), and many other cases seem to indicate that the Crown before Magna Charta had the power even in the case of tidal navigable waters to make a grant of the soil, but since the development of what is contained therein rather than what is expressed, the

(1) 10 H.L. Cas. 591. (2) 11 H.L. Cas. 192.

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Crown cannot now in England make such a grant of soil in such river as will exclude the public or create a several fishery.

This suggests the inquiry of whether or not the like limitations bind the Crown in the colonies. If the prerogative of the Crown in such cases is to be measured by that existent anterior to Magna Charta, assuredly there cloud be no doubt of the power to make a grant of the soil in any tidal navigable river and thereby exclude the public and hence much more so relative to inland navigable rivers or other waters.

It may well be observed that the historical side of the question as exemplified in the grants made in the early history of the English colonies in America may warrant us in saying that much wider powers than might be tolerated in England, if conceivable of exercise there, have been presumably duly exercised in colonies.

Though this case has been argued twice I have been unable to tempt counsel to help us in relation to the line of inquiry I thus suggest.

I presume counsel in so refraining have been well advised for the two-fold reasons, first that royal prerogative in these later and degenerate days, cannot be imagined to have possessed, even a long time ago, such powers (so repugnant to modern thought) as to render the resting of a claim thereon advisable; and next, that in any case it is the sand and gravel which would go with a rightful grant of the soil that appellants claim and possibly they attach little importance to the right thereto being subject to the public's reasonable rights of navigation. I therefore express no definite opinion on that aspect of the case.

The Crown certainly owned this soil in question and this river a hundred and ten years ago, and could

within the law as laid down in the cases of *Murphy* v. *Ryan*(1), followed by *Pearce* v. *Scotcher*(2); *Tilbury* v. *Silva* (3), without any great stretch of its prerogative grant both soil and river and let the public find its own way of reclaiming any uses thereon or thereof as they best might.

The case of *Hurdman* v. *Thompson*(4), and other like cases also support the appellants' contention relative to the power of the Crown to convey the soil in the bed of a navigable river. As they do not bind us I have tried to test the question by the application of general principles which should prevail.

The process adopted for disposing of this part of the wilderness to induce settlement thereof is outlined in the recitals in the grant. And in the instructions to Lord Dorchester, as Governor-General in 1791, some fifteen years before the grant in question both the learned trial judge and counsel arguing here seem to find the only guide to the meaning of said recitals.

I should much have preferred to have seen the instructions to Bouchette, the Surveyor-General, and the reports of the surveyors to him, accompanied as they doubtless were with their field notes, and default those illuminating records should have been glad to have had some reasonable explanation for their non-production.

Had such and the like information relative to the instructions to the Governor-General and Lieutenant-Governor, for the time being, been forthcoming or accounted for, we could probably approach the use of the fifteen-year old instructions to Lord Dorchester and use same with more confidence, than we can in the

(1) Ir. Rep. 2 C. L. 143.
(2) 9 Q.B.D. 162.
(3) 45 Ch. D. 98.
(4) Q.R. 4 Q.B. 409.

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absence thereof, that the inferences to be drawn therefrom are resting upon a sure foundation.

With such doubt and hesitation as must exist under such circumstances I assume that the instruction to Lord Dorchester and the terms of his commission give us at least a fair indication of the policy of the advisors of the Crown at that time and in all probability it continued for some years unchanged especially as the appointment of Lord Dorchester was coeval with the new departure in the Government of Canada.

The commission to Lord Dorchester contained direct authority for making grants of such kind as in question herein in the following terms:—

> And we do likewise give and grant to you full power and authority with the advice of our Executive Councils for the affairs of our said Provinces of Upper Canada and Lower Canada to grant lands within the said provinces respectively which said grants are to pass and be sealed with our Seal of such Province and being entered upon record by such officer or officers as shall be appointed thereunto shall be good and effectual in law against us Our Heirs and Successors: Provided nevertheless that no grants or leases of any of the trading ports in our said provinces shall under colour of this authority be made to any person or persons whatsoever until our pleasure therein shall be signified to you.

This was accompanied by instructions relative to the execution of this power as follows:—

> It is therefore Our Will and Pleasure, that all and every person and persons, who shall apply for any grant or grants of land, shall previous to their obtaining the same, make it appear that they are in a condition to cultivate and improve the same, and in case you shall, upon a consideration of the circumstances of the person or persons applying for such grants, think it advisable to pass the same, you are in such case to cause a warrant to be drawn up directed to the Surveyor-General or other officers empowering him or them to make a faithful and exact survey of the lands so petitioned for, and to return the said warrant within six months at farthest from the date thereof, with a plot or description of the lands so surveyed thereunto annexed, and when the warrant shall be so returned by the said surveyor, or other proper officer, the grant shall be made out in due form, and the terms and conditions required by these Our Instructions be particularly and expressly mentioned therein—and it is Our Will and Pleasure that the

said grants shall be registered within six months from the date thereof in the Registrar's office, and a docket thereof be also entered in Our Auditor's Office, copies of all of which entries shall be returned regularly by the proper officer to Our Commissioners of Our Treasury.

32. And for the further encouragement of Our Subjects, It is Our Will and Pleasure that the lands to be granted by you as aforesaid, shall be laid out in townships, and that each inland township shall, as nearly as Circumstances shall admit, consist of ten miles square; and such as shall be situated upon a navigable river or water shall have a front of nine miles, and be twelve miles in depth, and shall be subdivided in such manner as may be found most advisable for the accommodation of the settlers, and for making the several reservations for public uses and particularly for the support of the protestant clergy agreeably to the above recited Act passed in the present Year of Our Reign.

* * * * *

That no farm lot shall be granted to any one person being master or mistress of a family in any township so to be laid out, which shall contain more than 200 Acres.

It is our Will and Pleasure, and you are hereby allowed or permitted to grant unto every such person or persons such further quantity of land as they may desire, not exceeding one thousand acres over and above what may have heretofore been granted to them, and in all grants of land to be made by you as aforesaid, you are to take care that due regard be had to the quality and comparative value of the different parts of land comprised within any township, so that each grantee may have as nearly as may be a proportionable quantity of lands of such different quality and comparative value, as likewise that the breadth of each tract of land to be hereafter granted be one-third of the length of such tract, and that the length of such tract do not extend along the banks of any river, but into the main land, that thereby the said grantees may have each a convenient share of what accommodation the said river may afford for navigation or otherwise.

And illustrative of the spirit in which these instructions were conceived we find item 61 thereof deals with the Bay of Chaleurs, as follows:—

61. Whereas it will be for the general benefit of our subjects carrying on the fishery in the Bay of Chaleurs in Our Province of Lower Canada, that such part of the beach and shore of the said bay as is ungranted, should be reserved to Us, Our Heirs, and Successors, it is therefore Our Will and Pleasure that you do not in future direct any survey to be made or grant to be passed for any part of the ungranted beach or shore of the said Bay of Chaleurs, except such parts thereof as by Our Orders in Council dated the 29th of June and 21st of July, 1786, are directed to be granted to John Shoolbred of London, merchant, and to Mess'rs. Robin, Pipon and Company of the Island of Jersey, mer-

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chants, but that the same be reserved to Us, Our Heirs and Successors, together with a sufficient quantity of wood land adjoining thereto, necessary for the purpose of carrying on the fishery.

It certainly never was supposed than that the parts of unexplored and unknown rivers or margins of the sea should be put beyond the power of the local executive to grant same when deemed advisable.

Let is now apply the terms of the said commission and instructions to the dealing with the lands in question.

The survey made the lots in question run somewhat obliquely across the Gatineau River. So much so does this appear that whilst the instructions are followed literally by making the lots in the survey run at right angles to the Ottawa River, known to be navigable, no such attempt was made in that regard relative to the lands through which the Gatineau River ran.

What is the correct inference to be drawn from such a mode of treatment thereof? Is it not as plain as if we saw the surveyors doing the work that they, no doubt well instructed on the point, had arrived at the conclusion that the Gatineau River, as they found it, was not a navigable river and hence could not be treated as such.

Moreover, we must recall to mind what the conditions were relative to navigation a hundred and ten years ago when the powers of steam were unknown and nothing but the uses of the oar, or the pole, or the wind were available to navigate any river. When we see tugs operated by the use of steam or gasoline hauling vast loads of timber, or anything else floatable, we are apt to forget that this was not always so; and jump to the conclusion that streams which thereby can be made available for navigation and might now

make valuable navigable waters, could not, so long ago, be looked upon, or held to be, absolutely worthless for any such purpose; as they in fact were according to the means of navigation then known.

Again we must realize that the condition of the Gatineau at its mouth and for some miles back therefrom over the plain through which it runs may have been entirely different when the Township of Hull was surveyed, from what it seems now, or may have seemed sixty years ago, when steps were taken to improve and render it navigable, for even the limited navigable uses it has been put to.

We must, so far as we can, with the very limited information given us, try to realize what those engaged in the survey found confronting them; and I think we must attribute to them at least an honest purpose to discharge their duty.

That discharge of duty we find portrayed in the plans before us which assuredly indicate an intention to measure out in rectangular lots of the dimensions indicated in the instructions that space in the wilderness occupied by either land or water or both, regardless of the possibilities of the developments of the waters for purposes of navigation.

To quote the language of the Judicial Committee in the recent case of *Maclaren* v. *The Attorney-General of Quebec*(1), at page 275, when dealing with this river and having to consider the title as to the bed thereof at a point where the townships and land on either side of the river had been bounded by iron posts placed in the bank thereof; the judgment stated:—

> The plots in those townships (meaning the Townships of Hull and Wakefield) are rectangular, so that in the case of river lots the bed of

(1) (1914) A.C. 258.

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the river is included within the metes and bounds of the lots in question without any appeal to the doctrine of *ad medium filum aquæ*.

That is not a decision of the court on the point involved herein but it is of great value as indicating how this survey and these plans thereof as presented to the minds of their Lordships led them to view the matter and conclude what was the nature thereof.

It is, I submit, reasonable to presume that the Governor-General of the time, or his Lieutenant-Governor did not discard their instructions and that the Surveyor-General for the province properly instructed his deputy surveyors and duly received reports from them of their work duly accompanied by their field notes, and duly considered same; and acted properly in adopting the survey and directing the patents to issue upon which appellants now rely.

It requires more assurance than I possess to overrule their judgment reached upon a knowledge of the facts no one can now ever possess, and condemn their conduct of the business they had in hand.

With great respect I submit the language of the patent read in light of the plans and instructions can convey no other meaning than the plain reading thereof.

There is nothing that can be found in the history of the prerogative of the Crown which would render it either necessary or proper to read into such a language a condition relative to future possible uses of the waters in question for purposes of navigation.

We might almost as well try to read into the patents of those holding grants of land from the Crown a reservation in favour of railways to be constructed by the Crown because we now find such might have been a prudent exercise of the power of the Crown in making such a grant.

Although we are far from having presented to us all that might have been so, relative to the condition of the Gatineau River before it was touched by the improving hands of those acting for the respondent, there is enough presented in the evidence to suggest that it may have shifted more than once its banks at the places in question long before any such improvements were made.

The accumulation of banks of sand and gravel which are in question and all that is implied therein ought to make one pause before positively reaching any conclusion in favour of navigability of the parts in question a hundred and ten years ago.

We have in truth nothing to guide us accurately unless we adopt the conclusion reached by those concerned in the survey and the outcome of the labour as exemplified in the patent and plans descriptive of the lots.

We do find those called to testify as to the navigability of the river telling us as follows: Noonan says:—

Q.—Down to 18 years ago, or say in later days, we will call it, where was the channel? A.—The place commenced to fill up.

Q.—On the west shore? A.—On the west shore, and then we had to let them through on the other side. We let them through on the east side when the water was high; and when the water went down we let them through in the middle of the boom.

Q.—At high water, the place for passing boats through is where you describe between piers 9 and 10? A.—Yes.

Q.—If the water was low you used to let them through in the middle of the boom? A.—Yes, at the third pier.

Q.—How long ago was it you let steamers through at the third pier? A.—A long time.

Q.—In more recent years all have gone through at the trip? A.—They got the dredge at the trip to make the channel deeper.

Q.—When was that dredging done? A.—In 1874. They dredged twice.

Q. Was the last time in 1874? A.—I can't say.

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Fenton says:—

Q.—The three inch planks would be rafted, and where would you raft to? A.—We rafted it.

Q.—At the yard at Ironsides—what sort of raft? A.—The cribs were 24 feet wide, and 72 feet long, and 12 tiers when the water was at its proper pitch. There were 12 tiers in each crib. The crib was 72 by 24 of 12 tiers of three inch planks.

HIS LORDSHIP:—What would that draw? A.—I should say it would draw about 24 inches or a little more perhaps.

And again:—

Q.—Do you remember if the river was dredged at any time? A.—Yes.

Q.—When was it first dredged? A.—I can't say. It was dredged while I still was at Ironsides.

He was employed at Gilmour's Mills from 1869 to 1890; and again:—

Q.—What about the sandbars, were they there in your time? A.—There were sandbars there.

Q.—But you can't say how they compared with those to-day? A.—No.

Q.—You don't know the size of them? A.—No.

Scott, an engineer of respondent, in 1889, says:—

Q.—It shews Leamy's Lake? A.—Yes.

Q.—It shews the outlet of the Leamy Lake and the old canal and the new canal? A.—Yes.

Q.—Are the numbers on this plan for the piers? A.—Yes.

And again says:—

Q.—And the boom is attached to the east bank of the Gatineau River, about three-quarters of a mile north of the C.P.R. Bridge? A.—About that. The boom extends from the north of the new canal on the west side to about a quarter of a mile above the C.P.R. bridge on the east side.

The respondent, interested only in seeing justice done, should have been able to follow these hints, so as to enlighten us why and when such conditions existed and especially how the two feet of navigable water was obtained and whether or not it was the result of improvements to navigation? Or was the entrance only a few inches in depth before these changes?

It should be held to be impossible by such evidence, unless clearly demonstrating that the improvements had nothing to do with producing even that degree of navigability, to establish that the Crown had originally been improvident in its grant and thereby escape the consequences thereof.

The reservations of the minerals and of the right to use the waters on the lands in question for operating mines is indicative of what was thought of the waters at the time of the grant. No doubt that was a usual provision in every like grant. Yet it brought always home, to the minds of those acting, the nature of the waters referred to in each grant.

I conclude from all the foregoing considerations not only that the grant of the lands in question was intended and properly intended to convey all that the Crown could grant by a conveyance of lots 2 and 3 in range 5 as it purports to, and that is all proprietory interests possible therein. Hence the respondent had no right without expropriation to interfere with the enjoyment of anything thereby presumably granted, any more than with the rights of grantees of low and marshy spots of land through which in the interests of navigation a canal might be projected and constructed.

In any event I am unable to understand in light of the authorities I have referred to, how it can be contended that the Crown had not by so plain a description comprehending the lands covered by the waters of the Gatineau as well as everything else within the assigned limits conveyed the soil over which the river runs even if subject to the right of the public for purposes of navigation.

The legislation of the last session of the Quebec Legislature would seem, if applicable to a pending suit, to have put an end to controversy on this head,

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but, holding the views I have expressed, I prefer resting thereon to seeking refuge in this legislation which may not have been intended to affect the present litigants.

Then the assertion of such public right does not require or justify the uses of the river for purposes of storage of lumber or encumbering the soil with such timber as stranded there when the waters have subsided.

Whether the soil under the piers erected by the respondent has by reason of such possession of the soil whereon they rest become by prescription that of respondent and that respondent is entitled to maintain that title thereto is by no means easy of a satisfactory solution.

The uses to which the piers were put from time to time could not establish at law any prescriptive title to maintain such an easement or servitude as needed to maintain the right to so use and enjoy them.

And with the failure to assert such a right of user I think must fall the possible claims to the soil on which the piers rest.

I see no good ground for questioning the title of appellants found as fact by the learned trial judge.

The appellants are entitled to the declarations prayed for and the other relief prayed for save in so far as the measure of the damages to determine which there must, if the parties cannot agree as to same, be a reference to find what may be due within the times not answered by the plea of prescription relative thereto so far as same be found on the facts applicable.

The appeal should therefore be allowed with costs throughout.

ANGLIN J.—Whatever may be their position in other provinces of Canada (see *Keewatin Power Co.*

v. *Town of Kenora*(1),) in the Province of Quebec the beds of non-tidal rivers navigable or floatable in fact form part of the public domain (Art. 400 C.C.; *Attorney-General of Quebec* v. *Fraser*(2), at pages 593, 599), and do not pass to the grantee of lands bordering upon them, at all events unless expressly included in the grant in terms specific and unmistakable (Seigniorial Questions, Vol. A., pp. 68a, 130a, 374a; Vol. B., 50 (*c*); *Maclaren* v. *Attorney-General for Quebec*(3), at pages 273-8. As to the effect of decisions of the Seigniorial Court and their applicability to other than seigniorial lands, see the "Seigniorial Act," 18 Vict. ch. 3, sec. 16, and *Tanguay* v. *Canadian Electric Light Co.*(4), at pages 12-13, 19; *Maclaren* v. *Attorney-General of Quebec*(3), at pages 280-1.) Although non-floatable in some of its upper reaches and indeed throughout the greater part of its length (*Maclaren* v. *Attorney-General for Quebec*(3), at pages 278-283), the Gatineau is admittedly navigable for several miles from the point at which it debouches into the River Ottawa. Notwithstanding that its general character is that of non-navigability, and however its navigable reaches above the first obstruction to navigation should be regarded (see *Hurdman* v. *Thompson* (5), at pages 437, 450, the converse case), the incidents of a navigable river attach to it up to that obstruction. *The Queen* v. *Robertson*(6). The lands in question are within this navigable stretch of the river.

Having regard to the royal instructions referred to by Mr. Justice Audette (15 Ex. C.R. 189), to which it was expressly made subject and to the rule of construc-

(1) 13 Ont. L.R. 237; 16 Ont. L.R. 184.
(2) 37 Can. S.C.R. 577.
(3) [1914] A.C. 258.
(4) 40 Can. S.C.R. 1.
(5) Q.R. 4 Q.B. 409.
(6) 6 Can. S.C.R. 52.

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tion "in favour of the Crown *pro bono publico* and against grantees" (Coulson and Forbes on Waters (3 ed.), p. 28), the grant to the appellants' predecessor in title of lots by number, although, as surveyed for the purpose of the erection of the Township of Hull, they extend across the river, was not, in my opinion, such an express grant of the river bed as would be necessary to carry title to it, assuming that it was alienable.

I also incline to the view that, if it were necessary to invoke it, the Crown could maintain the title by prescription alternatively asserted on its behalf.

BRODEUR J.—Avant la Confédération, le gouvernement canadien avait érigé près de l'embouchure de la Rivière Gatineau des estacades (booms) pour y recueillir les billots qu'on descendait dans cette rivière. Depuis 1867, le gouvernement fédéral a continué a maintenir ces estacades et une poursuite est maintenant dirigée contre lui par les appelants, qui déclarent que le lit de la Rivière Gatineau, à cet endroit-là, était leur propriété.

Ils se prétendent subrogés aux droits de Philemon Wright et ils alleguent qu'en vertu d'une concession faite par la Couronne à ce dernier, le 14 janvier, 1806, il est devenu propriétaire de certains lots de terre que couvrait la rivière.

Dans une cause de *Maclaren* v. *Attorney-General of Quebec*(1), la Rivière Gatineau a été l'objet d'un litige qui a été porté jusqu'au Conseil Privé.

Dans cette cause de *Maclaren*(1), il s'agissait de savoir si le lit de la rivière à un endroit où elle n'était pas navigable était la propriété des riverains ou la

(1) [1914] A.C. 258.

propriété du gouvernement provincial. Le Conseil Privé a décidé qu'à cet endroit particulier il était évident que la rivière n'était pas navigable et qu'en conséquence les riverains, par leur contrat de concession, étaient devenus propriétaires du lit de la rivière.

A l'endroit qui nous occupe dans la présente cause, il est incontestable que la rivières est navigable.

Alors la première question qui se présente est de savoir si une rivière peut être navigable pour partie et être considérée comme une dépendance du domaine public pour cette partie-là lorsque dans d'autres parties elle n'est pas navigable et est par conséquent du domaine privé.

Je n'hésite pas à dire avec les auteurs suivants que des rivières peuvent être du domaine public pour partie.

Daviel, Cours d'eau, p. 40, dit:

> Lorsqu'une rivière n'est navigable ou flottable en trains qu'en certaines parties, toutes ces parties exclusivement doivent être considérées comme dépendances du domaine public.

Duranton, No. 203, dit:—

> Les rivières navigables ou flottables ne sont telles que dans les parties où la navigation ou la flottaison peut avoir lieu; dès lors elles ne font partie du domaine public que dans ces endroits et dans les autres les riverains peuvent les faire servir à l'irrigation de leurs propriétés.

Garnier, Régime des Eaux, Vol. 1er, p. 56:—

> Les lieux navigables et flottables font partie du domaine public et ceux qui ne le sont pas appartiennent aux particuliers sans égard à leur situation sur l'étendue du cours d'eau.

Cette cour a d'ailleurs consacré le même principe dans la cause de *Attorney-General of Quebec* v. *Fraser*(1). Le jugement a été plus tard confirmé par le Conseil Privé(2).

(1) 37 Can. S.C.R. 577.

(2) [1911] A.C. 489.

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La Couronne avait-elle le droit, en 1806, de faire des concessions de terrain de manière à y inclure des parties de rivières navigables?

Cette question aurait donné lieu a beaucoup d'étude et de travail pour être solutionnée; mais depuis que la cause est pendante devant nous un statut provincial a été adopté (6 Geo. V., ch. 17) qui déclare positivement que la Couronne avait le droit de concéder et d'aliéner les lits des rivières navigables et flottables.

Peut-on interpréter la concession du terrain qui a été faite comme incluant la rivière elle-meme?

Le Township de Hull avait été divisé en lots par un arpenteur; mais cette division paraît avoir été faite sur le papier plutôt que sur le terrain lui-même. On semble avoir pris l'étendue du township et avoir tracé sur papier divers lopins de terre sans y indiquer les cours d'eau, ni même les rivières. Est-il à présumer que lorsque la concession a été faite à Philemon Wright, en 1806, la Couronne lui concédait en même temps la Rivière Gatineau qui couvrait quelques-uns de ces lots, et notamment les lots en litige dans la présente cause?

Chitty, On Prerogatives of the Crown, p. 391, dit:—

> In ordinary cases between subject and subject the principle is that the grant shall be construed, if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security. But in the case of the King, whose grants chiefly flow from his royal bounty and grace, the rule is otherwise; and the Crown grants have at all times been construed most favourably to the King, where a fair doubt exists as to the real meaning of the instrument.

Il me semble que dans une concession comme celle-ci si on avait voulu inclure les rivières navigables on l'aurait certainement mentionné.

La Cour Seigneuriale, appelée à examiner des con-

cessions de la même nature, a déclaré que ces contrats de concession ne pouvaient pas être interprétés comme comprenant les rivières navigables. (Décisions de la Cour Seigneuriale, Vol. A, page 68 à la 26ème Question.) Sir Louis-Hypolite La Fontaine, le Président de cette Cour disait, p. 358:—

> De tout ce qui précède nous concluons que les seigneurs comme tous autres particuliers ont pu acquérir des droits dans des rivières navigables mais non pas de plein droit comme seigneurs de fiefs adjacents à ces rivières, à la différence des rivières non navigables ni flottables dont la propriété leur était dévolue à ce seul titre.
>
> Pour acquérir ces droits dans une rivière navigable, *il leur fallait une concession expresse du Souverain.*

Je considère que dans les circonstances le contrat de concession sur lequel les appelants basent leur demande ne les autorise pas à réclamer la propriété dans le lit de la rivière où le gouvernement fédéral maintient ses estacades.

Pour ces raisons, l'appel doit être renvoyé avec dépens.

Appeal dismissed with costs.

Solicitors for the appellant: *Aylen & Duclos.*
Solicitor for the respondent: *F. H. Chrysler.*