1911
*Nov. 7, 8.
1912
*March 21.

MACLAREN AND OTHERS v. THE ATTORNEY-GENERAL OF QUEBEC AND HANSON BROS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Public domain—Floatable or navigable rivers—Grant from the Crown—Riparian owners—Title to bed of river—Erection of townships—Description of areas included—Costs.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), reversing the judgment of the Superior Court, District of Ottawa, which maintained the plaintiffs' (appellants') action with costs.

The plaintiffs alleged that they were proprietors of certain lots of land in the Townships of Low and Denholm, in the County of Wright, one lot being bounded on the west side and the other on the east side by the Gatineau River and lying directly opposite to each other. They contended that, as the River Gatineau was not navigable nor floatable, but merely *flotable à bûches perdues,* they were, as riparian proprietors, owners of the bed of the river between the lots in question, each title carrying with it ownership *ad medium filum aquæ.* The lots were granted in fee simple by the Crown in the years 1860 and 1891, respectively, and the grants contained no special reservations in regard to the bed of the river. At the locus in dispute the course of the river is interrupted by "Paugan Falls," a natural water-power capable of development for com-

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

(1) Q.R. 21 K.B. 42.

mercial purposes. The Township of Low was erected, by proclamation, in 1859, out of the wild lands of the Crown, and its eastern limit was bounded by the waters of the river; in a similar manner the Township of Denholm was erected, in 1860, with its western limit bounded by the waters of the river; the description of the lots stated they were, respectively, situated within Low and Denholm.

In 1899, the defendants, Hanson Brothers, purchased from the Government of Quebec that part of the bed of the river lying between the lots in question, and received a Crown grant therefor. Upon the institution of the action against them, the Attorney-General for Quebec intervened to protect the rights of the defendants in virtue of the grant to them, alleging that the river was navigable and floatable; that its bed was a portion of the Crown domain, and that it had never become the property of the plaintiffs. It was also contended by the defendants that, as the lots were described in the plaintiffs' title as bounded by the river and situate within the area of the respective townships, no property in the bed passed to them in any event.

The trial judge, in maintaining the plaintiffs' action, held that the river was not a navigable river, and that, by the ruling of the Supreme Court of Canada in *Tangway* v. *Canadian Electric Light Co.*(1) it was also non-floatable. As to the other point he held that a grant giving a non-navigable and non-floatable river as the boundary of the land sold could not be read as implying a reservation of its bed or as excluding rights in it from the grant. The Court of King's Bench re-

(1) 40 Can. S.C.R. 1.

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versed this judgment on both grounds, holding the river to be floatable and that the plaintiffs' grant conveyed no title to the bed of the river.

On appeal by the plaintiffs to the Supreme Court of Canada, after hearing counsel on behalf of both parties, judgment was reserved, and, on a subsequent day, the judges being equally divided in opinion, the appeal stood dismissed without costs.

*Appeal dismissed without costs.**

Aylen K.C. for the appellants.

R. C. Smith K.C. and *Brooke K.C.* for the respondents.

*Leave to appeal to Privy Council was granted on 16th July, 1912.