

ferent period of the year, by reason of which the plaintiff is injured, that might furnish a ground of action; but the present action is not brought for any injury of that character, nor would the facts presented in this case sustain such an action, if it was before us.

The State
vs.
Gilmanton.

We have considered this case as if Watson & Son, when they conveyed, in 1819, could grant the right to use, at the southerly end of the dam, all the water ordinarily running in the stream, beyond the quantity which the defendants, and those under whom they claim, had been accustomed to use on the northerly side. Whether, however, Watson & Son could convey such a right? or whether the right to the use of such water would belong equally to the owners on both sides of the river? or whether the long continuance of the mills on the northerly side, without any use at the southerly end of the dam, is to be regarded as evidence of a right to erect a dam and use all the water of the river at pleasure upon the north side? are questions which we have not considered, and upon which we do not intend to intimate an opinion.

Judgment for the defendants.

THE STATE vs. GILMANTON.

Where a grant is made, extending to a river, and bounding upon it, the centre of the stream is the line of the boundary, if there is no limitation in the terms of the grant itself.

But where a grant runs to, and is bounded upon a lake, or other large body of standing fresh water, the grant extends only to the water's edge.

INDICTMENT against the town of Gilmanton, for not repairing a certain highway, beginning at the dwelling-house of Joseph Fifield, and running to Gilmanton line, between said

The State
vs.
Gilmanton.

Gilmanton and Sanbornton ; submitted to the determination of the court upon the following statement of facts.

There is a bridge across the waters between the towns of Sanbornton and Gilmanton, about thirty-seven rods long, and these waters are the Sanbornton bay. The bridge was built by private subscription, connecting the shores of the bay, and over this bridge a highway has been laid out by a committee from the court of common pleas. Sanbornton bay is about ten miles long, and from two to three miles wide in the broadest part. There is so much current where this bridge is, that no ice forms about it. The outlet of the lake Winnipissiogee is by the river of that name, and it discharges itself into this bay. The boundaries of Gilmanton are as follows—"To begin on the head of the town of Barnstead, at the corner of the said town, and next to the town of Chichester, and running from thence on a north-west line to Winnipissiogee pond, or river that runs out of said pond ; and commencing again from the place where it began, to run north-east six miles on the head of the aforesaid town of Barnstead ; then north-west two miles ; then north to Winnipissiogee pond ; then on the pond and river to meet the first line."

The state has exercised jurisdiction over the waters of the lake, so far as to annex islands thereof to the adjacent towns ; and in one instance an island was conveyed by the state, in a bay three or four miles below the aforesaid bridge, but not in the same bay over which the bridge is made.

If upon these facts the court should be of opinion that the town of Gilmanton is liable for the repairs of said bridge, judgment to be entered for such sum as shall be necessary to make such repairs : otherwise the town to be discharged from the indictment.

Gove, A. G. for the state.

I. A. Eastman, for the defendant, cited 5 N. H. R. 37,

Lawrence vs. Haynes ; 5 *Wendell* 423, *Canal Com'rs vs. The People* ; 3 *Kent's Com.* 427. The State
vs.
Gilmanton.

PARKER, C. J. The facts necessary to a decision in this case are not fully stated.

The rule for the construction of grants bounding on rivers, is stated in *Prop'rs of Claremont vs. Carleton*, 2 *N. H. R.* 369—Where a grant is made extending to a river, and bounding upon it, the centre of the stream is the line of the boundary, if there is no limitation in the terms of the grant itself.

But in relation to grants bounding on ponds, lakes, or other large bodies of standing fresh water, that principle does not apply, but the grant extends only to the water's edge. Such seems to have been the construction of the legislature in this state, as appears from the annexation of islands, in lake Winnipissiogee, to the towns adjacent, and from a grant of one stated in the case. And such is laid down as the rule in New York, by Mr. Chancellor Walworth. 5 *Wend.* 447, *Canal Com'rs vs. The People*. *Vide, also*, 6 *Cowen* 545, *note*.

If, therefore, the line of the township of Gilmanton, running from Barnstead, as stated in the case, strikes a river, and the boundary is then upon a river, the grant extends to the thread of the river ; but if it strikes any large body of standing water, by whatever name it is called, it will go only to the water's edge, and be there bounded, there being nothing in the terms of the grant to show that it was to be extended further.

The controversy between the parties here seems to be, whether the water upon the westerly boundary, and particularly at the place where this bridge is built, constitutes a river. A portion of a river may be designated as a bay. It is not the less a river on account of such name. On the other hand, bays may be connected with rivers in such way as to form a body of standing water, extending inland, and not be considered part of the river.

Smith
vs.
Whittier.

The water from the lake, which forms a junction with the Pemigewasset river, has generally been known as the Winnipissiogee river. In the course of that distance, however, there are large bodies of water denominated bays. There is no pretence that any of these are arms of the lake. They are on a lower level. But they may be lakes of themselves, in which case there are in fact two or more rivers; or they may in some instances be mere enlargements of a river.

It is stated in the case that there is a current at the place where the bridge is situated. This would indicate that the boundary at that place is a river. If so, its being designated as Sanbornton bay would of course make no difference.

As there is a controversy as to the facts of the case, we think it proper to discharge the statement, and transfer the case for trial, to ascertain whether the water of the boundary, and particularly at the place in question, is a river or not. The whole character of the water on that boundary may be of importance in the construction of the grant.

SMITH vs. WHITTIER.

The parties in an action before a justice of the peace, in the state of Maine, after a trial, agreed that the action should be continued for judgment to such time as the justice should appoint, who afterwards appointed a day, but did not give notice—*Held* that the defendant, in an action upon the judgment rendered against him in that suit, could not object that the magistrate rendered judgment without making proclamation of the time to which the action was continued, according to the laws of Maine, and without giving him notice; and that having pleaded, and proceeded to trial in the original action, the defendant could not now object that no regular service had been made upon him in that suit.

DEBT on judgment rendered by John Frost, Esq., a jus-