

highway. The English and American law treatises and decisions are full of authority to this effect, and it is unnecessary to cite them. It is worthy of remark that Congress, as early as 1786, affirmed this view in respect to the navigable waters leading into the Mississippi and St. Lawrence. This was done by a resolution adopted in that year; and the same view was afterwards reaffirmed in the ordinance of 1787, which, in the very language of the resolution cited, declares the said waters and the carrying places between the same "to be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor." The right of freely navigating the Mississippi to its mouth had already been asserted by the United States, and the resolution cited and the ordinance of 1787 extended that right to the navigable tributaries of both rivers.

How, then, stands the case of the St. Lawrence? It is a large navigable river, emptying directly into the ocean. For several hundred miles above its mouth, it is substantially a great ocean-inlet, averaging not less than thirty miles in width. Above, the American sovereignty rules upon one bank and the English upon the other; whilst below, both are ruled by the latter. It is a national highway; and the right to navigate it is the right to use it, to apply it to those purposes for which it was designed by the God of nature. The right of navigation in this case, as in that of a highway, is the right of the *individual*, the *natural* man; and the ruling sovereignty is absolute in neither. In fact, that sovereignty or control which a nation claims for itself over a navigable river passing within its borders is substantially the right of its people—its individual citizens or subjects—to use it according to its natural design of furnishing them with a pathway to the ocean, and enabling them to hold intercourse with the remote nations of the globe. How, then, can those who dwell upon the upper parts of a navigable stream lose the right of freely passing on it to and from the ocean by happening not to dwell under the sovereignty of that people who occupy its lower banks? How can it be shown that a mere difference of local position can thus operate to diminish or enlarge a natural right which exists and belongs to man independently of all human government?

To such views as these may be added the authority of Mr. Clay, who, when he was Secretary of State, in his instructions of June 19, 1826, to Mr. Gallatin, our minister at London, used the following language: "It is inconceivable upon what just grounds a nation below can oppose the right of that above to pass through a great natural highway into the sea, that it may trade or hold intercourse with other nations by their consent. From the very nature of such a river, it must, in respect to its navigable uses, be considered as common to all the nations who inhabit its banks, as a free gift flowing from the bounty of Heaven, intended for all whose lots are cast upon its borders." And in his instructions of the 8th of August, in the same year, to Mr. Gallatin, he says, concerning the right of navigating the St. Lawrence, independently of Great Britain: "Nor can the President consent to any treaty by which they should renounce that right, expressly or by implication."

The right to *regulate* the use of a highway—as a navigable river—must not be confounded with an absolute sovereignty. This right of *regulation* must necessarily belong to the contiguous nations; but it must be