all events the defendants have not demurred to the indictment nor sought to quash it. The question then is, have the prosecutors proved their case? Before entering into an examination of the evidence, I shall read you the text of a recognized authority which gives a definition of a nuisance: "Nuisance, *nocumentum* or annoyance, signifies anything that worketh hurt, inconvenience or damage, and nuisances are of two kinds, *public* or *common* nuisances, which affect the public and are an annoyance to all the King's subjects, and *private* nuisances, which may be defined as anything done to the hurt or annoyance of the lands, tenements or hereditaments of another."—2 Russell, 418. The limit to this definition is expressed in a very few words: "But the annoyance or neglect must be of a real and substantial nature."

There are therefore two sorts of nuisances, one which affects or is of a nature to affect *all* Her Majesty's subjects, and another which affects private and individual rights. The former is indictable, the latter is not.

The Court of Appeals held in the case of *McBean & Carlisle*, that the interruption of a private river, not fully navigable, but only floatable, gave rise to an action of damages,—that is to say, that the interruption was a nuisance, whether an indictable one or not, it is not now necessary to determine. In another case, of *Dunning & Girouard*, it was held by the Superior Court, and the judgment was confirmed in Appeal, that mooring a raft in the St. Lawrence for weeks opposite the property of the plaintiff was also a nuisance which gave rise to an action by the proprietor for damages.

Now under this explanation of the law you have to look at the facts that are proved. It is pleasing to be able to say that there is no essential difference between the evidence of witnesses on the part of the prosecution and those of the defence, except as to the distance the raft was pushed from the shore on the day after the arrival of the raft. But perhaps this is not of much importance, for it seems to be satisfactorily proved that the raft filled the whole of the channel that could be used for navigation. Two matters have, however, been put forward on the part of the defence. It was said, firstly, that the great commercial interests of the country required that those bringing down lumber in rafts should have the power to stop in the way this raft had done, that the Grand Trunk Railway required ties and could not conveniently get them in any other way. This argument is not a good one, for if the defendants had a right to block up one channel for weeks, another person with a raft might block up another, and so on till all means of circulation were rendered impossible, and thus the trade would be confined to those parties who came first. This defence then is perfectly illusory and unsound. The next means of defence relied on is that the defendants had used great diligence in breaking up the raft and diminishing the annoyance. This argument is much more plausible than the other, and if it had been shown that the raft took up the position complained of, by stress of weather so irresistible that those conducting it could not have prevented it, then this defence would have been a complete answer to the charge. But in this case the parties took up their position deliberately, and knowing perfectly the result of the proceeding. They were towed into the channel opposite Mr. Lacroix property by a steamer, and it does not appear that there was any reason for their taking up the position they did except that it was the most convenient place for them to lay-to in order to discharge their ties. Under these circumstances this line of defence is no more tenable than the other. Your enquiry is, therefore, as to the naked fact of whether there was a public nuisance or not. As matter of law the voluntary obstructing a channel of a navigable river for weeks, in such a way as to prevent the rest of the public from using it, without being authorized by competent authority, is a public nuisance. Of course you may disbelieve all the witnesses and arrive at the conclusion that there was no raft and no channel, and that the whole story is a fabrication, but if you do not think that, I cannot fancy there can be much doubt as to what your verdict will be. Two letters have been put in to establish some sort of understanding between the parties, but both parties seem to agree that these letters have no influence in the case. Chief Justice Dorion appears to have been satisfied with a sort of half assurance on the part of the chief engineer of the Grand Trunk Railway Company, but Mr. Archambault and Mr. Lacroix were not, and they have continued the prosecution. They had