

Mr. GUTHRIE: Yes, he has.

Mr. POWELL: Not in the language of the dictionary. It is a highly technical use of the word "free."

Mr. GUTHRIE: I certainly think that "free" would not permit the building of a dam across the water.

Mr. POWELL: Is not this the case, that the free and uninterrupted navigation of a river would not prevent the owner, if the owner had such a right of soil in the bed of the river, from erecting therein the pier stretching out, so long as it did not unreasonably interfere with navigation, and that question of unreasonable right to navigation will be tried out in a suit for what? For a nuisance. And the thing would be whether it was reasonable or not.

Mr. GUTHRIE: I grant you that all things must be reasonable; otherwise they would be a farce.

Mr. POWELL: If you go back to the Ashburton Treaty, you may restrict the word "free" and adopt it as a highly technical term which does not mean free as given by lexicographers; yet you cannot restrict it to the point of absolute prohibition.

Mr. GUTHRIE: It has been argued that that word "free" means untaxed or without charge, but the word "open" was put in to extend it, and you have both words to deal with. So, if one foot is not on strong ground the other foot is.

Mr. MIGNEAULT: The word "open" with the word "free" shows that navigation should not be restricted.

Mr. POWELL: In the United States there was an island in the centre, and the railway company was building two bridges—the right of free and uninterrupted navigation was invoked, and it came before the Supreme Court of the United States in the way of getting an injunction against the railway company for putting the bridge over one branch of the stream and absolutely closing it. The Supreme Court of the United States held that, inasmuch as there was an ample and sufficiently capacious alternate route, the injunction would not lie.

Mr. GUTHRIE: They did not have a treaty with another nation that said both routes shall be open.

Mr. POWELL: If you had not the Ashburton Treaty the other principle might come in.

Mr. GUTHRIE: I am making no suggestion of that kind at all. We are relying upon the Ashburton Treaty.