

Upon these several pleas issues were joined.

The parties were heard on the pleadings, and on the 19th. of February 1816, the Court below dismissed the Appellant's demurrer, with costs.

The cause was then inscribed upon the Roll of Enquêtes, and several witnesses were examined on the part of the Respondent.

The items, which the Respondent attempted to establish, were,—

1^o Rent for timber shipped from the Appellant's Raft, whilst it was afloat opposite the Respondent's grounds, but tied to a tree upon or near them.

2^o Rent for timber placed by the Appellant above high water mark, upon or opposite the Respondent's grounds.

Upon this evidence the parties went to trial and the Appellant maintained,

1st.—That the land lying between high and low water mark formed part of the bed of the river St. Lawrence, and that he the Appellant, in common with others the King's subjects, was entitled to use the same *as well* as the shore of the river. By the civil law the beach and shores of navigable rivers belonged to the proprietors of the adjoining lands, the use of them belonged to the public.—(Vinnius ad Inst. tit. de rer. div. §. 4.—Accurs ad Inst. de rer. div. §. 4.—Cujac. Ib. pag. 11. litt. D. Acosta. ibid.)—The beach or the interval of land, between high and low water mark, was considered part of the bed of the river.—(Ins. lib. 2. tit. 1. §. 3.)

The shores and banks of navigable rivers (or the declivity adjoining to the high water mark, L. 1. §. 5. D. de flum.) were considered as accessories to the river. "*Usus riparum* (says Vinnius) *ita publicus est ut fluminis: quinimo ripæ usus nihil aliud est, quam ipsius fluminis, cum per ripam flumine utamur. Ideoque quæcumque sunt interdicta ad tuendum usum publicum fluminis, eadem sunt et conjunctim ad tuendum usum riparum.*—L. 1. et passim. tit. de flum. Ait (Justinus) *jure gentium quasi dicat, hunc usum atque hanc servitutem ripis à naturâ impositam esse omnibus, quibus flumine uti jure gentium licet, etiam ripis ripis ad eum usum uti liceat, cum nec flumine aliter uti commodè possint.*"—Vinnius ad Inst. de rer. div. §. 4.

Accordingly the public had a right to attach fastenings to trees growing upon the shores (Inst. d. t. §. 4.) to discharge load upon the shores, (Ibid.) to build huts thereon, (§. 5.) as fully and freely as they had to navigate the river itself.—Sicut per ipsum flumen navigare, (Inst. ib.)

The only difference between the law of France and the civil law upon this head, is that in France the King was vested with the property of the beds, beaches and shores of navigable rivers and held them in trust for the public. (Ferr. Inst. Vol. II. pp. 8. 9. 12. 13.—Poth. droit de propriété, no. 161.—Rep. de Jur. verbo Rivière.—Coll. de Jur. verbo Atterrissement.—Ferrière D. Dt. verbo Rivage—Domat, Bacquet, Tr. des droit de Justice, p. 406—Orl. de la Marine, liv. 4. tit. 7. act. 1. and Ordees. there cited.) And such is too, the Law of England.—(Com. Dig. Navigation A.—Prerogative D. 61.—Viner. Soil A.—Davis Reports 154.—Hale de Jure Maris apud Bacon's abridgt. Prerogative B. 3. in notis.)—If it were necessary it might be shewn that it was the law of the whole of continental Europe—of Germany, (Heinece: Elem. Jur. Germ. lib. II. Tit. 1. §. 8.)—Of Spain, (Maymó et Ribes Instit. Jur. Rom. et Hispani. lib. II. tit. 1. §. 13.)—And of the United Provinces, (Voët ad Pand. lib. 41. tit. 1. §. 18.—Huber de Jure Civit. lib. 2. s. 4. cap. 4. §. 13.)

Consistently with these principles an Ordonnance was, on the 13 May 1665, issued by the Superior Council, to secure to the subjects of the French King, the free navigation of the St. Lawrence and the use of its shores.—*Le Conseil a ordonné à toutes personnes qui ont et auront des clôtures à faire sur le bord du fleuve, de les mettre en sorte qu'il reste deux perches libres au-dessus des plus hautes marées pour la liberté tant du passage des charrettes et bestiaux que de la navigation, &c.*—Edits et Ordees. t. II. p. 126.

The Appellant relying upon these authorities, trusted that he had shewn that the Respondent could not recover from him the rent of the beach nor the rent of the shore.