

The Municipal Code articles 868 and 891 provides that every river or natural water course which is neither navigable nor floatable at certain periods of the year, is a municipal water-course, and that any person may use the same as well as the banks thereof for the conveyance of any kinds of timber, subject to the payment of all damages. The right to float timber down streams which are floatable during the freshet season is well settled. *Atkinson vs Couture*, 2 S. C., 46; *Gouin ès-qual vs McManamy*, 32 S. C., 19. See also *Price vs McConville*, 12 K. B., 163.

"Under the positive laws and the decisions cited we have to regard McGregor Creek as a stream which riparian owners—and especially if, as in this case, they can show express title to the adjacent water power as well—might turn to account by the erection of dams and works. Having erected these works under authority of the law, defendants cannot be restrained by injunction from using the water in such manner as may be necessary for the operation of their power house. The only recourse possessed by those who have been injured is for damages. The judgment under review properly so held."

*(The balance of Mr. Justice Davidson's remarks refers to the facts and the damages awarded).*

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