

such a wharf, and would be entitled to maintain an action for the injuries to it which are complained of."

It was not necessary in that case to consider the power to grant the water lot, because the Statute of Canada, 23 Vic. c. 2, s. 35, already cited, afforded a short answer and it was used.

Of course, when one comes down to English rivers and harbours, he may expect to find English Judges using extreme language to prevent interference with these highways.

It was apparently Lord Blackburn who first thought in this connection of the Amazon, and Wilson, C.J., who quoted him. He might have mentioned the St. Lawrence, or many other Canadian rivers, or the Great Lakes, or Halifax Harbour.

But even Sir George Jessel, M.R., when he undertook in *Attorney-General v. Terry*, 9 Ch. App. 423, to overrule in part *Rex v. Russell*, 6 B. & C. 566, supplied a test as to what was a public nuisance, and there he was dealing with a width of sixty feet available for navigation, of which the defendant had taken three feet, and Lord Cairns said that was a substantial interference with navigation. Sir George Jessel, however, says, quoting from the argument of Sir William Follett in *Rex v. Ward*, 4 A. & E. 384, as a correct statement of the law: "Erections may be made in a harbour below high-water mark, and in places where vessels might perhaps have sailed, and the question whether they are a nuisance or not will depend on this, whether upon the whole they produce public benefit; not giving the term 'public benefit' too extended a sense by applying them to the public frequenting the port."

The American view is thus stated in 29 Cyc. 344: "Piers and wharves to some extent obstruct navigation, but they are also substantial and material aids to it, for without piers and wharves at which vessels might land, navigation would cease. The question as to the legality of such structures is therefore not whether they obstruct navigation to some extent, but whether they constitute a material obstruction."

The port warden, a witness called by the defendants, said of this wharf: "It is not an interference with navigation as far as extending into the harbour is concerned."