between a non-navigable river (such as that in *Miner* v. *Gilmour*) and a navigable or tidal river, forming at high water the boundary of riparian land, was that in the case of a non-navigable river the riparian owner is proprietor of the bed of the river, *ad medium filum aquæ*, which, in the case of a non-navigable river such as the St. Charles, belongs to the Crown. The same distinction was contended for in *Lyon v. Fishmongers' Company;* but the House of Lords, on grounds with which their Lordships concur, thought it immaterial. Lord Cairns rejected the proposition that the right of a riparian owner to the use of the stream depends on ownership of the soil of the stream; he adopted the words of Lord Wensleydale in *Chasemore* v. *Richard* (7 H. L. 372);—"The subject of "right to streams of water flowing on the "surface has been of late years fully dis- "cussed, and by a series of carefully con- "sidered judgments placed upon a clear "and satisfactory footing. It has now been "settled that the right to the enjoyment of a "natural stream of water on the surface, "*ex jure naturæ*, belongs to the proprietor of "the adjoining lands, as a natural incident "to the right to the soil itself, and that he is "entitled to the benefit of it, as he is to all "the other natural advantages belonging to "the land of which he is the owner. He has "the right to have it come to him in its "natural state, in flow, quantity and quality, "and to go from him without obstruction, "upon the same principle that he is entitled "to the support of his neighbour's soil for "his own in its natural state."

It was said in the same case of *Lyon* v. *Fishmongers' Company*, p. 683: "It is, of "course, necessary for the existence of a "riparian right that the land should be in "contact with the flow of the stream; but "lateral contact is as good, *jure naturæ* as "vertical; and not only the word 'riparian,' "but the best authorities, such as *Miner* v. "*Gilmour*, and the passage which one of your "Lordships has read from Lord Wensleydale's "judgment in *Chasemore* v. *Richards*, state the "doctrine in terms which point to lateral "contact rather than vertical." This is followed by the words already cited as to its being sufficient that this contact should exist daily, in the ordinary and regular course of nature, though it may not continue during the whole of any day.

Their Lordships have considered the authorities referred to in support of this part of the appellants' argument, and they are of opinion that none of them tend to establish the non-existence of riparian rights upon navigable or tidal rivers in Lower Canada, or to show that the obstruction of such rights, without Parliamentary authority, would not be an actionable wrong, or that, if in a case like the present, the riparian owner would be entitled to indemnity, under a statute authorizing the works on condition of indemnity, the substituted access by openings, such as those which the appellants in this case have left, would be an answer to the claim for indemnity. The French law prevailing in Lower Canada recognizes generally, in cases of this nature, the right of *accès* and *sortie*; and under that law any substantial obstruction of it, by persons in other respects authorized, would give (*prima facie*) a right to indemnity. The only authorities relied upon by the appellants to which their Lordships think it necessary now to refer, are two Lower Canada cases, the *Queen* v. *Baird* (4 L.C.R. p. 325), and *Starns* v. *Molson* (M.L.R., 1 Q.B. pp. 425-431), and a modern French case *in re* Joanne Rousseray, quoted from the second part of Sirey's Decisions of the Imperial Courts in 1865.

In the *Queen* v. *Baird* there was upon the facts, as proved, no question of riparian right, or of any obstruction of access to the river. The dispute related to land which the nuns of a certain religious house at Quebec had reclaimed from the foreshore of the river, so that the water ceased to flow over it (4 L. C. R., p. 339), and to which the Crown had afterwards established its title. The only question was whether the Crown could grant it to other persons, without giving that religious house a right of preference or pre-emption, and this question was determined in favour of the Crown. In the grant actually made, there was a condition, reserving free access to the inhabitants there, and to the public generally, to pass and repass at all times over the wharves and roads.