

THE FREE NAVIGATION OF THE ST. LAWRENCE.

vessels, though navigable by those of a light draught of water descending. It cannot therefore be considered navigable in the full sense of the term, owing to the impossibility of its being used as a channel of communication from the Ocean to St. Regis. The right of the Americans then being measured by the natural facilities of its course for navigation, it may safely be laid down that they have a right to its navigation down to the Ocean, but have no right to navigate it from the Ocean to St. Regis.

Granting, then, the right of navigation from St. Regis to the Atlantic Ocean to the Americans, it remains to be seen whether it can be exercised independently of the Government of Canada.

From the authorities already cited, it is apparent that vessels passing through a navigable strait are subject to the sovereignty of the State to which the strait belongs. The right of passage exists in favour of the foreign vessel, the rights of jurisdiction and sovereignty of such State are unimpaired in every other particular. A State has the right of taking such precautions as may be necessary for self-defence, and the preservation of its revenues and rights within its own territory. The right to search neutral vessels on the high seas exists in favour of belligerents. The right to search all vessels coming into its maritime territory exists in favour of each State in the world, as well in peace as in war time. A State owning a strait has therefore at all times the right of search over passing vessels, and can take such precautions as may be necessary to insure that such passage be not productive of harm to itself. As a natural consequence of the principle, foreign vessels have but the right of innocent passage through such strait, and must submit to the regulations made by the State proprietor, to prevent their abusing the privilege accorded.

The pretension of the British Government in 1826 as to the right of passage through such strait being but an imperfect right, is incontestable.

The navigation downwards of the St. Lawrence would be of but little use to the inhabitants of the United States, if it were impossible for their vessels to make return voyages through the Gulf to the great lakes. The St. Lawrence presents insuperable obstacles to vessels trying to ascend the channel between Montreal and St. Regis. The canals on Canadian territory alone enable vessels to take advantage of the navigable, and to avoid the unnavigable portions of the river, and thus make the upward passage to United States territory.

Without the right of navigating the canals, that of navigating the St. Lawrence would be almost worthless. As yet no direct claim of right to such canal navigation has been advanced by the United States; but in the claim so persistently pressed for many years is concealed in embryo that to the navigation

of the canals, to be brought forth at the proper moment.

The foundation whereon reposes the American claim to the navigation of the St. Lawrence from St. Regis downwards is, that that river is the natural channel of communication for vessels from the great lakes to the Ocean, and that it is impossible to make use of such channel without navigating that portion of the river which flows through Canada. Thus the impossibility of passing over United States territory forms part of the corner-stone of the right of United States vessels to pass over Canadian territory, in making use of a bounty of nature.

But above St. Regis, Canadian and United States vessels have equal rights in the navigation of the river, each country owning one of the banks. There are no canals in United States territory, whilst on Canadian soil canals have been made by which vessels can avoid the Longue Sault rapids and the unnavigable parts of the Niagara river, and thus pass with ease from St. Regis up the St. Lawrence to Lake Ontario, and thence through the Welland canal to Lake Erie.

The first objection to the claim to navigate the canals is, that the basis on which rests the American right to navigate the St. Lawrence, viz.: that that river is a natural channel of communication between the great lakes and the sea, does not support a right to navigate artificial canals. It may be urged that they are accessional to the navigation of the river, that having been erected by the government with the intention of thereby overcoming the difficulties of navigation, they are dedicated to the public use of all entitled to exercise the right of navigating the St. Lawrence; that the Americans have the same rights of navigation of the St. Lawrence as British subjects, and consequently they have the same rights in the Canadian canals. On the other hand, it may be urged that the Canadian canals are built on Canadian soil, over which the Americans never possessed any rights; that being superstructures on land, they are owned by the proprietors of the land on which they are built; that having been erected by Canadian labour and capital, they follow the natural order of things and belong to those who built them; that the facts of their having been erected by the State and destined to public use do not give any right to foreign nations freely to navigate them, as in such case the use contemplated was merely that by British subjects; that canals do not necessarily, any more than railroads, by the law of nature, form portions of the public property of the State within which they are built, and that consequently when they are private property no foreign State can possess even a right of servitude upon them, and that to canals generally; the principle of the Roman law which submitted its banks to the use of vessels navigating the river, never has been and cannot now be extended.