

It will not, however, be necessary to review the opinions of text writer on the claims of this natural right of nations to the free passage of ships through rivers flowing through several sovereignties. Wheaton on International Law says: "It was a right, as real as any other right; and were it to be refused, or to be shackled by regulations not necessary for the peace or safety of the inhabitants, as to render its use impracticable to us (the United States) it would then be an injury of which we should be entitled to demand redress."

The reasons given by the learned judge of the Supreme Court, which were concurred in by a majority of the Court, are thus expressed: "I do not think that the D. C. Whitney, a foreign ship, while sailing from one port of a foreign country to another port of that country, and passing through, in the course of her voyage, one of the channels declared by convention or treaty to be equally free and open to the ships, vessels and boats of both countries, can be said to be within any jurisdiction conferred on any Canadian Court by the sovereign authority in control of the Dominion of Canada even though that channel happened to be Canadian waters": 38 S.C.R. 309.

The "jurisdiction conferred on the Canadian Court by the sovereign authority in control of the Dominion of Canada" over any vessel being in, or lying, or passing off the Canadian coast, or being in or near a Canadian channel, river or navigable water, is thus described in the Imperial "Merchant Shipping Act, 1894," not cited to, or noticed by, the Supreme Court, although it has been statute law since 1854:

"685. Where any district within which any Court, justice of the peace, or other magistrate, has jurisdiction, either under this Act, or under any other Act, or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on, or projecting into, any bay, channel, lake, river, or other navigable water, every such Court, justice, or magistrate shall have jurisdiction over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, lake, river or navigable water, and over all persons on board that vessel, or