

THE FREE NAVIGATION OF THE ST. LAWRENCE.

them with the ocean. The right to navigate both (the lakes and the ocean), includes that of passing from one to the other through the natural link.

"Was it then reasonable or just that one of the two co-proprietors of the lakes should altogether exclude his associate from the use of a common bounty of nature, necessary to the full enjoyment of them?

"The distinction between the right of passage claimed by one nation through the territories of another, on land, and that on navigable water, though not always clearly marked by the writers on public law, has a manifest existence in the nature of things.

"In the former case, the passage can hardly ever take place, especially if it be of numerous bodies, without some detriment or inconvenience to the State whose territory is traversed. But in the case of a passage on water, no such injury is sustained. The American Government did not mean to contend for any principle, the benefit of which, in analogous circumstances, it would deny to Great Britain.

"If, therefore, in the further progress of discovery, a connection should be developed between the River Mississippi and Upper Canada, similar to that which exists between the United States and the St. Lawrence, the American Government would be always ready to apply, in respect to the Mississippi, the same principles it contends for in respect to the St. Lawrence.

"But the case of rivers which rise and debouch altogether within the limits of the same nation, ought not to be confounded with those which, having their sources and navigable portions of their streams in States above, finally discharge themselves within the limits of other States below.

"In the former case, the question as to opening the navigation to other nations, depended upon the same considerations which might influence the regulation of other commercial intercourse with foreign States, and was to be exclusively determined by the local sovereign. But in respect to the latter, the free navigation of the river was a natural right in the upper inhabitants, of which they could not entirely be deprived by the arbitrary caprice of the lower State. Nor was the fact of subjecting the use of this right to treaty regulations, as was proposed at Vienna to be done in respect to the navigation of the European rivers, sufficient to prove that the origin of the right was conventional and not natural. It often happened to be highly convenient, if not sometimes indispensable, to avoid controversies by prescribing certain rules for the enjoyment of a natural right.

"The law of nature, though sufficiently intelligible in its great outlines and general purposes, does not always reach every minute detail which is called for by the complicated wants and varieties of modern navigation and commerce. Hence the right of navigating the

ocean itself, in many instances, principally incident to a state of war, is subjected by innumerable treaties, to various regulations. These regulations—the transactions of Vienna, and other analogous stipulations—should be regarded only as the spontaneous homage of man to the paramount Lawgiver of the universe, by delivering His great works from the artificial shackles and selfish contrivances to which they have been arbitrarily and unjustly subjected."

DESCRIPTION OF THE COURSE OF THE RIVER ST. LAWRENCE, AND OF THE ST. LAWRENCE AND WELLAND CANALS.

The St. Lawrence ceases to be the boundary between the United States and Canada at or near St. Regis, an Indian village situated about sixty miles above Montreal. To the west of that place the northern shores of the river, Lake Ontario and Lake Erie belong to Canada, the southern to the United States, From St. Regis eastward the territory on both sides of the river belongs to Canada. Between St. Regis and Montreal are the Cedars, Cascade and Lachine rapids, all navigable by vessels of small draft of water descending to the sea, but unnavigable by all vessels ascending. The Beauharnois and Lachine canals have been built on Canadian territory, enabling vessels going up the river to pass from Montreal to St. Regis. The Cornwall canal is also on Canadian territory, but the Longue Sault, which it enables vessels to pass, is above St. Regis, and consequently is owned on the south *ad flum aqua* by the United States. Between Lakes Erie and Ontario the river precipitates itself over the Falls of Niagara. On Canadian territory is the Welland canal, affording means of communication for schooners and propellers of moderate size, between those lakes.

AUTHORITIES ON THE QUESTION OF FREE NAVIGATION OF RIVERS.

By the Roman law rivers were public, that is to say, belonged to the particular people through whose territory they flowed, but could be used and enjoyed by all men: the use of their banks also was public.

"*Riparum quoque usus publicus est juris gentium, sicut ipsius fluminis. Itaque navem ad eas applicare, funes arboribus ibi natis religare, onus aliquod in his reponere cuilibet liberum est sicut per ipsum flumen navigare; sed proprietates earum illorum est quorum prædiis hærent; quæ de causa arbores quoque in iisdem natæ eorundem sunt.*"*

The doctrine in England, from a period anterior to the publication of Selden's "Mare Clausum," has been, not only that certain portions of the open sea can be reduced into the absolute possession of a nation, but that all straits and rivers running through its territory belong to the nation in absolute property. Writers upon international law term

* Ins. lib. 2, tit. 1, § 4.