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Toronto, December 8, 1870.

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THE
Monetary and Commercial Times.

WITH WHICH HAS BEEN INCORPORATED

THE MONTREAL TRADE REVIEW.

TORONTO, CAN., FRIDAY, DEC. 9, 1870.

A MENACE FROM WASHINGTON.

President Grant, we judge by his annual Message just delivered to Congress, intends to be a candidate for re-election. Ben Butler, a prospective rival candidate, has been bidding high for the support of the more reckless portion of the population, which, we trust, are but a small minority. Butler has been advising American fishermen to resist the fishery law of the Dominion by force, and he has been threatening war in their behalf. President Grant, having the responsibilities of office on his shoulders, sets up a counter bid for popularity; but it is evident that Butler will beat him in this line. He complains that the Dominion gave no warning of the change in our laws, by which the privilege of license to Americans to fish within limits prohibited by the Convention of 1818 was withdrawn; that we acted in an unfriendly spirit, with the design of bearing harshly on American fishermen; that if we attempt to enforce the law, in some particulars, it will be his duty to take steps to protect these fishermen; that our law assumes a right of excluding American fishermen from our harbors, except for certain purposes, which right, he contends, is not deducible from the Convention of 1818; and that, if it rests wholly on the Dominion law, it is a violation of the spirit of the treaty, for "which the Imperial Government is alone responsible;" and he asks Congress to arm

him with power to suspend the Bonding Act, and all laws under authority of which the vessels of the Dominion are empowered to enter the ports of the United States. He also complains that we show an unfriendly disposition towards the Republic "in the maintenance of a claim to exclude the citizens of the United States from the navigation of the St. Lawrence."

In what way this disposition is manifested the President does not state. The fact is, we allow the Americans the right not only to navigate the naturally navigable parts of the river, but also the use of the canals we have made to overcome the obstructions to the navigation, as well as of the Welland, that connects lakes Erie and Ontario; and we do this without having obtained any corresponding right to use the Erie Canal.

The questions raised about the Fishery Act, we shall not now discuss, further than to say that we do not regard it as obnoxious to all the objections which the President has made. It is easy to see where he gets his ideas, as to the remedy which he proposes to apply. He desires to revive the old Interdict laws of 1818 and 1820. There was some poor pretence for the enactment of those laws at that time. Originally, all nations which had colonies in America excluded them from all trade but with the mother country. So universal was this rule, that it became part of the international law of Europe, which the prize courts regularly applied in cases of contraband trade with colonies through the intervention of neutrals. The Americans, in retaliation, passed the Interdict laws of 1818 and 1820. But now the circumstances are wholly different; and it will be strange if Congress should now do, at the bidding of President Grant, what it refused to yield to the eloquence of Daniel Webster, in 1827, and revive those barbarous laws.

President Grant does not seem to see that the right of passage, by the people of one country over another country, whether on land or water, rests on a common ground—that of necessity. "A river, as it is a river," says Grotius, "is the property of those people whose the banks are, or his, who hath the sovereign power over them, whose power it is to make mills or dams in it, and whatsoever is bred in that river is his; but that river, as it is a flowing stream, remains common, and every man hath a right to drink or draw water out of it, as well as he that owns it." And again: "Both lands, rivers, and such parts of the sea as are held by any prince or people in property, ought to be open and free to all who have occasion to pass over them upon any just and lawful cause; as namely, * * * either because

they desire to traffic with some people remote from them," in order that—

"What, to one nation, nature doth deny,
That, she from others, may her want supply."

The cases in which there is, and those in which there is not, a right to charge a toll for such passage are stated. The distinction is this: where a nation has been at no expense to provide the means of passage for others, no right of taxing the passage exists; but either for the better securing of their merchandize, or if for this among other things, *the Prince shall be at any great charge, then to recompense that charge, tolls may be imposed upon those goods that shall be thus secured, so that they be not excessive.*

Let us apply these principles to the case in hand. We do not deny the Americans a passage on the great river St. Lawrence; but in those parts of it which run exclusively within Canadian territory, it is not naturally, a navigable river, for any sort of craft with which it would now be possible to carry on commerce. This country has gone to a great expense in supplying the deficiencies of nature; and we have a clear right to charge reasonable tolls for the use of the artificial works we have constructed. If, in express terms, the right of the United States to navigate the St. Lawrence has not been conceded, it has in fact, as the constant practice of recent times proves; and if England once or twice obtained a treaty right to navigate the Mississippi, without granting a correlative right to Americans, in the case of the St. Lawrence, by the same instrument or instruments, it is an incident in the maritime history of the two countries, that has no present significance. In point of fact, the United States makes the freest use of the St. Lawrence, while British subjects make no use of the Mississippi. The facts, as they stand to-day, are all on our side and against the Americans. The attempt of the President to make a grievance out of a state of things that has passed away must wholly fail. And if he invokes the law of nations, that law is just as strong in asserting our right of way over American territory to the ocean as that of Americans is to the use, with the limitations mentioned, of the St. Lawrence. Both rights rest on the common ground of necessity; and to deny one is to invalidate the other.

But, if we reject the view of Grotius and adopt that of Zeigler and Puffendorf, the right of land or river passage still rests on a common ground. Indeed, it is impossible to make any distinction between canals and the land out of which they were dug, or other land, so far as right of passage goes. The latter author rests the right to levy a toll on the same ground as Grotius; because the