

running their timber and saw logs down the said streams, are wrongfully and forcibly, and without right or colour of right making use of the improvements made by the plaintiff and those under whom he claims, and to which, for the reason aforesaid, the plaintiff is entitled to the exclusive and uninterrupted user.

"37. The plaintiff further shows that the defendants have made use of the said streams and the improvements thereon without any authority or license from the plaintiff, and well knowing, as the facts are, that the plaintiff was owner of such improvements, and that owing to the said improvements, all of which have been made by the said plaintiff or those through whom he claims, the said streams have become useful for the purpose of floating down saw logs and timber, and that before the said improvements were made, and when the streams were in a state of nature, they would not permit of timber and saw logs being floated down the same even during freshets, yet the defendants have never paid to the plaintiff any compensation for the user of the said streams and improvements, and the plaintiff submits that the defendants are liable to pay him compensation therefor, and that this Honourable Court should direct an account to be taken of the amount of compensation which the defendants should pay, and that the defendants should be ordered to pay the same to plaintiff when so ascertained."

The following are the more material parts of defendants' answer:—

"We are the owners of certain timber limits situated in the townships of Abinger and Denbigh, in the county of Addington, for the purchase of which we paid a very large sum of money.

"The said limits were originally the property of the Crown, and were sold by the Crown Lands Department to one Skead, and we claim title thereto through the said purchaser from the Department.

"Our object in purchasing the said limits was to obtain a supply of timber and saw-logs for our mills at Carleton Place, and we would not have purchased and paid the price we did for them for any other purpose or object.

"Timber and saw-logs, cut and manufactured upon the said limits, can only be brought to our saw-mills by means of the Mississippi River, and Buckshot and Louse Creeks, mentioned in the Plaintiff's bill, form the only outlets by which the said timber and saw logs from our said limits can be carried to the said Mississippi River.

"We deny the allegations contained in the 9th and 10th paragraphs of the said bill, and, on the contrary, we say that we are informed and believe, and charge the fact to be, that the said Mississippi River and Buckshot and Louse Creeks are all streams which are navigable or floatable for timber and saw logs within the meaning of the statutes in that behalf, and we claim the benefit of the said statutes.

"We deny that the alleged improvements upon the same streams, claimed by the plaintiff, confer upon him the rights he claims against us by his said bill, but we have nevertheless been always ready and willing, and before the commencement of the suit we offered the plaintiff, to pay him any proper sum for the use of any of said improvements, or any loss or damage that he might fairly claim to be put to by reason of the passage of our said timber and logs over the said improvements, and we offered to submit the question of the amount we should pay to arbitration, but the plaintiff would not accede to any of our offers."

Strong, J., began his judgment by saying: •

"The finding of the learned Judge before whom this case was tried, that those parts of the river Mississippi and of Louse and Buckshot Creeks, at which the Appellant has constructed his improvements, were not originally and in their natural state capable of being used, even in times of freshets, for the transportation of saw logs or timber, was not on the argument of this appeal demonstrated to be erroneous, and a careful perusal of the evidence has led me to the conclusion that an attempt to impugn that finding would have been hopeless, even if we could have entirely disregarded the rule so often laid down in this Court, that the finding of the Judge before whom the witnesses were examined is, in the case of contradictory evidence, entitled to the strongest possible