

## THE FREE NAVIGATION OF THE ST. LAWRENCE.

Holland, was entirely artificial; that it owed its existence to the skill and labour of Dutchmen; that its banks had been erected and maintained by them at a great expense.

"Hence, probably, the motive for that stipulation in the treaty of Westphalia, that the lower Scheldt, with the canals of Sas and Swien, and other mouths of the sea adjoining them, should be kept closed on the side belonging to Holland. But the case of the St. Lawrence was totally different, and the principles on which its free navigation was maintained by the United States had recently received an unequivocal confirmation in the solemn act of the principal States of Europe.

"In the treaties concluded at the Congress of Vienna, it had been stipulated that the navigation of the Rhine, the Neckar, the Mayn, the Moselle, the Maese, and the Scheldt, should be free to all nations. These stipulations, to which Great Britain was a party, might be considered as an indication of the present judgment of Europe upon the general question.

"The importance of the present claim might be estimated by the fact that the inhabitants of at least eight States of the American Union, besides the territory of Michigan, had an immediate interest in it, besides the prospective interests of other parts connected with this river, and the inland seas through which it communicates with the ocean. The right of this great and growing population to the use of this its only natural outlet to the ocean, was supported by the same principles and authorities which had been urged by Mr. Jefferson in the negotiation with Spain respecting the navigation of the river Mississippi. The present claim was also fortified by the consideration that this navigation was, before the war of the American Revolution, the common property of all the British subjects inhabiting this continent, having been acquired from France by the united exertions of the Mother Country and the Colonies in the war of 1756. The claim of the United States to the free navigation of the St. Lawrence was of the same nature with that of Great Britain to the navigation of the Mississippi, as recognized by the 7th article of the Treaty of Paris in 1763, when the mouth and lower shores of that river were held by another power. The claim, whilst necessary to the United States, was not injurious to Great Britain, nor could it violate any of her just rights.

"On the part of the British Government, the claim was considered as involving the question whether a perfect right to the free navigation of the River St. Lawrence could be maintained according to the principles and practice of the law of nations.

"The liberty of passage to be enjoyed by any one nation through the dominions of another, was treated by the most eminent writers on public law, as a qualified occa-

sional exception to the paramount rights of property.

"They made no distinction between the right of passage by a river, flowing from the possessions of one nation through those of another to the ocean, and the same right to be enjoyed by means of any highway, whether of land or water, generally accessible to the inhabitants of the earth. The right of passage then, must hold good for other purposes besides those of trade,—for objects of war as well as for objects of peace,—for all nations, not less than for any nation in particular,—and be attached to artificial as well as to natural highways. The principle could not therefore be insisted on by the American Government unless it was prepared to apply the same principle by reciprocity, in favour of British subjects, to the navigation of the Mississippi and the Hudson, access to which from Canada might be obtained by a few miles of land carriage, or by the artificial communications created by the canals of New York and Ohio. Hence the necessity which has been felt by the writers on public law, of controlling the operation of a principle so extensive and dangerous, by restricting the right of transit to purposes of *innocent* utility, to be exclusively determined by the local sovereign. Hence the right in question is termed by them an *imperfect* right.

"But there was nothing in these writers, or in the stipulations or treaties of Vienna, respecting the navigation of the great rivers of Germany, to countenance the American doctrine of an absolute natural right. These stipulations were the result of mutual consent, founded on considerations of mutual interest, growing out of the relative situation of the different States concerned in this navigation. The same observation would apply to the various conventional regulations which had been, at different periods, applied to the navigation of the River Mississippi. As to any supposed right received from the simultaneous acquisition of the St. Lawrence by the British American people, it could not be allowed to have survived the treaty of 1783, by which the independence of the United States was acknowledged, and a partition of the British dominions in North America was made between the new government and that of another country.

"To this argument it was replied, on the part of the United States, that if the St. Lawrence were regarded as a *strait*, connecting navigable seas, as it ought properly to be, there would be less controversy. The principle on which the right to navigate straits depends, is, that they are accessorial to those seas which they unite, and the right of navigating which is not exclusive, but common to all nations; the right to navigate the seas drawing after it that of passing the straits.

"The United States and Great Britain have between them the exclusive right of navigating the lakes. The St. Lawrence connects