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NAVIGABLE RIVERS AS A FISHING GROUND.

Much space has been devoted this week to the report of the trial of the case of *Blount v. Layard*, before Mr. Justice Field and a special jury, the week before last. The action involves the rights of riparian owners in the Thames, from Cricklade to Teddington. Historic Mapledurham, in the heart of the district, was, on an autumn day, in the year 1885, invaded by Mr. Layard, a solicitor, rod in hand and embarked in a punt, who duly took and carried away a fish under the eyes of Mr. Blount, the riparian proprietor, who had been politely informed of the expedition. A trial ensued before the Lord Chief Justice, but the popular view that anyone may fish in the Thames, so far prevailed that the jury were discharged without a verdict. On December 31 following, the comment was made in these columns, that 'it may be that the plaintiff claimed too much, and that if he had confined himself to that part of the river of which he had the ownership in the soil, and sued in trespass, he would have succeeded. It is so much easier to prove ownership of the soil than to prove an exclusive right of fishery.' The plaintiff, however, proceeded with his action as it stood, and moved the Queen's Bench to have judgment entered for him on the verdict. The motion was refused by Justices Hawkins and Grantham, and their decision affirmed in the Court of Appeal, consisting of the Master of the Rolls, and Lords Justices Lindley and Bowen. On this decision the following comment was made on May 12, 1888: 'Obviously the public cannot have a profit *à prendre in alieno solo*, because it is neither a corporation nor an individual. The defendant may succeed on the weakness of the plaintiff's case, but not on his own. Lord Justice Bowen suggests that, as the river is the king's highway, the jury might think that the property in the bed was still vested in

the king and not in the plaintiff.' So obvious was this, that the case was not reported either in the Queen's Bench or in the Court of Appeal. It fell, however, to the lot of Mr. Justice Field to carry out the instructions, as he said obediently, of the Court of Appeal in summing up to the jury at the second trial, and the result is a masterly and popular exposition of the law of riparian owners which deserves to be preserved in as full a form as *Nisi Prius* cases deserve. The long quotations from the judgments of the Court of Appeal embodied in the summing-up form a sufficient report of the decision of that Court. The only point in their judgments ignored by Mr. Justice Field was Lord Justice Bowen's picturesque imagination of the possibility of the property in a navigable river being in the Crown in its character as the king's highway, and this was an *obiter dictum*.

The difficulties which met the plaintiff's case in regard to his own title at the first trial disappeared on the second. In the meanwhile the hint had been taken and a count for trespass both to land covered with water and to the plaintiff's fish had been added. With some chivalry the defendant did not object in point of law, to the allegation of a trespass for taking and carrying away the plaintiff's fish, but treated it as a matter of aggravation, seeing that probably they had formed his luncheon. He, however, denied the plaintiff's possession, which was fatal to that part of the claim. If, as might not be unlikely, the plaintiff and defendant shared them at lunch, nice questions might have arisen whether the possession by the riparian host from the hand of his fisherman-guest might not be a reduction into possession by the rightful owner. Both parties, in fact, were willing to try the question of right, and no question was made but that if Mr. Blount ultimately succeeded, not only did the decision apply to the trespass in question in the action, but to the long stretch of water of which he is riparian proprietor, and also to other owners similarly situated on the banks of the Thames and other navigable rivers. It will be observed that the defendant did not contend that there was such a thing known to the law as a