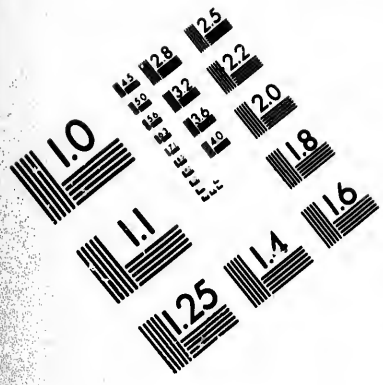

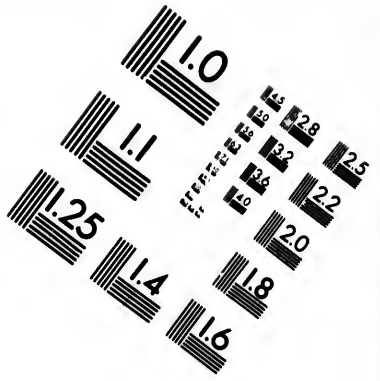

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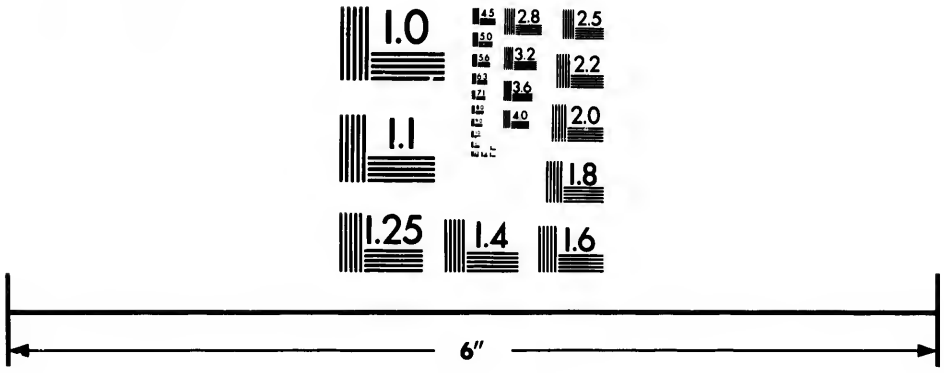

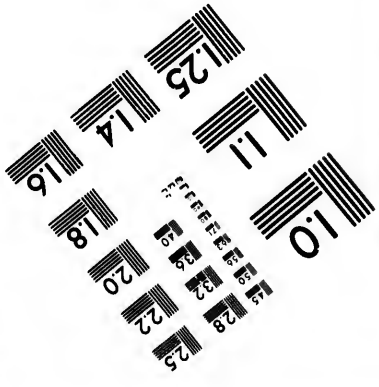

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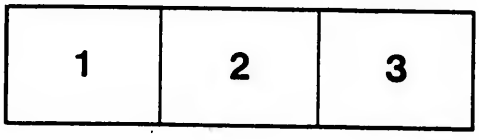

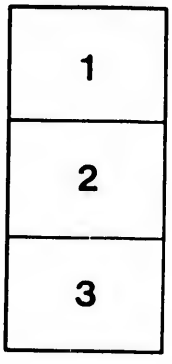

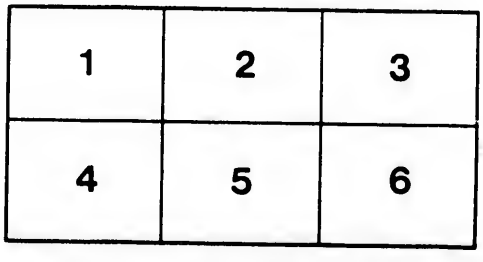

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THE RAFTS CASES.

THE RAFTS CASES.

Four cases of considerable importance to the lumbermen and to the riparian proprietors along the St. Lawrence and the Ottawa Rivers have just been decided by the Harbour Commissioners of Montreal.

The statute of the late Province of Canada, 12 Vict. c. 117, sect. 7, declares that three members of the Trinity House of Montreal shall have jurisdiction "to hear and determine *all* "*matters and things relating to any beach of the River St.* "*Lawrence, or of any other rivers within the jurisdiction of* "*the corporation* . . . . as well as *to hear and determine* "*all offences committed against this Act, or against any such* "*By-laws, Rules, Regulations, or orders (of the Master, &c., of* "*the Trinity House of Montreal)*, by any person or persons "whatsoever."

The statute of the Dominion, 1873, 36 Vict. c. 61, s. 2, declares that "all and every the then remaining powers, authority, "*jurisdiction*, rights, duties, and liabilities of the said Trinity "House of Montreal, shall become and be transferred to and "vested in, and shall be exercised and enjoyed, assumed and "discharged by the said corporation of the Harbour Commissioners of Montreal."

Under these statutory provisions, the plaintiffs in these four cases were endeavouring to obtain the enforcement of two By-laws of the late Trinity House of Montreal, and of one statutory enactment.

The two first cases are based upon section 8 of By-laws of the Trinity House of Montreal, 1860, sections 5 and 7 of 27-28 Vict. c. 58, 1864, and sect. 2 of By-laws of 1861, which read as follows:

Section 2 of By-laws of 1861.—"That all rafts navigating "the waters, within the limits of the jurisdiction of the Trinity "House of Montreal, shall have *the name of the Owner or Owners* "thereof *legibly painted* in letters not less than eighteen inches "long on both sides of a board not less than five feet in height "to be affixed to the *Cabane* or other prominent place on the "raft, so as to be easily discernible, under a penalty not exceed-

"ing ten pounds against the owner, master or person in charge "thereof."

Section 8 of By laws of 1860:—"That all and every the per- "son or persons who *shall encumber the navigable part of the* "*River St. Lawrence*, the River Richelieu, the River Yamaska, "the passage called the Doré, the Channel du Moine, *or other* "*navigable water within the limits of the jurisdiction of the* "*Trinity House of Montreal*, or any of the harbours, creeks, in- "lets *and beaches within the said limits, or in any way obstruct* "*the navigation thereof*, with stones, filth, rubbish, timber, logs, "spars, *rafts or cribs*, wrecks of steamers or other vessels, shall "incur a penalty not exceeding ten pounds for each and every "offence, and a further like penalty, for neglecting or refusing "to remove or cause to be removed any such incumbrances or "obstructions within ten days after being acquired so to do by "the Registrar or other Officer in the service or employment of "the Trinity House of Montreal, and a further like penalty for "every subsequent ten days such incumbrances or obstructions "shall not be removed."

Section 5 of the Statute of 1861.—"The Trinity House of "Montreal shall have power, after the expiration of ten days "from the time at which any timber, logs, spars, *rafts or cribs*, "wrecks of steamers or other vessels, or the cargoes of such "steamers or other vessels, *or other description of obstruction* "*whatsoever, may be placed or otherwise happen to be in the* "*navigable part of the River St. Lawrence*, or in any other part "of the rivers or waters generally, or *on any of the beaches*, "*shores* or wharves, within the limits of the jurisdiction of the "said Trinity House of Montreal, *to remove, or cause to be* "*removed*, such timber, logs, spars, *rafts or cribs*, wrecks of "steamers or other vessels, or cargoes of such steamers or vessels, "or other description of obstruction as aforesaid, either by rais- "ing or blowing up the same, or in such other manner as the "said Trinity House of Montreal may deem advisable, and to "sell, in such manner as the said Trinity House of Montreal "may think proper, such portion of such timber, logs, spars, "rafts or cribs, wrecks of steamers or other vessels, or cargoes of "such steamers or vessels, or other description of obstruction as "aforesaid, as may not be entirely destroyed in the removal "thereof as aforesaid, and to apply the proceeds of such sale to- "wards defraying the expenses which the said Trinity House

"may incur or cause to be incurred in and about the removal of "such obstructions as aforesaid."

7.—"Nothing herein contained shall in any way affect the "*liability of any person or persons who shall encumber the said* "*navigable or other waters, or any of the said beaches, shores or* "*wharves, for any penalty or penalties recoverable under any* "*by-laws*, orders, rules and regulations of the said Trinity House "of Montreal, which may presently or at any time hereafter be "in force."

The third case rests upon the application of section 2, art. 21, sect. 5 and sect. 8 of the Statute of Canada, 31st Vict. c. 58, 1868:

"ART. 21.—*Rafts* while drifting or *at anchor on any navig-* "*able water shall have a bright fire kept burning thereon from* "*sunset to sunrise;* whenever any raft is going in the same "direction as another which is ahead, the one shall not be so "navigated as to come within twenty yards of the other; and "every vessel meeting or overtaking a raft shall keep out of the "way thereof."

"5.—*All owners, masters, and persons in charge of any* ship, "vessel or *raft, shall obey the rules prescribed by this Act*, and "shall not carry and exhibit any other lights nor use any other "fog signals than such as are required by the said rules; *and in* "*case of wilful default, such master or person in charge, or such* "*owner, if it appears that he was in fault, shall, for each occas-* "*ion in which any of the said rules is infringed, incur a penalty* "*not exceeding two hundred dollars nor less than twenty dollars.*"

"8.—Except as hereinbefore provided, all penalties incurred "under this Act, may be recovered in the name of Her Majesty, "by any Inspector of Steamboats, or by any party aggrieved by "any act, neglect, or wilful omission by which the penalty is in- "curred, before any two Justices of the Peace, on the evidence "of one credible witness; and in default of payment of such "penalty, such Justices may commit the offender to gaol for any "period not exceeding three months; and, except as hereinafter "provided, all penalties recovered under this Act shall be paid "over to the Receiver General, and shall be by him placed at "the credit, and shall form part of "The Steamboat Inspec- "tion Fund;" except always, that *all penalties incurred for any* "*offence against this Act shall, if such offence be committed* *within the jurisdiction of* the Trinity House of Quebec, or o

"*the Trinity House of Montreal, be used for, recovered, enforced* "*and applied in like manner as penalties imposed for contraven-* "*tion of the by-laws of the Trinity House within whose juris-* "*diction the offence is committed.*"

Mr. Girouard on behalf of the prosecution said:—If the raft in question is held to be still navigating, that is subject to the laws of navigation (and in fact t must be so considered, so long as it has not reached its destination), it must also be considered as being at anchor, and therefore should have a sign and also a fire at night.

The two cases, based upon the By-laws of 1860 and the Statute of 1864, involve questions of no small magnitude and difficulty. Section 8 of the By-laws of 1860 above quoted enacts that *all persons who shall encumber the navigable part of the River St. Lawrence . . . . or any of the beaches,* etc., shall incur a penalty, etc. The statute of 1849, creating the Trinity House of Montreal, also declares that they shall have jurisdiction to hear all *matters and things* connected with the beach of the River St. Lawrence or of any other navigable river as far as the Provincial line. The point at issue is, therefore, what constitutes an obstruction or encumbrance of a portion of a navigable river or of its banks; in other words, what use may be made of said river and beach by the public and riparian proprietors.

It is an undeniable fact that for the last fifteen or twenty years lumber merchants, notwithstanding the protests of the adjoining residents, have been in the habit of mooring their rafts for months and months along and on the beach of the River St. Lawrence, from Lachine to St. Anns and upwards, in some cases seriously obstructing the navigation of the river, in some others using the trees of the banks, even depriving the inhabitants of the use of the water for household purposes, exposing the life of children to constant danger and being in all instances a common and public nuisance. The object of the present prosecution is to determine whether these gentlemen have the right to act in this manner.

The Roman law declared all navigable rivers the property of the nation. Boating, bathing, fishing, washing, mooring, landing, etc., was allowed to every one and in every portion of the stream and its shores. Daviel, Des Cours d'eaux, No. 74; Garnier, Régime des eaux, 68.

In England, the sovereign has also the dominion over public

navigable waters, but only as far as the flowing and reflowing of the tide extends. Beyond this the soil of the stream belongs to the riparian owners. Woolrych on Waters, 23, 24; Angell on Watercourses, § 535, § 545.

This rule of the English common law has been recognized by the Courts of the States of New York, Massachusetts, New Hampshire, Connecticut, Maine, Maryland, Virginia, Ohio, Indiana, also Illinois—Angell § 547. On the other hand the principle of the Roman Law has been maintained by the Courts of Pennsylvania, North Carolina, Tennessee, Louisiana, and forms part of the common law of Europe and South America.

In France, it seems that the sovereign did not claim the soil of navigable rivers till after the fourteenth century; until then it was the property of the *Seigneurs*. Champonnière, Propriété des Eaux Courantes, pp. 615 *et seq*. But there is no doubt that long before the settlement of this colony, the *domain* of all navigable streams, that is capable of being navigated, whether of fresh or salt water, was vested in the Crown for the purposes of navigation. Ordonnances of 1415, 1520, 1583, art. 18; Bouteiller, Somme rurale, tit. 73; Duparc-Poullain, t. 2, p. 398; Loyseau, Des Seigneuries, ch. 12, No. 120; Legrand, Coutumes de Troyes, art. 1791 gl. 1; Loysel, tit. 2, reg. 5; Garnier, Régime des eaux, vol. 1, pp. 44 *et seq*.

The Civil Code of Lower Canada has reproduced the provision of the old French law. Article 400 says that "navigable and "floatable rivers and streams *and their banks* . . . . are "considered as being dependencies of the crown domain." The corresponding article of the French Code (538) is substantially the same, with the exception that it does not contain any provision concerning the banks of rivers.

If the rule of the English law, which prevails in Ontario and the sister provinces, was to be applied to the River St. Lawrence in the Province of Quebec, above water tide, it would be clear that the riparian proprietors, being owners of the stream, would also own the shore which is a mere accessory of the river. "The banks of rivers," says Woolrych, p. 44, "together with the trees belong to the owner of the soil adjoining." Callis, on Sewers, pp. 73, 115.

What constitutes the bank of a navigable river is a point upon which commentators do not agree. According to the best authorities in France, a division must be drawn between high

and low water marks. The inferior half is the bank proper of the river and belongs to the Crown, and the superior one is a portion of the adjoining land. Rolland de Villargues, vo. chemin de halage, No. 9, 11; Garnier, vol. 1, No. 73, 102: vol. 2, No. 477; arrêt de Rouen, 16 dec. 1842, S. 43, 2, 409; Daviel, vol. 1. No. 91; Isambert, De la Voirie, No. 127.

It is unimportant to the determination of this case to examine at any length this question of proprietorship of navigable rivers and of their banks. Both the English and the French law have nearly the same regulations concerning the use that can be made of these things.

Woolrich, p. 40, says: "Waters flowing in land where the "public have been used to exercise a free right of passage "from time whereof the memory of man is not to the contrary, "or by virtue of legislative enactments, are public navigable "rivers."

By use and by legislative enactments the River St. Lawrence is a public navigable river, and it is immaterial whether the channel, which is entirely or partly filled up by the rafts, is used for steamboat or heavy transportation, or only barges and boats.

Navigable rivers, says again Woolrych, p. 1, are considered in law as "highways." Even at common law any encroachment upon a public stream was considered to be purpresture, that is to say, the making of that several and private which ought to be common to all. Woolrych, 196, 199, 257. The public, said Lord Chief Justice Abbott, has a right to all the convenience of the former state of the river. *Rex* v. *Lord Grosvenor*, 2 Stark 511. It is no excuse that the obstruction is beneficial to the public. Woolrych 208. A floating dock in a public river is a nuisance, although beneficial for repairing ships. Id. 200. To construct and moor a floating storehouse or vessel, for the receiving and delivery of goods, is an offence indictable as a public nuisance. Angell, § 556. There is no common law right to bathe in a river. Woolrych, p. 2, 6 et seq.; *Blundell* v. *Catterall*, 5 B. & A. 268. No right exists at common law to tow on the banks of navigable rivers; it depends on usage; *Ball* v. *Herbert*, 3 T. R. 261; *Kinloch* v. *Neville*, 6 M. & W. 794; Woolrych, 9, 164; Angell, § 551. (The French and Canadian law is different in this respect.) *The mooring of barges in an inconvenient manner* has been deemed an obstruction. Woolrych, 200, 201; *Rose* v. *Miles*, 4 M. & S. 101. No length of time

will legitimate a public nuisance, so that the acquiescence of twenty years will not divest the rights of the public. Woolrych, 208; Angell, § 563.

It appears that in certain cases the obstruction may be removed without any judicial process. In a case of *Wyat* v. *Thompson*, 1 Esp. 252, the plaintiff brought trespass for cutting a rope belonging to his barge, by which the rope was spoiled and the barge set adrift. The defendant replied that he was possessed of a wharf and that the rope was injuriously fastened without his leave. He was condemned, but only because it was proved that "the custom of "mooring barges at low water is *for one tide* at the piles in the "front of the wharf, *and if there are no piles, the custom does "not allow the barges to moor at the wharf, unless through dis-"tress.*" Woolryeh, 201. In *Arundell* v. *McCulloch*, the defendant cut down and removed a bridge built over a public river without authority from the Government, and the Court declared it to be clear "that when *any public way is unlawfully obstructed*, "any individual who has occasion to use it in a lawful way, may "remove the obstruction." 10 Mass. 70; *Mayor of Colchester* v. *Brooke*, 7 A. & E. (N.S.) 339. See also *Dimes* v. *Petley*, 19 L. J. Q. B. 453; Woolryeh, p. 199, 200, note a; *Hart* v. *Mayor of Albany*, 9 Wend, 571.

The regulations of the English law are plain enough; those of the French law, which are in force here, are not less explicit. Article 649 of the Code Napoleon says: "Les servitudes établies "par la loi ont pour objet l'utilité publique ou communale "ou l'utilité des particuliers." Article 650: "Celles établies "pour l'utilité publique ou communale ont pour objet le marche "pied le long des rivières navigables ou flottables, la construc-"tion des chemins et autres ouvrages publics ou communaux.

"Tout ce qui concerne cette espèce de servitude est déterminé "par des lois ou des règlements particuliers."

These provisions of the French Code have been reproduced word for word in the Civil Code of Lower Canada Article 506 says: "Servitudes established by law have for their objects pub-"lie utility or that of individuals." Art. 507: "Those estab-"lished for public utility have for their object the foot-road or "tow-path along the banks of navigable waters or flotable rivers, "the construction or repairs of roads or other public works. "Whatever concerns this kind of servitude is determined by "particular laws or regulations." The two Codes being similar,

the French authorities must therefore be of great weight in this Province for the determination of any question connected with navigable rivers or their banks.

Garnier, Régime des eaux, vol. 2, p. 82, says: "La servitude "imposée aux riverains est exclusivement réservée au service de "la navigation, et ne peut en conséquence donner à des tiers "aucuns droits étrangers à ce service, tels que de construire des "aquedues, *de puiser de l'eau, de laver*, etc." See also Garnier, vol. 1, p. 91; Favard, vo. chemin de halage; Rolland de Villargues, vo. chemin de halage; Proudhon, de la Propriété, Nos. 779, 782, 784; Gilbert sur Sirey, notes 1, 10, sur l'article 650; Pardessus, Des Servitudes, No. 139.

Garnier: "Le chemin de halage ne peut être employé par les "navigateurs à un autre usage que le simple passage, *et ceux ci* "*ne peuvent le transformer en un port fixe d'abordage où ils* "*demeureraient amarrés.*" Garnier, vol. 1, p. 93; vol. 2, p. 82; Gilbert, loc. cit. note 15 bis; Proudhon No. 784; Daviel No. 116; Arrêt du Conseil, 26 Août 1818; Sirey, 18, 2, 332; Bulletin des lois, 1818, p. 234. On ne peut se servir du marche pied du fleuve afin de s'y baigner, Daviel, p. 78.

Garnier, vol. 1, p. 93, says: "Un arrêt de la Cour de Cassa- "tion du 11 Juin 1822 a décidé dans l'affaire Duboury & L'alle- "mand que le premier n'avait pu amarrer son bateau aux arbres "existant sur les rives d'une île appartenant au second." Daviel vol. 1, p. 79, No. 74. "Ce n'est qu' en cas de nécessité, par "exemple de naufrage ou de péril manifeste, que, soit le depôt "de quelques objets, soit l'amarrage des câbles, devrait être "accidentellement toléré par le riverain." Daviel, vol. 1, Nos. 73, 74, 76.

Dumont, des Cours d'eau, p. 61: "La fréquentation du che- "min de halage est interdite à tous autres qu'aux navigateurs "et aux pêcheurs. Ceux ci même ne peuvent s'en servir que "pour trainer leurs filets, *non pour les sécher et les déposer.*" Daviel, vol. 1, p. 80, No. 76.

In Louisiana, where the same principles prevail, it has been decided that any work or establishment which obstructs the free use of roads and banks of a river, is a nuisance, and may be abated by the police authorities of the place, or perhaps even a private individual, *Henderson* v. *Mayor*, 3 L. 566; *Natchitoches* v. *Cox*, 3 N. S. 141. See also *Hanson* v. *Lafayette*, 18 L. 295. No one has a right to a permanent occupancy of the banks of

a river; *Shepherd* v. *Municipality No. Three*, 6 R. 349. See also *DeBen* v. *Gerard* 4 A. 30; *Carrollton R. Co.* v. *Winthrop* 5 A. 36.

The lumber merchants have pleaded that they have no other place where they can moor their rafts. I do not know that such is the case; in fact it has been proved that they could be moored at *Grande Anse* or *Isle Perrot*, without any inconvenience to the public; but it is alleged that these places are out of the way. Whatever this may be, the plea of the defendants cannot be a good answer to the complaints made. The law is precise and must be respected. Lumbermen, like other boatmen, should buy or lease the necessary ground to receive their goods. If the Government does not give them public booms, they ought to construct private ones, as is done near Quebec, and ask permission from the proper authorities to keep their rafts in moorage along their own banks. No more than ordinary importers, have they a right to trespass on the property of their neighbours or of the public, and expect that others should provide them with the proper storage. If the bay at Upper Lachine is the only safe place where rafts can be moored, they ought to buy the property adjoining. No one has the right to forcibly take the land of his neighbour and carry on his trade there, because it is the most suitable. What would one of the honorable commissioners do if one morning he was finding a herd of cattle fastened on to his trees along the land public highway? I do not suppose that he would wait for a judgment of the court to remove the nuisance. No one would be surprised to hear that even the honorable Chairman of this Commission had cut the rope or ropes and let the whole herd wander at large. It is hard to see any difference between this case and that of a nuisance committed on a water public highway. A recent telegram received from Ottawa informed the horrified public that cattle is far less dangerous than certain raftsmen. At all events, if no one can abate a nuisance on a public highway without the intervention of courts of justice, that intervention ought to be readily granted in favour of citizens who merely demand justice, the peaceable and full enjoyment of their property and rights and the enforcement of the laws of the country.

Mr. Carter, in reply, argued that the raft having arrived at its destination, there was no longer any necessity for any light being shown or the name of the owner being affixed to the cabin.

they being only required while the raft is in transit. With regard to encumbering the beach, he quoted from the Civil Code of Lower Canada, No 400:—

"Roads and public ways maintained by the State, navigable and floatable rivers and streams and their banks, the sea-shore, lands reclaimed from the seaports, harbours and roadsteads, and generally all those portions of territory which do not constitute private property, are considered as being dependencies of the Crown domain."

And again, from sub-section 2 of the Consolidated Statutes of Lower Canada, chapter 26:—

"It shall be lawful nevertheless to make use of any navigable or floatable river or watercourse, and the banks thereof, for the conveyance of all kinds of lumber, and for the passage of all boats, &c., subject to the charge of repairing, as soon as possible, all damages resulting from the exercise of such right, and all fences, drains or ditches so damaged."

On the 20th August, 1874, judgment was given as follows;

DÉSIRÉ GIROUARD, complainant, *vs.* JOHN GRIER *et al*, defendants.—The undersigned, three of the Harbour Commissioners of Montreal, having heard the complaint against the said defendants, as set forth in the information in this matter fyled, and having also heard the several witnesses who were duly sworn and examined by and before us touching the charge and accusation contained in the said information, and the arguments of counsel on behalf of the prosecution and defence, and having deliberated, and considering that all or every the person or persons who shall encumber the navigable part of the River St Lawrence or the navigable waters within the jurisdiction of the Corporation of the Harbour Commissioners of Montreal, or any of the harbours, creeks, inlets and beaches within the said limits, or in any way obstruct the navigation thereof with stones, filth, rubbish or cribs, wrecks of steamers or other vessels, shall incur a penalty not exceeding £10 for each and every offence, and a further like penalty for neglecting or refusing to remove or cause to be removed any such encumbrances or obstruction, within ten days after being legally notified so to do, and a further like penalty for every ten days such encumbrances shall not be removed; and also considering that it hath been satisfactorily proven before us that at the time of the laying of the information in this matter

and of the commission of the offence therein alleged, the said defendants, John Grier and Brock Grier, were the owners of a certain raft, which raft obstructed a navigable part of the River St Lawrence in the upper part of the Parish of Lachine, within the jurisdiction of the Corporation of the Harbour Commissioners of Montreal, which said raft has, as has been proven before us, obstructed the inside channel of navigation on that part of said river hereinbefore described, and also prevented access to the beach of said river by the proprietors thereof, and by said raft lying partly in the navigable part of said river, and also on its beach and on that part of it hereinbefore described, the said defendants are by us adjudged and condemned to pay for their said offence a fine of $20 to the said Harbour Commissioners, together with the costs of the present prosecution, and it is by us further ordered and adjudged that the said defendants, John Grier and Brock Grier, be forthwith required by the Secretary-Treasurer of this Corporation or some other of its officers in that behalf duly authorized, to notify the defendants to remove or cause to be removed the obstruction and incumbrance complained of in and by the said information, and further, that if said removal of said obstruction be not effected in 10 days after being required so to do, then it is by us further ordered and adjudged that said defendants be condemned to pay to the Corporation of Harbour Commissioners of Montreal a further penalty of £5 for every subsequent 10 days the said obstruction and incumbrance shall not be removed after said notification; and also considering that the other defendant, W. Murphy, is not liable in manner and form as set forth in said information, the present complaint, in so far as it affects him, is hereby dismissed without costs.

JOHN YOUNG, Chairman.
ANDREW ALLAN.
A. ROY.

ALEXIS BRUNET, complainant, *vs.* JNO. GRIER, *et al.*, defendants.—The undersigned, three of the Harbour Commissioners of Montreal, having heard the complaint of the said Alexis Brunet against the said defendants, as set forth in his information in the matter fyled, and having also heard the several witnesses who were duly sworn and examined by and before us touching the charge and accusation contained in the said information, and the argument of counsel on behalf of the prosecution and defence, and

having maturely deliberated, and considering that under the law owners or persons in charge of rafts within the jurisdiction of the corporation of said Harbour Commissioners are not obliged to keep a bright fire or any fire burning thereon from sunset to sunrise, unless said rafts are drifting or at anchor on any navigable water, and considering also that the prosecutor has failed to establish the material allegations of his information, to wit: That the raft complained of was, while drifting or anchored on any navigable river, without a bright light burning thereon; and also considering that it hath been satisfactorily proven before us that said raft was not at time of the laying of said information or of the commission of the offence therein alleged drifting or anchored on any navigable water which imposed upon the said defendants the obligation of keeping a bright fire burning thereon from sunset to sunrise, or any fire, but on the contrary was anchored to a beach in the parish of Lachine, within the jurisdiction of said corporation and at a place which exempted defendants from the obligation of keeping a fire on said raft. It is therefore ordered and adjudged that the complaint and information of the said Alexis Bouret be, and the same is hereby dismissed with costs.

JOHN YOUNG.
A. ALLAN.
A. ROY.

PIERRE ETIENNE NORMANDEAU, informant and prosecutor, *vs.* JOHN GRIER *et al*, defendants.—The undersigned, three of the Harbour Commissioners of Montreal, having heard the complaint of said informant and prosecutor against the said defendants, as set forth in the information of said Pierre Etienne Normandeau in this matter, produced and fyled, and having also heard the several witnesses produced upon the trial of said cause, and who were duly sworn and examined before us touching the charge and accusation contained in the said information, and having heard the arguments on behalf of the prosecutor and defendants, and having maturely deliberated, considering that by law all rafts navigating the waters within the limits of the jurisdiction of the Corporation of the Harbour Commissioners of Montreal, shall have the name of the owner, or owners thereof, legibly painted in letters not less than eighteen inches long, on both sides of a board, not less than five feet in heighth, to be

fixed in some prominent place on the raft, so as to be easily discernible, under a penalty not exceeding ten pounds against the owner, master or person in charge thereof; and, considering that at the time of the laying of the information in this matter, and of the commission of the offence therein alleged, the raft complained of in and by the said information was being navigated through the waters of the St. Lawrence, in the Parish of Lachine, in the County of Jacques Cartier, within the jurisdiction of the said Corporation of the said Harbour Commissioners; and also considering that it hath been satisfactorily proved before us that the defendants, John Grier and Brock Grier, are the owners of the said raft and were such at the time af the offence complained of, and that they had not, as alleged in the said information, the name of the owner or owners of the said raft painted on the *Cabane* or any other prominent place on the said raft, as by law required; we adjudge and condemn the said John Grier and Brock Grier to pay for their said offence to the Corporation of the Harbour Commissioners the sum of five pounds currency money of the Dominion of Canada, to wit, twenty dollars, with also the cost of the present prosecution. And further, considering that the said William Murphy, the said other defendant, is not liable in the manner and form, as set forth in said information, the present complaint, in so far as it concerns him, is dismissed without costs.

JOHN YOUNG.
A. ALLAN.
A. ROY.

Hon. John Young, after delivering the judgments of the Board said: "In giving this judgment, which the Commissioners "believe is quite in accordance with the rules and by-laws of "the Harbour Commissioners, they cannot give it without "stating that the lumber trade of Montreal and of the Ottawa is "so large in its character and of so much interest to the whole "community, that although this is the law according to our "opinion, yet some steps should be taken by the lumber merchants "whereby provision should be made for the accommodation of "their trade. No communication whatever has been made either "to the late Trinity Board or to the Harbour Commissioners. "No attempt, no request has ever been made by the lumber "trade of the country for any provision by which they could

"obtain ample means for its accommodation without infringing "upon the rights of private parties. We believe that the rights "of private parties have been infringed, and we have given judg- "ment accordingly.

"I believe I speak the unanimous opinion of the Commission- "ers when I say that we shall be glad to receive any application "from the lumber trade setting forth how provision could be "made for their accommodation either by booms or in some "other way.

"I deem it my duty to make these remarks in giving this "judgment, in order that the public may understand that while "the Commissioners have no alternative but to carry out the "law, yet they are perfectly sensible to the requirements of the "lumber and timber trade of the country."

These decisions were received by the lumbermen with apparent surprise. On the 26th August, according to announcement in the newspapers, a meeting of gentlemen interested in the lumber and timber trades was held in Mr. Stanton's office, St. James Street. Mr. J. K. Ward was called to the chair, and Mr. Brown officiated as Secretary.

THE CHAIRMAN said that the meeting had been called at a very short notice, but it had been thought desirable to lay the views of the lumbermen before the Harbour Commissioners, who met to-morrow (Thursday) afternoon. To this end a delegation should be appointed to wait on the Board and represent to them the troubles and grievances under which the trade suffered by the recent decision of the Commissioners, and which deprived them of their rights on the river. They could not tell, by the decision of the Board, what rights they did possess. (Hear.) For over forty years the Montreal timber trade had been undisturbed, and now suddenly their accommodation was taken away from them, and they had no safety for their rafts. The trade had previously understood that the Board of Public Works had control of the river; but if the Harbour Board had the control, it was their duty only to protect the navigation of the river, and not the rights of private persons.

After further discussion,

Mr. John Tucker moved, seconded by Mr. J. G. Dunning: "That in view of the unexpected and sudden position taking with regard to the mooring of rafts on the shore of the St

Lawrence at and above Lachine, under the now apparent jurisdiction of the Board of Harbour Commissioners, the following gentlemen present be a deputation to wait on the said Board to represent the serious grievance that exists under such sudden change of affairs from the practice heretofore enjoyed for over forty years, and to request that no further action or interference shall be taken until the case is represented to the government especially as it is understood that the Harbour Commissioners are not at present prepared to give the lumbermen a proper place of safety for their very extensive business—the said committee to consist of Messrs. J. K. Ward, Jas. Shearer, G. G. Dunning, J. W. McGauvran and B. Grier.

The meeting then adjourned.

At a regular meeting of the Harbour Commissioners held on the 27th of the same month, a deputation consisting of Messrs. J. W. McGauvran, J. G. Dunning, J. K. Ward, James Shearer and B. Grier were admitted.

Mr. Young thought that an effort should be made to accommodate the lumber trade of Montreal, and if a moderate expenditure would accomplish this, he would be in favor of it. He had received a letter stating that there was a place at Isle Perrault where the trade could be accommodated, but on enquiry he had received information that the place was not sufficiently large.

Mr. McGauvran, on their behalf, stated the grievances of the trade on account of the position recently taken by the Board.

Mr. Dunning said that they had large quantities of lumber for sale, but much of it had to be kept moored above Lachine until such time as a sale should be effected. In Lachine the space for their accommodation was so small that no more than a tenth of the demand could be kept there. They asked the Board to use their aid to enable them to keep their rafts above Lachine until wanted. The interest of the trade was so large that in comparison with it the annoyance to those parties who had brought complaints against them were nothing.

Mr. Cramp said there could be no double authority in this matter. Either the Government should furnish all the accommodation needed or else they should give the Harbour Commissioners full control of the booms at present at Lachine, and also permission to make such further improvements as were needed, and also authority for collecting fees from the rafts using these improvements.

Mr. Donovan said he must protest against the dog in the manger proceedings of some of the land owners above Lachine. The interests of the trade were too important to be obstructed by a few city gentlemen who had bought summer residences on the banks of the St. Lawrence.

Mr. Shearer said he had a raft at present lying at the shore opposite the property of Benjamin Décary. He had obtained the permission of Mr. Décary for leaving it there, but as it was above the property of Mr. Girouard, that gentleman had complained that the presence of the raft rendered the water unfit for use, and had ordered him (Shearer) to have it removed. He had also another raft lying below the G.T.R. wharf at Lachine, and a hotel keeper in the vicinity wanted it removed, as his boarders—who paid $60 per month for their accommodation—objected to the smell arising from the raft.

Mr. Young thought that the case was so urgent that they ought to provide accomodation for the trade at once. There would be no expense on the Commission as the trade were willing to pay a fair remuneration for the use of the booms.

Mr. McLennan said that a representation from the Board to the Government ought to obtain the necessary relief.

It was stated by the deputation that several representations had been made to the Government of the state of the case, but had met with no response.

Mr. Donovan thought that a joint deputation from the Board of Harbour Commissioners and the Lumber Trade, to the department of Public Works would succeed in securing the required aid. He would move that Mr Young, Mr Cramp and Mr McLennan be a deputation to act with a similar number from the lumber interest.

Mr. Young said he found that by law the Board had no power to expend money on improvements outside the harbour. He supported the motion for a delegation.

Mr. Donovan's name was substituted for Mr McLennan's.

The lumbermen appointed Messrs Ward, McGauvran and Shearer as their Committee.

These proceedings attracted considerable attention from the press. The Montreal *Witness*, 27th August, said:

RAFTS ON THE ST. LAWRENCE.—The lumbermen have suddenly discovered that what they have been in the habit of con-

sidering as their rights—and what they have used as such during the past 40 or 50 years—is subject to be taken from them at the mere whim of any party who may buy a small piece of land on the banks of the St. Lawrence above Lachine. The speakers at the meeting yesterday afternoon appeared like men who had discovered a serious flaw in what they usually considered the title deeds of their estate. The habit of mooring rafts to the shores of the St. Lawrence above Lachine had been practiced for so long a time that the people who owned the adjacent land, as well as the lumbermen, began to look upon this as an undoubted right. Latterly a good many persons from the city have bought land and erected houses on these shores. These persons having bought their places at a high price, on account of their proximity to the river, looked on the presence of rafts and raftsmen as anything but agreeable, as they were thereby shut off from free access to the river, on account of which they had paid so much for their land, and consequently complained of the rafts as being a nuisance. The lumbermen replied to all their complaints by saying that the custom of mooring rafts to these shores is much older than the title of the present proprietors of the adjacent land; consequently when these persons bought their land, they bought them subject to the raft nuisance.

The latter have discovered that whatever privileges the lumbermen may claim to using the beach or channel of the river while their timber is being brought to market, they have no right to make a public market of these places, and consequently have taken proceedings to compel the owners to remove their rafts. The lumbermen find themselves in a disagreeable predicament; they are ordered to remove their rafts, but there is no place provided where they can move them to, so they have got to remain —except as has been done in some instances, they are cut adrift, and allowed to go over the rapids.

They are about applying to the Harbour Commissioners for redress, but these latter cannot change the law, nor can they legislate away the rights of the land owners to free access to the river; nor yet can they furnish accommodation at present for the rafts elsewhere. It is quite evident that all parties will have to exercise considerable forbearance until suitable places be secured for keeping rafts at while waiting for sale.

There is a suitable bay above Pointe Claire where rafts might be kept, were it not for the swells caused by a westerly storm in

Lake St. Louis. A considerable sum would be required to erect piers and booms to protect the rafts were they left here. There is also a bay a short distance below the mouth of the Chateauguay river, on the south side, which would be very suitable for keeping rafts in; and the shore being in a state of nature the presence of rafts at that place could not give cause of complaint to any one; but they would not be so convenient to market, as they would require to be towed across the river by steamboats.

The Montreal *Herald*, 28th August:

THE RAFT GRIEVANCE AT ST. ANN'S.—A meeting of those interested in the Ottawa lumber trade was held in this city yesterday, at which Mr. J. K. Ward presided. The following resolution was passed:— "That in view of the unexpected and sudden position taken with regard to the mooring of rafts on the shore of the St. Lawrence at and above Lachine, under the now apparent jurisdiction of the Board of Harbour Commissioners, the following gentlemen present be a deputation to wait on the said Board to represent the serious grievance that exists under such a sudden change of affairs from the practice heretofore enjoyed for over forty years, and to request that no further action or interference shall be taken until the case is represented to the Government, especially as it is understood that the Harbour Commissioners are not at present prepared to give the lumbermen a proper place of safety for their very extensive business—the said committee to consist of Messrs. J. K. Ward, Jas. Shearer, J. G. Dunning, J. W. McGauvran and B. Grier. It was claimed that the Harbour Commissioners had deprived these gentlemen of their rights on the Ottawa River. Evidently the impression prevails that the residents of St. Ann's, Dorval and Lachine have no rights. We sympathize with the trade in having no suitable arrangements made to receive their rafts when they wish to anchor at the places named; but residents on the banks of the river on that account should not be subjected to such annoyance, which, it is admitted, has lasted for 40 years. The fact is, no community should for a moment be compelled to tolerate the offences which raftsmen have been guilty of, to the knowledge of the writer, for years. They destroy trees; behave indecently—for instance, strip and bathe within a few yards of the road—and when remonstrated with, residents are met with all kinds of insults. One or two owners plead that they know

nothing of the law. These very gentlemen have promised repeatedly to move their rafts, some of which have been obstructions for months past. Not one in fifty ever has the name of the owner, or a light, which it is well known to the trade they should have, and in not one case in 100 can you find—at least raftsmen never will own—a responsible man on board to appeal to when residents wish to have a raft moved a few feet to enable small boats to reach the beach. We are certain that the people who complain have good reason for so doing, but if lumbermen will only, during their pressure of business, do what is right until the Harbour Commissioners afford proper facilities for the trade, they will find little or no inconvenience. Lumbermen ask to have their rights respected. That is precisely what the residents of St. Ann's, Dorval and Lachine desire, and if the latter have suffered for 40 years, it is high time that some change for the better should be effected.

Le National, 29th August:

UNE DÉCISION.—Une décision donnée récemment par les commissaires du Hâvre a ordonné aux commerçants de bois de ne pas amarrer leurs cages dans le haut de Lachine. Les *lumbermen* s'en sont alarmés et ils demandent l'intervention du gouvernement. Il est clair qu'il n'y a que le Parlement qui puisse changer la loi sur la matière et il y a tout lieu de croire qu'avant de permettre l'amarrage des cages dans des centres aussi importants que Lachine, Ste. Anne et Vaudreuil, on fera constater par des sondages ou autrement s'il n'y a pas d'endroit plus avantageux et pour le public et pour les commerçants de bois.

L'amarrage des cages à Ste. Anne, Vaudreuil et Lachine a été un véritable inconvénient depuis plusieurs années. Les hommes de cage ne se gênent pas de se baigner avec indécence en face des habitations et en plein jour. Ils disposent les cages de telle façon dans le fleuve que les propriétaires riverains ne peuvent puiser l'eau nécessaire à l'usage de la famille ou de la ferme, et encore celle qu'ils vont chercher au large en passant sur les plançons n'est guère potable. Encore, si cela ne devait durer que quelques jours; mais cet état de choses continue pendant des mois, durant toute la belle saison de l'été et même en hiver. Les cages arrivent pendant la crue des eaux du printemps pour ne partir que vers la fin de l'automne et même parfois le printemps suivant.

Ajoutez qu'aux eaux basses ces cages restent à sec, constam-

ment à la portée des enfants, et l'on comprendra facilement les ennuis et le trouble des propriétaires riverains. Ce qui rend la conduite des marchands de bois moins excusable encore, c'est qu'il existe à l'Ile Perrot, vis-à-vis Ste. Anne et loin des habitations, une baie spacieuse qui semble faite exprès pour un grand marché à bois, sans désavantage pour personne et avec beaucoup de commodité pour tout le monde. Cette partie de l'Ile Perrot par sa proximité de Ste. Anne et du chemin de fer du Grand Tronc, est à quelques minutes seulement de distance de Montréal.

La Minerve, 31st August :

L'AMARRAGE DES TRAINS DE BOIS.—Depuis près d'une vingtaine d'années, les marchands de bois ont eu l'habitude d'amarrer, pendant des mois entiers, leurs cages le long des grèves, à Lachine et à Ste. Anne, malgré les propriétaires riverains. Ces derniers cependant, jusqu'à cette année, se bornèrent à faire de simples protestations. Nos bons habitants craignant l'influence des riches lumbermen n'osaient pas faire valoir leurs droits. Mais depuis une année ou deux, Lachine et Ste. Anne sont devenus des lieux de rendez-vous fashionnables pour la société de Montréal, plusieurs citoyens de cette dernière ville y ont acheté des terrains, bâti des résidences d'été, et les dommages et ennuis résultant de la présence des cages devinrent si intolerables qu'en juillet dernier ils portèrent leur plainte devant la Commission du Hâvre de Montréal qui a juridiction sur les rivières navigables et leurs grèves. M. Girouard, tant en son nom qu'en celui des autres propriétaires du haut de Lachine, accusa J. et B. Grier de violer :

1o. Un article de règlement de la Trinité de 1861, en n'ayant pas d'enseigne sur la cabane de la cage ;

2o. Un statut de 1868 qui exige que les cages portent un feu depuis le soleil couchant jusqu'au soleil levant ;

3o. Un règlement de la Trinité de 1860 et un statut de 1864 qui prohibent l'obstruction d'une rivière navigable ou de ses grèves, en tout ou en partie.

Nombre de témoins furent entendus, et, il y a quelques jours, trois des Commissaires du Hâvre, MM. Young, A. Allan et A. Roy, condamnèrent les propriétaires de cages sur la première et troisième accusation, et en ordonnèrent l'enlèvement sous peine de cinq louis d'amende par chaque dix jours. Il est inutile de dire que les lumbermen qui, jusqu'ici, avaient joui en maîtres absolus du fleuve et de ses grèves en se moquant des représenta-

tions des propriétaires riverains, ne se soumirent pas à cette décision. Réunis en caucus, ils nommèrent des delégués pour faire valoir leurs prétendus droits auprès de la Commission du Hâvre, et à la dernière réunion de ce corps, MM. J. W. McGauvran, M. P. P., et autres, faisaient nommer une délégation à Ottawa pour demander l'intervention du gouvernement en leur faveur. Nos confrères, le *Herald* et le *Witness* ont déjà fait remarquer les exigences des commercants de bois. Sans aucun doute, le commerce de bois doit être protégé, mais il faut qu'il le soit en respectant les droits des particuliers et du public en général. Les rivières navigables, de même que leurs grèves ne sont pas la propriété des lumbermen; les rivières sont pour l'usage de tous et les grèves ne sont assujetties qu'à la servitude du chemin de halage ou du marche-pied, c'est-à-dire à un droit de passage en faveur des navigateurs et des pêcheurs. Personne n'a le droit de se servir d'aucune partie du fleuve ni des grèves des propriétaires riverains, et encore moins de leurs arbres, (hors les cas de danger,) pour y amarrer des cages d'une manière permanente et de façon à gêner la navigation du fleuve et la circulation de la rive. On invoque au contraire un usage ou une coutume de 30 ou 40 ans: mais n'est-ce pas un principe élémentaire que l'on ne prescrit pas contre la Couronne, et que, d'ailleurs, vis à-vis des particuliers mêmes, les servitudes ne s'acquièrent point par la prescription, même centenaire. Voilà la loi telle qu'on la trouve au Code Civil du Bas-Canada, et telle que jugée par les Commissaires du Hâvre. La même loi existe en France, en Angleterre, aux Etats Unis, et dans tous les pays. Il est évident que le gouvernement, pas plus que les Commissaires du Hâvre, ne peut changer cette loi. Seul un acte du Parlement Fédéral pourrait donner aux commercants de-bois plus de droits qu'ils n'en ont aujourd'hui, et encore le consentement du Parlement Local serait probablement exigible, car une telle législation affecterait évidement les droits fonciers de la Province de Québec, qui sont exclusivement du ressort de la Législature Provinciale. Dans tous les cas, il est peu probable que le Parlement Fédéral ou Local intervienne en cette matière, car cette intervention serait une violation des droits acquis des particuliers, et provoquerait des demandes d'indemnité contre le gouvernement. A Lachine et à Ste. Anne, la valeur de la propriété s'est accrue considérablement, et depuis même que le public a appris que les commer-

cants de bois n'ont pas le droit d'y amarrer leurs cages et qu'ils les ont enlevées, il s'est fait à Dorval plusieurs ventes à 5 et 10 centins le pied carré, et il n'est pas douteux que le retour des cages aurait pour effet de détériorer la propriété et d'en diminuer la valeur.

Plusieurs considérations d'utilité publique, sinon de nécessité, existe contre l'amarrage des cages, dans les centres près de la cité de Montréal.

Les eaux salées sont inaccessibles à un grand nombre de personnes pour différentes causes, affaires, gouts ou autres raisons, et il est indispensable que les grandes avenues qui environnent Montréal soient parfaitement libres et ouvertes à la population. N'est-ce pas à cause de l'amarrage des cages qui encombrent Lachine que récemment nous avions à déplorer l'accident qui enlevait à une famille bien connue, un fils unique.

On a même lieu de s'étonner que ces malheurs ne soient pas plus fréquents en cet endroit où des centaines de cages passent tout l'été sans aucune garde, ni protection, et il est presqu' incompréhensible que Lachine, avec sa population toujours croissante, n'ait pas encore pris les mesures nécessaires pour faire disparaître cette obstruction presqu'entière de son port et un état de choses qui porte préjudice à tous et surtout à cette partie de la ville forcée de venir puiser l'eau croupie et malsaine qui entoure les cages.

Enfin l'amarrage des cages à Lachine n'offre aucune sûreté. Tous les ans nous en voyons plusieurs brisées et emportées dans les rapides par les gros vents qui soufflent sur le lac St. Louis. La baisse des eaux met souvent à sec durant l'été des cages arrivées au commencement du printemps et deviennent une source continuelle de dangers pour les familles environnantes et de dépenses pour les propriétaires s'ils veulant les faire enlever à l'automne.

Tout bien considéré, il nous semble que l'amarrage des cages devrait se faire dans un endroit où tous ces désavantages ne se feraient pas sentir. A Québec, les commerçants de bois ont leurs *booms* privés, absolument comme les négociants ordinaires ont leurs *warehouses*. Dans tous les cas, s'il faut que le Parlement autorise des *booms* publics, ils devraient être placés dans un endroit où personne n'en souffrirait.

On dit que le sud de l'Ile Perrot vis-à-vis Ste. Anne possède

une baie splendide capable de contenir 400 à 500 cages et où les propriétaires riverains, dont les habitations se trouvent à plusieurs arpents du rivage, n'auraient aucunement à souffrir. L'expropriation de leurs droits de riverains donnerait lieu à peu ou point d'indemnité. Ce qu'il faut c'est la justice à tous et pour tous.