

DOMINION CONTROL OVER PROVINCIAL LEGISLATION.

Council to disallow a Provincial Act, is as absolute as the power of the Queen to disallow a Dominion Act; and it is in each case to be the result of the exercise of a sound discretion, for which exercise of discretion the executive council for the time being is in either case to be responsible as for other Acts of executive administration."

But, as Mr. Todd remarks (p. 363), though for the most part, this power has been resorted to only in cases wherein the Provincial Legislatures have passed Acts which were unconstitutional, or beyond their legal competency to enact, yet—

"It has been sometimes invoked, in respect to Acts which contained provisions that were deemed to be contrary to sound principles of legislation, and therefore likely to prove injurious to the interests or welfare of the Dominion." (See ib. p. 366.)

It is proposed here to review, briefly, some of the precedents shown in the Parliamentary Returns, which go to justify this last statement.

It is worth while to observe, in the first place, that the deprivation of innocent parties of vested interests by retroactive enactments is mentioned by Draper, C. J., in *Re Goodhue*, 19 Gr. 366 (1872) as affording specially fitting grounds for the interference of the Governor-General in Council. In this case, it will be remembered, the provisions of a certain will were overridden by a private act of the Local Legislature, and one of the trustees named under the will refusing to carry out the provisions of the Act, the validity of the Act (amongst other questions) came before the Court on petition presented by persons interested under the will. At p. 384, Draper, C. J., says:—

"In regard to the absence of a second chamber, it may be further observed, so far at least as estate or private bills are concerned, that as such bills involve ordinarily no mere party political considerations, all those whose interests are or may be touched have a right, in the first place, to expect a careful examination of their contents on the part of the Provincial Executive, and a withholding of the Royal

assent if it is found that the promoters of the bill are seeking advantages at the expense of others whose interests are as well grounded as their own. *And further, if from oversight or any other cause, provisions should be inserted of an objectionable character, such as the deprivation of innocent parties of actual or even possible interests, by retroactive legislation, such bills are subject to the consideration of the Governor-General, who, as the representative of the Sovereign, is entrusted with authority, to which a corresponding duty attaches, to disallow any law contrary to reason or to natural justice and equity.* So that, while our legislation must unavoidably originate in the single chamber, and can only be openly discussed there, and once adopted there cannot be revised or amended by any other authority, it does not become law until the Lieut.-Governor announces his assent, after which it is subject to disallowance by the Governor-General."

But he concedes that the Act (p. 386) was within the defined powers of the Local Legislature, for it was of a local and personal nature, and related to property and civil right. Nevertheless, he declares in the above passage, that it would have been right and proper for the Governor-General in Council to have disallowed it.

The first precedent immediately bearing on the main subject of this article appears to be that of an Act passed by the Quebec Legislature, in 1868, "To incorporate the St. Louis Hydraulic Company," which was reserved by the Lieutenant-Governor for the assent of the Governor-General. The Company was proposed to be incorporated for the purpose of creating a water-power, by the erection of a dam across the River St. Lawrence. The Minister of Justice, on January 11th, 1869, (Can. Sess. Papers, 1870, No. 35, p. 29), reported as to this Act that,

"As it is a matter of national importance to preserve the navigation of the greatest river in the Dominion from being obstructed, and as it was the opinion of some professional men that the erection of the proposed dam would not only injuriously affect the navigation of the river, *but cause great injury to property on or near its banks,*" he had obtained a report from the Chief Engineer of the Department of Pub-