possible reason whereby its disallowance could be justified it would be sought and found. Yet, looking at the matter purely from a constitutional standpoint, Sir John Macdonald said on the 20th January, 1872:

"The Provincial Legislature has exclusive power to make laws in relation to education. It may be that the Act in question may act unfavorably on the Catholics or other religious denominations, and, if so, it is for such religious bodies to appeal to the Provincial Legislature, which has the sole power to grant redress.

"The sole matter which presented itself to the Government was whether, according to the British North America Act of 1867, the Legislature of New Brunswick had exceeded its powers. As the officer primarily responsible on such subjects, he could only say that he had taken uniform care to interfere in no way whatever with any Act passed by any of the Provincial Legislatures if they were within the scope of their jurisdiction. There were only two cases, in his opinion, in which the Government of the Dominion was justified in advising the disallowance of local Acts. First, if the Act was unconstitutional, and there had been an excess of jurisdiction; and, second, if it was injurious to the interests of the whole Dominion."

"In the case of measures not coming within either of these categories the Government would be unwarranted in interfering with local legislation.

"In the present case there was not a doubt that the New Brunswick Legislature had acted within its jurisdiction, and that the Act was constitutionally legal, and could not be impugned on that ground.

"On the second ground which he had mentioned in which he considered the Dominion Government could interfere, it could not be held that the Act in any way prejudicially affected the whole Dominion, because it was a law settling the common school system of the Province of New Brunswick alone.

"The Government of the Dominion could not act, and they would have been guilty of a violent breach of the constitution if, because they held a different opinion, they should set up their judgment against the solemn decision of a province in a matter entirely within the control of that Province."

## RETROSPECTIVE LEGISLATION.

In 1859, Hammond was registrar of the County of Bruce. Under 9 Victoria Chapter 34, the Government had the right to dismiss the Registrar upon certain grounds specified. Hammond was dismissed by the Government upon a ground which was not mentioned in the Statute, and was superseded under the great seal of the Province of Ontario, and another man by the name of McLeay was appointed in his place. Hammond brought an action for the fees, contending that the Government had no power to dismiss him. Pending the litigation, and before a final judgment was rendered, the Government passed a Statute which changed the tenure of office from good behavior to tenure during the will of the Lieutenant-Governor of Ontario. Now, this was an *ex post facto* Act, which interfered with the judgment of the Court and affected private rights. It is true that it was passed before Confederation, but then the Imperial Parliament possessed precisely the same rights with regard to the Canadian Legislature, that the Dominion Legislature possesses as to interfering with the Legislatures of the several Provinces.

## PROVINCIAL RIGHTS INVADED.

Now it is quite clear that the disallowance of the "Streams Bill," as it is usually called, was a great outrage, not upon Caldwell simply, but the rights of the Provinces to self-government:

1. Because the Bill was admittedly within the competence of the Provincial Legislature.

2. It did not "take one man's property and give it to another" in the sense alleged of confiscating McLaren's property, because it provided compensation based on the value of the improvements made, the cost of maintaining such work and the interest upon the investment.

3. Even if the Bill was an invasion of private rights, it was not competent for the Dominion Government to disallow it on the basis laid down by Sir John Maconald himself and according to the many precedents of the Department of Justice during the last fifteen years.

4. That although it interfered with the decision of a court of competent jurisdiction, yet even that would not bring it within the class of cases stated by Sir John Macdonald in 1868, as those in regard to which the prerogative of disallowance should be exercised. Besides, since the disallowance the court of appeal reversed the judgement of the Court of Chancery, and held that McLean never had any right to the uses of the stream, except such as was given to the whole world. The judgment of the Court of Appeal contains the following statement:

"Having reached the conclusion that all streams are by public authority dedicated as highways to at least the extent essential to the defence in this action, I have only further to remark that when the obstruction which stood in the way of the enjoyment of the legal right is removed, when the traveller by land or lumberer seeking to float his