

preservation and protection, with which the property in the fish or the right to take the fish out of the water to be appropriated to the party so taking the fish has nothing whatever to do, the property in the fishing, or the right to take the fish, being as much the property of the Province or the individual, as the dry land or the land covered with water. I cannot discover the slightest trace of an intention on the part of the Imperial Parliament to convey to the Dominion Government any property in the beds of streams or in the fisheries incident to the ownership thereof, whether belonging at the date of Confederation either to the Provinces or individuals, or to confer on the Dominion Parliament the right to appropriate or dispose of them, and receive therefor large rentals which most unequivocally proceed from property, or from the incidents of property in or to which the Dominion has no shadow of claim; but, on the contrary, I find all the property it was intended to vest in the Dominion specifically set forth. Nor can I discover the most remote indication of an intent to deprive either the Provinces or the individuals of their proprietary rights in their respective properties; or, in other words, that it was intended that the lands and their incidents should be separated and the lands continue to belong to the Provinces and the Crown grantees, and the incidental right of fishing should belong to the Dominion, or be at its disposal. I am at a loss to understand how the Dominion, which never owned the land, and therefore never had any right to the fishing as incidental to such ownership, without any grant, statutory or otherwise, without a word in the Statute indicating the slightest intention to vest the rights of property or of fishing in the Dominion, without a word qualifying or limiting the right of property of the Provinces in the public lands, can now successfully claim to have a beneficial interest in those fisheries, and authority to deal with such rights of fishing as the property of the Dominion, and claim to rent or license the same at large yearly rents and appropriate the proceeds to Dominion purposes."

He also says, at page 123:

"To all general laws passed by the Dominion of Canada regulating 'sea coast and inland fisheries' all must submit, but such laws must not conflict or compete with the legislative power of the Local Legislatures over property and civil rights beyond what may be necessary for legislating generally and effectually for the regulation, protection and preservation of the fisheries in the interest of the public at large. Therefore, while the Local Legislatures have no right to pass any laws interfering with the regulation and protection of the fisheries, as they might have passed before Confederation, they, in my opinion, clearly have a right to pass any laws affecting the property in those fisheries, or the transfer or transmission of such property under the power conferred on them to deal with property and civil rights in the Province, inasmuch as such laws need have no connection or interference with the right of the Dominion Parliament to deal with the regulation and protection of the fisheries, a matter wholly separate and distinct from the property in the fisheries."

Justice Strong, at page 133, says:

"The question next presents itself, did the British North America Act either directly effect these vested rights of property, or did it authorise Parliament to interfere with them by legislation? There is no pretence for saying that the Act contains anything in the slightest degree derogating from the rights of fishing belonging to the proprietors of the beds of non-navigable rivers. By the thirteenth enumeration of the ninety-second section the exclusive right to legislate concerning property is conferred upon the Local Legislatures, to whom also by the sixteenth sub-section are granted similar powers concerning matters of a local and private nature. The provisions must necessarily exclude the right of the Parliament of the Dominion to legislate to the prejudice of the rights of fishing vested in the proprietors of beds of rivers and streams, unless we can find in section ninety-one, defining the powers of Parliament, some exception to the general effect of the word 'property' as including such a proprietary right. The only words in the last mentioned section which it can be suggested may have such an operation are those of the twelfth enumeration 'sea coast and inland fisheries.' It is a sound and well recognised maxim of construction that in the interpretation of Statutes we are to assume nothing calculated to impair private rights of ownership, unless compelled to do so by express words or necessary implication."

At page 135, the Judge says:

"Again under this provision Parliament may enact laws for regulating and restricting the right of fishing in the waters belonging to the Dominion, such as public harbors, the beds of which have been lately determined by this court to be vested in the Crown in right of the Dominion, and also for regulating the public inland fisheries of the Dominion, such as those of the great lakes and possibly also those of navigable non-tidal rivers. There is therefore no unreasonable restriction of the power of Parliament in constraining the twelfth sub-section as I do, as not including a power to legislate concerning the right of property in private fisheries."

Again he says:

"These fisheries, although often in practice not conserved by the Provinces, are certainly not public fisheries open of common right to all who may choose to avail themselves of them, as is the case with regard to the fisheries in tidal waters and the great lakes, but the Provincial Governments may, without special legislation, and in

exercise of their right of property, restrict their use in any manner which may seem expedient just as freely as private owners might do. In short, the public have no more right in law to take fish in non-navigable rivers belonging to the Provinces than they have to fell and carry away trees growing on the public lands; in the one instance, as in the other, such interferences with provincial rights of property are neither more nor less than illegal acts of trespass.

"This being so, it seems very clear to me that no well-founded distinction, as regards the power of legislation by Parliament, can be made between fisheries in rivers which, at the date of Confederation, were the property of private owners under grants from the Crown and those which remain the property of the Provinces as part of the public domain. In both cases the right of fishing is a profit of the land, an incident of the proprietary right in the soil, and is as much property in the hands of the Province as in that of a private owner."

I have called attention to these opinions of the learned Judges, opinions which were concurred in by Justices Four-
nier, Henry and also Gwynne in the Exchequer Court. The section of the proposed Bill reads as follows:—

"2. The Minister of Marine and Fisheries may issue, or authorise to be issued, fishery leases or licenses for fisheries and fishing where-
ever situated or carried on, but leases or licenses for any term ex-
ceeding nine years shall be issued only under authority of an order
of the Governor in Council; and provided that where an exclusive
right of fishing exists by law, no lease or license shall be issued
other than a license to fish at a certain time, or in a certain mode,
and then only to the person in whom the exclusive right is vested."

That is, no person entirely by implication can fish on his property until he obtains a license from the Government; and then there is this difficulty: Suppose there are five riparian proprietors on a stream, by a whim of the inspector, or of a subordinate, licenses might be granted to three and refused to two, the result being that three persons, not by virtue of their right as owners of the soil, but of licensees from the Government, would have the right to fish there, while the other two who owned the soil would be excluded. Therefore, this at once conflicts with the powers of Local Legislatures and the rights of property, beyond what is necessary for the preservation of the fisheries in the Dominion. Prior to this, and by the law of 1868, angling was allowed upon our streams, and the use of nets was prohibited, and under the seventh sub-section of the old Act, salmon could not be caught in New Brunswick between the 15th of August and the 1st of March. The effect of the amendment is to do away with the exception of the rod and line; but we know, so far as fishing in New Brunswick is concerned, that fishing with the rod and line is not destructive to the salmon fishery. In fact, the class of persons to which this relates, is interested in protecting this fishery and in associating with the Government to a certain extent in this regard. It would be well that the question I raised with respect to it being impolitic to deprive riparian owners of the privilege of fishing with the rod and line, and whether this exception should not be allowed to continue is worthy of consideration. This is a matter of very great importance as far as New Brunswick is concerned, and, also, I may say the lower portion of Quebec, because the wealthy Americans who come to these places every year to enjoy fishing, are a large source of revenue to the people of the Province. But practically if they are to obtain their rights as riparian proprietors, they are obliged, under this Bill, to take out a lease and license, and to have their rights made subordinate to and entirely dependent on the pleasure of the Department, or, perhaps, of its subordinates. The effect would be to interfere very much with this privilege, because, as is well known, the rod and line are simply used for pleasure, and not to make large captures for the purpose of business as is the case with nets and other instruments. Many of the large riparian proprietors are extremely anxious that the Government regulations should be enforced, and they are perfectly willing to aid the Government to protect the fisheries, to be preserved for the uses of sportsmen and visitors. I know of a case which actually occurred to a gentleman owning an interest with others in a New Brunswick river. Some two years ago, in 1880 or