

RETROACTIVE LEGISLATION.

appear to be of the kind referred to by Jessel, M. R., in *re Joseph Suche & Co.*, L.R. 1 Ch. D. 50, where he says:—"It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, *unless in express terms they apply to pending actions*, do not affect them." There have been statutes passed in England at different times taking away the right of prosecuting certain pending *quidam* actions to recover penalties for certain kinds of gaming; e.g., Imp. 8 and 9, Vict., c. 109, sec. 16.

It is easy to distinguish all such cases from the recent act of the Ontario legislature. In the first kind mentioned a certain time is given during which vested rights may be enforced to their full extent; in the second, if not made retrospective, trustees would have had to remove any trust funds then invested in such funds and securities simply to re-invest them in similar ones and then claim the benefit of the statute; the third kind rather relate to modes of procedure than affect vested rights; while the last relating to actions by informers can scarcely be called an interference with vested rights.

We have not found any precedent really parallel to the Act we are principally concerned with. By R. S. O., c. 115, sec. 1,—(C. S. U. C., c. 48, sec. 15), it was enacted that all persons might float saw-logs and timber down all streams. In *Boale v. Dickson*, 13 C. P., 337, it was held that a river, not before capable of being used for running timber, was not brought within the statute by reason of its being rendered available for such purpose by the erection of a slide. This case was followed by *Whelan v. McLachlan*, 16 C. P. 102, and the law remains thus declared by properly authorized courts, in discharge of their proper function in the commonwealth. The new Act, however, (sec. 2), gives a right to all persons to use rivers on which improvements *necessary to render them navigable or floatable* have been made by others for the purpose of floating down

timber, subject to the payment of reasonable tolls, which (sec. 4) are to be fixed by the Governor in council. It, then, proceeds to enact (sec. 5): "The foregoing provisions of this Act shall apply to all such constructions and improvements as have hitherto been made, as well as to such as may be in course of construction or shall hereafter be constructed." And (sec. 10) if any suit is now pending, the result of which will be changed by the passage of this Act, the court, or any judge of such court, having authority over such suit or over the costs, may order the costs of the suit or any part thereof to be paid by the party who would have been required to pay such costs if this Act had not been passed.

There is no need to call attention to the practical results of these retroactive sections. The case of Mr. McLaren, which notoriously gave rise to the Act spoken of, illustrates them clearly enough. A man who had been just declared by a properly authorized court to be vested with a valuable property and legal rights, has had those rights, not purchased, but deliberately taken away from him by the Legislature. It is indeed difficult to see on what principle such legislation can be defended.

For our own part we feel disposed to say with Burke in his *Reflections on the French Revolution*: "We entertain a high opinion of the legislative authority; but we have never dreamt that parliaments had any right whatever to violate property, to over-rule prescription. . . . I find the ground upon which your confiscators go is this; that indeed their proceedings could not be supported in a court of justice; but that the rules of prescription cannot bind a legislative assembly. So that this legislative assembly of a free nation sits, not for the security, but for the destruction of property, and not property only, but of every rule and maxim which can give it stability."