

wisdom of the various stages for money resolutions which Parliament has prescribed is entirely thwarted if the explanations are put off to the later stages. I should like the hon. gentleman to inform us at the earliest time, if he cannot now, what the chartered power of this company is, what its capital is, what its borrowing power is, and whether it has power to execute a first charge of the description proposed in this resolution. It is a local company, and we have no means of knowing anything about it, from our own reports.

Sir LEONARD TILLEY. I may say that the assent of the Crown has been given to this resolution. Some legislation has recently been had by the company in amendment of their powers. I shall be able, to-morrow, to state what the amendments were, and to lay on the Table various information with reference to the company.

Motion agreed to.

#### THE FISHERIES ACT.

Mr. BOWELL, in the absence of Mr. McLelan, moved that the House resolve itself into Committee of the Whole on Bill (No. 101) further to amend the Fisheries Act.

Motion agreed to; and the House resolved itself into Committee.

(In the Committee.)

On section 1,

Mr. WELDON. This clause, read with the new subsection 6, practically prohibits fishing in private waters without a license from the Government, and it is a question whether that is within the powers of Parliament. The section which proposed to repeal that section provided that the hon. Minister of Marine and Fisheries had the right to grant licenses where the exclusive right by law already existed. Under that section leases were issued for nine years on various rivers, giving the lessee the exclusive right to fish. Under these leases arose disputes between the owners of land and the lessees. Under the old Statute fishing by nets was prohibited, and certain regulations were made with regard to a close season, fishing with a rod and line being allowed. But the effect of this section is to prohibit a person from exercising his right of fishing on waters of his own land. Now, I consider the principle upon which the right of fishing exists is an incident of property and resides in the land. Although it comes under the head of property and civil rights, that right can be interfered with by the Dominion Legislature in so far as necessary for the purpose of carrying out the regulations of coasting and inland fisheries; beyond that it is not within the power of this Parliament to interfere with that property. I am not opposing the Bill generally, because I am well aware that riparian proprietors in New Brunswick are rather desirous to further the views of the Government with regard to the fishing regulations. We believe it will eventually make their properties more valuable. At the same time there is no doubt the difficulty has arisen with respect to the fisheries, which sprang from the unfortunate order in June 1874 with regard to fishing. Now, my view is that the right of private fishing is a right incident to the property in the land. If a man owns the banks on both sides of the stream he has the exclusive right of fishing in that stream during the time the fish pass. If, on the other hand, he only owns the bank on one side of the stream he is entitled to one-half the stream for the same purpose, and his neighbor on the opposite bank has the same right with regard to the other portion of the stream. This is an incident of property which goes with the soil and which passes with the grant of the soil. It may be covered by a separate grant, but without the separate grant it passes with the rights of the property. That doctrine has been very clearly established by the decisions which have

Mr. BLAKE.

already taken place. The question, then, amounts to this: Whether prohibiting a person entirely from using that stream without a license is not simply an appropriation of his property. The Government may define a close stream within which he may exercise his rights, and may prescribe the manner in which he may exercise it; but to say that he shall not exercise it at all except under license from the Government is in effect an appropriation of his property. Then the question arises whether that is within the powers of this Parliament, because the principle laid down is that where the regulation of a particular thing is left to Parliament, that body can only interfere with the power of Local Legislatures in so far as is necessary in carrying that principle out. I would call the attention of the acting Minister of Marine and Fisheries to the decision of the Supreme Court in the case of the *Queen vs. Robertson*, when this matter was fully discussed. I know that the riparian proprietors are very desirous that this question should be settled so as to prevent any more difficulty. There is no doubt that the decisions of the court have established the rights of the riparian proprietors, and the only question is whether this is a matter within the powers of Parliament. The learned Chief Justice, in the case of the *Queen vs. Robertson*, on page 110 of Supreme Court reports, says:

"In construing the British North American Act I think no hard and fast canon or rule of construction can be laid down and adopted by which all Acts passed, as well by the Parliament of Canada as by the Local Legislatures, upon all and every question that may arise, can be effectually tested as to their being, or not being, *intra vires* of the Legislature passing them. The nearest approach to a rule of general application that has occurred to me for reconciling, apparently conflicting legislative powers, under the British North America Act, is what I suggested in the cases of *Vanin vs. Langlois*, and the *Citizens' Insurance Co. vs. Parsons*, with respect to property and civil rights, over which exclusive legislative authority is given to the Local Legislatures: That, as there are many matters involving property and civil rights expressly reserved to the Dominion Parliament, the power of the Local Legislature must, to a certain extent, be subject to the general and special legislative powers of the Dominion Parliament. But while the legislative rights of the Local Legislatures are in this sense subordinate to the rights of the Dominion Parliament, I think such latter rights must be exercised so far as may be consistently with the rights of the Local Legislatures, and, therefore, the Dominion Parliament would only have the right to interfere with property and civil rights, in so far as such interference may be necessary for the purpose of legislating generally, and effectually, in relation to matters confided to the Parliament of Canada."

That is the general principle which the Chief Justice laid down in the case. Applying that principle, we may ask, is it necessary for the purpose of legislating generally and effectually in regard to matters entrusted to the Parliament of Canada, to adopt such legislation as is proposed. The Chief Justice further says at page 119:

"Previous to Confederation many enactments were passed by the Legislature of New Brunswick for the general regulation and protection of the fisheries in that Province, but no Act, I will undertake with confidence to assert, can be found in the Statute-books of New Brunswick, from the date of the erection of the Province to the day of Confederation, taking away or interfering with (except as such general regulations might interfere with) the private rights of the individual proprietors of lands through which such rivers run, still less to take from them the enjoyment of their rights of fishing and to authorise the leasing of the same to others to the exclusion of the owner."

The learned Chief Justice goes on further to say, at page 120:

"Such being the state of matters at the time of Confederation, I am of opinion that the legislation in regard to 'Inland and Sea Fisheries' contemplated by the British North America Act was not in reference to 'property and civil rights'—that is to say, not as to the ownership of the beds of the rivers, or of the fisheries, or the rights of individuals therein, but to subjects affecting the fisheries generally, tending to their regulation, protection and reservation, matters of a national and general concern and important to the public, such as the forbidding fish to be taken at improper seasons in an improper manner, or with destructive instruments, laws with reference to the improvement and increase of fisheries; in other words, all such general laws as enure as well to the benefit of the owners of the fisheries as to the public at large, who are interested in the fisheries as a source of national or provincial wealth; in other words, laws in relation to the fisheries, such as those which the Local Legislatures were, previously to and at the time of Confederation, in the habit of enacting for their regulation,