

"That he make a separate report or separate reports on those Acts which he may consider :

- "1. As being altogether illegal or unconstitutional.
- "2. As being illegal or unconstitutional only in part.
- "3. In cases of concurrent jurisdiction, as clashing with the legislation of the general Parliament.
- "4. As affecting the interests of the Dominion generally. And that in such report or reports he gives his reasons for his opinions."

Here we have a clear exposition of the grounds on which local legislation was to be disallowed. On this basis the federal system was to be reared; provincial rights were to be preserved; and within their own jurisdiction the various Local Legislatures were to be absolutely free from all interference. Sir John Macdonald himself contended for the same principle in 1872, when the question of disallowing the New Brunswick School Bill came before him. His contention was then, as it had been in 1868, that provincial rights were sacredly guarded by the Constitution, and must not be invaded by the Executive.

#### SIR JOHN MACDONALD'S VIEW IN 1872.

Speaking in the House of Commons on this question, he said :

"The Provinces have their rights, and the question was not whether this House thought a Local Legislature was right or wrong. But the whole question for this House to consider, whenever such a question as this was brought up, was that they should say at once that they had no right to interfere so long as the different Provincial Legislatures acted within the bounds of the authority which the Constitution gave them. (Hear, hear.) There was this fixed principle—that every Provincial Legislature should feel that, when it was legislating, it was legislating in the reality and not in the sham. If they did not know and feel that the measures they were arguing, discussing, and amending, and modifying to suit their own people would become law, *it was all sham*, and the federal system was gone forever. If this House undertook the great responsibility of interfering with the local laws, they must be prepared to discuss the justice or injustice of every law passed by every Provincial Legislature—(hear, hear)—and this Legislature, instead of being, as now, the General Court of Parliament for the decision of great Dominion questions, would be simply a Court of Appeal to try whether the Provincial Legislatures were right or wrong in the conclusions to which they came. (Hear, hear.) If this House was prepared to take that course and adopt that principle, then the Government of the day, while it would have much more responsibility, would also have *much more power*; for, besides conducting and administering the affairs of the whole Dominion as one great country, it would also have *the power, the authority and the control of a majority over every Bill, every Act, every conclusion, every institution, every right of every Province in Canada.*"

With this view of Provincial authority the Liberal party agreed, and on this view Sir John Macdonald acted in every instance, from Confederation down to the disallowance of the Streams Bill.

#### HISTORY OF THE STREAMS BILL.

On the 4th of March, 1881, the Ontario Legislature passed "An Act for protecting the Public Interests in Rivers, Streams, and Creeks."

Section 1 of this Act provided that "So far as the Legislature of Ontario has authority so to enact, all persons shall, subject to the provisions in this Act contained, have, and are hereby declared always to have had, during the spring, summer and autumn freshets, the right to, and may float and transmit saw logs and all other timber of every