LEGISLATIVE PRECEDENTS.

McLAREN v. CALDWELL

It appears somewhat strange that in this pre-eminently "legislating" age, it should be hard to know where to go in order to lay one's hand on legislative precedents. We are not aware of any well-known practical treatise on legislation, in which can be found recorded a history of the course taken by various legislatures in special cases. For example, the public benefit may appear to require the passing of an Act which shall have a retroactive operation detrimental to vested rights. Where can a book be found which sets out the various kinds of retroactive acts which have been passed by various legislatures, and the circumstances of their passing?

The somewhat hackneyed subject of the legislation and judicial decisions in this Province on the subject of Rivers and Streams, affords an opportunity of illustrating what is meant. Some twenty years ago it was decided in the Court of Common Pleas, and subsequently confirmed by later decisions, that the clause in C. S. U. C. c. 48, which gives "all persons" the right to float saw-logs and timber down "all streams," only applies to rivers and streams which are naturally capable of being used for running timber, and not to those which have been rendered thus navigable by artificial improvements. On the faith of the law as thus declared (as it must be presumed), the owners of timber limits in different parts of the Province expended money in rendering various streams capable of being used for this purpose, expecting to be protected in the exclusive enjoyment and benefit of these improvements. Now, in 1881, the Court of Appeal gives judgment that the previous decisions promulgated an erroneous view of the law, and lumberers who have acted on the faith of the prior decisions find themselves in a false position. Members of the legislature might be supposed to desire to see how other legislatures, as for example, the English Parliament, had acted under similar circumstances.

What their desire was in this case it is not our proviuce to enquire, but we can refer them to at least one interesting precedent in point in the history of English legislation. It has reference to the history of special resignation bonds in England. The 31 Eliz., c. 6., enacted that if any patron of a living in England, for any corrupt consideration, by gift or promise, directly or indirectly, should present or collate any person to any ecclesiastical benefice or dignity, such presentation should be void, and the crown should present. It became, however, a common practice where a living became vacant during the minority of a son of a patron intended for the church, for the patron to present a clergyman, who executed a bond conditioned in a penal sum to resign when the patron's son should be of age to hold the preferment. And in *Johnes* v. *Lawrence*, Cro. Jac. 248, it was decided that these special resignation bonds did not offend against the provisions of the statute of Elizabeth. Many years afterwards, however, namely in 1826, a decision was come to by the House of Lords in the case of *Fletcher* v. *Lord Sondes*, 3 Bing. 501, which overturned the decisions which had previously taken place in favour of such special resignation bonds. "But," says Mr. J. W. Smith, in his work on contracts, "as the consequences of this would have been exceedingly hard upon persons who had executed special [resignation bonds at the time when they were looked upon as legal," the Archbishop of Canterbury immediately brought in a bill, which afterwards passed into law. It is the 7–8 Geo. IV., c. 25, which confirms special resignation bonds, if made before April 9th, 1827, the day of the decision in *Fletcher* v. *Lord Sondes*, a course, it may be observed, the very reverse of that pursued by the Ontario Legislature in the late session.