

pelled to make a deed of it. See sect. 10 of said chap. 24.

As to the first objection I shall deal with it by and by, only remarking here that the distance of this lake (Lorimer) from the company's mills was stated by Mr. Plumb to be only about 16 miles, though no positive evidence was given of the exact distance. As to the second objection, I think the wives are not necessary parties; they have no vested interest in the lands, only a contingent one; their husbands are the actual "owners and occupiers" of the lands. Suffice it to say that I think the wives of the defendants, and also any other persons, though not named in the record, might have appeared at the hearing and opposed the granting of the application. Whatever may be the interest of the wives, notice to the husbands must, I think, under the circumstances, be held sufficient notice to them.

It seems to me, too, that the conveyance to be made under sect. 10 being compulsory, and made under the order of the judge, can hardly be called an alienation such as is intended by sect. 15 of chap. 24, R. S. O. If it were necessary that the wife should join in such conveyance there is sufficient authority impliedly given by the Act to compel her to execute it, though if this were not quite clear the proper thing to do to preserve the right of the wife would be to limit the time for the exercise of the powers asked for by the applicants to the life-time of the husband, and no longer, unless, indeed, the wife had predeceased him; this sect. 7 of the Act would authorize. The only difficulty in such a case would be the quantum of damages to be allowed. As to the third objection, as it is only of his "rights" that Bell would be required to make a conveyance, there need be no difficulty on that head.

I now proceed to notice the evidence offered in opposition to the application so far as it relates to the point we are now considering, namely, whether the allowance of it will conduce to the public good, that is, how far such allowance will affect the rights and well being of others, for I think the expression, "public good," is one that is not always an abstract one. There may be times when a case of "public good" is made out so absolutely and completely that the question of the rights of others being interfered with cannot be inquired into. These rights must give way, and the only point then to be determined is that of

the amount of the compensation to be paid; on the other hand there will arise a case where the "public good" is not so clearly established, and then it may be only right and proper to enquire what is the extent of the injury or damage arising from the exercise of such a right, as well as the public benefit derived from it, in order to determine the whole question, and have the expression "public good" as a relative one.

This question may be further considered presently when we have looked at the evidence as to the injury likely to ensue from the allowance of this application as well as the good to be gained by the public.

Francis B. Ferris, called to oppose application, says:—"It is healthy around this lake, (Lorimer), and there are lots of fish in it. The frost has not the same effect on crops grown around the lake as on those further off. The effect of granting this application will be that I will have to leave my house. Last year the water came up to the inner line (the witness is referring to the map showing the water line of the proposed flooding, and also the line to which he is referring) and affected my health, as the water created a stench when the hot sun came out. My family all suffered. I was feverish and could not work. I believe it was the effect of the malaria. I suffered this way once before when there was a dam lower down. Never suffered otherwise. The water comes within 28 feet of my dwelling house. I have a spring in my cellar, and it would flood the cellar if the water came to that height. The water touches the out-buildings, though a manure heap prevented it doing so when Mr. Beatty was there and it will flood the floor of it. I could not nor would I live there if the land is flooded, as the effect is to render it very unhealthy. I have seven children and a wife. There is no other Government land to be got like this. I know Bell's property. The water will come within 30 feet of his house. I believe malaria will arise on his place too. I don't think he could live elsewhere on the lot. The flooding prevents his draining a meadow, five or six acres of low ground. There is a lake at the back of his lot, also raised, and so I think he could not safely live between them. The same applies to my lot. I use to go by Still Creek to McKellar mills, with a boat 18 feet long. It averages two rods wide. Some parts are very deep, some shallow.