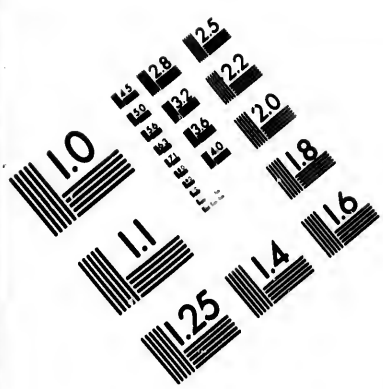

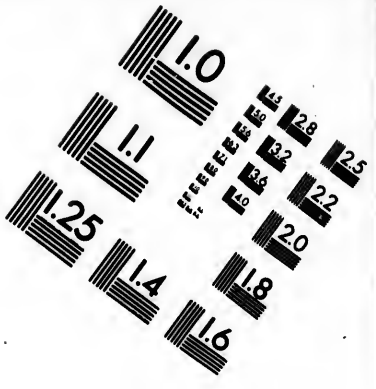

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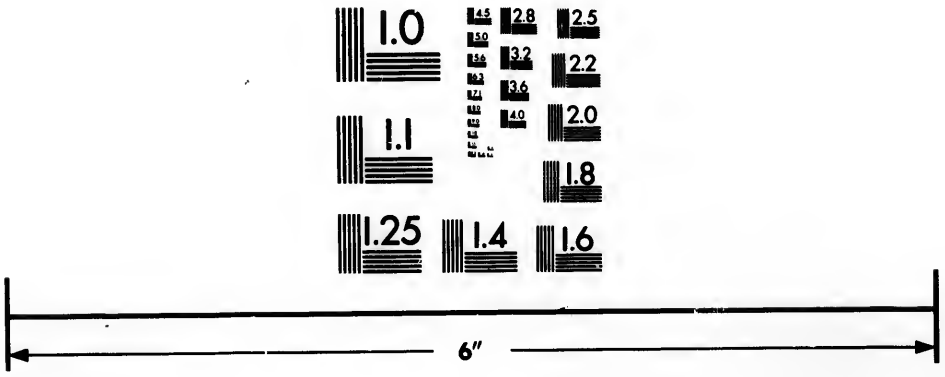

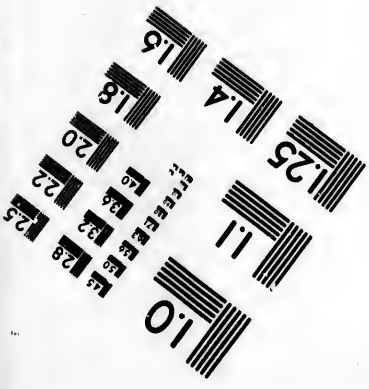

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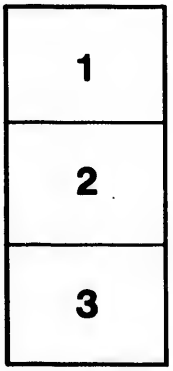

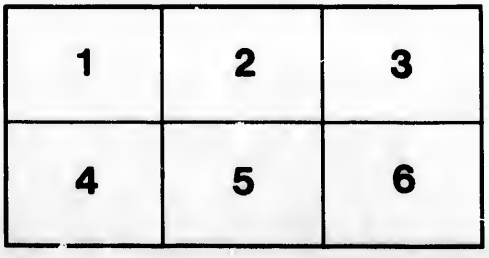

7

UNCONSTITUTIONAL LEGISLATION.

See Montreal Herald, 20th March, 1868,

IN RE.

"ST. LOUIS HYDRAULIC BILL."

THE ST. LOUIS HYDRAULIC COMPANY.—This association, or its promoters, are, we learn, taking a step to secure their objects which cannot but appear very remarkable, and, as we suppose, is wholly unprecedented. They are circulating for signature a petition praying for the passing of the bill, which is to give them possession of the property of a number of gentlemen, who do not desire to sell, except on the usual terms upon which people dispose of what belongs to them: viz, at the price which they fix themselves. This step to say the least of it, is one which shows very little delicacy, when we consider that the point on which the aid and stress of public opinion is thus invoked, is as to whether the parties to the act of incorporation shall obtain, at their own desire, something to which at present they have no right, and can hereafter have no moral right whatever. If the proprietors who are to be ousted, were to obtain signatures to petitions intended to defend their just claims to property now undoubtedly theirs, one could understand it. They have a plain, equitable, and legal connection with the matter in dispute, such as civilized men everywhere recognize; but those who seek to become its possessors have at present no other connection or interest in it, than the affection which they have conceived for it—we say affection in preference to the word mentioned in the tenth commandment in order to keep the discussion within the bound of reason, without calling for the intervention of conscience. One would think that when these gentlemen found that they could not agree with the proprietors of the land they wanted, they would have abandoned their project, or would have sought to obtain an accommodation by the offer of better terms;—or again, that if they were absolutely bent on manufacturing, they would have found some other site for their industry, where they would be welcomed. In fact, however, they do not intend manufacturing, but speculating, and the speculation is on the spoliation of other people. For if there is a profit to be expected from the possession of this property at its present value, who ought to have that profit? Is it they to whom the land belongs, or some gentlemen who riding by have been taken by the capabilities of the site? If the place selected become a great seat of industry, why is it to go out of the hands of its

present owners, and into the hands of persons, who only purpose as a condition of the acquisition to subscribe a sum of money quite within the power of any one of the present owners? The proposition is this—We, mere strangers to this property, except in so far as the attraction it has exercised over our acquisitive organs establishes a sympathetic link between the dirty acres and our hearts and pockets, can by investing a small sum of money, obtain further assistance from capitalists, and with this can convert your homesteads into some thing of indefinitive value, for our benefit. We therefore propose to take these homesteads. But, say, the objectors, "we can do that ourselves; some of us "indeed, contemplate doing it ourselves in our own way, and for our own "profit. We bought the property, in fact, just with this design." "No matter," reply the Joint Stock gentlemen, "we will send round and get signatures to a "petition from people who have as little right as ourselves and with that, and "with the interest some of us have in Parliament and in the Government, we "have little need to care for your very weak notions about being master of "what you have paid for." Now, it does seem to us that persons who are urging a measure in which they are, so far, mere intruders, might be content to leave their side of the case to rest upon what the law officers of the Crown will hold to be the correct principles of expropriation, without attempting to bring to bear upon the decision influences which cannot be governed by any appreciation of right or wrong. We think it proper, therefore, to caution those who may be asked to sign this petition to think a little before they yield, as persons frequently do yield, to such requests. The very same principles may hereafter be applied to themselves, and they may find that when they have asked a price for their property which the would-be purchaser does not choose to give, such would-be purchaser will have only to apply for an Act of incorporation, associate himself with a few other persons, and get himself put into possession at a valuation. At this moment there are two or three Associations to whom the adoption of such a principle would be very convenient. The Warehousing Company might like to obtain a number of properties of a prospectively increasing value, at what abritators would conceive to be the fair price of the day; and the gentlemen who are known to have been in treaty for the property of the Bank du Peuple for an Hotel, without so far coming to terms with the Bank, would have the whole matter settled by an Act of Parliament. If there were no other reason for objecting to such a law as the one now sought for, the manifest hardship and inequality of its operation should be enough to condemn it. There is no man in his senses who can suppose that an Act of Parliament could be put through to take a property for such limited and merely private purpose, as the one in question, from any person of influence in politics—say Mr. Brydges, or Mr. Ferrier, or Mr. Galt. Why then should persons without this influence be made victims? In the present case it is true that all the proprietors concerned are men of good social position and means, and able to make some resistance; but once introduce this precedent into legislation, and what chance would there be for a single individual, perhaps, utterly ignorant of the methods of conducting public business, and with no means except the property whose very desirability, like the beauty of some women, might constitute the chief danger of its possessor. At this moment we see the question of the absolute rights of property discussed elsewhere on the very

largest scale, by the finest intellects, and under circumstances which may well reduce the value of these rights to the lowest point, or cause men to believe that they must at any cost be made to yield to rights still more sacred and paramount. When millions of human beings are confessedly suffering miseries unknown elsewhere, and when the whole frame-work of a great empire and a civilized society has become insecure and dangerous, the most conservative of men may not unreasonably believe that the extreme pretensions of property must, if necessary, give way. But even men like Mr. Mill and Mr. Bright, who believe that Ireland might be regenerated by commuting the tenure of land, and who, therefore, advocate that measure, do so with a full consciousness of the great hazards and dangers which must attend any interference with the fundamental rule upon which depends the stability of all men's possessions. If even to pacify a nation and to save an empire the boldest shrink from handing over to the tenant the fee simple of the lands which have been fertilized by his labour at a rent to be fixed by arbitration, what shall be said of an attempt on the part of half a dozen or half a score of persons who are neither landlord nor tenants and who have no legitimate interest at all, to break through the most ancient rules of property for the sake of creating large fortunes for themselves?

Statement of the grounds on which it is contended that the Bill to incorporate the St. Louis Hydraulic Company, passed by the Parliament of the Province of Quebec but reserved for the Royal assent should not be passed.

The first ground upon which it is believed, the Royal assent must be refused to this Bill is its unconstitutionality. One of its most important clauses, gives a right to dam a navigable channel of the St. Lawrence, a river whose property and right of conservancy is in the Government of the Dominion, and not in that of the Province of Quebec. Even if the proposed dam were not intended to obstruct a navigable channel, it would be not the less true, that the water in that part of the stream is not within the domain of the Local Government, because it is impossible to divide a river, and to say that the navigable part belongs to one authority and the non-navigable part to another. However there can be no doubt of the navigability of the channel, which it is now intended to close, since before the construction of the artificial navigation by the Lachine Canal, it was by that course that all the vessels bound upwards used to pass the Lachine Rapids. It is believed, that there can be no doubt therefore of the Bill in question being *ultra vires* of the Parliament of Quebec. If not, it must be because the stream which is to be dammed, is held to be non-navigable. But if so, the promoters of the Bill have asked, and so far as the action of the Quebec Legislature is concerned, have obtained the gift of a property, supposed, by them, to be of enormous value, which did not belong to the public; but to the riparian proprietors, and this without any compensation whatever to these proprietors. Since the passing of the Seigniorial Tenure Bill, there can be no question on this subject. The Seigniorial Tenure Court

declared, even before the passing of that act, that the water of non-navigable streams, by law, belonged to the riparian proprietors; and the act followed that decision and established the rights of such proprietors, by a most comprehensive enactment. Is it to be supposed that, after the country has thus deliberately determined that the individual ownership of non-navigable waters, shall be in the *censitaire* to the utter abolition of the pretensions heretofore made by the holder of the *dominium directum*, a body of mere strangers can, at their own request, be put into possession of this property, without the smallest compensation to those from whom it is usurped? If so, one of the leading features in the policy of the legislation on the Seigniorial Tenure will be utterly destroyed, and after large sums of money have been expended to confirm the title of the *censitaire* as against another ancient claimant who moreover had written titles, the *censitaire* will find himself despoiled by persons absolutely without title, except the vulgar desire of owning that which belongs to others.

The Bill is farther opposed on the ground that it will if passed, consecrate the worst kind of spoliation of other private and vested rights. It provides that the persons to be incorporated may go upon the lands which border the channel, which it is proposed to dam. and take all or any part of those lands, at prices to be fixed by arbitrators. The Bill, in short, confers upon this Company all the prerogatives which belong to the State in order that (in case of need), it may exercise its supreme authority by the *expropriation pour cause d'utilité publique*. It is contended that the circumstances under which this Bill have been applied for, and passed by the two houses at Quebec, are not such as to justify the delegation of this extraordinary prerogative of the Sovereign. *The expropriation pour cause d'utilité publique* is essentially opposed to any idea of private profit, or subsequent private ownership of the land expropriated. In its principle it is the Prince representing the State, who takes, for purposes to which the idea of profit and subsequently private ownership is utterly foreign—as for the construction of citadels, harbours, canals, &c., which have in all ages been regarded by civilized communities as constructions that should be made by the State, and when made as the property of the State. Even for such purposes the *expropriation* ought only to take place, according to the best authorities on the subject, when the land to be taken is the particular property required for the purpose, and when none other will serve, or at all events none other will serve except at a very considerable diminution of efficiency in the work to be constructed. Now the purposes for which it is intended to acquire property under this Bill do not conform to any of these conditions.

1st. The purpose is not mainly a general one, nor one which can be described as *d'utilité publique* though incidentally like all industrial enterprises, it will if prosecuted, add to the prosperity of the country. In this respect it only differs in degree from any other industrial enterprise whatever, and if it be a *cause d'utilité publique* to construct one dam for obtaining water power it must be equally so to construct any other—or even to establish a steam engine intended to move machinery for industrial purposes. Yet it will surely not be pretended that the hundreds of men who in this Province desire to to be mill owners have a right to invoke the prerogative *of expropriation* which belongs

to the State, in order to save them from what they may consider a hard bargain.

2nd. In the present instance it is not in any sense the State by whom the property is to be acquired and owned, and yet this is an essential condition of the just exercise of the prerogative of *expropriation*. It may be said that in modern times, the condition has been often departed from, and the example of expropriations for railways will no doubt be relied upon as a precedent, and has probably suggested the objectionable clauses in the present Bill. But that supposed analogy, occurring very naturally to the minds of men who have had to deal frequently with legislation which confers the power, without having had to consider the basis of it, cannot for a moment stand the test of scientific investigation. No doubt there may be cases where it is difficult to draw the precise line between a public work and a private enterprize, and it is possible that legislation may be cited, which, enacted by popular bodies at the request of interested persons, generally ignorant, sometimes unscrupulous, and occasionally without opposition from the proprietors who are to be affected, has overpassed the just limit. But in general it will be found that the true rules have not been infringed upon. They certainly have not been in the case of railway expropriations; for no one can doubt that it is one of the first functions of all civilized governments to construct roads and other great communications according to the best scientific methods of the day. If this duty has sometimes even in the case of Turnpike roads been committed to trustees, empowered to borrow money, and pay interest from the tolls, or even to Companies entitled to levy tolls for the sake of paying interest in the shape of dividends on the capital outlay, that has been only the mode adopted of obtaining the construction and maintenance of the work at a cheaper rate than was supposed possible by day labour under official supervision. But the roads so made are still the Queen's highways—the railways built by companies no less than the Turnpikes built by the same agency. The former cannot as Lord Cairns has decided be so mortgaged as to divert them from the public purpose for which they were intended. Their rates of fare are limited; and in most countries the State either exercises a concurrent control with the Companies, or has granted Charters subject to its own right thereafter to re-acquire the roads. The private property in these roads is therefore a mere incident in a work essentially public, and the reason why the intervention of private proprietors was admitted is well known to be the practical difficulty or impossibility of allowing the running of carriages upon them under diverse management. Yet even so, many of the ablest thinkers believe that the State ought never to have delegated its power, even partially, into private hands, and ought to resume all such delegations.

It is submitted that these considerations show the utter impossibility of reasoning from the justice of expropriation for railway purposes, to the expropriation for which authority is now asked. It surely cannot be pretended that it is or ever has been considered as a function or duty of the State to construct water powers for manufacturing purposes in competition with other owners of mill sites; nor, that under the present Bill, the State will possess any property in the works to be constructed; nor, that a manufacturing business, upon however large a scale, of which there are thousands throughout the country, can

be looked upon as a matter of such general and public utility as to justify the intervention of one of the high prerogatives of the State, as against the laws which ordinarily govern society.

3rd. Other and subsidiary reasons may be urged in support of the above why the consent of His Excellency should be refused to this Bill. Among these, it may be pointed out that usually the land which is required for a public improvement, is of very small value compared to the work to be erected upon it; but in this case the great value of the property which the Company will own if its project should be carried out, will not consist in the works which they erect, but in the power of the water, that they are to make available, at an outlay which, compared to the expected results, is exceedingly small. Thus the persons seeking incorporation do not propose to create the major part of the value which they are to own, but to force the major part of the value, which is already existing, out of the hands of the present proprietors, and merely render it available by an inconsiderable investment. In this respect the actual demand, is the case of persons who should claim to be put into possession of a gold or other valuable mine, worth thousands of pounds, upon the consideration that they would aid in the development of the property by the erection of a winch, at the cost of a few score of dollars.

Another very important consideration arises from the last fact. Supposing that in opposition to the established principles which have been developed above, it should be held that the possessors of a valuable piece of natural wealth ought not to be allowed to lock it up from the use of mankind, and thus play the part of the "dog in the manger." It cannot be pretended that the first comers who ask for it, are to have it conferred upon them, though they may be willing to do nothing for its development, and merely mean to put it on the market for other purchasers, in the shape of subscribers to a joint stock company. In that case the right causes of *expropriation* would cease to be those which have been described by authors, and would hereafter consist of a penalty to be exacted for the benefit of the prosecutor from owners who do not make the best use of their land. But even if that is to be imported as a principle into the equitable laws, of which all municipal laws should be the application and interpretation, surely the actual proprietors have the first right, after due warning, to be allowed to make the required amelioration, and to secure the profit, in preference to mere intruders.

The promoters of this Bill set up that they intend to construct a very important water power. How do they know that the proprietors whom they are to eject, do not intend to do the same thing? Yet these new claimants do not pledge themselves absolutely to effect this work, but they demand three—or practically ten—years, during which they shall retain the privilege, without committing themselves to any responsibility whatever. Surely the present proprietors have not by their delay to make this improvement committed so grave an offence as to shut themselves out of the days of grace which are asked by mere strangers, whose sole claim consists in their pretended intention to do the projected work. In point of fact, some of the proprietors have just as keen an appreciation of the capabilities of this site as the gentlemen who, in virtue of their appreciation of them, seek to appropriate it. They desire to render these capabilities available in their own time and their own way, of

course for their own benefit, but also, with as great a benefit to the public as can be conferred by any other plan. Why are they and their plans to be superseded? The question may be tested by another question. If the promoters of this Bill, in virtue of a pretension—moreover an unproved pretension—that they will make of this property better use than the present owners, can usurp possession, what will be the future value to the intrusive owners of their new-fangled Parliamentary title? Why should not some still abler or more enterprising or more boastful speculators obtain the right to dispossess them, in order still further to improve their improvements? Once admit the idea we are now discussing, and property will no longer be held by the ordinary stable and legal title; but only by the fact that the owner does not promise—truly or falsely—to do as magnificent things as some landless person, possibly a mere quack, may undertake. The penalty for not conceiving and working out the very highest capability of a property, will be to lose it; but afterwards the holder of the championship must, in his turn, answer all challengers.

In close connection with this part of the subject, is the very small sum of money, the investment of which is to authorize the persons seeking incorporation, to possess themselves of the property. So soon as they have got together the paltry sum of $10,000, they are to be able to dispossess against their will the owners of land worth some hundreds of thousands of pounds in the aggregate. Can any proposition be more reasonable?—especially when there is not one of the proprietors thus to be unceremoniously turned out, who could not easily raise the whole of this small capital himself! The modest persons who ask thus to be put in possession of the estates of others, on account of the service they are about to confer upon the public, measure this service by the standard of $10,000, that is to say, of £250 for each of the ten gentlemen named in the bill. All the rest of the money required they are to borrow on mortgage, or to raise by shares issued on the basis of land, of which to-day they do not own an inch. Why again is it asked, are the present proprietors not to be allowed one hour to see whether they cannot obtain the funds required to give them the control, and profit of improvements on what belongs to them, while mere strangers ask for the fee simple of the land, without the risk of forfeiture for neglect of use during a period of ten years.

In conclusion it is respectfully submitted, that if the principle of this bill be adopted in our legislation, the fee simple of land will not consist of the right to hold it; but only of the right to appoint one of three valuators to fix the price to be paid by the first company who wants to buy it. But as the new purchaser must be subjected to the consequences of the same philosophical conception of the nature of property, his holding will be as precarious as that of his predecessor—a tenor which will introduce some novel and very startling changes into the law of real estate

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Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Administrator in Council, on the 13th January, 1869.

On a Report dated 11th January, 1869, from the Honourable the Minister

of Justice on a despatch of the Lieutenant-Governor of the Province of Quebec, of the 28th February last, enclosing a Bill which he had reserved for the assent of the Governor-General intituled: "An Act to Incorporate the St. Louis Hydraulic Company."

The Minister of Justice reports that this Company is proposed to be incorporated, for the purpose of creating a water-power by the erection of a dam across the river St. Lawrence, running between Isle-au Heron and the northern bank of the river.

That the Bill was reserved for the Governor-General's assent, on the report of the Attorney-General for Quebec.

That in his opinion, the second clause of the act, which authorises the construction of this dam, appeared to fall within the powers of the Parliament of Canada, under the 10th paragraph of the 91st section of the Union Act.

That as it is a matter of national importance to preserve the navigation of the greatest river in the Dominion from being obstructed, and as it was the opinion of some professional men, that the erection of the proposed dam would not only injuriously affect the navigation of the river, but cause great injury to property on or near its banks, he, the Minister of justice, thought it expedient that a report should be obtained from the Chief Engineer of the Department of Public Works on the subject. That report, a copy of which he submits, was, he states, received by him on the 24th ultimo.

That the whole tenor of this report shows. that Mr. Page apprehends that the projected work would cause serious changes of a prejudicial character in the navigation of the river and might be the means of injuring private property to an extent which cannot now be calculated.

That after such a report, and without reference to the constitutionality of the act, he is of opinion that it would not be safe, in the public interests, to allow this bill to become law.

He therefore recommends that your Excellency's sanction be not given to it, and that such decision, together with a copy of Mr. Page's report, be transmitted to the Lieutenant-Governor of Quebec, for his information.

The Committee concurs in the above recommendation and submits the same for your Excellency's approval.

Certified,

(Signed) W. H. LEE,
C.P.C.

To the Honourable
The Secretary of State for the Provinces, &c.

OTTAWA, *7th December*, 1868.

The Secretary of Public Works.

SIR,

I have the honour to acknowledge the receipt of your letter (No. 2864), drawing attention to certain enquiries, made by the Honourable the Minister of Justice, relative to the probable effects of the works purposed to be

constructed by a Company, at or near the Lachine Rapids in the River St. Lawrence.

With a view of placing the matter fully before the Department, it is deemed proper first, to give a brief statement of the leading points contained in the documents, which have been submitted both for and against the scheme, together with reference to other papers bearing on the subject.

It appears that a number of gentlemen, residents of Montreal and other parts of the Province of Quebec, are desirous of being incorporated under the name of the "St. Louis Hydraulic Company," for the purpose of carrying on the business of creating water power for driving of Mills and Machinery by the construction of dams, sluices and other mechanical appliances, and of leasing or selling the same."

The place where they purpose engaging in this business is at, or near, that part of the River St. Lawrence known as the Lachine Rapids and in the vicinity of Montreal.

They represent having made an arrangement for the undivided half or moiety of that certain fief, in the district of Montreal, known as l'Isle-au-Heron, in the river St. Lawrence, near the St. Louis or Lachine rapids, etc.

In confirmation of this, a copy of a notarial document dated 4th December, 1866, is submitted from which it appears that the transfer of the undivided half of l'Isle-au-Héron has been made conditionally, that is to say, in case the company be not incorporated and chartered, or of its failing to carry out the terms of the arrangement, then re-assignment of the property is to be made to the original owner or person who made the transfer.

On a memorial setting forth the objects proposed to be effected by the company, an act of incorporation was passed at the last session of the Legislature of Quebec, authorizing a Joint-Stock Company to be formed, with power to take possession of part of the bed and beach of the St. Lawrence, to purchase, acquire and hold lands for canals, roads, ditches, &c., and construct a dam between Isle-au-Hèron and the North Shore of the River.

The several clauses of chapter 66 of the Consolidated Statutes of Canada, under the several heads of Powers, Plans and Survey Lands, and their valuation and fences shall be incorporated with this Act, &c., &c.

The company to have a capital stock of two millions of dollars with power to increase that amount, if deemed proper. The charter to be forfeited if the company do not go into actual operation within three years. The construction of the works not to be commenced until one million of dollars of the capital stock is subscribed, nor until one hundred thousand dollars shall have been paid up.

This Act or Bill was however reserved for the Royal assent.

Since the Bill was passed by the Legislature of Quebec, several memorials have been presented to His Excellency the Governor-General praying for various reasons therein stated, that it be disallowed, viz :—

1st. From W. J. Knox and Robert Knox (18th March, 1868), owners of Mills at the Lachine Rapids, representing that, by the Bill, the St. Louis Hydraulic Company would have the power of constructing works which would destroy the water-power owned by them, the memorialists.

That the Company would have the right of acquiring a large amount of

property that would prevent the carrying out of a scheme, which had been in contemplation for the last thirty years, for the further developement of the water-powers, &c.

2nd. From F. B. Mathews (21st March, 1868), owner of the undivided half of Isle-au-Heron, praying that his property may not be taken possession of, against his will, for the benefit of a private Company, &c.

3rd. From Hugh Fraser, and eighteen other proprietors of land lying on the north-shore of the River St. Lawrence, between Montreal and Lachine (23rd March, 1868), praying that assent to the Bill be withheld, inasmuch as the passage of a law giving private individuals and speculators the right to take the property of their neighbours, at their own valuation, would tend to destroy the security hitherto enjoyed by the inhabitants of the country, in their titles to lands, &c.

The petitioners also state that they believe the Bill in its present shape to be unconstitutional for various reasons and amongst others, those recapitulated in the *expose* or factum hereunto annexed, and respectfully submitted, &c.

The document thus referred to is headed "Statement of the grounds on which it is contended that the Bill to incorporate the St. Louis Hydraulic Company, passed by the Parliament of the Province of Quebec, but reserved for the Royal assent, should not be passed."

In this paper the principal features of the Bill are discussed and reasons assigned why it should be disallowed. This document seems to have been ably and carefully prepared and as a whole is well worthy of consideration.

There is also a memorial (dated March, 1868,) signed by 231 persons chiefly residents of Montreal, to His Excellency the Governor General, praying that the Bill may be assented to, inasmuch as the carrying out of the proposed undertaking would secure to Montreal an unfailing supply of pure water, and create an immense amount of invaluable water-power for general use, &c.

In this connection it may be stated that an Act was passed in 1861, (24 Vic. cap. 96) intituled: "An Act to incorporate the Montreal Hydraulic and Dock Company." By the third section of this Act the company are empowered to make a canal and conduct water from some point on the river St. Lawrence, within seven miles from the city of Montreal, for the use and supply of the said Docks or for Hydraulic or manufacturing purposes.

By the fifth section, the company has the power to lease or sell water-power for mills, manufactories, &c., &c., "but none of the provisions in this Act "mentioned, as to taking possession of and entering upon lands, shall apply to "lands to be purchased along the canal, applying the said water-power, which "land shall only be acquired by voluntary contract and agreement."

By the 45th section, the powers of the company are to cease if their works are not commenced within three years, or are not finished or put in operation within ten years from the passing of this Act.

The Act shows that the scheme was looked upon as consisting of two distinct parts; the principal one or that connected with navigation being considered as essentially a public work, whilst that relating to water-power was viewed and treated as a private undertaking.

It is believed that the proposed canal was to have been supplied with water

from a point above the Lachine Rapids, where the river is naturally of a height suited to the purposes contemplated.

It appears from the Acts passed previous to 1859 that the Public Works Department had no power to acquire land as a site for water-powers, or other hydraulic purposes, except in the usual manner of voluntary agreement with the owners, although invested with full power to take possession of all such lands as were necessary for works essentially of a public nature.

But in 1859 an Act was passed (22 Vic. cap. 3.), intituled, "An Act to amend and consolidate the several Acts respecting the Public Works." By the 31st section the commissioner may at all times acquire and take possession of all lands or real estate, streams, water and water-courses, the appropriation of which for the use, construction and maintenance of hydraulic privileges made or created, by, from or at such public works, is, in his judgment, necessary, &c.

In "An Act respecting the Public Works of Canada," passed in 1867 (31 Vic. cap. 12), the powers relating to acquirement of land are similar to those described in the Act of 1859.

It therefore appears that previous to 1859, the Department of Public Works was not invested with the power of taking possession of lands for the water-powers which even the construction of the Provincial Canals had created.

The exception then made in favour of the department was not however, in 1861, extended to the "Montreal Hydraulic and Dock Company," in so far as related to that portion of their project which had for its object the formation of mill privileges.

Notwithstanding the magnitude of the scheme now in consideration and its great public importance, if it could be successfully carried out, its chief aim is similar to that part of the Montreal Hydraulic and Dock Company's project from which the power of expropriation was withheld.

It may therefore fairly be questioned whether such powers could judiciously be conceded to the St. Louis Hydraulic Company.

The (231) memorialists in favour of the projected undertaking give as their principal reason for supporting it, that it would have the effect of "permanently securing for the City of Montreal an unfailing supply of pure and wholesome water."

On examining the plan submitted by the company it appears that the water above the proposed dam is intended to be raised 18 feet, and kept at a height of about 30 feet over ordinary low water mark, in the harbour of Montreal, and in this way it is alleged the desired object will be effected.

A memorandum, explanatory of the design, shews that during a portion of last winter (1867), a natural dam of ice was actually formed across the lower end of this channel and raised the water above it to about the level which will be attained when the permanent dam is constructed, &c., &c.

A record of the water levels kept by the superintendent of the Montreal Water Works shews that during the period alluded to, viz. the 16th and 18th January, 1867, the water at the site of the proposed dam stood at a height of 30. 37 feet above datum or fully 4 inches higher than the level to which it is intended to raise the water above the dam.

During the remaining portion of the month of January, it varied from 29. 74 to 27. 97 and averaged 28. 76 feet about datum, giving for this time a

mean fall of 1. 24 feet at the site of the dam when the level above is maintained at 30 feet as proposed.

In the month of February it ranged from 28. 97, to 24. 63 feet averaging 26. 58 feet over datum and giving for this period a mean fall of 3. 42 feet at the dam.

From the first to the 21st March, the average level was 25. 61 feet over datum giving a mean fall at the dam of 4. 39 feet.

The general average of the daily levels from 16th January to 21st March, 1867, gives a mean fall of 3. 31 feet. Although the water was backed up in 1867 to a greater height at this point on the St. Lawrence than is usually the case, the phenomenon is more or less of annual recurrence so that in ordinary seasons, during the greater part of the months of January, February and March, there is not a fall of more than 4 to 6 feet, under the assumed level, at the place where the dam is proposed to be built.

Any opinion given as to the probable effects which the construction of a permanent dam would have on the ice jam below. must of necessity be mere conjecture it being quite as likely that the height of the back water, hitherto experienced might be augmented as that it would be diminished. In fact the result is something which cannot be foreseen or calculated upon with the slightest degree of certainty.

From the facts above stated it appears that for a considerable portion of every winter (ice jams and back water continuing as heretofore) there would practically be no available pumping power to effect the object for which the memorialists mainly recommend the scheme, nor indeed a sufficient head of water to drive machinery suitable for manufacturing or milling purposes.

In the memoranda submitted by the company it is stated that the erection of this dam will be followed by the packing back of the water to the lake 100 feet and the probable rising of the lake level with its tributary streams.

This view of the matter is doubtless correct, by closing up the north branch of the river, all the water would be forced into the south channel where it would have to pass in a space of much less width than at present occupied by the river, which would of course cause an elevation of the surface level above.

This increased height of the surface would doubtless bear some proportionate relation to the section of the river closed and would be such as to give the water a fall sufficient to produce a velocity which would carry off the whole natural flow of the river. The height or distance up stream to which this rise would be experienced it would be all but impossible under any circumstances to determine correctly in advance, but from this class of information submitted on the part of the company no "data" whatever are afforded, on which to base any opinion relating to these important points.

Indeed when the magnitude of the river, the sets of the rapids and the irregularity of the channel at this place is considered, it seems doubtful whether such details and formula as are applicable to ordinary streams would be any thing like a safe guide in attempting to form an opinion of the results likely to ensue from the construction of the proposed works.

The banks of the River below Lachine on the north-side and below Caughna-

waga on the south-side are understood to be so high that they are unlikely to be flooded to any great extent.

There is reason to apprehend that a permanent rise in the Lake St. Louis, would, during periods of high water, result in considerable damage to several low Islands on the Lake and to tracts of low lands along its shores.

The streams which now drain the surrounding country might also form channels for conveying water into the interior. Thus the property of a large number of persons, in no way connected with the enterprise, would in all probability be injuriously affected and possibly to an extent which, when fully ascertained, might prove to be a serious if not unexpected drain on the means of the Company.

There is no doubt that if they could cause the proposed undertaking to be successfully accomplished it would greatly advance the manufacturing interests of Montreal and be a source of immense benefit to the whole community.

Nevertheless a project where so many individual interests are at stake and which is open to such serious objections should not be entertained unless it can be clearly shown that it is the best, if not the only way of effecting the object.

An enterprise of this kind to be really successful should be so situated that the power is as little as possible liable to variation or interruption. This it has been shown is unlikely to be the case with water powers found in the vicinity of Isle-au-Héron.

It is however evident that the river St. Lawrence between Montreal and Lachine can supply a very large amount of "unfailing" water-power, but in order to secure this, the water must be drawn from the river at a point considerably higher than the place selected by the St. Louis Hydraulic Company. That is to say, if from some point within a few miles of Lachine, a canal of large dimensions was constructed at such a distance from the margin of the river as circumstance required, an almost unlimited number of unfailing water-powers might be formed.

In this way the probable extent of damages could be foreseen and provided for, the risk of flooding of lands avoided and the hazardous experiment of blocking up a large section of a river of such magnitude as the St. Lawrence rendered unnecessary.

I have the honour to be,

Sir,

Your obedient servant,

(Signed,) JOHN PAGE,

Chf. Engr. P. Works.

P. S. A copy of my letters on this subject, dated 21st September 1867, is herewith appended.

All papers bearing on this matter which have been sent or obtained from the Office of the Honourable the Minister of Justice are herewith returned.

(Signed,) J. PAGE.

OTTAWA, 21st *November*, 1867.

The Secretary of Public Works.

SIR,

I have carefully read over the accompanying report of Mr. Sippell, and the explanatory statements of Mr. Legge, but have failed to obtain from them any other information bearing on the main question, than that the River-banks between Lachine and the proposed dam (on the north-side) and below Caughnawaga on the south side, are so high that the raising of the water would be unlikely to cause much damage between these points.

The water levels are not given, except for a short distance above the site of the proposed dam; so that the effect at Lachine cannot even be approximtaely ascertained, but both Mr. Sippell and Mr. Legge agree that the water in Lake St. Louis will be raised. Mr. Sippell states that the extent of this cannot be determined until after the dam is built, and Mr. Legge remarks that the precise amount of the "pack" cannot be definitely ascertained at present except at great labour and expense. We therefore propose to establish beach-marks along the margin of the river and lake for the purpose of ascertaining the amount of damage that may be caused at a future period. Mr. Sippell further remarks that although there will not be so much drowned land below the villages of Lachine and Caughnawaga, there are however large tracts of lowland on the shores of the lake and several large islands which would probably be rendered worthless."

The works and improvements proposed are doubtless of great importance and if executed would create very extensive water powers, irrespective of other advantages claimed for them by the applicants.

The scheme, however, is of such a nature that a large number of land owners in no way connected with it, would in all probability be injuriously affected, and no attempt seems to have been made to arrive even at an approximate estimate of what these damages would amount to.

In this view of the matter it appears to me that the interest of the Company would not be consulted, should they embark in an undertaking of such magnitude without some knowledge of the liabilities which they would be inevitably called on to meet, while at the same time, it is open to question whether it would be fair to place the land-owners in a position where the only compensation they could obtain would be from the funds of a limited liability company.

It is presumed that the general government has the control of all main navigable rivers and can proceed with such undertakings as may be fairly considered of national importance, by allowing reasonable compensation to all parties suffering damage by the construction of the works.

Somewhat analogous powers are given to Railway Companies, but the amount of land required for their purposes is usually determined beforehand with sufficient accuracy, and the extent to which they will interfere with the rights of private parties is generally foreseen and provided for. It does not however follow that powers of a similar nature could with equal propriety be granted to the St. Louis Hydraulic Company, inasmuch as the extent of the damage for which they may be liable is not stated and when ascertained might prove to be of such magnitude as to be wholly beyond their means. Besides in the ab-

sence of the necessary information, confidence in the scheme would doubtless be lessened by those likely to sustain damage from it.

It must also be borne in mind, that the effect of shutting off so large a sectional area of the river would not be confined merely to throwing into the south-channel, the volume of water, which has hitherto flowed through the north-channel; but will establish a permanent rise at all stages on the normal levels of the river above the dam, and this rise will be proportionally greater during periods of high water.

In the absence of proper data, it is impossible to even approximately estimate what the rise of the water would be; but it is probable that it would not be only the low-lands on the margin of the lake St. Louis or its Islands that would be affected, but it will also back up into the rivulets and streams which drain the surrounding country. It therefore appears to me that, although this undertaking would doubtless be greatly beneficial to the manufacturing interests of the community, it would at the same time, be likely to affect injuriously those of a large number of individual land-owners in the Province of Quebec, which might eventually lead to serious complications. If this view of the case be correct, it would be scarcely judicious for the Department to treat the application of St. Louis Hydraulic Company as coming within the scope of the general Act respecting Joint-Stock Companies.

I have, etc.,

(Signed,) J. PAGE,
Chief Eng. Pub. Works.

The powers thus sought by the projectors of this Bill, under the several clauses of Chapter 66 of the *Consolidated Statutes of Canada*, under the several heads of powers, &c., &c., which should be applicable only to Public Companies in case of disagreement between proprietors and petitioners, is to be settled as stated in the Act by the Arbitrator, of course to be named by the petitioners, who is empowered to name what he considers a fair compensation for the land, damages, &c., &c., It is then provided by the ninth clause of the *Act*, That,

"If within ten days after the service of such notice, or within one month after the first publication thereof as aforesaid, the opposite party does not notify to the Company his acceptance of the sum offered by them, or notify to them the name of a person whom he appoints as Arbitrator, then the Judge shall, on the application of the Company, appoint a Sworn Suveyor for Upper or Lower Canada, as the case may be, to be sole Arbitrator for determining the compensation to be paid as aforesaid."

And although provision is made for the appointment of an arbitrator by the opposing party, and the appointment of a third by the arbitrators, or a judge on the application of the Company, no provision is made for the water privileges connected with the several properties, the Company would be empowered to wrench from the proprietors or the "prix d'affection" their undoubted right. There is not a farm at any point along the entire line this Company would include in their Charter, upon which a "Mill privilege" does not exist, and that

might not be utilized at comparatively small outlay. The grant of such a Charter, therefore, would no doubt enrich a few "PRIVATE" speculators at the expense of the proprietary—the extent of land, too, the Company seek the right to take on the banks of the proposed "Hydraulic Works," would render the remainder of the farms useless for agricultural purposes, if not totally destroyed by inundations, as in all probability they would be. The idea of the Company paying indemnity in such cases would be preposterous. The Government and the people of Canada have already experienced, but triflingly, the damages arising from the "Beauharnois Canal." The damming of the "Great St. Lawrence" at the point indicated, would sooner or later destroy millions worth of valuable property. The natural obstruction of the waters at this particular point—"Isle-au Heron"—but three years ago, caused the river to rise higher than ever known in that locality, in so much that the *ice* shoved over the north bank of the river on the high road.

Apart from various reasons above set forth, there can be no doubt the bed of the River St. Lawrence is a part of the Public Domain, and out of the jurisdiction of the Legislature of the Province of Quebec, as conclusively shewn by the "Factum" above, and as coincided in by the following editorial which appeared in the "Montreal Telegraph" of the 27th February, 1869.

"The Minister of Justice probably thought that he had adopted a conciliatory course towards the Quebec Legislature in disallowing the bill to incorporate the St. Louis Hydraulic Company on the ground of the "public interests," and "without reference to the constitutionality of the act." The Quebec Legislature is determined to be guided by no such ideas of moderation. It will have all or nothing, and the Minister of Justice will find out before he has done with the question that our note of warning, that the constitution was in danger, merited a little more serious consideration than it received. On the 25th, MR. BEAUBIEN, seconded by MR. HEMMING, moved the suspension of the 51st Rule of the House—that is the rule requiring regular notice for the introduction of every private bill, in order to introduce the self-same law the Governor General has disallowed. This motion was carried without a dissenting word. What, then, is intended? Does the Local Legislature mean to try and force the Governor General to declare that the act cannot be sanctioned because it is unconstitutional, or does it hope to compel the Federal Ministry to neglect "the public interests" in obedience to the vote of a majority of a local legislature? SIR JOHN MACDONALD may try to avoid bringing these questions to an issue; but they have to be decided, and until a federal court is established, the Federal Ministry will have to decide the constitutionality as well as the advisability of every local measure."