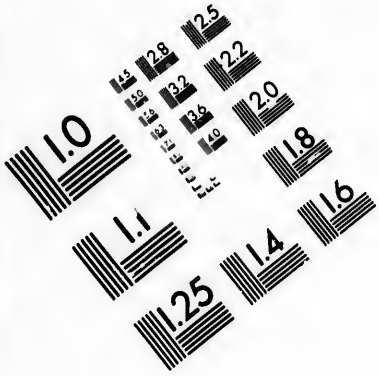

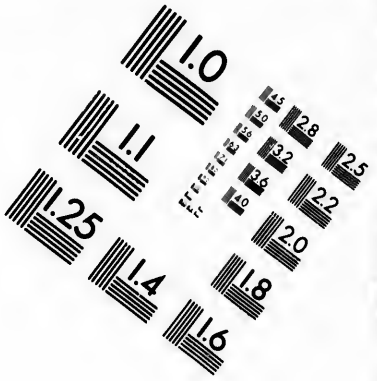

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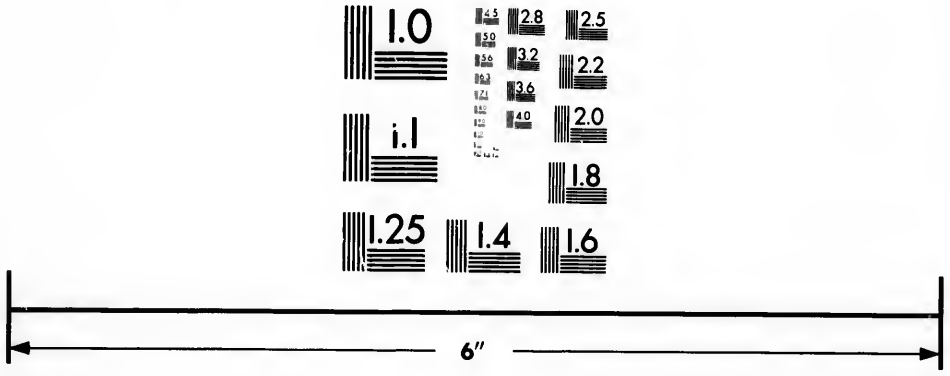

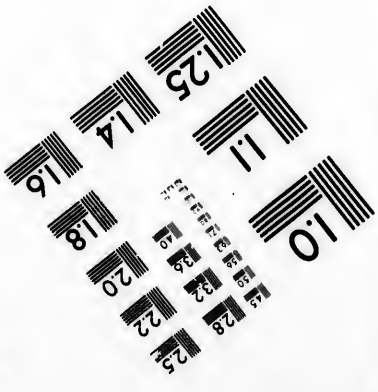

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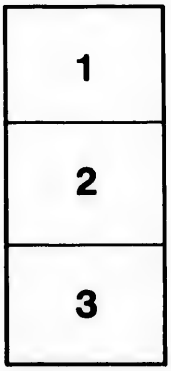

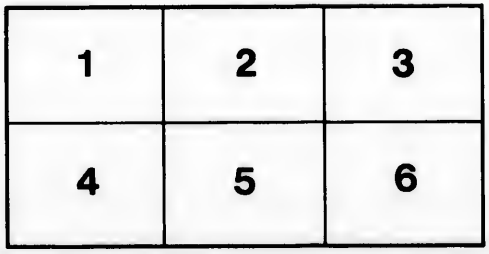

LET RIGHT BE DONE.

To the Honourable

THE MEMBERS OF THE LEGISLATURE OF THE PROVINCE OF ONTARIO, IN THE 4TH LEGISLATURE, SECOND SESSION, AND 44TH YEAR OF THE REIGN OF HER MAJESTY, QUEEN VICTORIA, IN PARLIAMENT ASSEMBLED, AT TORONTO, 22ND FEBRUARY, 1881.

THE PROTEST

— OF —

Peter McLaren, Lumberer and Manufacturer,

RESIDING AT PERTH, COUNTY OF LANARK,
PROVINCE OF ONTARIO,

AGAINST THE ENACTMENT OR PASSAGE OF A CERTAIN BILL, INTITULED,

"AN ACT FOR PROTECTING THE PUBLIC INTERESTS IN RIVERS, STREAMS AND CREEKS."

TORONTO:
DUDLEY & BURNS, PRINTERS, COLBORNE STREET,
1881.

Contents.

(COPY).

No. 102.] BILL. [1881.

An Act for Protecting the Public Interest in Rivers, Streams and Creeks.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. 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 kind, and all rafts and crafts, down all rivers, creeks and streams in respect of which the Legislature of Ontario has authority to give this power; and in case it may be necessary to remove any obstruction from such river, creek or stream, or construct any apron, dam, slide, gate-lock, boom or other work therein or thereon, necessary to facilitate the floating and transmitting such saw-logs and other timber, rafts or crafts, down the same, then it shall be lawful for the person requiring so to float and transmit such saw-logs and other timber, rafts and crafts, and it is hereby declared always to have been lawful, to remove such obstruction, and to construct such apron, dam, slide, gate-lock, boom, or other work necessary for the purposes aforesaid, doing no unnecessary damage to the said river, creek or stream, or to the banks thereof.

2. In case any person shall construct in or upon such river, creek or stream, any apron, dam, slide, gate-lock, boom or other work necessary to facilitate the floating or transmission of saw-logs, or other timber, rafts or crafts, down any such river, creek or stream, which was not navigable or floatable before such improvements were made, or shall blast rocks, or remove shoals or other impediments, or otherwise improve the floatability of such river, creek, or stream, such person shall not have the exclusive right to the use or control of such river, creek or stream, or to such constructions and improvements; but all persons shall have, during the spring, summer and autumn freshets, the right to float and transmit saw-logs and other timber, rafts and crafts, down all such rivers, creeks or streams, and through and over such constructions and improvements, doing no

unnecessary damage to the said constructions and improvements, or to the banks of the said rivers, creeks or streams, subject to the payment to the person who has made such constructions and improvements, of reasonable tolls ;

3. The foregoing sections, and all the rights therein given, and all the provisions therein made and contained, shall extend and apply to all rivers, creeks and streams, mentioned in the first section of this Act, and to all constructions and improvements made therein or thereon, whether the bed of such river, creek or stream, or the land through which the same runs, has been granted by the Crown or not, and if granted by the Crown, shall be binding upon such grantees, their executors and assigns.

4. The Lieutenant-Governor in Council may fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge on the saw logs and different kinds of timber, rafts or crafts, and may from time to time vary the same ; and the Lieutenant-Governor in Council, in fixing such tolls shall have regard to, and take into consideration, the original cost of such constructions and improvements, as well as the amount required to maintain the same and to cover interest upon the original cost.

5. The foregoing provisions of this Act shall apply to all such constructions and improvements as may hitherto have been made, as well as to such as may be in course of construction, or shall hereafter be constructed.

6. All persons driving saw-logs, or other timber, rafts or crafts, down any such river, creek or stream, shall have the right to go along the banks of any such river, creek or stream, and to assist the passage of the timber over the same by all means usual amongst lumbermen, doing no unnecessary damage to the banks of the said river, creek or stream.

7. If any suit is now pending, the result of which will be changed by the passage of this Act, the court or any judge of such court, having authority over such suit, or over the costs, may order the costs of the suit, or any part thereof, to be paid by the party who would have been required to pay such costs if this Act had not been passed.

PROTEST

Against the passage by the Legislature of Ontario of Bill No. 102, intituled "An Act for Protecting the Public Interests in Rivers, Streams, and Creeks," introduced on 8th February, 1881, by the Hon. Mr. Pardee, Crown Lands Commissioner of Ontario.

It is submitted that if the change in our law indicated by that measure be effected, a great *injustice* will be done to private individuals in this Province who have invested large amounts of money in the improvement of private streams flowing through their own land, and who in that way have developed very considerably the natural resources of this country, resting as they did in the full assurance *that they would always be protected in the enjoyment of their property*, and that such property would never be wrested from them by the strong arm of their own Provincial Parliament *without just and adequate compensation.*

It has been thought desirable to place before Honorable Members for their consideration, a few of the facts in connection with the case of one fellow-resident of this Province who has expended not less than $250,000 in the improvement of certain streams *which before the construction of such improvement were utterly useless for any commercial purpose*, but which by reason solely of such expenditure have become useful avenues for the transportation of timber and saw logs to market.

On the 16th day of December last the Court of Chancery of this Province after a long, expensive, and exhaustive investigation, held at the towns of Brockville and Perth, made a decree declaring that Peter McLaren, an extensive Lumber Manufacturer and Mill Owner in the Eastern part of this Province, was entitled to the exclusive use of the improvements erected by him, or by those through whom he claimed as purchaser, on certain streams flowing through his own lands, and a rival lumbering firm who were asserting a right to use these improvements without paying for them were restrained by an injunction from so doing.

These parties were offered the use of the improvements at a reasonable toll, if they would acknowedge Mr. McLaren's proprietary rights, which offer, they rejected.

The defendants in this suit (Messrs. Boyd Caldwell & Son, of Carleton Place) have appealed from this decree to the Court of Appeal, where the cause is now pending, but as there is little doubt

that the judgment of the Court of Chancery will be affirmed, the defendants have invoked the aid of the Legislature, to assist them in depriving Mr. McLaren of certain rights which have been secured to him by the Courts of the land, and to compel him to share with them the produce of his own labor and capital, *without even the shadow of recompense.*

Mr. McLaren's improvements are situated in the Counties of Lanark, Frontenac and Addington. They extend along the following streams :—

(*a*) The North or Main Branch of the Mississippi, from the High Falls near the Boundary between the Townships of Dalhousie and Sherbrooke North, to the head of the stream.

(*b*) Louse Creek, which is a small steam principally in Denbigh, County of Addington, and forming with other small streams the head waters of the Mississippi.

(*c*) The South Branch of the Mississippi.

(*d*) Swamp Creek, which is a tributary of the Mississippi flowing in from the North ; and,

(*e*) Buckshot Creek, which flows from a small lake called Buckshot Lake into Swamp Creek.

The South Branch and Swamp Creek were not in question in the Chancery suit.

It was incontrovertibly established on the part of Mr. McLaren that prior to the making of the improvements in question, and when the said streams were in their natural state, it was an impossibility to drive logs down the Mississippi above the High Falls, or down the Buckshot or Louse Creeks even during freshets, and he is prepared to establish the same in reference to the South Branch and Swamp Creek. It was further established that the whole value of these streams as flotable avenues of commerce, has been occasioned by the expenditure of Mr. McLaren and others, of whose lands and works he has from time to time become the purchaser. Skilled lumbermen and engineers exploring in the localities on numerous occasions, pronounced many of the places *utterly impassable*, and the consequence was, *that the Crown timber limits along the principal portions of these streams, were, and would to this day have remained comparatively valueless, but for the expenditure on improvements thereon. In this work Mr. McLaren has been wholly unaided.*

There is no stream in this Province, where works of equal magnitude and importance, equal to those erected by Mr. McLaren on any one of the streams referred to, can be found, as the result of private and individual effort, so that as a great sufferer if the proposed legislation be carried into effect he will stand almost alone.

Mr. McLaren's right to regulate these improvements has, until questioned by the Messrs. Caldwell during last year, always been conceeded by the lumbermen in that District, and his rights respected

except in one instance in 1875, when a lumberman named Buck, being then of unsound mind, forced his way through the improvements with a quantity of timber. Legal proceedings promptly taken against him, were terminated shortly afterwards by the committal of the unfortunate aggressor to the Provincial Asylum.

The greater portion of the amount so expended on improvements was expended *since* the Courts of this Province declared that the general public have no right to use streams which, in their natural and unimproved state, were not of use for driving logs and timber even during freshets, and in making such a large expenditure Mr. McLaren fully believed that he was improving his own private property, and that no attempt would be made to deprive him of his rights and to compel him to share the benefits of his own property with a firm which has not expended a single dollar in improving these streams.

Mr. McLaren, at a very large expenditure of money, has become the owner of every portion of said streams where great natural obstructions existed, and, in one instance, he was compelled to pay $9,000 cash for the privilege of controlling one portion of the Mississippi, where dams could be erected with great advantage.

The Timber Limit of the Messrs. Caldwell is properly a Madawaska Limit, and in formgr years the logs and timber cut thereon were driven down that river and not down the Mississippi, and even now they are taking their square timber down the former stream. This Limit was purchased by them only two years ago, and when they had ample knowledge of Mr. McLaren's rights, and yet they are the only parties who have denied, and who, if this Bill becomes law, will share the proprietary right of Mr. Laren.

The tolls to which, by this Bill, Mr. McLaren will be entitled, will not pay the costs of keeping the accounts relating to the passage of logs.

It is urged in support of the Bill that the Legislature never contemplated the existence of such rights as those claimed by Mr. McLaren: in other words, that the construction placed upon the Act 12 Vic., Cap. 87, Sec. 5, by our Courts is not the true construction.

This Act, which was re-enacted when the Statutes of the late Province of Upper Canada were revised in 1859, and which then became Chapter 48, Sec. 15 of the Consolidated Statutes of Upper Canada, gave the right to float saw-logs and timber down the streams of this Province during the spring, summer and autumn freshets.

The first judicial construction placed upon the Act was in the case of Boale v. Dickson, reported in the 13th volume of Upper Canada Common Pleas Reports at page 337, the stream in question being the Indian River, not far distant from the Mississippi. In that case Richards, C.J., referring to the Act, says: "I am of opinion

'that this right so given extends only to such streams as in their nat-
"ural state will without improvements during freshets permit saw-
"logs, timber, etc., to be floated down them."

In the case of Whelan v. McLachlan reported in the 16th volume of the Common Pleas Reports, the decision in Boale v. Dickson was quoted, approved of and followed.

In the case of McLaren v. Buck reported in the 26th volume of the Common Pleas Reports, the report in which case was published and in the hands of every member of the legal profession in Ontario whilst the last revision of our Statutes was in progress, and the two cases above referred to were quoted with approval and followed. In dealing with the judgment in Boale v. Dickson, Gwynne, J., says: "By this decision we should be bound even if it did not, "*as it does by its sound sense*, recommend itself to our approval. The "Statute, therefore, does not interfere with the right at Common Law "of the proprietor of land on both sides of a stream down which "in its natural state without improvements logs, timber, etc., could "not be floated."

With this decision fresh in their minds, the revisers of the Statutes of Ontario in 1877 recommended and the Legislature in the same year adopted the Act in precisely the same words as it appears in the Consolidated Statutes before it was judicially interpreted, as will be seen by reference to Sec. 1 R. S. O. Cap. 115.

It has always been regarded in this country as one of the undoubted privileges of the citizen, that his rights in his own private property should be respected, and when the public interest demands that private rights should be taken for public use, it has always been a cardinal principle to award adequate compensation for the loss sustained by individuals.

A great authority on the subject says:—

"It is a rule founded in equity and is laid down by jurists as an "acknowledged principle of universal law, that a provision for com-
"pensation is a necessary attendant on the due exercise of the power "of the lawgiver to deprive an individual of his property without "his consent."

And again—

"The public good is in nothing more essentially interested than "in the protection of every individual's private rights by the Muni-
"cipal Law. In this and in similar cases the legislature alone can, "and indeed frequently does, interfere and compel the individual ac-
"quiescence. But how does it interpose and compel? Not by abso-
"lutely stripping the subject of his property in an arbitrary manner, "but by giving him full idemnification for the injury thereby sus-
"tained. The public is considered as an individual treating with an "individual for an exchange. All that the Legislature does is to oblige "the owner to alienate his possessions for a reasonable price, and

"even this is an extension of power which the Legislature indulges "with caution."

This is the rule laid down by Sir William Blackstone, in his celebrated Commentaries on the English law.

By the fifth article of the Constitution of the United States, and a similar article may be found in the Constitutions and Bills of Rights of nearly, if not all of the several States, it is provided that "private property shall not be taken for public use without just com- "pensation."

And in discussing that provision a celebrated writer on the subject of *Eminent Domain*, says :—

"And even if there exists no such clause in the State Constitu- "tion, whenever the power is exercised by the Legislature, natural "justice speaks so forcibly on this subject, that just compensation "will be made." And again—

"Although it rests with the wisdom of the Legislature to deter- "mine what is of public use, and also the necessity of taking the "property of an individual for that purpose, yet, this right of Eminent "Domain does not authorize the Government, even for a full com- "pensation, *to take the property of one citizen and transfer it to another "where the public is not interested in the transfer.* The possession "and exercise of this power would be incompatible with the nature "and very object of all government if it be admitted that a chief "end for which government is instituted, is, that every man may "enjoy his own. It follows necessarily that the rightful exercise "of a power by the Government of taking arbitrarily what is his own, "for the purpose of giving it to another, would subvert the very "foundation principle upon which the Government was organized, "and dissolve the political community into its original chaotic "elements."

It cannot be doubted that the Bill in question will be a clear violation of these well understood and highly salutary rules for the guidance of legislators.

ADDRESS.

In reproducing a few comments from Provincial journals, it seems desirable to preface them with some general remarks bearing upon the whole subject. In the first place, we have to urge that the Bill now before the House is in palpable violation of every recognized principle of law and equity. The Legislature has certainly the right to take possession of any man's property for public purposes, conditionally, however, upon paying him fair and just compensation therefor. It has no right to declare that he did not possess proprietary rights, which the statute, as uniformly interpreted by the Courts up to the moment of legislation, declares that he does possess. It is unnecessary to recapitulate the views of jurists upon this head. It is enough to point out that they are unanimous in declaring that to expropriate a man without paying him for what the law declares to be his, is the height of injustice. Yet this, on the face of it, is what the Bill "for protecting "the public interest in rivers, streams and creeks," professes to do. The first clause not only covers future rights, but is distinctly retrospective. The declaration that all persons not only shall have, "but are hereby declared always to have had," rights which the law and the judges have always declared that they have not, is not to expound or declare an old law, but to make a new one. The fifth section repeats the same solecism in legislation, by enacting that the Act "shall "apply to all such constructions and improvements as may "hitherto have been made," a retro-active provision which cannot be justified by any recognized principle of justice or equity. The Legislature, by passing such a Bill would, in fact, constitute itself a legal tribunal, and sit in judgment upon the decisions of the Courts. If one such measure should be per-

mitted to pass into operation, the very foundation of proprietary rights would be shaken.

It is not denied that this measure was formed, not in the interests of the public, but to meet a special case. There is, in fact, no other case to which it can or is likely to apply. This of itself constitutes a strong and invincible objection to its passage. The House is not in a position to understand, without enquiring the peculiar state of facts, and therefore inquiry at all events should precede legislation. And when it is considered that the Bill deprives a business man of property he acquired or made in reliance upon the good faith of the Province, and its fidelity to its own laws, as construed by the Courts, it is surely advisable to pause before taking so palpably unjust a step, more especially whilst the subject matter of the dispute is still before the Courts. This haste is not justified by a desire to settle the matter before the spring freshets occur. Precipitate action is only made worse by that plea, because it practically means a naked avowal of the desire to injure as well as use Mr. McLaren's property, and to impede his business operations in defiance of the Courts. In Chancery, he obtained an injunction against the defendants, and now without awaiting the decision of the Court of Appeal, the Commissioner of Crown Lands proposes to dissolve the injunction by an arbitrary act of legislation unprecedented in parliamentary annals. There is, in fact, no public interest at stake in the matter, but two private interests only, that of the man who has spent a vast sum in widening, deepening, strengthening, and protecting his works, paid out of his own pocket, and that of a firm which has done nothing in the matter, but desires to use his works, without acknowledging his rights, and paying an adequate proportion of his outlay.

No allegation is made that the streams were of any use until Mr. McLaren and those from whom he purchased the other improvements had made them floatable. The work over a length of forty or fifty miles is his; and yet it is deliberately proposed to legislate him out of his property and to declare

that never to have been his, which the law declared to be private property, and inalienable even by the Legielature except for just compensation. Mr. McLaren would most certainly never have expended his money upon the works, or purchased the fee simple of barren lands on both sides of the streams, had he entertained the idea for a moment, that the Legislature would, years after, entertain a measure declaring that he never had been possessed of proprietary rights pronounced to be his by the Courts. If this Bill should be sanctioned by the House, we repeat there is no security for any enterprise in the future. The Legislature may certainly purchase ; but it cannot confiscate. It is unnecessary to point to the opinions of eminent jurists from Blackstone to Stephen, yet it may not be amiss to note that the framers of the American Constitution insisted so strongly upon the sacredness of proprietary rights that they inserted in the fifth article of the fundamental law of the United States the words, " nor shall private property be taken for public use, without just compensation." If the public interests are to be subserved by the Bill under review, the rights of the proprietor as sanctioned by the law, as its only authorized interpreters have construed it, should be respected. As a matter of fact there are no public interests involved, and the promise of partial compensation in the shape of tolls is utterly inadequate.

Mr. McLaren does not seek to prevent the legitimate use of his improvements. So far as regards their value. he courts the fullest investigation : but he protests against an *ex post facto* Bill being passed which deprives him of improvements he made in the belief that the law guaranteed him their absolute ownership. Before litigation the offer was made to Messrs. Boyd Caldwell & Co., to give them the use of the works on the simple acknowledgment of Mr. McLaren's riparian rights, and the payment of fair tolls. The offer was rejected, and an act of violence compelled the proprietor to seek protection in the courts. The collection of tolls without summary jurisdiction is not only difficult, but as a general rule, impossible. So

soon as the Bill passes, declaring Mr. McLaren's improvements public property, without public compensation, so far from there being an end to litigation, it will be fostered to a degree hardly contemplated by the supporters of the measure. The collection of tolls in the wilderness will be attended with insuperable difficulty, whilst the risk to the proprietors business, as well as to the safety of his work will be greatly increased.

It is hardly necessary to point out that the great difficulty in lumbering districts lies in the supply of water. A large proportion of Mr. McLaren's improvements have been constructed purposely to husband it, and use it as economically as possible. Under the proposed Bill, any economy of this sort will be out of the question. Messrs. Boyd Caldwell & Co., may sub-let their limit to a variety of timber-hunters of various sorts, each of these will enjoy the liberty of wasting the water as he pleases, with the inevitable consequence that Mr. McLaren's labour, enterprise and expenditure will have been largely spent in vain. The measure will encourage a class of pretended settlers who will contribute nothing to the Provincial revenue, but who will under the guise of settlement, injure the works, damage the forests, and decamp at last, having accomplished mischief for which there is no redress.

If the House fully understood the evil that will be wrought by the measure, we cannot believe that it would be entertained for a moment. Certainly neither the Premier nor the Commissioner of Crown Lands could support it were they cognizant of the true state of the case, It is not too much therefore, to ask that the Bill shall not pass until full inquiry is made. As it stands the objections against it are *prima facie* fatal. It deliberately confiscates property which has been declared to be such by the Courts; it is not a public, but a private measure, aiming retrospectively against the legal rights of an individual; and as it violates every principle of equity, so also, in its effects upon the lumbering interests—and they are interests of the Province—it will prove contrary to public policy, injurious to the revenue of Ontario, destructive of private enterprise, and demoralizing wherever it is put in practical operation.

Opinions of the Press.

THE PUBLIC INTEREST IN STREAMS.

From the Globe, February 10th, 1881.

The Commissioner of Crown Lands has introduced into the Ontario Assembly a Bill which will no doubt, give rise to some discussion in the House as well as throughout the Province. The process of cutting trees into saw logs and square timber, and floating these logs down streams to mills and rafting places, has been going on all over this and other Provinces for generations. It is easy to see how important to the lumberer is the privilege of getting his logs floated to the place where he wants them. Without it his timber limits or lots would be comparatively worthless in most cases, and in some instances they would be absolutely so. By availing himself of the spring freshet he can transport at comparatively small cost, and often to great distances, lumber or timber which would not pay for overland hauling, to say nothing of getting it easily out of spots where road-making would be very costly, if not utterly impracticable.

It would be a mistake to suppose that even with the assistance of high water stream-driving logs is always plain sailing. The driver has to encounter frequent obstructions in the shape of boulders, shoals, rapids, waterfalls, and sharp curves, and in various ways these obstructions can be greatly ameliorated. Rocks can be blasted, shoals can be got over by damming back the water, and rapids, waterfalls, and curves can be circumvented by that useful appliance known as a "slide." In the more primitive lumbering times these aids to the navigation of timber streams were constructed chiefly, if not exclusively, by enterprizing proprietors of the lands through which the streams run. In some instances, where works of considerable magnitude were required, the Government of the old Province of Canada undertook their construction, and in this respect the Ontario Government have followed their example. But on small streams it is utterly impossible for any Government to remove or get round every obstruction. Much must still be left, as all was once left, to private enterprize.

When the owner of land along a stream that is obstructed constructs slides or dams it is only fair that he should be empowered to

collect reasonable tolls from all timber passing down the stream. More than this he should not be allowed to do, and more than this few owners of land under such circumstances have ever assumed to do. Within the past few months, however, an extensive lumberer who controls a number of works constructed to facilitate the floating of timber and logs in the eastern part of the Province has declined not merely to allow timber to be floated down at a fair charge, but to allow it to be floated down at all. The Court of Chancery has so far sustained him in the position he has taken, and the result at present is that thousands of logs are detained at points on an important stream above the works in question, and that the owners of these logs can make no use of them. It is evident that no man can be allowed to capriciously deprive the public of the use of streams in this way. Such an exercise of power would lead to an intolerable state of affairs, and would at once reduce the value of timber and timber limits indefinitely. All negotiations entered into with a view to securing a reasonable settlement of the dispute in the case of McLaren v. Caldwell having failed, and the Court having affirmed that in the present state of the law a property owner has power to prevent absolutely the passage of timber, there was nothing left but to propose a change in the law, and this the Commissioner of Crown Lands has properly taken the responsibility of doing.

It may seem to some an arbitrary enactment which allows any one not merely to drive timber through slides constructed by his neighbour on his own property, but to go on that property and construct the works necessary to make a stream passable. But it must be borne in mind that some remedy was absolutely required, and that nothing less than this will suffice. It is also to be noted that the owner of such lands as may be forcibly entered upon, or such works as may be arbitrarily used, is entitled under this measure to a fair recompense for the use of his property. To leave a matter involving so many and such small interests to ordinary arbitration would be impracticable, and therefore the Commissioner proposes to have the amount of tolls determined by the Lieutenant-Governor in Council. Some remedy was needed, and the one proposed appears to be as little open to objection as any that could be devised.

McLAREN vs. CALDWELL.

An Invasion of Private Rights.

Important Constitutional Questions—Mr. McLaren Protests.

From the Daily Free Press, London, C. W., February 17.

The public will no doubt remember the important suit before the courts last year, McLaren vs. Caldwell, in which the plaintiff tried to protect his private property from the encroachments of the defendant, and in which he was sustained by the courts. He is now threatened from another quarter, viz., a Bill introduced on the 8th inst., by the Hon. Mr. Pardee, Crown Land Commissioner of Ontario, intituled, "An Act for Protecting the Public Interests in Rivers, Streams and Creeks." This, if passed, would, it is submitted, do a great injustice to private individuals in this Province, who have invested large amounts of money in the improvement of private streams flowing through their own land, many of whom have developed very considerably the natural resources of the country, resting as they did in the full assurance that they would always be protected in the enjoyment of their property, and that such property would never be wrested from them by the strong arm of their own Provinvial Parliament, without just and adequate compensation.

Against this Bill a protest has been entered; as, if passed, it would inflict great injury upon many, and would in the case of one fellow resident of this Province, cause the loss of the labor of a life time. The gentleman referred to is Mr. Peter McLaren, an extensive lumber manufacturer and mill owner in the eastern part of this Province. And as interests of great importance are affected by the Bill now pending, it might not be amiss to place before the public a plain statement of the main features in this matter.

Some forty years ago, Peter McLaren worked for the Caldwell's for six dollars a month and board. By dint of close application to business, he has advanced himself to the front rank, and now stands at the head of the many lumbering firms in that district. Mr. McLaren is a man of high standing, his word is as good as his bond, and incapable himself of inflicting a wrong on any one, he very naturally feels indignant at the invasion of his private rights by his

old employers, the Caldwells. They know well that he has proprietary rights, but they will not acknowledge them, and they further refuse to pay an adequate compensation for the privilege of floating their logs and timber down the streams improved by Mr. McLaren. The amount of toll proposed would not pay the costs of keeping the accounts relating to the passage of logs, and they have only been asked the small sum of six cents per saw log, and ten cents per stick of square timber, and this after an expenditure of a quarter of a million of dollars by Mr. McLaren. It is doubtful if another man could be found in the Province who would have persevered as Mr. McLaren has done in rendering these streams useful. The former wealthy owners abandoned them in disgust. There are places where the stream disappears completely by subterranean passages, leaving the bed completely dry. Mr. McLaren stopped these fissures and made the stream useful. Skilled lumbermen and engineers, exploring in the localities on numerous occasions, pronounced many of the places utterly impassable, and the Crown timber limits along the principal portions of these streams, would have been valueless had it not been for the immense expenditure of Mr. McLaren. There is no stream in the Province where works of equal magnitude and importance can be found as the result of individual effort. The mills at Carlton Place, and other points, would have to shut down three months earlier, but for the conservancy of the waters on these streams owing to his expenditures. In the suits before the Court, it was established incontrovertibly on the part of Mr. McLaren, that prior to the making of the improvements in question, and when the streams were in their natural state, it was an utter impossibility to drive logs down the Mississippi above the High Falls, or down others, even during freshets. It was further established, that the whole value of these streams as floatable avenues of commerce, has been occasioned by the expenditure of Mr. McLaren and others, of whose lands and works he has from time to time become the purchaser. He has proved himself a public benefactor in many respects by his outlay along the several streams, as many now residing there can testify.

Still after having made all this great expenditure, and having made what was hitherto perfectly useless of considerable value, he is called upon to surrender his rights and privileges without any adequate compensation being offered him in return, and in defiance of the great principle, that "private property shall not be taken for public use without just compensation." It is to be hoped that our legislators will hesitate to sanction any measure tending towards the taking arbitrarily from one man what is his own, for the purpose of giving it to another. To do so would subvert the very foundation upon which the Government is organized, and resolve the political community into its original chaotic elements. A celebrated writer

on the subject "Eminent Domain," says:—"But even if there exists no such clause in the state constitution, natural justice speaks so forcibly on this subject, that just compensation will be made. And again, although it rests with the wisdom of the Legislature to determine what is of public use, and also the necessity of taking the property of an individual for that purpose, "*yet the right of Eminent Domain does not authorize the Government, even for a full compensation, to take the property of one citizen and transfer it to another, when the public is not interested in the transfer.*"

Here, in short, McLaren, who, acting in good faith upon the construction of the law laid down by the highest authority in the land, expends the bulk of his fortune in improving what he supposes to be his own property, is now required by one fell swoop of the Legislature, to give up his rights to the public, and in exchange to receive a paltry sum in tolls, to be to the expense, trouble and risk of collecting them himself, and to be subject to every kind of annoyance in the management of his own extensive business. Surely there cannot be conceived a greater invasion of private rights without compensation. It would seem that the timber limit of the Caldwells is more properiy speaking a Madawaska limit, and in former years the logs and timber cut thereon were driven down that river, and not down the Mississippi, and even now they are taking their timber down the former stream. The limit was purchased by them only two years ago, and when they had ample knowledge of McLaren's rights; and yet they are the only parties who have denied, and who, if this Bill now pending becomes law, will share the proprietary rights of Mr. McLaren. If the Bill is passed it will result in injury not only to Mr. McLaren, but to the Provincial chest. Mr. McLaren will, from those limits alone, pay in thirty years a sum exceeding $300,000, and this at little or no expense to the Government. Let squatters and small speculators have the privilege of running on these streams, and they will so blockade it that the business of lumbering can be no longer carried on profitably, as any one could cut down timber and, under the Bill, would be entitled to pass through Mr. McLaren's improvemonts. The letter of the law would be filled, and the spirit broken. The revenue to the Crown from this class would be very trifling, and a large number of bush rangers would have to be employed to watch the operations. At present one suffices for the whole territory, as Mr. McLaren pays promptly for every stick. He also is a valuable friend to the settler, purchasing all the hay and oats they raise at good prices. He contends that the Government should purchase the improvements itself, and collect its own tolls from all, himself included, as even though the Bill gives him power to collect tolls, he can only rank as an ordinary creditor, whereas the Government could levy in every case. If Mr. McLaren, is capable of being a toll keeper, the Government is much

more capable. It is questionable if it is good policy to break up the business of Mr. McLaren who has been not only a benefit to the country, but has been a valuable source of revenue to the Province. He has opened up one of the most uninviting districts in Ontario—a perfect sea of rocks and lakes—that others had abandoned as unprofitable. Jas. Skead & Co. and Allan Gilmour & Co. once owned this region, but abandoned it as useless. Mr. McLaren, by the most indomitable perseverance, renders it valuable, and now others seek to enjoy the fruits of his labor and his expenditure, without the outlay of a cent. It certainly looks like an act of spoliation which should not be allowed. Vice-Chancelor Proudfoot gave judgment in favor of Mr. McLaren, and an injunction was issued, but in face of all that, the moving of the timber was persisted in, the Crown Land department evidently countenancing the transaction.

In conclusion, it is to be hoped that all parties interested will look closely into the merits of this case before coming to a decision. Mr. McLaren courts the strictest investigation. He asks simple justice at the hands of his fellow citizens. The result will be looked forward to with interest, as the question is a new one, and will be of grave importance to all owners of streams similarly situated.

"PROTECTING THE PUBLIC INTEREST."

From the Mail, February 19th, 1881.

The Commissioner of Crown Lands has introduced a measure regarding rivers, streams and creeks, ostensibly for the purpose of protecting the public interest, really to violate the rights of private property. Not only does it do that, but it undertakes to change the law of the land as interpreted by the courts while the case is actually *sub judice*. The bill, in fact, belongs to a class of measures universally repudiated by jurists, those namely which, while affecting to be general, are aimed at individual rights in a particular case. We can only hope that when the facts are fully understood in the House, few even of the Government's majority will sanction the outrage.

Mr. McLaren is an extensive lumber merchant and mill-owner in Eastern Ontario. After the purchase from the Province of extensive timber limits, he found that some of the streams were

utterly useless for floating timber, and would have remained so until this day but for the very large amount he has expended upon them. On a number of rivers and creeks in the counties of Lanark, Frontenac, and Addington, he has spent no less a sum than $250,000. Years after, another firm, finding that Mr. McLaren's improvements had made the limits on the Mississippi river valuable, purchased a small tract, and at once began to use the river which Mr. McLaren had in fact called into being for any useful purpose, and when solicited by him to pay their share of the cost, declined to do so; thereupon that gentleman filed a bill in chancery to restrain them from using his improvements without adequate compensation. The case was heard before Vice-Chancellor Proudfoot at Perth, and judgment given in Mr. McLaren's favor. The defendants then appealed to the higher court, where the case is now pending.

And now Mr. PARDEE comes forward with a bill to change the law before the plaintiff's rights are fully adjudicated upon. A more flagrant instance of the abuse of legislative jurisdiction we have seldom met with. The Court of Chancery has decreed that Mr. MCLAREN is entitled to proprietary rights in the streams and river, and the Commissioner of Crown Lands actually proposes to deprive him of them by Act of Parliament. And this, too, without waiting to see whether the Court of Appeal will confirm the Vice-Chancellor's judgment or reverse it. The defendants evidently perceive the strength of the case against them, and seeing no chance of success at law, they have induced Mr. PARDEE to legislate away Mr. MCLAREN'S proprietary rights. It is true they propose to make a sham recognition of these rights by making a vague provision for tolls. But that provision is altogether inadequate, and, as Mr. MCLAREN insists, so far from being any compensation for his vast outlay, would not pay the cost of collection.

A more outrageous assault upon the rights of private property has never been made. Here is a gentleman who, at his own proper cost, has made a stream available, and hy so doing has enhanced the value of the provincial timber limits; and now, *pendente lite*, the Government arbitrarily steps in and proposes to confiscate his property without so much as the offer of adequate compensation. It is impossible to believe that the Assembly will venture to consummate an Act so grossly unjust, and so clearly opposed to the first principles of equity. Mr. MCLAREN, supposing the law as hitherto laid down to be correct, purchased the limits, with the distinct knowledge that any improvements he might make would be his own, and now Mr. Pardee proposes coolly to deprive him of what the courts declare to be his.

THE CALDWELL-McLAREN BILL.

From the Hamilton Spectator, February 21.

A bill is before the Ontario Legislature entituled an "act for protecting the public interests in rivers, streams and creeks." It was introduced by Mr. Pardee, and if its object were not known, one would imagine, from its title, that it was a measure framed to guard the public interests from the encroachments of some rapacious lumberman. But the fact is, it is a bill to settle a case still pending in the courts, and is brought forward by the Commissioner of Crown Lands in behalf of one of the parties to the suit who is a supporter of the Mowat Government. This is rewarding your friends with a vengeance. The facts are briefly these:

Mr. McLaren, one of the largest lumbermen in Canada, has during many years past spent large sums in improving the Mississippi river and some of the smaller streams flowing into it, so as to enable him to float saw logs down them. He has also bought the improvements made by other lumbermen, his predecessors, his total outlay being in the neighborhood of a quarter of a million dollars. He has spent this money upon the strength of a decision rendered twenty-five years ago by the late Chief Justice Robinson, and subsequently confirmed by other eminent judges, to the general effect that if a lumberman improved a stream previously unfloatable and rendered it fit for the purpose of timber driving, it became in a measure his private property and could not be taken from him by the Crown, nor shared by private individuals unless he received fair compensation for his outlay. That reasonable view remained unchallenged until a short time ago, when the lumbering firm of Messrs. Boyd Caldwell and Son, of Carleton Place, claimed the right to use the Mississippi and tributaries for floating their logs from a limit recently purchased; in other words, to take advantage of Mr. McLaren's improvements without arrangements for compensation. On the 16th December, Vice-Chancellor Proudfoot, after a long and patient investigation of the case, decided against the Caldwell claim. The Caldwells had been offered the use of the improvements at a fair toll, provided they recognized Mr. McLaren's proprietary rights; but they refused the offer, and carried the case to the Court of Appeal, where it is now pending.

And now comes Mr. Pardee with a bill to decide the case in favor of the Caldwells, and upset the judgment of the Court of

Chancery and the view always entertained by the judiciary of Upper Canada. If the bill is passed, a great blow will be dealt at the administration of justice in this Province. If the courts decide against a suitor he has simply to appeal to the majority in the Local Legislature, if they happen to be political friends of his, and his opponent is done for, although in law and equity the judgments of the courts are in favor of the latter. The passage of the bill will also unsettle the rights of private property, for no man's lands or goods will be safe if the doctrine is once promulgated that he may be deprived of them at the will of the Legislature, without receiving reasonable compensation. We cannot believe that Mr. Mowat will stand by and see this great outrage perpetrated.

THE PUBLIC INTEREST IN STREAMS.

From the Globe, 21st February, 1881.

It is difficult to imagine what the *Mail* proposes to effect by its article on Mr. Pardee's Bill to protect the public interest in streams and rivers. Its purpose may be to arouse public opinion on the subject; it may be on the other hand to induce opposition to the Bill in the Legislative Assembly. In either case its article would have been more effective in the long run if it had shown more regard for the facts. The *Mail's* article is really a *resume* of a document which has already been laid on the desks of members of the House of Assembly. Had Mr. McLaren not by counsel brought his case thus pointedly before the Assembly it is probable that there would have been very little reference to it in the debate on Mr. Pardee's Bill. Now that he has done so, of course the author of the Bill can hardly refuse to accept the challenge to accept the facts elicited in the Chancery suit of McLaren and Caldwell. It is now alleged, for instance, that on the Mississippi River improvements Mr. McLaren spent $250,000. If so, why in his bill of complaint did he himself put the sum at $150,000? It is currently stated that even this latter sum is an exaggeration; but as the value of the works has to do with the amount of tolls charged rather than with the principle of the measure, it is not worth while dwelling on that point. If the bill become law a careful survey will accurately determine the present

value of the improvements, and Mr. McLaren will have an opportunity of furnishing evidence as to their cost to him. Meanwhile, loose *ex parte* statements will weigh with nobody.

Mr. McLaren alleges in his circular, and the *Mail* repeats the statement, that the Messrs Caldwell, while wishing to use his slides and dams, refused to pay their share of their cost. As a matter of fact it was brought out in the course of the suit that when the Messrs. Caldwell asked leave to use the works, and wanted to know what the charge would be, Mr. McLaren absolutely declined to let them drive their logs, and persistently refused to name any rate of remuneration. The point in dispute was not the toll to be levied on logs passed down the stream, but whether the logs should be allowed to pass down at all or not. The question was not at all as to the adequacy of certain compensation, for, as a matter of fact, the owner of the works could not be induced to say that he would accept any, however exorbitant. It is surely, intolerable in any country where the principle of eminent domain is recognized, that any individual should be allowed in this way to obstruct the passage of any stream, the use of which is indispensable to the public. If Mr. McLaren can do this, every owner of a slide or dam in the Province can do the same, so that the measure is not a particular but a most general one.

But the *Mail*, not content with misrepresenting the point at issue in the case which led to the introduction of the Bill, misrepresents even more flagrantly and inexcusably the measure itself. The object in view in getting it enacted during the present session is manifestly not to affect a pending lawsuit, but to guard against widespread confiscation of property during the time of the spring freshets fast approaching. If Mr. McLaren is virtual owner of important parts of the Mississippi river, then other owners of land are equally supreme over floatable streams running through it, and if immediate precautions are not taken the owners of half the improvements in the Province may take it into their heads to become obstructive with a view to compelling the Government to purchase their works. Mr. Pardee does not propose to "change the law" in any sense whatever, so far as the principle of his Bill is concerned. At present it is not known whether Vice-Chancellor Proudfoot's decision in favor of Mr. McLaren's contention will be declared by the Court of Appeal to be in accordance with the law or not. So long as it is not known what the law on the point is, Mr. Pardee can not assume to change it. What he does assume to do is to declare the law, and we venture to affirm that his declaration of it is in strict accordance with not only equity and common sense, but also what has hitherto obtained as the universal practice in all lumbering districts. We have never heard of any slide or dam owner taking the position Mr. McLaren took, that of refusing to allow logs to be floated down any

stream he controlled for reasonable compensation. It is perhaps just as well, however, that he has taken this course, for it will lead, we have little doubt, to a declaration of the law so explicit that there will be no room hereafter either for unreasoning obstruction or vexatious litigation.

MR. PARDEE'S LITTLE BILL.

From the "Toronto Mail," Feb. 22nd.

We certainly expected a better defence of the Streams and Rivers Bill than the *Globe* could offer yesterday. If the organ could have alleged that the measure was a general, and not a special one, it would have boldly asserted the fact, and put the Minister's cause on a better footing. But it is confessed at once that Mr. McLaren's case led to the introduction of the bill, and it might have added, at the instance of the member for North Lanark, whose uncle is a party interested. There is no pretence, therefore, that this little job is being perpretated for any other purpose than to meet a single case. The pretence that others who possess riparian rights might take up Mr. McLaren's position is untenable. There is no other case analogous to it in any lumbering district in Ontario. The *Globe's* allegation that whereas $250,000 are said to have been expended on the streams, the bill of complaint only stated the sum at $150,000, is a plain mis-statement of facts, as our contemporary must have known. The larger sum was expended on all the streams mentioned in the protest; but with some of these, such as the South Branch and Swamp Creeks, the Caldwell's had nothing to do. These waters are not mentioned in the bill of complaint, therefore, an account sufficiently for the difference. At all events, whether the amount expended be $25,000 or $250,000 is a matter irrelevant to the question at issue.

The organ says that if the bill be passed an accurate survey will determine the value of the improvements. It so happens that the Caldwells have already taken that trouble off the Government's hands. The experts sent thither made an estimate which even Mr. McLaren's opponents would reject as absurdly low. Mr. Skead spent some $8,000 on the streams, and the Messrs. Gilmour $68,000; the latter got tired of the work, and so finally it came into Mr. McLaren's hands. It was he who constructed the major part of the

works, and, in fact, made the Mississippi and its tributaries a floatable stream. It is alleged that he refused to accept tolls from the rival firm. He did nothing of the kind; but he claimed, with them, a recognition of his riparian rights in accordance with the law as interpreted by the courts. This they refused; but they did more. Not content with refusing to come to terms, they forced Mr. McLaren to seek legal protection by their own lawlessness. Knowing that that gentleman allowed no work on Sunday, they advanced their drive on a Saturday to the vicinity of a slide, forced the lock during the absence of Mr. McLaren's foreman, in the calm of a Sabbath day, and passing their drive through on Saturday and Sunday, left him no resource but an appeal to the courts.

The case is an entirely exceptional one. As a source of provincial revenue, we deem ourselves within correct lines in stating that from the original sale to the present time the limit now owned by Mr. McLaren has yielded over $300,000 in dues; and assuming that that gentleman's operations for the next ten years will not exceed 75,000 standards of saw-logs per year—at the existing rate of fifteen cents per standard—the handsome sum of $112,500 will accrue to the treasury therefrom. These figures probably will not cover more than two-thirds of his operations. During the past he has constantly added to the dams, piers, &c., on these streams. This season alone $4,000 have been spent on one creek. To survey improvements as they stand would be absurd. The surveyor must have seen the streams when in a state of nature; he must know all the expenditure on repairing damages by ice and fire, all the outlay in renewals—in fact the entire history of them from first to last. The miserable provision in the bill for the payment of tolls is utterly useless. There is no method of collecting them; indeed, so valuable is the water-supply that it would be more profitable to let the wandering sub-tenants and bogus settlers do at they please rather than that a summary obstruction should be placed in the way of Mr. McLaren's operations, The great purpose of these improvements, in addition to making the streams available, is to husband the water. But under the bill there is nothing to prevent Messrs. Boyd Caldwell & Co. from sub-letting portions of their limit, and each of these tenants would be at liberty to waste the stored-up water at pleasure, The system of bogus settlement already adopted leads to bush-ranging, increased danger of fire to the detriment of the provincial revenue, and the destruction of an important branch of business conducted with energy and enterprise. The fact is the members of the House do not understand the nature of the case, and therefore, instead of legislating in the dark at the bidding of Mr. Pardee or the member for North Lanark, they ought to insist upon a preliminary enquiry.

The passage of the bill now would be an outrage upon justice

of the grossest character. Twenty-five years ago, before Mr. McLaren had any personal interest in the property, Chief Justice Robinson decided the question of proprietary rights. His decision was upheld by the courts, and the statute itself has remained in force without alteration after two separate consolidations. The *Globe* urges that Vice-Chancellor Proudfoot's judgment to the same effect may not be confirmed by the Court of Appeal. The presumption is overwhelming that it will; but why not wait for it, instead of passing retroactive legislation under which the rights of a man are to be voted away without compensation? It is wrong to take away proprietary rights without adequate compensation; it is doubly so to make a pretence of "declaring" that to be law which all the courts hitherto have declared not to be the law, and that while the case is *sub judice*. Mr. McLaren purchased improvements and made vast extensions to them on the faith of a statute as interpreted by the courts, and it is impossible to conceive of a more flagrant piece of iniquity than now to deprive him of his rights under the law as it was. It is simply confiscation in its most undisguised form; worse than that, under the peculiar circumstances, it is simply a job.

DEBATE IN THE LEGISLATURE

ON

Second Reading of the Bill Intituled

AN ACT

For Protecting the Public Interests in Rivers, Streams, and Creeks,

Mail 24th February, 1881.

AFTER RECESS.

Mr. PARDEE moved the second reading of his bill, entitled an Act for Protecting the Public Interest in Rivers, Streams, and Creeks. He said that the bill was intended to apply to every mile of timber limit of the Province, and not to any particular section. The largest item in revenue, save one, being derived from the timber of the Province, the House would see how important it was that lumbermen should be permitted to bring down their timber to market without hindrance. The bill simply explained the law as it had always stood. In 1849 a law was passed giving all persons a right to float timber down all streams. When, however, a case came before the courts, it was held that the Act was not intended to apply to streams which had to be made navigable by private improvements. Now the Legislature could not have intended to refer to the navigable streams, because the common law had already given the right to float timber down these streams. It was impossible to allow the construction of the law to remain where it was, because there were such improvements on almost every stream. In 1863, in the case of Doale v. Dickson, 13 C. P., the decision was given, not in a case where the owner of private improvements had refused permission to float logs down the stream, but on a suit to recover tolls which the defendant had agreed to pay, but did not pay. In the case of Whelan v. McLachlan, 16 C. P., in which was confirmed the decision given in Doale v. Dickson, that the right given by the existing law only applied to streams which would in their natural state permit saw-logs to be floated down during freshets, the suit was in regard to the obstruction of the stream, while the decision in Buck v. McLaren to the same effect was on a suit for breaking down improvements. The courts in wishing to place the right of Doale in the case of Doale v. Dickson to the tolls agreed upon beyond dispute did not foresee what consequence would follow the language of their decision. The bill he had introduced had been objected to on the

ground that it was retroactive and was confiscatory. Well, the Legislature had before passed bills of a retroactive nature, as in the case of the registrars, who under one statute were declared appointed for life, but whom a subsequent statute said it was not the intention of the Legislature so to appoint. As to the alleged confiscation of private rights, the bill provided that the right to use rivers for floating down timber may be used on payment of tolls to the owner of improvements thereon, such tolls to be fixed by the Lieutenant-Governor-in-Council. This was not confiscation, but would give parties an equivalent for the use of their improvements. He denied that the public impression had been that parties making improvements on streams could claim them for their own use, because the case of McLaren v. Caldwell was the only instance that had occurred of a person refusing another the right of way when payment of reasonable toll was offered. It was said that the Government, if they wished to secure these improvements for the general lumber interest, should buy them altogether. What position would the Government occupy if they admitted such a proposition? Mr. McLaren was the only man who had offered any opposition to the bill, and in his protest before the House he claimed that the improvements cost him a quarter of a million. If such a valuation were accepted, and other rights were bought in a similar way, it would cost the Province four or five millions. Would it be right to incur so great an expenditure in order that persons might have exorbitant profits for improvements which, when they made, they could not have expected to have exclusive use of? It was said that the legislation was introduced to meet a particular case, that of Mr. McLaren. He maintained that it was framed in the public interest, and although it might be true that the case in question had called the attention of the Government to the necessity of the measure, its provisions applied to all streams, whether used by Mr. McLaren or others. He had a letter from Mr. McLaren to Mr. Caldwell, refusing the privilege of floating down logs at any price whatever. The value of the improvements was questioned, because at the trial Mr. Caldwell offered to prove that they only cost $15,000. However, whatever their cost might have been, the bill proposed to do absolute justice to all parties, and the tolls allowed might be fixed having regard to the cost of construction and maintenance, and the interest upon the original cost. He could see no objection to the bill, which would commend itself to the favor of the House.

Mr. MEREDITH said that so far as the bill proposed to deal with the future, there could be no objection to its passing a second reading, but the proposition to interfere with vested rights was another matter. The policy of retroactive legislation wae so dangerous, that in the United States such legislation was distinctly disallowed in the constitution. In the Legislature of Ontario, where there was no subsequent revision of legislation, no interference with vested rights should be resolved on without the gravest deliberation. In the general desire to serve the public interest, the Government ought to stand between the public and private individuals, and see that no injustice was done to the latter. The Minister of Crown Lands has taken a very inconsistent position. In the first place he had argued that the decision of the courts had been wrong, and the result of such reasoning would be that the owners of private rights in streams were not entitled to compensation. In the second place he allows for compensation, thereby admitting that vested rights did exist in the case of persons who had constructed improvements in

streams. In the case of Doale v. Dickson, the court held that the public had no right to float timber down streams which were not navigable or floatable without improvements. In the subsequent case of McLaren v. Buck, Justice Gwynne held that this decision was correct, and in the case of McLaren v. Caldwell, the Court of Chancery held that the former had a right in the stream which no one could interfere with. There was, therefore, a concurrent decision of the courts on this point. The Consolidated Statutes of 1877 gave the original Act in the same words as it appeared before being judicially interpreted. According to law therefore, Mr. McLaren had as absolute a right in his streams as a farmer had in his land. The hon. gentleman had referred to the statute affecting the registrars as a precedent for retroactive legislation, but there was no doubt that a great wrong was done these persons, and that the bill was forced through the House, just as the present bill would be forced. He admitted that the private rights might be invaded in the public interest, but adequate compensation must be given for the rights taken away. The hon. the Minister of Crown Lands could not point to a single statute dealing with land in which the rights of property were interfered with without a compensation in money value being given. If the proposition were to give the public a road through a farmer's property on payment of toll, it would not be supported; but there was little difference between the two cases. The Commissioner of Crown Lands had not always taken the same course he then advocated. When the dispute first arose, he understood that the hon. gentleman wanted to force Mr. McLaren to allow Mr. Caldwell's logs to go down his stream without payment.

Mr. PARDEE—I wrote to Mr. McLaren saying that Mr. Caldwell would be willing to pay reasonable dues, and that if they could not agree, I would myself fix the dues to be paid.

Mr. MEREDITH said he had in his possession a copy of a letter dated May 6th, 1880, from the hon. gentleman, which read very much like an attempt at coercion. It was as follows :—

DEPARTMENT OF CROWN LANDS,
WOODS AND FORESTS BRANCH,
TORONTO, 4th May, 1880.

SIR,—It has been brought to the notice of the department that certain works and dams have been erected by you, on or across the Mississippi river, presumably to serve your purposes in connection with your lumbering operations, to which from this point of view no reasonable objection can be made, so long as the rights of others to the free use of the stream for the deseent of timber from territory above such works are not interfered with in consequence of them, but it has been further represented that you refuse to allow licensees, holding limits from Government on the Mississippi above the works in question, to pass their timber through the slides or dams erected by you, and that in consequence the works referred to are in effect a barrier to the free use of the waters of the river, by which they are prevented from taking their timber to mill or market. Although the information given in this latter respect is deemed reliable, the department has great hesitation in crediting it as a fact, that you, a holder of licenses to cut timber on the public domain, have assumed the position of obstructing the free passage of timber down the river, as

such action would be not only unjust and ungenerous on your part to other licensees from the Crown, but also detrimental to the interests of the public revenue by interrupting the legitimate operations of other limit holders, and on these and other grounds could not be sanctioned, or in any manner permitted by Government. The department trusts, therefore, that if there has been any grounds for complaint that the works erected by you are obstructive of the free passage of timber, or that you have refused to allow timber to be passed over or through them, such refusal shall be withdrawn, and all restrictions in that respect removed, so that it may not be called upon for further action.

Your obedient servant,

(Signed), T. B. PARDEE,

Commissioner.

Certified a true copy,

THOS. H. JOHNSON,

Asst. Commissioner.

Toronto, 16th February, 1881.

It was evident that the Commissioner assumed in this letter that Mr. McLaren in making these improvements in the stream, had erected illegal barriers, and was insisting that timber should be allowed to float down the stream without any compensation under what appeared to be a threat of revoking the license. The position taken by the hon. gentleman was that the construction of the statute taken by the courts was so erroneous that it should not be permitted. He understood that the case was before the Court of Appeal, so that there was no binding decision. It was most unjust that while the case was *sub judice* a bill like the present one, containing so many objectionable features, should be forced upon the statute book. It would be better to withdraw the bill, and if the Court of Appeal confirmed the decisions of the courts below, no harm would be done, and the bill could be re-introduced next session. The Commissioner stated that the public had not held the opinion that persons could have such exclusive rights as the courts had allowed, because no complaints had been made before of persons being refused the floating of logs down stream. This was no argument. The fact rather indicated that an arrangement had been made between limit owners as to the floating of timber in other cases. In the present instance, he supposed Mr. McLaren conceived the permission to float logs would injure him. Mr. McLaren did not desire to be put in the position of a toll-keeper, but said "that if the public interests require my property I should be compensated in money for what is taken away from me." If it had cost Mr. McLaren what he claimed for the works on the two streams, was it fair that his property should be imperilled for the accommodation of one limit-holder? It was said that the previous owners of Mr. Caldwell's limit never attempted to use the works of Mr. McLaren, but floated down the Madawaska. There was another reason why the Legislature should not interfere. It seemed to him that to pass the bill would be to establish a most dangerous precedent, and that if the Government proved the public interest required the invasion of Mr. McLaren's rights, that full and fair compensation should be awarded. (Applause.)

Mr. MOWAT said that if he had any doubt as to the propriety of this legislation, the speech of the hon. gentleman would have dispelled

it. His hon. friend was the most able member on the other side, and he had only succeeded in making out the Government case stronger than before. It was well known that Mr. McLaren absolutely refused to allow logs going down the stream to have the advantage of his improvements.

Mr. MEREDITH said the owner of the timber limits above Mr. McLaren could send his logs down the Madawaska.

Mr. MOWAT said he must not be compelled to send them down any stream. The ground taken by his hon. friend was that Mr. McLaren had an absolute right to prevent logs coming down the stream. They had to consider whether any individual could take such a stand, as streams in precisely the same position abounded in the province, and affected timber limits of very great value. Notwithstanding that a long period had elapsed since the decisions on which his hon. friend relied, except Mr. McLaren, no one had ever attempted this obstructive policy The Commissioner of Crown Lands fairly inferred from this that people situated as Mr. McLaren was never believed they had any such special privileges. It was now proclaimed that all such people had a right to obstruct streams. Public interest was not only concerned in the upper limit of Mr. Caldwell, but in all such limits all over the province. No one ever suggested that the Government in giving parties rights along the streams ever contemplated that any person should obstruct such streams. His hon. friend did not dispute that the public interests was concerned in this matter, and in regard to the future he did not urge that the legislation was unreasonable. His hon. friend, however, claimed that Mr. McLaren should get compensation. Practically the Government did not dispute that ground at all, and they did not propose that no compensation should be given. But his hon. friend said that if the Government allowed anybody to make use of the stream they must buy the whole thing out and out and purchase the fee simple. This was not a sound principle. The Government did not want to appropriate the improvements of Mr. McLaren, but was quite willing he should use them as before. The Government simply said he must not obstruct other people going down stream. But it was said they would get the benefit of his improvements. Well, the Government said they should pay for the privilege by reasonable tolls, and a tribunal was appointed to decide what these tolls should be. The bill enacted that the original cost of construction, cost of maintenance. and interest should be taken into account in computing these tolls. As to the objection to the *ex-post facto* legislation, he could only reply that the public interest required it.

Mr. MILLER said they had heard the legal points discussed, and he would now discuss the practical side of the question, which, with the large majority of the people of this country, was the most important. The question was a large one, and involved the taking away of from one to two millions of property held in fee simple by private individuals and vesting it in the hands of the Crown. There were now about two millions of properry held by private people on streams, in improvements, etc., made by private persons. He did not contend that this property, involving such large interests as the timber interest, should be vested in private hands. Still the bill would be found in a certain degree unwelcome. He had considered all its provisions, and he had had great experience in improving streams. The company with which he was connected had spent $20,000 in this kind of improvements. Many of these improvements had been made on land held in fee simple. When the

commissioner held that these improvements must not be held for private purposes, he must surely have forgotten that when he sold limits to his company, the statement was made, that in order to control the stream improvements the patent must remain with the company. The commissioner must have understood at that time that the object in acquiring the patent was with the view of controlling these streams. If the Province of Ontario had pursued the same policy in regard to rivers and streams as was pursued before Confederation by the old Parliament, this difficulty would not have arisen. Before Confederation the Public Accounts showed that a large sum was expended in making streams navigable for the purpose of sliding timber. The Government charged them regular sliding dues, and a large revenue was derived therefrom. He assumed that the province yet owned on the Georgian Bay enough pine timber to make twenty-six billion superficial feet. At one dollar dues per thousand, the revenue derived would be $26,000,000. Not ten per cent. of the rivers down which this timber must come had ever been improved. All the tributaries of the French river had yet to be improved, and it would take millions of dollars to improve them. Although he knew the Government had great hesitation in grappling with anything of this kind, he doubted very much whether the Government, if they dealt with the matter in a fair and business-like manner and improved these streams, could not only repay themselves for the expenditure, but obtain a revenue as well by the exaction of fair tolls. The old province of Canada got a revenue from this source. The Government, however, proposed dealing with large private rights in the way proposed in the bill. The bill, however, enacted that all persons were to have the same control of these streams, and if this were carried out the Government would soon find themselves in a pretty kettle of fish. Everybody would put in their logs, perhaps 50,000 would be floated at one time where there was not enough water to float 25,000, and no one having any control over the matter, there would be considerable delay. He knew of a case where in a certain stream three years supply of logs accumulated before one of them reached the waters of the Georgian Bay. He questioned very much whether any gentleman in the House, however great his legal knowledge might be, or even his knowledge of the lumber business, would be able to fix tolls which would fairly compensate the parties who really made these streams in the first instance. The Commissioner did not discriminate between large rivers draining an extensive section of country and small creeks on which large sums had been expended in order to slide timber. Could not the Government devise some scheme by which the rights of persons in cases like these would be recognized? Greater difficulties would arise under the bill than now existed. It was under the matter of control that trouble would arise, because the toll-keeper might levy tolls, but could not control the traffic. The bill provided that the original cost of the improvements, with the cost of maintenance and interest, might be taken into account in computing the tolls, but many of these improvements had been renewed, and there was no provision made by which a sinking fund would be created to wipe out the original cost. This was a most important matter. A man who had put in his five or ten thousand dollars might have that considered, but until a sinking fund was created, he would lose the original expenditure while other parties would get the benefit of it. If the timber went out

in these terms, in a few years the improvements would become worthless. Then there would be delay in getting the tolls fixed. Affidavits for both sides would have to go before the Governor-in-Council, who might not be ready to declare upon the question. However constituted this court might be, and it would be one of the most important in the land, it would have a vast amount of labour for the next two years. Before the party entitled to tolls got a decision, he would find his account with his solicitors in Toronto would be from $500 to $,1000. He was not overstating the case, because a suit he had brought in the Court of Chancery had cost him $562. He thought that provision should be made that the person who wanted the tolls fixed should be required to bear all the legal expenses, and he hoped such an amendment would be made in committee. There was another question which had to be considered. The Government had made certain large and important improvements on certain streams. It was a manifest injustice that one particular stream should be improved while on streams a few miles away the limit owners had to make their own improvements. In the Muskoka river the Government paid for the slide, which was a very fine one, and cost $14,000, paid out of the consolidated revenue funds of the province, and some $20,000 had been expended altogether on river improvements. The Government had never collected one cent from the parties using these improvements. Was this a proper administration of public money, or fair to the lumbermen on other streams who had paid for their own improvements? If the Government were going to take away private property, they should at once put tolls on every one of these streams improved with public money, so as to put all parties on an equal footing. The present system gave some men an advantage of fifty cents per 1,000 feet on their lumber. He hoped the Government would strike out of the estimates such unjust items as he had referred to. On page thirty-seven of the estimates there was a vote of $6,200 for the Gull and Burnt river districts, of $6,200 for the purpose of allowing certain persons to get their logs down streams, for which not one cent would be exacted. He failed to see what right these people had to have these streams improved for them, when other parties were compelled to make their own improvements, and then have them taken away by the Government. Another difficulty would be the collection of the tolls. The Commissioner said that the logs should go down on the payment of tolls. Now, in many of these streams the "drives" go there together, and the logs became mixed up, and when they came to the slide they could not be divided because there was no room on the river, and particular logs could not be stopped without stopping the whole. The only way to provide for the tolls was to have a lien on the timber which the Government could collect anywhere. All sorts of small stuff came in with the timber, and generally belonged to poor people from whom no collection could be taken. What he feared was that adequate compensation would not be gained by the persons having rights. In the United States it had been declared in many cases that the right of "driving" a river was as exclusive as that in a railway. Many lines of railway had been built exclusiuely for the carriage of timber. When people go to so great an expense as this, would tolls compensate them for such improvements? No one would propose that the railway should be taken away and given to a company owning contiguous limits. There was no more reason why parties who had improved a stream which originally was of

no earthly use should be compelled to give up their right than that a man who built a railway exclusively for his own use should be compelled to give it for his neighbour's use. He knew that the legislation was suggested by the case of Mr. McLaren and Caldwell. If, however, Mr. McLaren and parties situated like him got full and fair compensation there would be little opposition to the bill. (Applause.)

Mr. BRODER said that under the bill, before toll could be collected, a legal process would have to be resorted to. He did not say that Mr. Caldwell was a man to refuse to pay toll, but then the bill legislated for the whole province. Squatters could settle upon land, cut down the timber, and float it down these streams to the great detriment of all in the business. He considered that when the public interest required the expropriation of private rights adequate compensation should be given. As the bill did not provide for this, he would oppose it.

FLOATABLE STREAMS.

MR. LEES, M.P.P., ON THE QUESTION AT ISSUE.

From the Mail, Saturday, Feb. 26th, 1880.

Owing to the pressure upon our columns, we have not been able to give the speeches made during the debate on floatable streams so much space as we could wish, and as Mr. Lees, M.P.P., represents a portion of the district through which the Mississippi runs, we reproduce his contribution to the controversy. Mr. Lees said :—I am strongly impressed with the belief that the Government has introduced the measure before the House owing to the legal troubles of McLaren and Caldwell & Son. It would in my opinion have been more becoming on the part of the Government if they had allowed the litigants to settle the matter in the courts, especially as it is at this moment under appeal, and the precedent it seems likely to afford in rescuing one party from the results of their lawlessness and punishing the law-abiding for presuming to defend his previously well ascertained rights is highly dangerous to the well-being of the community at large. Since it is admitted that this piece of legislation is begotten of the McLaren-Caldwell suits, it might not be amiss that I should state what I know in connection with that case, and the localities called into question by it, as I am better acquainted with the creeks and streams which may be called the head waters of the Mississippi river than any other member of this House. About forty years ago the Hon. James Skead purchased the limit now held by Mr. Peter McLaren, and after working on it probably about six years, he was an eager seller, as, although removing at that time only the finest of the timber, the improvements soon found to be requisite were far beyond his means. Messrs. Gilmour were the next owners ; while owners they also found that river improvements were extremely costly in connection with the limit or the drawing by teams over long distances in the abscence of such improvements, and in those days it should be remembered the prices obtainable for lumber or timber at Quebec were very low ; so, finding the cost overcame profit, they too were glad to find a purchaser to relieve them. Gillies & McLaren then became the owners, and for many years invested their profits in improvements. Under the then existing laws as

to property, the various owners had acquired the land whereon improvements were made in fee simple ; working up year after year in the direction of the head waters. The creek improvements, owing to the peculiar nature of the country, were and will ever be indispensable. In a state of nature, these creeks and streams were the merest channels along which the overflow of a chain of lakes drifted to the high falls of the Mississippi; the existing creeks are vastly more the work of capital than nature ; this was plainly and very fully established at the trial between McLaren and the Caldwells at Perth last December. Without large expenditures, I know them to be unfloatable. That these improvements are the private property of Mr. McLaren no one will deny, and it is not contended that they can be kept from the strong arm of our Legislature, if required for the public service or interests, when fairly compensated for ; but, knowing the facts of this case throughout as I do, I am convinced that the Caldwells, under the name of public interests, with the assistance of the Commissioner for Crown Lands, are being specially legislated for. I could not have thought that the hon. gentleman could have taken such an undignified course. McLaren and the Caldwells are the only holders of licenses on that river ; so, unless by the public we are to understand those who attempt to drive railway ties, telegraph poles, and even hop poles, I can only see that public interests have been substituted for the Caldwell interests. I call this, really what it is, neither more nor less than class or party legislation, and I warn this House that it usurps power and authority when it attempts retroactive legislation, and when practically censuring the judiciary. This Act completed, an era of class or party legislation may be considered as established, but if continued I am quite sure the people of this province will rise as one man and demand the abolition of this Legislature.

I have always held in high esteem the hon. Premier and the gentlemen who form his Cabinet, but if henceforth they cannot bring under our consideration measures untainted with class or party legislation, my opinion of them will undergo a great change. I would remind hon. gentlemen that the small limit purchased by the Caldwells was only purchased by them about two years ago, and they had long been aware that Mr. McLaren claimed exclusive rights, and I also remind the House that the limit of which it formed a part is really a Madawaska limit, and the only reason why they seek to use the McLaren streams is the fact of their having a saw-mill at Carleton Place. As reasonably might they ask the Government, after having bought from them a farm on an island, to find means for them to go to and from the mainland at seasons when the ice was either taking or breaking up. Necessarily I feel a delicacy in addressing the House owing to near relationship to the man who will be most severely injured by the passing of the bill. But were he my greatest enemy I could not wish him a greater injury than will be entailed by this bill. I am well aware that the Messrs. Caldwell began by a show of hostility to Mr. McLaren when they commenced laying their logs on the streams, without any arrangement whatever as to tolls, and the difficulty was brought directly home by their breaking the lock of a slide in the absence of McLaren's custodian, and running through their timber on Saturday night and Sunday morning. This slide is not in the bed of the river, but lays across a point of land some distance from the edge of the river and is over 200 yards long. I have little more to add on this occasion, but would remind you of the golden maxim of

doing unto others as you would they should do unto you, and do not disgrace the records of this Chamber by taking property from one and giving it to another without just and proper compensation therefor.

Mr. CALDWELL spoke in favor of the bill. He said that the owners of the improvements referred to often got repaid for their outlay ten times over in a few years. Mr. McLaren had been offered fair dues for the privilege of floating down, but absolutely refused them. The cost of Mr. McLaren's improvements had been estimated too high, and competent engineers had valued them at $14,000 only.

Mr. MORRIS said that the statement made by the member for Lanark proved beyond all question that the motive which led the Commissioner to deal with this matter was not the public interest, but the dispute which had arisen between Messrs. Caldwell and McLaren. These parties were really before the House, and he confessed he was surprised that the leader of the Government should have consented to an Act which would take away vested rights, and remove the right of decision from the courts of law, and throw upon the House the responsibility of adjudicating. The Minister of Crown Lands, in his opening remarks, said the law had always been as the bill was designed to make it. But as the hon. gentleman proceeded he was forced to the admission that the law could not be allowed to remain as it was. In reference to proprietary rights, the bill declared that the law always had been what the courts had declared it had not been. The Legislature were asked to say that the judicial decisions extending over eighteen years were all wrong, and that the House knew what the law had been better than the judges of the land. The bill was extremely objectionable from two points of view : it proposed to deal with vested rights, and it was retroactive in its tendency. It was also objectionable because it provided no sufficient means of compensation for the man whose property was interfered with. The bill enacted that the compensation shall be by toll. It did not give the owners of this property the slightest control over it, nor did it give him the priority even for passing his own timber. There should be a system of rules laid down for the control of this traffic. What would be the result of this season's operations? Mr. McLaren, as the result of the bill, might have his timber landed high and dry, and the miserable petty toll he could exact would not compensate him for the loss he would be subjected to. The hon. member for Muskoka, whose speech had been in the highest degree practical, pointed out the difficulties which would arise from this legislation. He hoped the Government, who were all-powerful, would not rush the bill through the House, but give time for its consideration. It was the duty of the Legislature to deal justly between man and man, and as the public interests required. The House should endeavor to prevent private interests being injured. The Minister of Crown Lands asked if the measure was confiscation. The effects of the bill would show it was confiscation, unless the Legislature had the right to take away any man's rights without just and adequate compensation. It was the duty of the majority of the House to inquire whether the tolls permitted would be any compensation to Mr. McLaren, who had spent a large fortune in making his streams navigable and floatable for timber. The Commissioner of Crown Lands said that the owners of limits situated as Mr. McLaren had never conceived the idea that they had absolute right to sliding logs down their streams. This view had not been sustained by the decision of the courts.

It was possible that in other cases the lumbermen were desirous of accommodating each other, and the works were in such a position that logs could be got down without detriment to the owners. But, in exceptional cases, where such detriment would be done, it was right that the owner should object to the public use of his property, and such objection had been sustained by the courts. The Attorney-General said that these works would only be occasionally used, and therefore high compensation was precluded. But such occasional use as that referred to by the hon. the Premier, viz., for an hour or a day, would never be asked for. It had been stated that timber could be sent down the main stream of the Mississippi, and if this were true, where was the necessity for this legislation? The Government said to Mr. McLaren: "Although timber can go down the main stream, your neighbors shall use your improvements." The Premier had told the House that the Government would do justice to private rights and no more. Unfortunately he thought that the measure was not doing justice in this matter. More was due to this man, who was being legislated against, than was proposed, and the payment of tolls would be no compensation to him after the withdrawal of the control of his property from him. He hoped the Government would take up the question of control in these matters, and settle who was to have priority. Was the owner to stand aside and see hundreds of logs pass through before his own? If the Government were determined to have it declared that what the highest courts had pronounced to be law was not law, they should at least see that private rights received that consideration they were entitled to. The Government had been led into a position in regard to this matter which would cause a great wrong to a private individual, and it was improper that the Government should pass any measure withdrawing from the courts a decision in a case already *sub judice*, and throwing upon the House the responsibility of interfering with rights which now existed under the statute. (Applause.)

Mr. MACMASTER said that the measure which was then before the House was evidently one of very great importance, and dealt with questions of public policy and private rights. The private rights were so skimmed over in the bill by the question of public policy that it was not easy at first sight to detect them. But it was quite evident from the discussion and the admissions made therein that private rights were at the bottom of the whole question. The responsibility for the introduction of the bill rested entirely with the Minister of Crown Lands. The bill proposed to regulate the right of all parties to creeks, rivers and streams, not only for the future but for the past. It not only contemplates the treatment of matters in the future, but was retroactive, and materially affected the interests of several private individuals. It was in regard to the latter phase of the bill that he desired to call attention, because, in regard to the public policy, the Minister of Crown Lands must take the entire responsibility. It was evident from the speech of the member for Muskoka, that every lumberman was interested in the passing of this measure. It was a measure in which Mr. McLaren especially was deeply interested. A few months ago he was a party to litigation. The suit arose in regard to the right to two particular streams, and was decided in favour of Mr. McLaren. The case had gone to the Court of Appeal, and was still *sub judice*. Thus the matter stood at present, and affected an amount estimated at $200,000. While the court had still to decide as to the rights of private individuals, this mea-

sure was introduced. If this bill passed the ground would be entirely taken from the feet of one of the litigants, and the law already declared in favour of Mr. McLaren will be declared wrong and swept from the statute book. It had already been shown that the rights of private individuals would be seriously interfered with by the bill. If public interests were to be regarded before those of private persons, it must be only on due recognition of the latter's rights. A very preliminary inquiry was what were the rights of Mr. McLaren at this time before the bill passes into law; because whatever were his rights would be those of others in a similar position interested in lumber operations. He understood the streams referred to were non-floatable streams. He understood that under the Statute 12 Vic. particular provision was made for the driving down of logs in streams, and in the Consolidated Statutes the same provision was re-enacted, and when the Statutes of Ontario were revised the same provision was made for floating timber down all streams. In the Acts referred to the law had been interpreted by the judges to mean that non-floatable and non-navigable streams did not come within its provisions. If they did not, they remained at common law the property of the riparian proprietor. Hence it became very important to consider whether the streams declared to be affected by this bill were non-navigable or non-floatable. If they were non-floatable they came within the decisions of the courts. These decisions of the highest authorities, successive in order, and extending over a considerable period, together declared what the common law was, viz., that the streams and all improvements made on them, were the property of the owner of the adjoining banks in such cases. That view was confirmed by Chief Justice Richards, and later by Justice Gwynne, who held that the decision of Chief Justice Richards was in accordance with common sense. This had been the undisputed law for twenty years. Men knowing this to be the interpretation of the law would naturally acquire possession of certain territory, and use it for a certain purpose, or in other words, they would with confidence purchase lands, believing their rights would be recognized by the courts, and that they would be perfectly safe in their proprietorship. This was the view Mr. McLaren took. He possessed himself by patents of certain lands, and imagined he had the privilege of the fee-simple. After owning the property for a considerable time this trouble arose. The two streams in question were comprised in this district. Mr. McLaren had his patents for them from the Crown, the streams were developed and made navigable by him and his predecessors at a cost of about $250.000—they were his property by law, they were inside the bounds specified and assigned to him in his patents. Was there any reservation in those patents of right in favor of the Crown? None whatever. The property was absolutely his and he properly imagined himself to be the proprietor of all the rights which were concomitant with the title. Now that his right had been disputed and had been promptly decided in his favour by the courts, it was again put in jeopardy by this piece of legislation. So far as it related to the future, it might be defended in the public interest, but what could be said when it attempted to take away the rights of a man as defined by the judges of the land. Would this House undertake to supersede the judges and the courts? It would be a dangerous experiment. It could not be justified either before the Legislature or the people. These were his views. The Government might get a more authoritative expression of opinion by their majority

in the House, but it would not receive the approbation of the country. It would never sanction so glaring a piece of legislative vandalism. He regretted to expect that the bill would receive the support of the House, because every hon. member who voted for it acknowledged that his title to any property might be declared invalid by the Legislature, although of course it was not likely such would be the case. Assuming that it was in the public interests for the future that Mr. McLaren should give up his rights, what provision should be made for him. The proposition was that those who may use his improvements should pay him certain tolls. This was claimed to be an equitable arrangement. The Government said we will take your rights and we will arrange what you shall receive. This was not a proper principle. The proper principle was that this man, if he had acquired property under the law or legislation of this House, it should be sacred and inviolate. If the Government said we want your property for the public, then it should be taken on the principle of compensation in money. The Attorney-General laid stress upon two points. He said that Mr. McLaren obstructed others coming down with logs. Well, if these streams were non-floatable, he had a right to do so under the law. The real issue was whether he had such a right or not. If he had not, then all the judges who said he had were wrong. The leader of the Government said it was absurd to propose to pay this man a large sum of money because the right of way was never required for a long time. In such a case public policy would not require legislation of this kind for the surrender of this man's rights. The Government ought to be able to say that the public interests involved are so great, the amount of lumber in our Dominion so large, that you must give up your privilege, and we will pay you for it, and we will collect toll for the future, and make you pay also. He had had some acquaintance with the law of England, France, the United States and Canada in connection with expropriation. He was not aware of any single instance in which the law in any one of the countries he had mentioned contained any provision that a party should be paid for the deprivation of rights by the vicarious payment of tolls. Under the law of France, so clear was the principle recognized that the compensation should be ample, that in addition to the actual value, an additional sum was given, called the *prix d'affection*. In England ample compensation must be given for any right taken from the individual. So sacred is the right of property in England, that it has passed into a proverb that "a man's house is his castle," and he may if he will deny the king admittance. It had been said there would be a difficulty in collecting the tolls. He could not say as to this. It had been argued that a lien should attach to the lumber, and perhaps it should. But a man placed in this position should not depend upon uncertain means for his compensation. With regard to the *ex post facto* legislation, it was admitted by all authorities that such legislation should not be resorted to except on rare and important occasions, and in cases of great necessity. He referred to Dwarris on the statutes, an indisputable authority, as to this. It happened that both parties concerned were friends of his own, but looking at the matter from the standpoint of justice between man and man, he must say he feared great public injury was about to be perpetrated by the admission of the principle that rights which were acquired under the acknowledged law of the country, were now to be violently and without money compensation interfered with by the Legislature.

A few weeks ago Mr. McLaren might safely have predicted what his rights were, but what was the case to-day? His rights were unstable and uncertain. Yesterday his broad estates were secure to him; he might truly say, "I am monarch of all I survey." To-day, these fruits of his industry were imperilled--were as unstable as an inverted pyramid. He knew hon. gentlemen would reply, that compensation would be given in the shape of tolls. He thought tolls were no compensation, and the offer was simply an insult to this man. If the province required certain rights belonging to a private citizen, it should pay for them or abstain from interference. (Cheers).

Mr. FRAZER said he apprehended that there never had been any question whatever as to the power of interfering with private rights in the public interest. It was done in connection with railways every day, and a man's lands could be taken and appropriated for railway purposes.

Mr. MACMASTER—And you pay for it, (Applause.)

Mr. FRAZER said that his hon. friend had not pretended to say that private rights must not be interfered with if the public interest required it. As to the *ex post facto* legislation, what difference would it make to Mr. McLaren if the bill said "from and after this date, &c.," instead of defining what had always been the law? The alteration would do him no benefit. The question then narrowed itself to the point whether the compensation was sufficient or not. It seemed to be suggested in earnest that the province should purchase the properties affected. The Government then would have to impose tolls, and would have to keep a large staff over the province to regulate these matters. The mere statement showed how unwise it would be on the part of the province. The collection of tolls by the owner was the only proper method. The Government did not take away Mr. McLaren's property because 10,000 logs were to be floated down the stream, while for the next ten years the privilege might not be exercised again. The only real question being one of compensation, hon. gentlemen opposite had wasted a good deal of energy that evening. The details of compensation could, if necessary, be settled in committee.

The bill was read the second time.

The House adjourned at 11 p.m.

PUBLIC STREAMS AND VESTED RIGHTS

From the Globe, February 24th, 1881.

The factious opposition to Mr. Pardee's Bill for protecting the public interest on streams is based on professions of superstitious regard for vested rights. The fact is that the Act will preserve to a number of lumbermen the rights which a few may override. According to Mr. Meredith and his supporters, the maker of improvements near the mouth of a stream should be allowed to shut out owners of timber further up the watercourse from access to the main river. What would become of the vested rights of the majority of lumbermen if one man, by spending a small sum in improving a stream, could reduce to nothing the value of his neighbours' property? In such a case he who should first build a dam would be able to purchase on his own terms the private interest in every stick of timber on the river.

It is said that the Local Government should make all streams navigable for drives at the public expense, and charge tolls for the use of improvements. But the Province could not find money for all the works that would be demanded by such a change of policy. Improvements could not be made as cheaply by the Government as by the lumbermen. Nor uould the necessity for works be ascertained so well by Departmental officials as by the interested limit-owners. The policy advised by the Opposition would lead to continual squabbles, as positive injustice might be done by charging the same tolls against timber cut near the mouths of streams and that made higher up. It would not be possible to vary the rate according to the locality of the cut. The best way out of the difficulty is to let the lumbermen alone as much as possible. If left free to arrange among themselves the liability of each for improvements, the public will not be troubled, while the interest of everyone concerned will be fairly preserved. Mr. Pardee's Bill merely restores to many persons the liberty which they were supposed to possess, till one man attempted to take advantage of an interpretation of the law quite opposed to common sense.

FLOATABLE STREAMS.

From the Toronto Mail, February 25th, 1881.

We commend the debate upon Mr. Pardee's bill to the careful consideration of our readers. The subject is not of itself an interesting one, but it involves a principle of momentous importance. The Commissioner of Crown Lands undertook to review the decisions of the courts and to pronounce judgment upon them. He thereby exposed the weakness of his case. The Ontario Assembly is not the constitutionally appointed arena for legal discussion. We have a Court of Appeal in this province and a Supreme Court of the Dominion, and therefore any controversy regarding judicial utterances on the floor of the House is not only improper but grossly impertinent, more especially when a particular case is yet *sub judice*. There is no justification for interference with the McLaren and Caldwell case under these circumstances. Should the higher court decide that the Vice-Chancellor's decision and the previous decisions are correct in law and equity, the Legislature will be deluded into pronouncing that never to have been the law which its authorized exponents, during more than a quarter of a century, have concurred in pronouncing to be the law. On the very face of the Act will stand, therefore, a palpable falsehood.

The Ontario Legislature may, under stress from the Premier, do what it likes as to the future tenure of any man's property; but it has no right to alter the law, as authoritatively declared from the bench, or to deprive any man of rights which that law declared to be his, unless it is prepared to give him adequate compensation. Mr. Pardee pleaded that it would cost the province five millions to buy out the rights of riparian proprietors. Be it so; but nobody asked him to buy them out. Mr. McLaren is not in the market; he does not ask the Commissioner to buy him out; all he asks is that he shall not be deprived of property declared to be his under the law by an arbitrary measure of retroactive legislation. What the plaintiff desires is only to be let alone, under the protection of the courts. Mr. Pardee, in effect, proposes to dissolve an injunction by bill before the case has been fairly adjudicated upon.

Mr. Miller, of Muskoka, himself a Reformer, pointed out in a clear, practical way what the effect of the measure would be. He, at all events, knew what he was talking about, and did not hesitate to warn the Government of "the kettle of fish" they were preparing for themselves. All that we have urged regarding the absurd inadequacy of the tolls provision, the difficulty of lumbering operations under the provisions of the bill, the inevitable waste of water, precious on streams like the Mississippi, were all borne out by the honourable member. In fact, only ignorance and self-interest, such as prompted Mr. Caldwell's indelicate interposition, can be blind to the serious mischief in contemplation. We have to repeat once again that there are no general interests involved in the

case. It is simply a job perpetrated by a pliant Minister to serve an obsequious follower. The special aim of the measure is boldly avowed, so that Mr. Mowat's unctuous pleadings about its general scope were insincere and disingenuous in the extreme.

The Ministerial organ has never dared to meet the question on its merits, because, with all its assurance and hollow plausibility, it sees clearly the utterly indefensible position of the Minister. It prated yesterday of "factious opposition"; is it factious to condemn a measure which bears a lie on its face? Is it factious to denounce a bill which deliberately enunciates the principle that improvements which the law declares to be a man's property have never been his property? What proprietary rights, we should like to ask, will be safe, if the Ontario Legislature, at the bidding of a partisan, can declare them to be worthless? The *Globe* thinks the best way is to leave the timber men alone as much as possible; that is also our opinion, and therefore we protest against Mr. Pardee's interference with one man's rights to favour the uncle of a nephew who has a vote in the House. The province has a right to improve streams or not, as it thinks fit; but it has no right to legislate away the property of any man without adequate compensation. Had the river and creeks in question been available at all before the improvements the case would have been slightly different. But Mr. McLaren absolutely created them for floatable purposes; the judges declared the works to be his property; and no Legislature without committing a monstrous act of usurpation and confiscation can deprive him of them. Thank heaven, if we have no Legislative Council, we have a Supreme Court and a Governor-General.

FLOATABLE STREAMS.

From the Guelph Herald, February 25th, 1881.

It is most earnestly to be hoped that the Assembly will not pass a bill introduced by Mr. Pardee, entitled "An Act for Protecting the Public Interest in Rivers, Streams and Creeks." It is astonishing when the peculiar provisions contained in the measure are scanned closely that no suspicions were aroused as to its true character. As a matter of fact it turns out to be a piece of partizan legislation of the most objectionable description. So far from fulfilling its ostensible purpose of protecting public interests, its concealed aim was to rob one lumbering firm of its property to benefit another, simply because the nephew of a partner in the latter represents North Lanark in the House, and is a thick-and-thin supporter of Mr. Mowat.

The facts are these: Mr. Peter McLaren, of Carlton Place, purchased the interest of Allan Gilmour & Co. in extensive timber

limits on the Mississippi, a tributary of the Ottawa. That stream with the creeks running into it was absolutely useless as a floatable stream for timber and logs, when the Hon. James Skead first attempted the improvements. He spent a large sum upon it, and sold out to Gilmours, who prosecuted the work, and then gave it up as a losing enterprise. All previously constructed works were purchased by Mr. McLaren, who at once set to work with an energy and zest deserving of the highest praise. For seventy miles there is a continuous chain of piers, dams, slides and other works; the tortuous course of creeks, absolutely useless, has been straightened; channels have been deepened, and altogether no less a sum than a quarter of a million dollars has been spent in the work. In order to secure control of the banks on both sides where extensive works were requisite, Mr. McLaren purchased the fee simple of the banks, thus acquiring by law full proprietary rights. It is not pretended that the streams would ever have been available but for these improvements, and according to every principle of law and justice, no Legislature has the right to deprive him of the use and enjoyment of property upon which he has expended the bulk of his fortune, and practically render all his enterprise useless for himself. A few years since the firm of Boyd Caldwell & Co. obtained a small timber limit on the Mississippi. Hitherto their chief operations had been conducted upon the Madewaska. It was quite possible to make that river the base of their operations still; but they resolved to use Mr. McLaren's improvements without regard to their cost or to the needs of his business. They claimed the privilege of using the dams and slides at pleasure, and when compensation was demanded refused to acknowledge Mr. McLaren's legal rights, whilst they professed to acknowledge their liability to the payment of tolls. The chief difficulty in the way of the lumbering business on the Mississippi is the difficulty of procuring a constant supply of water. The utmost economy is necessary in the use of it, and Mr. McLaren, after expending a vast sum in the necessary works, finds himself, supposing his proprietary claims denied, at the mercy not merely of the rival firm, but of every one to whom it might sub-let temporary usance of any portion of their limits.

This completes one of the chief objections to the bill under consideration. It not merely impedes Mr. McLaren's business, but leaves it at the mercy of anyone who may acquire rights in other limits than his own. Mr. Pardee's measure, indeed offers tolls, but apart from the lack of guarantee for the reasonable use of the improvements, the collection of them would cost more than they are worth. Supposing it to become law, Mr. McLaren is without any means of compelling payment. There exists no method of securing jurisdiction by which he can recover. People who know nothing of the lumbering districts can hardly understand the puzzling effect this

bill would have upon his operations. If every temporary subtenant or pretended settler on the Mississippi may claim the right to use his works, there is a threefold danger for him. In the first place the tolls would not be paid, and his dams would be filled with stuff, which it would, on the whole, be better to let through rather than incommode his own business, and that without payment. Secondly, every such mission would involve a waste of water, which, if frequently repeated, must leave him helpless. And thirdly, it would open the door to a bastard system of settlement to bush-ranging, bush fires and damage to works against which no adequate protection is offered.

Such being the true position of the case, the question as to proprietary rights remains. To whom under the law as it stands, and as it will stand until this bill becomes law, does the property in the works belong? Be it observed that apart altogether from the question of natural justice, there stands the fact of legal and equitable right. Mr. McLaren has acquired all pre-existing improvements; he has extended them until they can cover at least seventy miles; in fact, he has created the Mississippi river a floatable stream. Now, how does the law stand. Twenty years and more the courts decided that the statute clearly meant that if a man so improved a stream as to make it available for floating logs he was entitled to proprietary rights in it. There has been no adverse declsion up to this moment, and it is not likely there will be one. Since the autoritative decisions on this subject there have been two codifications of the statutes, one under the old Provincial system, and one by the Province of Ontario. The law, therefore, as construed by the Bench, has been twice reaffirmed. Mr. McLaren, when he entered upon his enterprise, had therefore the highest sanction which any man could possess for the property he purchased, constructed and held. In the strongest possible form he had been assured that the money he had expended in the form of works was his own—in fact property in the strictest sense of the word. Unless, therefore, the bill passes, Mr. McLaren is the owner of the works and improvements to as full an extent as any landlord or proprietor owns house or farm.

Mr. Pardee, in defiance of the law and of the courts, sets out in his bill not only that all future works shall be public property, but declares that they always have been so. There is no need for insisting upon the point that this declaration is absolutely untrue—in fact the very reverse of the truth, as a simple statement of facts will show. It is nearly a quarter of a century since the statute was interpreted by Chief Justice Robinson. Tuere has been no attempt to dispute that judgment since, and therefore during the whole of the subsequent period Mr. McLaren has legally enjoyed the rights of property in the works upon which he had expended his fortune. More than that, in addition to paying the Province hundreds of thou-

sands of dollars, as lessee of timber limits, he has purchased outright, on both sides of the stream, property absolutely valueless except to the lumberer. It is clear, therefore, that any measure, which under pretence of "declaring" the law, absolutely alters it, and deprives Mr. McLaren of property the statute and the judges declare to be his, is a deliberate case of confiscation. In order that there may be no mistake about it, a quotation from Vice-Chancellor Proudfoot's judgment may be given. It is necessary to premise that Messrs. Boyd Caldwell & Co., forced the litigation by a lawless act committed on the Sabbath day, when they burst the locks and floated down their timber in defiance of the law as it stood, and still stands. Mr. McLaren was forced to have recourse to legal remedies, and an injunction was granted at Perth by the Vice-Chancellor. Against this judgment the defendants appealed, and it is now, while the case is yet before the courts, that Mr. Pardee comes forward with a bill to alter the law, and deprive Mr. McLaren of his rights as proprietor. Vice-Chancellor Proudfoot, after quoting the crucial case, said, "I understand that case to determine that if any improvements are necessary to render streams floatable, the statute does not apply—that it does not alter the character of private streams, and that the owner of the land over which the stream flows, has the right to prevent intrusion upon it." The learned judge, after weighing the evidence, said, "it seems impossible to escape the conviction—at least I cannot—that without these artificial means, neither the Mississippi, nor Louse Creek, nor Buckshot Creek can be considered floatable, even in freshets or high water."

Mr. McLaren thus stands upon an absolutely impregnable position equitably, and Mr. Pardee must stand convicted of seeking to deprive him of his rights of private property without adequate compensation. To perpetrate such an act is to run counter to the first principles of jurisprudence. To make the bill retrospective is altogether a violation of justice, and to declare that always to have been the law, which the courts declare not to have been the law, is to place a falsehood upon the statute book. The bill is throughout a special measure framed to oblige a political friend, and its form, as a general act is of itself a sufficient condemnation of it. We hope the majority in the House will be sufficiently influenced by a sense of common justice as to reject a bill so utterly outrageous and flagrantly inequitable.

PROVINCIAL "WATER PROTECTION."

From the Ottawa Daily Citizen, February 23rd.

There is now before the Local Legislature a Government Bill bearing the apparently innocent title of "An Act for protecting the public interest in rivers, streams and creeks." Briefly, this bill provides in its clauses that, as far as the Local Legislature has the power, it will enable, after the passage of the bill in question, "all persons to use rivers for floating down timber and saw-logs"; it provides also that exclusive rights shall not pertain to any person on a creek, river or stream, on account of improvements he, as owner or occupant of the property, may have made, no matter whether the property has been patented and granted by the Crown or not. The bill also provides that the Lieutenant-Governor in Council may fix a series of tolls which may be paid to the improvers of rivers, subject to the value of the improvements, so far as their original cost is concerned and the annual cost of maintenance. The bill also provides that persons driving logs shall have the right of using the river-banks on whosoever's property the river may pass through. This bill, harmless though it may seem to those who are not interested in the driving of logs or other features of the lumber trade, really contains a very great deal of legal principle which will, as a matter of precedent, seriously affect the interests of those who have, what they may now erroneously suppose to be a right in a water way. This bill has already been noticed in the American lumber journals, and as the precedents of British law are greatly observed in the United States, it may have a wider influence than at first appears. The Local Legislature of Ontario has for some time past not been over scrupulous in its care of the rights of persons. The rebukes it has received from successive Ministers of Justice, *ex. gr.* Blake and Fournier for the *ultra vires* legislation it has attempted, has amply proved this. Hence the framer of the bill to which reference is now made has wisely inserted in the first clause—there is no preamble, often an inconvenient thing—that the bill only applies "as far as the Legislature of Ontario has power to enact." This, of course, opens the door to endless litigation, and in the special case involved will carry the lawyers back in the study of legal lore for centuries. The ancient right of the King's highway, and the Right of Domain, a most complicated subject, is involved. But the last clause of the

bill goes further in the direction of indicating that the bill, notwithstanding the magnitude of the main issue, has a very local and personal issue. It runs in the following terms :—

"If any suit is now pending, the result of which will be changed by the passage of this act, the court or any judge of such court, having authority over such suit, or over the costs, may order the costs of the suit, or any part thereof, to be paid by the party who would have been required to pay such costs if this act had not been passed."

This strange proviso will be better understood when it is stated that the bill is really the result of a legal dispute between Mr. Peter McLaren, of Carleton Place, and Messrs. Caldwell. Briefly, and as many of our readers are aware, Mr. McLaren has made very large improvements upon the Mississippi river, from the High Falls on the main stream, and also on Louse Creek in the form of dams and slides, piers and artificial channels along the entire course of the channel. The south branch of the river has in like manner, in company with Buckshot Creek and Swamp Creek, been improved. These improvements were commenced forty years ago by the Hon. James Skead, and were continued by others, whose interests afterward fell into the hands of Mr. McLaren. Since then the latter gentleman has paid very large sums for the improvement of the channels of the waters in question, and he as a consequence feels, as the largest operator in the district, that he will be poorly used if his improvements are to be at the service of any person who may choose to use them. Tolls are no object in such a case as that which frequently occurs, namely, when a dam only serves to supply enough water to give sufficient power to float down a certain number of logs. It will be seen plainly enough that Mr. McLaren will gain little if his logs are left on the dry land, while those of some other operator are passed through with the aid of his improvements, on payment of a "toll." The fact is, that it is largely due to Mr. McLaren that the Mississippi river is useful for lumbering at all. The river at Carleton Place would have been useless for a greater period than now if the improvements had not been made by that gentleman. But he has been subjected to litigation, and the suit in which he has been involved has become a matter of note. These actions at least have proved that no logs could be driven above the High Falls or down the other creeks, even during freshets, before the McLaren improvements were made. The usefulness of the stream has, in fact, been made by Mr. McLaren. Now, having made the streams practicable for lumbering purposes, he is called upon suddenly to surrender his rights and privileges without the very ordinary and commonplace "compensation" being offered to him. Blackstone has stated that the right of Eminent Domain does not authorize the Government, even for a full compensation, to take the property of one citizen and transfer it to another, when the public is not interested in the transfer. Yet here the Local Legislature proposes to step in, and by an arbi-

trary bill, and contrary to the accepted interpretations of both ancient and modern law, suddenly to wrest the rights of Mr. McLaren from him. It would, perhaps, be improper to hint that it is not without the bounds of possibility that the influence of Mr. Caldwell, M.P.P. has had some power in bringing about this Government bill. It certainly is not just, and is only about on a level with some piece of political favoritism. The justice of Mr. McLaren's case has been proved by Vice-Chancellor Proudfoot's decision in the case under notice in favor of Mr. McLaren, and it seems somewhat harsh and somewhat strange that a bill which violates commonly accepted law should so suddenly be introduced to the Legislature. In the consideration of bills involving legal rights the lay members of the Local Legislature are often somewhat careless. In the present case they would do well to examine the subject in dispute before the bill goes to a final reading.

THE BILL IN COMMITTEE OF THE HOUSE, 28TH FEBRUARY, 1881.

From the Toronto Mail, 4th March, 1881.

RIVERS, STREAMS AND CREEKS.

The House went into Committee of the Whole on the bill to protect the public interest on streams and rivers.

Mr. MEREDITH asked if the Commissioner of Crown Lands proposed any amendments.

Mr. PARDEE said he had some amendments, but they did not affect the principle of the bill.

Mr. MEREDITH said he thought it would be just as well to leave out the words in the first clause which referred to the past operation of the bill. They might affect the rights of others in suits now pending, and re-open cases already decided by the courts, and lead to further litigation. It seemed to him undesirable to make this provision, especially as practically there was nothing to be gained by it.

Mr. PARDEE said it was better to leave the clause as it stood. There might be cases where parties would be liable for trespass for having used these streams if the enactment were not made.

The first clause then passed.

Mr. PARDEE moved in amendment to the second clause that the words "or control" be struck out of the thirty-first line.

Mr. MEREDITH enquired if the striking out of the words would leave the owner the right to control the traffic.

Mr. PARDEE said the clause said nothing but that the owner of the stream improvements should not have the exclusive use of them.

Mr. MEREDITH asked what was the intention of the hon. gentleman.

Mr. PARDEE said he meant that other parties having lumber to bring down shall have the right to use the stream and improvements. There could be no difficulty whatever about this, because for the last forty years such improvements had been used by all parties, with the exception of the one case referred to. There was no necessity to make special provision in regard to the priority of entering the drives, or to go into details. It was all very well to say that parties would use up all the water. The hon. gentleman was anticipating difficulties which he (Mr. Pardee) was satisfied would not arise. He knew something about the working of rivers and streams, and felt certain that the Act would work satisfactorily.

Mr. MEREDITH said that the bill seemed to him a most extraordinary interference with private rights, and it was considered to be so by the other side of the House. The Commissioner said he knew all about the working of streams and rivers, but they had on the other hand the statement of one practically acquainted with these matters, viz., the hon. member for Muskoka, that such difficulties would arise. He thought, in dealing with this matter, that great care should be taken not to deal unjustly with private rights. He understood, so far as Mr. McLaren's works were concerned, that the stream was not used except by the owner, which seemed to indicate that it could not be used without interfering with the owner. A provision should at least be made that these slides should be subject to the control of the owner. Under the bill a man might make a large outlay on stream improvements, and when he desired to use them find himself prevented by others. As the hon. member for Muskoka pointed out, the owner should have the priority in using his improvements.

Mr. PARDEE said the hon. gentleman should not try to conjure up imaginary difficulties in the way of the bill. If the House were to adopt the suggestion of the hon. gentleman the bill would be useless.

Mr. MEREDITH said he suggested that the matter of general regulation should be submitted to the Governor-in-Council.

Mr. PARDEE said that no Government could prevent men acting unfairly if they chose to do it. It was impossible to make regulations to cover particular cases. The owner of improvements might, if he were given control, refuse to allow others to use a stream for two or three weeks, on the ground that he required it himself. The common sense of the people had for the last forty years carried out the law without difficulty, and there was nothing to apprehend in the future.

Mr. MORRIS said the Commissioner made out it was impossible to adopt the regulations suggested. It was, therefore, somewhat singular that in the bill for the incorporation of timber slide companies the following clause was found :—"Every such company may make by-laws, and from time to time alter and amend the same, for the purpose of regulating the safe and orderly transmission of timber over or through the works of the company, and the navigation therewith connected." Why should Mr. McLaren, whose private improvements were to be given over to

public use, be placed in a worse position than a joint-stock company? He considered the suggestion of his hon. friend from London a very reasonable one. The law placed the private owner at a great disadvantage compared with a joint-stock company, because in the case of the latter, precautions were taken to recover tolls on timber passing through the slides. If the owner had not the control of these slides, or the right of priority in using, parties might waste the water, and no one would get ny benefit from it.

Mr. MILLER said that taking away control absolutely from the owner would lead to a great deal of confusion and trouble. For instance, a man having say ten thousand logs in a stream, might, on reaching a reserve dam, where there were a large number of rapids over which it would be difficult to get logs, feel inclined to let the water out, because it would be easier for him to get over. Another lumberman with twenty thousand logs might be behind him, but not up to the reserve, who would be stopped if he acted thus in bad faith. It would be better to vest the control in the owner of the slide, and make him responsible for the proper use of the water. Unless this was done the man who got first to the slide might use up the water, and it would often happen that he would be the owner. He had thought that by striking out the words "or control" the control would be practically left to the owner.

Mr. MEREDITH—No.

Mr. MILLER said he hoped that it would have that effect. It was utterly absurd to say that these works should be under no control whatever. If after the owner had spent $20,000 in improvements no person was to have any control, and everybody could let out the water, why the thing would not work. He believed the striking out the words "or control" would have the effect of leaving the control with the owner, but it would be better perhaps to make the matter clear.

Mr. PARDEE said that the bill gave the control of these works to no one, and under the common law the owner had the control of his improvements, but the bill said that the exclusive use of the improvements did not belong to the owner, and everybody could use them on paying for it. It was only right that they should be used during the spring, autumn, and summer freshets, and it was to be supposed that during the continuance of the freshets there would be water enough to bring all parties down. With regard to the Joint Stock Companies Act, referred to by the member for East Toronto, it was to the interest of these companies to allow as much timber and logs to go through as possible, but in the case of Mr. McLaren, it was against his interest to allow logs to go through, and if he had the control, he would say at all seasons of the year that there was not sufficient water for others to go through. The bill was intended to meet such cases as that of Mr. McLaren, and if the clause from the timber companies were inserted, it would not be satisfactory.

Mr. MEREDITH said the hon. gentleman looked at the question from a one-sided point of view, but Mr. McLaren was not the only owner of private rights in streams. In cases where there was only sufficint water to float down the logs of the owner, it would be unjust to allow everybody to use the stream. He thought the traffic should be subject to proper regulations. Another difficulty was the right persons would have to send small stuff, such as telegraph poles, railway ties, and jam up the slides.

Mr. MILLAR pointed out that in cases where the owner got ahead of others in a slide, there was nothing in the bill to prevent him letting out the water and preventing other logs following. However, it was seldom a difficulty arose in the lumber trade. He apprehended most trouble from the small stuff.

Mr. MEREDITH asked if the hon. member had not been in the habit of regulating the time when his river improvements should be used.

Mr. MILLER said that he had done that. He had controlled the use of the improvements, and his company had exacted tolls, which had been usually agreed to. In nine cases out of ten the logs came down together. In other cases it was generally the owner who was ahead, so that the bill would leave it in the hands of the owner to injure others if he wished to.

Mr. COOK said it would be an unfortunate thing for the Government if they attempted to take these river works into their own hands, as had been suggested.

Mr. FRASER said the statement of the hon. member for Muskoka almost settled the question. In nine cases out of ten he said all the lumber came down together, and in cases where logs were behind they generally belonged to the man who was not the owner of the drives, so that the chance of any difficulty was exceedingly problematical. Under every law injustice might be done, and occasionally to some individual. There was no chance at all of the bill working badly.

Mr. LAUDER said the practical men thought otherwise.

Mr. FRASER denied this.

Mr. MEREDITH said the reason why there had been no trouble in the past was because the persons making the improvements had the regulation of the use of them.

Mr. NEELON thought that the owner should have the control of the traffic, and that the tolls should be a lien upon the lumber.

Mr. CALDWELL asked if the member for Muskoka had ever stopped drives.

Mr. MILLER—Yes ; for ten days at a time.

After some further discussion,

Mr. MEREDITH asked if the Attorney-General would say that the bill after the words "or control" were struck out would leave the control with the owner.

Mr. MOWAT said that control was one thing and the use another.

Mr. MILLER said he inferred from that reply that the owner would still have control, but not the exclusive use of his improvements.

Messrs. Bishop and Lees both anticipated the bill would cause injustice to be done to the owners of stream rights.

The second clause as amended then passed.

Mr. PARDEE, after making some verbal amendments to the third and fourth clauses, added a new clause, providing that the tolls imposed should be a lien on the lumber, recoverable before a magistrate, who, in default of payment, could order the sale of the lumber to secure the tolls. The period during which the lumber is liable to seizure was limited to one month.

Mr. MEREDITH moved an amendment, providing that persons entitled to toll might from time to time make by-laws in regard to the control of the traffic, which should be valid on the sanction of the Governor-in-Council.

Mr. PARDEE said he would require time to consider the effect of

the amendment, and therefore moved that the committee rise and report, and ask leave to sit again.

The committee rose.

PUBLIC RIVERS AND STREAMS.

From the Globe, March 2.

AFTER RECESS.

MR. PARDEE moved the House into Committee of the Whole, and moved that the following clause be added to the Bill :—"That every person owning such improvements may make rules and regulations governing the transmission of logs and timber, but no such regulations shall have any force until approved of by the Lieutenant-Governor in Council, who may cancel such regulations and from time to time approve of new ones."

The motion was carried.

PUBLIC STREAMS AND RIVERS.

From the Toronto Globe, 4th March.

Mr. PARDEE moved the third reading of the Bill to protect the public interests in streams and rivers.

Mr. MEREDITH moved in amendment, "That while this House is willing to pass such an Act as is necessary for the protection of the public interests in streams, rivers and creeks, it is considered that such legislation as the present Bill, is calculated to interfere with important private rights without providing for any adequate compensation, and is therefore opposed to sound legislation, and establishes a dangerous precedent, and the Bill ought not as now framed, to become law.

The amendment, on being put, was lost on a division by a vote of 54 to 23.

YEAS.—Messrs. Baker, Baskerville, Bell, Boulter, Broder, Creighton, French, Jelly, Lauder, Lees, Long, Meredith, Merrick, Metcalfe, Monk, Morgan, Morris, Near, Parkhill, Rosevear, Tooley, White, Wigle—23.

NAYS.—Messrs. Appelby, Awrey, Badgerow, Ballentyne, Baxter, Bishop, Blezard, Boulter, Caldwell, Calvin, Cascaden, Chisholm, Cook, Crooks, Deroche, Dryden, Ferris, Field, Fraser, Freeman, Gibson (Huron), Gibson, (Hamilton), Graham, Harcourt, Hardy, Hawley, Hay, Hunter, Kerr, Laidlaw, Livingston, Lyon, McCraney, McKim, McLaughlin, McMahon, Mowat, Nairn, Neelon, Pardee, Paxton, Peck, Robinson, (Cardwell), Robinson (Kent), Robertson (Halton), Ross, Sinclair, Springer, Striker, Waters, Watterworth, Wells, Widdifield, Wood, Young—54.

THE ACT FOR PROTECTING THE PUBLIC INTEREST IN RIVERS, STREAMS, AND CREEKS.

From the Daily News, Kingston, Feb. 25th.

The Legislature of Ontario has never been over careful of the rights of the people. Many bills have been rushed through it at the bidding of the Government, which have, on analysis proved to be direct encroachments upon accepted liberties of the people. The snubs that have been administered to the Local Government for the *ultra vires* legislation it has initiated, from Ministers of Justice at Ottawa, mostly Grit ones, have indicated that it is a fortunate circumstance that there is a court of review before which the acts of the Local Legislature have to pass. But probably there never was a bill so full of latent injustice, containing so flagrant an invasion of the people's rights as the one now before the Legislature and fathered by the Government in general, and the Hon. T. B. Pardee in particular. This bill bears the very innocent title of "An Act for protecting the public interest in rivers, streams, and creeks." The object of the bill in question is to give power to any person to use any stream or river for the purpose of floating timber, notwithstanding the fact that the same waters would possibly be impracticable and useless were it not for improvements made by the owner or holder of certain portions of it. This action is in clear defiance of the interpretation of the law established by the courts in several cases for a number of years past. It has always been held that in the event of a river not being navigable or floatable, then the owner of the land through which it runs has a clear right to it exclusively. This is in accordance with the most ancient privileges of the people. But the Bill in question purposes utterly to upset this, and in consequence to seriously injure the property of persons all over the Province—persons who have entered into expenditure upon the improvement of their property on the belief that the interpretations of the law, to which reference has been made, rendered the law upon the subject clear and indisputable. Scattered throughout the Province there are probably some $2,000,000 worth of improvements upon rivers and ways, all made at the cost of individuals. These improvements will, by the Bill, practically be confiscated by the Local Government, for it throws these improvementa open to the public on the payment of tolls to be fixed by the Lieutenant Governor. Now, it must be perfectly clear to any person considering the matter, that tolls will never compensate for the use of such improvements, and in many cases their use may by others be made detrimental and fatal to the owners of the same. For example there are frequently dams which will only allow a very slight number of logs to pass. The Bill in question will promptly enable a driver in such a case to pass his own logs down

and leave those of the owner high and dry upon the banks. What tolls will compensate for such a catastrophe to the lumberman as this? Again, the bill is contrary to the principles of the law in any country, which, while it acknowledges that, in the public interest, in extreme cases private property may be taken by Parliament, yet holds that in such exceptional cases full compensation shall be awarded. In this case no compensation is awarded, and the present bill even goes further in the direction of departing from the accepted law, for Blackstone has distinctly laid down that the Government, even for a full compensation, cannot take the property of one citizen and transfer it to another "when the public is not interested in the transfer." Now, it must be asked, why this bill should be passed, and why it should be made retroactive, and why it be declared that it governs cases "now pending?" Our readers may have heard of the case of McLaren vs. Caldwell, now before the Court of Appeal. The former, a well known lumberman, has made very extensive improvements on the Mississippi River at a very large cost, and has made what was before deemed an impracticable series of waters useful as a waterway. Forthwith come the Messrs. Caldwell, holders of a license geographically above him, and they demand the right of way over these improvements. Very rationally, the owner and builder of these improvements objects, and litigation has ensued. V. C. Proudfoot has granted an injunction to restrain the Caldwells from using the improvements. The law is on the side of Mr. McLaren, and now comes in the Government with their "little bill" to stamp upon the private rights of a man who in good faith, and on the understanding that he was within the law, made the great outlay he has on the river. Surely this will not commend itself to the people, and we think that the conduct of the Hon. T. B. Pardee in the matter will not bear investigation. He has, it is true, spoken of compensation in the matter of tolls, but his correspondence with Mr. McLaren indicates that he threatened them some time ago for refusing Messrs. Caldwell passage and then made no mention of tolls. It is hard to believe that the Ministry would allow politics to influence them in this matter, but it cannot be forgotten that Mr. Caldwell, M.P.P. is a thick and thin supporter of the Government, and that Mr. McLaren is an equally sincere Conservative. It will be well for the public to consider this Bill and the extraordinary action of the Government concerning it. It is a direct encroachment on the right of property and its passage shows clearly the manner in which the Legislature can, with its unreasoning and obedient Government majority, carry any measure right or wrong at the bidding of the Cabinet. Never has so flagrant a violation of liberty or rights to property come before the Legislature, and it is to be hoped there never will be the like seen again. The conduct of the Commissioner of Crown Lands, the author of the Bill, is certainly not very creditable in relation to the subject.

THE "MAIL" AND THE BILL FOR THE IMPROVEMENTS ON CREEKS OR SMALL STREAMS.

(*To the Editor of The Globe, Feb.* 28, 1881.)

SIR,—I notice an article in Saturday's *Mail* attacking the Commissioner of Crown Lands for bringing in a Bill to settle the matter of improvements on creeks or small streams, which without such could not be utilized for the driving of timber or saw-logs.

The writer evidently understands nothing whatever about the subject.

In the first place, it is absurd to state that Mr. McLaren ever expended $250,000 in improvements. I think people acquainted with the trade will bear me out in saying that nothing like that amount has ever been disbursed by a single individual in that way.

The *Mail* forgets that there are two sides to a story. It is well known that in nine cases out of ten there is only one spot available for making dams or slides on small streams. Supposing that an arbitrary man gets possession of this place, and makes improvements such as are required, how are his neighbors further up on the same stream to pass their lumber? They cannot make other dams or slides, because our arbitrary friend has appropriated the only place that will admit of improvements, and his neighbors would be obliged to pay such extortionate tolls as he would demand in order to pass their lumber or sell their limits.

Now the Government licenses these limits to these parties for certain considerations, and they are in duty bound to provide that the license-holder shall have access to all streams running through or near the same without being subject to the unreasonable exactions of an arbitrary neighbor. And Mr. Pardee is to be commended for dealing thus promptly with this matter.

With regard to the case of McLaren and Caldwell being *non sub judice*, the interests of two parties should not be allowed to interfere with a principle so important to the trade generally.

It is not difficult to understand that as pine becomes more scarce, lumbermen are obliged to go farther up the rivers for it, and if people who having been many years owners of limits on these streams are allowed to monopolize all the improvements, even though they built them themselves, it would be manifestly unfair to parties who have acquired limits more recently.

And as lumbermen will commence their next year's operations before the next session of the Legislature, it is plain that the matter should be dealt with at once.

A CONSERVATIVE.

Ottawa, Feb. 20, 1881.

STREAMS AND RIVERS.

From the Mail, March 1st, 1881.

A correspondent of the *Globe* attempts to defend Mr. Pardee's measure on this subject upon grounds of public policy. Now, if he or the organ can name any case analogous to the one which admittedly led to the introduction of this bill, we shall be prepared to consider it. To throw doubts upon Mr. McLaren's alleged expenditure is easily done by any one not cognizant of the facts. The improvements actually made are proper subject of enquiry, but they are not the proper subject for expropriation without enquiry, and while the question is before the courts. If the province desires to buy out Mr. McLaren, the means are to hand for ascertaining the amount of capital sunk in the works. We are accused of ignorance of the facts; the reverse is the case. It so happens that no line appeared in this journal until the fullest information had been gathered. On the other hand when a newspaper correspondent talks about single spots for improvements, when a river and all its tributaries have been virtually called into existence as floatable streams over forty or fifty miles, he is simply talking nonsense.

Again, if the interests of the public require that the property of a man who has invested money on the faith of the law as expounded by the courts should be taken from him, the Legislature is bound to compensate him to its full value. To say that Mr. McLaren should rest satisfied with precarious tolls, for the collection of which no provision is made, is a shallow mockery. In nine cases out of ten, he would be compelled to let defaulters go down rather than submit to a suspension of his own business during the season. The tolls clause is a mere farce, as anyone conversant with the facts must see. There are no general interests involved here whatever. The bill was introduced at the instigation of a Government supporter to benefit his relative, and is an odious form of special, retroactive legislation. The pretence that all streams passing through timber-limits should be public would be plausible supposing them to be navigable without improvement, or at slight cost. In this case, without Mr. McLaren's energy and enterprise, the Mississippi and the tributary creeks would have remained utterly useless for floating purposes up to this hour. Such being the case, the courts decided that the improvements were private property, and such they will remain until Mr. Pardee induces the House to confiscate them.

Mr. Miller, of Muskoka, very fully entered upon the subject; but he certainly did not approve of the principle of the bill, which not only declares that Mr. McLaren has no riparian rights, but that these rights were always public property, notwithstanding the judicial decisions to the contrary. It is not true that Mr. McLaren "abso-

lutely refused" to allow the Caldwells to use his works; on the contrary, he offered them their use for fair rates, coupled with an acknowledgement of his rights of property as declared by the courts. We trust that the House will pause before it permits so dangerous a specimen of partisan legislation to pass, destroying rights acknowledged in the past, even whilst the matter is before the Court of Appeal. We have returned to the subject again simply because the principle underlying the bill appears to us dangerous, pernicious, and unjust in the extreme.

RETROACTIVE LEGISLATION.

From the Stratford Herald, March 2nd.

The members and supporters of the Ministry profess to have a holy horror of class legislation, but they are quite willing to support what is far worse. Wise and honest statesmen are opposed to nothing so much as to special retroactive legislation, such as the so-called Reformers of this province are now enacting. For many years the large lumbering house of Gillies & McLaren, and subsequently Mr. Peter McLaren, have possessed and operated extensive limits on the Mississippi river and its tributary creeks. These streams are principally fed by the overflow of a number of small lakes, and their water supply is, therefore, naturally of an uncertain and fluctuating character. To overcome these natural defects—to husband the water supply and to render the streams floatable—Mr. McLaren has expended nearly a quarter of million of dollars, in the construction of channels, dams and slides. Another firm, Boyd Caldwell & Son, have recently come into possession of a portion of the Skead estate on the head waters of the Mississippi, and have endeavoured to force their drives of logs and timber through the McLaren works, without offering to the latter any sufficient compensation for the privileges they seek to enjoy. Mr. McLaren appealed to the courts, which, after long and costly litigation, decided that Caldwell & Son had no right to intrude upon the property of their neighbours for the purposes of carrying on a rival lumbering business. To the ordinary mind this decision appeals as being well founded, in both law and equity, and it would be naturally supposed that the judgment of the competent tribunals should settle such a dispute in a law abiding country. But our provincial rulers think more of politics than of either law or equity. It so happens that Caldwell & Son are Grits, while Mr. McLaren is a Conservative, and that accounts for the present high-handed proceedings of the

Government, who have introduced a Bill to override and revise the findings of the courts, and to declare that to be and to have been law which the judges have declared not to be and to not have been law. Things have come to a pretty pass when a man can be legislated out of his moral and legal rights simply because he sees fit not to support the party in power. Such is Canadian Liberalism. Every man who votes for this act of spoliation should be marked by property holders as a lawless enemy of vested rights. If such legislation can be procured by partisans, no man's property can be considered safe.

FLOATABLE STREAMS.

From the Monetary Times and Trade Review, March 4, 1881.

Litigation has long been going on and still is pending between Mr. Peter McLaren, an extensive mill owner and lumber merchant, in the eastern part of the Province of Ontario, and Messrs. Boyd Caldwell & Son, of Carleton Place, also largely interested in similar pursuits in the same district. The question in dispute is the right of the latter to float timber down the Mississippi River, (in Ontario) and some of its tributaries without submitting to such tolls and restrictions as Mr. McLaren may choose to impose. It appears that these streams in their natural state were not susceptable of being used for floating timber; and it is claimed by Mr. McLaren, that having changed the character of these streams and made them floatable by the improvements made by him at an enormous expense, he is entitled to the exclusive use of them for floating purposes, and that any person else seeking to share in that use must treat with him, as any man seeking the use of another's property must treat with its owner. These improvements are said to have cost not less than $200,000 and were made by Mr. McLaren for his own use, he being the owner of all the timber limits bordering on the stream in question, except one limit owned by the other parties to the suit.

After a protracted and thorough investigation, involving the parties in heavy expense, the Court of Chancery of this Province decided that McLaren was entitled to the exclusive use of the improvements made by him or those under whom he claimed. From this decision the defendants, Boyd Caldwell & Son have appealed to the Ontario Court of Appeal, where the argument has not yet taken place. This case, it is contended, establishes no new principle of law, there being several cases reported wherein it was held that in case of streams not naturally floatable any owner of adjoining lands or timber, making such improvements as to secure floatability,

was himself entitled to the exclusive use of such improvements. Practically this seems to mean that in case of any such stream the party first removing obstructions may, if he choose, prevent all other persons from floating timber down the stream, who did not submit to such tolls as he sees fit to impose. In effect, the man first on the ground may if he so desire it, absolutely preclude all others from the use of the stream made floatable by his efforts, notwithstanding that such other persons may be interested more largely than himself in its use and may be willing to pay the whole expense of the improvements for the privilege of floating timber down the stream. The law declares the maker of the improvements to be their absolute owner, with all that that implies. It is easy to see that circumstances might arise where a man so situated could, at the expense of those coming in later, reap an advantage out of all proportion to the expense and risk incurred, where, but for a comparatively slight obstruction the use of the stream would have been public property.

This state of the law can scarcely be said to be satisfactory in the public interest. On the other hand, it will be admitted that any person removing obstructions should be protected against the use of such streams by the public without proper compensation. Further, in the particular case referred to, it goes without saying that the evils which, as pointed out above, may flow from the law as laid down by the Court of Chancery, have not been shown to exist. It is no matter of surprise that this litigation should have called for legislation on the subject; and if a law had been passed making some adequate provision for the prevention of such disputes in the future, there would not have been much room for adverse criticism. When, however, a law is proposed, apparently under the inspiration of the unsuccessful litigants, retroactive in its effect, and making only questionable provision for the protection of Mr. McLaren's interests, there is reason to fear that a bad precedent is being established, which powerful litigants, having the ear of the dominant party in politics, will hereafter be only too ready to invoke.

It has ever been an acknowledged principle of legislation in all civilized countries that retrospective laws were justifiable only by grave necessity. Equally honored are the rules that only public necessity can justify interference with private rights, and that even then such rights will only be taken away or affected after adequate compensation has been made to the party interested. It is to be hoped that the measure now before the Ontario Legislature will yet be so modified as not to infringe these time-honored principles.

THE RIVERS AND STREAMS BILL.

From the Citizen (Ottawa), March 10, 1881.

The *Globe* appears to have come as near to allowing the claim of Mr. McLAREN to the exclusive right of way over his own costly improvements on the Mississippi River as its duty to its party could, under the circumstances, well allow. It has in effect plainly stated that it is only fair that he should be empowered to collect reasona ble tolls from all timber passing down the stream. This is, perhaps, a very gracious concession in view of the fact that the Government evidently feels an especial dislike for Mr. McLAREN, and for some reason, which ordinary common sense compels us to consider political spleen, has tried to cause his position to be most embarrassing and doubtful. The organ—which, we are sorry to say, appears ready to aid its political friends at the expense of its political opponents, even at the cost of approving legislation which is discreditable and an outrage to the name of justice, if it was not as we fully believe *ultra vires*—goes yet further. Referring to Mr. McLAREN, it states, that "an extensive lumberer who controls a number of works, constructed to facilitate the floating of timber and logs in the eastern part of the province has declined not merely to admit of their being floated down at a fair charge, but allow them to be floated down at all. The Court of Chancery has so far sustained him in the position he has taken, and the result is that at present thousand of logs are detained at points on an important stream above the works in question, and that the owners of these logs can make no use of them." It has been asserted that the *Globe* has come as near allowing the claim of Mr. McLAREN as it dare, but any person who has read the utterances of that journal for any length of time cannot help being aware that it has always been tolerably careful to leave open a line of retreat in the case of disaster. The *Globe*, following its former precedent, while allowing that the Government of Ontario acted rightly in passing the so-styled "Act for Protecting the Public Rights in Rivers, Streams and Creeks," has virtually admitted the principle that Mr. McLAREN is also right in his claims. It babbles of "tolls." It prattles of the "decision of the Court of Chancery" which has decreed that Mr. McLAREN'S claims to the improvements he has at great outlay made, are just. So, therefore, in effect it allows that there is, at least, a strong claim, even from its own point of view, in favor of Mr. McLAREN. Its line of retreat thus being clear in case of future and probably inevitable emergencies, it becomes as usual

illogical and absurd. It goes on to tell us that it is "evident that no man can be allowed to capriciously deprive the public of the use of streams in this way," *i. e.*, in the way Mr. McLAREN endeavors to protect himself. Who has endeavored to deprive the "public" of the "use of streams," and who of the "public" ever wanted to use this particular stream until it was made useful by the expenditure of Mr. McLAREN'S money? "Such an exercise of power," the *Globe* further tells us, "would lead to an intolerable state of affairs, and would at once reduce the value of timber and timber limits indefinitely." It must be remembered that the encroachments and the wrong come in this case not from Mr. McLAREN, but from another quarter. Had it not been for the improvements of which others now wish to take advantage at a mere nominal charge, there certainly would never have been any "encroachment" on any person's right, for the river in dispute would have been useless and impassable. When the future of this wild bill of the Ontario Government, of which the nominal father, Mr. PARDEE, is by this time probably heartily ashamed, is known most likely the *Globe* will take advantage of the line of retreat it has left open, and confess that, in view of a decision yet to be made, higher, wiser and more impartial than that of the Local Assembly, the bill was an error. Of the future of the bill we have yet to hear. One word more. The *Globe* declares that Mr. McLAREN declined not only to let the logs of others be floated down at a fair toll, but to be floated down at all. This story has been spread abroad by the opponents of the firm in question. It is true an offer was made to the defendants in the suit of McLAREN vs. CALDWELL before the action was commenced, asking only for fair tolls and an acknowledgment of riparian rights, and it was refused. Mr. McLAREN has allowed passage to others and has remitted tolls, notably in the case of Mr. J. H. BREDIN, of Woodlands, to whom a similar favor was summarily refused by Messrs. CALDWELL in connection with certain improvements of their own.

No. 102.] # BILL. [1881.

An Act for Protecting the Public Interest in Rivers, Streams and Creeks.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. 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 kind, and all rafts and crafts, down all rivers, creeks and streams in respect of which the Legislature of Ontario has authority to give this power; and in case it may be necessary to remove any obstruction from such river, creek or stream, or construct any apron, dam, slide, gate-lock, boom, or other work therein or thereon, necessary to facilitate the floating and transmitting such saw-logs and other timber, rafts or crafts, down the same, then it shall be lawful for the person requiring so to float and transmit such saw-logs and other timber, rafts and crafts, and it is hereby declared always to have been lawful, to remove such obstruction, and to construct such apron, dam, slide, gate-lock, boom, or other work necessary for the purposes aforesaid, doing no unnecessary damage to the said river, creek or stream, or to the banks thereof.

2. In case any person shall construct in or upon such river, creek or stream, any apron, dam, slide, gate-lock, boom or other work, necessary to facilitate the floating or transmission of saw-logs or other timber, rafts or crafts, down any such river, creek or stream, which was not navigable or floatable before such improvements were made, or shall blast rocks, or remove shoals or other impediments, or otherwise improve the floatability of such river, creek, or stream, such person shall not have the exclusive right to the use of such river, creek or stream, or to such constructions and improvements ; but all persons shall have, during the spring, summer and autumn freshets, the right to float and transmit saw-logs and other timber, rafts and crafts, down all such rivers, creeks or

streams, and through and over such constructions and improvements, doing no unnecessary damage to the said constructions and improvements, or to the banks of the said rivers, creeks or streams, subject to the payment to the person who has made such constructions and improvements, of reasonable tolls.

3. The foregoing sections, and all the rights therein given, and all the provisions therein made and contained, shall extend and apply to all rivers, creeks and streams, mentioned in the first section of this Act, and to all constructions and improvements made therein or thereon, whether the bed of such river, creek or stream, or the land through which the same runs, has been granted by the Crown or not, and if granted by the Crown, shall be binding upon such grantees, their heirs, executors, administrators and assigns.

4. The Lieutenant-Governor in Council may fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge on the saw-logs and different kinds of timber, rafts or crafts, and may from time to time vary the same; and the Lieutenant-Governor in Council, in fixing such tolls, shall have regard to, and take into consideration, the original cost of such constructions and improvements, the amount required to maintain the same, and to cover interest upon the original cost, as well as such other matters as under all the circumstances may, to the Lieutenant Governor in Council, seem just and equitable.

5. The foregoing provisions of this Act shall apply to all such constructions and improvements as may hitherto have been made, as well as to such as may be in course of construction, or shall hereafter be constructed.

6. Every person entitled to tolls under this Act shall have a lien upon the saw-logs or other timber passing through or over such constructions or improvements, for the amount of such tolls, such lien to rank next after the lien (if any) which the Crown has for dues in respect to such logs or timber, and if such tolls are not paid, any Justice of the Peace having jurisdiction within or adjoining the locality in which such constructions or improvements are, shall, upon the oath of the owner of such constructions or improvements, or upon the oath of his agent, that the just tolls have not been paid, issue a warrant for the seizure of such logs or timber, or so much thereof as will be sufficient to satisfy the tolls, which warrant shall be directed to any constable, or any person sworn in as a special constable for that purpose, at the discretion of the magistrate, and shall authorize the person to whom it is directed, if the tolls are not paid within fourteen days from the date thereof, to sell, subject to

the lien of the Crown (if any) for dues, the said logs or timber, and out of the proceeds to pay such tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner: Provided always that the authority to issue such warrant by such Justice of the Peace shall not exist after the expiration of one month from the time of the passage of such logs or timber through or over any of such constructions or improvements.

7. Nothing in this Act contained shall be construed as interfering with the powers or rights of any company formed under the Act respecting Joint Stock Companies, for the construction of works to facilitate the transmission of timber down rivers and streams, being chapter one hundred and fifty-three of the Revised Statutes of Ontario, or with mill-dams, or the right to erect and maintain mill-dams on streams; and the law respecting mills and mill dams being chapter one hundred and thirteen of the Revised Statutes of Ontario, and any other law conferring rights in mill-dams shall remain the same as if this Act had not been passed.

8. All persons driving saw-logs, or other timber, rafts or crafts, down any such river, creek or stream, shall have the right to go along the banks of any such river, creek or stream, and to assist the passage of the timber over the same by all means usual amongst lumbermen, doing no unnecessary damage to the banks of the said river, creek or stream.

9. Every person entitled to tolls under this Act may make rules and regulations for the purpose of regulating the safe and orderly transmission of saw-logs, timber, rafts and crafts over or through such constructions or improvements, but no such rules or regulations shall have any force or effect until approved of by the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may revoke and cancel such rules and regulations so made and approved, and from time to time approve of new rules and regulations which the person so entitled to tolls, as aforesaid, shall have the power to make.

10. If any suit is now pending, the result of which will be changed by the passage of this Act, the court or any judge of such court, having authority over such suit, or over the costs, may order the costs of the suit, or any part thereof, to be paid by the party who would have been required to pay such costs if this Act had not been passed.