

1950

c 195 Lakes and Rivers Improvement Act

Ontario

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CHAPTER 195

The Lakes and Rivers Improvement Act

INTERPRETATION

1. In this Act,

Interpre-
tation.

- (a) "dam" means a dam or other work forwarding, holding back or diverting water;
- (b) "floating of timber" includes transmission of timber;
- (c) "lake" includes pond;
- (d) "Minister" means Minister of Lands and Forests;
- (e) "regulations" means regulations made by the Lieutenant-Governor in Council under this Act;
- (f) "river" includes creek and stream;
- (g) "timber" includes rafts and crafts, saw logs, posts, ties, cordwood, pulpwood, masts, staves, deals, boards, and all sawed and manufactured lumber. R.S.O. 1937, c. 45, s. 1.

GENERAL PROVISIONS

2.—(1) The Lieutenant-Governor in Council may make Regulations, such regulations as he may deem necessary,

- (a) for the safe and orderly floating of timber down lakes and rivers, and for preventing the use of the lakes and rivers for the purpose of navigation by vessels and boats being unnecessarily impeded or interfered with by the timber;
- (b) as to the construction, description and dimensions of the aprons or slides which are to be provided for or in connection with dams by the owners and occupiers of them;
- (c) generally respecting the use under the provisions of this Act of lakes and rivers and waters therein;
- (d) prescribing penalties for contravention of such regulations.

(2) The regulations may be general in their application, or be applicable to any particular Part of this Act or to any particular lake or river or to any particular dam or work. R.S.O. 1937, c. 45, s. 2 (1, 2).

Compliance
with Part
VI.

3. Every person making use of a lake or river upon which works are constructed under this Act or any other Act for the purpose of floating timber shall comply with the requirements of Part VI as to timber driving. R.S.O. 1937, c. 45, s. 3.

County or
district
judge sole
arbitrator
for determin-
ing claims.

4. Wherever in this Act any claim for compensation for land, property or works taken or injuriously affected or a claim or dispute is to be determined by arbitration, a judge of the county or district court of the county or district in which the land, property or works are situate or in which the claim or dispute arises or, in the case of a claim under Part VI, in which the timber in connection with which the claim or part of the claim is made or the greater part of such timber is situate at the time of the service of the notice of claim, shall be the sole arbitrator for such purpose and the provisions of *The Arbitration Act* shall otherwise apply. R.S.O. 1937, c. 45, s. 4.

Rev. Stat.,
c. 20.

5. Where land is overflowed or otherwise injured by the maintenance of a dam which was erected before the land was granted by the Crown, and the grantee or any person under whom he derived title obtained a reduction in the price of the land on account of, or was otherwise indemnified for, its being overflowed or otherwise injured by the dam, no subsequent owner of the land shall be entitled to maintain an action against the owner or occupier of the dam for damages for any overflowing or injury to the land due to the continuance of the dam. R.S.O. 1937, c. 45, s. 5.

Restrictions
upon
operations.

6. Nothing in this Act shall authorize any person to obstruct any waters already navigable or to collect tolls other than those upon timber. R.S.O. 1937, c. 45, s. 6.

Rights of
parties as to
water powers
created.

7. If, by reason of a dam erected for the floating of timber, any water power is created the owner of the dam shall not have any title or claim to the use of such water power; but, if the owner or occupier of the adjoining land claims compensation for damages arising from such dam the claim shall be determined by arbitration and the arbitrator may take into account the increased value of his land by reason of the water power so created. R.S.O. 1937, c. 45, s. 7.

PART I

CONSTRUCTION, REPAIR AND USER OF DAMS

Interpre-
tation

8. In this Part, "owner" means the owner of a dam and includes the person constructing, maintaining and operating it. R.S.O. 1937, c. 45, s. 8.

9.—(1) A dam shall not be constructed on any lake or river unless the site and plans and specifications thereof have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature. 1949, c. 48, s. 1 (1).

Approval
of plans
of dams.

(2) Application for such approval shall be made in writing to the Minister and shall be accompanied by,

Application
for approval.

(a) complete copies of the plans and a report of the engineer in charge of the work showing full details of the construction of sluice-gates, spillways and other works connected with the dam and the height at which the water is to be held;

(b) a map of the watershed affected which shall show the area of the watershed above the dam with the estimated elevation of high water caused by the spring, summer and autumn freshets, where the water level is raised by the dam, and the submerged areas at low, normal and high water periods, in different colours;

(c) particulars as to the nature of the bottom or foundation on which the dam is to be constructed with reports of all boring or test pits;

(d) such other particulars as the Minister shall require;

provided that nothing herein shall prevent or apply to the construction of an emergency dam where such construction may be considered necessary for the prevention of loss or damage, but the owner in such case shall immediately give notice to the Minister that he is proceeding with the construction of the dam and shall thereafter comply with any directions of the Minister as to the precautions to be taken in maintaining the dam or its removal when the purpose for which it was constructed has been served. R.S.O. 1937, c. 45, s. 9 (2); 1949, c. 48, s. 1 (2).

(3) The approval of the Minister shall not be given until an engineer designated by him (hereinafter referred to as "the engineer") has examined the plans, documents and other information and recommended the approval of the proposed dam. R.S.O. 1937, c. 45, s. 9 (3); 1949, c. 48, s. 1 (3).

Engineer to
examine
plans.

(4) Upon the request of the Minister made either before or after the construction thereof every such dam hereafter constructed shall be provided with a fishway which will permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1937, c. 45, s. 9 (4); 1948, c. 87, s. 4 (1).

Fishway.

Approval
of plans
and
specifications.

10. Where a dam has heretofore been or is hereafter constructed in any lake or river and it is proposed to make improvements to the dam the improvements shall not be proceeded with until complete copies of the plans and specifications have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature. R.S.O. 1937, c. 45, s. 10; 1949, c. 48, s. 2.

Requiring
production
of plans on
report of
engineer.

11.—(1) Where a dam has heretofore been or is hereafter constructed in any lake or river and an engineer or other officer of the Department of Lands and Forests reports that by reason of the construction or condition of the dam water may be held, released or diverted in sufficient volume to cause personal injury or damage to property, the Minister may require the owner of the dam to furnish within a given time the plans and other particulars mentioned in subsection 2 of section 9.

Failure to
furnish
plans.

(2) Upon failure on the part of the owner to furnish such plans and other particulars within the time specified, the Minister may require the engineer to make an examination and report on the dam, and the expenses incurred in making the examination and report shall be a debt due by the owner to the Crown, and the amount thereof as certified by the Minister shall be recoverable with costs in any court of competent jurisdiction at the suit of the Treasurer of Ontario.

Engineer
to have
free access.

(3) For the purpose of making the report, the engineer shall have free access to all parts of the dam and to the adjoining or neighbouring lands and to all plans, books, accounts, documents and reports relating to the construction of the dam. R.S.O. 1937, c. 45, s. 11 (1-3).

Order to
repair,
improve, etc.

(4) On the report of the engineer, the Minister may make such order as he may deem necessary to ensure the safety of the public or of persons whose lands and property may be endangered by the dam, and for such purpose may order the owner to repair, improve, open up or remove it, and may fix the time within which such repairs, improvements, opening up or removal shall be completed. R.S.O. 1937, c. 45, s. 11 (4); 1949, c. 48, s. 3 (1).

Effect of
non-com-
pliance with
order.

(5) Upon non-compliance with the order within the time limited or, in case the Minister deems that the repairs, improvements, opening up or removal ordered is immediately required in an emergency, the Minister shall have power to do whatever is necessary to comply with the order and the cost of any work done by or under the direction of the Minister, as certified by him, shall be a debt due by the owner to the

Crown and shall be recoverable with costs in any court of competent jurisdiction at the suit of the Treasurer of Ontario. R.S.O. 1937, c. 45, s. 11 (5).

(6) Where any dam heretofore constructed has not been provided with a fishway the Minister may direct that the owner of the dam shall forthwith provide a fishway to permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1937, c. 45, s. 11 (6); 1949, c. 48, s. 3 (2). Direction for fishway to be provided.

12. Where water is impounded for power development or storage purposes the Minister may order the owner of any dam that impounds the water, or the owner of any lands so flooded, to clear timber from the lands so flooded. 1949, c. 48, s. 4, *part*. Clearing timber from flooded lands.

13.—(1) The Minister may authorize the engineer to inspect or cause an inspection to be made of any dam or other structure or work for the development, improvement or utilization of the waters of any lake or river and report in writing upon the state of repair of the dam or other structure or work. Minister may authorize inspection.

(2) The Minister may, after the receipt of the report of the engineer, order the owner of the dam or other structure or work to repair or reconstruct the same within the time specified in the order. Repair or reconstruction.

(3) Where the owner fails to comply with an order made under this section the Minister may cause the repairs or reconstruction to be made and the rights of the owner in the dam or other structure or work shall be forfeited to the Crown upon payment of such compensation as the Lieutenant-Governor in Council may direct. 1949, c. 48, s. 4, *part*. Non-compliance with order for repair, etc.

14.—(1) Every person who, Penalties.

- (a) constructs or maintains a dam in contravention of this Part;
- (b) refuses or neglects to comply with an order, requirement or direction of the Minister made under this Part; or
- (c) hinders or obstructs the engineer in the performance of his duties under this Part, or refuses or neglects to produce any plans, accounts, documents or report relating to the construction of a dam when required by the engineer,

shall on summary conviction be liable to a penalty of not more than \$500, and if after conviction such default continues, such person shall be liable to a further penalty of \$10 for each day upon which the default continues. 1946, c. 89, s. 26 (2); 1949, c. 48, s. 5.

Liability of person not restricted by conviction under subsection 1.

(2) The conviction of any person under subsection 1 shall not affect the liability of such person for damages or otherwise either at common law or under any statute in force in Ontario. R.S.O. 1937, c. 45, s. 12 (2).

Plans, etc., to be filed in Department.

15. All plans, orders and reports furnished or made under this Part shall be kept on file in the Department of Lands and Forests. R.S.O. 1937, c. 45, s. 13.

Disputes as to user.

16. Where it appears expedient in the public interest, or where a conflict or dispute arises between persons having a right to use a lake or river, or any works or other improvements thereon for floating timber or between such persons and any other persons having the right to use a lake or river for any other purpose, the Minister may appoint an officer or officers with such powers and duties as may be deemed expedient to be in charge of the lake or river or any works or improvements thereon and to regulate the use of the lake or river or any works or improvements thereon in such manner as seems best calculated to afford to persons having diverse interests on the lake or river or in the works or improvements a fair and reasonable use of the waters of the lake or river; provided that where any alterations of the level of international boundary waters is involved such regulation, powers and duties shall conform to any order or recommendation which the International Joint Commission may make under the terms and authority of the International Boundary Waters Treaty between Great Britain and the United States. R.S.O. 1937, c. 45, s. 14.

Regulation of use of water.

17. Where a dam or other structure or work for the development, improvement or utilization of a water power on any river down which any timber is floated has been heretofore or is hereafter constructed, the Minister, with the approval of the Lieutenant-Governor in Council, may make such order as he may deem expedient respecting the use of the river or of the waters of it, or of any water which is or is intended to be stored by means of any such dam, structure or work by the owners and occupiers of it, or of any work operated wholly or partly by the power so developed or improved and by persons using the river for the purpose of floating timber. R.S.O. 1937, c. 45, s. 15.

18. Subject to compensation being made as provided by *The Public Works Act* for any damages sustained by reason thereof, the Minister may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any rocks, stones, gravel, slab or timber jam, dam or part of any dam, rubbish of any kind or other obstruction in any lake or river, the removal of which he deems necessary or expedient in the public interests. R.S.O. 1937, c. 45, s. 16.

Removal of obstructions, dams, etc., on order of Minister. Rev. Stat., c. 323.

19.—(1) A judge of the county or district court of the county or district in which any part of any works used for floating timber is situate, on the complaint of any person interested in the floating of timber down any lake or river, through or over the works upon which tolls are collected, that the works are clearly inadequate by reason of being out of repair, shall appoint an inspector to examine the works and to report on the state of repair thereof.

Works out of repair.

(2) The judge shall, after report of the inspector, order what repairs are necessary and shall be made by the owner of the works, and the time by which the repairs shall be made and completed.

Order to repair.

(3) If the owner does not comply with the order the person so interested may make the repairs, and the cost thereof, or such portion of them as the judge determines, shall be paid by the owner and be a lien and charge in favour of such person on the works and tolls.

When person interested may repair.

(4) The judge may require the applicant to deposit with the clerk of the court such sum as will, in the opinion of the judge, be sufficient to pay the fees and expenses of the inspector, to be allowed by the judge at a rate of not more than \$10 per day and actual travelling expenses, and such sum, when the works are found to be clearly inadequate by reason of being out of repair, may in the discretion of the judge be made a lien or charge in favour of the person paying the same on the works and tolls.

Deposit to cover fees.

(5) The applicant shall, before the application comes on to be heard, file with the judge a bond signed by himself in the sum of \$100 and by two sufficient sureties, who shall duly qualify, each in the sum of \$50, conditioned to pay to the owner such costs connected with the application and subsequent proceedings as the owner may become entitled to.

Bond to cover costs.

(6) Four days notice of the application shall be sufficient and the notice may be served upon the owner or in the case of a company upon the president, secretary or superintendent, manager or acting manager thereof.

Notice.

Costs in discretion of judge, etc.

(7) The costs incidental to the application shall be upon the county court or division court scale as the judge may direct.

Interpretation

(8) "Inspector" means a person appointed by the Lieutenant-Governor in Council to act as inspector of works constructed for the floating of timber. R.S.O. 1937, c. 45, s. 17.

Provision for passage of timber.

20. Where a dam is now or shall hereafter be erected on or across any lake or river down which timber is usually floated such dam shall at all times be provided with a slide or apron for the passage of timber of such description and dimensions as shall be prescribed by the regulations. R.S.O. 1937, c. 45, s. 18.

Apron to admit of timber passing.

21. Every such apron shall be so constructed and maintained as to afford depth of water sufficient to admit of the passage over it of such timber as is usually floated down the lake or river on which the dam is erected. R.S.O. 1937, c. 45, s. 19.

Penalty for not providing apron.

22.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair an apron thereto in accordance with the regulations, shall on summary conviction be liable to a penalty of \$20 for every day on which the default occurs or during which it continues.

Where apron carried away penalty suspended.

(2) Where the apron is carried away, destroyed or damaged by flood or otherwise the owner or occupier of the dam shall not be liable to the penalty provided by subsection 1 if the apron is repaired or reconstructed as soon as the state of the lake or river safely permits. R.S.O. 1937, c. 45, s. 20.

PART II

PROCLAMATION CONTROLLING NAMED LAKE OR RIVER

Control by Order in Council.

23. The Lieutenant-Governor in Council may declare that any lake or river shall be subject to this Part. R.S.O. 1937, c. 45, s. 21; 1946, c. 89, s. 26 (3).

Jurisdiction of Minister.

24.—(1) From and after a date named in the declaration made under section 23, all questions arising in relation to the lake or river,

(a) as to the right to construct or use works or improvements thereon;

(b) as to the respective rights of persons using the lake or river for the purpose of floating timber thereon;

(c) as to the right to interfere with, alter or obstruct in any manner the flow of the water in the lake or river,

shall be determined by the Minister upon application to him by any of the parties concerned, and after such notice to other parties interested as the Minister may direct, and no action or other proceeding shall lie or be taken in any court with respect to any such matter. R.S.O. 1937, c. 45, s. 22 (1); 1946, c. 89, s. 26 (4).

(2) The order of the Minister given in writing shall be final and shall not be subject to appeal. Decision to be final.

(3) Any such order may be filed in the office of the Registrar of the Supreme Court, or in the office of the local registrar or deputy registrar, and upon being so filed it shall become an order of the Supreme Court and may be enforced in the same manner and by the like process as if it had been made by that court. Enforcement of order of Minister.

(4) The like fees shall be payable as upon an order made by a judge of the Supreme Court in the exercise of his ordinary jurisdiction. Fees on filing order.

(5) The order shall be entered in the same manner as a judgment of the court. R.S.O. 1937, c. 45, s. 22 (2-5). Entry of order.

PART III

PUBLIC RIGHTS IN LAKES AND RIVERS

25. This Part shall be subject to the provisions of Parts I and II. R.S.O. 1937, c. 45, s. 23. Application.

26.—(1) All persons shall have the right to and may, subject to the provisions of this Part, float timber down all lakes and rivers during the spring, summer and autumn freshets. Right to float timber.

(2) No person shall, by felling trees or placing any other obstruction in or across a lake or river, prevent the floating of timber. Duty not to obstruct.

(3) If it is necessary to remove an obstruction from a lake or river, or to construct a dam, apron, slide, gate, lock, boom or other work therein or thereon in order to facilitate the floating of timber down the lake or river, the person requiring Right to remove obstructions and to construct works.

so to float the same may remove the obstruction, and may construct the dam, apron, slide, gate, lock, boom or other work, doing no unnecessary damage to the lake or river or to its banks.

Right to persons driving timber, etc., to go on banks.

(4) All persons driving timber down a lake or river shall have the right to go along the banks of the lake or river for the purpose of assisting and to assist the floating of the timber by all means usual with lumbermen, doing no unnecessary damage to the banks of the lake or river. R.S.O. 1937, c. 45, s. 24.

Right of public to use works and improvements.

27. A person who has constructed in or upon a lake or river, which was not navigable or floatable before the same was constructed, a dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating of timber down the lake or river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the lake or river, shall not have the exclusive right to the use of the lake or river or of the works or improvements, but all persons, subject to the payment of tolls fixed under Part V, shall have the right during the spring, summer and autumn freshets to float timber down the lake or river and through and over such works and improvements, doing no unnecessary damage. R.S.O. 1937, c. 45, s. 25.

Act to apply whether land patented or not.

28. All the rights conferred by this Part shall extend and apply to all works and improvements heretofore or hereafter made, on a lake or river, whether the bed of the lake or river has been granted by the Crown or not. R.S.O. 1937, c. 45, s. 26.

Moving timber across lakes, etc.

29.—(1) Where upon the course of a river it enters or widens into a lake or other considerable body of water, every person using the river for the purpose of floating timber shall provide proper and adequate means by a steam tug or otherwise to move his timber across the lake or body of water with expedition.

Minister may order use of power.

(2) The Minister may by his order in writing direct what kind of power or appliance shall be used in bringing timber across the lake or body of water from the place of entrance to the outlet. R.S.O. 1937, c. 45, s. 27 (1, 2).

Penalty.

(3) Any person contravening or neglecting to obey the terms of the order shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$500. R.S.O. 1937, c. 45, s. 27 (3); 1946, c. 89, s. 26 (5).

OBSTRUCTIONS IN LAKES AND RIVERS

30.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells any tree into a lake or river down which timber is usually floated, or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn freshets, without lopping off the branches of the tree and cutting up the trunk into lengths of not more than 18 feet before the tree is allowed to be floated or cast into the lake or river shall for every such offence on summary conviction be liable to a penalty of not more than \$10.

Penalty for not lopping off branches of trees, etc.

(2) Subsection 1 shall not apply to timber prepared for transportation to market. R.S.O. 1937, c. 45, s. 28.

Exception.

31.—(1) No person shall throw, and no owner or occupier of a mill shall suffer or permit to be thrown into a lake or river slabs, bark, stumps, roots, shrubs, waste wood, leached ashes, sawdust or other refuse from a saw mill and no person shall fell or cause to be felled into or across a river any tree and allow it to remain in or across such river.

Prohibition against throwing refuse into lake or river, etc.

(2) For every contravention of subsection 1 the person offending shall on summary conviction be liable to a penalty of not more than \$20 and not less than 20 cents for each day during which the obstruction continues over and above all damages arising therefrom.

Penalty.

(3) Where damage to private property is caused by a contravention of this section the damages may, at the request of the person aggrieved, be assessed by the convicting magistrate and included in the conviction when the damages together with the penalty imposed do not exceed \$20.

When damages may be assessed:

(4) Where damages are so assessed they shall be paid to the person aggrieved.

and paid to person aggrieved.

(5) This section shall not apply to the St. Lawrence River or the Ottawa River.

Exception.

(6) No such obstruction happening without the wilful default of the person by whom it is caused, or in the *bona fide* exercise of his rights, shall subject him to the penalty unless he makes default in removing the obstruction after notice and reasonable time afforded for that purpose.

As to obstructions not wilful.

(7) This section shall not apply to a dam, weir or bridge erected in, across or over a lake or river, or to anything done *bona fide* in or for erecting the same, or to any tree cut down or felled across a river for the purpose of being used as a bridge

When section not to apply.

from one side of it to the other, if the dam, weir, bridge or tree does not impede the flow of water or the floating of timber. R.S.O. 1937, c. 45, s. 29.

DISCRETIONARY POWERS OF COURT

Interpre-
tation

32.—(1) In this section, “mill” means a plant or works in which logs or wood-bolts are processed and includes a saw mill, a pulp mill, and a pulp and paper mill.

Discretion of
court as to
granting of
injunction
in certain
cases.

(2) Where in an action or proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a mill for an injury or damage, direct or consequential, sustained by such person, or for any interference directly or indirectly with any rights of such person as riparian proprietor or otherwise, by reason or in consequence of the throwing, depositing or discharging, or permitting the throwing, depositing or discharging of any refuse, sawdust, chemical, substance or matter from the mill or from it and other mills into a lake or river, or by reason or in consequence of any odour arising from any such refuse, sawdust, chemical, substance or matter so thrown, deposited or discharged or so permitted to be thrown, deposited or discharged, the court or judge may,

- (a) refuse to grant an injunction if it is proved that having regard to all the circumstances and taking into consideration the importance of the operation of the mill to the locality in which it operates and the benefit and advantage, direct and consequential, which the operation of the mill confers on that locality and on the inhabitants of the locality, and weighing the same against the private injury, damage or interference complained of, it is on the whole proper and expedient not to grant the injunction; or
- (b) grant an injunction to take effect after such lapse of time or upon such terms and conditions or subject to such limitations or restrictions as may be deemed proper; or
- (c) in lieu of granting an injunction, direct that the owner or occupant of the mill take such measures or perform such acts to prevent, avoid, lessen or diminish the injury, damage or interference complained of as may be deemed proper.

Right to
damages not
affected.

(3) Nothing in subsection 2 shall affect any right of the person claiming the injunction to damages against the owner or occupier of the mill for any such injury, damage or interference.

(4) Where damage from the same cause continues the person entitled to the damages may apply from time to time in the same action or proceeding for the assessment of subsequent damages or for any other relief to which by subsequent events he may from time to time become entitled.

(5) This section shall apply whether the injury, damage or interference is or is not a continuing one, and whether the person claiming the injunction in the action or proceeding is a plaintiff or is a defendant proceeding by way of counterclaim. 1949, c. 48, s. 6 (1).

PART IV

TIMBER SLIDE COMPANIES

33. In this Part, "works" means a dam, slide, pier, boom or other work constructed or proposed to be constructed in or upon a lake or river in order to facilitate the floating of timber down the lake or river and any improvements made or proposed to be made to the floatability of a lake or river by the blasting of rocks or dredging or the removal of shoals or other impediments or otherwise. R.S.O. 1937, c. 45, s. 31.

34. A company may be incorporated under *The Companies Act* for the purpose of acquiring or constructing and maintaining and operating works upon a lake or river in Ontario, and every such company shall thereupon become subject to all the provisions of this Part. R.S.O. 1937, c. 45, s. 32.

35. The application for the letters patent shall give,

- (a) a detailed description of the works proposed to be undertaken and an estimate of their cost;
- (b) an estimate from the best available sources of the quantity of different kinds of timber expected to come down the lake or river yearly after the works have been completed. R.S.O. 1937, c. 45, s. 33.

36. The letters patent incorporating the company for any of the purposes mentioned in section 34 shall not be issued until proof has been furnished to the Minister,

- (a) that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated, that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking;

- (b) that notice of the application for the letters patent has been served upon all timber licensees and other persons known to be interested in the works proposed to be constructed,

nor until approval of the proposed work has been obtained under Part I, and the Minister has certified to the Provincial Secretary that, in his opinion, it is proper that they should be issued. R.S.O. 1937, c. 45, s. 34.

Rate of dividend.

37. The Lieutenant-Governor in Council may, in the letters patent, state a rate of dividend, not exceeding 12 per cent per annum, which the company shall be at liberty to pay to the shareholders, if the revenues of the company otherwise justify such payment. R.S.O. 1937, c. 45, s. 35.

Limitation of company's existence.

38. The existence of the company may be limited to a term of years, not exceeding 21, to be fixed by the letters patent. R.S.O. 1937, c. 45, s. 36.

Property vesting in the Crown on expiration of company's existence.

39. Upon the expiration of the period limited for the existence of the company all the works constructed by the company shall become the property of His Majesty for the public uses of Ontario, and shall be under the control of the Department of Lands and Forests, and the company, or the shareholders thereof, shall have no right to compensation therefor. R.S.O. 1937, c. 45, s. 37.

Company's existence to continue for the purpose of winding up.

40. Notwithstanding the expiration of the period limited for the existence of the company it shall continue to exist for the purpose of taking such proceedings as may be requisite for winding up and settling its affairs, and for getting in its assets and distributing them amongst its shareholders; and the company may, for those purposes, sue and be sued as if the period of its corporate existence had not expired; but after such period the words "in liquidation" shall be added to the name of the company and shall be a part of such name. R.S.O. 1937, c. 45, s. 38.

Distribution of capital and profits.

41. No distribution of capital shall be made under section 40 until three years after the expiration of the period limited for the existence of the company, but this shall not prevent the distribution amongst the shareholders of the annual profits received from investments, and after such three years section 95 of *The Companies Act* shall not apply. R.S.O. 1937, c. 45, s. 39.

Rev. Stat., c. 59.

Yearly report to the Minister.

42. The directors of the company incorporated shall annually, in the month of January, make to the Minister a

report, verified by the oath of the treasurer of the company, specifying,

- (a) the cost of the works;
- (b) the amount of all money expended;
- (c) the amount of the capital stock, and the amount paid in;
- (d) the whole amount of tolls expended on the works;
- (e) the amount received during the year from tolls and all other sources, stating each separately, and distinguishing the tolls on different kinds of timber;
- (f) the amount of dividends paid;
- (g) the amount expended for repairs;
- (h) the amount of the debts due by the company, stating the objects for which they were respectively incurred;
- (i) a detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the following year, together with an estimate of the cost thereof. R.S.O. 1937, c. 45, s. 40.

43. The company shall keep proper books of account Books of account. containing full and true statements of,

- (a) the financial transactions of the company;
- (b) the assets of the company;
- (c) the sums received and expended by the company and the matters in respect of which the receipt or expenditure took place; and
- (d) the credits and liabilities of the company,

and such books shall be at all times open to the inspection and examination of any shareholder. R.S.O. 1937, c. 45, s. 41.

44.—(1) The company shall have the right to expropriate Rights of expropriation. any land, right or easement requisite for the purpose of its undertaking, and the amount of compensation therefor shall be determined by arbitration.

(2) In ascertaining the amount of the compensation due Ascertaining compensation. regard shall be had to the benefits which will accrue to the person claiming compensation from the construction of the intended works. R.S.O. 1937, c. 45, s. 42.

Interference
with
property
of others.

45. No company shall construct its works over or upon or otherwise interfere with or injure any private property or the property of His Majesty, without first having obtained the consent of the owner or occupier thereof, or of His Majesty, except as is in this Part provided. R.S.O. 1937, c. 45, s. 43.

Compensation for
existing
works
taken over.

46.—(1) If there is already established by any person, other than a company formed under this Part or under any Act of the Legislature, any works on a lake or river for the improvement of which a company is formed under this Part, such company may with the approval of the Minister take possession of the works, and the owners thereof, or, if the works have been constructed on the property of His Majesty, the person at whose cost they have been constructed, shall be entitled to compensation for the value of the works, either in money or in stock of the company, at the option of the owner or the person at whose cost the works were constructed, and may become a shareholder in the company for an amount equal to the value of the works, such value to be ascertained by arbitration.

Formalities
to be
observed by
company
acquiring
existing
works.

(2) Where the company purchases or takes possession of the works, and does not make or construct any other works than those so acquired, the company shall furnish the Minister with a detailed description of such works and the amount of the purchase price or compensation. R.S.O. 1937, c. 45, s. 44.

Mill sites,
etc., not to
be taken
without
consent of
owner.

47.—(1) Nothing herein shall authorize a company formed under this Part to take possession of or injure any mill site upon which there are existing mills or machinery, or hydraulic works other than those intended to facilitate the passage of timber, and no company formed under this Part shall commence any work which interferes with or endangers such occupied mill site without the consent in writing of the owner, or unless it is determined by arbitration that the proposed works will not injure such mill site.

Registering
consent
or award.

(2) The consent or award shall be registered in the same manner as the instrument of incorporation of the company. R.S.O. 1937, c. 45, s. 45.

Time for
completion
of works.

48.—(1) The company shall, within two years from its incorporation, complete every work undertaken by it and mentioned in the application for the letters patent, and for the completion of which the company is incorporated, in default of which the company shall be liable to forfeit the right to all the corporate and other powers and authority which it has acquired, and the Attorney-General may cause proceedings to be taken in the name of His Majesty to set aside the

charter by serving notice upon the company, and the Lieutenant-Governor in Council may, after an opportunity to be heard has been given to the company, declare that its corporate powers shall cease and determine at a date to be named in the Order in Council.

(2) From and after that date all the corporate powers of the company shall cease and determine unless, prior to the taking of proceedings by the Attorney-General, further time is granted by the Minister, or the completion of the works appears to be unnecessary and is dispensed with by him.

(3) If in the opinion of the Minister the company has abandoned for one year any works completed by it so that the same are not in sufficient repair and cannot be used for the purpose for which they were undertaken, the Minister may by his order in writing declare that the corporate powers of the company shall cease and determine to the extent set out in the order. R.S.O. 1937, c. 45, s. 46.

49. Any two companies formed for the construction of works on contiguous waters may unite and form one consolidated company on such terms as to them seem meet, and the name of the company to be then assumed shall thenceforth be its corporate name, and letters patent may, subject to the approval of the Minister, be issued to it, and when issued the consolidated company may exercise and shall enjoy all the rights and shall be subject to all the liabilities of other companies formed under this Part, and which the separate companies had and enjoyed or were subject or liable to before their union. R.S.O. 1937, c. 45, s. 47.

50. Whenever the Lieutenant-Governor in Council deems it expedient for the public service he may declare any company formed under this Part to be dissolved, and may declare all the works of such company to be public works upon payment to such company of the then actual value of the works to be determined in accordance with *The Public Works Act*. R.S.O. 1937, c. 45, s. 48.

51. Where a company incorporated under chapter 153 of the Revised Statutes of Ontario, 1877, or under chapter 68 of the Consolidated Statutes of Canada, 1859, applies for the issue of letters patent under *The Companies Act*, letters patent may, subject to the approval of the Minister, be issued conferring upon the company any of the powers authorized by this Part, and by such letters patent the term of existence of the company may be limited and the company shall be subject to this Part. R.S.O. 1937, c. 45, s. 49.

Extension of existence of company.

52.—(1) The term of existence of a company incorporated for a limited period may be extended for such a number of years as the Lieutenant-Governor in Council may, previous to the expiry of such period, direct.

Extension of charter after expiry of term of company's existence.

(2) Where the term of existence of a company incorporated for a limited period has expired but the company has continued to carry on business and it appears to the Lieutenant-Governor in Council that the company has acted in good faith, the Lieutenant-Governor in Council, notwithstanding the expiry of such period, may, by supplementary letters patent, extend the term of existence of the company as from the date of the expiry, and thereupon the company shall be deemed to have continued in existence from such date and the works constructed by the company shall not be deemed to have become the property of His Majesty, but to have remained vested in the company for the period named in such supplementary letters patent.

Issue of supplementary letters patent for extensions or improvements.

(3) Where any extension or improvement of the works or any new works proposed to be undertaken are approved by the Minister, supplementary letters patent may be issued authorizing the construction of such extension or improvement or such new works as the case may be. R.S.O. 1937, c. 45, s. 50.

PART V

TOLLS

Interpretation.

53. In this Part,

- (a) "operator" means owner or occupier of the works;
- (b) "works" means works as defined in Part IV which have been constructed. R.S.O. 1937, c. 45, s. 51.

Right to tolls.

54. The operator may demand and receive the lawful tolls upon all timber passing through or over such works, and shall have free access to such timber for the purpose of measuring or counting it. R.S.O. 1937, c. 45, s. 52.

Publication of schedule of tolls.

55.—(1) In each year, prior to the 1st day of March, the operator shall publish once a week for four successive weeks in a newspaper published in the county or district in which the works are situate, a schedule of the tolls proposed to be charged together with a notice stating that on a day and hour named he will apply to a judge of such county or district for the approval of such tolls.

(2) Before publishing the schedule of tolls the operator shall apply to a judge of such county or district to fix the time for the hearing of the application so that it may be inserted in the notice, and the judge shall at the time so fixed hear the application and approve of the schedule of tolls after making such changes therein as he may think proper.

Time for hearing application.

(3) In fixing the tolls the judge shall have regard to and take into consideration the original cost of the works and improvements, the amount required to maintain them and to cover interest upon the original cost, as well as such other matters as under all the circumstances may be deemed just and equitable.

Basis on which tolls to be fixed.

(4) The judge may on the hearing require the production of all books of account of the operator for the purpose of ascertaining the state of the affairs of the operator, and may, if he thinks it necessary, appoint some person to inspect such books and make a report to him on the affairs of the operator for the purpose of determining the tolls which should be charged.

Production of books of account.

(5) The schedule of tolls as approved of by the judge shall be final and binding and there shall be no appeal from his decision.

No appeal.

(6) If the schedule of tolls be amended, then the tolls as so amended shall be published once a week for two successive weeks in a newspaper published in the county or district in which the works or improvements are situate.

Publication of tolls as approved.

(7) The operator shall forthwith after the schedule of tolls has been approved of by the judge send a copy of it certified by the judge to the Minister so that the same may be filed in the Department of Lands and Forests, and on failure to do so he shall be liable to a penalty of not more than \$20. R.S.O. 1937, c. 45, s. 53.

Copy of tolls to be sent to Department.

56.—(1) The operator may demand from the owner of any timber intended to be passed over or through any portion of the works, or from the person in charge of the timber, a written statement of the quantity of every kind of timber and of its destination, and of the sections of the works over or through which it is intended to pass, and if no written statement is given when required, or if a false statement is given, the whole of the timber, or such part of it as has been omitted by a false statement, shall be liable to double toll.

Demanding of owner statement of quantity of timber liable to toll.

When false estimate is given as to quantity liable to toll, extra tolls may be collected.

(2) If any owner or person in charge of such timber knowingly or wilfully returns a larger quantity than it is his intention to pass over or through the works the operator shall be entitled, in addition to any other remedy he may have, to collect tolls on the difference between the quantity so falsely estimated and the quantity actually passing over or through the works. R.S.O. 1937, c. 45, s. 54.

May sue for tolls.

57. If the tolls are not paid on demand they may be recovered by action. R.S.O. 1937, c. 45, s. 55.

Tolls to be apportioned to the extent of the works used.

58. If timber has come through or over part only of the works the owner of the timber shall be liable to pay tolls only for such sections of the whole works as he has made use of if, in the schedule of tolls, the works are divided into sections, and if not, to pay such a portion of the whole tolls as the distance the timber has come through or over the works bears to the whole distance for which the works extend. R.S.O. 1937, c. 45, s. 56.

Lien of operator for tolls.

59.—(1) The operator shall have a lien upon the timber passing through or over the works or improvements for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber.

Seizure of timber for tolls.

(2) If the tolls are not paid any justice of the peace having jurisdiction within or adjoining the locality in which the works are situate, upon the oath of the operator or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of the timber or so much of it as he may deem sufficient to satisfy the tolls.

Warrant to seize and proceedings thereon.

(3) The warrant may be directed to any constable or to any person sworn as a special constable for that purpose at the discretion of the justice, and it shall authorize the person to whom it is directed, if the tolls are not paid within 14 days from the date of the warrant, to sell the timber subject to any lien of the Crown for dues, and out of the proceeds to pay the tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner.

When warrant not to be issued.

(4) A warrant shall not be issued after the expiration of one month from the time of the passage of the timber through or over any of the works. R.S.O. 1937, c. 45, s. 57.

Rules by operator.

60.—(1) The operator may make rules for regulating the safe and orderly floating of timber over or through the works; but no such rules shall have any force or effect until approved by the Minister who may alter or amend them before giving

his approval, and the Minister may revoke and cancel any rules so made and approved, and from time to time approve of new rules which the operator may make.

(2) Any person who resists or impedes the operator or any Penalty. of his servants in the floating of timber through or over any such works, or in carrying out any such rules or resists him or his servants who may require access to any timber to ascertain the just tolls thereon, or in any way molests him or his servants in the exercise of any rights conferred upon them by this Part, shall on summary conviction be liable to a penalty of not less than \$1 and not more than \$10.

(3) In any prosecution under this section the summons Service of summons. may be served either personally or by leaving a copy of it at the usual place of abode of the person named in it or with any adult person belonging to the raft to which the person named is attached.

(4) The penalties when collected shall be paid to the operator for his own use. Right to penalty. R.S.O. 1937, c. 45, s. 58.

PART VI

DRIVING OF TIMBER

61. Any person putting or causing to be put timber into any water for the purpose of floating it in, upon or down such water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of the timber and clear the timber from the banks and shores of such water with reasonable dispatch, and shall run and drive the timber so as not unnecessarily to delay or hinder the removal, floating, running or driving of other timber or unnecessarily to obstruct the floating or navigation of such water. Duty of persons floating timber not to obstruct navigation. R.S.O. 1937, c. 45, s. 59.

62. If any person neglects to comply with section 61 it shall be lawful for any other person desiring to float, run or drive timber in, upon or down such water, and whose timber would be obstructed by such jams, to cause them to be broken and the timber to be cleared from the banks and shores of such water, and to be floated, run and driven in, upon or down the same. Right of other persons obstructed to clear. R.S.O. 1937, c. 45, s. 60.

63.—(1) The person who causes such jams to be broken or timber to be cleared, floated, run or driven, pursuant to section 62, shall do the same with reasonable economy and dispatch, and shall take reasonable care not to leave timber Duty and lien of persons clearing obstruction.

on the banks or shores, and shall have a lien upon the timber in the jam or upon the timber so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driving, booming and keeping possession of such timber, and may take and keep possession of the same or so much thereof as may be reasonably necessary to satisfy the amount of such charges and expenses pending the determination thereof by arbitration.

Idem.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such charges and expenses possession of the timber shall be given up. R.S.O. 1937, c. 45, s. 61.

Provision when timber of several owners cannot conveniently be separated.

64. When timber of any person upon or in any water or the banks or shores of such water are so intermixed with timber of another person, that the same cannot be conveniently separated for the purpose of being floated in, upon or down such water, the several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to break jams of such intermixed timber, and to clear the same from the banks and shores of such water with reasonable dispatch, and to float, run and drive the same in, upon or down such water, and the costs and expenses thereof shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration. R.S.O. 1937, c. 45, s. 62.

Provision when owner of any portion of timber is in default.

65. If any person neglects to comply with section 64 it shall be lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency and break jams of such intermixed timber and to clear the same from the banks and shores of such water, and to float, run and drive all such intermixed timber in, upon or down such water. R.S.O. 1937, c. 45, s. 63.

Duty and lien of person supplying deficiency.

66.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed timber to be cleared, floated, run or driven, pursuant to section 65, shall do the same with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or

shores, and shall have a lien upon the timber owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming, and keeping possession of such intermixed timber, and may take and keep possession of such timber or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of such charges and expenses pending the determination thereof by arbitration.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place. Duty of holder.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the timber shall be given up. Notifying owner. R.S.O. 1937, c. 45, s. 64.

67. Where timber of any person upon or in any water or the banks or shores of such water is intermixed with timber of another person any of the persons whose timber is intermixed may at any time during the drive require his timber to be separated from the other timber at some suitable and convenient place, and after such separation he shall secure the same at his own cost and expense in such manner as to allow free passage for such other timber; but when any timber reaches its place of original destination, if known, so intermixed the same shall be there separated from the other timber, and after such separation each owner shall secure the same at his own cost and expense. Right of owner to separation of timber. R.S.O. 1937, c. 45, s. 65.

68. The several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to make the separation and the cost and expense of such separation shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration. Expenses of separation to be shared. R.S.O. 1937, c. 45, s. 66.

69.—(1) If any person neglects to comply with section 68 it shall be lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency, and the timber owned or controlled by the person guilty of such neglect shall be subject to a lien in favour of the person supplying the deficiency for a fair proportion of When owner does not provide for his share of work.

the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such timber or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending determination of the amount by arbitration.

Duty of holder.

(2) The person taking possession of timber under this section shall use all reasonable care not to take such timber beyond the place of its original destination, if known, but may securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the timber shall be given up. R.S.O. 1937, c. 45, s. 67.

Form of security.

70. The security referred to in sections 63, 66 and 69 may be by bond (Form 1) or by deposit of money, or in such other way as the parties may agree upon. R.S.O. 1937, c. 45, s. 68.

Damages when timber wrongfully detained.

71. If it is determined by arbitration that any person acting under the assumed authority of this Part has without just cause taken possession of or detained or caused to be taken possession of or detained timber of another person, or has after offer of security which the arbitrator may think should have been accepted, detained such timber, or has through want of reasonable care left timber of another person on the banks or shores of any lake or river, or has taken timber of another person beyond the place of its original destination contrary to sections 63, 66 and 69, such first-mentioned person shall pay to such last-mentioned person such damages as the arbitrator may determine. R.S.O. 1937, c. 45, s. 69.

Lien under ss. 63, 66 and 69, subject to lien for tolls.

72. The lien given by sections 63, 66 and 69 shall be subject to the lien, if any, of any person for tolls for the use of any works or improvements made use of in running or driving timber. R.S.O. 1937, c. 45, s. 70.

Rights of Crown not affected.

73. Nothing in this Part shall affect the lien or rights of the Crown upon or in respect of any timber. R.S.O. 1937, c. 45, s. 71.

Arbltration.

74. All claims, disputes and differences arising from any act or omission under this Part or by reason of failure to perform any duty or obligation imposed by this Part shall be

determined by arbitration and not by action. R.S.O. 1937, c. 45, s. 72.

75. The person claiming that another person has not complied with this Part, or claiming payment of any charges or expenses under this Part, or claiming a lien upon any timber, or claiming damages under section 71, shall give to such other person notice in writing stating the substance and amount of the claims made. R.S.O. 1937, c. 45, s. 73. Notice of claim.

76. The person on whom a claim is made, at any time before the arbitration is entered upon or with leave of the arbitrator during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Part which such person may have against the claimant, and such counterclaim, unless barred under section 79 shall be determined in the arbitration. R.S.O. 1937, c. 45, s. 74. Counter-claim.

77.—(1) The person having a lien upon timber by virtue of this Part may with the approval of the arbitrator sell the timber or a sufficient part thereof in order to realize the amount of the lien, and of the costs, charges and expenses connected with the sale. Sale by person having lien

(2) The arbitrator shall determine either by the award or by a separate document the time, place and manner of the sale, and may from time to time give directions in writing respecting the sale, and the realization of the lien and of the costs, charges and expenses connected therewith. R.S.O. 1937, c. 45, s. 75. Direction by arbitrator.

78. The award and directions in writing of the arbitrator shall be final and binding and shall not be subject to appeal. R.S.O. 1937, c. 45, s. 76. Finality of award.

79.—(1) All claims arising under this Part shall be made within one year after the same have arisen otherwise they shall be barred; but in the event of such claims arising between the same parties in two successive seasons the same shall be so made within one year after the last of such claims has arisen. Limitation of time for making claims.

(2) Where any claim is submitted to arbitration and a counterclaim is set up such counterclaim shall be deemed to have been brought at the date of the service of the claim. R.S.O. 1937, c. 45, s. 77. Counter-claim.

Exemption
of territory
from
operation
of Part.

80. The Lieutenant-Governor in Council may from time to time declare that any part of Ontario or any water therein shall, until further declaration, be exempt from the operation of this Part, and thereupon the same shall be exempt accordingly. 1946, c. 89, s. 26 (6).

Bringing
exempted
territory
again under
Part.

81. Any part of Ontario or any water therein exempted by declaration from the operation of this Part may, by declaration, be again brought within its operation until further declaration and so on from time to time. 1946, c. 89, s. 26 (7).

PART VII

WATER PRIVILEGES

Application.

82. This Part shall be subject to the provisions of Parts I and II. R.S.O. 1937, c. 45, s. 80.

Interpre-
tation.

83. In this Part, "occupied water privilege" means a mill privilege, or water power, which has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. R.S.O. 1937, c. 45, s. 81.

Protection
of occupied
water
privilege.

84. Subject to section 89, an occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Part without the consent of the owner. R.S.O. 1937, c. 45, s. 82.

Right of
owner of
water
privilege to
enter on and
survey lands.

85.—(1) A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending the area thereof, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work which he may require in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, shall have the right to enter upon any land which he may deem necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for the actual damage done.

(2) If, upon an application to a judge of the county or district court, as hereinafter provided, such person obtains authority he may take, acquire, hold and use such portions of the land so examined or such rights over or in respect thereof as the judge may deem necessary for the completion, improvement or maintenance of the water privilege and works in connection therewith.

Acquisition
of lands
for water
privilege.

(3) The building of a transmission line for the transmission of electrical power or energy generated by an occupied water privilege shall be deemed to be a use or improvement of a water privilege within the meaning of this section. R.S.O. 1937, c. 45, s. 83.

Trans-
mission line.

86.—(1) A person desiring to exercise the powers herein- before mentioned, or any of them, shall cause,

Proceedings.

(a) surveys and levels to be made and taken of the land sought to be taken, used or otherwise affected, and a map or plan thereof to be prepared;

(b) a statement to be prepared giving,

(i) a general description of the land to be taken and of the powers intended to be exercised with regard to any land, describing it,

(ii) the names of the owners and occupiers of the land, so far as they can be ascertained, and

(iii) everything necessary for the right understanding of the map or plan, including a registrar's certified abstract of the titles to all the land to be affected by the application;

(c) the map or plan and the statement to be filed in the office of the clerk of the county or district court of the county or district wherein the land or part thereof is situate.

(2) He may then apply to the judge of such county or district court for an order empowering him to exercise the powers or such of them as he may desire. R.S.O. 1937, c. 45, s. 84.

Application
to judge.

87. In addition to any other notice which the judge may direct to be given, public notice of the application stating the time and place when and where the same is to be heard, shall be inserted for such period as the judge may direct in a newspaper published in the county or district or one of the counties or districts where the proposed works are to be constructed or any of the land affected is situate. R.S.O. 1937, c. 45, s. 85.

Public notice
of applica-
tion.

Order, when deemed proper and just.

88. If the judge is of the opinion that the allowance of the application in whole or in part is in the public interest and is proper and just under all the circumstances of the case he may make an order empowering the applicant to exercise such of the powers as the judge may deem expedient, for such time and on such terms and conditions as he may determine, and the land affected shall be described in the order. R.S.O. 1937, c. 45, s. 86.

Order as to privilege not in actual use.

89. Where evidence is produced which satisfies the judge that the owner of a water privilege which has been but is not then in use for any of the purposes mentioned in subsection 1 of section 85 is holding the same with the intention of again using it for mechanical, manufacturing, milling or hydraulic purposes the judge may make an order fixing the time within which the necessary works for the actual use of such water privilege shall be constructed and actually used, and, unless such evidence is produced or the terms of such order are complied with, the water privilege shall not be deemed to be an occupied water privilege within the meaning of this Part. R.S.O. 1937, c. 45, s. 87.

Case of two or more claimants.

90. Where two or more persons claim to exercise the powers conferred by this Part in respect of the same water privilege, or any part thereof, the judge may impose such terms as he may deem just, and may also limit a time within which the person whose application he allows shall construct the necessary works and actually use such water privilege. R.S.O. 1937, c. 45, s. 88.

Limit of size of ponds.

91. No pond shall be authorized to be made or enlarged so as to exceed 20 acres in extent unless the judge for special reasons otherwise directs. R.S.O. 1937, c. 45, s. 89.

What to be stated in order.

92.—(1) The judge shall in the order state the height to which the water may be raised and fix the extent of the pond.

Compensation for injury.

(2) The judge shall also assess the sum to be paid as the value of the land to be taken or used or of the powers to be exercised, and the damages, if any, to be paid as compensation by the applicant for any injury which may be occasioned by the proposed works, and may make such order as to costs as he may deem just.

Scale and taxation.

(3) The costs shall be the same as in ordinary proceedings in the county court and shall be taxed by the clerk. R.S.O. 1937, c. 45, s. 90.

93.—(1) The sums so assessed and the costs shall be paid to the persons entitled thereto or into the Supreme Court as the judge may direct, before the powers or any of them are exercised and within 60 days after the order is made. Payment of amount awarded.

(2) If the same are not so paid the order may be enforced under *The Judges' Orders Enforcement Act*, or, at the option of any of the persons entitled to receive a sum so assessed, may, on application to the judge, be set aside and vacated as to him, and in such case the judge may make such order as to the costs of the proceedings and of the application as he may deem just. R.S.O. 1937, c. 45, s. 91. Enforcing or setting aside order. Rev. Stat., c. 189.

94. Upon the payment of the sums assessed and costs the applicant shall be entitled to a conveyance, to be settled by the judge in case of a dispute, of the land or rights mentioned in the order in respect of which payment is so made, and shall be further entitled to have and exercise such of the powers mentioned in section 85 as he is authorized by the order to exercise. R.S.O. 1937, c. 45, s. 92. Conveyance of land.

95. For the purpose of registration the order shall be deemed a judgment of the court to which the judge belongs. R.S.O. 1937, c. 45, s. 93. Registration of judge's order.

96. The Judge shall have all the powers possessed by him or by a county or district court in an action. R.S.O. 1937, c. 45, s. 94. Judge's powers.

97. The Judge shall be entitled for his services to the like fees as are allowed to arbitrators. R.S.O. 1937, c. 45, s. 95. Judge's fees.

98.—(1) By leave of a judge of the Supreme Court an appeal shall lie from the order of the judge on any application under this Part to the Court of Appeal. Appeal from county judge.

(2) On such appeal the decision of the judge upon questions of fact and all other questions shall be open to review. Review of decision.

(3) The application for leave to appeal shall be made within 10 days from the day on which the order appealed from is made, or within such further time as a judge of the Supreme Court may allow. Application for leave to appeal.

(4) The judge to whom the application is made shall determine the time within which the appeal shall be set down to be heard, the persons upon whom notice of the appeal shall be served and all such other matters as he may deem Terms.

necessary for the most speedy and least expensive determination of the appeal.

Effect of non-compliance with conditions of appeal.

(5) If the appeal is not set down to be heard within the time limited, or if any other condition imposed is not complied with, the appeal shall, unless otherwise ordered by a judge of the Supreme Court, be deemed to have been abandoned.

Practice on appeal.

(6) The practice and procedure upon the appeal, except so far as is herein, or by the judge to whom the application for leave is made, otherwise provided, shall be the same as upon an appeal from a county court. R.S.O. 1937, c. 45, s. 96.

FORM 1

(Section 70)

Know all men by these presents that we (here insert names of obligors, being the owner of the timber and at least one sufficient surety or, if the signature of the owner cannot be obtained without unreasonable delay, then being two sureties)..... are held and firmly bound unto A. B. (here insert the name of the person claiming the lien) in the penal sum of (double the amount of the claim) \$....., to be paid to the said A. B., his executors, administrators and assigns, for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals, and signed by us this....., 19.....

Whereas the said A. B., claiming to act under the authority of Part VI of *The Lakes and Rivers Improvement Act* has taken possession of certain (timber) owned or controlled by.....and claims a lien thereon for the sum of \$....., under the provisions of section 63, 66 or 69 (as the case may be) of the said Act.

And whereas this bond is given as security for payment to the said A. B., of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration which may become payable to him.

Now the condition of the above obligation is such that if the said....., his executors or administrators to pay to the said A. B., his executors, administrators or assigns, such sum as may be determined by arbitration pursuant to the said Act, to be payable to the said A. B., his executors, administrators or assigns for charges and expenses, and also such sum as may become payable to the said A. B., his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

C. D. (SEAL)

F. G. (SEAL)

Signed, sealed and delivered in the presence of X.Y. }