1914

c 130 Rivers and Streams Act

Ontario
CHAPTER 130.

An Act for protecting the Public Interest in Rivers, Streams and Creeks, and respecting Dams and other Works thereon.

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

PRELIMINARY.

1. This Act may be cited as The Rivers and Streams Act. 3-4 Geo. V. c. 26, s. 1.

2. In this Act,

(a) "Regulations" shall mean regulations made by the Lieutenant-Governor in Council under the authority of this Act;

(b) "River" shall include creek and stream;

(c) "Timber" shall include saw logs and timber of every kind and masts, staves, deals, boards and other sawed or manufactured lumber. 3-4 Geo. V. c. 26, s. 2.

PUBLIC RIGHTS IN RIVERS.

3.—(1) All persons shall have the right to and may, subject to the provisions of this Act, during the spring, summer and autumn freshets, float and transmit timber, rafts and crafts down all rivers.

(2) No person shall, by felling trees or placing any other obstruction in or across any river, prevent the passage of timber, rafts or crafts.

(3) If it is necessary to remove any obstruction from such river, or to construct any dam, apron, slide, gate, lock, boom or other work therein or thereon in order to facilitate the floating and transmitting of timber, rafts or crafts down the river, the person requiring so to float and transmit the same may remove such obstruction, and may construct such dam, apron, slide, gate, lock, boom or other work, doing no unnecessary damage to the river or to its banks.
(4) All persons driving timber, rafts or crafts down a river shall have the right to go along the banks of the river for the purpose of assisting and to assist the passage of timber, rafts or crafts by all means usual with lumbermen, doing no unnecessary damage to the banks of the river. 3-4 Geo. V. c. 26, s. 3.

4. Where there is a convenient apron, slide, gate, lock or opening in any dam or other structure in or upon the bed of or across a river for the passage of timber, rafts and crafts authorized to be floated down the river no person using the river in manner and for the purposes mentioned in section 3 shall alter, injure or destroy such dam or other structure or do any unnecessary damage to it or to the banks of the river. 3-4 Geo. V. c. 26, s. 4.

OBSTRUCTIONS IN RIVERS.

5.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells any tree into any river down which timber is usually floated or transmitted or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn by the rising of the water, without lopping off the branches of such tree and cutting up the trunk into lengths of not more than eighteen feet before the tree is allowed to be floated or cast into the river shall for every such offence incur a penalty not exceeding $10.

(2) Subsection 1 shall not apply to timber prepared for transportation to market. 3-4 Geo. V. c. 26, s. 5.

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

(2) For every contravention of subsection 1 the person offending shall incur a penalty not exceeding $20 and not less than twenty cents for each day during which the obstruction continues, over and above all damages arising therefrom.

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

(4) Where damages are so assessed the same shall be paid to the person aggrieved.
(5) This section shall not apply to the River St. Lawrence or the River Ottawa.

(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. 3-4 Geo. V. c. 26, s. 6.

7. Section 6 shall not apply to a dam, weir or bridge erected in, across or over a river, or to anything done bona fide in or for erecting the same, or to any tree cut down or felled across such river for the purpose of being used as a bridge from one side of it to the other, if such dam, weir, bridge or tree does not impede the flow of water or the passing of timber, rafts and crafts. 3-4 Geo. V. c. 26, s. 7.

REMOVAL OF WORKS BY ORDER OF MINISTER OF PUBLIC WORKS.

8.—(1) Subject to compensation being made as provided by The Ontario Public Works Act the Minister of Public Works may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any work in any river, to whomsoever belonging other than to Canada, the removal of which in the judgment of the Minister is necessary or expedient in the public interests, and the provisions of that Act shall apply to the powers conferred by this section.

(2) Nothing in this section shall apply to any land or to any obstruction on any land belonging to Canada, or to any work or materials ordered or approved by the Lieutenant-Governor in Council, or where municipal authority exists to remove the obstruction.

(3) In this section "work" shall mean and include any rocks, stones, gravel, slab or timber jam, dam, or part of any dam, rubbish of any kind or other obstruction. 3-4 Geo. V. c. 26, s. 8.

TOLLS.

9. A person who has constructed in or upon a river, which was not navigable or floatable before the same were constructed, any dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating or transmission of timber, rafts and crafts down such river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the river, shall not have the exclusive right to the use of the river or to the works or improvements, but all persons, subject to the payment to the person who constructed the works or made the improvements of rea-
sonable tolls, shall have the right during the spring, summer and autumn freshets to float and transmit timber, rafts and crafts down such river and through and over such works and improvements, doing no unnecessary damage to them or to the banks of the river. 3-4 Geo. V. c. 26, s. 9.

10. Sections 3 to 14 and all the rights conferred by them shall extend and apply to all works and improvements made, whether before or after the passing of this Act, on any river, whether the bed of the river or the land through which it runs has been granted by the Crown or not, and, if granted by the Crown, shall be binding upon the grantees, their heirs, executors, administrators and assigns. 3-4 Geo. V. c. 26, s. 10.

11.—(1) A Judge of the County or District Court of the county or district in which the works or improvements are situate shall, upon the application of the owner thereof or of any person who desires to use the same, fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge, and may from time to time vary such amounts, except where the tolls are fixed by charter of incorporation of the Government of Canada, or by any Act of the Parliament of Canada or of this Legislature.

(2) 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. 3-4 Geo. V. c. 26, s. 11.

12.—(1) Any person interested who is dissatisfied with the order of the Judge may within fifteen days from the date thereof appeal therefrom to a Divisional Court.

(2) A Judge of the Appellate Division may fix and determine the time within which the appeal is to be set down to be heard, the security, if any, to be given by the appellant, and the persons upon whom notice of the appeal shall be served, the manner of service, and all such other matters as he may deem necessary for the most speedy and least expensive determination of the appeal, and except in so far as any of such matters have not been otherwise fixed and determined the practice and procedure relating to the appeal shall be that applicable to appeals from a County Court. 3-4 Geo. V. c. 26, s. 12.

13.—(1) A person entitled to tolls under this Act shall have a lien upon the timber passing through or over such works or improvements for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber.
(2) If the tolls are not paid any justice of the peace having jurisdiction within or adjoining the locality in which the works or improvements are situate, upon the oath of the owner of the works or improvements or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of such timber or so much of it as he may deem sufficient to satisfy the tolls.

(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 such tolls, together with the cost of the warrant and sale, rendering the surplus on demand to the owner.

(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 or improvements. 3-4 Geo. V. c. 26, s. 13.

14. Every person entitled to tolls under this Act may make rules for regulating the safe and orderly transmission of timber, rafts and crafts over or through the works or improvements; but no such rules shall have any force or effect until approved by the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may revoke and cancel any rules so made and approved, and from time to time approve of new rules which the person entitled to tolls may make. 3-4 Geo. V. c. 26, s. 14.

15. Nothing in sections 3 to 14 shall affect the powers or rights of any company formed under The Timber Slide Companies' Act, or mill-dams, or the right to erect and maintain mill-dams on rivers, or any other law conferring rights in mill-dams. 3-4 Geo. V. c. 26, s. 15.

SPECIAL PROVISIONS AS TO RIVER OTTAWA AND ITS TRIBUTARIES.

16.—(1) Where in an action or other proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a saw-mill situate on or near the River Ottawa or any of its tributaries for any 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 or depositing of any sawdust or other mill refuse from the saw-mill or from it and other saw mills into that river or its tributaries, the Court or Judge may refuse to grant an injunction if it is proved that having regard to all the circumstances, and taking into consideration the importance of the lumber trade to the locality in which the injury, damage or
interference takes place, and the benefit and advantage, direct and consequential, which such trade confers on that locality and on the inhabitants of it, 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 the Court or Judge may

(a) 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;

(b) in lieu of granting an injunction, direct the person against whom the injunction is claimed to 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.

(2) Nothing in subsection 1 shall affect any right of the person claiming the injunction to damages against the owner or occupier of the saw mill for any such injury, damage or interference.

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

(4) This section shall apply whether the injury, damage or interference is or is not a continuing one, and whether the person claiming the injunction is a plaintiff in the action or other proceeding, or is a defendant proceeding by way of counter-claim.

(5) This section shall not apply where, in the opinion of the Court or Judge, the injury, damage or interference complained of is of such a nature that it cannot be adequately compensated for by the awarding of damages. 3-4 Geo. V. c. 26, s. 16.

DAMS.

17.—(1) The Lieutenant-Governor in Council may make regulations as to the 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, and such other regulations as to the mode of constructing dams, the provisions to be made in or in connection with them for the passage of timber, rafts and crafts, and otherwise as he may deem necessary to prevent the reasonable use of the river for the passage of timber, rafts and crafts being impeded or interfered with.
(2) The provisions of sections 19 to 23 as to the width of aprons and the mode of constructing them may be abrogated or varied by the Regulations. 3-4 Geo. V. c. 26, s. 17.

18. Where a dam is now or shall hereafter be erected on or across any river down which timber is usually brought such dam shall at all times be provided with a slide or apron for the passage of the timber, rafts and crafts of such description and dimensions as shall be prescribed by the Regulations. 3-4 Geo. V. c. 26, s. 18.

19. Subject to sections 22 and 23, unless and until otherwise provided by the Regulations, every such apron shall be not less than eighteen feet wide by an inclined plane of twenty-five feet to a perpendicular of six feet, and so in proportion to the height where the width of the river will admit of it, and if the river or the dam is less than fifteen feet wide the whole dam shall be aproned in like manner with the same inclined plane. 3-4 Geo. V. c. 26, s. 19.

20. Every such apron shall be constructed on the main channel of the river, and its highest part shall be one foot below the level of the dam at the place where it joins the dam. 3-4 Geo. V. c. 26, s. 20.

21.—(1) 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 river on which the dam is erected.

(2) The owner or occupier of the dam may construct a waste-gate or put up brackets and slash boards in, upon and across the apron for the purpose of preventing the unnecessary waste of water, and may keep the waste-gate closed when no person is ready and requires to pass or float any timber, rafts or crafts over the apron, and shall not be bound to remove the brackets or slash boards until the timber, rafts or crafts required to be passed or floated are ready to pass and have for that purpose gained the main channel of the river. 3-4 Geo. V. c. 26, s. 21.

22.—(1) On the River Moira and its tributaries the apron shall be at least thirty-two feet in width if the dam is of that or of a greater width, and if it is not then of the width of the dam and at least five feet in length for every one foot rise of the dam.

(2) The dam where the apron is constructed shall be at least two feet lower than the top of the dam at any other place unless it occupies the whole width of the dam, but if the rise of the dam is less than four feet the height of it at the place where the apron is constructed shall not exceed one-half its height at any other place. 3-4 Geo. V. c. 26, s. 22.
Sec. 23. On the River Otonabee the apron shall not be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular height of one foot, and so in proportion to the height of the dam, and side pieces at least one foot in height shall be fixed on the outside of the apron to confine the water and prevent the timber from falling off at the sides. 3-4 Geo. V. c. 26, s. 23.

24. The Lieutenant-Governor in Council may, as to any dam, reduce the width of the apron and the specifications as to the inclined plane prescribed by sections 19 to 23. 3-4 Geo. V. c. 26, s. 24.

25.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair an apron thereto in accordance with the provisions of sections 19 to 23, or of the Regulations, shall incur a penalty of $20 for every day on which the default occurs or during which it continues.

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 in conformity with this Act and the Regulations as soon as the state of the river safely permits. 3-4 Geo. V. c. 26, s. 25.

26. 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. 3-4 Geo. V. c. 26, s. 26.

REGULATION OF USE OF WATER.

27. Where a dam, weir or other structure or work for the creation, development or improvement of a water power on any river down which any timber is floated or for the utilization of such water power has been heretofore or shall hereafter be constructed the Lieutenant-Governor in Council may make such regulations 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, weir, structure or work by the owners and occupiers of it, or of any work operated wholly or partly by the power so created, developed or improved and by persons using the river for the purpose of floating or transmitting timber. 3-4 Geo. V. c. 26, s. 27.
28. The Lieutenant-Governor in Council may make such regulations as he may deem necessary for the safe and orderly transmission of timber, rafts and crafts down rivers, and for preventing the use of the river for the purpose of navigation by vessels and boats being unnecessarily impeded or interfered with by the timber, rafts and crafts. 3-4 Geo. V. c. 26, s. 28.

29. Regulations made by the Lieutenant-Governor in Council under the authority of this Act may

(a) prescribe penalties for the contravention of them;

(b) be general in their application or be applicable to any particular river or to any particular dam. 3-4 Geo. V. c. 26, s. 29.

RECOVERY OF PENALTIES.

30. The penalties imposed by or under the authority of this Act or of the Regulations shall be recoverable under The Ontario Summary convictions Act. 3-4 Geo. V. c. 26, s. 30.

31. All Regulations made under the authority of this Act shall be laid before the Assembly forthwith if the Assembly is then in session, and if the Assembly is not in session within the first fifteen days after the opening of the next session thereafter. 3-4 Geo. V. c. 26, s. 31.