

CANADA.

“ 1. That by the 18th Clause of “ The British North America Act, 1867,” it is provided as follows :—

“ The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.”

“ 2. That subsequently, on the 22nd May, 1868, the Canadian Parliament, by the Act 31st Victoria, chap. 23, in pursuance of the authority so given by the Union Act, defined the privileges of the Senate and House of Commons respectively. The clause doing so is as follows :—

“ The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy, and exercise such and the like privileges, immunities, and powers, as at the passing of ‘ The British North America Act, 1867,’ were held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof, so far as the same are consistent with and not repugnant to the said Act.

“ At this time neither the British House of Commons, nor any Committee thereof, had power of examining witnesses on oath, except in certain specified cases, such as in Private Bills. That power was only conferred on the British House of Commons and the Committees in 1871, by the Act 34 and 35 Vict., chap. 83.

“ The Bill now referred to the undersigned seeks to confer this power upon any Committee of the Senate or House of Commons, when either House shall have resolved that it is desirable that witnesses should be examined upon oath. The empowering section of the Bill is as follows :—

“ ‘ Whenever any witness or witnesses is or are to be examined by any Committee of the Senate or House of Commons, and the Senate or House of Commons shall have resolved that it is desirable that such witness or witnesses should be examined upon oath, such witness or witnesses shall be examined upon oath or affirmation, where affirmation is allowed by law.’

“ The question has been raised whether it is competent for the Parliament of Canada to confer this power on a Committee of the Senate or House of Commons here, as it is a power which was not possessed or exercised by the British House of Commons at the time of the passing of ‘ The British North America Act, 1867.’

“ The undersigned has come to the conclusion, although not without doubt, that this Bill is not within the competency or jurisdiction of the Canadian Parliament, and that the attention of Her Majesty’s Government should be called to its provisions, and to the doubt that exists with respect to its validity.

“ All which is respectfully submitted.

(Signed) “ JOHN A. MACDONALD.”

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Enclosure 3 in No. 1.

“ OPINION IN REFERENCE TO THE MEANING OF THE 18TH CLAUSE OF THE BRITISH NORTH AMERICA ACT OF 1867.

“ This clause is as follows :—

“ The privileges, immunities, and powers, to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.”

“ A Bill having been introduced into the Dominion House of Commons, in the present Session, intituled ‘ An Act to provide for the Examination of Witnesses on Oath by ‘ Committees of the Senate and House of Commons in certain cases,’ a question has been raised as to whether the Dominion Parliament were competent to pass this Bill in view of the restrictions imposed by the 18th clause of the B. N. A. Act aforesaid.

“ In my opinion that clause was intended to restrain the claims of either House to