

“ 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
 “ indefinite privileges and immunities, by providing that such privileges shall never exceed
 “ those enjoyed by the Imperial House of Commons, at a given date. The privileges
 “ and immunities herein referred to are those that might reasonably or unreasonably be
 “ claimed as inherent in, or necessarily attaching to the Houses of the Canadian
 “ Parliament, pursuant to the maxim that ‘all things necessary pass as incident.’
 “ By limiting such privileges and powers to those possessed by the Imperial House of
 “ Commons in 1867, it prevents, on the one hand, an undue encroachment or extension
 “ of privilege, and on the other hand secures to the two Houses and the Members
 “ thereof, respectively, the privileges, immunities and powers appropriate to them as
 “ component parts of the Canadian Parliament.

“ It has been urged that the Act to authorize the examination of witnesses on oath
 “ by Committees of the Senate and House of Commons of Canada, is an extension of
 “ their privileges, beyond those sanctioned by the B. N. A. Act, inasmuch as Select
 “ Committees of the Imperial House of Commons (not being Private Bill Committees)
 “ did not possess such power in 1867, or until, by the Imperial ‘Parliamentary
 “ Witness Oaths Act of 1871,’ such power was for the first time conferred upon them.

“ It is to be observed, however, that the power so conferred upon Committees by the
 “ English House of Commons was not claimed as a ‘privilege’ inherent in that Body.
 “ It was merely a power conferred by Statute, to facilitate legislative inquiries, similar to
 “ that which has been repeatedly conferred upon Statutory Commissions; and in being
 “ so conferred it did not trench upon any prerogative of the Crown, or enlarge the
 “ constitutional rights of the House of Commons.

“ The Dominion Parliament were therefore clearly competent, in my judgment, to
 “ confer a similar power upon Committees of the Senate and House of Commons,
 “ pursuant to the authority conveyed to that Parliament by the 31st clause of the
 “ British North America Act, ‘to make laws for the peace, order, and good
 “ government of Canada.’

“ In a word, the restrictions contained in the 18th clause of the aforesaid Act, are
 “ restrictions upon claims that might be urged on behalf of the two Houses of the
 “ Canadian Parliament, or the Members thereof, respectively, to *inherent or excessive*
 “ *privileges*, and are not intended to prevent the exercise of *legislative powers* by the
 “ whole Parliament, provided that the same are exercised within appropriate con-
 “ stitutional limits.

“ (Signed) ALPHEUS TODD.”

“ Library of Parliament,
 1st May, 1873.”

TELEGRAM RECEIVED IN OTTAWA, MAY 29TH, 1873.

The Earl of Kimberley to Earl of Dufferin.

“ Your despatch dated the 3rd May, with its enclosures has been referred to the Law
 “ Officers of the Crown, who report that the Oaths Act is *ultra vires*.”