

IMPERIAL TRUSTS COMPANY.

House resolved itself into Committee on Bill (No. 15) to incorporate the Imperial Trusts Company of Canada.—(Mr. Denison.)

(In the Committee.)

On section 4,

Mr. WELDON (St. John). There are two points in this Bill to which I desire to draw the attention of the Minister of Justice. I doubt whether we have power to pass such a Bill, which enables a company to exercise the functions which this company might do, as trustees of estates in the different Provinces, where the company might not be under the control of the courts of the Provinces. For instance, this company may have a head office in Toronto, and do business in New Brunswick and Nova Scotia, and yet be beyond the control of the courts of those Provinces. It seems to me the matter should be left to the Provincial Legislatures to be dealt with. Then there is another objection, that is, the propriety of incorporating a company of this kind which really deals with local matters within each Province, because there are very few matters which are interprovincial, with the exception, perhaps, of a railway or steamboat company which might have interprovincial lines. There is nothing under this Act that I can see which would not be of a provincial or local nature. It would be an unwise policy on the part of the Dominion to pass a Bill giving a company of this nature powers over all the different Provinces. That is a matter which should be fairly left to the different Legislatures to deal with.

Mr. THOMPSON. My attention was turned to that point and I came to the conclusion that the Bill was one within the power of this Parliament to pass. My reason for forming this opinion was this: The Bill is one to incorporate a company to do business in more than one Province, in fact in all the Provinces of Canada. It is true that if the Bill is of that description, and the company's transactions are of that description, or if its operations were confined to any one Province, it would not come within our power to pass it; but inasmuch as the company seek to do business in all the Provinces of Canada, it is not felt that any Provincial Legislature could pass it, and therefore this Parliament alone can pass it. I think the principle is clear—we have power to legislate over all those matters which are not assigned exclusively to the Local Legislatures. We have incorporated—and this observation I think will answer the hon. gentleman's question, both as to the constitutionality of the Bill and the propriety of passing it—we have passed two accident corporations of precisely the same character, and for precisely the same purposes. The hon. gentleman will remember that we have in almost innumerable cases incorporated companies to do fire, life, marine and accident insurance business in the different Provinces of Canada, and it is only because their operations are extended into more than one Province that we can empower a company to do business of that kind, which, after all, is only authorising them as a company to engage in private contracts. The point was raised in one case which the hon. gentleman will remember, the case of Dobie, in the Privy Council. It was there decided that the question of territoriality, if I may so call it, that is, the extent within which the company was to operate, is to be one test of its constitutionality. I take it, as I said at the outset, that inasmuch as this Bill provides to incorporate a company to do business in more than one Province of Canada, it is one which this Parliament can pass. Of course I appreciate the weight of what the hon. gentleman has said as to the propriety of creating a company to undertake the business of trustees in the different Provinces of Canada, and the danger of doing so, in

view of the fact that the company may not have a head office, or even a principal agency, in the different Provinces of Canada. It is not exactly the time to consider the propriety of a policy of that kind, when we have already incorporated two companies who are now actively engaged in that business, as I am informed; and if we decide that we should not incorporate this company, we are simply deciding that it is not wise to incorporate three companies, but it has been wise to incorporate two. If the company acquire any right whatever under this Bill to assume the office of trustee, of its own motion, and by its own authority, I certainly, as one member of Parliament, would oppose it strenuously. But the company can only exercise the office of trustee, or executor, or administrator, on being appointed by a legal tribunal, it can only be a trustee by the action of one of the superior courts in each Province. It would be for the court to consider whether this company should be appointed a trustee or administrator, in view of the fact that its head office may not be within the Province, and in view, likewise, of the fact that it may undertake that office, if appointed to it, without giving any security. At the same time, it is well to bear in mind the other provisions of the Bill, which are in the nature of security, to those for whom the office is undertaken as trustee, namely, the provision as to the payment of capital stock, or investment of a trust fund, and the supervision which the courts are empowered to exercise over it, from time to time.

Mr. WELDON. What two companies were incorporated?

Mr. DENISON. The Union is one, which is for the whole Dominion; and there is another one, which is also a trust company, in Toronto.

Mr. DAVIES. I do not think the Minister is correctly advised.

Mr. THOMPSON. I am. We found that Act, the Union Act, was more carefully drawn than this, and we extracted from it a number of clauses which we substituted for the clauses in this Act. There are two Dominion charters at the present time.

Mr. MILLS (Bothwell). Notwithstanding the position taken by the Minister of Justice that if the Act was Provincial, it could not do business over the whole Dominion, it seems to me that no matter where the company may be incorporated, from that moment it becomes a person in law, an artificial person, it is true, but nevertheless, a person who may do business in any part of the Dominion, in fact it may do business anywhere throughout the world, wherever it may be permitted to do so. Of course it may be legislated against in a Province, but it seems to me to be a very extraordinary policy to incorporate a company with Provincial objects to carry on business over the entire Dominion. I know that rule is laid down in the case to which the hon. gentleman has referred, but it was exceedingly questionable whether that was very fully argued, and whether, if it was reconsidered, it would be followed. It is anomalous, to say the least. We know that by the last clause of Section 92 of the British North America Act everything of a local or private nature belongs to the Provinces, and those not of a private or local character belong to the Dominion. But I do not see very well, if the Provinces were to adopt the policy in regard to questions within their exclusive jurisdictions, how we could create corporations to exercise authority within that jurisdiction. At all events if it were done, it would be an extremely bad policy to adopt, and yet that is practically what we are doing here. If the rule is one that is tenable and can be maintained, the whole functions of the Local Legislature might be brought within the jurisdiction of this Parliament by creating corporations to exercise powers exclusively vested in the Local Legislatures.