

Privy Council, on more than one occasion since the Despatch of Lord Carnarvon in 1874.

32. Before referring to the decisions of that tribunal, however, he would advert to the opinion presented to Lord Carnarvon in 1872 from the two Law Officers already named. In that opinion the view is stated that the powers of Parliament are exclusive only so far as relates to the Legislatures of the provinces of which Canada is composed. This view it is not intended to controvert.

33. It has never been claimed that the powers of the Parliament of Canada are exclusive of the powers of the Parliament of Great Britain, and nobody can doubt that the Parliament of Great Britain can at any time, limitations of good faith and national honour not being considered, repeal or amend the British North America Act or exercise, in relation to Canada, its legislative power over the subjects therein mentioned. Subject to the same limitations, Her Majesty's Government can, of course, disallow any Act of the Parliament of Canada.

34. It is respectfully submitted that the Canadian Parliament except as to the control which may be exercised by the Imperial Parliament by a statute subsequent to the British North America Act, and except as to the power of disallowance, possesses unlimited power over all the subjects mentioned in the 91st section, and that it is necessary that it should do so for the well-being of Canada, and for the enjoyment of self-government by its people.

35. In the case of *Hodge v. the Queen* (9 Appeal Cases, 117), decided by the Judicial Committee of the Privy Council in 1883, the following passage declares:—

“When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow.

“Within these limits of subjects and area the local legislature is supreme and has the same authority as the Imperial Parliament or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make byelaws or resolutions as to the subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.”

36. In the case of *Harris v. Davies* (10 Appeal Cases, 279), the Judicial Committee of the Privy Council decided in 1885, that the Legislature of New South Wales under a charter not wider than the British North America Act had power to repeal a Statute of James (21 Jas I., c. 16, s. 6), and had impliedly done so by 11 Vict., c. 13, s. 1, of that Colony, which, according to its true construction, placed an action for words spoken upon the same footing as regards costs and other matters as an action for written slander.

37. In the case of *Powell v. Apollo Candle Committee* [? Co.] (Limited), (10 Appeal Cases, 282), the Judicial Committee decided in the same year, that a Colonial Legislature within the area of its powers is unrestricted. The following passage from the judgment is pertinent to the present question:—

“Two cases have come before this Board in which the powers of Colonial Legislatures have been a good deal considered, but these cases are of too late a date to have been known to the Supreme Court when their judgment was delivered. The first was the case of *Reg. v. Burah* in which the question was whether the section of an Indian Act conferring upon the Lieutenant-Governor of Bengal the power to determine whether the Act, or any part of it, should be applied to a certain district, was, or was not, *ultra vires*. In the judgment of this Board, given by the Lord Chancellor, the legislation is declared to be *intra vires*, and the Lord Chancellor lays down the general law in these terms: ‘The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it; and it can, of course, do nothing beyond the limits which circumscribe these powers.’

“But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature as those of Parliament itself. The same doctrine has been laid down in a later case of *Hodge v. The Queen* where the question arose whether the Legislature of Ontario had, or had not, the power of intrusting to a local authority, a Board of Commissioners, the power of enacting regulations with regard to their Liquor License Act of 1877, of creating offences for the breach of those regulations and