

cluding the renewals of existing licenses—a sense in which I cannot find it has ever been used, and which appears to me to be contrary to the spirit as well as the letter of the fundamental Act, chapter 23 of the Consolidated Statutes of Canada.

I cannot pretend to explain why the first section of the Act 61 Vict., Cap. 9, should have been so drawn as to be apparently applicable to future sales only, and not to past ones, but the later and entirely distinct paragraphs 2 and 4 of the same Act bring into force the order in council of 17th December, 1897, in which, as I have pointed out, there is no ambiguity, and which stand upon their own ground. To hold them applicable to new sales only, and not to renewals also, would be to strain their language for the purpose of introducing an innovation upon the long established and invariable practice of the department.

The remaining ground taken by the suppliants is that the Act 61 Vict., cap. 9, is ultra vires the Provincial Legislature, as being an encroachment upon the legislative authority reserved to the Dominion by the British North America Act.

It is declared by the 91st section of that Act that the exclusive legislative authority of the Dominion parliament extends to all matters coming within the classes of subjects here enumerated, the second of which is, "The regulation of trade and commerce," and it is further declared by that section of the Act that any matter coming within any of the classes of subjects therein enumerated shall not be deemed to come within the class of matter of a local or private nature comprised in the enumeration of the classes of subjects assigned by the 92nd section exclusively to the legislatures of provinces.

By the 92nd section, it is declared that in each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next enumerated; and the 5th of the classes of subjects then enumerated is: "The management and sale of the public lands belonging to the province, and of the timber and wood thereon."

It is proved on the part of the suppliants in support of their contention, that for many years before the passing of the Act complained of (61 Vict., cap. 9) a very large number of pine logs had been exported from Ontario, the larger proportion of which had been cut upon the public lands of the province, under licenses similar to those now in question. It is a matter which may readily be taken for granted that if the regulations in question are sustained, the export of logs cut under such licenses will be entirely stopped. It is further shown that the tariffs established in the United States from time to time with regard to the timber trade with Canada have been affected at times by the tariffs adopted by the Dominion bearing upon Canadian timber, or have been, to some extent, regulated by or been made dependent upon them. I am asked to draw from these circumstances the conclusion that the Act and regulations of which the suppliants are now complaining are a contravention of that part of the British North America Act which reserves to the Dominion Legislature the exclusive right of making laws for the "regulation of trade and commerce," and to hold that the Provincial Legislature under the guise of a regulation for the management of its timber has, in reality, attempted to interfere with the regulations of trade and commerce. In my opinion the Act and regulations complained of are clearly within the powers of the Provincial Legislature, and are not in any way an interference with the regulation of trade and commerce within the meaning of the 91st Section of the British North America Act.

In the first place, it is to be borne in mind that the Provincial Legislature in passing this Act are dealing with property belonging to the province, over which they have the fullest power of control. They are entitled to sell it or to refuse to sell it, and if they sell, they have the right, in my opinion, to impose upon the purchaser such conditions as they deem proper with regard to the destination of the timber after it is cut, including the state in which it shall be exported, just as they have the right in selling cattle from the farm at their agricultural college to stipulate that the purchaser shall not export them alive. The condition that the timber shall be sawn into lumber before exportation in the one case no doubt reduces the quantity of logs exported just as the supposed stipulation in the other case reduces the quantity of live stock exported, but in each case the matter is one purely of internal regulation and management by the province of its own property for the benefit of its own inhabitants.

The matter, I think, may be placed beyond any question by looking at it in another way. It is clear that the right to pass the Act complained of, and the regulations accompanying it, rest either in the Provincial or the Dominion Legislature,

and if the contention of the suppliants is to be adopted, it exists in that of the Dominion. Would it be possible for a moment to contend that the Dominion Legislature under their power of passing Acts for the regulation of trade and commerce, could enact that every license to cut timber upon the lands owned by the province of Ontario should contain a condition that the timber should be sawn into boards before being exported? And would not such an Act, if passed by the Dominion, be clearly an encroachment upon the exclusive right of the Provincial Legislature to pass laws for the regulation and sale of the timber on its own lands? The general limitation upon the powers of the Dominion Legislature to legislate with regard to the regulation of trade and commerce are indicated in the report of the judgment of the Privy Council in the case of the Citizens' Insurance Company of Canada vs. Parsons, 7 App. Cas. 96 at p. 113, where it was held that these powers do not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, but for the reasons I have given it appears to me that the powers exercised by the legislature of the province of Ontario which are questioned by the suppliants here are so plainly within those exclusively assigned to them that it is unnecessary to resort for guidance to any of the decided cases.

Upon the whole case I am, therefore, of opinion that the suppliants are not entitled to have their licenses renewed except upon the conditions offered by the Commissioner of Crown Lands, as set forth in the orders in council in force on 30th April, 1898, and that their petitions must be dismissed with costs.

LOSS BY FOREST FIRES.

In a book entitled "A Primer of Forestry," issued under the direction of Mr. Gifford Pinchot, the author gives an interesting sketch of historic forest fires, from which the following extracts are taken:

"When all conditions are favorable, forest fires sometimes reach gigantic proportions. A few such fires have attained historic importance. One of these is the Miramichi fire of 1825. It began its greatest destruction about 1 o'clock in the afternoon of October 7 of that year, at a place about sixty miles above the town of Newcastle on the Miramichi river in New Brunswick. Before 10 o'clock at night it was twenty miles below Newcastle. In nine hours it had destroyed a belt of forest eighty miles long and twenty-five miles wide. Over more than two and one-half million acres almost every living thing was killed. Even the fish were afterwards found dead in heaps on the river banks. Five hundred and ninety buildings were burned, and a number of towns, including Newcastle, Chatham and Douglastown, were destroyed. One hundred and sixty persons perished, and nearly a thousand head of stock. The loss is estimated at \$300,000, not including the value of the timber.

"The Peshtigo fire of October, 1871, was still more severe than the Miramichi. It covered an area of over 2,000 square miles in Wisconsin, and involved a loss, in timber and other property, of many millions of dollars. Between 1,200 and 1,500 persons perished, including nearly half the population of Peshtigo, at that time a town of 2,000 inhabitants. Other fires of about the same time were most destructive in Michigan. A strip about 40 miles wide and 180 miles long, extending across the central part of the state from Lake Michigan to Lake Huron, was devastated. The estimated loss in timber was about 4,000,000,000 feet board measure, and in money over \$10,000,000.

"The most destructive fire of more recent years was that which started near Hinckley, Minn., September 1, 1894. While the area burned over was less than in some other great fires, the loss of life and property was very heavy.

Hinckley and six other towns were destroyed, about 500 lives were lost, more than 2,000 persons were left destitute, and the estimated loss in property of various kinds was \$25,000,000."

GETTING TIMBER LAND CHEAP.

THE statement of the Division of Forestry of the United States to the effect that the last of the great white pine timber tracts of the Northwest lies in the northern part of Minnesota, a vast region of several thousand square miles, receives additional interest in the light of advice from Duluth that dealers in timber lands are conducting operations under which they are acquiring some of the most valuable timber lands in northern Minnesota for almost nothing, and doing it legitimately, too. They are locating on lands in the northern tier of counties in this State with what is known as forestry scrip, which entitles them to locate on any lands, surveyed or unsurveyed, in any part of the country. This scrip they have been able to buy at \$2 to \$4 per acre, and thus they have been locating on lands in this and other counties at a cost to them of about the value of one large pine tree out of the hundreds on each acre.

It will be remembered that during President Cleveland's administration he was much interested in the matter of preserving the forests, and a number of large forest reservations were made by him, mostly in the west. On the lands thus reserved there were, of course, a good many settlers, and to compensate them for the loss of their lands they were given this forestry scrip. This could be located on land anywhere in the United States, whether surveyed or not, and it was the first scrip ever issued entitling its holder to locate on unsurveyed lands. Recently a number of land dealers have been west and have purchased a quantity of this scrip from the people to whom it was issued, and returning, they have entered upon the choicest pine lands in the unsurveyed portions of this state. This scheme is working so well that others are taking it up, and the result is that nearly all of the valuable portions of the unsurveyed pine lands will be located long before the territory is surveyed and thrown open to settlement. There is no way to prevent this, as the holders of the scrip are allowed to sell it, and the purchasers acquire the rights of those to whom it was issued. Those who are working the scheme will get immense profits out of it, as they are getting from \$2 to \$4 per acre land that is easily worth many times that.

It is possible that congress will be appealed to at this winter's session to see if there is any way that body can put a stop to the practice. There seems to be no other way to stop it, and there is considerable doubt whether even that method will stop it, as before any law can go into effect the men who are working the scheme can get hold of large quantities of the scrip and locate the best part of the unsurveyed pine lands of this section. When the unsurveyed lands are thrown open to settlement there will be almost nothing that is worth locating upon left.—Lumber Trade Journal.

Mr. Horace B. Hudson contributes to the Review of Reviews for December an account of the movement to establish a national forest park in Minnesota, near the headwaters of the Mississippi.