

Having reference to the condition of Canada at the time of the union with the province the undersigned is of opinion: That the authority given by the 95th section of the British North America Act is an authority to regulate and promote immigration into the provinces and not an authority to prohibit immigration.

A law which prevents the people of any country from coming into the province cannot be said to be of a local or private nature. On the contrary it is one involving Dominion, and possibly imperial interests.

The measure was then referred to the imperial authorities and the result was that the Act was disallowed. That principle laid down by Sir Alexander Campbell at that time has been followed ever since with respect to British Columbia legislation on the subject of Chinese emigration.

As regards the Natal Act, I have not it before me and I do not like to speak from memory regarding it because this is a matter of very considerable importance, and I do not like to discuss the question without having the documents so as to be able to speak with accuracy. But my recollection of the Natal Act is this: That the question at one time was considered as to whether or not, in British Columbia, it would be possible to adopt the Natal Act. The people of British Columbia said that the Natal Act did not go far enough. My hon. friend will bear in mind that the Natal Act has no reference to Chinese or Japanese immigration, but has reference to immigration generally. A person who cannot comply with certain conditions laid down in that Act with respect to the speaking of the English tongue and being able to read and write cannot settle in the colony of Natal. The Natal Act would be impossible of application here; it would be impossible for us to allow the province of British Columbia to have such an Act governing immigration. It is necessary for us to have an Act which would be applicable to the whole of the Dominion of Canada and the Natal Act is impossible of application to the whole Dominion. I do not want to go any further at the present time. This question is one of considerable importance and it requires to be discussed with a present knowledge of all that has taken place. I say to my hon. friend, that the principle adopted, in so far as the disallowance of this Act is concerned by the Department of Justice on a recent date, is the principal laid down by Sir Alexander Campbell in 1884.

Mr. BORDEN (Halifax). I would like to have some information before the resolution is adopted, as to whether or not, as has been alleged in the press of British Columbia, it was suggested by the imperial government that the very Act which was disallowed might be passed by that legislature and would be regarded as satisfactory. No papers have been brought down to this House on this subject. Substantially this has been asserted in the press of British Columbia. I do not know as to

the truth of that, but I would like to have some information on the subject.

The PRIME MINISTER. That despatch is in the report.

Mr. BORDEN (Halifax). Could my right hon. friend refer me to the page.

The PRIME MINISTER. I cannot at the moment.

Mr. BORDEN (Halifax). I understand that the position which my hon. friend the Minister of Justice takes is: That this Act was beyond the powers of the legislature of British Columbia and therefore was disallowed. I would like to ask the Minister of Justice, whether it is the practice of the Department of Justice to sit as a court of interpretation upon provincial statutes and deal with them all in that way; disallowing all those that are possibly ultra vires—or is it the practice to leave that question to be determined by the courts in the usual way.

The MINISTER OF JUSTICE. When a question comes before the Department of Justice for the purpose of settling as to whether or not a law is ultra vires of the provincial parliament; representations in the first place are invariably made to the provincial government asking that as a doubt has arisen it may be set at rest by subsequent legislation. If subsequent legislation is not passed and if in the opinion of the Department of Justice the legislation is clearly ultra vires, then disallowance takes place. If there is a doubt as to whether legislation is ultra vires or not, it is left then to its operation and to be settled by the courts. The course to be pursued with respect to Acts passed by the provincial legislatures was settled by an Order in Council passed 8th June, 1868.

Mr. BORDEN (Halifax). What does my hon. friend mean by that? Does he mean that in case the provincial authorities contend that their Act is within the competence of the provincial legislature, and the Department of Justice arrives at an opposite conclusion; that in such case the department constitutes itself a judge instead of leaving the provincial authorities to have that question determined by the courts.

The MINISTER OF JUSTICE. There is a door open under the statutes. If the question is one on which the provincial authorities want to have the matter referred to the courts and will say that they will have a case stated for the courts; then the Department of Justice is always ready to meet them half way. That question has now arisen in the province of Ontario with respect to the rights on the rivers, and will be disposed of in that way.

Mr. BORDEN (Halifax). I would consider that a fair way of dealing with the subject. The provincial authorities adhere to their view that the Act is within the legis-