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Disallowance and Dolly Vardon

THE Canadian constitution provides that a law passed by a Provincial Legislature may within a year from its passing be "disallowed," vetoed, by the Governor-General, this of course meaning by the Dominion Government. In the earlier years of Confederation this provision gave rise to much friction between Federal and Provincial authorities. Sir John A. Macdonald, always a centralist, was inclined to the view that the Provincial Legislature was a subordinate body to the Federal Parliament, and that the Federal Government had an unrestricted right to veto Provincial laws. The Provincial authorities, led by Sir Oliver Mowat, then Premier of Ontario, strenuously opposed this view, claiming that within their specified sphere the Provincial Legislatures were as independent as the Federal Parliament, and that while the right to disallow a Provincial law was not expressly limited by the British North America Act, the spirit of the constitution required that such right be exercised sparingly and for certain causes only. On this and some other constitutional questions of a similar character there was a long battle between Sir John and Sir Oliver, the general result of which was a victory for the Provincial representative. Out of these contests came a recognition of Provincial rights which has been strengthened with the passing of the years. The doctrine that the Dominion Government have an unrestricted right to disallow a Provincial law is no longer held at Ottawa.

This question of disallowance comes up again in an acute form in connection with some recent Acts of the British Columbia Legislature, relating to the affairs of the Dolly Varden Mining Company, a company operating a silver mine in that Province. The facts of the case may be open to dispute. We state them as they are given in the press by one side of the controversy. The Mining Company made a contract with the Taylor Engineering Company for the construction of a railway to the mine. Disputes and financial difficulties arose. The Engineering Company did the work. The Mining Company were unable to pay, or at all events did not pay.

The matter came before the Legislature in 1919, when an Act was passed purporting to transfer the Mining Company's property to the Engineering Company. The Mining Company petitioned the Dominion Government for disallowance of the Act. The Dominion Minister of Justice reported that the dispute was one to be settled by the courts and not by an exercise of the power of disallowance at Ottawa. At the session of the British Columbia Legislature which closed a few days ago, "at midnight in the dying hours of the session," the Provincial Government introduced and carried a measure confirming the former one, distinctly vesting all the Mining Company's property in the Engineering Company, and providing that no action questioning the transfer should be entertained by the courts of the country.

The Mining Company and those who sympathize with them claim that this latest Act, especially the clause shutting the company out of their right to appeal to the courts, is an indefensible interference with the course of justice and calculated to do great damage to the credit of the Province by creating among capitalists a lack of faith in the British Columbia Government and Legislature.

If the facts are as thus stated, the case looks bad for the British Columbia Government, looks like a grave injustice to one set of litigants for the benefit of another. looks like an assumption by the Government and Legislature of powers that should be exercised only by the courts of the country. All who are interested, however, will do well to reserve judgment until the British Columbia Government's side of the story is heard. The Premier of the Province has become known as "Honest John Oliver," and few even of his opponents have disputed his right to the title. Honest John must be allowed a hearing before he is condemned.

In the meantime, the principles governing the question of disallowance do not seem to be affected by the facts of this case, even if they are as bad as they are represented to be. A Provincial law may be disallowed on the ground that it is beyond the power conferred on the Provinces by the B.N.A. Act. Where a law is distinctly of that character, early disallowance is justifiable and may