

this—that the inference of an excess of power by the Dominion Parliament in the given case necessarily follows from the fact that it was undertaking to confer proprietary rights in regard to a subject matter which the British North America Act did not authorize it to control to this extent."

If Lord Herschel, then, had had the advantage of discussing the matter with Mr. Labatt, he might have expressed his meaning thus:—"If the legislature purports to confer proprietary rights in regard to a subject matter over which the British North America Act did not authorize it to confer proprietary rights, that in their lordships' opinion is not an exercise of the legislative jurisdiction conferred upon it by the British North America Act."

Now I think we generally expect and find in the judgments of the Privy Council propositions of more value than such as Mr. Labatt suggests, namely, that if the Dominion Parliament purports to exercise legislative power which it does not possess, it exceeds its legislative jurisdiction.

I am afraid I cannot accept Mr. Labatt's corrections, or retire from the Fashoda which I occupy. The fact is, I think, there were two ways in which the question of legislative jurisdiction submitted as above stated in the Fisheries case might have been dealt with. One was by founding the judgment strictly on the construction of the legislative power conferred in item 12 of section 91, whereby the Dominion Parliament is given power to make laws for the peace, order and good government of Canada in relation to sea, coast and inland fisheries, and holding that, on the proper construction of this item, it does or does not comprehend legislative power over proprietary rights in relation to sea, coast and inland fisheries. This was the way in which the Supreme Court of Canada dealt with the matter, though they founded their decision upon what I have ventured to submit, is a somewhat peculiar analogy between the construction of an ordinary legislative enactment and the construction of a legislative power conferred by the British North America Act. But this mode of dealing with the matter, at all events, gives rise to no constitutional difficulty.