

A.C. 204 (*cf. Booth v. McIntyre* (1880), 31 C.P. at p. 193), the Privy Council decided that for the purposes of a Dominion railway company, the Dominion Parliament has power to dispose of provincial Crown lands, and, therefore, of a provincial foreshore to a harbour, so there can be no doubt that, under its exclusive jurisdiction over "navigation and shipping," the Dominion parliament could expropriate a provincial harbour. And so, in the principal case, *per Davies, and Duff, JJ.*

Some day, as already stated, the question whether the B.N.A. Act is to be construed as always speaking may arise, not in reference to its section transferring provincial property to the Dominion, but in reference to its clauses defining areas of legislative power. Such a question has already arisen in the Australian Commonwealth, where "trademarks" is one of the subjects with respect to which the Federal parliament is expressly given power to make laws. Such a power is conceded, though not expressly granted in our Federation Act, to the Dominion parliament, no doubt as incidental to, or included in, its exclusive jurisdiction over "the regulation of trade and commerce." In *Atty.-Gen. for New South Wales v. Brewery Employees Union of N.S.W.* (1908), 6 C.L.R. 469 (*cf. Keith's Responsible Government in the Dominions*, vol. II., p. 840), the validity of part VII. of the Commonwealth Trademarks Act, 1905, came up for consideration. That section of the Act provided for the registration of workers' trademarks. These marks or labels were marks affixed to goods to shew that they were manufactured by the workers or associations of workers by whom they were registered, and the Act penalized the use of marks in the case of goods not produced by the workers or associations. The aim of the enactment was, of course, to extend the influence of trade unions by allowing the immediate identification of goods as produced under union conditions, and several brewery companies of New South Wales questioned its validity. The Court decided against the validity of the part of the Act attacked, because they held that the power of the Commonwealth to legislate as to trademarks did not extend to permit the creation of what was not a trademark at all in the sense of that word as understood in 1900, the date of the enactment of the Constitution. O'Connor, J., pointed out, 6 C.L.R. 469 at 540, that a workers' trademark was deficient in both of the essential characteristics of a trademark as ordinarily understood, a trade or business connection between the proprietor of the trademark and the goods in question, and distinctiveness in the sense of being used to distinguish the particular goods to which it is applied from other goods of a like character belonging to other people. Even so we may surmise, in view of the liberal construction given to those clauses in our Federation Act which confer spheres of legislative power, that the decision would be different under our Constitution, if the subject of trademarks was expressly placed within the legislative powers of the Dominion parliament.

There can be no doubt that the phrases by which subjects of legislative power are conferred must acquire a more extended connotation as the