

II. THE ENGLISH CONTENTION.

To return to our immediate enquiry. As stated above, the views entertained by the home government are given in Lord Carnarvon's despatch to the Governor-General, dated June 15th, 1874 (*d*).

They may be summarized as follows :

1. The 91st section of the British North America Act giving power to Canada to legislate upon the subject of copyright is one of several having reference (under the sixth general head of the Act) to "the distribution of legislative power," and provides that "copyright," amongst other subjects, is to be dealt with by the Parliament of Canada, while other subjects (under section 92) are to be dealt with by the Provincial Legislatures.

2. The effect of the Imperial Act is to enable the Parliament of Canada to deal with colonial copyright within the Dominion, but it is clear that it is not contemplated to interfere with existing Imperial legislation having force in Canada.

3. The Canadian legislation, in any event, is subject to the provisions of the Colonial Laws Validity Act, 28 & 29 Vict., c. 63.

4. It is further to be implied from Lord Carnarvon's despatch that it was his view that the B.N.A. Act merely divided up the powers that previously belonged to the Provinces.

The above despatch was concurred in sixteen years later by Lord Knutsford, then Secretary of State for the Colonies, who stated that "the powers of legislation conferred upon the Dominion Parliament by the B.N.A. Act, 1867, do not authorize that Parliament to amend or repeal, so far as relates to Canada, an Imperial Act conferring privileges within Canada" (*e*).

In support of the first and fourth contentions, attention is directed to the fact that, at the Quebec Conference, the parties interested in the proposed compact had before them all the subjects that were likely to come within the range of Government in the colony, and, in order to avoid disputes between the contracting parties, that is between the new Dominion, on the one hand, and the Provinces, on the other, a general division was made between these parties of the matters then before them, without any thought whatever that the Imperial Parliament was relinquishing any of its

(*d*) See Hodgins at p. 12.

(*e*) See Hodgins, p. 40.