

remembered that the power to legislate in relation to fisheries, does necessarily to some extent enable the legislature so empowered to affect proprietary rights."

Thus the Privy Council in the clearest possible way show that they are drawing a distinction between legislative power and proprietary rights; and they then give utterance to the proposition which was the fons et origo of my article, namely: "If the Legislature purports to confer upon others proprietary rights where it possess none itself, that, in their lordships' opinion, is not an exercise of the legislative jurisdiction conferred by section ninety-one. If the contrary were held it would follow that the Dominion might practically transfer to itself property which has, by the British North America Act, been left to the Provinces, and not vested in it." And so the judgment concludes: "It follows from what has been said that in so far as s. 4 Revised Statutes of Canada, c. 95, empowers the grant of fishery leases conferring an exclusive right to fish in property belonging not to the Dominion but to the Provinces, it would not be in the jurisdiction of the Dominion Parliament to pass it."

This judgment was delivered by Lord Herschel, and Mr. Labatt has come to the conclusion, to use his own words, "That that eminent jurist has inadvertently fallen into a verbal blunder, and that the control to which he was referring was rather that which finds its active exercise in laws declaring to whom proprietary rights shall belong than that which amounts to 'possession' (properly so-called)."

So what Lord Herschel ought to have said in the sentence which has given rise to this discussion was, apparently, "If the legislature purports to make laws declaring to whom proprietary rights shall belong where it has no power to make such laws, that in their lordships' opinion, is not an exercise of the legislative jurisdiction conferred on the legislature by section ninety-one."

Mr. Labatt, however, gives Lord Herschel an alternative mode in which he might have expressed himself without falling into any verbal blunder. Mr. Labatt says: "The real meaning of Lord Herschel's words I believe to be merely