

# HENDRIE'S BILL IS HARMLESS.

### The Dominion and the Veto Power.

### Aylesworth on Some of Whitney's Doubtful Legislation.

### Cobalt Lake, Fish and Game, Public Utilities and Marriage Act.

Ottawa, April 30.—The Dominion Government has decided not to disallow the several acts passed by the Ontario Legislature in the session of 1907, which have been called into question. The fact of non-disallowance is due to the desire of the Minister of Justice and his colleagues to interfere as little as possible with Provincial rights in the matter of legislation. In the minute of council passed this week recommending to His Excellency non-interference in the case of the Provincial statutes respecting the legality of the patent of the Cobalt Lake Mining Company, the Hendrie Railway and public utilities act, the fish and game act, and the act amending the marriage act, the Minister of Justice reviews the circumstances attending the passage of each act. In respect to the Cobalt Lake Bill Hon. Mr. Aylesworth says that while there is ample precedent for disallowance of the act, as interfering with vested interests and the title to property still in litigation, and although the legislation must be admitted to be harsh and unjustified in principle, yet on the general principle that it is not a matter of general Dominion interest he deems it wise to leave to the people of the Province the ultimate decision of approval or disapproval of the Provincial Government's course.

#### Wholly Inoperative.

In the matter of the Hendrie railway and public utilities act, the Minister of Justice points out that the act is wholly inoperative and harmless, and since it can be so easily amended that any attempt to act under its provisions would ever be made, and if made, would be promptly set at naught by the courts, no further notice of it need be taken.

The game and fisheries act of 1907 is found to be ultra vires in respect to some of its most important clauses, but since the incapacity of the Local Legislature to enact fishery regulations is so clearly established by the British North America act, he finds no harm will be done by not disallowing the act, pending the elimination of the ultra vires clauses by the Legislature.

The Ontario Government's amendment to the marriage act with regard to declarations of nullity of marriage in certain classes is regarded as of questionable constitutionality, but until any appeal is made to the courts of justice as to its legality the question is left in abeyance.

#### The Cobalt Lake Case.

In forwarding his recommendation with respect to the Cobalt Lake Mining Company act, Mr. Aylesworth notes that applications for its disallowance were made by Henry Dreany, who claimed a prior discovery and location of mining rights in the bed of the lake in July, 1905, and by the Florence Mining Company, whose claim was based on discovery, on March 8, 1906. The case upon which the petitioning company relied was briefly that under the provisions of the general mining law of Ontario they had acquired the right to mine the claim. But the Ontario Government proceeded to sell the property to the Cobalt Lake Mining Company, disregarding the rights of the petitioning company. On these being asserted in the courts the statute in question was passed, the effect being to preclude the petitioners from any redress, notwithstanding their claim to be the true owners of the property.

#### Sir John Macdonald's View.

Quoting precedents in similar applications for disallowance, Mr. Aylesworth notes that in 1881 Sir John Macdonald, then Minister of Justice, reported in favor of the disallowance of the Ontario act entitled "An act for the protection of public interests in rivers, streams and creeks." In this report Sir John said: "I think the power of the Local Legislature to take away the rights of one man and vest them in another, as is done by this act, is exceedingly doubtful; but, assuming that such right does in strictness exist, I think it devolves upon this Government to see that such power is not exercised in flagrant violation of private rights and natural justice," etc.

Other authorities along similar lines are quoted.

These authorities, if followed," says Mr. Aylesworth, "would doubtless require the disallowance of the present act, but during later years different views have prevailed, and in many cases applications for disallowance upon the ground of undue interference with vested rights have been refused for the reason that it is contrary to the true intent and spirit of the British North America Act that the Dominion Government should inquire into or determine the merits of provincial legislation which is intra vires and not in conflict with Dominion policy."

#### Not Concerned With Policy.

The Hon. David Mills, when Minister of Justice, had occasion to report upon an Ontario statute, Chapter VII, which was submitted seeking disallowance for the reason among others that the act impaired or interfered with an existing contract. The Minister stated: "The undersigned conceives that your Excellency's Government is not concerned with the policy of this measure. It is no doubt ultra vires of the Legislature, and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the act of the Legislature will be ultimately judged by the people. The undersigned does not consider, therefore, that your Excellency ought to exercise the power of disallowance in such cases."

#### The Principle at Issue.

Hon. Mr. Aylesworth shares the views expressed by Mr. Mills and Mr. Fitzpatrick. In his opinion it is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling provincial legislation, even though the Federal Ministers consider the legislation unjust or oppressive or in conflict with recognized legal principles, so long as such legislation is within the power of the Provincial Legislature to enact. His memorandum to Council continues:

"The undersigned is of the opinion that where an act is of a merely domestic or local character and does not affect any matter of Dominion in-

terest, your Excellency's Government ought not to review the policy or propriety of the measure which is exclusively a matter of provincial concern, and he accepts the general view that it is not the office or right of the Dominion Government to sit in judgment considering the justice or honesty of any act of the Provincial Legislature which deals solely with property or civil rights within the Province.

"The undersigned observes that in Sir John Macdonald's report of June 8, 1868, submitted for the purpose of setting the course to be pursued with respect to acts passed by the Provincial Legislatures, only four cases are stated as proper subjects for consideration with a view to disallowance, namely, acts which the Minister may consider:

- "1. As being altogether illegal or unconstitutional.
- "2. As illegal or unconstitutional in part.
- "3. In cases of concurrent jurisdiction as clashing with the legislation of the general Parliament.
- "4. As affecting the interests of the Dominion of Canada.

#### Disapproval, But Not Disallowance.

"The legislation in question, even though confiscation of property without compensation and so an abuse of legislative power, does not fall within any of the aforesaid enumerations. For these reasons the undersigned, although compelled to report to your Excellency strong disapproval of the policy of the statute, recommends that it be not disallowed, but be left to such operations as may lawfully be given to it."

#### The Public Utilities Bill.

In respect to Colonel Hendrie's measure designed to keep railway and other public utility corporations within Provincial jurisdiction, Mr. Aylesworth says, after briefly reviewing the main provisions of the act and noting the definition of "public utility" contained therein, that by section 91, paragraph 29, of the British North America Act, the exclusive legislative authority of the Parliament of Canada is declared to extend to such classes of subjects as are expressly excepted in the classes coming exclusively within the jurisdiction of the Legislatures. Among these exceptions are such local works as "although wholly situated within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces."

#### The Power of Parliament.

Mr. Aylesworth continues: "It is plain, therefore, that local works such as are by the said Chap. 37 included in the expression 'public utility' fall within the exclusive legislative authority of the Parliament of Canada if and when declared by Parliament to be for the general advantage of Canada. The Parliament of Canada has the sole right to make this declaration, and is the sole judge of the circumstances which justify it. The statute now in question is an attempt to control or affect by Provincial authority the exercise of these exclusive powers of the Dominion Parliament, and is, therefore, plainly incompetent. The statute purports to have no other object than to assert Provincial legislative authority over a subject which is within the exclusive jurisdiction of the Parliament of Canada."

"The B. N. A. Act has in terms assigned to the Dominion Parliament the uncontrolled discretion to determine what works are, for the general advantage of Canada. By the statute in question the Legislature of Ontario assumes to confer upon the Government of that Province the power to substitute this discretion in the premises and to destroy any Ontario company with regard to which Parliament may see fit to make such declaration."

#### A Basis of Action.

"It might be well that Parliament would be influenced in executing its power to declare the undertaking of a company a work for the general advantage of Canada by reason of the company possessing powers, rights, privileges and franchises conferred upon it by letters patent, or by a general or special act of Ontario, or by reason of municipal by-laws or agreements with a municipality, and it is impossible to suppose that such could be forfeited or taken away in any case for no other cause than that Parliament had seen fit to exercise its jurisdiction conferred upon it by the B. N. A. Act."

"From the time when the undertaking and works of any company have been declared by Parliament to be for the general advantage of Canada such company and its undertakings and works become just as much subject to the exclusive legislative authority of the Dominion Parliament as any company withdrawn from the legislative authority of the local Legislature as if these undertakings and works had been expressly enumerated in section 91."

#### The Courts Have Power.

"Accordingly, if it were possible that the Provincial statute in question could ever be of any effect, action could never be taken under it by the Lieutenant-Governor in Council till after the company to be struck had been completely withdrawn from Provincial jurisdiction. Necessarily such action then would be wholly inoperative, and the enactment is, therefore, the mere brutum fulmen. It can scarcely be imagined that any attempt to suspend its provisions would ever be made, and it is very certain that such attempts, if ever made, would be set at naught by the courts."

"The legislation is so plainly ineffective and harmless," he concludes, "that it does not, in the opinion of the undersigned, call for any action by your Excellency or for further notice."

#### The Game and Fisheries Act.

"The incapacity of a local Legislature," he concludes, "to enact treaty regulations is, however, so clearly and unequivocally established that these provisions now in question seem unlikely to do any harm, since there is now no time to correspond with the Government of Ontario upon the subject, the undersigned sees not, in view of the many useful and unquestioned provisions which this act contains, recommend its disallowance. He does recommend, however, that the above observations with regard to the said statute be especially called to the attention of the local Government, with a suggestion that legislation should be promoted to amend the statute by striking out those ultra vires provisions, which otherwise may perhaps in some cases prove misleading."

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## Fun for Times Readers

**Secrets.**  
I'd like to tell you everything  
That happens where I am;  
I want to lead an open life,  
And shun forms of abstinence,  
But there are things I must not tell  
In doing it I'd stammer.  
For instance, what Dad said the day  
His thumb nail fell the banner.

There is a secret I must keep,  
In fact I couldn't print it;  
It would not even do with dots  
And dashes just to let it out,  
I cannot tell what father said,  
You would not understand.  
The morning that the ice hid  
Fell down and smashed his hand.

I've told you all about the time  
That father rode the goat;  
The way he tried to curve a duck,  
The way he rooked the boat,  
But O, I dare not tell you how  
He swore—the air was black—  
The night he left the dowry couch  
And stepped upon a tack.

Kind friends you must imagine now  
Some things that have occurred,  
A world of fun for the general  
Defy the printed word.  
What father said is now at hand,  
To tell you I don't dare.  
What father said the night that he  
Walked plump into a chair.

**Matter of Labor.**  
Lady—Yes, I advertised for a cook.  
What wages do you expect?  
Applicant—Ten dollars a week, ma'am.  
Lady—I suppose you can furnish first class references as to your ability?  
Applicant—No, ma'am. I never did any cooking in my life.  
Lady—It seems to me you expect very high wages for an inexperienced person.  
Applicant—Yes, ma'am; but you see it will be so much harder for me because I don't know how.

**Full of Scratches.**  
"What has this man been doing, sergeant?" gasped Officer O'Toole, as he rolled over and over on the sidewalk with his unruly prisoner.  
"Hold on to him," shouted Sergeant Baumgarten, as he sent in the call for the wagon. "He was a fence."  
"A fence," is it?" he blurted. "Hold on, from 'lo looks as me hands he must be a barb-wire fence."

**Sure to Sell Stock.**  
Gunner—Why in the world does Brainwood roll in his sleep and blow like a steam engine?  
Guyler—Why, he is dreaming of his great scheme.  
Gunner—What scheme?  
Guyler—Why, a scheme to form a stock company and drop the north pole into Venusium and supply the world with steam.

**Encouraging Theft.**  
Prudent Swain—If I were to steal a kiss would it scare you so that you would scream?  
Timid Maiden—I couldn't. Fright always makes me dumb.—Baltimore American.

**The Only Way.**  
"There goes a man who made a fortune writing poetry."  
"Wh-hat?"  
"No, I'm not joking. He wrote tender verses to a romantic young heiress."  
—Kansas City Times.

**A Profit Anyhow.**  
He was filling his first prescription, and when he handed it to the lady he told her it was \$1.10.  
She paid the dollar and ten, and after she had gone he informed the proprietor that the dollar was counterfeit. The proprietor looked over his glasses at the young man and said:  
"Well, how about the 10 cents—is that good money?"  
The young man answered in the affirmative.

**The Wise Rooster.**  
"I now observe," the rooster crows, "where I shall shortly feed;  
The neighbor's wife in even rows  
To-day is planting seed."

**No Occasion for It.**  
"My dear," said the old man to his only daughter on the morning of her wedding day. "I don't see how I am going to get along without you."  
"Now don't let that worry you, papa,"

**HOW THEY LOVE ONE ANOTHER.**  
Maud—Now, when I am asked to sing, I never say "Oh, I can't," but I always sit down at the piano.  
Mamie—And let the audience find out for themselves? Quite so.

**Repairs Needed.**  
The millionaire's racing machine had crashed into the farmer's cart and overturned the load of potatoes.  
"I'll fix you!" roared the irate farmer, waving his whip.  
"I guess I need fixing, old man," sighed the meek millionaire, as he rolled out of the ditch. "Got any court plaster and arnica handy?"

The C. N. R. men at Winnipeg have accepted a slight reduction in wages, and the fact is expected to have an important bearing in the case of the C. P. R. men.

## AMONG THE JEWS

News Notes About Them From All Over the World.

The excesses of the Kaimakum of Jaffa have received prompt punishment. The report that the guilty Kaimakum has been dismissed has been confirmed. Last week the Chacham Bashi received from the Sultan the official intimation of the dismissal. At the same time the Sultan conveyed his greetings to the Jews and expressed his sympathy with them.

The Queen of Holland has conferred the rank of the Commander of the Order of Orange Nassau on Mr. F. S. Van Nierop, of Amsterdam, chairman of the Royal Commission of Inquiry into municipal finances.

Last week a Consumptive Hospital for Children was opened by the Queen-Mother at Kistyk-on-Sea, Holland. The hospital is endowed through the munificent generosity of Herr A. S. Van den Bergh, of Rotterdam (who contributed the sum of £18,000), and is replete with every modern scientific appliance.

An unidentified Jew died the other day in St. Petersburg. In his room was found the enormous sum of two hundred thousand rubles. The money, as his heirs are unknown, was declared to be the property of the city of St. Petersburg.

Joseph C. Cowen, one of the most prominent Zionists in England, and one of the directors of the Jewish Colonial Trust, has arrived in New York, and will address a number of meetings on topics pertaining to his work in connection with the Zionist movement and other Jewish interests.

A touching appeal is being made to save the family of the late Jehuda Steinberg, the Hebrew author, from starvation. The appeal is printed in Hebrew and is signed by Prof. Solomon Schechter and other notables.

Through the efforts of Maurice Weidenthal, editor of the "Jewish Independent," the obnoxious caricatures of the Jew on the stage have been driven away from the theatres of Cleveland.

Another Jew has obtained promotion on the bench in Bavaria, which is continually giving proofs that it is one of the most liberal of the German States. Dr. Theodore Engelmann has been appointed Councillor of the Supreme Court; he has hitherto held the important post of Chief Crown Attorney.

The Municipality of Nuremberg is displaying warm interest in a movement for the establishment of a Jewish Orphan Asylum in that town, and has offered generous concessions to the promoters.

It is stated that the late Professor Gustav Oppert has bequeathed to the Lehranstalt für die Wissenschaft des Judentums in Berlin, the sum of 300,000 marks for the creation of a chair of Semitic languages.

Joseph Popper, Austrian philosopher, poet and thinker, has celebrated his seventieth birthday in Vienna.

More than fifty thousand pounds of matzos were distributed daily, for the whole week, by the United Hebrew Communities Charity in New York. The number of people applying for such aid was enormous.

Rabbi Hezikiah Chabetai, Chief Rabbi of Tripoli, has been elected Chief Rabbi of Aleppo. He is a doctor of law, and a profound talmudist.

Jewish students in Germany are excluded from the Victoria School and Seminary for Female Teachers.

Dr. Sigmund Gottschalk, the well known gynaecologist, has been appointed professor of gynaecology at the University of Berlin.

Lieutenant-Colonel Salmon Jules Levy, director of engineering at Nantes, has been promoted colonel and retained at his present post. Several other promotions of Jews in the French army are recorded in the Official Journal.

A Judische Volksgruppe has been formed in St. Petersburg for the uplifting of the Jewish workman.

Alexander Lvovitch Karavajew, member of the second Duma, champion of the Jewish cause in Russia, who was advocating that Jews be granted equal rights, has succumbed to the wounds he received from the hands of members of the Black Hundred.

A glowing tribute was paid to the Jews of America, as well as to Judaism, by Bishop Scadding, of Portland, Oregon. Bishop Scadding has for three years lived in the overcrowded east side of New York, and the opinions expressed are the result of his study of Jewish characteristics.

The balance sheet issued by the Jewish Colonial Bank shows the institution to be on the path of progress. The profit last year was £17,550, about two thousand pounds sterling more than in 1906. Six hundred and fifty pounds were expended on altering the statutes of the bank. During 1907, shares to the amount of 1,323 pounds were sold.

The Society for Relieving the Aged Needy of the Jewish Faith of London is in need of funds. Since the year 1829 this society has been distributing pensions to the old men and women who are past self-support. The age of the beneficiary must be 60 years or upwards, and the pension is five shillings per week. There are now 129 pensioners on the books of the society, and an equal number of cases are in course of inquiry.

The annual report of the British Ophthalmic Hospital, Jerusalem, has just been issued. The statistics prove that the amount of work done by the staff in Jerusalem has been far in excess of any previous record, the number of consultations in the out-patient department showing an increase of nearly 5,000.

By decree of the President of the French Republic, a commission has just been formed at the Ministry of Labor to study the measures which should be taken in order to attenuate the stoppage of work which results from periodical economic crises. Several Jews are members of this commission.

Rabbi Harrison, of St. Louis, has started a movement to have a free lecture course given nightly in the public school buildings. Such a series of lectures, in his opinion, would reach the people more than a hundred universities.

Dr. Magnes, speaking of anarchism at

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### STATUS OF QUEEN'S.

The Trustees Refer Question to General Assembly.

Kingston, April 30.—Queen's trustees, after debating a proposal to change the constitution, so that the professor could be eligible for the Carnegie foundation fund, agreed, with practical unanimity, to send the proposal to the General Assembly for advice, in view of the fact that the trustees, at the request of the Assembly, agreed to maintain the essential relations between the Church and the university.

Those opposed declare the changes would undoubtedly separate Queen from the Presbyterian Church, in spite of the assertions by members of the senate that the hold and influence of the Church would still remain. Dr. James Douglas, New York, and Dr. B. MacLennan, K. C., Cornwall, support the changes.

Some of the clerical members of the trustees board vigorously opposed the proposition. Rev. Dr. Campbell, Montreal; Rev. Alfred Gaudier, Kingston, and G. M. Macdonald, Kingston, being the leaders. There was no guarantee that Queen's would benefit to any extent in the way of endowment if the university was made non-denominational. The Dominion or Provincial Governments could not be expected to do much for her. To help the professors a pension fund might be arranged when the \$500,000 needed is raised, of which only \$90,000 is required.

The legal aspect was spoken of, and advice may have to be secured before definite action is taken.

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