

CANADIAN FISHERIES APPEAL.

A REPLY AND REJOINDER.

I would like to make my reply to Mr. C. B. Labatt's article in a recent number of this journal (ante, p. 677), wherein he criticises some comments of mine in the current number of the *Law Quarterly Review* upon the judgment of the Privy Council in the Fisheries Case.

Mr. Labatt is evidently of opinion, first, that I do not understand Lord Herschel; and secondly, that Lord Herschel does not understand English.

In that appeal the Privy Council were asked among other questions, whether the Dominion Parliament had jurisdiction to authorize the giving by lease, license, or otherwise, to lessees, licensees, or other grantees, the right of fishing in waters, the beds of which were Provincial property at the time of the passing of the British North America Act, or had been granted to private individuals before that event. These questions obviously relate to legislative jurisdiction over proprietary rights in relation to fishing in the strict and ordinary sense of those words; and the Privy Council so treated them. The part of the judgment with which we are now concerned clearly recognizes this, and is as follows:

"Their lordships pass now to the questions relating to fisheries and fishing rights. Their lordships are of opinion that the ninety-first section of the British North America Act did not convey to the Dominion of Canada any proprietary rights in relation to fisheries. Their lordships have already noticed the distinction which must be borne in mind between rights of property and legislative jurisdiction. It was the latter only which was conferred under the heading of 'Sea, coast and inland fisheries' in section ninety-one. Whatever proprietary rights in relation to fisheries were previously vested in private individuals or in the Provinces respectively, remained untouched by that enactment. Whatever grants might previously be lawfully made by the Provinces in virtue of their proprietary rights could lawfully be made after that enactment came into force. At the same time it must be