

25

Imperial Commons therein authorized, the following cases, showing the defects and possible future complications may be cited.

After the Parliament of Canada, in its first parliament, by 31 Vict. (1868) Chap. 23, assumed and took the "Powers, privileges" etc. of the Imperial House of Commons, as authorized under section 18 of the B.N.A. Act, they proceeded to pass an Act known as the "Oaths Bill," 36 Vict. Chap. 1 (1873), which was passed under the authority of this 1868, Chap. 23, Statute, but it was afterwards disallowed by the Imperial authorities, in June, 1873, after having been forwarded to England for the opinion of the Law officers of the Crown there, by Sir John A. Macdonald, in May, 1873. This Bill purported to provide for the examination of witnesses on oath by committees of the Senate and House of Commons in certain cases, and it was disallowed and declared ultra vires because it proposed to confer powers in excess of the powers exercised by the Imperial House of Commons itself, at the time the Imperial Law was enacted in 1867.

At the same time and in the same year, the Law Officers of the Crown in England pointed out that another Canadian Statute, 31 Vict. cap. 24, passed by the Canadian Parliament in 1868, for the purpose of conferring upon the Senate the power of administering oaths to witnesses at their bar - though it appears to have escaped observation, and was not disallowed - was nevertheless, "void and inoperative as being repugnant to the provisions of the British North America Act, and cannot be legally acted upon."

The above facts will be found set out in the Journals of the Canadian Commons for Oct. 23rd, 1873, at pages 5-12; and Commons papers for 1873, Vol. 45, pages 3-9.

The Imperial Statute of 1875, repealing section 18 of the B.N.A. Act, 1867, will be found to have at the same time validated the Canadian Act of 1868 above mentioned which was declared to have been invalid, because of its repugnancy to the Imperial Act of 1867, and for the reasons alone given.

Accordingly, in the year 1876, the "Oaths Bill," disallowed merely upon technical grounds, was re-enacted by the Parliament of Canada; see Canadian Statutes, 39 Vict. chap. 7. (For a reference to the foregoing facts in detail see "Todds Parliamentary Government in the British colonies," pages 147 and 467).

The late Mr. Justice Clement, in the 1916 edition of his book on Canadian Constitutional Law, in a footnote at the bottom of pages 44 and 45, referring to this same matter says:-

"In 1873 the Parliament of Canada passed an Act (36 Vict. Chap. 1),

'To provide for the examination of witnesses on oath by committees of the Senate and House of Commons, in certain cases.'

"At the date of the passage of the British North America Act, the Committees of the Imperial "Commons House" had no power to examine witnesses upon oath, and for this reason the Dominion statute was disallowed by the Queen in Council. The Act had been passed in order to facilitate enquiries into what was popularly known as the "Pacific Scandal," and its disallowance created some excitement. The result of the negotiations with the Imperial authorities was the passage of "The Parliament of Canada Act, 1875, (38 & 39 Vict. Chap. 38, Imp.), which substituted the section, as above printed, for the original section 18. It also expressly validated 31 & 32 Vict. Chap. 24 (Dom.). 'An Act to provide for oaths to witnesses being administered in certain cases for the purpose of either House of Parliament,'

PARLIAMENTARY PAPERS, Series 5 (1868-76, I, Volume 140)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA