

ONTARIO POWER ACT DEFENDED BY FOY.

Justification For Hydro-Electric Legislation—Many Authorities For Whitney's Position.

Toronto, Dec. 13.—"The people of Ontario take their position on the positive and unshaken foundation formed by the British North America Act and the decisions which have been indicated, and in agreement with the principle laid down by the present Minister of Justice, and respectfully submit that for upwards of two hundred years the Lords and Commons of Great Britain have legislated without fear of the royal veto, although its existence has been undoubted, and, therefore, in full accord with the spirit and genius of British institutions, the people of the Province entitled to all the rights of British subjects elsewhere, as free, as has been practically pointed out by the Minister of Justice, to legislate within their jurisdiction as the Lords and Commons of Great Britain are free to legislate, cannot submit to any check upon the right of the Legislature to legislate with reference to subjects within its well-defined jurisdiction, although a technical right to disallow may exist. Any other view would mean that there are different grades of British subjects in the Empire; that the people of the several Provinces of the Dominion have not and are not entitled to the full and free enjoyment of those civil rights and liberties which are enjoyed by British subjects in the mother country, a condition of things which would be intolerable."

STATEMENT SENT TO OTTAWA. He writes Hon. J. J. Foy, the Attorney-General, speaking for the Government of Ontario, in submitting the defence of the Province to the application made to the Federal authority for a disallowance of Ontario's Hydro-Electric power legislation. The statement is dated Dec. 7, and was forwarded by the Lieutenant-Governor to the Secretary of State last week.

WITNESSES TO PROVINCIAL RIGHTS. The document is gauged broadly along the lines of the inviolability of provincial right, and in support of its contentions the Attorney-General has summoned the evidence of Sir Oliver Mowat, Hon. Edward Blake, Sir John Thompson, Hon. David Mills, Hon. Charles Fitzpatrick, and Hon. A. B. Aylesworth. He has cited the judicial declaration of the Privy Council that the Ontario Legislature had "exclusive authority to make laws for the Province," and that, within the limits of legislation for provincial purposes under section 92 of the British North America Act, "the Local Legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion."

HISTORY OF POWER POLICY. From the broad constitutional aspect of the case the Attorney-General passes to a detailed analysis of the legislation called in question. He gives a resume of the evolution of the Government's power policy. He recites the genesis of the movement among the municipalities, the history of its development and expansion, and its adoption as a provincial undertaking by Sir James Whitney and the Government. He has cited the investigations of Hon. Adam Beck and his initial fellow-commissioners. The Government, Mr. Foy states, took action because "the investigation of this commission made it clear that power could be produced and sold at a much lower rate than was being charged by the companies," and the permanent Provincial Commission was appointed at the solicitation of the municipalities themselves. He directs attention to the fact that "the commission is not competing in any sense with the companies." Under the provision of the statutes it is acting merely as the agent of the municipalities in producing for them cheap power and transmitting it to them.

Hon. Mr. Foy attaches significance to the fact that opposition to the Government procedure developed after the Electrical Development Company failed to secure the Provincial contract. He relates that tenders were called for and the lowest accepted, after opportunity had been given the electrical company to participate. "No objection," the Attorney-General states, "was at any time made by the lower tier of the Ontario Power Co. had been received and accepted."

TO AVOID DISASTER. Touching the legislation confirming by-laws and contracts, the Minister points out that it was not the intention of the Legislature in decreeing the initial legislation that another vote should be necessary in the municipalities. This, however, was not understood by the municipalities, and following a judgment "exactly the opposite of the expressed intention and desire of the Legislature," the municipalities affected petitioned the Government to correct the defect created by the judgment. "The circumstances were exceptional," observes Hon. Mr. Foy, "and any other course would have invited disaster. Such legislation is not unusual under the circumstances."

"No vested right or right of or to property of any kind in any way affected by the act in question," is the declaration of the Attorney-General. Had the actions in question gone on, he points out, and the plaintiffs succeeded, they could only have delayed the municipalities and perhaps gained costs. As to the question of payment of compensation by the commission for easements, Mr. Foy intimates that if there is any doubt—which he disputes—it can be made clear by the Legislature at its next session by a declaratory act.

QUOTES BRITISH PRECEDENT. Dealing generally with enactments precluding appeal to the courts, the Minister points out that in the legislation submitted by the British Government to the House of Commons during the current session there are no less than thirty-four instances of constructive substantive legislation, in each of which it is provided that there shall be no appeal to the courts in matters directly affecting rights of property, whereas the power commission amendment act, 1909, was incidental legislation and was passed at the request of municipalities affected by the judgment referred to, and in order to make clear and carry out the intention of the legislature in passing the act of 1907 and 1908. "There

is nothing unusual in such legislation," is Mr. Foy's comment. The Attorney-General scores the allegation of some of the persons asking for disallowance, that the financial credit of the Dominion will be affected by the legislation in question. "The claim is unfounded and contrary to fact," is his brief comment, in support of which he quotes Mr. Byron E. Walker, President of the Bank of Commerce; Mr. William Mackenzie and Mr. E. B. Osler, M. P. The three financiers in question are cited as declaring that Canadian and Ontario credit in England was never higher.

Much regarding the history of the power project and the data and conditions which precipitated the legislation under challenge, the Attorney-General admits, is germane to the question of disallowance, but he deems it well to refer to some of the occurrences leading up to the present situation, "having regard to the great volume of misrepresentation given to the public by those selfishly interested themselves in the attack upon the power of the Provincial Legislature."

Hon. Mr. Foy, in summing up the case, refers significantly to the disallowance asked for as possible "interference" with Provincial rights, a condition of things which, he declares, would be intolerable. In concluding he emphasizes the fact that he has penned the document with "an appreciation of the very grave and serious consequences which must inevitably follow" such interference.

THE PROVINCIAL POSITION. That the Provincial legislation under challenge is wholly legal and constitutional, that it does not clash with the legislation of the Dominion Parliament, nor does it affect the interests of the Dominion generally, are the premises upon which the Attorney-General bases his claim that it cannot be interfered with. The act, he states, "deals with property and civil rights in the Province or Ontario—matters which are by the British North America Act, section 92, clause 13, given to the Legislature exclusively to make laws in relation thereto."

The language of Sir Oliver Mowat, when Premier and Attorney-General of Ontario, upon the question of the disallowance of a Provincial Act, is quoted. "I repudiate the notion," said Sir Oliver, "that it is the office of the Dominion Government to sit in judgment on the right and justice of an Act of the Ontario Legislature. Likewise Hon. Edward Blake, when Minister of Justice, in reporting a petition for similar disallowance, said: "The undersigned does not conceive that he is called upon to express an opinion upon the allegations of the petition as to the injustice alleged to be effected by the Act. This is a matter for the Local Legislature." Sir John Thompson, when appealed to, took like ground, that action was "within the undoubted legislative authority of the Legislature of the Province."

FINDINGS OF THE COURTS. Reference is also made to concurring judgments by the courts. Decisions by Mr. Justice Osler and Judge Casault are quoted to show that veto can only be pronounced when the law assented to encroaches upon the prerogatives of the Sovereign or of the Imperial or Federal Parliament. Sir Barnes Peacock, delivering the judgment of the Judicial Committee of the Privy Council in *Hodge vs. The Queen*, 9 app. cas., page 132, is cited as declaring: "When the British North America Act enacted that there should be a Legislature for Ontario, and that the Legislature should have exclusive authority to make laws for the Province and for the Provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and exercised. Within these limits of subjects and area the Local Legislature is supreme, and has the same authority as the Imperial Parliament or the Parliament of the Dominion."

Lord Herschell, delivering the Privy Council judgment in the case of the Attorney-General of Canada vs. Attorney-General of Ontario et al., 1898, A. C. page 713, went even farther. "The suggestion," he found, "that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the courts of any limit upon the absolute power by legislation conferred. The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is the only remedy is an appeal to those by whom the Legislature is elected."

THREE MINISTERS OF JUSTICE. Reference is also made to the decisions of three Canadian Ministers of Justice in such cases. Hon. David Mills, Hon. Charles Fitzpatrick and Hon. A. B. Aylesworth. In 1901 Hon. David Mills declared that he was not concerned with the policy of the Provincial measure in question. "It is no doubt intra vires of the Legislature," he found, "and if it be unfair or unjust, or contrary to the principles which ought to govern in dealing with private rights, the constitutionality of the measure is not affected by the Acts of the Legislature may be ultimately judged by the people." A year later, reporting upon British Columbia legislation, Hon. Charles Fitzpatrick said that the Federal Government could give no relief without affirming a policy which required it to "put itself to a large extent in the place of the Legislature" and "cede the propriety of its Acts relating to matters committed by the constitution to the exclusive legislative authority of the Province."

HON. MR. AYLESWORTH'S VIEW. Concluding his quotations, Hon. Mr. Foy cites Hon. A. B. Aylesworth, the present Minister of Justice, who, on the application to disallow two Ontario statutes on March 1 last declared: "These are considerations entirely for the Provincial Legislature. It represents the people of the Province; its members are elected by the same electors who send us to this House, and I certainly seek to put every Provincial Legislature,

within the scope of its jurisdiction, as laid down in the B. N. A. act, upon an absolutely level footing with the Parliament of Canada itself so far as legislation is concerned." Proceeding, Mr. Aylesworth said: "My view 'was and is that any measure of this sort is one in regard to which the only appeal from the Provincial Legislature ought to be to the people who elect that Legislature, and who, if they please, may depose the Government of the day and deprive it of power."

MEETING SPECIFIC COMPLAINTS. Dealing with the specific complaints of the petitioners, the Attorney-General points out that the Legislature validates irregular by-laws nearly every session, and that this power is undoubtedly acknowledged to be beneficial. Replying to the reference to the use of the waters of the Niagara River as being under the control of the Dominion, he contends that by section 109 of the B. N. A. act the soil of the river to the international boundary line and one chain reservation along the river bank is the property of the Province. The rights of the Dominion over the river are only so far as it is navigable, its non-navigability at the points in question being apparent and notorious. The question of the right of the Ontario Power Co. or any other power company to take water from the river without leave of the Dominion, Mr. Foy submits, a matter between the companies and the Dominion, and not in any way affected by the legislation sought to be disallowed.

If, as is also alleged, the manner in which the towers and wires are constructed and will be operated constitute a crime—an allegation Mr. Foy declares to be erroneous—he points out that it can be properly dealt with by the criminal law, the Hydro-Electric Commission being no more exempt from its provisions than other corporations.

ORATORY FOR TEMPERANCE.

Young Men Speak at Sunday Night Mass Meeting.

Large Gathering at Erskine Church to Hear Them.

Ward 4 Temperance Candidates Were Present.

A mass meeting was held last night in Erskine Presbyterian Church school room, after the evening service, under the auspices of the Citizens' Campaign Committee. The speakers were Robert J. Menary, Frank A. Parlington and Walter W. Lee, three young men from the Hamilton School of Oratory.

Mr. William Brown was chairman, and introduced the speakers. The object of the meeting was to advance the cause of the Citizens' Campaign Committee, in securing the election to the City Council of those candidates in each ward, the committee has been nominated on the temperance ticket.

"A Fallacy of the Twentieth Century," was Mr. Menary's subject. He said the liquor traffic was one of the exhibitions of the colossal stupidity. It has had a bad character through the centuries and medical men and broad-minded politicians have each and all declared liquor to be detrimental to the community in every respect. The speaker then hurled verbal missiles at the liquor business by arraigning facts and figures to show what a disturber of the peace it is, and how it eats away the vitals of society. In conclusion he said the revenue acquired from the traffic was largely eaten up by the cost of administering justice, through the trouble the traffic caused. "It is a disgrace to Hamilton and we should not allow money to go into the city treasury that has been the damnation of so many," said the speaker.

Frank A. Parlington spoke on "License Reduction." He also had many strong things to say about the traffic. The reduction of licenses, he said, would be the reduction of drunkards. The first step to better hotel accommodation would be to reduce the bars. He urged that party differences be put aside on January 3, and vote for the temperance candidates. He deplored the fact that there were three times as many bar rooms in Hamilton as in Toronto in proportion to the population.

Walter W. Lee's subject was "The Appeal of the Rising Generation." He said the means of removing the curse of the liquor traffic was in the hands of the present generation. They alone could give the rising generation the chance they ought to have. He said there are 15 hotels that are a nuisance to the city. By reducing the temptation the consumption would be reduced. He drew a long, harassing word picture of drunkards and attendant crime. Mr. Lee said the removal of slums was up to the voters of to-day. They can reduce them by sending them to the City Council who will be opposed to drink in every way. If the evil is not removed it will become a burden on the community. Mr. Brown said the Citizens' Campaign Committee had got three men in the field for controllers, namely, Aldermen Cooper, Lees and Peregrine. Mr. J. Williamson and Dr. Davey, Citizens' candidates for Ward 4, were also on the platform.

CHILDREN BURNED.

Joseph Brazier's House Near Eganville Destroyed.

Ottawa, Dec. 12.—The three infant children of Joseph Brazier, a Renfrew county farmer, living near Dere, between Renfrew and Eganville, were burned to death this morning in a fire which destroyed the house. Mr. Brazier had gone to a neighbor's farm, and his wife was in the barn milking, when the house took fire, presumably through the children playing with coals at the kitchen stove. When the fire was discovered the flames had such a hold on the house that the horror-stricken father and mother were unable to effect an entrance. The eldest child was a boy of five years of age and the other two children were respectively three years and one month old.

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THE BRITISH CAMPAIGN.

Austen Chamberlain Criticises the Premier.

The Suffragettes Will Fight For Votes For Women.

Tory Candidate Chased From Meeting at Denbigh.

London, Dec. 12.—A majority of the Woman Suffrage Societies have issued plans of campaign. The National Union, comprising 105 affiliated societies, will support only candidates who declare in favor of woman suffrage in their election addresses. These will be supported regardless of party.

The Unionist Women's Association, on the other hand, will put Unionism first to this extent, that they will not oppose any Unionist, but will not work for any who does not favor woman suffrage.

The militant Suffragists cast aside all considerations except votes for women. The retiring members of the Cabinet will be opposed "because they have had the opportunity to do justice and have refused to use it." All known anti-Suffragists will be opposed regardless of party.

Where both candidates favor the women, the militants will support or oppose neither, but will conduct a militant campaign of protest against any Government being elected without the consent of women.

Neither Prime Minister Asquith's speech nor Mr. Balfour's manifesto can be said to have advanced the political situation or to have markedly stimulated interest therein. Both men expect in the House of Commons itself, but neither possesses to any conspicuous degree the gift of stirring to the depths popular enthusiasm outside. Mr. Asquith, of course, had a magnificent reception by his great and unanimous audience, but the top note of enthusiasm was only struck twice during the evening, once when Mr. Lloyd-George entered the hall, and again when he arose to propose a vote of thanks to the Prime Minister.

Judging from Friday night, the Radical enthusiasts look upon him as the real leader, not the Prime Minister. It is difficult, even impossible, to confine the issue of a general election to one question, but Mr. Asquith's speech made it evident that the Liberal party will endeavor to keep the attack on the House of Lords to the forefront. Other interests must be considered and the usual promises to any conspicuous degree not dwelt upon. The most pronounced of Mr. Asquith's speech was contained in the words: "The will of the people as delicately expressed by their elected representatives must, within the limits of the lifetime of a single Parliament, be made effective."

While saying he favored a second Chamber, Mr. Asquith, beyond the words just quoted and his declaration that "the absolute vote must go," gave no indication of how his party proposed to reform the present second Chamber. Opposition critics say that the Radical party amounts to a single Chamber, while Mr. Asquith's supporters, in the words of the Daily News, declare that "Campbell-Bannerman's classic resolution outlines the only practicable manner in which the problem can be solved." This means what at the time was described as the "going, going, gone" method, viz., to submit the bill to the House of Lords, and then for the House of Commons to make it a law despite the Lords' rejection.

Though it is generally believed the Unionists will keep the question of the House of Lords in the background as far as possible, Mr. Balfour gives it first place in his manifesto, but admits that "the House is capable of improvement. The rest of the manifesto shows the Unionist campaign will follow the lines suggested by the posters which are already appearing upon the hoardings all over the country, attributing the poverty, non-employment and the despatch of provisions to the Liberal Government and free trade.

The chief effect of the impending fight felt in London thus far is the ruination of the Christmas season. Hostesses cannot get the right people together, the theatres are suffering, and until Christmas is over politics is regarded as somewhat of a nuisance.

TO BEAT UNIONISTS.

Liberals and Labor to Avoid Triangular Contests.

London, Dec. 12.—One of the most important facts in connection with the election campaign is the tacit compact between the Government and the Laborites to avoid triangular contests where a Unionist might be beaten. Both parties deny that such an arrangement has been made, but its

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HOLIDAY ART. Productions of Raphael Tuck & Son's Co., Art Publishers.

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AT EBENEZER. Fine Gospel Address by Young Convert Last Evening.

Ebenezer Hall was well filled again last evening with an attentive congregation, and those who were present were amply repaid for their journey through the storm, for the speaker, Wm. Donnelly, a young man still in his teens, gave a stirring address, his subject being "Can God Save All Men?" "Billy," as he is familiarly called by "the boys" of Ebenezer, was really the beginning of the revival which swept through East Hamilton in the fall of 1907. He was not, of course, the beginner of it, as it was started by greater power, but he was the first one to be converted and begin a work which shook the east end of our fair city. Many who knew this fact were out last evening to hear him, and they were not at all disappointed with what they heard. The young preacher showed from Scripture that God not only could, but would, save all men, and it is man's own fault if he is not saved, as Christ Himself expressed, when He said, "Ye will not come unto me, that ye might have life"; and again, "Oh, Jerusalem, Jerusalem, thou that stonest the prophets, and killest them that are sent unto thee, how often would I have gathered thee together, even as a hen gathereth her brood under her wing, but ye would not." There were three baptisms at the conclusion of the service. Next Thursday evening Wm. Kerr will speak on "Prayer," and it is expected that Wm. Crook, another convert of the '07 revival, will speak on "God's Great Whosever" next Sunday evening.

Five deaths resulted from the inauguration of the ice skating season on Saturday in Pennsylvania and New Jersey. Four of the victims were boys who had ventured on thin ice. The fifth was Charles Bell, of Camden, N. J., who was skating with his twelve-year-old son at Forest Lake Park. Three men died of suffocation and twenty-one others were overcome late last night as a result of a peculiar accident at a mine of the Shoemaker mining Company, fifteen miles northeast of Johnstown, Pa. All are foreigners.

Nine workmen were suffocated to death while working in a compressed air compartment in the harbor at Naples. Three others were rescued. Indian agencies for south Saskatchewan estimate the grain grown by Indians at 250,000 bushels. "I am looking for a quiet place to rest," said the tired-looking man. "I think we can promise you all the comforts of home," assured the seashore hotel clerk. "Not on your life!" exclaimed the tired-looking man. "I've been married nine years and have seven children."

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