

The Toronto World

A Morning Newspaper Published Every Day in the Year.

PUBLIC RIGHTS AND PRIVATE INTEREST.

Having signally failed to browbeat the Ontario Government, to influence public opinion and to discredit the province and its municipalities with the British investor, the opponents of the Whitney-Brock power policy are now concentrating their last desperate effort on the federal authorities.

A document has been put into circulation purporting to give the opinions of Dr. Albert Venn Dicey, K.C., Vinerian professor of English law in the University of Oxford on the Cobalt case and on the London power case. The learned council admits that the legislature has power to pass the acts in question and that they are valid, but holds that the governor-general has unlimited power of disallowance.

The character of that information can, however, be gathered in part from the nature of the replies made to the various questions, particularly the fourth. The professor says that "the idea naturally suggests itself that a so-called law which without compensation confiscated the property of an individual or of designated individuals, or imposed upon an individual or on designated individuals, liability for a contract into which he or they had not in fact entered, might be held invalid as not being a law at all."

BRITISH TRADE PROGRESS. Every now and again complaint is made that British manufacturers are behind the times, that they are indifferent to the means necessary to develop new markets or to hold their own in the old, that the productive capacity of their workmen is inferior to that of American or German artisans, and so on in almost endless variety.

A recent Blue Book on British trade proves anything but a deterioration in British productivity. The export trade of the mother country rose from \$1,600,000,000 in 1904 to \$2,130,000,000 in 1907, and even for last year stood at \$1,885,000,000, notwithstanding the slump which affected all exporting countries.

MUNICIPAL REFORM IN THE UNITED STATES. Increasing attention is being paid in the United States to the reform of



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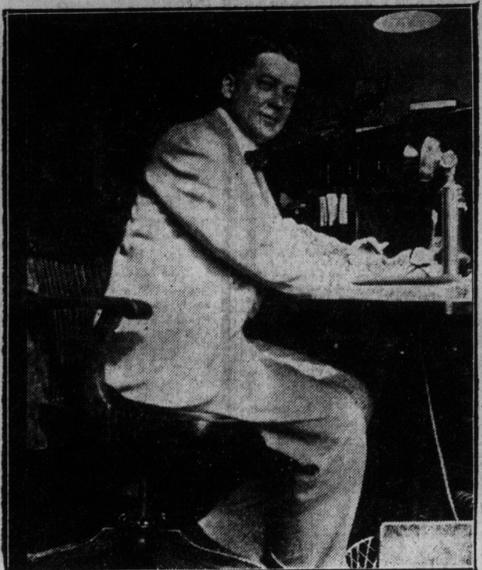
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W. A. M. GOODE, STANDARD OF EMPIRE.

W. A. M. Goode is one of the bright young men who have come over from the British Islands to show Canada that there is a deal of life in the old dog yet. Mr. Goode represents The Standard of Empire in Canada and has already acclimatized himself and the English Imperialistic Journal.

By a happy conception he enlisted Young Canada under his standard, and as earnest of his success eleven lads of the Dominion are now en route for the heart of the empire.

Mr. Goode is shown on his field of war with the rattling gun of modern business at his hand. He was "snapped" in action by Archibald Collins, another bright Briton (from County Cork), who has also drifted over to Canada to show us how to do it. Mr. Collins represents The Morning Leader of London, The Sheffield Daily Telegraph, The Dundee Advertiser and half a dozen other influential British Journals.

city government. "That there is both occasion and need for reform is patent enough, looking to the numerous instances where the public interest has been sacrificed by city councils amenable to the corrupt influences exercised usually by franchise exploiters or by franchise holding corporations.

Hardly a city of any note in the United States has escaped, and in consequence they are now suffering from defective public services whose breakdown has been accomplished by high financiers working to enrich themselves. But apart from this it is being recognized that the affairs of the municipalities have been conducted in an extravagant and wasteful manner, and that millions on millions of dollars have been squandered without benefit to the taxpayers.

It is the recognition of these scandals that has stimulated the adoption of the system of municipal government thru highly paid commissioners, each of whom is personally responsible for his own department of civic administration. Hardly a week passes without intimation that, somewhere in this new order has been resolved upon, and so far none of the cities that have changed from the older methods have shown any inclination to return to them. Recently another organization has been established for the purpose of assisting municipalities towards better government. It is called The Bureau of Municipal Research, and it has been actively engaged in investigating conditions in New York, and in calling the attention of the people to faults and defects in its administration.

By insisting upon its budget be-

ing itemized, the bureau has secured a reduction of twenty-five per cent. in the estimates for 1910. The bureau also discovered that New York had paid out nearly a million dollars for work on streets which the traction companies should have kept in repair, and suits have been brought to have the amount refunded. In this and in other ways the bureau is making itself felt. New York is now discussing a proposal to obtain the best managerial ability possible by paying \$125,000 a year for mayor for a term of four years, with a bonus of \$500,000 over and above the regular salary, to be raised by public subscription. And in Chicago a movement is on foot to pay the city aldermen \$3000 a year, said to be a larger salary than is paid in any other city, or to members of legislative bodies in any state in the Union. These are heroic remedies to secure men of high character and qualifications to enter the field of municipal government.

Your Holiday Trip. Can you imagine anything more delightfully refreshing to both mind and body than a fresh water voyage? It stands to reason that the air you breathe aboard a steamer miles from shore, beneath a clear sky, is far more beneficial than that which has become contaminated by the dust and smoke of the city.

If you are not feeling just right or think you need a rest by all means take a water trip and the benefit derived from it will amply repay the expense of same.

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THEIR EXPERT OPINION NOT AS COUNTED UPON

Prof. Dicey, in Survey of Florence Mining Co. Litigation, Admits the Power of Province.

In the cases of The Florence Mining Company versus the Cobalt Lake Mining Company and Smith versus City of London, opinions were sought on the legal merits of the questions raised from A. V. Dicey, K.C., LL.D., Vinerian Professor of English Law, Oxford, honorary LL.D., Cambridge, Glasgow, and Edinburgh, and author of several standard works on legal subjects.

Mr. Dicey was retained by the Electric Power Corporation interests of Ontario with a view of obtaining the present Ontario Government. Mr. Dicey's opinion was evidently not so favorable for the power interests as was hoped, and on that the law is with Sir James Whitney. The matter is dealt with editorially elsewhere.

The opinions following have not been given general circulation, but there is nothing to be gained by concealment. The two cases, namely, the Cobalt case and that of the City of London (London power case) appear to raise the following questions:

First question—Does the B.N.A. Act, 1867, s. 92, ss. 13, confer upon a provincial legislature (in this instance the Legislature of Ontario) power to deprive individuals of substantive rights, and especially of property rights without compensation?

(See Mr. Labatt's opinion in Canada Law Journal, April 15, 1909, p. 267.)

Answer to first question—The B.N.A. Act, 1867, s. 92, ss. 13, confers upon a provincial legislature power to make any law in relation to the province and civil rights in the province, and thus appears to confer upon such legislature power to deprive of (1) individuals of substantive rights, and even though they be property rights, without compensation. There is nothing in the act, as there is in the Constitution of the United States, prohibiting the passing of a "law impairing the obligation of contracts" (Constitution of U. S., article 1, sec. 10). The guarantee provided by the B.N.A. Act, 1867, against possible injustice resulting from the legislation of a provincial legislature is to be found, if anywhere, in the governor-general's power under the B. N. A. Act, 1867, s. 96, 90, to disallow any law passed by a provincial legislature.

Second question—Does the B. N. A. Act, 1867, s. 92, ss. 13, give power to a provincial legislature to enact a law staying actions for the enforcement of the substantive and actually acquired rights of individuals?

Answer to second question—The act does, in my opinion, confer such power. I do not think it possible to draw in principle a distinction between a law which without compensation deprives an individual of his property rights and a law which deprives him of his rights to enforce such rights by action. It is in the former case, unless the plainest language be used, and court would be unwilling to presume that a law was intended to have a retrospective operation which deprives an individual of his right to maintain an action, especially if it were already commenced and interference with an actually acquired right.

Power of Governor-General. Third question—Does the B.N.A. Act, ss. 96 and 90, give the governor-general unlimited power of disallowing the acts of a provincial legislature?

Answer to third question—The whole working of the constitution of the Dominion, which is created under the B. N. A. Act, 1867, appears to depend upon the possession of, and the use by the governor-general, of this unlimited and general power of disallowance. (See Lefroy, Legislative Power in Canada, proposition 10, pp. 188-207.) On this point I entirely agree with Mr. Goldwin Smith, that the enactment giving the power of disallowance plainly "refers to a power of disallowance, in the exercise of which political control to be exercised in the interest of the nation, not to a mere power of restraining judicial stretches of jurisdiction, a function which belongs, not to a government, but to a court of law" (Goldwin Smith, Canada, etc., p. 159).

The power of disallowance is, I am told, exercised by the governor-general by the ministry of the day. But surely, if it is its own power, and is not to be exercised by the ministry, it is not to be exercised by the ministry. It is not to be exercised by the ministry, but by the governor-general.

Fourth question—Are the provincial acts relied upon in the Cobalt case, (Edwards v. The Queen, 12 and 13 Edward VII, c. 12, and 7 Edward VII, c. 15) and in the London power case, (The Electric Power Corporation v. The City of London, 1909) valid?

Answer to fourth question—As to this question with some hesitation. On the whole I am of opinion that they are valid, i.e., they are not beyond the power conferred by the B. N. A. Act, 1867, s. 92, ss. 13, on a provincial legislature; but it is right to add that these acts, taken as a whole, and particularly the Cobalt case, are not to be regarded as a precedent for the future, and that it is possible the court may say the privy council—might be inclined to hold them invalid.

The Remedy. Fifth question—Generally, what remedies have individuals for injustice worked or which might be worked by the Ontario Acts in question?

Answer to fifth question—The injustice and impolicy of these acts is admitted, and it is not to be denied that they may directly affect only property and civil rights in a particular province, they must affect the credit and the commerce of the Dominion as a whole. The Power Commission Act, 1909, appears to be, if there be any difference, rather more opposed to the ordinary rules of justice.

NEW MILITARY HEADQUARTERS. OTTAWA, July 15.—(Special.)—The headquarters of the eastern Ontario military command will be transferred from Kingston to Ottawa on Sept. 1. Mr. W. D. Gordon will also act as district officer commanding No. 4 district. Col. Hodgins will go to London to take command of that district Sept. 30.

For Imperial Defence. LONDON, July 15.—The royal commission on electoral methods examines Earl Grey to-morrow. Sir F. Borden, interviewed, said that the instructions to the Canadian delegates to the defence conference were based on the Ottawa resolution. The delegates intimated that they desire to avoid public dinners and other engagements as far as possible. In a Melbourne despatch Minister of Defence Cook states: "I am thoroughly in favor of a local squadron provided it becomes the Australian section of the imperial navy. The offer of £2,000,000 is unconditional, but should the home authorities prefer to employ the money in building swift cruisers for the protection of Australian trade routes, so much the better. These could be Australian built and work in connection with local destroyers."

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Richard Tew has returned to the city after spending several weeks in the British Isles.

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Winnipeg School Medical Inspectors. WINNIPEG, July 15.—The school board has decided to appoint two doctors, a lady and gentleman, as medical inspectors of the city pupils.