

The Toronto World

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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 Whitney-Beck power policy are now concentrating their last desperate effort on the federal authorities. Ottawa is appealed to with almost frantic entreaty to step in and override the clear and reiterated verdict of the provincial electorate, and the municipalities concerned, in favor of a public supply of Niagara white coal. It is hardly credible that the Dominion Government contemplates the disallowance of the acts of the provincial legislature now before it, which have for their object the protection of the municipalities from vexatious and oppressive litigations at the instance of the abettors of the financial rings whose plans to sew up the province have been so effectively frustrated.

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. He proceeds to answer other queries which indicate, without directly charging, that these acts are unjust and impolitic, and Professor Dicey follows the lead. It is not our purpose nor is it necessary to suggest that his opinion is not an honest one, but every one knows how easy it is to get just the answer wanted by submitting a memorial with its statements carefully edited to suit the purpose. The parties who have gone to the expense of obtaining these opinions from the Oxford expert carefully refrain from printing the information on which he proceeded and the omission is eloquent.

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." This is enough to show the imperfect and one-sided, and therefore misleading nature of the information with which Professor Dicey must have been supplied. The strength of the provincial government's case and the justification of the challenged acts lie in the fact that no valid property right has been affected and that so far as the power act is concerned it simply carries into effect the will of the great majority of the people. Things have come to a pretty pass in a democratic country when it is sought to restrict, hamper and defeat the right of the province to protect its natural resources from private exploitation and to administer them in the public interest.

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. All this would be very alarming if similar criticism were not just as freely bestowed upon the nations that are being held up for emulation. United States consuls in their reports frequently deprecate the failure of American manufacturers to cater to the prejudices and predilections of the countries where they are stationed and in turn quote British importers as securing trade by their careful catering to foreign requirements. In all these cases there is not an argument from some one particular to the general, a fallacy which often leads to very inconsequent conclusions.

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. As the net result of the four years trading the United Kingdom has increased its exports by over \$2 a head per annum for every man, woman and child within its borders. Its total exports and imports, which in 1904 were valued at \$2,400,000,000, in each of the last three years exceeded \$2,000,000,000. And there has been what is called an adverse balance of trade for many years the country is continually growing richer. It is true the exports of Germany and the United States have increased in greater ratio and that the British home market is affected by the large importation of foreign manufactured articles. But this introduces another question and does not in the least affect the conclusion to be drawn from the statistics of British trade.

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

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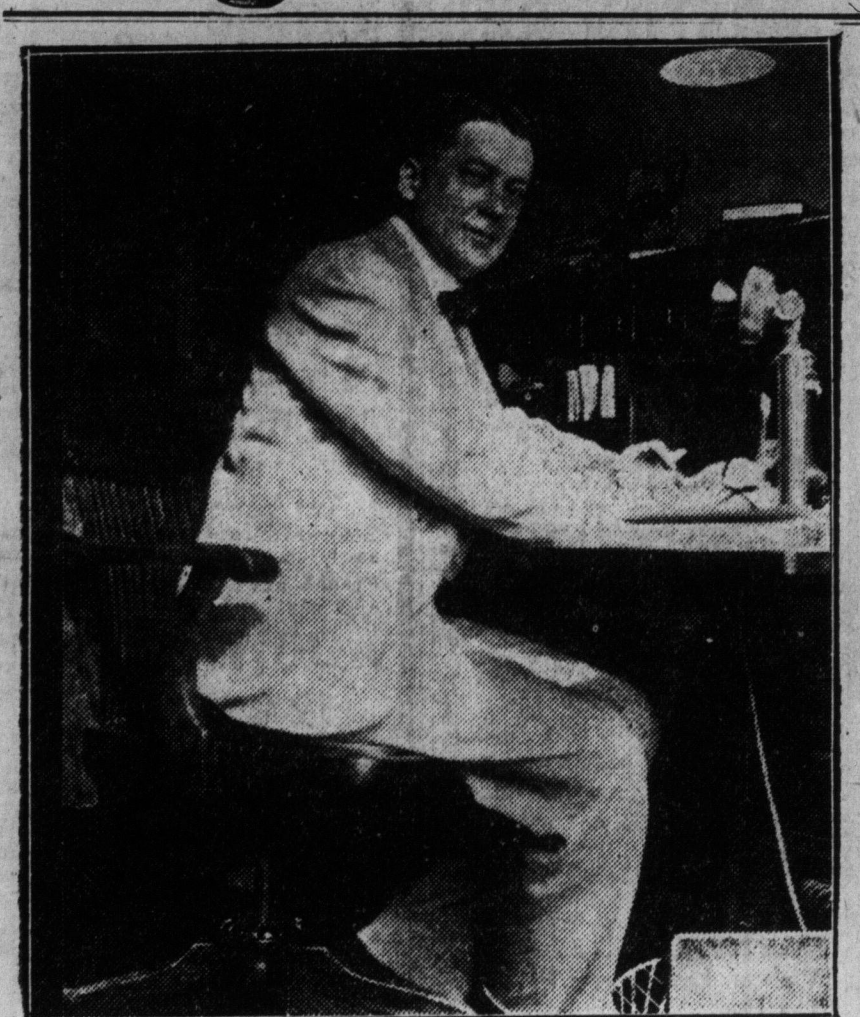
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W. A. M. GOODE, STANDARD OF EMPIRE.

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 gattling 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 or other, thruout the States, introduction of this new order has been resolutely 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.

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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 opinion of an expert on the legal aspects of the case. The matter 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 the City of London case (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. 287.)

His Answer.

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 "property and civil rights in the province," and thus appears to confer upon such legislature power to deprive individuals of substantive rights, and especially of 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, ss. 56, 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 third 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 fact, the same thing, unless the law is intended to have a retrospective operation which deprives an individual of his right to maintain an action, especially if it were already commenced for interference with an actually acquired right.

Power of Governor-General.
Third question—Does the B.N.A. Act, ss. 56 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, proposed, 10, pp. 186-207.) On this point Smith, that the enactment giving the power of disallowance plainly "refers to a political control to be exercised in the interest of the nation, not to a mere power of restraining it."

Fourth question—Are the provincial acts relied upon in the Cobalt case, (Edwards v. 12, and 7 Edward VII. c. 12) and in the London power case, (Power Commission Act, 1909) valid?

Answer to fourth question—In answer 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 Power Commission Act, 1909, s. 2-8, seem to me practically to have a retroactive effect so strange and manifestly unjust that it is possible the court may say the Privy Council might be inclined to hold them invalid.

The Remedy.

Fifth question—Generally, what remedy 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 almost patent. It is the fact that they do they may directly affect only property and civil rights in a particular province, they must affect the credit and interest of the Dominion of Canada 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.

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At Scarborough Beach a generous lunch was provided under the trees and the children had the free run of the amusements. The return journey was made in the cool of the evening. Of the 650 children 150 came from the Protestant Orphan's Home, 95 from the Girls' Home, 125 from the Boys' Home, 70 from the Children's Aid Society, 90 from the Presbyterian Jewish Mission, 50 from the Toronto Jewish Mission, 50 from the east end day nursery.

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Many generous gifts of candy, ginger ale, flags, etc., were received from prominent business firms.

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