# INVESTMENT IN CANADIAN PROVINCIAL SECURITIES.

## Some Obstacles Which Need Obliteration—Notes of an Interesting Case.

The Monetary Times has frequently appealed for the inclusion of Canadian provincial securities in the British Trustee List, the merits of which proposal we feel sure will in due time achieve the desired result. In the Canadian Gazette of November 30th, Mr. J. G. Colmer, who has frequently contributed to The Monetary Times, reviews an interesting case bearing on that subject. We reprint in full the article in the columns of our interesting contemporary:

Mr. Justice Eve, in May last, had a case before him in which a decision was asked upon the question whether trustees, who were authorized to invest in the stocks of any British Colony or Dependency, were justified in investing in stock issued by the Provinces of the Dominion of Canada.

The decision was to the effect that trustees had no power to invest in such stocks in the circumstances; although it was admitted by the judge that the Canadian Provinces, under the Colonial Stock Acts, were included in the interpretation of the term "Colony." It was maintained, however, that the true interpretation of the word "Colony" is to be found in the Interpretation Act, 1889, section 18, sub-section 3, which states that all parts of the Dominion under a central legislature shall be deemed to be one Colony.

### As to the Word "Colony."

On appeal before the Master of the Rolls, Lord Justice Fletcher Moulton, and Lord Justice Farwell, this decision has now been confirmed, and is based largely, as in the case of the decision of Mr. Justice Eve, on the terms of the Interpretation Act of 1889.

The inscribed stocks of the Provinces of Canada are eligible for registration under the Colonial Stock Act of 1877, and amending Acts; and the word "Colony" is defined in the Colonial Stock Act of 1877, as follows:—

Clause 26.—In this Act, unless the context otherwise requires, the expression "colony" means any dominion, colony, island, territory, province or settlement situate within Her Majesty's dominions, but not within the United Kingdom, the Channel Islands, or Isle of Man, and not forming part of India as defined for the purposes of the Acts for the time being in force relating to the Government of India; and for the purposes of this Act the whole of the dominion, colonies, islands, territories, provinces and settlements under one central legislature, and also such part of the said dominion and such of the said colonies, islands, territories, provinces and settlements as is under a local legislature is deemed to be a colony.

### To the Ordinary Mind.

It would seem to the ordinary mind that if the stocks of any of the provinces of Canada are brought within the terms of the Colonial Stock Acts (and this has been done in the case of British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan) a trustee would be justified in investing any funds in those stocks, when authorized to make investments in the stocks of any British Colony or Dependency. And it hardly seems reasonable to suppose that the special interpretation clause in the Colonial Stock Act is rendered invalid by the terms of the general Interpretation Act of 1889, which are as follows:—

Section 18.—In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Sub-section 3.—The expression "colony" shall mean any part of Her Majesty's dominions, exclusive of the British Islands and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one Colony.

### Serious Effect was Argued.

The Master of the Rolls stated, in the course of his judgment, that "it was argued that Mr. Justice Eve's decision would have a serious effect upon the financial position of the provinces. The answer is simple. If they elect to take advantage of the Colonial Stock Act, 1900, no difficulty will arise. They are colonies within the definition of that Act. Their securities will at once become authorized securities." But his lordship is apparently not aware that the Provinces of Canada are not permitted to take advantage of the Act of 1900.

The Australian States and many of the Crown Colonies and Dependencies have been brought within the Act of 1900. But the privilege is withheld from the Canadian Provinces, some of which have populations of over two millions, while in the aggregate their populations number over seven millions. The Colonial Stock Act of 1900 extended the powers of trustees under the Trustee Act of 1893, to enable them to invest trust funds in Colonial securities under regulations to be made by the Lords Commissioners of the Treasury. The following are the regulations promulgated by the Treasury under the Act in question:—

### Three Clauses of Act.

1. The Colony shall provide by legislation for the payment out of the revenues of the Colony of any sums which may become payable to stockholders under any judgment, decree, rule, or order of a Court in the United Kingdom.

2. The Colony shall satisfy the Treasury that adequate funds (as and when required) will be made available in the United Kingdom to meet any such judgment, decree, rule, or order.

3. The Colonial Government shall place on record a formal expression of their opinion, that any Colonial Legislation which appears to the Imperial Government to alter any of the provisions affecting the stock to the injury of the stockholder, or to involve a departure from the original contract in regard to the stock, would properly be disallowed.

The Canadian Provinces could readily comply with the first two of the regulations, and the only difficulty in the way of extending the benefits of the Act of 1900 to them, under the regulations in question, is found in the third regulation. It is held by the Imperial authorities that they have no direct right of disallowance as far as the legislation of the provinces of Canada is concerned, and that the position in that respect is different to the position obtaining in the case of Colonies to which the provisions of the Act of 1900 have been applied. Under the British North America Act, the power of disallowance in relation to the legislation of the provinces is, it is true, reserved to the Governor-General in Council, and the contention is therefore correct so far as it goes; but the provinces have placed on record, through resolutions passed, in every case, by the Provincial Legislatures, that any provincial legislation which appears to the Dominion or Imperial Governments to alter any of the provisions affecting the stock to the injury of the stockholders, or to involve a departure from the original contract, would properly be disallowed by the Governor-General. And further, if that assurance is not deemed to be sufficient, the provinces have expressed their willingness to give favorable consideration to any suggestions that may be made by His Majesty's Government to enable the Stock Act of 1900 to be extended to the stock already issued, or to stock which may be issued in the future by the Governments of the Provinces of Canada.

### Provinces Have Been Unsuccessful.

These provinces have, however, so far been unsuccessful in their endeavors to obtain for their stocks the privileges conferred by the Act of 1900, although they are prepared to give effect to the provisions of the regulations of the Treasury under the Act in question; and they alone among the constituent parts of the Empire, are in consequence prejudiced and their financial interests and credit adversely and seriously affected.

The Canadian Provinces seem indeed to be in an unfortunate position. They are not regarded in law as Colonies or Dependencies, and executors or trustees cannot invest in their stocks when specifically authorized to invest in the stocks of any British Colony or Dependency. Surely this discrimination ought to be remedied; and if the decisions referred to are right in law, and the Interpretation Act of 1889 over-rides the special interpretation clause in the Act of 1877, the former ought to be amended so as to include the provinces.

And again, some means ought to be found to give the provinces of Canada the benefit of the Act of 1900, and to make their inscribed and registered stocks rank with other Colonial Trustee stocks, such as those of the Dominion of Canada, South Africa, Newfoundland, New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia, Barbados, British Guiana, Ceylon, Gold Coast, Grenada, Hong Kong, Jamaica, Lagos, Mauritius, St. Lucia, Sierra Leone, and Trinidad. Surely the great Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta, and British Columbia are equal in importance to the States and Colonies that are mentioned above? The loans they issue are all sanctioned by Parliament, and the Act authorizing them are assented to in the name of His Majesty. They ought not to be penalized because their position in the Confederation of Canada is not so loosely determined as that of the States of Australia in the constitution of the Commonwealth. If, instead of joining together and making one great Union, the Canadian provinces had retained the status of separate Colonies, they would have been eligible to receive the benefits of the Act of 1900, which are now denied to them.