fishing industry of the country? Has the enforcement of the law been sought from the active fish men of the province as a safeguard to their industry? Or has the whole tempest been raised by a few devotees to sport who never contributed a dollar to the development of the fishing industry of the province, and only seek to preserve their own pleasure? Those are the questions we should like to see sifted. We do not know that the lumbermen of this country are a unit in resisting the enforcement of the severe regulations recently adopted. We would like to know the business weight of those who are pushing it.

It is also to be noted that these blue laws are only sought to be put in operation in Nova Scotia. We are not aware of any honest attempt made to guard the fish of Ontario and Quebec. There is some talk of regulating the emptying of sawdust into the rivers in the upper provinces on the ground that the accumulations are likely to interfere with navigation, but nothing is heard about fish. Here the very gravamen of the whole charge is that the fish are being destroyed. We think the same principle should apply everywhere, and while we have no desire to dogmatise on the point we certainly think there is a great lack of definite information in this matter, and a total lack of scientific knowledge to justify a wholesale crusade against one of our most important industries.

THE BOUNDARY DISPUTE.

Full Text of the Judgment by the Privy Council.

Following is the full text of the judgment delivered by the Judicial Committee of the Privy Council in the case between the St. Catharines Milling and Lumber Co. and the Crown, as represented by the Attorney-General for Ontario :--

After a preliminary statement of the facts of the case the judgment of their Lordships proceeded as follows .—

Although the present case relates exclusively to the right of the Government of Canada to dispose of the timber in question to the appellants, yet its decision necessarily involves the determination of the largest question between that Government and the Province of Ontario with respect to the legal consequences of the Indian treaty of 1873. In these circumstances, her Majesty, by the same order which gave the appellants leave to bring the judgment below under the review of the board, was pleased to direct that the Government of the Dominion of Canada should be at liberty to intervene in this appeal or to argue the same upon a special case raising a legal question in dispute. The Dominion Government elected to take the first of these courses, and their Lordships have had the advantage of hearing from their counsel an able and exhaustive argument in support of the claim to the part of the ceded territory which lies within the provincial boundaries of Ontario.

The capture of Quebec in 1759, and the capitulation of Montreal in 1760, were followed in 1763 by the cession to Great Britain of Canada and all its dependencies, with the sovereignty, property, and possession and all other rights which had at any previous time been held or acquired by the Crown of France. A royal proclamation was issued on the 7th October, 1763, shortly after the date of the Treaty of Paris, by which His Majesty King George erected four distinct and respective governments, styled respectively Quebec, East Florida, West Florida, and Grenada, specific boundaries being assigned to each of them. After reciting that it was just and reasonable that the several nations and tribes of Indians who lived under British protection "should not be molested or disturbed in the possession of such parts of our Dominion and territory as, not having ceded to or purchased by us, are reserved to them as their hunting ground," it is declared that no Governor or Commander-in-Chief in any of the new colonies of Quebec, East Florida, or West Florida "do presume, on any pretence, to grant warrants of survey, or pass any patents for lands, beyond the grounds of their respective Governments, or until our further pleasure be known upon any lands whatever which, not having been ceded or purchased as aforesaid, are reserved to the said Indians or any of them."

It was further declared to be "our Royal will for the present as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories not included within the limits of our said free new Governments, or within the limits of the territory granted to the Hudson Bay Company." The proclamation also enacts that no private person shall make any purchase from the Indians of lands reserved to them within those colonies where settlement was permitted, and that all purchases must be on behalf of the Crown in the public assembly of the Indians by the Governor or Commander-in-Chief of the colony in which the lands lie.

The territory in dispute has been in Indian occupation from the date of the proclamation until 1873. During that interval of time Indian affairs had been administered successively by the Crown, by the Provincial Government, and, since the passing of the British North America Act, 1867, by the Governments of the Dominion. The policy of these Administrations has been all along the same in this respect, that the Indian inhabitants have been precluded from entering into any transactions with a subject for the sale or transfer of their interest in the land, and have only been permitted to surrender their rights to the Crown, by a formal contract duly ratified in a meeting of their chiefs or headmen, convened for the purpose. Whilst there have been changes in the administrative authority, there has been no change since the year 1763 in the character of the interest which its Indian inhabitants had in the lands surrendered by the treaty. Their possession, such as it was, can only be ascribed to the general provisions made by the Royal Proclamation in favor of all Indian tribes then living under the sovereignty and protection of the British Crown. It was suggested in the course of the argument for the Dominion, that inasmuch as the proclamation recites that the territories thereby reserved for Indians had never been ceded to or purchased by the Crown the entire property of the land remained with them. That inference is, however, at variance with the terms of the instrument, which shows that the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be parts of "our Dominion" and territories; and it is declared to be "the will and pleasure of the Sovereign that for the present they shall be reserved for the Indians as their hunting grounds under his protection and dominion." There was a great deal of learned discussion at the bar with reference to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the points. It appears to them to be sufficient for the purpose of this case that there has been all along vested in the Crown, a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished.

By an Imperial Statute passed in the year 1840 (3 and 4 Vict., cap. 35) the Provinces of Ontario and Quebec, then known as Upper and Lower Canada, were united under the name of Province of Canada, and it was *inter alia* enacted that, in consideration of certain annual payments which her Majesty agreed to accept by way of civil list, the produce of all territorial and other revenues at the disposal of the Crown arising in either of the united provinces should be paid into the consolidated fund of the two provinces. There was no transfer to the province of any legal estate in the Crown lands, which continued to be vested in the Sovereign, but all moneys raised by sales or in any other manner became the property of the province. In other words, all beneficial interest in such lands within the provincial boundaries belonging to the Queen, and either producing or capable of producing revenue, passed to the province, the titles still remaining in the Crown. That continued to be the right of the province until the passing of the British North America Act, 1867, transferred to the Dominion all interest in Indian lands which had previously belonged to the province. The Act of 1867, which created the Federal Government, repealed the Act of 1840, and restored Upper and Lower Canada to the condition of separate provinces under the titles of Ontario and Quebec, de. provision being made by sec. 142 for the division between them of the property and assets of the united provinces with the exception of certain items specified in the fourth schedule, which were still to be held by them jointly. The act also contains careful provisions for the distribution of legislative powers and of revenues and assets between the respective provinces included in the union on the one hand and the Dominion on the other. The conflicting claims to the ceded territory maintained by the Dominion and the Province of Ontario are wholly dependent upon the statutory provisions. In construing these enactments, it must always be kept in view that wherever public lands, with its incidents, is described as the property of, or as belonging to, the Dominion or a province, these expressions merely import that the right to its benefical use, or to its proceeds, has been appropriated to the Dominion or the province, as the case may be, and is subject to the control of its legislature, the land itself being vested in the Crown; section 108 enacts that the public works and undertakings enumerated in schedule 3 shall be property of Canada. As specified in the schedule, these consist of public undertakings which might be fairly considered to exist for the benefit of all the provinces, federally united, of lands and buildings necessary for carrying on the customs or postal service of the Dominion or required for the purpose of national defence, and of lands set apart for general public purposes. It is obvious that the enumeration cannot be reasonably held to include Crown lands which are reserved for Indian use.

The only other clause in the Act by which a share of what previously constituted provincial revenues and assets is directly assigned to the Dominion in sec 102. It enacts that all duties and revenues over which the respective Legislatures of the United provinces "had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the provinces, or are raised by the.... in accordance with the special powers conferred upon them by this Act, shall form one consolidated fund to be appropriated for the public service of Canada." The extent to which duties and revenues arising within the limits of Ontario, and over which the legislature of the old province of Canada possessed the power of appropriation before the passing of the Act, have been transferred to the Dominion by this clause, can only be ascertained by reference to the two exceptions which it makes in favor of the new Provincial Legislatures.

The second of these exceptions has really no bearing on the present case, because it comprises nothing beyond the revenues which Provincial Legislatures are empowered to raise by means of direct taxation for provincial purposes in terms of section 92 (2). The first of them, which appears to comprehend the whole sources of revenue reserved to the provinces by section 109, is of material consequence. Section 109 provides that "all lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick, at the union, and all sums then due or payable for such lands, mines, minerals, or royalties shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate, or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same." In connection with this clause it may be observed that by section 117 it is declared that the provinces "shall retain their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume that land or public property required for fortifications or for the defence of the country." A different form of expression is used to define the subject matter of the first exception, and the property which is directly appropriated to the provinces, but it hardly admits of doubt that the interests in lands, mines, minerals and royalties, which by section 109 are declared to belong to the province, include (if they are not identical with) the duties and revenues first excepted in section 102. The enactments of section 109 are, in the opinion of their Lordships, sufficient to give to each province, subject to the administration and control of its own Legislature, the entire beneficial interest of the Crown in all lands, within its boundaries, which at the time of the union were vested in the Crown, with the exception of such lands as the Dominion acquired right to under section 108, or might assume for the purpose specified in section 117. Its legal effects is to exclude from the duties and revenues appropriated to the Dominion all the ordinary territorial revenues of the crown arising within the provinces. That construction of the statute was accepted by this board in deciding Attorney-General of Ontario v. Mercer (8 Appeal Cases, 767), where the controversy related to land granted in fee simple to a subject before 1867 which became escheated to the Crown in the year 1871. The Lord Chancellor, Earl Selborne, in delivering judgment in that case, said (8 Appeal Cases, 776): –

"It was not disputed in the argument for the Dominion at the bar that all territorial revenues arising within each province from lands, in which term must be comprehended all estates in land which at the time of union belonged to the Crown, were reserved to the respective provinces by section 109; and it was admitted that no distinction could in that respect be made between lands then ungranted and lands which had previously reverted to the Crown by escheat; but it was insisted that a line was drawn at the date of the union, and that the words were not sufficient to reserve any lands afterwards escheated which at the time of the union were in private hands and did not then "belong to the Crown." Their Lordships indicate an opinion that the escheat would not in the special circumstances of that case have passed to the provinces as "lands," but they held that it fell within the class of rights reserved to the provinces as "royalties" by section 109.

Had its Indian inhabitants been the owners in fee simple of the territory which they surrendered by the treaty of 1873, the case of the Attorney-General of Ontario v. Mercer might have been an authority for holding that the Province of Ontario could derive no benefit from the session in respect that the land was not vested in the Crown at the time of the union. But that was not the character of the Indian interest. The Crown has all along had a present proprietary estate in the land, upon which the Indian title was a mere burden. The ceded territory was at the time of the union land vested in the Crown subject to any interest other than that of the province in the same, within the meaning of section 109, and must now belong to Ontario in terms of that clause, unless its rights have been taken away by some provision of the Act of 1867 other