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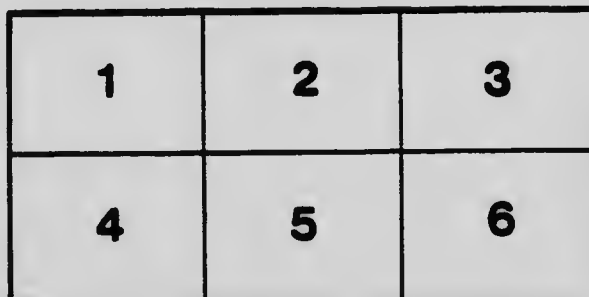
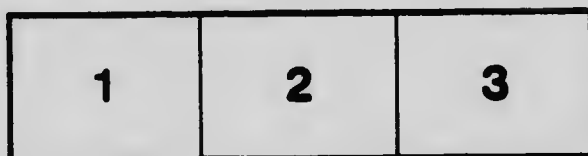
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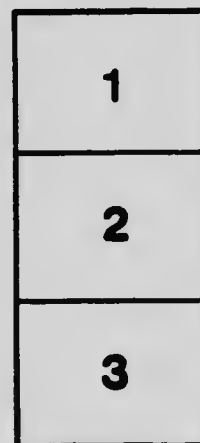
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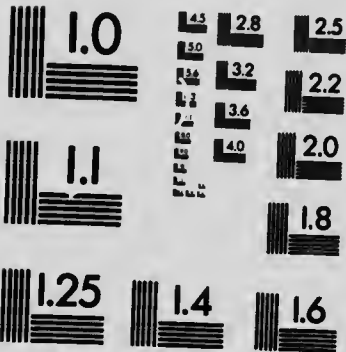
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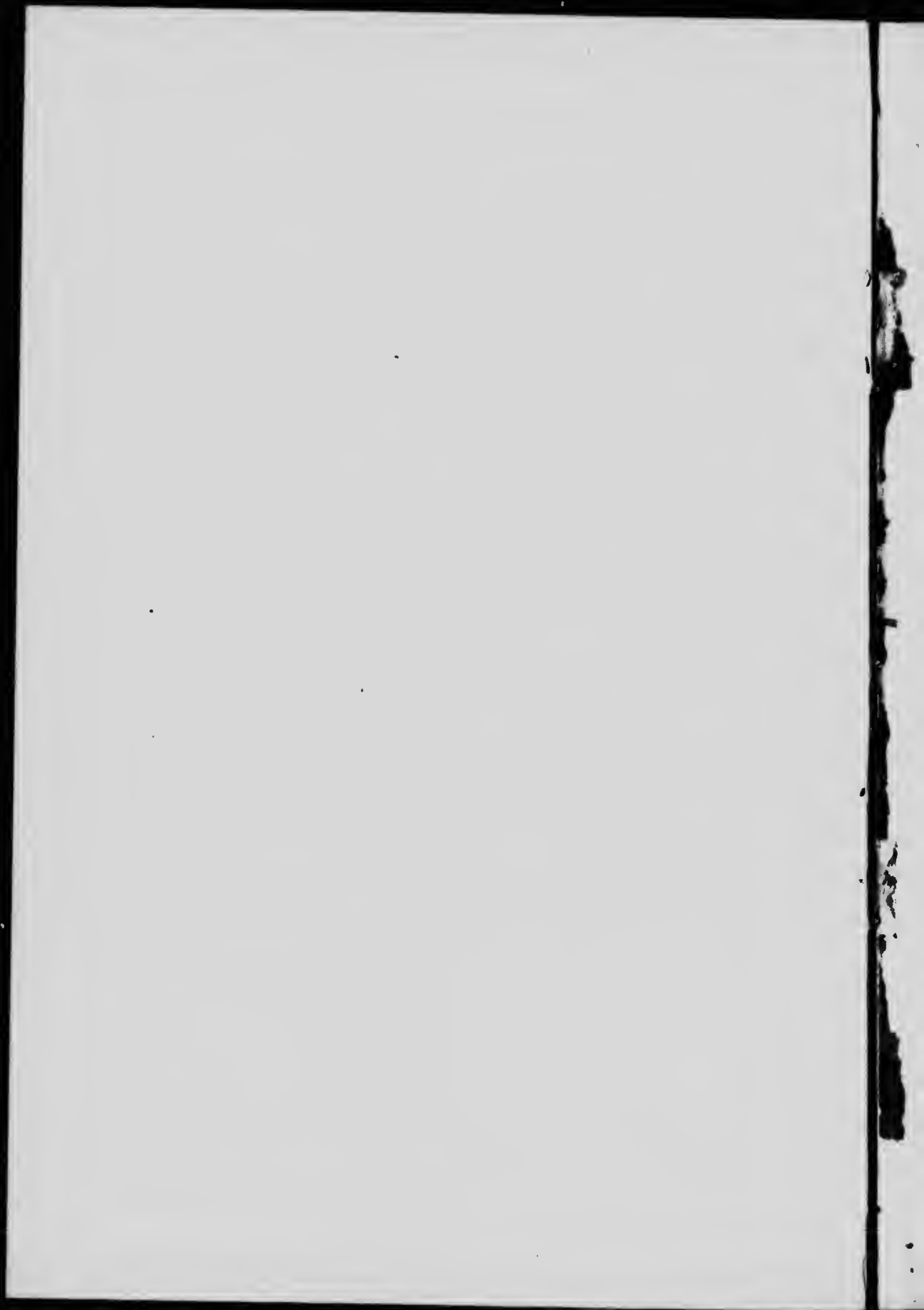
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CORRESPONDENCE,
REPORTS OF THE MINISTER OF JUSTICE
AND
ORDERS IN COUNCIL
UPON THE SUBJECT OF
PROVINCIAL LEGISLATION
1899-1900

COMPILED UNDER THE DIRECTION OF THE HONOURABLE
THE MINISTER OF JUSTICE

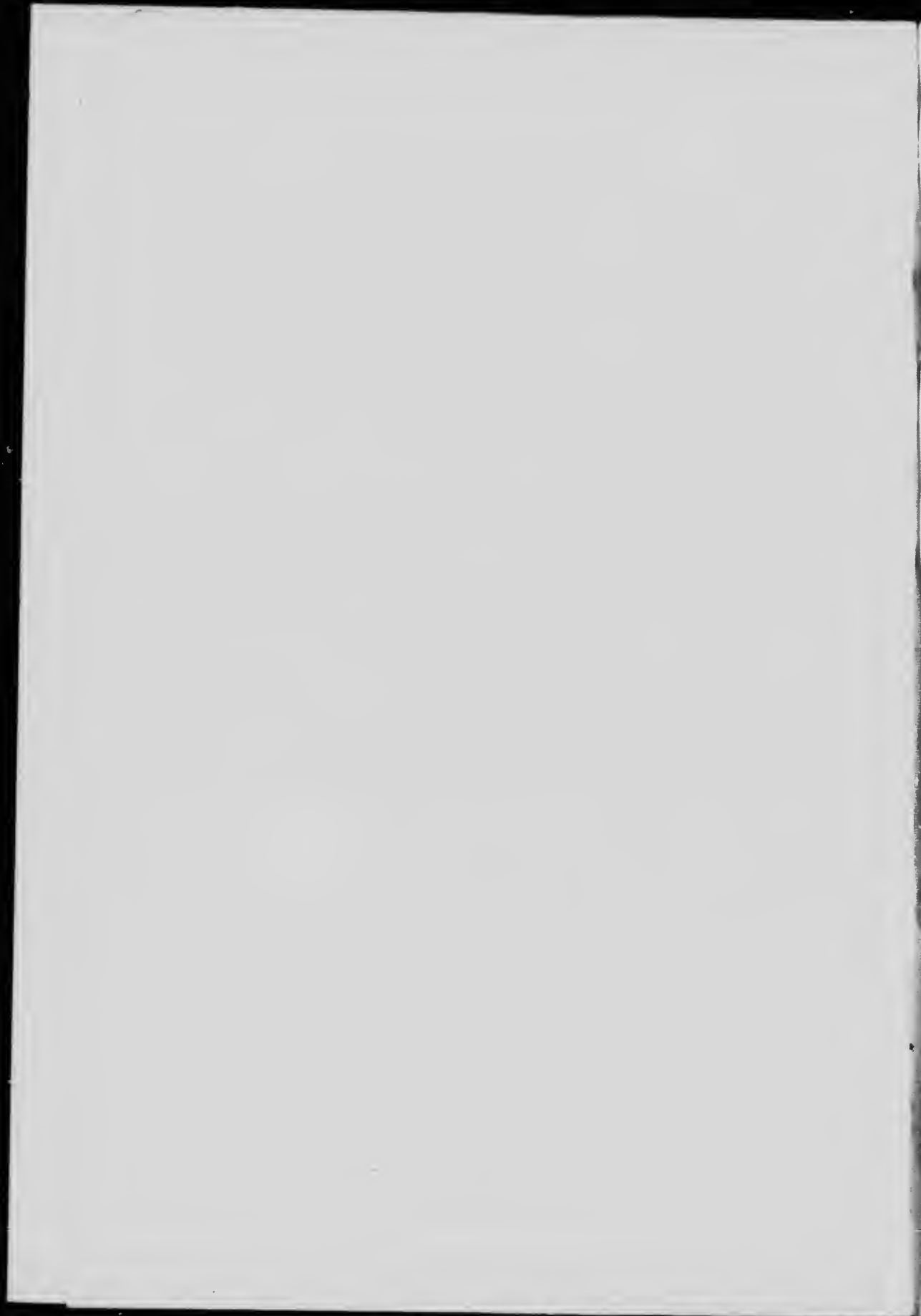
BY

W. E. HODGINS, M.A.,

Barrister at Law, of the Department of Justice



OTTAWA
GOVERNMENT PRINTING BUREAU
1902



ONTARIO

62nd VICTORIA, 1899.

2ND SESSION—9TH LEGISLATURE.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th November, 1899.

DEPARTMENT OF JUSTICE. OTTAWA, 11th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Ontario, passed in the 62nd year of Her Majesty's Reign (1899), received by the Secretary of State for Canada on 15th April last, and he has the honour to report that these statutes may be left to their operation without comment, with the exception of the following *us* to which the undersigned considers it necessary to make *ne* remarks.

Chapter 10. 'An Act to amend the Mines Act.'

By section 2 of this statute it is provided that no person, firm, syndicate or company conducting a mining business of any sort or kind in the province shall use the word 'bureau' to describe the name or title under which such business is carried on.

This section is subject to two objections—

(1) That it is a regulation of trade and commerce, and such regulations can only be competently made by the parliament of Canada, and

(2) Parliament having authority to incorporate companies whose objects are not merely provincial, must have the right to assign to the company such name as it sees fit.

The undersigned apprehends that a provincial legislature cannot limit parliament in the choice of a name, and that without infringing upon the authority of parliament in the regulation of trade and commerce, a provincial legislature cannot deny to a company incorporated and named by parliament, the right to carry on business in the province merely because the name of the company is not satisfactory to the legislature of the province.

The undersigned does not consider, however, that the objections so stated are in the present case of sufficient importance to justify the disallowance of the statute which contains many other unquestionable provisions.

Chapter 34. 'An Act to improve the law relating to the Fisheries of the province.'

Sections 6, 7 and 14 of this chapter seem to affect somewhat the regulation of the Fisheries.

The undersigned apprehends that it is now well understood that a provincial legislature has no right to regulate the time or the mode of fishing, and that provincial enactments affecting these matters must be *ultra vires*. He conceives, however, that so far as the present statute is concerned any question which may be raised may be better disposed of by the courts than by action of Your Excellency in Council.

- Chapter 92. 'An Act to incorporate the Algoma Central Railway Company.'
Chapter 93. 'An Act to incorporate the Bruce Mines and Algoma Railway Company.'
Chapter 94. 'An Act to incorporate the Haliburton, Whitney and Mattawa Railway Company.'
Chapter 98. 'An Act to incorporate the Nipigon Railway Company.'
Chapter 100. 'An Act to incorporate the North Lanark Railway Company.'
Chapter 103. 'An Act to incorporate the Thessalon and Grand Portage Railway Company.'
Chapter 104. 'An Act to incorporate the Thunder Bay, Nipigon and St. Joe Railway Company.'
Chapter 105. 'An Act to incorporate the Toronto, Lindsay and Pembroke Railway Company'; and
Chapter 106. 'An Act to incorporate the Worthington and Onaping Railway Company.'

These are statutes incorporating companies, and each of them contains a provision in effect that aliens and companies incorporated abroad may be shareholders in the company and entitled to vote on their shares equally with British subjects, and also eligible to office as directors of the company.

Objections from the Dominion point of view to similar provisions have been frequently stated heretofore by the undersigned or his predecessors in office, and the undersigned does not consider it necessary at present to do more than call attention to previous reports upon similar statutes.

For the reasons above stated the undersigned does not consider it expedient to recommend the disallowance of any of these statutes.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900.

3RD SESSION—9TH LEGISLATURE.

Mr. W. R. P. Parker to the Right Hon. Sir Wilfrid Laurier, G.C.M.G., M.P., P.C.

TORONTO, CANADA, 13th September, 1900.

DEAR SIR,—Herewith inclosed is a copy of a petition forwarded to the Honourable the Secretary of State for consideration by your government.

In view of the urgency and importance of the matter, I am sending you this copy, and I would also call your attention to the Parallel Act passed by your government in 1897, being 60-61 Vic., chap. 17. Upon comparing the two Acts, and bearing in mind that the nomenclature was changed while the bill was passing through the Ontario legislature, the license fee sought to be imposed by the Ontario legislature is in substance and reality an export duty, as appears on the face of the Act, but more clearly by the declaration of the Ministers in respect thereto.

Trusting that this will receive your early and serious consideration.

I am, yours truly,

W. R. P. PARKER.

Petition from W. R. P. Parker and others to His Excellency the Governor General in Council.

To His Excellency the Right Honourable Gilbert John Elliot, Earl of Minto, G.C.M.G., Governor General of the Dominion of Canada, in Council :

THE PETITION OF THE UNDERSIGNED,

SHOWETH :—

1. That your petitioners are the owners of or interested in nickel or nickel and copper properties in the district of Nipissing and Algoma, in the province of Ontario.

2. For the most part the said lands were granted to your petitioners or to their predecessors in title prior to the year 1891 and in all cases the said lands were so granted in fee simple as mines or leased by letters patent under the great seal of the province of Ontario.

3. That by the Act of the Legislature of the province of Ontario, passed in 1891 (known as 54 Vic., ch. 8) certain royalties were imposed on all ores and minerals mined, wrought or taken from the lands located, sold and granted or leased by the Crown after the passing of the Act, that is, after the 4th day of May, 1891, and in the following session of the legislature there was by The Mines Act of 1892 (being 55 Vic., ch. 9) a declaration by Her Majesty by and with the advice and consent of the legislature in the words following

‘All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been received, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents

and lying within this province, are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty.'

And the said declaration has been continued in the various enactments in regard to mining laws subsequently passed by the province of Ontario, and is contained in section 3 of the present Mines Act (being Revised Statutes of Ontario, chapter 36) in the following words:—

'That such lands, ores and minerals shall be free and exempt from every such royalty, tax or duty.'

4. That large amounts of money have been expended and valuable rights acquired on the faith of the said declaration by the legislative assembly of the province of Ontario and of the said unconditional patents and leases.

5. That a large part of the patented lands of the districts of Nipissing and Algoma are held under the Land Titles Act in force in the province of Ontario, i.e., under what is known as the Torrens System of Land Titles.

6. The said Land Titles Act declares:

'The first registration of any person as owner of land (in this Act referred to as first registered owner) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject as follows:—

1. To the incumbrances, if any, entered on the register.

2. To such liabilities, rights and interests, if any, as are by this Act declared for the purposes of the Act not to be incumbrances, unless under the provisions of this Act, the contrary is expressed on the register.

3. Where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any person claiming under him, to any unregistered estates, rights, interests or equities to which such persons may be entitled; but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors, which are within the legislative jurisdiction of this province.'

7. That upon the faith of the rights acquired under the said Act and of the absolute title so guaranteed and vested, transactions involving large sums have been completed and large sums of money invested.

8. That on the 30th day of April, 1900, the Royal Assent was given to an act passed at the last session of the legislative assembly to amend the Mines Act by which section 1 of 63 Vict. (Ont.), Ch. 13, what had been section 3 of the Mines Act (referred to in paragraph 3 hereof) is repealed, including the said declaration that such lands, ores and minerals shall be free and exempt from every such royalty, tax or duty.'

9. Sections 4, 6, 7, 9, 10, 11 and 13 of the said Act to amend the Mines Act (being 63 Vict. (Ont.), Ch. 13, provide as follows:—

4. No owner of any mine shall carry on the business of mining for any ore or mineral in respect of which a license fee is imposed without first taking out a license under the provisions of this Act.

6. (1) The fee chargeable for a license shall be \$10, unless a greater amount is payable as provided in the next subsection.

(2) A second or subsequent license shall not be issued under this Act until all fees provided in section 7 of this Act in respect of the property proposed to be covered by such license have been paid, and such fees shall constitute the sum payable for the issue of any second or subsequent license in respect of such property.

7. Every person carrying on the business of mining in this province shall pay a license fee upon the gross quantity of the ores or minerals mined, raised or won during the preceding year from any mine worked by him, to be paid to the

treasurer of the province for the use of the province at the following rates, or such less rates as may be substituted by proclamation of the Lieutenant Governor, namely :—

(a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced ;

(b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced.

9. (1) The owners of the mine shall be jointly and severally liable to the Crown for the amount of the license fees payable in respect thereof, and the same shall be recoverable by action at the suit of Her Majesty on behalf of the province, if not paid to the treasurer of the province on or before the 30th day of April in each year.

(2) The fees payable under this Act shall be a charge upon the lands (described in the license) on which the mine is situate and in respect of which such fees are payable, and shall have priority over all other charges thereon ; and in case the same are not duly paid, proceedings may be taken for and on behalf of Her Majesty to foreclose the estate and right of all persons claiming any interest in the said property.

(3) In any action under this section Her Majesty's Attorney General shall have the same right either before or after the trial to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action.

10. Where ores or minerals that have been mined, raised or won in this province are smelted or otherwise treated in the Dominion of Canada by any process so as to yield fine metal, or any other form of product of such ores or minerals suitable for direct use in the arts without further treatment, then and in every such case the fees provided herein or such proportion thereof as may be fixed by the Lieutenant Governor in Council shall be remitted, or if collected shall be refunded under such regulations as the Lieutenant Governor in Council may prescribe.

11. Any person required under this Act to take out a license, who works or permits to be worked any mine without a license under this Act covering such mine shall forfeit to Her Majesty the sum of \$50 for every day during which he, without the said license, works or permits such mine to be worked, such sum to be recovered with costs by an action on behalf of Her Majesty in any court of competent jurisdiction.

13. (1) The provisions of sections 4 to 12 of this Act or of any of them may from time to time in whole or in part be brought into force and effect by proclamation of the Lieutenant Governor in Council, and until so brought into force shall not take effect, and the Lieutenant Governor may by the proclamation bringing any of such provisions into force or by subsequent proclamation, substitute any less fee, for any fee imposed by section 7 of this Act, and may also by proclamation direct that such proportion of the said fees as may be deemed advisable shall, subject to such conditions as may be imposed, be remitted in respect of ores or minerals refined in the United Kingdom or in any British colony or dependency.

(2) No return shall be made in respect of any fees paid, unless within twelve months of the time of payment, application is made therefor, and satisfactory evidence is furnished showing that the applicant is entitled to the relief claimed.

10. The Bill to amend the said Mines Act as introduced in the said legislative assembly provided for a tax not only upon nickel and copper ores but upon all other ores, but the said tax, which was a tax within the meaning of the said section 3 of the Mines Act repealed as aforesaid was abandoned after introduction, and what is tanta-

mount thereto is now under the name of a license fee authorized in respect only of ores of nickel or ores of nickel and copper combined.

1. In the speech from the Throne delivered by His Honour the Lieutenant Governor at the opening of the session of the Ontario legislature on February 14, 1900, these words were used :

'It is the object and policy of my government to utilize all the natural resources of our country so as to afford the largest scope for the profitable employment of capital and labour and thus furnish the markets of the world with finished articles instead of raw materials.'

12. In introducing the said bill and in moving the second reading thereof in the legislative assembly of the province of Ontario the Honourable the Commissioner of Crown Lands stated that the object of such legislation was not for the purpose of raising a revenue.

13. In assenting to the said Act and the other Acts passed at the same session of the Ontario legislature, His Honour the Lieutenant Governor in the speech from the Throne said :—

'I hope that the efforts of the legislature to promote the manufacture of refined nickel in the province in the early future will be successful.'

The only legislation in regard to refining of nickel passed at the said session of the Ontario legislature is that contained in the above-mentioned Act.

14. Your petitioners submit that it therefore appears that the said Act was not passed in the exercise of any power or jurisdiction vested in the Ontario legislature, but was passed for the express purpose and with the design of regulating the trade and commerce of Canada, and also for the purpose of authorizing the Lieutenant Governor in Council to impose what in reality is an export duty on nickel and nickel copper ore and matte exported from the Dominion of Canada.

15. The imposition of the said license fees, unless same are remitted pursuant to section 13 of the said Act, would be fatal to the nickel industry of the districts of Algoma and Nipissing and the menace to the said industry contained in the said Act is extremely prejudicial.

16. That if the said Act is not disallowed by Your Excellency the security of property rights in the province of Ontario will be greatly depreciated and the difficulties in securing the investment of British and other capital in Canadian enterprises will be correspondingly increased ; in fact if the provisions of sections 4 to 11 of the said Act are put in operation and become effective and the license fees mentioned in section 7 are exacted from the owners of lands granted prior to the passing of the said Act, no investment of British or foreign capital in Canada could thereafter be considered secure.

17. Acts of local legislatures are by the British North America Act subject to disallowance by Your Excellency in Council within one year from the passing thereof, but your petitioners are advised that if the said Ontario Act is not disallowed Your Excellency in Council will have no authority to disallow Orders in Council which may subsequently be passed pursuant to the said Act.

18. The said Act if not disallowed by Your Excellency or declared void by the courts would authorize the Lieutenant Governor in Council :—

(a) To impose license fees which would practically amount to the confiscation of your petitioners' lands without any compensation therefor.

(b) To impose export duties upon ores of nickel and ores of copper and nickel combined and upon matters thereof, in contravention of the provisions of the British North America Act by which such power is exclusively conferred on the Dominion parliament.

(c) To enforce such export duties as a charge upon the lands from which such ores are mined, raised or won.

(d) To discriminate against British industry and enterprise.

(e) To prevent matte produced from Ontario nickel ores or copper and nickel ores being treated in any refinery situate in Great Britain or any other part of the British empire outside of Canada.

19. If not disallowed the said Act will tend to discourage and prevent the investment of British capital in the Canadian nickel industry, in the success of which your petitioners are greatly interested, and will also assist in directing attention, capital and enterprise to the development and working of the nickel deposits of New Caledonia, Germany, Norway and Spain.

20. The injurious effect of the said Act (if not disallowed) upon the trade and commerce and also upon the credit of the Dominion of Canada will be exceedingly great.

21. Wherefore your petitioners pray that the said Act, being 63 Vic. (Ont.), chap. 13, entitled 'An Act to amend the Mines Act,' may be disallowed pursuant to the authority vested in Your Excellency in Council by the British North America Act.

And your petitioners will ever pray.

A similar petition was also received from Messrs. F. F. Lemieux, Geo. J. McCain, Thos. Clemow and 28 others.

From the Secretary of the Canadian Manufacturer's Association to the Hon. the Secretary of State.

TORONTO, 29th October, 1900.

DEAR SIR,—The recent legislation passed by the province of Ontario providing for the taxation of extra-provincial companies is causing widespread dissatisfaction among many manufacturers doing business in this province.

This dissatisfaction is particularly keen in the case of those companies that are incorporated under Dominion charter, because they believe that in seeking incorporation in this way that they would be able to do business in any part of the Dominion, and so feel especially grieved that they should be compelled to pay this tax now.

It seems to operate most injuriously in the case of those manufacturers situated in the province of Ontario and doing business under Dominion charter, who have been carrying on a manufacturing business in this province for years, and consequently feel that this tax now placed upon them is unfair, and places them at a disadvantage to their other competitors.

Our association therefore is anxious to find out how far this Act is going to operate to the prejudice of companies of this kind, and for this purpose I write to obtain from you, if possible, a list of the companies that have been incorporated under Dominion charter.

I am not sure that you have this list in any form that is readily accessible, but if you have, I would be pleased to see a full list. If, however, you have not, I am particularly interested in securing a list of the manufacturing companies that have been incorporated under Dominion charter, and would be particularly obliged if you could favour me with this.

On behalf of the Canadian Manufacturer's Association.

Your obedient servant,

T. A. RUSSELL,

Secretary.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th October, A.D. 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 24th September, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that there has been referred to him copies of the petition addressed to Your Excellency in Council which was forwarded to the Prime Minister by Mr. W. R. P. Parker, Toronto, apparently on behalf of the owners or others interested in nickel or nickel and copper property in the district of Nipissing and Algoma, in the province of Ontario, in which the petitioners pray that the Act 63 Victoria, chapter 13, province of Ontario, entitled 'An Act to amend the Mines Act,' may be disallowed.

I have the honour to recommend that before any further action be taken a copy of this petition be referred to the Lieutenant Governor of Ontario for the observations of his government thereon.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to the Deputy Minister of Marine and Fisheries.

DEPARTMENT OF JUSTICE, OTTAWA, 22nd November, 1900.

SIR,—I have the honour to call your attention to an Act passed at the last session of the Ontario legislature, 63 Vic., Ch. 50, intituled: 'An Act respecting the Fisheries of Ontario.

You will observe that there are a number of provisions in this Act, as for instance, sections 13, 34, 38 and 39, *et seq.*, which profess to regulate the provincial fisheries, and seem, therefore, to be *ultra vires* under the decision of the judicial committee in the fisheries case. It will be necessary shortly for the Minister of Justice to report upon this statute to His Excellency in Council, and attention will, of course, be drawn to the unconstitutionality of these provisions, but what I would like first to ascertain is whether these so far interfere with or affect the policy of your department, or the administration of the fishery laws and regulations of the Dominion, as in the opinion of the Minister of Marine and Fisheries to call for disallowance. In the absence of necessity for the exercise of that power it is quite likely that this department might perhaps be satisfied to call attention to these provisions, point out their invalidity and suggest their repeal, leaving it to the persons affected, in case the province should retain these provisions, to set up their rights in the courts. I will withhold further action with regard to this statute until I receive the views of your department, but this matter should be attended to without undue delay as the time for disallowance is running, and a proposition to disallow would doubtless lead to some preliminary correspondence with the provincial authorities.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Deputy Minister of Marine and Fisheries to the Deputy Minister of Justice.

DEPARTMENT OF MARINE AND FISHERIES, OTTAWA, 28th December, 1900.

SIR,—I have the honour to acknowledge the receipt of your letter of the 22nd ultimo, calling the attention of this department to an Act passed at the last session of the Ontario legislature, 63 Vic., Ch. 50, intituled : 'An Act respecting the Fisheries of Ontario'; and asking whether certain specified sections of this Act, which profess to regulate the provincial fisheries, so far interfere with or affect the policy of this department or the administration of the fishery laws and regulations of the Dominion as, in the opinion of the Minister of Marine and Fisheries, to call for disallowance.

Having carefully looked into the matter, I am, by direction to state that this department is of opinion that the provisions of the Act to which you refer are calculated seriously to interfere with the policy of this department, and the administration of the fishery laws and regulations. The position this department has always taken is, that under the decision of the Privy Council, the exclusive power to make regulations is vested in them, and there is no co-ordinate provincial power, nor any power in the local government to authorize interference with the regulations made by this department. If such power existed and the provincial authorities could interfere with the close seasons as established by this department, or ignore the regulations in whole or in part, the entire policy of this department would probably be defeated.

In regard to the minimum size of fish allowed to be taken, the power to regulate is clearly vested in the Dominion and not in the provincial authorities, and for this and other reasons it would therefore seem to be advisable to disallow the Act, rather than to leave it to the persons affected to set up their rights in the courts, in case the province should retain these provisions after you had pointed out their invalidity and suggested their repeal. That the Dominion government should not rest satisfied with a mere protest in the present case is evident from the fact that the provincial authorities seem to be of opinion that regulations defining the close season and the implements with which fish should be taken are all that are vested in the Dominion, and that the powers vested in the Dominion may be indirectly defeated or rendered nugatory by the exercise of similar powers on the part of the province in its capacity as proprietor or owner of the fishery. The department holds as a matter of policy that the exclusive power to regulate the fisheries must be preserved, and must not be permitted to be infringed upon. It would be better at the outset to let it be clearly and firmly known what the position of the Dominion government is on this point.

I am, &c.,

F. GOURDEAU,
Deputy Minister of Marine and Fisheries.

Copy of a proposed Report of the Hon. the Minister of Justice, submitted as a statement of objections to the Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 22nd November, 1900.

The undersigned has had under consideration chapter 24 of the statutes of the province of Ontario, passed in the sixty-third year of Her Majesty's reign (1900), assented to 30th April, and received by the Secretary of State on 18th May, intituled 'An Act respecting the Licensing of Extra Provincial Corporations.'

The term 'extra provincial corporations' is defined by this Act to mean 'a corporation created otherwise than by or under the authority of an Act of the legislature of Ontario.'

Section 2 mentions certain classes of extra provincial corporations which are not required to take out any license under the Act. These include corporations licensed or registered under the provisions of 'The Ontario Insurance,' or of 'The Loan Corporations Act,' and corporations liable to payment of taxes imposed by chapter 8 of the Ontario statutes for 1899, intituled 'An Act to supplement the revenues of the Crown in the province of Ontario.'

Section 3 mentions certain classes of extra provincial corporations which are required to take out license under the Act. These include corporations other than those mentioned in section 3 created by or under the authority of (a) an Act of the legislature of the old province of Canada, or by royal charter of the government of that province authorized to carry on business in Upper Canada but not carrying on business in Ontario at the date of the commencement of this Act; (b) an Act of the Dominion of Canada and authorized to carry on business in Ontario, and (c) extra provincial corporations not coming within any of the classes enumerated in sections 2 and 3, which latter would include corporations created and authorized by the parliament of the United Kingdom.

It is provided by section 6, as to extra provincial corporations required under the provisions of section 3 to take out a license, that none of these shall carry on within Ontario any business, unless and until a license under this Act so to do has been granted, and unless such license is in force; provided that the taking of orders for or the buying or selling of goods by travellers or by correspondence, if the corporation have no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of the Act.

Section 7 enacts that an extra provincial corporation required to take out a license may apply to the Lieutenant Governor in Council for a license to carry on its business or part thereof and exercise its powers or part thereof in Ontario, and upon the granting of such license such corporation may thereafter, *while such license is in force*, carry on in Ontario the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license, subject, however, to the provisions of the Act, and to *such limitations and conditions as may be specified in the license*. The following section authorizes the Lieutenant Governor in Council to make regulations respecting, among other things, the *forms of licenses*, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under the Act, and also to make orders with respect to particular cases where the general regulations may not be applicable, or where they would cause unnecessary inconvenience or delay.

It is to be observed here that these corporations are forbidden by the Act to do business in the province without license, and although it would appear from the above-mentioned sections and section 4 that it would be the duty of the provincial government to issue licenses to such corporations upon their complying with the provisions of the Act and the regulations, yet the licenses may be subject to limitations and conditions, the nature of which are not stated in the Act, and which depend upon regulations to be made from time to time by the Lieutenant Governor in Council; and further, that special limitations and conditions may be imposed in particular cases, so that there must be considerable uncertainty as to how far a corporation would be licensed in any case to carry on the business intended or authorized by its charter.

Section 13 authorizes the Lieutenant Governor in Council to suspend or revoke any license in whole or in part for default in observing or complying with the limitations and conditions of the license.

Section 14 provides a penalty against any corporation required to take out a license, for carrying on business without such license and renders such corporations while unlicensed incapable of maintaining any action, suit or other proceeding in

the courts of Ontario in respect of any contract made within the province or in connection with business carried on contrary to the provisions of section 6.

Section 18 establishes fees to be taken upon the granting of licenses.

The question as to the right of a provincial legislature to limit the authority granted to a corporation by the Imperial parliament or the parliament of Canada has heretofore on several occasions been considered by the government of Canada.

The undersigned apprehends that no argument is required to establish the invalidity of such a provincial Act so far as concerns the powers conferred by the parliament of the United Kingdom, the Acts of which, where intended to apply to a colony or province, must in all cases be paramount. The undersigned conceives that it is equally beyond provincial authority to prevent or in anywise limit the exercise of the powers of a company conferred by the parliament of Canada relating to any of the subjects specially enumerated in section 91 of the British North America Act. In both these cases the incompetency of the provincial legislatures has been already affirmed by the Dominion government.

Your Excellency's government is now, however, perhaps for the first time called upon to deal with a provincial Act which is clearly intended to prevent all Dominion corporations, save those falling within the classes mentioned in section 2 of the present Act, from doing any business within the province, unless thereunto licensed by provincial authority, and which is intended further to confer a discretion upon the provincial government as to the conditions, terms and limitations upon which such licenses may be granted, the exercise of which discretion may involve limitation of the powers which parliament has conferred and requirements which may render the execution of those powers burdensome or unprofitable.

In 1887, Sir John Thompson, then Minister of Justice, had occasion to report upon an Act of the province of Quebec, 49-50 Vic., Ch. 39, intituled: 'An Act to authorize certain corporations and individuals to loan and invest money in this province.' He stated that the right of the Dominion parliament to establish a corporation having powers and civil rights in more than one province had been most conclusively established; that the power of provincial legislatures in regard to the establishment of corporations was limited by section 92 of the British North America Act to the incorporation of companies with provincial objects and matters of a merely local and private nature in the province, while the powers of the Dominion parliament extend to all matters not coming within the classes of subjects assigned exclusively to the legislatures, and that it followed, therefore, that a statute relating to the incorporation of a company which was beyond the authority of a provincial legislature would be within the competency of parliament. The minister stated further that the right of a corporation so created by the federal authorities to hold lands or to make contracts in the several provinces in which it is established as a civil person might be dependent upon the general law of each province as to corporations, but could not, in his opinion, be restricted by any provincial legislation aimed at corporations established by the federal parliament, and he quoted high judicial decisions in support of these views. Sir John Thompson would have recommended the disallowance of this statute had it contained the provisions which the present statute does prohibiting Dominion companies from doing business without a license. He stated as the ground for refraining to recommend disallowance that while the statute empowered the provincial secretary to issue licenses to the companies referred to and proposed to convey authority to such companies to do business under such licenses, it did not contain any negative provision forbidding the companies to do business without license, and that it did not establish any penalty for non-compliance. The minister considered, therefore, that the Act seemed incapable of doing harm or obstructing the operation of corporations duly authorized or doing business within the scope of their lawful constitutions, except in so far as it might raise doubts as to the necessity for such a license. This report of the Minister of Justice was approved by His Excellency the Governor-General on 9th August, 1887, and is printed on pages 339 to 342 of the compilation of Dominion and provincial legislation, 1867-95.

In 1891 upon the recommendation of Sir John Thompson a statute of the province of Manitoba, 53 Vic., Ch. 23, intituled : 'An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein' was disallowed, and the minister in his report recommending disallowance referred to his previous report upon the Quebec statute, 49-50 Vic., Ch. 39, and he remarked that for the reasons therein stated the Act then under review, in so far as it related to companies having the powers mentioned in the Act by virtue of legislation from the parliament of the United Kingdom or from the parliament of Canada, was *ultra vires* of a provincial legislature, and upon that reason, as well as the further reasons stated in his report, he based his recommendation. This report of the Minister of Justice was approved by His Excellency in Council, 4th April, 1891, and is printed in the volume aforesaid at pages 941 to 945.

In 1896 another statute of the province of Manitoba, 58 Victoria, cap. 4, intituled 'An Act respecting corporations incorporated out of Manitoba,' was disallowed by His Excellency in Council because of the incompetency of the legislature to limit or forbid the exercise of powers lawfully conferred by the parliament of Canada. Reports of the Ministers of Justice of the time holding these views were approved by His Excellency in Council on 8th November, 1895, and 12th March, 1896. These reports and the correspondence connected therewith are printed at pages 1005 to 1010 of the above-mentioned volume.

Afterwards still another statute was enacted by the legislative assembly of Manitoba, 60 Vic., cap. 2, containing all the provisions which occasioned the disallowance of the Act 58-59 Vic., cap. 4. Sir Oliver Mowat, then Minister of Justice, in his memorandum of 15th November, 1896, pointed out that it had been held that the Dominion had power to incorporate a company for the whole Dominion, though the objects of the company were provincial, a provincial legislature having no power to authorize a company to do business outside of the province. He stated that it was unnecessary at that time to express any opinion as to whether a provincial legislature might require that a license should be obtained by such company before it could do business in the province, but that there could be no doubt that where a company was incorporated by the Dominion in the exercise of any one or more of its special and exclusive powers of legislation enumerated in section 91 of the British North America Act, a provincial legislature had no authority to impose any such conditions. This Act was afterwards disallowed upon the report of the undersigned concurring in the view of his predecessor, which report was approved by His Excellency in Council on 14th March, 1898. The particular point upon which the disallowance of the two latter statutes proceeded was the incapacity of a provincial legislature to limit or affect the operation of Dominion statutes enacted in the execution of any of the powers particularly enumerated in section 91. The present statute is open to the same objection, although not so far reaching, because under section 2 of the Act in question some Dominion companies have been excepted from the operation of the Act.

It has been the policy of the parliament and government of Canada for many years, in the exercise of undoubted constitutional rights, to incorporate companies for the purpose of doing business throughout the Dominion or in two or more provinces thereof, not only as to matters relating strictly to the enumerated subjects of Dominion jurisdiction, but also as to those matters which, if limited to the territory of any one province, would be within the exclusive legislative authority of that province. This jurisdiction in the Dominion arises, in the opinion of the undersigned, not only under the general authority of the Dominion relating to the peace, order and good government of Canada, but also as affecting the regulation of trade and commerce, a subject specially assigned to the exclusive legislative authority of Canada.

In the case of the Citizens' and Queen Insurance Co. vs. Parsons (1 Cartwright, at page 278), the Judicial Committee of the Privy Council held that the regulation of trade and commerce would include the regulation of trade in matters of interpro-

vincial concern, and, it may be, would include the general regulation of trade affecting the whole Dominion. It has also been held by the same authority that the parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (*Loranger vs. Colonial Building and Investment Association*, 3 Cartwright at page 128). This latter statement refers to companies incorporated not under the powers conferred within the scope of any of the subjects specially enumerated in section 91, but to companies the incorporation of which but for the fact that their powers or capacity to do business are to extend beyond the limits of any one province, would be solely within provincial authority.

In the case of the liquor prohibition appeal (1896 Appeal Cases at page 363) Lord Watson delivering the opinion of the committee and referring to the *Citizens' and Queen Insurance Company vs. Parsons*, says, 'It was decided that in the absence of legislation upon this subject by the Canadian parliament, the legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance, which was admitted to be a trade, so long as those conditions only affected provincial trade.' Construing this decision with that in the *Citizens' case*, the undersigned apprehends that legislation affecting interprovincial trade or affecting trade in matters of interprovincial concern would be *ultra vires* of a provincial legislature as being comprehended within the regulation of trade and commerce.

The question, therefore, arises whether legislation can be upheld by which a province professes to take power to prohibit the right of trading within the province, of a company incorporated by the exclusive authority of parliament to trade throughout the Dominion or in two or more of the provinces. Such a company has capacity within the scope of its charter to trade within the provinces and elsewhere in the Dominion just as an individual has. An enactment by a province forbidding residents of or persons doing business in any other province to trade in the first named province would seem to affect more than provincial trade. It would be a matter of interprovincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce; otherwise all interprovincial trade, which the judicial committee holds that the Dominion has the right to regulate, could be rendered impossible by the provinces.

If the right of trading between individuals of different provinces be a matter of interprovincial concern, so also must be the right of trading by a company incorporated by parliament for the purpose of trading in different provinces. It is incorporated for the purpose of a trade which is not local or provincial—a trade which concerns at least two provinces; in other words, a trade which the Dominion has exclusive authority to regulate; and hence, though such a company is subject to all the general laws relating to property and civil rights and private and local matters of the respective provinces where it does business, it cannot be bound by provincial legislation directed against it as an extra provincial company in respect of its trade which concerns the whole Dominion or several provinces.

It is the opinion of the undersigned that interprovincial trade or trade that concerns the whole Dominion cannot be prohibited or restricted by a province and, if this be so, it follows that the agencies of such trade established by the Dominion cannot competently by provincial legislation be prevented from executing their powers, or restricted in operations within the scope of their Dominion charters.

It would appear, therefore, that the Act in question is *ultra vires*, and that so far as it has any operation as to Dominion corporations it is likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies intending to do business in Ontario.

It will be observed, moreover, that among the corporations required to take out licenses as a condition to their transaction of business in Ontario are included corporations constituted by Act of the late province of Canada authorized to carry on business in Upper Canada, but not carrying on business there at the date of the com-

mencement of the Act. The undersigned apprehends that there can now be no doubt that the legislature of either of the provinces of Ontario or Quebec has no power to modify or repeal the provisions of the charter of a corporation created by the legislature of the late province of Canada for the purpose of doing business in Upper and Lower Canada. Companies so incorporated have by virtue of their constitutions, both the capacity to do business within the scope of their powers, and the right to exercise those powers to the fullest extent within the two provinces, and it is, according to the highest judicial authority, incompetent to either of these legislatures to modify or repeal the provisions of such an Act. Therefore the legislature of Ontario cannot effectively prohibit such a corporation from transacting its business within Ontario, or confine the execution of its powers by conditions or limitations established under the authority of the Lieutenant Governor in Council, or otherwise, as it is sought to do by the present Act.

For the foregoing reasons the undersigned considers that this Act ought not to be allowed to remain as it stands, and he hopes that the provincial government, upon the matter being called to its attention, will promote legislation to amend the Act so as to repeal those provisions which require Dominion corporations and those of old Canada to procure provincial licenses and forbid them from doing business otherwise.

The undersigned, therefore, recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario for the information of his government, with a request that Your Excellency's government be informed as early as convenient as to whether such amendments will be made at the ensuing session of the legislature.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th December, A.D. 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Ontario, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State on 18th May, 1900.

Chapter 24, intituled 'An Act respecting the licensing of extra provincial corporations,' will form the subject of a separate report.

Chapter 13 intituled 'An Act to amend the Mines Act,' and

Chapter 50, intituled 'An Act respecting the fisheries of Ontario,' are reserved for further consideration.

As to all the other statutes the undersigned is of opinion that they may be left to their operation without comment, except as to a number of chapters relating to the incorporation or constitution of companies which each contain a provision to the effect that aliens may be shareholders and shall be entitled to vote and eligible for office as directors of the company, as to which attention is called to the observations which have been repeatedly made by the undersigned or his predecessors upon similar clauses, both in the statutes of Ontario and those of other provinces. This objection applies in like manner to the sections in question, but the undersigned does not on that account consider it proper to recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

His Honour the Lieutenant Governor of Ontario to the Hon. the Secretary of State.

GOVERNMENT HOUSE, TORONTO, 28th December, 1900.

SIR,—Adverting to your despatch of 19th October, No. 1620, covering for the information of my ministers a certified copy of a Minute of the Privy Council approved by His Excellency the Governor General on the 9th of that month, together with the petition attached thereto from Mr. W. R. P. Parker, of Toronto, in which the petitioner prays that the Act 63 Victoria, chapter 13, of the province of Ontario, entitled 'An Act to amend the Mines Act' may be disallowed, I have now the honour to inclose herewith, for submission to His Excellency in Council, copy of an Order of the Executive Council of Ontario, approved by me this day, together with a copy of the report of my Attorney General in the premises.

I have, &c.,

O. MOWAT,

Lieutenant Governor of Ontario.

Copy of an Order in Council, approved by His Honour the Lieutenant Governor in Council on the 28th day of December, 1900.

Upon the recommendation of the Honourable the Attorney General, the Committee of Council advise that a copy of the annexed report, with respect to the petition of W. R. P. Parker, and others, asking that the Act to amend the Mines Act may be disallowed, be transmitted to the Honourable the Secretary of State for submission to His Excellency the Governor General in Council.

Certified,

J. LONSDALE CAPREOL,

Asst. Clerk, Executive Council.

Report of the Hon. the Attorney General of Ontario.

The undersigned has had under consideration the petition of W. R. P. Parker, and others, asking that the Act of the legislature of Ontario, 63 Vic., Ch., 13, entitled: 'An Act to amend the Mines Act,' may be disallowed pursuant to the authority vested in His Excellency the Governor General in Council by the British North America Act, and begs respectfully to make the following observations with reference thereto.

1. The Act in question was passed by the legislative assembly without any division.
2. The statements purporting to be statements of fact set forth in the petition are not admitted to be true. On the contrary in reply to a question, it was distinctly stated by a member of the government, when the Bill was under discussion, that the object of the Bill was the raising of revenue. The undersigned, however, apprehends that in considering the propriety of the legislation, regard must be had alone to the provisions of the statute against which complaint is made. Its meaning and intention must be gathered from its terms, and it is therefore unnecessary to answer argument set forth in the petition that is based upon alleged statements of fact which are not admitted.

3. The Act complained of is an Act relating exclusively to the management and control of the mineral interests of the province of Ontario. Under the British North America Act the provinces have exclusive power to raise revenue for provincial purposes by means of direct taxation or the imposition of license fees. In some of the provinces mines and minerals constitute probably the most important source from which their revenues are derived, and any interference with the right of the provinces to raise revenue by direct taxation, which is undoubtedly what the Act provides, might result in the most serious consequences.

4. Whether the revenue sought to be raised is obtained in the shape of royalty, license fee or any other form of direct tax is a matter of no importance, and one form of tax may at any time be dropped and another substituted and the amount imposed, whatever the form of the tax may from time to time be either increased or diminished, or entirely new taxes may be imposed according to the necessities of the revenue or the policy of the legislature.

5. The power to impose a tax or license fee implies the power to reduce or remit such tax or fee, and the taxing authority is the only authority for defining the circumstances under which such reduction or remission may be allowed. If, as I maintain is the case, the legislation is strictly within the competency of the legislature, we are not called upon to defend the provisions of the Act in question. There may be adverse criticism of the policy involved, strong differences of opinion, both in the House and in the country as to the wisdom or prudence of a measure, but if within its jurisdiction each legislature must be supreme in determining whether it is or is not called for in the public interest.

6. The legislature of each province has exclusive legislative jurisdiction in matters relating to the sale of public lands belonging to the province, and this includes the minerals, property and civil rights in the province and generally all matters of a merely local or private nature in the province; and when in addition regard is had to the express authority to raise revenue by taxation either in the form of direct taxation or license fees, and the further well established right of proprietorship over royalties, there seems no room whatever for the contention that the legislature has exceeded its authority in passing the Act in question.

7. Sir Oliver Mowat, late Minister of Justice, when Premier and Attorney General of Ontario, in the course of a correspondence with the federal government upon the question of the disallowance of an Act relating to the Niagara Falls Park, 55 Vic., c. 8, used the following language:—

‘I repudiate the notion of the petitioners 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 relating to property and civil rights. That is a question for the exclusive judgment of the provincial legislature.’

In another case as far back as 1875 the Honourable Edward Blake, then Minister of Justice, in reporting on a petition for the disallowance of an Act respecting the union of certain Presbyterian churches, 38 Vic., Chap. 75, 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 was a matter for the local legislature.’

The late Sir John Thompson, in his report to Council upon the Act 48 Vic., chap. 5, ‘An Act in respect of certain sums of money ordered by the legislative assembly to be impounded in the hands of the Speaker,’ to which objection had been taken on the ground that it was an interference with the private rights of a creditor, used these words: ‘Without expressing any opinion as to whether the Act is a just measure or not, the undersigned is of the opinion that it is within the undoubted legislative authority of the legislature of that province, and therefore respectfully recommends that it be left to its operation.’

I also refer to the case of the Nova Scotia Act, 55 Vict., chap. 1, ‘An Act to amend and consolidate the Act relating to Mines and Minerals.’ The contention was that this Act affected the rights of lessees of mineral lands and changed the terms upon which they were held, numerous petitions against the Act being presented by capitalists who were lessees of coal areas in Nova Scotia. The government, however, declined to interfere upon the ground that the matters dealt with were clearly within the legislative authority of the province.

8. The well understood rule or principle upon which the federal government acts in relation to disallowance of provincial legislation is that there shall be no interference except in the case of Acts which are illegal or unconstitutional.

9. The Act does not come within the meaning of the words *regulation of trade and commerce* in the 91st section of the B. N. A. Act as interpreted by the courts.

These words *regulation of trade and commerce* include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of interprovincial concern and possibly general regulation of trade affecting the whole Dominion. Clearly no interpretation should be placed in these words which in its effect would hamper, impair or interfere with the right of the province to raise revenue under the powers given by the Act in that behalf.

In the recent case of *Smylie et al., vs. the Queen*, 31 O.R. 202, 27 A.R. 172, it was held that a statute of the province of Ontario (61 Vic., chap. 9) enacting that all sales of pine timber thereafter made and every license thereafter granted should be made or granted subject to the condition that all pine timber cut under such license should be manufactured into sawn timber in Canada, was *intra vires* of the Ontario legislature and was not an interference with the regulation of trade and commerce.

The following extract is from Mr. Justice Osler's judgment in that case:—

'We are dealing with a provincial Act, and we are only to inquire whether the subject with which it is concerned is within the power of the legislature, and (2nd) whether the language employed is effective for the purpose contended for by the respondent.

'I am unable to agree that the Act is *ultra vires* for bringing upon the powers reserved to parliament by the British North America Act, sec. 91 (2), for the regulation of trade and commerce. The ground on which it is said to do so is that by requiring the timber to be manufactured into sawn timber in Canada, the Act indirectly prohibits its exportation to foreign countries in any other than its manufactured state.

'Whether this objection would be valid if the Act professed to deal generally with timber which had become the property of private persons or corporations free from any condition on which it had been acquired from the Crown, might admit of argument, but if I am right in my view that the legislature is dealing with the public property of the province and dictating the terms on which it might be acquired, I think that it is not well founded.

'The Act does not in terms purport in any way to regulate trade and commerce, though trade and commerce may be incidentally affected by the business conditions which arise out of its operation just as they may be by private legislation affecting property and civil rights in the province, or dealing with other subjects assigned to the exclusive jurisdiction of the provincial legislature, and which, as Lord Herschell expresses it, incidentally involves some fetter on trade and commerce but is not concerned directly therewith for the purpose of regulating it.

10. For the foregoing reasons the undersigned submits with confidence that the Act should be left to its operation.

M. GIBSON,
Attorney General.

20th December, 1900.

The Hon. G. W. Ross, M.P.P., Premier of Ontario, to the Hon. the Minister of Justice.

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 8th February, 1901.

MY DEAR SIR,—I inclose you herewith the statement you were good enough to give me some time ago respecting the proposed order regarding our Act of last session with respect to extra-provincial corporations. I also send you a memo. which has been prepared in answer to some of the objections you have taken to the validity of our Act.

Yours truly,

G. W. ROSS.

*Re Extra-Provincial Corporations Act.**MEMORANDUM upon the letter and memorandum of the Honourable the Minister of Justice.*

1. It does not seem necessary to comment upon the general observations contained in the letter of the Minister of Justice in so far as they deal with the general questions arising under the British North America Act, to which the letter has reference, as the general correctness of the views of the Minister of Justice in this respect may be acquiesced in. It is with reference to the intention and effect of the Ontario legislation respecting extra-provincial corporations that it is necessary to deal. In this respect the undersigned ventures to think that the Minister of Justice in his letter has misapprehended the intention and effect of the provincial Act and its scope. The memorandum inclosed in his letter does not seem to go as far as the letter itself, and, taking the two together, it seems to the undersigned that the objections to the legislation are not serious, and that, properly understood, the intentions of the Act in question, and the views of the Minister of Justice with respect to the kind of legislation which might properly be left to its operation, so far as regards the power of disallowance, are not far apart, and that a slight amendment for the purpose of removing doubts is all that is required.

2. A very clear distinction is made in the Act between the position of companies incorporated by or under the authority of an Act of the Dominion of Canada or of the legislature of the late province of Canada, and the position of a company incorporated in a foreign country, or under an Act of the parliament of Great Britain, which does not assume to extend to Canada, and which for this purpose may properly be treated as if passed in a foreign country. By section 4 a corporation incorporated under an Act of the Dominion and authorized to carry on business in Ontario and a corporation incorporated under an Act of the late province of Canada, are entitled as of right, upon complying with the provisions of the Act and the regulations made under it, to receive a license to carry on their business and exercise their powers in Ontario. It is suggested in the memorandum of the minister that under section 7, limitations and conditions might be included in the license to a Dominion company which would modify the right conferred by section 4 to receive a license to carry on its business and exercise its powers in Ontario, meaning of course the whole of its business and the whole of its powers. This certainly was not the intention of the framer of the Act, and the undersigned ventures to think that, under a proper reading of sections 4, 5 and 7 taken together, that which is feared by the Minister of Justice could not properly be done. Section 4 is unqualified in its terms. Section 5 contains the words 'subject however to such limitations and conditions as may be specified' in the license. The same words occur at the end of section 7, but, as section 7 covers the three cases which are included in sections 4 and 5, a fair reading of section 7 would in the opinion of the undersigned confine the right to impose limitations and conditions to the class mentioned in section 5, giving in this way full effect to the unqualified terms of section 4. However this may be, the undersigned recommends that for the removal of doubts the following proviso be added to section 7, viz.: 'Provided always that no limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within sections 7 or 8 to carry on in Ontario all such parts of its business and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized or have capacity to carry on and exercise therein.' This proviso would in the opinion of the undersigned remove the objections pointed out by the Minister of Justice.

3. The regulations which under the Act the Lieutenant Governor in Council is empowered to make are confined to matters of procedure, and the right under section 13 to suspend or revoke a license to a Dominion company would be confined to a case of default in making returns or in continuing the appointment of a representative in Ontario on whom process could be served.

4. The undersigned begs to refer to the legislation in other provinces of Canada respecting extra-provincial companies and the taxation thereof, notably that in British Columbia. The undersigned also refers to the Act of the legislature of Prince Edward Island with respect to the carrying on of business in that island through the medium of commercial travellers and companies elsewhere. The undersigned also refers to the provisions of the Act of the province of Quebec with respect to the licensing and taxation of companies not incorporated in the province and to the decision of the Judicial Committee of the Privy Council with reference thereto. The undersigned is aware that in matters of this kind new questions are constantly being raised, and it is not difficult to suggest arguments for and against the constitutionality of provincial and Dominion legislation with respect to such matters. The question in hand, however, is not to be decided upon strict legal principles of detail construction; all such questions should be and must be left for the decision of the courts. The question in hand is whether the exercise of the powers of disallowance is under all the circumstances called for, and the undersigned ventures to express his very strong view that, having regard to the provisions of other statutes, both in the province of Ontario and in other provinces, which have been allowed to have their operation, the power of disallowance cannot constitutionally and properly be exercised on this occasion.

5. The conclusion of the memorandum of the Minister of Justice expresses the hope that the provincial government will promote legislation to amend the Act so as to repeal those provisions which require Dominion corporations and those of old Canada to procure provincial licenses and forbid them from doing business otherwise. The undersigned hopes that the amendment to section 7 which he has suggested will be regarded as satisfactory by the Minister of Justice. In the opinion of the undersigned it would not be proper to repeal entirely the provisions requiring Dominion corporations and those of old Canada to procure provincial licenses. The power conferred upon the provincial legislatures under section 92 of the British North America Act with respect to licenses and with respect to taxation clearly includes the power to require a Dominion company to take out a license and to pay a tax as well as foreign companies. The provisions of the Act prohibiting such companies from doing business in Ontario without a license and without the payment of a tax are, in the opinion of the undersigned, proper provisions and required for the proper enforcement of the licensing and taxing provisions. These provisions will not bear oppressively upon any company, and the widest discretion is given to the executive of the province to relieve from penalties and to prevent informers or others from proceeding for their recovery. This discretion has up to the present been exercised in the most liberal manner, and in no case has any proceeding been threatened or taken where a company shows a desire to comply with the provisions of the statute.

6. From the foregoing the undersigned hopes the Minister of Justice will see that the statement in his letter that the Act was intended to hamper the Dominion government and parliament in dealing with matters relating to trade and commerce, &c., and to hamper them with respect to corporations which are desirous of doing business in two or more provinces, is not warranted by the facts.

The Hon. Geo. W. Ross, M.P.P., Premier of Ontario, to the Hon. the Minister of Justice.

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 22nd February, 1901.

MY DEAR SIR,—I inclose you copy of the Bill to amend the Act respecting extra-provincial corporations to bring it within the limits of our jurisdiction as a province. Will you kindly look it over and see if it meets with your views, and return it at your earliest convenience?

Yours truly,

G. W. ROSS.

BILL.

[1901.]

An Act to amend Chapter 24 of the Statutes for A.D. 1900, intituled : 'An Act respecting the Licensing of Extra-Provincial Corporations.'

His Majesty, by and with the advice and consent of the legislative assembly of the province of Ontario, enacts as follows :—

1. Section 2 of Ch. 24 of the statutes of Ontario for the year 1900 is hereby amended by adding to Class V, therein, the words 'or by Ch. 31 of said statutes for 1899, intituled : 'An Act respecting Brewers' and Distillers' and other licenses.'

The amendment made by this section shall take effect as if it originally formed part of said Chap. V.

2. Section 6 of the said Act is hereby amended by striking out of the third line of the first proviso thereof the word 'and' and substituting therefor the word 'or.'

3. Section 7 of the said Act is hereby amended by adding thereto the following, viz. :—'Provided always that no limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within Class VII. or VIII., to carry on in Ontario all such parts of its business, and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein.'

From the Hon. the Minister of Justice to the Hon. G. W. Ross, M.P.P., Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1901.

MY DEAR SIR,—Referring to your letter of 2nd instant, I have considered your memorandum with respect to the Extra-Provincial Corporations Act; also the proposed amendment, which is satisfactory so far as it goes, but I do not consider that a provincial legislature ought so to legislate as to require the payment of a license fee, as a condition, to a Dominion corporation doing business within the province, or to exact license fees discriminating between trading corporations established by parliament and those established by the provincial legislature. I think the Act ought to be further amended so as either to exempt corporations created by parliament and those of old Canada from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act shall be imposed equally upon corporations created by the Dominion, by the old province of Canada and by the legislature of Ontario.

I sincerely hope that you will be able to recommend the further amendment herein suggested.

Yours, &c.,

DAVID MILLS,
Minister of Justice.

The Hon. Geo. W. Ross, M.P.P., Premier of Ontario to the Hon. the Minister of Justice.

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 18th March, 1901.

MY DEAR SIR,—I notice by your letter of the 14th inst., that you still object to the Extra-Provincial Corporations' Act on the ground that we impose a license fee on corporations holding a charter of the Dominion parliament or from the old parliament of Canada. As you do not say that you propose disallowing our Act of last session on account of this provision, the Provincial Secretary will introduce an amended Bill

with the clauses eliminated which have been considered as *ultra vires*. Should you still contend that the power to impose a license fee on corporations holding a Dominion charter or a charter of the old parliament of Canada is beyond our jurisdiction, we will be prepared to submit a case and argue this right, as the law provides. I mention this so that you may feel that we are treating your views with the greatest courtesy and at the same time maintaining what we think are our constitutional rights.

Yours truly,

G. W. ROSS.

The Hon. the Minister of Justice to the Hon. G. W. Ross, M.P.P., Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 19th March, 1901.

MY DEAR SIR,—I have your letter of the 18th inst., with reference to extra-provincial corporations. I think that you have overlooked some of the objections to that Bill. What we contend is that the regulation of trade and commerce is with us, and that you undertake to treat the Dominion corporations which we have the right to create, for the purpose of trade, in a way different from that in which you treat the corporations called into existence by your own authority. The question is not, whether you have the power to tax Dominion corporations more than you do those of the local legislature, created for a similar purpose, but whether we ought to permit the policy of the Dominion to be frustrated by unjust provincial legislation. You have only to make the tax sufficiently discriminating, in order to force Dominion corporations out of existence altogether, and I do not think we ought to permit you to interfere with our policy in a matter within our jurisdiction by such a use of your power of taxation. It may be that you have the power to impose ten times the tax upon 'A' that you do upon 'B' for the same kind of property, and for the same purpose, but when you extend that power to us, with the view of frustrating our public policy, I think we ought to use the constitutional power which we possess to prevent it. As long as you impose no greater tax upon Dominion corporations than you do upon similar corporations created by yourselves, I am not disposed to recommend interference. It is where you undertake to discriminate, and to apply the doctrine of protection against our corporations that I object. The government of Canada is not a foreign government; the corporations that it creates are not foreign corporations; they are as much at home in the province of Ontario, as are those called into existence by the local legislature, and violent hands ought not to be laid upon them. If this is done, it is our duty to protect them, and we think there is but one mode of harmonious living, and that is by treating all alike, whether their charters are Dominion or provincial. As we have the power of taxation in any form whatever, we can discriminate in favour of Dominion corporations in Ontario, as easily as you can discriminate against them. If we were to do so, you would at once cry out against our legislation, not because it was *ultra vires*, but because it would be unjust. We simply ask you to recognize the principle of equality. What have you to say against it? What reason can you assign for imposing a higher tax upon a Dominion corporation than upon one created by your own legislature? We have not proposed to impose a discriminating tax upon your corporations, but we have undoubtedly the power. In my opinion, all legislation, on the part of a province, of this kind, ought to be disallowed if persisted in. I think you will see what my position is. The question of *ultra vires* in this matter is quite subordinate to the general question of public policy.

Yours, &c.,

D. MILLS,

Minister of Justice.

MEMORANLUM as to Disallowance of 63 Vic. (Ont.) Chap. 13, whereby certain License Fees on the Business of Mining are Imposed or Authorized.
Submitted by J. M. Clark, Esq., K.C.

FAITH SHOULD BE KEPT.

To show that the imposition of the license fees authorized by the said Act would be a breach of faith towards all those who have acquired mining lands in the province of Ontario under letters patents issued prior to the 4th day of May, 1891, all that is necessary is to quote the declarations of the province made by Her late Majesty by and with the advice and consent of the provincial legislature.

By the Mines Act of 1892, 55 Vic., chap. 9, it was declared that :

'All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents and lying within this province are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty.'

The said declaration was embodied in the Revised Statutes of Ontario, 1898, chap. 36, in the following words, referring to all lands granted by patents issued prior to the 4th day of May, 1891, that 'such lands, ores and minerals shall be free and exempt from every such royalty tax or duty.' Similar declarations have since confederation been repeatedly made. See, for instance, 32 Vic., chap. 34, sec. 3.

In the first reading of the present Act the word 'tax' was used, but subsequently the phrase 'license fee' was substituted. But inasmuch as a license fee is a tax and moreover just such a royalty tax or duty as was covered by the legislative declaration, that such lands, ores and minerals 'shall be free and exempt from every such royalty, tax or duty,' such a transparent disguise does not alter the fact that the Act now complained of is a gross breach of faith to all who hold lands affected patented prior to 4th May, 1891.

This was the ground for the disallowance of the Act of British Columbia, 37 Vic., No. 1 (see Dominion and provincial legislation, 1867 to 1895, at pp. 1024 to 1028). At page 1028 the ground for the disallowance is shown to be the honour and good faith of the Crown. The precedent so established should, it is respectfully submitted, be followed in the present case.

ACT IS CONFISCATION.

The license fees authorized to be imposed by the said Act complained of are as follows :—

- '(a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced ;
- '(b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced.'

These amounts exceed the value of the ores or matte so taxed, so that what is authorized is plainly confiscation without compensation, and moreover the lands so to be confiscated were granted under the great seal of the province of Ontario unconditionally in fee simple.

This follows from common knowledge of the value of such ores, but is conclusively shown by the official reports issued by the province of Ontario. The report of the Bureau of Mines, published in 1899 for the year 1898, states that 120,924 tons of nickel and copper ore were smelted, producing 21,101 tons of matte valued at \$782,300.

The above tax of 21,101 tons of matte would amount to \$1,055,050, being in excess of the total value of the product by \$272,700.

Further, according to the same report the amount paid out in wages alone was \$315,501, which means that the amount of duty and wages would exceed the value of the product for that year by \$588,201.

For the year included in the report of 1900 (at page 18) it is stated that the total quantity of the ore smelted in that year was 171,230 tons, yielding 19,215 tons of matte of a total value of \$702,440. The duty on 19,215 tons of matte at \$50 per ton would be \$960,750, the duty thus being greater than the total value of product in that year by \$258,310.

Further, the report shows that the wages paid in that year amounted to \$443,879, so that the duty and wages for that year would, if the Act were enforced, amount to \$702,189 more than the total value of the product.

It is further to be pointed out that these license fees are declared to be a charge upon the land and that if same are not paid power is given to the Attorney General of the province to foreclose the estate and right of all persons claiming any interest in the property from which the ores to be taxed are mined or won. It is pointed out that this confiscation is not for the purpose of producing provincial revenue or for the purpose of dealing with property and civil rights within the province, but for the purpose of attempting to regulate trade and commerce, a matter committed to the exclusive jurisdiction of the Dominion parliament.

The present Act is therefore an attempt to do indirectly what would be wholly beyond the power of the province to do directly.

In view of the mischievous consequences which will flow from such trenching upon federal authority, the present is pre-eminently a case in which the power of disallowance, which involves a corresponding duty, should be exercised.

To quote the language used in a report confirmed by the Governor General in Council in reference to a previous unsuccessful attempt to encroach upon federal jurisdiction, the Act now complained of is 'objectionable in principle and calculated to produce a feeling of insecurity abroad with reference to provincial legislation.'

VESTED INTERESTS THREATENED.

It follows from the above that the vested interests of all who had acquired lands patented prior to 4th May, 1891, are threatened by this legislation, and if the present Act is not disallowed, the security of all Canadian investments under provincial control, and particularly of all Canadian mining investments will be sensibly diminished.

In provincial and Dominion legislation, 1867-1895, p. 1048, the section of the British Columbia statute there referred to is said to be objectionable 'because it may be an interference with the vested rights of individuals without providing any compensation therefor.'

TRENCHES ON DOMINION JURISDICTION.

That the object and intention of the Act complained of is not to deal with any matter over which the province has jurisdiction, but indirectly to attempt to regulate trade and commerce has been clearly shown. This was the object stated in reference to the Act both at the time of its introduction and of its being assented to, and the same conclusion results inevitably from a consideration of the circumstances under which the Act was introduced. In fact it is obvious that under the guise of dealing with license fees and property and civil rights, the purpose and object of the enactment is to deal with matters entrusted to the exclusive jurisdiction of the Dominion parliament, and as has been laid down in the courts, however carefully such object or purpose is veiled, the foresight of those who framed our constitution has led them to provide a remedy in the 90th section of the British North America Act, by vesting the power of disallowance in the executive power of the Dominion, the Governor General in Council.

The remarks made by the Hon. Edward Blake, as Minister of Justice, in his report of 11th October, 1876, quoted in provincial legislation, 1867 to 1895, at page 1043, are fully applicable to the present case. In that report which was confirmed by the Governor General in Council it is said that 'the unequal and discriminatory character of these taxes and their injurious effect in the regulation of trade and commerce are very obvious.' After calling attention to the express provisions of the British North America Act, vesting exclusively in Canada the regulation of trade and commerce, the Minister of Justice said :

'It is to be observed that that Act (the British North America Act) vests in that parliament (the parliament of Canada) the legislation on duties, customs and excise and the funds produced thereby. It was also provided that all articles of the growth, produce or manufacture of any one province shall from and after the union be admitted free as to each of the other provinces.'

The local Act now under consideration appears to the undersigned by reason of its peculiar provisions both as to the claims of persons and the description of trade subject to taxation, to involve an attempt to regulate trade and commerce in excess of the powers of a local legislature, opposed to the spirit of the Union Act, in violation of sound principles of taxation, and of mischievous tendency.'

That report was adopted by Order in Council and the Act there in question disallowed.

The reasons for disallowance are much stronger in the present case, and it is respectfully submitted that a similar course should now be pursued.

NOT A BONA FIDE EXERCISE OF PROVINCIAL JURISDICTION.

From the above it follows that the present Act is not a bona fide exercise of provincial jurisdiction, and in the report of the Minister of Justice, dated 22nd December, 1875, confirmed by Order in Council of 29th February, 1876, in discussing the principles upon which the power of disallowance should be exercised, it is said, 'there may be a provincial jurisdiction for a particular purpose, exercised in fact, though not in form, for the accomplishment of another purpose within Canadian jurisdiction.'

See Dominion and provincial legislation, 1867-1895, p. 71.

A similar principle is pointed out by the present Chief Justice of Canada at 2 S.C.R., at p. 109, in the following words :—

'However carefully the purpose or object of such an enactment might be veiled, the foresight of those who framed our constitution has led them to provide a remedy in the 90th section of the Act by vesting the power of disallowance of provincial Acts in the executive power of the Dominion, the Governor General in Council.'

LICENSE FEES IN REALITY AN EXPORT DUTY.

This appears clearly from the provisions of section 10 and the last part of section 13, subsection 1, and attention is called to the last words of section 10 referring to the said license fees upon ores which are smelted or otherwise treated within the Dominion of Canada, &c., that they or such proportion thereof as may be fixed by the Lieutenant Governor in Council 'shall be remitted, or if collected shall be refunded under such regulation as the Lieutenant Governor in Council may prescribe.'

The confusion which would be created in the present case is shown by the fact that the Dominion parliament have already covered the same field by federal legislation in the Dominion Act, 60-61 Vic., Ch. 17, assented to 29th June, 1897. If therefore the present Act is not disallowed there will be a delegation by the Dominion parliament to the Governor General in Council a delegation to the Lieutenant Governor of the province of Ontario in Council al with precisely the same object. This is objectionable and it is submitted that appropriate remedy is disallowance.

LEGISLATION BY ORDER IN COUNCIL AN EVASION OF THE BRITISH NORTH AMERICA ACT.

The present Act virtually delegates the power of taxation and confiscation of mining lands, and regulation of the smelting and refining industries so far as nickel and nickel copper ores are concerned, by order of the Lieutenant Governor of Ontario in Council, and under the constitution such Orders in Council are not subject to revision by the Dominion government.

This is an evasion of the constitutional safeguard afforded by disallowance and was made the ground for the disallowance of a British Columbia Act by the Dominion government, as appears by the report of the Minister of Justice, dated 13th October, 1875. That report at page 1038 of Dominion and provincial legislation, 1867-1895, says: 'So long as the local legislature keeps within its own hands the division of the districts and the alteration of their boundaries, this government has by virtue of the power of disallowance some measure of control over such action, but should such Act go into operation no such control could thereafter be exercised here,' that is, by the Dominion government. The Act there in question was disallowed, the said report being adopted by Order in Council. The reasons for disallowance are much stronger in the present case, because the Act there in question dealt only with municipal boundaries, whereas the present Act deals with much more important matters.

It is to be added that such a delegation of legislative power, especially upon the subject of taxation is completely repugnant to the spirit of our Canadian constitution, and if in practice such a delegation is sanctioned, the power of disallowance may be wholly evaded.

SAW-LOG CASE NOT IN POINT.

It is urged that the present case is similar to what is known as the Saw-log Case. It is to be observed that there is no foundation in fact for this argument. There the province was dealing with its own property. In the present case the province had parted in the most absolute way, as above shown, with all proprietary control over the lands and ores now in question. This is made clear by the quotation from the judgment of Mr. Justice Moss, one of the judges of the Ontario Court of Appeal. He says (27 Ontario Appeal Reports, 192): 'I see no reason for thinking that the legislature may not in respect of this property do what any subject proprietor might do when proposing to dispose of his property.'

The basis, therefore, of that decision was that the property there being dealt with was the property of the province but it is an entirely different matter, the property has been granted unconditionally by the province and has in many cases passed into the hands of persons not resident in Ontario. This matter as discussed in the *Toronto Globe* of 11th April, 1900, where the well recognized principle was stated in the following words:—

'Had the minerals and mining lands been alienated unconditionally, the province could not now impose necessary obligations and taxes, for the mine owners would be in a position to claim immunity or compensation.'

The mine owners who hold lands patented prior to 4th May, 1891, do hold lands which had been patented unconditionally, and they are therefore in a position to claim immunity or compensation, and under the precedents the proper authority to grant such immunity is the Governor General in Council in whom is vested the power of disallowance.

DOMINION AND IMPERIAL INTERESTS PREJUDICED.

It is plain that if legislation such as the present is permitted, a precedent will be established for mischievous provincial legislation by Order in Council, over which the Dominion government will cease to have control, but for which they will be re-

sponsible. The result will be that Dominion and Imperial interests may be greatly prejudiced.

The reasons for entrusting exclusive jurisdiction over such matters as the regulation of trade and commerce were well considered. If the present Act is not disallowed, the efficiency of this necessary federal control will be seriously impaired.

The present Act, if not disallowed within the time limited therefor, will enable the Ontario government for the time being to frustrate, so far as nickel and copper ores are concerned, the policy of the Canadian government which has for its object the development of trade with Great Britain.

It authorizes discrimination against British industry and enterprise, and tends to compel British consumers of nickel to look to foreign sources for supplies of nickel.

In fact since the passing of the present Act the nickel mining industries of New Caledonia, Norway and other foreign countries have been greatly developed at the expense of Canada.

PRECEDENTS JUSTIFY DISALLOWANCE.

The precedents above referred to and others too familiar to render citation necessary, fully justify the exercise of the power of disallowance in the present case.

The action taken by the Dominion government with reference to the Quebec Mining Law, 54 Vic., Ch. 15, is also relied on.

See Dominion and provincial legislation, 1867-1895, p. 440. Section 1426, of the Act there complained of, imposed on all mineral properties, a tax therein styled a royalty 'of three per cent of the merchantable value of the product of all mines and minerals.'

As already shown the reasons there alleged, namely, that the royalty was made applicable to lands which had been alienated unconditionally by the province exist in the present case.

And whereas in the Quebec case only three per cent was imposed, in the present case over one hundred per cent is authorized.

NO PRESENT REMEDY IN COURTS.

This is not a case in which there is purely a legal question of *ultra* or *intra vires*, and in any event inasmuch as the Ontario government and legislature have formally declared that it is not in the public interest that the legislation in question should be enforced, it follows that there is no present remedy in the courts. On the other hand the Act creates a cloud upon the nickel industry and virtually a blanket charge or mortgage upon all nickel properties that may be worked, which should be removed.

The only available method of such removal is by the exercise of the power of disallowance.

The injury caused not only to private individuals but also to the trade and commerce of the Dominion by the present Act has already been very great and will in the near future be much greater.

The presence of the Act upon the statute-book will be a tremendous blow to the credit of Canada, and is very detrimental to the further investment of capital in Canadian enterprises.

The Act complained of is contrary to natural justice and equity which the Governor General in Council is entrusted with authority to disallow. To this authority as pointed out by Chief Justice Draper *re* Goodhue, 19 Gr. 384, a corresponding duty attaches.

On these grounds, namely :

1. That faith should be kept and the honour of the Crown maintained.
2. That the Act complained of amounts to virtual confiscation without compensation.
3. That vested interests are threatened.
4. That the Act complained of trenches upon Dominion jurisdiction.
5. That it is not a bona fide exercise of provincial jurisdiction.
6. That the license fees authorized are in reality export duties.
7. That legislation by Order in Council as proposed is an evasion of the British North America Act.
8. That the saw-log case is not in point.
9. That Dominion and Imperial interests are prejudiced.
10. That the precedents justify disallowance ; and
11. That there is no present remedy in the courts.

It is respectfully submitted that the Act complained of should be disallowed.

Toronto, March, 1901.

MEMORANDUM for the Honourable the Minister of Justice of reasons for the disallowance by the Governor General in Council of the Act to amend the Mines Act, being 63 Vict., Cap. 13, of the Ontario Statutes of 1900.

1. Dr. Ludwig Mond, F.R.S of London, England, acquired by the investment of considerable amounts of money several nickel properties in the province of Ontario, acquiring title in fee simple, under absolute grants from the Crown in right of the province of Ontario. The titles to these properties were acquired before the legislation complained of was introduced.

Certain royalties were by the legislation of 1891 imposed on certain lands in the province of Ontario, but by the Mines Act, 1892, being 55 Vic., Chap. 9, there was a declaration by Her Majesty made by and with the advice and consent of the Ontario legislature, as follows :—

‘All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents and lying within this province are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty.’

This declaration was contained in the R.S.O., 1897, cap. 36, at the time the said properties were acquired. On the faith of these rights and of the said declaration, considerable amounts of money were expended.

2. The said Act purports to create what is substantially a blanket charge upon all the said lands so acquired in good faith, for more than the value of the produce of the said lands, and it appears by the said Act that the right is reserved to make the said charge operative, and to permit the attempt to enforce the same by the Attorney General of the province of Ontario. The sections, namely, sections 4 to 12 of the Act complained of, have not yet been brought into force, and at the present session of the Ontario legislature a member of the government declared officially in the legislature that the government did not consider it in the public interests to enforce the provisions of the said Act.

3. It is strongly urged, therefore, that the incalculable injury wrought by the provisions of the said legislation is nevertheless continued by the appearance of the said provisions upon the statute-book, creating a cloud upon the nickel mining industry of such a nature that it is impossible to secure the investment therein of English capital.

4. The provisions of the said Act, as is indicated on the face of it, and as appears directly from the official statements which are of record in your department as to the object of the legislation in question, show that the Act complained of is an attempt to trench upon the authority of the federal parliament. That this is the case appears more clearly from the fact that the field covered by the present legislation was already covered by the Dominion Act of 1897, authorizing the Governor General in Council to impose certain export duties.

5. The following among other reasons, clearly indicate that such is the object of the legislation :—

(a) The license fees or taxes authorized are so excessive as to be absolutely prohibitory. This is shown conclusively by the official reports of the Ontario Bureau of Mines. In the official report for 1899, it appears that the value of the 21,101 tons of nickel and copper matte produced in the province of Ontario was \$782,300. The tax on this authorized by the Act is \$50 per ton, which would amount to \$1,055,050, being in excess of the total value of the produce by \$277,700. The report shows that in the production of this matte there was expended in Ontario for wages alone \$315,501.

Similarly for the year 1900, according to the report of the Bureau of Mines, the total quantity of ore smelted was 171,230 tons, yielding 19,215 tons of matte, of the total value of \$702,440. The duty or license fee on the 19,215 tons, at \$50 a ton, would be \$960,750, being in excess of the total value of the produce by \$258,310, and it may be pointed out that the wages alone expended in this year in producing this matte amounted to \$443,879.

(b) The Act deals with smelting or otherwise treating ores or minerals 'in the Dominion of Canada.' That is to say, the province of Ontario undertakes to legislate in regard to the business of refining and smelting in the Dominion of Canada, not merely in the province of Ontario. The mischievous character of such legislation is apparent when it is borne in mind that great industries may be established, for instance, at Sydney, C.B., and if the present Act is not disallowed, then the Dominion government will be virtually sanctioning the delegation to the Lieutenant Governor of Ontario in Council the jurisdiction to make such regulations as the Lieutenant Governor in Council may prescribe in regard to industries wholly outside of the province of Ontario, and to enforce such legislation by confiscation of the lands in the province of Ontario from which the ores or minerals so treated are derived.

It is to be observed that the legislature are not dealing with ores or minerals which belong to the province of Ontario, but also with ores and minerals in which the province of Ontario had divested itself of all proprietary interest.

(c) It further appears that by these objectionable sections the Ontario legislature seeks to vest in the Lieutenant Governor of the province in council the right to deal with Imperial interests as appear in section 13 of the Act complained of. That section refers to the conditions upon which the license fees may be remitted 'in respect of ores or minerals refined in the United Kingdom or in any British colony or dependency.' It is submitted that such legislation should be disallowed.

6. While it may be contended that the Dominion government would not intervene to prevent the confiscation of property of British subjects by provincial legislatures, yet it is submitted that it should not sanction the use by the province of the power of confiscation for the purpose of interfering with questions of trade and commerce and regulating the smelting and refining industries.

7. It is also submitted that this is a case in which the parties injuriously affected should not be left to their remedy in the courts when in the future the provincial government for the time being seek to enforce the legislation. It is quite true that as to matters within its competence and within its jurisdiction, the legislation of the province has the operation and force of sovereign legislation, and in the courts every presumption is made in favour of the validity of such legislation, and that all the

courts can judge of is the power to make the law; for, as pointed out by the late Chief Justice of the Supreme Court, with its expediency, its justice or injustice, its policy or impolicy, the courts have nothing whatever to do, but these are matters to be considered in discussing the power of disallowance.

In the *Attorney General of Canada vs. The Attorney General of Ontario*, 20 O.R. 245, the learned chancellor points out that the right of supervision touching provincial legislation entrusted to the Dominion government, works in the plane of political expediency as well as in that of jural capacity.

8. That the power of disallowance was designed to meet such a case as the present is very clear. In a very able judgment the present Chief Justice of Canada, then Strong, J., said, 2 S.C.R., at pp. 108-109, 'However carefully the purpose or subject of such an enactment might be veiled, the foresight of those who framed our constitutional Act led them to provide a remedy in the 90th section of the Act, by vesting the power of disallowance in the executive power of the Dominion, the Governor General in Council.'

9. Another most important consideration, which is pressed strongly upon your consideration, is that unless the power of disallowance is exercised before 18th May, 1901, the power of supervision upon this most important subject by the Dominion government will be wholly gone. After the said 18th day of May there will be no right in the Governor General in Council to supervise or disallow any Order in Council that may be passed from time to time by the provincial government. The Dominion government would be taken to have sanctioned anything that can be done under the authority of the legislation complained of, and inasmuch as the license fees upon ore and matte, as above shown, largely exceed the total value of the ore, practically absolute power would, so far as the Dominion government is concerned, be granted to the Ontario government.

10. It should be pointed out that it is much clearer now than it was at the time this legislation was passed, that the sections complained of are against the best interests of Canada. The legislation has already greatly benefited New Caledonia, Norway and other foreign countries at the expense of Ontario.

11. It is to be observed that the Act as introduced into the Ontario legislature, and read a first time, said nothing whatever about license fees, but purported to be an Act to impose taxes. This was abandoned, and the name was changed to license fees, but it is submitted that this change of name does not alter the substance of the Act, and that it is not in substance a license Act at all, but nothing more or less than an attempt to regulate trade and commerce, and to impose an export duty. This is the whole pith and substance of the sections, as was clearly admitted by the minister in charge of the Act when introducing the same into the Ontario legislature.

On these grounds, as well as on those previously presented, it is submitted that the power of disallowance should in the present instance be exercised.

J. M. CLARK,
Counsel for Dr. Ludwig Mond.

The Hon. the Minister of Justice to the Hon. G. W. Ross, M.P.P., Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 25th April, 1901.

MY DEAR SIR,—I received your letter this morning, and I have the honour to transmit, in reply thereto, the inclosed copy of a report which I submitted to Council, and which has been before it for the past fortnight.

As your legislature would not meet in time to have the legislation amended, I did not see any other course open than that of disallowance.

I hope that your government will be able to give an early reply to this communication. I am sending it to you in an irregular way. You no doubt will bring

it before your Attorney General for his report, and I shall be pleased to receive any observations which you and he may make upon the subject. If you had at once brought your Act into operation, my inclination would have been to contest the provisions in the courts, but the time for disallowance will be gone before anything can be done.

Yours, &c.,

DAVID MILLS,
Minister of Justice.

The Hon. Geo. W. Ross, M.P.P., Premier of Ontario to the Hon. the Minister of Justice.

TREASURY DEPARTMENT, ONTARIO, TORONTO, 27th April, 1901.

MY DEAR SIR,—I am greatly surprised at the contents of your letter of the 25th inst. On 20th December, a report was transmitted to your department by the Attorney General setting forth the grounds on which the government considered the Mines Act was within the jurisdiction of the legislature. Not having received any reply to this report, I concluded that you were convinced of the soundness of the position which the government had taken, and therefore the whole question was dismissed as practically settled. Had you still insisted upon your own views, as you had a perfect right to do, I could, while the legislature was in session, have met your objections by such modifications of the Act as would have been necessary, should such a course be deemed in the interests of the province and in accordance with the opinions of my government respecting its own right in the matter. Now after the legislature has been prorogued, and without any opportunity to meet your views, even were it practicable to do so, I am advised that you propose a disallowance of a certain portion of the Act in question.

Your course in this respect is the more difficult to understand because, with respect to other Acts to which you took exception, viz., the Fisheries Act and the Act respecting Extra-Provincial Corporations, the government acquiesced in all the amendments you suggested and which we considered might be made without derogating from our jurisdiction, in order to avoid unnecessary controversy between the two governments. Had you in this case treated my government with the same consideration, this correspondence would be unnecessary. Should you act upon the apparent intention of your letter, just received, we will be in the humiliating position—

1. Of having transmitted a despatch on a matter of supreme importance to the province of which no notice was taken and to which there was no reply, and

2. Of having an Act of the legislature disallowed without having been afforded an opportunity of amending the same, did we think proper so to do.

But apart from these considerations, which are of minor importance, with due deference to your views, I must still be permitted to say that the argument of the Attorney General in our despatch of 20th December last has not been answered. As the Attorney General has shown, the Mines Act is not an Act for the imposition of taxes in the nature of export duty, but on the contrary an Act imposing certain charges by way of license upon the property of the Crown on condition that that property shall be disposed of in a certain manner—the Crown in this case being the provincial government, not the Dominion government. Surely you do not propose to abridge the right of the Crown by license to dispose of its own property? If so, why did you not disallow the Act requiring pine logs to be manufactured into lumber in Canada? The principle was precisely the same. Moreover, as you are doubtless aware, the Court of Appeal was unanimous in sustaining the contention of the province in respect to this Act, as was pointed out in the despatch of the Attorney General, already referred to.

Nor need I cite the legislation of the province of Quebec with respect to the manufacture of pulp, by which it is provided that a fee or royalty of \$1.90 per cord will be chargeable upon pulp wood, with a rebate of \$1.50 if manufactured into pulp in the province. By section 7 of the Mines Act (1900) a license of \$10 per ton may be imposed upon nickel ore, and by section 10 this may be remitted in whole or in part when nickel is found to be treated in the Dominion so as to yield 'fine metal.' It appears to me that the analogy between the legislation as to pulp in Quebec and nickel in Ontario is complete. Then why should the Department of Justice pursue a different course with respect to the legislation of the two provinces?

But it is needless to repeat the argument so fully set forth in the despatch of the Attorney General of 20th December. Permit me to suggest a *modus vivendi*, viz., let the Mines Act stand as was done with the Act respecting the manufacture of pine logs, and let the parties who claim to have a grievance contest its validity in the courts. This appears to me to be the only proper course to pursue at the present juncture. We have now no farther opportunity for argument, nor, as already stated, have we an opportunity to consult the legislature as to possible amendments. You have allowed nearly four months to pass without any intimation that you had not accepted our answer to your objections. My government will feel aggrieved, and I think very justly, if the door is closed thus suddenly against a farther hearing of the case. Disallowance may mean untold disturbance in the mining industries, at present so prosperous. Capital is daily seeking investment; \$200,000 have been invested in fresh developments at Sudbury; Dr. Mond, notwithstanding what he says through his attorney, has invested nearly \$500,000 at Victoria; Mr. Clergue, at the Sault, is erecting a large steel plant with a view to use nickel ore in conjunction with iron in certain new processes of manufacture. We have projected railroads into the nickel districts in which at least ten millions of capital will be invested. The Hamilton works are engaged in investigation as to the refining of nickel and are investing large sums of money in a new process for that purpose. By the disallowance of the Mines Act all these interests will be disturbed and capitalists will begin to doubt the constancy of the government with regard to their mining policy. You will be asked to impose an export duty where we impose a license fee. Both political parties have accepted the policy of developing our mineral resources along the lines of the Mines Act. Are you prepared to take the responsibility which may follow such a course? We will certainly have to resist it and oppose it and antagonize it by every means in our power, and with the decision of the Court of Appeal, already cited, we think our position sufficiently strong constitutionally to make a good defence. Would it not, therefore, be reasonable, that the Act should be allowed to stand, its ultimate interpretation to be left with the courts?

I can well understand where an Act of a provincial legislature is clearly *ultra vires*, the Minister of Justice is bound to advise its disallowance, unless amended or repealed by the enacting body. The Mines Act is not in my opinion of this character. And where the circumstances are such that the enacting body has no opportunity to reconsider its own Act, and where there are doubts as to the invasion of the constitution, it is most reasonable that the courts as the recognized exponent of the constitution, should be permitted to settle such doubts.

Still another consideration. Why not let us submit a case to the Court of Appeal, as has already been done repeatedly with respect to previous legislation, and thus settle judicially a matter, which, if pronounced upon adversely by your department, will certainly become a vexatious and disturbing political controversy?

Hoping you may acquiesce in the reasonableness of this request, I remain,

Yours truly,

G. W. ROSS.

The Hon. the Minister of Justice to the Hon. G. W. Ross, M.P.P., Premier of On'ario.

DEPARTMENT OF JUSTICE, OTTAWA, 7th May, 1901.

MY DEAR SIR,—On 25th April, I wrote you in reference to your legislation, known as 'The Act to amend the Mines Act,' and on 28th April, I received a letter, dated the 27th, from you, in which you state, that on 20th December, a report was transmitted to my department by your Attorney General setting forth the grounds on which your government considered the Mines Act was within the jurisdiction of the legislature; and you inform me that had I still insisted upon my views while the legislature was in session, you would have endeavoured to have met my objections by such modifications of the Act as would have been necessary.

I regret that there should be any misunderstanding with regard to the matter. Your letter came during the holidays, when I was absent from the city, and upon my return we were so much engaged in preparation for the session, that no farther discussion of the subject with your government was then had. Indeed, I supposed that when you received no letter from me acquiescing in the opinions of your Attorney General, there would not be much room to doubt that this department adhered to the opinions which had already been conveyed to your government.

You undertake to strengthen the opinion you there express, by referring to the Fisheries Act, and to the Extra-Provincial Corporations Act, in which you say your government had acquiesced in all the amendments that I had suggested. Perhaps it is just as well that I should, at this point, remind you that in respect to neither of these provincial statutes have you acquiesced in the view expressed in my communications to you in regard to them, nor have you, so far as the Fisheries Act is concerned, adopted the course which was suggested, in the event that your government were unwilling to make all the changes that we regarded as essential. I certainly understood that if our objections to your fishery regulations were not fully met by the proposed changes in your law, the whole law, as it then stood, would be repealed and re-enacted, with such amendments as you were willing to make, in order that another year would be given to arrive at a conclusion in respect to all controverted matters that remained undealt with. But, instead of this, the objectionable provisions of your law, which had not been removed by the proposed amendments, were allowed to stand as a part of the statute objected to; so that you force us to act promptly, in order to protect Dominion authority from provincial encroachment. Neither the Fisheries Act, nor the Extra-Provincial Corporations Act are now, after the session, much more satisfactory in form than they were before. I may here remark that, in respect to the Extra-Provincial Corporations Act, my letter of 19th March has since remained unanswered, and yet what subsequently transpired shows that I could not infer from your silence what you think you were warranted in inferring from mine, for I do not find this inference sustained by your subsequent legislation.

You say that you have transmitted a despatch on a matter of supreme importance to the province, of which no notice was taken, and to which there was no reply, and you complain of having an Act of the legislature disallowed without having been afforded an opportunity of amending the same, had you thought proper to do so. I have already stated that your letter, having been written during the holidays, and the pressure of work in getting ready for the session which immediately followed, had led to its being over-looked at the time. But I think the proper inference from the facts was not that you were to conclude that I was converted to your way of thinking, but that the opinions expressed by me were still adhered to. I submit that it is an unusual proceeding to rely upon a doubtful inference upon a question which you pronounce one of supreme importance to the province, and especially where it was so easy to substitute fact for such an inference by a brief communication. I may say that in respect to the Extra-Provincial Corporations Act, your laches is the same as that of which you complain on my part. I received no answer to my letter of 19th March, and

yet I find you did not abandon your own previous contention by any subsequent Act of legislation.

You may say that the Mines Act is not an Act for the imposition of taxes in the nature of an export duty, but on the contrary, it is an Act imposing certain charges by way of license upon the property of the Crown on condition that that property shall be disposed of in a certain manner. I dissent from this opinion. You impose a tax amounting to more than 100 per cent upon an article, if it is exported from the country; but if this burden was imposed for revenue, the failure to export did not change your necessities. You remit the taxation, if the ore is refined within the Dominion; so that to one man it results in confiscation, and upon another it imposes no burden. But you do not confine the provisions of your bill to the lands of the Crown. You so undertake to regulate the use which the proprietors may make of the products of their mines, in which the title of the Crown has been conveyed away, as to deter them from carrying on mining operations.

You say, 'Surely you do not propose to abridge the right of the Crown by license to dispose of its own property?' Certainly not. But I do object to a provincial government and legislature, whose interest in certain lands had been parted with, undertaking to regulate, by their legislation, the commerce of the country in respect to the products of those lands. When the ores are made articles of merchandise abroad, they are under the jurisdiction of Canada, and not under the jurisdiction of the province, and it is the parliament of Canada, and not the legislature of a province, that has the power to make regulations respecting commerce, and that must settle the policy to be pursued by such mining regulations.

You ask, why we did not disallow the Act requiring pine logs to be manufactured into lumber in Canada? My answer is, because the Act regulating the exportation of pine logs was confined to logs cut upon lands, which the Crown still held, and therefore in respect to which your government had the right to part with the property in those logs upon such conditions as you saw proper. Your law upon this subject was an instruction by the legislature to the executive, in which it set out the conditions upon which they would authorize the provincial administration to part with the proprietary interests of the province in these logs. But you could not have applied such a law to the products of the land, which belonged to private proprietors, and in which the Crown in the province had no longer any property. And so it is not a fact that the principle of the Mines Act, and of the Act relating to the exportation of saw-logs cut upon the Crown lands of the province, is precisely the same. Nor is the example which you cite from the province of Quebec, a case in point. The Quebec government charged a royalty of \$1.90 per cord upon pulp wood, with a rebate of \$1.50 if such pulp wood were manufactured into pulp within the province of Quebec. Here again, the government of Quebec were dealing with wood which was the property of the Crown, and not with wood which was the property of private parties.

A friendly consideration on the part of governments must be mutual, and not entirely one-sided. The government of Canada cannot afford to have the field of its unquestioned jurisdiction invaded, and take no steps to protect those interests from usurpation which the constitution has placed under its jurisdiction. Under the provisions of your law, if Dr. Mond should undertake to transport from the mines upon his own property, and which he purchased, entirely free from such restrictions as you now impose, to his manufacturing establishment in Birmingham, he would be obliged to pay a license fee largely in excess of the total cash value of the ore mined from his own lands. And this policy is adopted against the exportation of the products of those lands to the mother country, which has never put any restrictions of any kind in our way.

By your legislation, you practically have done this: You tell him that if he manufactures this ore in any part of Canada, no matter where, no such charge shall be made upon him; if he undertakes to carry it to Birmingham, he must pay a larger sum for the liberty of sending it out of the country than the ore dug from his own

mines will bring in the English market. I do not understand how you can persuade yourself that this is not an export duty, imposed by the legislature of the province of Ontario, for the purpose of regulating trade for Canada, or rather, for the purpose of prohibiting trade out of Canada, in respect to this article. It becomes a reward to the man who retains the ore here, if he can find in Canada, not in Ontario only, a market for it. It is a punishment to him who sends it away, and so it cannot be a burden imposed for revenue.

Would it not be well for you and the Attorney General, or some of your colleagues, to meet with us, and see whether some way out of the difficulty which you have created by this most unusual legislation may not be discovered? Certainly, the three statutes to which I have referred are, from my point of view, undoubted invasions of Dominion authority, and quite unwarranted by any provision of the British North America Act. I must say that it appears to me you have assumed in this legislation that the jurisdiction of the federal authorities and the responsibility of the federal government are not entitled to any consideration from the government of Ontario.

Yours, &c.,

DAVID MILLS,
Minister of Justice.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th May, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 24 of the statutes of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign (1900), assented to 30th April, and received by the Secretary of State on 18th May, intituled, 'An Act respecting the Licensing of Extra-Provincial Corporations.'

The term 'extra-provincial corporation' is defined by this Act to mean 'a corporation created otherwise than by or under the authority of an Act of the legislature of Ontario.'

Section 2 mentions certain classes of extra-provincial corporations which are not required to take out any license under the Act. These include corporations licensed or registered under the provisions of 'The Ontario Insurance Act,' or of 'The Loan Corporations Act,' and corporations liable to payment of taxes imposed by chapter 8 of the Ontario statutes for 1899, intituled, 'An Act to supplement the revenue of the Crown in the province of Ontario.'

Section 3 mentions certain classes of extra-provincial corporations which are required to take out license under the Act. These include corporations other than those mentioned in section 2, created by or under the authority of (a) an Act of the legislature of the old province of Canada, or by royal charter of the government of that province authorized to carry on business in Upper Canada but not carrying on business in Ontario at the date of the commencement of this Act; (b) an Act of the Dominion of Canada and authorized to carry on business in Ontario, and (c) extra-provincial corporations not coming within any of the classes enumerated in sections 2 and 3, which latter would include corporations created and authorized by the parliament of the United Kingdom.

It is provided by section 6, as to extra-provincial corporations required under the provisions of section 3 to take out a license, that none of these shall carry on within Ontario any business, unless and until a license under this Act so to do has been granted, and unless such license is in force: provided, that the taking of orders for, or the buying or selling of goods by travellers or by correspondence, if the corpora-

tion have no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of the Act.

Section 7 enacts that an extra-provincial corporation required to take out a license may apply to the Lieutenant Governor in Council for a license to carry on its business or part thereof and exercise its powers or part thereof in Ontario, and upon the granting of such license such corporation may thereafter, while such license is in force, carry on in Ontario the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license, subject, however, to the provisions of the Act, and to such limitations and conditions as may be specified in the license. The following section authorizes the Lieutenant Governor in Council to make regulations respecting, among other things, the forms of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under the Act, and also to make orders with respect to particular cases where the general regulations may not be applicable, or where they would cause unnecessary inconvenience or delay.

It is to be observed here that these corporations are forbidden by the Act to do business in the province without license, and although it would appear from the above mentioned sections and section 4 that it would be the duty of the provincial government to issue licenses to such corporations upon their complying with the provisions of the Act and the regulations, yet the licenses may be subject to limitations and conditions, the nature of which are not stated in the Act, and which depend upon regulations to be made from time to time by the Lieutenant Governor in Council; and further, that special limitations and conditions may be imposed in particular cases, so that there must be considerable uncertainty as to how far a corporation would be licensed in any case to carry on the business intended or authorized by its charter.

Section 13 authorizes the Lieutenant Governor in Council to suspend or revoke any license in whole or in part for default in observing or complying with the limitations and conditions of the license.

Section 14 provides a penalty against any corporation required to take out a license for carrying on business without such license, and renders such corporation, while unlicensed, incapable of maintaining any action, suit or other proceeding in the courts of Ontario in respect of any contract made within the province or in connection with business carried on contrary to the provisions of section 6.

Section 18 establishes fees to be taken upon the granting of licenses.

The question as to the right of a provincial legislature to limit the authority granted to a corporation by the Imperial parliament or the parliament of Canada has heretofore on several occasions been considered by the government of Canada.

The undersigned apprehends that no argument is required to establish the invalidity of such a provincial Act so far as concerns the powers conferred by the parliament of the United Kingdom, the Acts of which, where intended to apply to a colony or province, must in all cases be paramount. The undersigned conceives that it is equally beyond provincial authority to prevent, or in anywise limit, the exercise of the powers of a company conferred by the parliament of Canada relating to any of the subjects specially enumerated in section 91 of the British North America Act. In both these cases the incompetency of the provincial legislatures has been already affirmed by the Dominion government.

Your Excellency's government is now, however, perhaps for the first time called upon to deal with a provincial Act, which is clearly intended to prevent all Dominion corporations, save those falling within the classes mentioned in section 2 of the present Act, from doing any business within the province, unless thereunto licensed by provincial authority, and which is intended further to confer a discretion upon the provincial government as to the conditions, terms and limitations upon which such licenses may be granted, the exercise of which discretion may involve limitation of the powers which parliament has conferred, and requirements which may render the execution of those powers burdensome or unprofitable.

In 1887, Sir John Thompson, then Minister of Justice, had occasion to report upon an Act of the province of Quebec, 49-50 Victoria, chapter 39, intituled 'An Act to authorize certain corporations and individuals to loan and invest money in this province.' He stated that the right of the Dominion parliament to establish a corporation having powers and civil rights in more than one province had been most conclusively established; that the power of provincial legislatures in regard to the establishment of corporations was limited by section 92 of the British North America Act to the incorporation of companies with provincial objects and matters of a merely local and private nature in the province, while the powers of the Dominion parliament extend to all matters not coming within the classes of subjects assigned exclusively to the legislatures, and that it followed, therefore, that a statute relating to the incorporation of a company, which was beyond the authority of a provincial legislature, would be within the competency of parliament. The minister stated further that the right of a corporation so created by the federal authorities to hold lands or to make contracts in the several provinces in which it is established as a civil person, might be dependent upon the general law of each province as to corporations, but could not, in his opinion, be restricted by any provincial legislation aimed at corporations established by the federal parliament, and he quoted high judicial decisions in support of these views. Sir John Thompson would have recommended the disallowance of this statute had it contained the provisions which the present statute does, prohibiting Dominion companies from doing business without a license. He stated, as the ground for refraining to recommend disallowance, that while the statute empowered the provincial secretary to issue licenses to the companies referred to, and proposed to convey authority to such companies to do business under such licenses, it did not contain any negative provision forbidding the companies to do business without licenses, and that it did not establish any penalty for non-compliance. The minister considered, therefore, that the Act seemed incapable of doing harm or obstructing the operation of companies duly authorized or doing business within the scope of their lawful constitutions, except in so far as it might raise doubts as to the necessity for such a license. This report of the Minister of Justice was approved by His Excellency in Council on 9th August, 1887, and is printed on pages 339 to 342 of the Session of Dominion and provincial legislation, 1867-95.

In 1891, upon the recommendation of Sir John Thompson, a statute of the province of Manitoba, 53 Vic., chap. 23, intituled 'An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein,' was disallowed. The minister in his report recommending disallowance referred to his previous report upon the Quebec statute, 49-50 Vic. chap. 39, and he remarked that, for the reasons therein stated, the Act then under review in so far as it related to companies having the powers mentioned in the Act, by virtue of legislation from the parliament of the United Kingdom or from the parliament of Canada, was *ultra vires* of a provincial legislature, and upon that reason, as well as the further reasons stated in his report, he based his recommendation. This report of the Minister of Justice was approved by His Excellency in Council 14th April, 1891, and is printed in the volume aforesaid at pages 941 to 945.

In 1896 another statute of the province of Manitoba, 58 Vic., Ch. 4, intituled: 'An Act respecting corporations incorporated out of Manitoba,' was disallowed by His Excellency in Council because of the incompetency of the legislature to limit or forbid the exercise of powers lawfully conferred by the parliament of Canada. Reports of the Minister of Justice of the time holding these views, were approved by His Excellency in Council on 8th November, 1895, and 12th March, 1896. These reports, and the correspondence connected therewith, are printed at pages 1005 to 1010 of the above mentioned volume.

Afterwards still another statute was enacted by the legislative assembly of Manitoba, 60 Vic., Ch. 2, containing all the provisions which occasioned the disallowance

of the Act 58-59 Vic., Ch. 4. Sir Oliver Mowat, then Minister of Justice, in his memorandum of 15th November, 1896, pointed out that it had been held that the Dominion had power to incorporate a company for the whole Dominion, though the objects of the company were provincial, a provincial legislature having no power to authorize a company to do business outside of the province. He stated that it was unnecessary at that time to express any opinion as to whether a provincial legislature might require that a license should be obtained by such a company before it could do business in the province, but that there could be no doubt, where a company was incorporated by the Dominion in the exercise of any one or more of its special and exclusive powers of legislation enumerated in section 91 of the British North America Act, a provincial legislature had no authority to impose any such condition. This Act was afterwards disallowed upon the report of the undersigned concurring in the view of his predecessor, which report was approved by His Excellency in Council on 14th March, 1898. The particular point upon which the disallowance of the two latter statutes proceeded was the incapacity of a provincial legislature to limit or affect the operation of Dominion statutes enacted in the execution of any of the powers particularly enumerated in section 91. The present statute is open to the same objection, although not so far reaching, because under section 2 of the Act in question some Dominion companies have been excepted from the operation of the Act.

It has been the policy of the parliament and government of Canada for many years, in the exercise of undoubted constitutional and statutory rights to incorporate companies for the purpose of doing business throughout the Dominion, or in two or more provinces thereof, not only as to matters relating strictly to the enumerated subjects of Dominion jurisdiction, but also as to those matters which, if limited to the territory of any one province, would be within the exclusive legislative authority of that province. This jurisdiction in the Dominion arises, in the opinion of the undersigned, not only under the general authority of the Dominion relating to the peace, order and good government of Canada, but also as affecting the regulation of trade and commerce, a subject specially assigned to the exclusive legislative authority of Canada.

In the case of the Citizens' and Queen Insurance Company vs. Parsons (1 Cartwright, at page 278), the Judicial Committee of the Privy Council held that the regulation of trade and commerce would include the regulation of trade in matters of interprovincial concern, and, it may be, would include the general regulation of trade affecting the whole Dominion. It has also been held by the same authority that the parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (*Loranger vs. Colonial Building and Investment Association*, 3 Cartwright, at page 128). This latter statement refers to companies incorporated, not under the powers conferred within the scope of any of the subjects specially enumerated in section 91, but to companies, the incorporation of which, but for the fact that their powers or capacity to do business are to extend beyond the limits of any one province, would be solely within provincial authority.

In the case of the liquor prohibition appeal (1896, Appeal Cases, at page 363), Lord Watson delivering the opinion of the committee and referring to the Citizens' and Queen Insurance Company vs. Parsons, says, 'It was decided that in the absence of legislation upon this subject by the Canadian parliament the legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance, which was admitted to be a trade, so long as those conditions only affected provincial trade.' Construing this decision with that in the Citizens' case the undersigned apprehends that legislation affecting interprovincial trade or affecting trade in matters of interprovincial concern, would be *ultra vires* of a provincial legislature as being comprehended within the regulation of trade and commerce.

The question, therefore, arises whether legislation can be upheld by which a province professes to take power to prohibit the right of trading within the province, of a company incorporated by the exclusive authority of parliament to trade throughout the Dominion or in two or more of the provinces. Such a company has capacity within

the scope of its charter to trade within the provinces and elsewhere in the Dominion just as an individual has. An enactment by a province forbidding residents of or persons doing business in any other province to trade in the first named province would seem to affect more than provincial trade. It would be a matter of interprovincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce; otherwise all interprovincial trade, which the judicial committee holds that the Dominion has the right to regulate, could be rendered impossible by the provinces.

If the right of trading between individuals of different provinces be a matter of interprovincial concern, so also must be the right of trading by a company incorporated by parliament for the purpose of trading in different provinces. It is incorporated for the purpose of a trade which is not local or provincial,—a trade which concerns at least two provinces; in other words, a trade which the Dominion has exclusive authority to regulate; and hence, though such a company is subject to all the general laws relating to property and civil rights and private and local matters of the respective provinces where it does business, it cannot be bound by provincial legislation directed against it as an extra-provincial company in respect of its trade which concerns the whole Dominion or several provinces.

It is the opinion of the undersigned that inter-provincial trade, or trade that concerns the whole Dominion, cannot be prohibited or restricted by a province, and, if this be so, it follows that the agencies of such trade established by the Dominion cannot competently by provincial legislation, be prevented from executing their powers, or restricted in operations within the scope of their Dominion charters.

It would appear, therefore, that the Act in question is *ultra vires*, and that so far as it has any operation as to Dominion corporations, it is likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies intending to do business in Ontario.

It will be observed, moreover, that among the corporations required to take out licenses as a condition to their transaction of business in Ontario, are included corporations constituted by Act of the late province of Canada authorized to carry on business in Upper Canada, but not carrying on business there at the date of the commencement of the Act. The undersigned apprehends that there can now be no doubt that the legislature of either of the provinces of Ontario or Quebec has no power to modify or repeal the provisions of the charter of a corporation created by the legislature of the late province of Canada for the purpose of doing business in Upper and Lower Canada. Companies so incorporated have by virtue of their constitutions both the capacity to do business within the scope of their powers and the right to exercise these powers to the fullest extent within the two provinces, and it is, according to the highest judicial authority, incompetent to either of these legislatures to modify or repeal the provisions of such an Act. Therefore, the legislature of Ontario cannot effectively prohibit such a corporation from transacting its business within Ontario, or confine the execution of its powers by conditions or limitations established under the authority of the Lieutenant Governor in Council, or otherwise, as it is sought to do by the present Act.

For the foregoing reasons the undersigned considers that this Act ought not to be allowed to remain as it stands.

The enacting authority is entitled to whatever force the legislation may derive through the powers mentioned in section 92 to make laws in relation to 'direct taxation within the province in order to the raising of a revenue for provincial purposes,' and 'shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes,' but these must be construed consistently with the authority of the Dominion to regulate trade and commerce and the other exclusive powers of Dominion legislation; and the undersigned does not consider that a provincial legislature ought to require the payment of a license fee as

a condition to a Dominion corporation doing business within the province, or to exact license fees discriminating between the trading corporations established by parliament, and those established by the provincial legislature.

The undersigned has had some correspondence with the provincial authorities, in consequence of which they have promoted legislation which was enacted at the last session of the legislature amending section 7 of the Act, by providing in effect that the license to be issued shall not be subject to any limitations or conditions which would restrict the right of any corporation constituted by the Dominion or the late province of Canada to carry on and exercise in Ontario all the business and powers which by its Act or charter of incorporation it may be authorized to carry on and exercise in Ontario. While this proposal is satisfactory so far as it goes, it does not, in the opinion of the undersigned, sufficiently respect the authority of parliament and the rights conferred by parliament in relation to the other matters to which he has referred.

The undersigned considered, and he so informed the Prime Minister of the province in effect, that the Act should be further amended so as either to exempt corporations created by parliament from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act, should be imposed equally upon corporations created by the Dominion and by the legislature of Ontario.

The undersigned considers it impossible to admit consistently with the general interests of Canada, the principle of interference with Dominion policy by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and he apprehends that disallowance is the appropriate remedy in such a case. The provincial government has, however, by an amendment already made gone a considerable way to remove some of the most serious objections to the Act, and after further conference the undersigned is encouraged to believe that the provincial government will at the first opportunity promote further legislation, to either exempt Dominion corporations from this statute, or establish equality with regard to license fees and taxation as between the Dominion and provincial companies. He considers, however, that Your Excellency's government should have a formal assurance of this intention from the government at Toronto, and he recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government will promote further amendments to the Act in question as hereinbefore suggested.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th May, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1901.

To His Excellency the Governor General in Council:

The undersigned has further considered chapter 50 of the statutes of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign, intituled 'An Act respecting the Fisheries of Ontario.'

Section 12 provides that fishery licenses or permits may be issued 'subject to such terms, conditions or limitations as may be contained therein or made part thereof, or as shall be prescribed by Order in Council, or by this Act,' provision having been previously made authorizing the Lieutenant Governor in Council to make regulations for the purpose of carrying the provisions of the Act into effect.

Section 13 prohibits fishing in provincial waters by any means other than angling, without first having obtained a lease or license from the provincial authorities.

Section 15 authorizes the commissioner to issue fishery licenses for fishing to be carried on in provincial waters, 'subject always to such regulations, conditions and restrictions as may from time to time be made by the Lieutenant Governor in Council, or as may be contained in the license.

Section 22 provides that any fishing license or permit held by any person convicted of any contravention of the Act, or of any of the conditions of the license, may be annulled and cancelled by the commissioner.

Section 28 prohibits the taking of fish or fish spawn in any manner from provincial waters for the purpose of stocking, artificial breeding, or for scientific purposes, without a written permit so to do from the commissioner or deputy commissioner of fisheries.

Section 34 enacts that fishery overseers shall direct and determine where nets shall be set and the distances to be maintained between each and every location of nets.

Section 35 provides that all nets shall be marked in a certain manner.

Section 36 authorizes disputes between persons relative to the position and use of nets and other fishing apparatus to be settled by the local fishery overseer, subject to appeal to the deputy commissioner of fisheries.

Section 38 prohibits any person from offering or exposing for sale any bass less than ten inches in length, or any whitefish, salmon-trout or lake trout weighing less than two pounds, undressed, taken or caught in provincial waters.

Section 39 prohibits common carriers from transporting out of the province any of nets and other fishing apparatus to be settled by the local fishery overseer, subject taken or caught in provincial waters.

Section 44 provides that no speckled trout, bass or maskinonge taken or caught in provincial waters shall be exposed for sale in or exported from the province, before the 1st day of July, 1903, provided that fish caught by any tourist or summer visitor, not exceeding the lawful catch of two days' angling, may be taken out of the province by such tourist or summer visitor when leaving the province.

Section 45 provides that no sturgeon shall be caught, taken or killed by any means whatever without a license first had and obtained, and that in the inland waters of the province none shall be taken between 1st April and 10th May, but that nothing in this section, or in section 47, shall be deemed to restrict close season prohibitions.

Sections 46, 47, 48, 49, 50 and 51 are intended to regulate the number and size of fish of the various kinds therein mentioned which may be taken, the manner and times of catching them, and the period for which licenses may be issued.

It has been finally determined that the enactment of fishery regulations and restrictions is within the exclusive competence of parliament, and not within the powers of provincial legislatures. The kind of legislation which the provinces may pass with respect to the fisheries under their authority over property and civil rights, or the management and sale of public lands, has also been indicated by the judicial committee. It relates to property, its disposition and the rights to be enjoyed in respect to property, and it is expressly held that such legislative authority does not extend to any restrictions or limitations by which public rights of fishing are sought to be limited or controlled.

The undersigned entertains no doubt that the particular provisions of this Act to which he has referred, are in the main regulations controlling or relating to the manner or times of fishing or the kinds, sizes or numbers of fish which may be taken, and that they are, therefore, *ultra vires* of the provincial legislature.

Upon reference to the Minister of Marine and Fisheries, the undersigned was informed that these regulations are calculated seriously to interfere with the policy of his department and the administration of the fishery laws and regulations of the Dominion.

It, therefore, seems inexpedient to allow these provincial regulations to remain. They conflict with the policy and legislation of the Dominion, and they are, the undersigned apprehends, by the judgment of the judicial committee demonstrated to be *ultra vires*.

The undersigned some time ago pointed out these objections to the Commissioner of Fisheries of Ontario, and they were discussed to some extent between the commissioner and his legal adviser, on the one hand, and the undersigned on the other. It was admitted on behalf of the province that some of these provisions could not be upheld, but it was contended that others should be maintained, and the undersigned suggested for the consideration of the provincial government that the Act should be repealed, and, if thought desirable on behalf of the province, that it should be re-enacted, subject to such modifications as seem necessary having regard to the limitations of the enacting authority. A statute has since been enacted by the legislative assembly, entitled: 'An Act to amend the Ontario Fisheries Act, 1900,' which repeals or amends a number of the sections in question, substituting also some additional provisions. This amending Act substitutes for section 10 of the previous statute the following provisions:—

'The Lieutenant Governor in Council may, from time to time, make regulations, and may, from time to time, vary, amend, alter or repeal all and every such regulations as may be found necessary or deemed expedient for the better management and regulation of Crown lands leased under the operation of this Act, or of regulations made thereunder, and the fishing rights thereto pertaining, or for the regulation of any fishing lease or license or permit which may be made or granted by virtue of this Act, or of said regulations, and to prevent the destruction of fish, and to forbid fishing in any waters within the province, except under the authority of a fishing license, and for the purpose of carrying the provisions of this Act into effect, and all regulations so made, shall have the same force and effect as if herein contained and enacted, and every offence against any such regulation may be stated as having been made in contravention of this Act.'

By sections 13 and 14 of the amending Act, sections 44 and 45 of the original Act are repealed, and the following provisions substituted therefor:—

'44. No one shall sell, barter or traffic in speckled trout, bass or maskinonge taken or caught in provincial waters before the first day of July, 1903.'

'45. No sturgeon shall be caught, taken or killed in provincial waters by any means whatever without a license first had and obtained from the commissioner or deputy commissioner, subject to any regulations or restrictions made or prescribed by or under any lawful authority in that behalf.'

Section 10 as now enacted seems to be open to a construction which would authorize the making of regulations in excess of any which are competent to a provincial legislature, particularly when read in connection with the other legislation contained in these two Acts.

The undersigned entertains no doubt that sections 44 and 45 directly affect the regulations of the fisheries.

Sections 35 and 36 of the original Act remain; these relate to the marking of nets and the use of nets.

Section 39 is not affected by the amending Act, and it prohibits common carriers from transporting out of the province trout or whitefish weighing less than two pounds.

Some of the provisions of section 51 as they stand are also, to say the least, questionable.

The original Act as amended has been reconsidered at the Department of Marine and Fisheries, and the undersigned is informed by the minister of that department that the sections above referred to, or some of them, are found to be so far unsatisfactory as to call for further action on behalf of Your Excellency's government.

The undersigned would consider it necessary to recommend disallowance of both these Acts were it not for the fact that upon conference with the representatives of

the local government, they had expressed their willingness to make further amendments at the next session of the legislature to repeal the objectionable provisions of these Acts. He considers, however, that Your Excellency's government should have a formal assurance of this intention from the Ontario government, and he recommends therefore that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government will promote further amendments of these two Acts, so as to remove the remaining provisions above referred to affecting the regulation of the fisheries.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th May, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to Ch. 13 of the statutes of the legislative assembly of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign (1900), intituled 'An Act to amend the Mines Act,' has the honour to report that he has had under consideration the petition of the owners or persons interested in nickel or nickel and copper properties in the districts of Nipissing and Algoma, and copy of an order of the executive council of Ontario, approved on 28th December last, with a copy of the report of the Attorney General of the province upon the petition. Copies of the said petition and report of the Attorney General are submitted herewith.

The Act provides that no owner of any mine shall carry on the business of mining for any ore or mineral in respect of which a license fee is imposed, without first taking out a license under the provisions of the Act. There is a license fee of \$10 established, and section 7 enacts that every person carrying on the business of mining in the province shall pay a license fee upon the gross quantity of the ores or minerals mined, raised or won during the preceding year from any mine worked by him, to be paid to the Treasurer of the province for the use of the province, at the following rates, or such less rates as may be substituted by proclamation of the Lieutenant Governor, viz. :—

(a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced.

(b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced.

These fees are made a charge upon the lands described in the license on which the mine is situate.

It is provided by section 10 that where ores or minerals that have been mined, raised or won in the province, are smelted or otherwise treated in the Dominion of Canada by any process, so as to yield fine metal, or any other form of product suitable for direct use in the arts without further treatment, then and in every such case the fees provided by the Act or such proportion thereof as may be fixed by the Lieutenant Governor in Council shall be remitted, or if collected, shall be refunded under such regulations as the Lieutenant Governor in Council may prescribe.

The petitioners refer to the speech of the Lieutenant Governor at the opening of the session, to the remarks of the Commissioner of Crown Lands in moving the second reading of the Bill, and the observation of the Lieutenant Governor in assenting to it, as showing that the Act is not intended as a taxing Act, or for the purpose of raising revenue, but with the design 'of regulating the trade and commerce of

Canada, and also for the purpose of authorizing the Lieutenant Governor in Council to impose what in reality is an export duty on nickel and nickel and copper ore and matte exported from the Dominion.' They state that the imposition of these license fees, unless remitted, will be fatal to the nickel industries of the districts of Algoma and Nipissing, and that the menace to the said industries contained in the said Act is extremely prejudicial for these and the other reasons stated in the petition.

The Attorney General of Ontario, in commenting upon the petition, does not admit the statements of fact therein set forth, and he endeavours to support the Act as a measure of taxation.

While the matter was still under consideration upon the petition and the memorandum of the Attorney General, a memorial was presented to the undersigned from Mr. J. M. Clark, counsel of Ludwig Mond, F.R.S., of London, England, objecting to the Act, and asking for disallowance. Copy of that memorial is submitted herewith, together with copies of further memoranda from Mr. Clark in support or extension thereof. Copy of Mr. Clark's said memorial having been submitted by the undersigned to the Prime Minister of Ontario with the statement that the points raised by Mr. Clark were deserving of serious consideration, and referring especially to the fact that sections 4 to 12 of the statute had not yet been brought into force, and requesting the observations of the provincial government thereon, Mr. Ross stated that the legislature had been prorogued before the further questions stated in Mr. Clark's memorial were raised, and there was, therefore, no opportunity to amend the Act within the time limited for disallowance. Mr. Ross further argued in support of the Act, and subsequently there was a conference between the Prime Minister, the Attorney General of Ontario and the undersigned. It is observed that under section 13 of the Act it is enacted that the provisions of sections 4 to 12, which are the objectionable sections, shall be brought into force by proclamation of the Lieutenant Governor in Council, who has power to proclaim the whole or any one or part of these sections. None of these have, however, been proclaimed, and at the conference referred to it was considered that in view of all the circumstances it would be expedient that Your Excellency, instead of being advised to disallow the said Act, should be advised to submit a case to the Supreme Court of Canada for hearing and determination as to the validity of this statute, particularly with reference to the sections complained of; the governments in and by such case agreeing to a statement of the facts involved, with power to the court to draw the necessary inferences therefrom; the provincial government agreeing in the meantime not to bring any of the sections complained of into effect, without prejudice to the right of either party to appeal to the Judicial Committee of the Privy Council.

The undersigned is accordingly now taking steps to have such a case prepared and regularly submitted before the time for disallowance expires. He recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, and that the Lieutenant Governor be asked for a formal assurance that he concurs herein.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to J. M. Clark, Esq., K.C.

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1901.

SIR,—I am to state that it is considered inexpedient to disallow the Ontario Act amending the Mines Act, the provincial government having agreed not to bring the objectionable sections into effect pending the decision of the question as to their validity by the courts. It is intended to submit the question by reference to the Supreme Court of Canada, and upon that reference you will, no doubt, have an op-

portunity of being heard on behalf of your client, Dr. Mond. In the meantime, however, it may be that you would desire some facts to be stated in the reference, which would be material for the court to consider in connection with the question of *ultra vires*, and if so, I would be glad to receive such a statement from you at your earliest convenience, so that I may consider the propriety of stating such facts in the reference.

I have, &c.,

E. L. NEWCOMBE,

Deputy Minister of Justice.

Copy of Order in Council, approved by His Honour the Lieutenant Governor, the 14th May, A.D. 1901.

The committee of Council have had under consideration the annexed report of the honourable the Premier with reference to the following reports of the honourable the Minister of Justice:—

1. With respect to chapter 50 of the statutes of Ontario, passed in the sixty-third year of Her late Majesty's reign, entitled 'An Act respecting the Fisheries of Ontario,' and also as to chapter 37 of 1 Edward VII., entitled 'An Act to amend the Ontario Fisheries Act, 1900.'

2. With respect to the provisions of an Act passed in the sixty-third year of Her late Majesty's reign, entitled 'An Act to amend the Mines Act,' and

3. With respect to the Acts respecting Extra-provincial Corporations.

The committee concurring in the report of the Premier, advise that a copy thereof be forwarded to the honourable the Secretary of State for the consideration of the Dominion government.

Certified.

J. LONSDALE CAPREOL,

Asst. Clerk, Executive Council.

Report of the Hon. G. W. Ross, M.P.P., Premier of Ontario.

TORONTO, 14th May, 1901.

The undersigned has the honour to report for the consideration of His Honour the Lieutenant Governor in Council, that he has received a Minute of the committee of the honourable the Privy Council, approved by His Excellency on the 11th of May, 1901, advising concurrence in the report of the Minister of Justice, dated 1st May, of the same year, with respect to chapter 50 of the Statutes of Ontario passed in the sixty-third year of Her Majesty's reign, entitled: 'An Act respecting the Fisheries of Ontario,' and also as to Ch. 37 of 1 Edward VII., entitled 'An Act to amend the Ontario Fisheries Act, 1900.'

The jurisdiction of the Dominion and provincial governments respectively, as to fisheries has been the subject of argument before the Privy Council, and notwithstanding the comprehensive character of the judgment in the case there appears to be no small difficulty in determining, with absolute certainty, to what extent provincial governments have the right to regulate fisheries within their respective provinces. At a conference between the Minister of Marine and Fisheries and the Commissioner of Public Works, it was agreed before the last session of the legislature, that certain amendments should be made to the Act of 1900. These amendments were embodied in 1 Edward VII., Chap. 37. At a conference with the Minister of Marine and Fisheries, held on the 9th instant, with the Attorney General and the undersigned, it appeared, after careful argument, that under the Act last mentioned the provincial

government assumed to exercise certain control over the fisheries of the province which the Minister of Justice contends are *ultra vires* of the rights of the province.

The undersigned would therefore recommend that His Honour the Lieutenant Governor be advised to assure His Excellency, the Governor General in Council, that 'at the first opportunity of so doing his government would promote further amendments to these two Acts so as to remove the remaining provisions referred to in the report of the Minister of Justice, affecting the regulations of the fisheries, and that in the meantime no regulations shall be passed under either of these Acts to enforce the provisions of the sections objected to.'

The undersigned desires to add in this connection that the limited authority conceded to the provincial legislature by the British North America Act, as interpreted by the Privy Council, is entirely inadequate for the proper protection of the fisheries of the province. So long as the Dominion government is prepared to pass proper regulations for the protection of fish in the waters of the province, no harm may arise, but the undersigned is of the opinion that as the proprietary right in the fish, by the judgment of the Privy Council, is vested in the province, the province should have all the powers necessary to protect its own property, even to the extent of defining the close season for fishing in the waters of the province and limiting the quantity of fish to be taken and the mode of taking the same, as the legislature of the province may deem expedient.

In the opinion of the undersigned it would therefore be desirable that steps be taken, by conference with the Dominion government, to secure the amendment of the British North America Act extending the powers of the province in the direction herein indicated.

THE MINES ACT.

In a report of the Minister of Justice dated 10th May last, and approved by the Privy Council of the Dominion of Canada, objection is taken to the provisions of an Act passed in the sixty-third year of Her late Majesty's reign, intituled: 'An Act to amend the Mines Act,' on the ground that the provisions of sections 4 to 12 (inclusive) are objectionable sections, and advising 'that a case be submitted to the Supreme Court of Canada for hearing and determining the validity of the statute particularly with regard to the sections complained of.'

Objection to this Act so far as the undersigned is aware, was first raised by Mr. Ludwig Mond, F.R.S., of London, Eng., through his attorney J. M. Clark. These objections were considered by the Attorney General of the province, and his answer, dated 20th December, transmitted to the Department of Justice. Later, on the 8th May, a conference was held between the members of the Privy Council of Canada, the Attorney General of the province and the undersigned, at which the constitutionality of the said Act was argued at considerable length, and at which it was agreed, on behalf of the undersigned, that without waiving the right of the province to pass the said Act, no loss would accrue to any public interest concerned, by a reference to the Supreme Court, as suggested by the Minister of Justice.

The undersigned would therefore recommend that steps be taken at once to have a case prepared on behalf of the province and accordingly submitted, reserving to the province the right to appeal from the decision of the said Supreme Court to the Judicial Committee of the Privy Council, if deemed expedient, and that in the meantime the sections 4 to 12 (inclusive) of the said Act be not proclaimed by His Honour the Lieutenant Governor, as provided by section 13 of the said Act.

The undersigned desires it to be clearly understood that in agreeing to such submission to the Supreme Court, the Dominion government shall aid by every means in its power, an early reference, and that should an appeal be taken from such decision, similar diligence be exercised in bringing the case before the Judicial Committee of the Privy Council, as delay in determining the constitutionality of the sections complained of, might be prejudicial to the interests of the province.

EXTRA-PROVINCIAL CORPORATIONS.

The undersigned has also the honour to state that he has received a report from the Minister of Justice with regard to the Acts respecting Extra-provincial Corporations in which the Minister of Justice states that he is prepared to suspend the right of disallowance of these Acts 'on receiving assurance that the provincial government will at the earliest opportunity, promote further legislation to either exempt Dominion corporations from this statute, or establish equality with regard to license fees and taxation as between Dominion and provincial companies.'

As the provincial government has undoubtedly the right to impose taxation, for the purposes of revenue, on all corporations, no matter whence their authority is derived, the undersigned would not recommend that the province should waive this right. The undersigned would, however, recommend that any Act of the legislature under which a discrimination may be exercised against corporations having authority from the Dominion government should be so amended as to establish equality in regard 'to license fees and taxation between Dominion and provincial companies,' as suggested by the Minister of Justice and that legislation to that effect should be introduced and carried through at the next session of the legislature.

Respectfully submitted,

G. W. ROSS.

QUEBEC

62nd VICTORIA, 1899.

2ND SESSION—9TH LEGISLATURE.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th day of November, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Quebec, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State on 23rd March last.

The undersigned calls special attention to the following of these statutes :—
Chapter 23. 'An Act respecting Fisheries and Fishing.'

Some of the provisions of this statute seem to constitute regulations respecting the mode or manner of fishing, or the protection of fisheries, rather than relating to the property in them, or the disposition thereof, or taxation.

The undersigned refers particularly to paragraphs 1375 and 1394H to 1394K, inclusive of section 1. It may be, however, that these provisions can be properly construed as affecting matters competent to the provincial legislature, and of course, in so far as they may in their terms have any application beyond that, the courts would hold them inoperative. It seems to be the general intention of the Act to affect only those matters which have been held to fall within provincial jurisdiction, and the undersigned does not anticipate that any harm will come from leaving the statute to its operation.

Chapter 43. 'An Act to amend the law respecting railways, with reference to the payment of certain debts incurred in their construction and to the sale of such railways in certain cases.'

This Act provides as to railway companies subsidized by the province, that in certain cases it shall be lawful for the Lieutenant Governor in Council upon the report of the Railway Committee of the Executive Council, to authorize the Commissioner of Public Works to cause the railway and roadbed and all the rolling stock and equipment thereof to be sequestrated or sold. One of the events upon which these proceedings may be had is the insolvency of the company. The statute proceeds to enact the procedure consequent upon such order.

It is of course clear in the first place that this Act can have no application to railways incorporated by the parliament of Canada or which have been declared by parliament to be for the general advantage of Canada, but assuming, as is probably the case, that the Act is not intended to apply to any such company, it is, in the opinion of the undersigned, clearly incompetent to a provincial legislature to provide for the sequestration or sale of a company's property, or the winding-up of the affairs of the company by reason of the company's insolvency. The subject of bankruptcy and in-

solvency is specially enumerated as one within the exclusive authority of parliament, and it is undoubted that subjects within the exclusive authority of parliament are not within the authority of a legislature. It is of course competent to the courts to give effect to this objection, but the undersigned recommends that the matter be called specially to the attention of the government of the province so that a proper amendment may be passed at the next session of the legislature to limit the operation of this statute to matters which are within provincial jurisdiction.

The undersigned sees no reason to comment upon any of the other statutes.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900.

3RD SESSION—9TH LEGISLATURE.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th day of November, A.D. 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 26th November, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Quebec, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 12th April and May 26th, 1900, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

NOVA SCOTIA

62nd VICTORIA, 1899.

—32ND GENERAL ASSEMBLY.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th November, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Nova Scotia, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on 25th July last, and has the honour to report that these statutes may be left to their operation without comment, excepting, however, Ch. 16, 126 and 163, as to which the undersigned considers it necessary to make the following observations:—

Chapter 16. 'An Act to amend Ch. 86 of the revised statutes 'of the Property and Civil Rights of Aliens.'

This chapter in so far as it relates to the subject of aliens, is subject to the remark that it affects a matter beyond the jurisdiction of the legislature. The undersigned is not satisfied that the statute does strictly relate to aliens, although it is introduced as an amendment to a statute of long standing in Nova Scotia respecting property and civil rights of aliens, and he considers that the statute ought to be allowed to stand for such operation as it may properly have.

Chapter 126. 'An Act to incorporate the Cape Breton Railway Extension Company, Limited.'

This Act provides for the incorporation of a company with power among other things to build, maintain, control and work a bridge, tunnel or ferry over at or under the Straits of Canso. The Straits of Canso being a navigable channel of the sea are, so far as navigation and shipping are concerned, within the exclusive legislative authority of the parliament of Canada, and while it may be competent to the legislature of Nova Scotia to incorporate a company with capacity to construct the works in question, yet it would require authority from parliament to authorize the company to construct any works in these waters, which would or might have the effect of interfering with navigation or shipping.

The undersigned assumes that the statute is not intended to do more than confer such capacity in this respect as the provincial legislature is constitutionally able to give, and that it is contemplated, in the event of the company desiring to exercise the power so referred, the necessary authority will be first sought and obtained from parliament, or that the existing requirements of parliament in such cases will be first complied with.

Chapter 163. An Act to amend chapter 190 of the Acts of 1890, entitled 'An Act to incorporate the Inverness Mining and Transportation Company, Limited, and Acts in amendment thereof, and to change the name thereof to the Mabou Coal Mining Company, Limited.'

This statute makes certain amendments to the Act of incorporation of the Inverness Mining and Transportation Company, Limited. The company was incorporated by Ch. 190 of the Nova Scotia statutes of 1890, and by Ch. 130 of the statutes of 1895, the name of the company was changed to the Nova Scotia Coal and Gypsum Company, Limited. The Act now in question, among other things, provides that the name of the company shall be 'The Mabou Coal Mining Company, Limited.'

The undersigned has received a communication, dated 29th June, 1899, signed by the Nova Scotia Coal and Gypsum Company, Limited, by Lewis McKeen, president, requesting that the present Act be disallowed for the following reasons :—

'1. That it was introduced, acted upon and passed without the knowledge, consent or wishes of any one interested in or authorized by the company formed under the original Act of 1890 and amendment of 1895.

'2. That it was obtained by false statements and representations to the member who introduced it, on the day before the House prorogued, and by persons who had no rights or interests either in the charter of 1890, nor the present company.

'3. That it affects the validity and credit and standing of the present company, the Nova Scotia Coal and Gypsum Company, Ltd., duly and legally organized under the Act of 1895, chap. 131, on the 5th of June, 1895 ; also the value and legality of the shares issued under it.

'4. That it affects the titles of said company to and in certain properties, leases, mills and quarries which it has held, owned, purchased and occupied since its organization in 1895, by deeds and titles, registered in the registrar's office at Port Hood.

5. That the said company is and has been in legal, continuous, and effective operation, and has been guilty of no lapse, act or other deed by which it should be deprived of its rights, titles, investments, properties or business without its knowledge or consent, or without trial, condemnation and expropriation under due course of law and compensation.'

On 14th July last, the undersigned caused to be referred to the Attorney General of Nova Scotia a copy of the letter of the Nova Scotia Coal and Gypsum Company, Limited, for the consideration of the Attorney General, and any observations which he might desire to make upon the objections raised by the company. The Attorney General replied on 31st July last, stating as follows :—

'I have carefully read petition of the Nova Scotia Coal and Gypsum Company to His Excellency the Governor General, asking for the disallowance of Ch. 163 of the Acts of 1899.

'I have consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advised me that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He afterwards discovered that this was a mistake and expressed his regret for having introduced the Act, and his personal willingness that it should be disallowed. I have seen Mr. A. A. McKay upon the subject, and he advises me that he prepared and introduced the Act on the representations of certain persons concerned in the company, but he finds since that it was not with the consent of all ; and he thinks that the Act was probably an improper one, and is content that it should be disallowed.'

Afterwards, on August 3, the deputy of the undersigned wrote Mr. McKeen as follows :—

'Adverting to your letter of 29th June last, with which you inclose for consideration copies of three Acts of the legislature of Nova Scotia relating to the Inverness Mining and Transportation Company, Limited, viz.:—Ch. 190, Acts of 1890 ; Ch.

131, Acts of 1895, and Ch. 163 of the Acts of 1899, and requesting that the last-named Act be disallowed for certain reasons therein set forth, I have the honour to inform you that upon reference of your petition to the Attorney General of Nova Scotia, the Attorney General reports that he has consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises him that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He says he afterwards discovered that this was a mistake, and expressed regret for having introduced the Act, and his personal willingness that it should be disallowed. Mr. Longley also states that he has seen Mr. A. A. McKay upon the subject and he advises him that he prepared and introduced the Act on the representations of certain persons concerned in the company, but that he has found since that it was not with the consent of all; and he thinks that the Act was probably an improper one, and is content that it should be disallowed.

'The Attorney General adds that as all the parties concerned seem to agree that the Act should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

'In these circumstances I do not suppose that the power of disallowance would ordinarily be exercised, and unless some reason can be shown why justice would not be done by the remedy of repeal, I do not anticipate that the minister would advise disallowance.'

To this communication no reply has been received.

The undersigned assumes, therefore, that at the ensuing session of the provincial legislature the Act now in question will be repealed. It seems to have been enacted through mistake and not to be desired by any one. These are not circumstances in which, in the opinion of the undersigned, the power of disallowance should be invoked. The subject is one entirely within the authority of the legislature of Nova Scotia, and doubtless the legislature will set the matter right.

For the reasons above stated the undersigned does not consider that any of the statutes mentioned or referred to in this report should be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Nova Scotia Coal and Gypsum Co. (Ltd.) to the Minister of Justice.

NOVA SCOTIA COAL AND GYPSUM CO., LTD.,
MABOU, CAPE BRETON, N.S., 29th June, 1899.

SIR,—The undersigned company has the honour to inclose for your consideration copies of three Acts of the legislature of this province relating to the Inverness Mining and Transportation Company, Ltd., viz., Chap. 190, Acts of 1890; Chap. 131, Acts 1895; Chap. 163, Acts 1899.

And to respectfully request that the last named Act, passed 30th March, 1899, and noted as chapter 163, Acts 1899, be disallowed, annulled and set aside for the following reasons:

1. That it was introduced, acted upon and passed without the knowledge, consent or wishes of any one interested in or authorized by the company formed under the original Act of 1890 and amendment of 1895.

2. That it was obtained by false statements and representations to the member who introduced it, on the day before the House prorogued, and by persons who had no rights nor interests either in the charter of 1890, nor the present company.

3. That it affects the validity and credit and standing of the present company, the Nova Scotia Coal and Gypsum Company, Limited, duly and legally organized under the Act of 1895, Chap. 131, on the 5th of June, 1895; also the value and legality of the share issued under it.

4. That it affects the titles of said company to and in certain properties, leases, mills, and quarries which it has held, owned, purchased and occupied since its organization in 1895, by deeds and titles registered in the registrar's office at Port Hood.

5. That the said company is and has been in legal, continuous and effective operation, and has been guilty of no lapse, act or other deed by which it should be deprived of its rights, titles, investments, properties or business without its knowledge or consent, or without trial, condemnation and expropriation under due course of law and compensation.

We have, &c.,

NOVA SCOTIA & GYPSUM CO., LTD.,

By LEWIS MCKEEN, *President.*

The Deputy Minister of Justice to Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 14th July, 1899.

SIR,—I have the honour to inclose herewith copy of a letter which I have received from the Nova Scotia Coal and Gypsum Company, Limited, asking for the disallowance of Chap. 163 of the Nova Scotia Statutes of 1899, upon the grounds stated therein.

I am to state that the minister will be glad to consider any observations which you may desire to make upon the objections raised by the company.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Hon. Attorney General Longley to the Deputy Minister of Justice.

HALIFAX, N.S., 31st July, 1899.

DEAR SIR,—I have carefully read petition of the Nova Scotia Coal and Gypsum Company to His Excellency the Governor General, asking for the disallowance of Ch. 163 of the Acts of 1899.

I have consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises me that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He afterwards discovered that this was a mistake, and expressed his regret for having introduced the Act and his personal willingness that it should be disallowed. I have seen Mr. A. A. McKay upon the subject and he advises me that he prepared and introduced the Act on the representations of certain persons concerned in the company, but he finds since that it was not with the consent of all; that he thinks the Act was probably an improper one, and is content that it should be disallowed.

I have no opinions of my own at all. I think very likely that the disallowance of the Act would do no harm to anybody. At the same time it is an Act entirely within the competence of the provincial legislature, and, as all the parties concerned seem to agree that it should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to the President Nova Scotia Coal and Gypsum Company (Ltd.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd August, 1899.

SIR,—Adverting to your letter of June 29 last, with which you inclose for consideration copies of three Acts of the legislature of Nova Scotia relating to the Inverness Mining and Transportation Company, Limited, viz.: Chap. 190, Acts of 1890, Chap. 131 Acts of 1895, and Chap. 163 of the Acts of 1899, and requesting that the last named Act, be disallowed for certain reasons therein set forth, I have the honour to inform you that upon reference of your petition to the Attorney General of Nova Scotia, the Attorney General reports that he has consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises him that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He says he afterwards discovered that this was a mistake and expressed regret for having introduced the Act, and his personal willingness that it should be disallowed. Mr. Longley also states that he has seen Mr. A. A. McKay upon the subject and he advises him that he prepared and introduced the Act on the representations of certain persons concerned in the company, but that he has found since that it was not with the consent of all; and he thinks the Act was probably an improper one, and is content that it should be disallowed.

The Attorney General adds that as all the parties concerned seem to agree that the Act should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

In these circumstances I do not suppose that the power of disallowance would ordinarily be exercised, and unless some reason can be shown why justice would not be done by the remedy of repeal, I do not anticipate that the minister would advise disallowance.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 3rd July, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 28th June, 1900.

To His Excellency the Governor General in Council

The undersigned has the honour to submit herewith copies of correspondence which has taken place between the Deputy Minister of Justice and the Attorney General of Nova Scotia with regard to chapter 4 of the Acts of Nova Scotia, 1899, intituled 'An Act respecting foreshores and beds of rivers and lakes.'

Inasmuch as the grounds of objection to the Act, the provincial argument in support of it, and the conclusion which has been reached between the undersigned and the Attorney General appear fully upon the correspondence, it is not necessary for the undersigned in this report to say more than that the undersigned would have felt bound to advise disallowance, for the reasons stated in the correspondence, had it not been for the undertaking of the Attorney General, confirmed as it is by a minute of the Lieutenant Governor in Council, to have the Act amended at the next session of the local legislature, by repealing section 10, and declaring that the Act was not and is not intended to have any application to public harbours within the meaning of the expression as used in the 3rd schedule of the British North America Act.

In view of the undertaking referred to, however, and having regard to the reasons urged by the Attorney General for retaining those provisions of the Act to which no objection has been made, the undersigned considers that it will be consistent with the public interest to leave this Act to such operation as it may have until the legislature meets, when, no doubt, the Act will be amended in accordance with the undertaking.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Hon. Minister of Marine and Fisheries to the Minister of Justice.

OTTAWA, 16th April, 1900.

MY DEAR SIR,—My attention has been called to the fact that the legislature of Nova Scotia, in the session of 1899, passed a Fisheries Act, one clause of which authorizes the licensing of fishing traps or weirs on any part of the coast of Nova Scotia.

Unless this Act has gone into operation I would like to consult with you, with the object of disallowing it, or calling the attention of the government of Nova Scotia to it, in order that it can be stricken out, as it is clearly not within their province to determine how, or in what manner, and at what times, fishing may be allowed. The Privy Council decision has set that at rest, if nothing else.

Yours, &c.,

L. H. DAVIES.

The Deputy Minister of Justice to the Hon. the Minister of Marine and Fisheries.

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1900.

MY DEAR SIR LOUIS DAVIES,—Referring to your letter of the 16th instant, addressed to the Minister of Justice, I presume you refer to Chap. 4 of the Nova Scotia Acts, 1899, intituled 'An Act respecting Foreshores and Beds of Rivers and Lakes.'

We reported on the Nova Scotia Acts on 11th November last, but unfortunately I seem to have overlooked this chapter. How it was I scarcely know, although the title is misleading, because it refers not only to the leasing of fish-traps and weirs (see section 10), which is the provision to which I presume you refer, but also authorizes the Governor in Council to grant or lease the beds of foreshores and harbours. The time for disallowance does not, however, expire until 24th July next, and I am writing the Attorney General according to the usual practice in such cases.

Yours faithfully,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Deputy Minister of Justice to the Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1900.

SIR,—In reporting in November last on the Nova Scotia statutes of 1899, the fact appears to have been overlooked that Chap. 4, entitled 'An Act respecting Foreshores and Beds of Rivers and Lakes,' deals not only with rivers and lakes, but also with harbours.

Section 1 authorizes the Governor in Council to issue grants or leases of any flats, beaches or foreshores in any harbour.

Section 2 provides that such grants, when issued, shall vest absolutely the fee simple of the land conveyed in the party receiving them, subject to any control vested in the parliament of Canada with respect to the navigation of any lands covered with water embraced in such grant.

Section 5 provides that applications for grants or leases of the beds of harbours shall be made in writing to the Attorney General.

Section 8 appropriates the money to be received from the granting of water lots, or the leasing of the beds of any harbours.

Section 9 prohibits any person to use or cultivate oysters upon any harbour without having obtained a lease of the lands so cultivated, under the provisions of this Act.

Section 10 enables the Governor in Council, upon application, to authorize the leasing of a fish-trap or fish-traps, a weir or weirs on any part of the coast of Nova Scotia.

I am directed to state that all these provisions appear to the Minister of Justice objectionable. The sections to which I have referred, other than section 10, seem to expressly authorize or impliedly sanction, the authority of the Lieutenant Governor in Council to grant or lease the beds of harbours, and appropriate the income arising from the disposal of such property, but inasmuch as these harbours have been held to belong to the Dominion and not to the provinces, the legislation in question can only be regarded as affecting the public property of Canada, and, therefore, *ultra vires*. Section 10, authorizing the leasing of fish-traps or weirs on any part of the coast, is, in the minister's opinion, so far as it intends to sanction the use of fish-traps or weirs, *ultra vires* as affecting the regulation of fisheries. The word 'leasing,' I suppose, is to be construed as licensing, and what the section seems really to intend is to enable the Lieutenant Governor in Council to authorize the use of traps, or weirs, on any place on the coast to be specified. This he certainly could not do except where consistent with Dominion legislation. As to leasing the bed of the sea within the three-mile limit, it is at least doubtful whether a provincial legislature has any authority. It seems to the minister at present, therefore, that this Act ought to be disallowed, unless it be amended so as to remove the objections to which I have referred.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Hon. Attorney General Longley to the Hon. the Minister of Justice.

HALIFAX, N.S., 25th April, 1900.

DEAR SIR,—I have the honour of acknowledging receipt of a communication from Mr. Newcombe, the Deputy Minister of Justice, dated the 18th inst., respecting an Act of the legislature of Nova Scotia, chapter 4, Acts of 1899, entitled, 'An Act respecting Foreshores and Beds of Rivers and Lakes.'

From his communication I am led to believe that in your view there are phases of the Act which are objectionable, and that authority is assumed by the provincial legislature which exceeds the powers conferred upon it by the British North America Act. I am going to submit considerations which induced me to believe that in framing the Act I kept strictly within the powers and prerogatives distinctly conferred upon provincial legislatures. As to whether in this regard I am right, or your views will ultimately be found to be the true ones, is a question, of course, which may be fairly open to debate and difference of opinion, and can only be adjusted by courts of the last resort, after the matter has been thoroughly threshed out in every aspect.

But the particular point I wish to call your attention to now is the inconvenience and undesirability of determining the matter at issue between us by any such drastic step as disallowance. This Act was passed more than a year ago and already many leases have been issued upon the faith of it, of oyster beds in the province. Large sums of money have been expended by the lessees in improving and developing the oyster culture of these beds, and valuable property rights have thus been acquired, all of which would be thrown into confusion and jeopardy by the disallowance of the Act. None of these leases exceeded the powers conferred upon us by the British North America Act, and yet these leases are issued under and by virtue of this particular Act of the legislature.

In regard to the leasing of what is strictly called fishing privileges, such as the leasing of lobster traps and weirs, I may state that by an arrangement between this department and the Minister of Marine and Fisheries, we are not seeking to exercise any such powers whatever. All lobster traps and weirs in Nova Scotia are still licensed by the Department of Marine and Fisheries. All lobster privileges are also disposed of under license from the Department of Marine and Fisheries, and we have not attempted to interfere, although the other provincial governments are disposed to interfere, with the absolute and unrestricted fishing privileges of the Dominion at large. We don't want control of the fisheries. We want the responsibility of regulating and protecting the fisheries to be vested in the Dominion authorities, as represented by the Department of Marine and Fisheries. All we want is the right to rent or lease our land, and that is all we are seeking by this legislation.

I am disposed to think that when the matter is reduced to its ultimate course of reasoning, and the highest judicial tribunals come to determine the point, it will be found that the rights of the province extend unquestionably to the exercise of ownership of lands covered with water surrounding the shores of all the provinces, while the control of navigation and of the fisheries surrounding these shores is vested in the Dominion.

I regard Holman and Green as a preposterous decision, and one which is partly disposed of by the latest decision of the Judicial Committee of the Privy Council, and when the matter comes to be threshed out more fully and definitely, the very last vestige of Holman and Green will be torn to shreds.

The Dominion authorities have supreme control over harbours in respect of navigation and in respect to the ownership of all improvements which go to make up the commercial phases of the harbour itself, but the land underneath the water of harbours is most unquestionably the property of the provincial government, and that will ultimately be found to be the inevitable conclusion which judicial authority will reach. The land belonging to the foreshores of the province generally is admittedly in the province. The Dominion legislature has gone so far as to pass an Act declaring it is in the province. No serious contention has ever been made that it was not in the province. The only serious contention that has been made is that the beds of harbours are in the Dominion. I think it will hereafter puzzle the erudition of the judicial mind to determine the very nice question as to when the action of the winds and waves has got to be sufficiently fierce to vest the foreshore in the province, and it gets sufficiently mild and calm by protecting hills to become a harbour and vested in the Dominion. The real fact of the case is that the water, the navigation and the control and regulation of fisheries of the foreshores, are in the Dominion, but the *terra firma*, the land under this water is undoubtedly an extension of the property in the land, which the British North America Act vests in the provinces.

I was present and took part in the argument of the fisheries and foreshores case before the Judicial Committee of the Privy Council, and I was extremely careful when draughting the Act of 1899 to keep absolutely and strictly within what I conceived honestly to be a fair and judicial interpretation of provincial rights, and all I wish to say at the present moment is, that, if we cannot agree between us as to what our rights are, there is a method by which the points at issue between us can be justly

and judicially determined, but it is not a proper case for the power of disallowance. This would be little less, in my judgment, in the present instance, than a disaster, an injustice, and bordering close upon an arbitrary act, and I must, therefore, strongly protest against the exercise of any such power. I do not see my way clear at present to recommend any substantial changes in the terms of the Act. I am willing, however, to submit every single question involved in that Act to judicial determination, and I will conform our legislation to the requirements of any competent judicial tribunal.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 21st May, 1900.

SIR,—Referring to your letter of the 25th ultimo, it was distinctly held by the Supreme Court of Canada in *Holman vs. Green*, that the property in public harbours, including the beds or soil thereof, is by the British North America Act, vested in the Dominion, and that the soil ungranted at the time of confederation between high and low water mark, and being within the limits of such harbours, also became by the express unqualified words of that enactment, vested in the Dominion as part and parcel of such harbours.

In the recent decision of the Judicial Committee of the Privy Council their Lordships said: 'With regard to public harbours their Lordships entertain no doubt that whatever is properly comprised in this term became vested in the Dominion of Canada. The words of the enactment in the 3rd schedule are precise. It was contended, on behalf of the provinces that only those parts of what might ordinarily fall within the term "harbour," on which public works had been executed, became vested in the Dominion, and that no part of the bed of the sea did so. Their Lordships are unable to adopt this view. The Supreme Court, in arriving at the same conclusion, founded their opinion on a previous decision in the same court, in the case of *Holman vs. Green*, where it was held that the foreshore between high and low water mark on the margin of the harbour became the property of the Dominion as part of the harbour.'

The only qualification of *Holman vs. Green* by the Judicial Committee is stated as follows:—'Their Lordships are of opinion that it does not follow that because the foreshore on the margin of a harbour is Crown property, it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If, for example, it had actually been used for harbour purposes, it would, no doubt, form part of the harbour; but there are other cases in which, in their Lordship's opinion, it would be equally clear that it did not form part of it.'

This qualification, however, is of no consequence so far as concerns the present statute respecting foreshores and beds of rivers and lakes, which professes to authorize the Lieutenant Governor in Council to issue grants of the foreshores and beds of harbours generally. It is true that in this Act the word 'harbours' is not qualified by the word 'public' as in the case of the British North America Act, but the minister apprehends that the word 'harbours' as used in the Nova Scotia statute cannot be interpreted so as not to include public harbours, and, therefore, what this Act professes to do is to authorize the Lieutenant Governor of Nova Scotia in Council to grant the foreshores and beds of harbours which the British North America Act, as construed by both the Supreme Court of Canada and the Judicial Committee, has declared to be vested in the government of Canada.

The reference in the fisheries case, to which the provinces were parties, was made for the express purpose, among others, of determining the title to the beds of harbours, Nova Scotia and some of the other provinces having questioned the propriety of the decision in *Holman vs. Green*. The decision reached upon that point has distinctly excluded from the range of provincial legislation, the enactment of the provisions in question. There is no further Court of Appeal, and it is extremely unlikely that the Judicial Committee would upon further hearing modify its opinion as pronounced in the fisheries case. Therefore the minister sees no alternative but disallowance.

It does not, in the opinion of the minister, follow that if the Act be disallowed, grants or leases made in pursuance of such provisions thereof as are *intra vires* would therefore become inoperative. So far as the provincial government has dealt with the beds or foreshores of public harbours, the conveyances are of no avail as matters stand, and disallowance as to them would be harmless. The importance of the matter is that the legislature of Nova Scotia has enacted a statute authorizing the Lieutenant Governor to deal with the public property of Canada, and you do not see your way clear to recommend any substantial change in the terms of the Act. Under such circumstances the minister presumes that in the event of disallowance, the legislature would take any steps which might be necessary to confirm proceedings lawfully taken under other portions of the statute which were competent to the legislature, and those holding vested rights must, in the minister's opinion, look to the provincial authorities for such confirmatory provisions as may be necessary or expedient.

The section with regard to licensing fish-traps, &c., seems, in the view of the minister, to cover a good deal more than what was intended, as stated in your letter. If you merely intend to authorize the Governor in Council to grant leases of fisheries or fishing privileges belonging to the province, why not so express the matter plainly? It is the construction of the section according to its letter which, of course, would govern, and not the present intention of your government in administering it. The section is objectionable for two reasons, first, because it may be construed to authorize the Lieutenant Governor in Council to license the use of traps and weirs, fishing by means of which may have been lawfully prohibited by parliament, and, secondly, because it may be held to authorize the leasing of fishing stations upon the open coast within the three-mile limit. The latter objection is, no doubt, a debatable one, but it is, in the minister's opinion, the only objection stated to this Act which is open to serious doubt.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Hon. Attorney General Longley to the Deputy Minister of Justice.

HALIFAX, N.S., 26th May, 1900.

DEAR SIR,—I must confess that I have read your letter of the 21st inst. with very great surprise and very profound regret. That any minister should undertake to advise His Excellency the Governor General to disallow, for the mere reason of differing views on the subject of its constitutionality, an Act so important in its character and so vital in its operations as that now under consideration, seems to me unusual and open to question.

That the responsibility of any of the difficulties and complications of such a step shall not attach to the provincial government of Nova Scotia, I am going to propose concessions, which, while not commending themselves to my judgment as being imposed by the British North America Act, yet being of no immediate practical concern, had better be abandoned as far as the province is concerned, than to be subjected to the evils which might arise from disallowing an Act, on the faith of which some hundreds of people have invested money and are carrying on an important enterprise.

The concessions I propose are as follows :

1st. To repeal absolutely the clause relating to fish traps and weirs, about which we care nothing, and which we do not propose, under existing circumstances, to put into execution.

2nd. To define by special Act the word 'harbours' and to declare that the Act is not intended to apply to public harbours or to harbours upon which improvements have been made. To leave out harbours altogether would be to abandon the Act because all our oyster beds are located in places which might very well be designated as harbours. Every arm of the sea is a harbour in the larger sense, and I am sure that the Judicial Committee of the Privy Council will never give any such interpretation to the word 'public harbours' as found in the schedule of the British North America Act as to have them include every place of shelter along coasts.

It seems to me that, in undertaking to introduce and carry legislation in the direction indicated above, further action on the part of the federal authorities should be suspended.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd June, 1900.

SIR,—I have the honour to acknowledge receipt of your letter of 26th ultimo.

I am directed to state that the Minister does not consider the remarks contained in the first paragraph of your letter can properly apply to the present situation. There was and perhaps still is difference of opinion as to what, independently of judicial interpretation, was intended by the expression 'public harbours' as used in the third schedule of the British North America Act ; but, while those holding views different from the ones which were contended for by the Dominion government, and ultimately upheld by the Judicial Committee, may not be satisfied with the propriety of the decision, yet the law must be administered subject to the interpretation of the courts, and it cannot, in the opinion of the minister, be seriously urged that the Judicial Committee has not clearly determined that public harbours, including the beds thereof, became, under the British North America Act, vested in the government of Canada. That being so, it seems to the minister the undoubted duty of this government to retain the administration of the property in its own hands, and, the courts already having pronounced upon the subject, there seems no remedy in the present case but repeal or disallowance.

As to the amendments which you propose, I am to state as follows :—

If these were proposed in the form hereinafter suggested as an undertaking by your executive council, the minister would submit to His Excellency in Council the propriety of allowing the Act to remain subject to such undertaking for its amendment. You propose to define by special Act the word 'harbours,' but the minister considers that it would be better not to undertake any such definition, as the question as to what is or is not a public harbour may be difficult to determine, and there would very likely be difference as to the scope of the definition. The amendment which your government should undertake to have enacted ought, in the minister's opinion, to be confined to the repeal of section 10 with regard to the licensing of fish-traps and weirs and the adding of a declaratory section to the effect that *the Act in question was not and is not intended to have any application to public harbours within the meaning of that expression as used in the 3rd schedule of the British North America Act*. Such an amendment would, of course, leave the question quite open to the courts with regard to any particular harbour as to whether it is a public harbour or not. If a public harbour within the meaning of the British North America Act, it would be Dominion property and not within the application of the statute. Otherwise I presume the statute would operate. If your government is satisfied to give such an undertaking, will you be good enough to have a minute passed and a despatch sent forward through the usual channels, after which the minister will report to His Excellency. As the period for disallowance is drawing to a close, this matter will not permit of very much delay.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Hon. Attorney General Longley to the Deputy Minister of Justice.

HALIFAX, N.S., 11th June, 1900.

DEAR SIR,—In answer to yours of the 2nd instant, I have to say that, so far as I can interpret your letter, there will be no difficulty in obtaining an Order in Council agreeing to introduce further legislation in the direction suggested and it will be attended to at once. I send this letter in order that you may be quite easy on the matter.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 25th June, 1900.

SIR,—Referring to previous correspondence with respect to Ch. 4 of the Nova Scotia statutes, 1899, and particularly to your letter of 11th instant, I am informed at the state department that no undertaking has yet been received undertaking to promote the amendments suggested. Will you be good enough to see that this is done at once. As the Hon. Attorney General has jurisdiction is drawing to a close

I have the honour

to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Hon. Attorney General Longley to the Deputy Minister of Justice.

HALIFAX, N.S., 26th June, 1900.

DEAR SIR,—I beg to inclose certified copy of a minute of council adopted upon a report of mine in relation to proposed amendments to the Act respecting the leasing of foreshores and the beds of harbours, Ch. 4 of the Acts of 1899. This, I think, covers the suggestions made in your former communication to me.

Yours very truly,

J. W. LONGLEY,

• *COPY of an Order of the Executive Council of Nova Scotia, passed at Halifax on the 19th day of June, A.D. 1900, and approved by His Honour the Lieutenant Governor.*

Upon reading the report of the Attorney General, dated 11th June, 1900, it is recommended that an Act be submitted to the legislature at the next ensuing session providing for the amendment of Ch. 4 of the Acts of 1899, as follows :—

1st. That section 10 of such Act be repealed.

2nd. That a clause be added declaring that the Act was not and is not intended to have any application to public harbours within the meaning of that expression as used in the third schedule of the British North America Act.

I hereby certify that the foregoing is a true copy.

E. C. FAIRBANKS,

Clerk of Executive Council.

The Deputy Minister of Justice to the Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 28th June, 1900.

SIR,—I have the honour to acknowledge receipt of your letter of 26th instant, inclosing certified copy of an order of the Executive Council of Nova Scotia with reference to the amendment of Ch. 4 of the Acts of 1899, which is quite satisfactory.

The minister will immediately make his report to Council upon the subject and a copy of the minute will be forwarded to you as soon as approved.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Hon. Senator McDonald to the Hon. the Minister of Justice.

OTTAWA, 5th March, 1900.

DEAR SIR,—I wrote you on the third instant calling your attention to chapter 84 of the Acts of 1899 for the province of Nova Scotia and the injury it inflicts upon those to whom it applies.

To-day I inclose you a copy of a petition to the local legislature of Nova Scotia from the same.

The inclosed resolution of the town council of Sydney is the only authority on record on which chapter 84 of the Acts of 1899 was founded 25th January, 1899.

The following resolution was moved by Councillor Greenwell, seconded by Councillor N. E. Huggah, and passed unanimously, viz. :—

'Resolved, that the town council of Sydney does hereby call a public meeting of the ratepayers of the town of Sydney for the purpose of submitting to them a resolution authorizing the procuring of an Act to enable the town to borrow a sum not exceeding \$50,000 for the purpose of providing a free water supply and site for any manufacturing company which shall within two years from January, 1898, locate its works within the town limits, such company to expend not less than \$200,000 on such works and to employ not less than 250 men, and also to authorize a legislation permitting the exemption from taxation in perpetuity of such site and the plant erected thereon, and also all ships, barges, tugs and steamers used in connection with such enterprise, and also to procure all necessary legislation to enable the town to carry out the foregoing resolution.'

The town meeting endorsed the above and thereupon application was made to the legislature which resulted in chapter 84. Acts 1899.

The following extract from the deed of the lands given by the town of Sydney to the Dominion Iron and Steel Company ('the said town of Sydney reserving the right to remove all buildings, structures and fixtures now on or upon the granted premises') shows the injustice of the legislation complained of. This practically confiscates to the town the buildings upon the lands expropriated. The town has lately sold the said buildings to the Dominion Iron and Steel Company for \$15,000.

In my own case I owned 20 acres of land with good buildings and fronting five chains on the waters of Sydney harbour at Huggah's creek, the buildings alone, including plumbing and heating apparatus, were valued by two competent builders and contractors at \$6,500.

Lands in similar situations has been selling since for over one thousand dollars an acre.

It will be seen from the above that my houses have been reserved to the town and since sold to the Dominion Iron and Steel Company. Thus I am deprived of all my real estate in Sydney and my own buildings go to the town to pay the town debts—my own houses are used to pay me for the land which the town expropriated from me.

The amount awarded me was only \$3,450 and as yet not a dollar was tendered to me while my land and houses were forcibly taken possession of.

Surely the Act complained of should be amended if not disallowed.

I remain, dear sir, yours respectfully,

WILLIAM McDONALD.

COPY OF PETITION.

To the Honourable the Lieutenant Governor, Legislative Council and Assembly of the Province of Nova Scotia:

The petition of the undersigned residents of the town of Sydney and late owners of lands expropriated for the Dominion Iron and Steel Company,

RESPECTFULLY SHOWETH:

1. That by an Act passed on the Thirtieth day of March, A.D. 1899, Acts of Nova Scotia, 1899, chapter 84), the town of Sydney was authorized to expropriate certain lands, situate in the town of Sydney, to provide a site or location for the works of the Dominion Iron and Steel Company.

2. Under such authority a large number of lots of land were expropriated and handed over to said Steel Company.

3. The Act above cited provided that the values of the expropriated lands should be fixed by a board of arbitrators, whose findings should be final and conclusive, and the amounts when so fixed should be paid by the town of Sydney.

4. A large number of persons, whose lands have been expropriated, complain that the amounts awarded to them were exceedingly unjust and unfair and far below the actual cash value of such lands, and also far below the actual selling price of lands similarly situate within the town of Sydney.

5. In many instances—including a number of your petitioners—the lands expropriated were occupied for purposes of residence, and houses, barns and buildings had been erected thereon, and such owners, being ousted from their homesteads, were compelled to purchase other lands and erect new buildings.

As soon as it was definitely settled that the works of the said Iron and Steel Company were to be placed in Sydney, and long previous to the time when said awards were made, the price of lands within the town and in the vicinity had risen more than one hundred per cent; and, as the result of such rise in values, the parties whose residences had been expropriated were utterly unable, with the amounts awarded to them, to re-establish themselves in similar circumstances and convenience; and the loss and damage sustained in these cases was very serious.

That a large body of the citizens and taxpayers of the town of Sydney recognize the injustice that has been inflicted upon the complainants and are anxious that all just causes of complaint should be removed.

The town of Sydney, since the expropriation and since the making of said awards, has received from the Dominion Iron and Steel Company the sum of fifteen thousand dollars in compensation, it is alleged, for the buildings remaining on the expropriated lands.

On the 13th day of November, 1899, the town council of Sydney passed the following resolution:

‘Whereas, the Town Council learns that it is claimed there are a number of the awards made by the Appraisers, under chapter 84 of the Acts of Nova Scotia, 1899, which on their face seem inequitable;

‘And Whereas, it was always the desire of the Town Council and the ratepayers of Sydney to see that justice be done to all persons whose lands were expropriated, and should be fairly and liberally compensated therefor;

‘And Whereas, it is desirable, in the town’s best interest, that due inquiry should be made as to such inequitable awards, to the end that if such substantial injustice has been done, the same should, if possible, be removed;

Therefore Resolved, that this council would respectfully ask the Lieutenant Governor, under the provisions of chapter 120 of the Revised Statutes of Nova Scotia, to be pleased to appoint this council a commission, to which shall be intrusted the duty of inquiring into and reporting upon the said awards, in order that, if the necessities of the case require, the necessary legislative action may be taken.’

Your petitioners beg to state the following facts as examples of the grievances complained of:

1. The owner of sixteen acres of land, with five dwelling houses and other buildings, was awarded the sum of \$2,400.

2. The owner of 57 acres of land, without buildings, was awarded \$7 per acre; whereas, at the time of such award nor since, could one acre of land be purchased within the limits of the town of Sydney for twenty times the amount of above valuation.

3. The owner of two acres of land, with dwelling house erected at a cost of \$800, was awarded \$650.

4. The owner of 16½ acres, with dwelling house, stable and outhouses, received \$2,500. Two and one-half acres of above land were cultivated, with garden and orchard, balance was leased for a long time previously for pasturage at a rental of \$110 per year.

5. The owner of two acres, with a good house thereon, was only able, with the amount awarded, to purchase a small lot in a similar locality—40 x 100 feet—and erect a small house. As a result of the expropriation and award, this owner was reduced from the ownership of two acres to a lot 40 x 100. Actual loss being the price of present lot multiplied by 22.

The owner of 45 acres of improved farm land, with water frontage, and having dwelling house, barns and outhouses, was awarded \$4,500.

In a large number of cases the entire homestead and real estate of the complainants was expropriated, and consequently were not beneficially affected by the rise in value of real estate outside the expropriated districts.

Your petitioners therefore pray that such legislation may be made in the premises as will enable the parties aggrieved to have an investigation of their claims before a competent tribunal, and such further enactments as may be necessary for the carrying out and satisfaction of any findings in their favor.

Dated at Sydney, February 20th, 1900,

The Deputy Minister of Justice to Hon. Attorney General Longley.

DEPARTMENT OF JUSTICE, OTTAWA, 7th March, 1900.

SIR,—I am directed to inclose herewith copy of a letter dated 5th instant which the Minister of Justice has received from the Hon. Wm. McDonald, also copy of a petition addressed to the Lieutenant Governor and legislative council and assembly of the province of Nova Scotia, which accompanied Mr. McDonald's letter, and which has been submitted to the Minister of Justice, as I understand, as a statement of facts upon which Mr. McDonald relies in addition to those set forth in his letter.

You will observe that Mr. McDonald seeks disallowance of the Act unless suitable amendments are made.

Mr. McDonald complains that the Act is unjust in principle, and that the awards made under it have been, in his own case and others, manifestly inadequate, yet there is no appeal or method provided by the Act for reviewing the awards.

Before considering the propriety of disallowance upon the ground urged by Mr. McDonald, the minister would be glad to have your observations upon the matter, and he would be glad to know whether it is proposed to amend the statute at the present sitting of the legislature so as to provide for appeal, or for further consideration of the award.

I have the honour to be, sir, your obedient servant.

E. L. NEWCOMBE,

Deputy Minister of Justice.

PETITION of the citizens of Sydney in the County of Cape Breton and Province of Nova Scotia to the Honourable the Minister of Justice of Canada.

To the Honourable Her Majesty's Attorney General and Minister of Justice, Department of Justice, Ottawa, Canada:

The petition of the citizens of Sydney in the county of Cape Breton and province of Nova Scotia, respectfully sheweth:

That by Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, the town council of Sydney aforesaid was authorized and empowered to expropriate and take the lands, and lands covered with water, belonging to certain of your petitioners at and near Sydney aforesaid, for the alleged purpose of providing a free site for a company to smelt and manufacture thereon iron and steel;

That the town council of Sydney, under said Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, did expropriate and take lands belonging to certain of your petitioners without making due or adequate recompense therefor, and did, for the alleged purpose of providing a site for an iron and steel manufacturing company, take and expropriate more and greater areas of lands than were necessary for the purposes of any such company; and also, under pretext of taking and expropriating lands and lands covered with water as authorized by said Act, did take and expropriate lands covered with tidal and navigable waters at Sydney aforesaid for the alleged purposes of said company; and did take, expropriate and transfer to the Dominion Iron and Steel Company, Limited, tidal and navigable waters and lands covered by such waters at Muggah's Creek, at Sydney aforesaid, and said town council did so, recklessly, unnecessarily, and improvidently;

That in the opinion of your petitioners the tribunal created by said Chap. 84 of the Acts of Nova Scotia for 1899, to appraise the compensation to be paid the owners of lands and lands covered with water taken and expropriated as aforesaid was insufficient and inadequate, being merely three appraisers not under oath; and there being no appeal whatsoever provided from the said tribunal, the method of determining the compensation aforesaid was ill-advised and inexpedient, and contrary to your petitioners ideas of British justice and fair-play;

That already hardships, wrong and gross injustice have resulted to a considerable number of the citizens of Sydney from the operation of the said Act, which can only be remedied by the repeal, or the disallowance, or the radical alteration and amendment of said Act;

That your petitioners earnestly desire and request and humbly implore that the Honorable Her Majesty's Attorney General and Minister of Justice aforesaid shall forthwith advise His Excellency the Governor General of Canada to disallow the said Act, namely: the said Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, on the ground that the said Act is, at least in part, unconstitutional and invalid, being *ultra vires* and beyond the jurisdiction of any provincial legislature in Canada; and also that the said Act is contrary to equity and natural law, being of an arbitrary and unjust character, and calculated to work wrong and injustice if permitted to remain in force.

And your petitioners, as in duty bound, will ever pray.

HUGH McDONALD, Contractor.

FRANK D. McDONALD.

ANGUS J. MACLEOD.

B. McLEOD.

ALMON ANDREWS.

J. W. McDIARMAID, Hotel Prop.

J. McFADDEN.

H. TOWNSEND, J.P.

PHILIP BAGNETT.

C. H. HARRINGTON, Merchant.

HUGH McKENNA.

HECTOR MORRISON.

LAUCHLIN M. QUARRIE.

J. A. MACLEAN, Merchant.

RICHARD ANDREWS.

March 12, 1900.

Hon. Senator Macdonald to the Hon. the Minister of Justice.

THE SENATE, OTTAWA, 26th March, 1900.

MY DEAR SIR,—The inclosed letter respecting Chap. 84 of the Acts of the Nova Scotia legislature for 1899, I have just received and I send it for your perusal.

The amendments which the government of Nova Scotia propose to make to Chap. 84 are not at all satisfactory to the parties complaining. The amendments simply propose to enable the town of Sydney to divide \$15,000 which they received for buildings on the expropriated lands among the owners of lands expropriated.

The honest owners of these buildings could have sold their houses to the Dominion Iron and Steel Company themselves and to better advantage. The Dominion Iron and Steel Company want all these buildings and would, I have no doubt, pay about the value for them.

The whole Act should be disallowed.

I remain, faithfully yours,

WM. McDONALD.

Mr. A. G. MacEchen to the Hon. Senator Macdonald.

SYDNEY, CAPE BRETON, N.S., 15th March, 1900.

DEAR SIR,—I take the liberty of directing your attention to the necessity that exists for interference by the Hon. Minister of Justice, as regards Chap. 84 of the Acts of the province of Nova Scotia for 1899. The Act I refer to is that under which the town of Sydney, for the alleged purposes of the Dominion Iron and Steel Company, expropriated not only some hundreds of acres of land, but also a considerable portion of navigable waters of Sydney Harbour and the lands covered with such waters. You will remember that the town of Sydney is situated on a peninsula, one side of it bounded by the lower part or mouth of Sydney river, or Spanish river, as it is called on old maps, and on the other side by a navigable channel of salt water, nowadays generally called Muggah's creek, but which on the old map is known under other names, among them 'Vessel's cove' and 'Wintering cove' and 'Maloney's Winter Harbour.' These names indicate that at the earliest period of settlement here, this bay or creek was not only navigable as it still is, but was used for laying up vessels for winter. And you have doubtless observed yourself as well as I have, that in our own day various crafts and vessels have passed the winter in that bay or creek. Of course you understand that the cove, bay or harbour to which I am referring is that which is locally known of late years by the name of Muggah's creek, on account of the number of families of the name of Muggah who have been living about the shores of this beautiful inlet. Now, I have directed the attention of a number of the lawyers here to the question of the validity and wisdom of our local legislature's action last year, by which the navigable waters of this bay were expropriated by the town of Sydney and handed over by the town to the Iron and Steel Company, who make no secret of their intentions to fill it up with slag and other waste matter from their works, without regard to the rights of the people or the Crown, in and to that bay, as navigable waters and as part of a harbour which has proved very useful at various times to ship-owners and to the public generally, and all our lawyers whose opinions are worth having think that the local legislature has exceeded its jurisdiction. If, as I am told, moreover, that the old 'Wintering cove' is claimed by the British Admiralty for naval purposes, and that there is on file in the Admiralty's office in London an old royal decree, reserving that cove, as well as 'Fresh Water creek,' for Admiralty purposes, what would be thought of our Governor General in Council and the Hon. the Minister of Justice for Canada, who allowed a stupid local legislature to legislate in such a manner as to have the waters in question converted into dry land? I write to direct your attention particularly to this, first, because you are one of the senators representing this province in the Upper House, and ought to have sufficient interest in the legislation of the country to try to have this blunder corrected before it is too late; secondly, because you have the honour of having sat in the same legislative chamber as the Hon. Mr. Mills, whom I know to be a learned constitutional lawyer, and whom I believe to be anxious to keep up the respectability of both Dominion and provincial legislation. I can't but believe that if you direct the attention of the Hon. the Minister of Justice to the point to which I have adverted above, he will see the necessity of disallowing the whole Act. I am well aware that there are other aspects of this Chap. 84 of the Acts of the pro-

vince of Nova Scotia for the year 1899, which are simply disgraceful to any British legislature, especially in the closing days of the 19th century ; but I remember that you very thoroughly exposed those other aspects yourself, in conversations with some members of the local legislature last summer, and therefore I need not dwell on those. However, I do not remember, that you emphasized the point referred to, to such an extent as I think you might fairly have done. I can't find any lawyer in this part of the country with any pretense to a knowledge of constitutional law, who will say that the legislation complained of was either wise or expedient or in any sense justifiable. Pardon me if I insist upon you directing the attention of the Minister of Justice to the various aspects of this legislation, including the one upon which I wish to lay special stress as above intimated.

Yours very truly,

A. J. G. MacECHEN.

The Hon. Attorney General Longley to the Hon. the Minister of Justice.

HALIFAX, N.S., 16th March, 1900.

DEAR SIR,—I received through the hands of Mr. Newcombe a copy of a memorial addressed to your department by the Hon. Senator McDonald, asking for the disallowance of chapter 84 of the Acts of 1899 of this province, and he intimated that your department would be glad to have any observations that I have to make on the subject.

I have to say that, in my judgment, the Act is one which is exclusively and undoubtedly within the jurisdiction of the legislature of Nova Scotia. The Act on the face of it seems to me to be a perfectly fair and proper one. It provides for the expropriation of land for a great public purpose and it provides a system of arbitration to determine values. If any injustice should occur under such a system of arbitration, it occurs to me that the legislature of Nova Scotia can be looked to as the natural and proper channel for obtaining redress of such grievances. If every time that an individual finds himself affected in any way by an Act of the provincial legislature, it would become intolerable if he was to have this legislation disallowed by the Governor General. Such a system of government could not be practically worked out in any country, and it has not been attempted to be worked out in Canada so far as my experience goes.

I may mention incidentally, although I do not know that this bears in any way upon the subject-matter of Senator McDonald's communication, that the town has applied to the legislature at this session for power to devote \$15,000 more to supply any deficiencies which the arbitration may have made in its awards. This \$15,000 was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken, and this money is not to be appropriated to the use of the town but is to be distributed upon a basis provided for in the Act, perfectly fair and equitable, among those who deserved larger sums than were originally awarded.

I think that this last incident takes away any pretense of consideration of the application that this legislation should be disallowed.

Yours very truly,

J. W. LONGLEY.

The Hon. Attorney General Longley to the Deputy Minister of Justice.

HALIFAX, N.S., 26th March, 1900.

DEAR SIR,—I beg to acknowledge receipt of petitions from certain inhabitants of the town of Sydney in regard to chapter 84 of the provincial Acts of Nova Scotia, 1899. All that I said in respect to the petition of Senator McDonald applies to this

petition. The Act is within the legislative competency of the legislature of Nova Scotia, is in itself proper and equitable, and if deficient in any way can be best remedied by an Act of the legislature of this province. An Act dealing with that subject has already, as I am advised, passed both Houses of the Nova Scotia legislature.

Yours very truly,

J. W. LONGLEY.

The Hon. the Minister of Justice to the Hon. Senator McDonald.

DEPARTMENT OF JUSTICE, OTTAWA, 28th March, 1900.

DEAR SENATOR McDONALD,—Referring to your letter of the 26th instant, inclosing a letter of 15th, addressed to you by Mr. A. J. G. MacEhen, I may say that I caused to be referred to the Attorney General of Nova Scotia a copy of your letter of the 5th instant and of the petition which accompanied the same, representing that the Act was complained of as unjust in principle and that the awards made under it were claimed to be, both in your case and in others, manifestly inadequate, yet that no appeal or method had been provided by the Act for reviewing the awards, and the Attorney General was asked for his observations upon the matter, and whether it was proposed to amend the statute at the present sitting of the legislature so as to provide for appeal or further consideration of the awards.

I have received a reply from the Attorney General, in which he says that the Act is perfectly fair and proper; that it is entirely within the legislative authority of the province, and that if it gives rise to any grievance, application for redress ought to be made to the provincial legislature, and not to this executive. The Attorney General mentions, however, that the town of Sydney has applied to the legislature for power to devote \$15,000 towards making up any deficiency there may be in the awards. He states that this sum was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken; that this money is not to be appropriated to the use of the town, but is to be distributed upon a basis provided in the Act, perfectly fair and equitable, among those who deserved greater sums than were originally awarded, and the Attorney General adds that he considers this last incident takes away any pretense for consideration of disallowance.

In these circumstances, I do not feel justified in recommending that the Act be disallowed. It is unquestionably *intra vires*, and as the provincial legislature has considered the measure an expedient one, it ought not, I think, upon any sound principle to be reviewed on the merits by the Governor in Council. I am in hopes, however, that the application of the \$15,000, to which the Attorney General refers, will in a large degree remove the grievance which is now complained of.

With regard to the question of navigation, which Mr. MacEhen mentions, the Act in itself does not authorize any interference with navigation, or the expropriation of any property belonging to Her Majesty in the right of Her Imperial government, or in the right of Her government of Canada. If, as Mr. MacEhen contends, the waters in question constitute a public harbour, the title, unless granted away before confederation, would be in the Dominion, and this provincial statute could not give or authorize compulsory acquisition of any title to it. If the company propose to fill up or construct any works in the harbour they would first have to obtain the approval of the Governor in Council, under chapter 92 of the Revised Statutes of Canada. There are thus ample means of protecting the public interest in the case of any unauthorized dealing with public property or navigation. In fact the company has no more right to do the things which Mr. MacEhen anticipates than they would have had if the Act complained of had not been passed.

Yours very truly,

DAVID MILLS,

Minister of Justice.

The Deputy Minister of Justice to Mr. Allan J. Macdonald.

DEPARTMENT OF JUSTICE, OTTAWA, 31st March, 1900.

SIR,—Referring to your letter of the 12th instant, inclosing a petition from citizens of the town of Sydney, seeking the disallowance of Ch. 84 of the Acts of Nova Scotia of 1899, I am directed to inform you that, as is usual in such cases, I have referred to the Attorney General of the province, a copy of the petition for his observation and for the purpose of ascertaining whether the local legislature, in view of the complaints, propose to make any amendment of the statute. The Attorney General states in reply that the Act is perfectly fair and proper, and that if it gives rise to any grievance, application ought to be made to the provincial legislature and not to the Dominion executive. The Attorney General mentions, however, that the town of Sydney has applied to the legislature for power to devote \$15,000 towards making up any deficiencies there may be in the awards. He states that this sum was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken, and this money is not to be appropriated for the use of the town, but is to be distributed upon a basis provided for by the Act, perfectly fair and equitable, among those who deserved greater sums than were originally awarded. The Attorney General adds that he considers this last incident takes away any pretense of consideration for disallowance. I understand that the amending Act to which Mr. Longley refers has already passed both Houses of the legislature.

The minister entertains no doubt as to the validity of the Act.

In these circumstances I am to inform you that the minister does not feel justified in recommending disallowance. Questions sometimes arise as to legislative authority, and sometimes provincial Acts conflict with Dominion policy. In such cases, and perhaps in some others, the power of disallowance is sometimes exercised, but the Dominion government does not undertake to judge of the propriety or expediency of provincial statutes competently enacted and consistent with the principles of legislation, where no Dominion interest is affected. I am to state, however, that the minister is in hopes that the application of the \$15,000, to which the Attorney General refers, will in a large measure remove the grievance complained of.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

63rd VICTORIA, 1900.

3RD SESSION—33RD GENERAL ASSEMBLY.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th February, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Nova Scotia passed in the sixty-third year of Her late Majesty's reign (1900), and received by the Secretary of State for Canada on 10th January, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia for the information of his government.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

NEW BRUNSWICK

62nd VICTORIA, 1899.

1ST SESSION—3RD LEGISLATIVE ASSEMBLY.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 18th day of November, A.D. 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of New Brunswick, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on 23rd June last, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900.

2ND SESSION—3RD LEGISLATIVE ASSEMBLY.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th December, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 24th November, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the statutes of the province of New Brunswick, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 28th June last, and he is of opinion that these statutes may be left to their operation without comment, except—

Chapter 63, intituled : 'An Act relating to the town of Newcastle,' and

Chapter 86, intituled : 'An Act relating to the Tobique Manufacturing Company, Limited.'

As to the former of these Acts the undersigned observes that by section 4 the town council is given power to make by-laws and regulations, among other things, to regulate and license traders, manufacturers or other persons, firms or corporations whose names have not been entered on the assessment book or list of the town in respect to income or personal property for the then current year, and who offer goods and merchandise for sale or otherwise carry on trade or business within the town ; also to regulate and license any and all persons, who not being residents of the town or parish of Newcastle or county of Northumberland, and whose names are not entered on the assessment list there, shall carry on any trade or employment within the town.

Section 5 authorizes the town council by by-law or ordinance to fix and determine what sum of money shall be paid by such persons, companies or corporations for licenses for the several purposes mentioned in the preceding section : and section 6 prohibits all persons, companies or corporations from engaging in or carrying on any trade or employment within the town for which a license is required, without being thereunto duly licensed.

While it may be competent under the authority so granted for the town council to make regulations which would not be *ultra vires*, it is certainly incompetent to a provincial legislature to enact laws for the regulation of trade and commerce or to delegate any authority to make such laws, and the sections now in question seem to relate in some aspects to that subject.

The undersigned apprehends, however, that in the case of regulations being made in excess of provincial authority the persons affected could conveniently have their rights determined by the courts, and inasmuch as inconvenience might result from disallowance of the Act, which contains many unobjectionable provisions relating to the town of Newcastle, he does not consider it necessary to recommend disallowance.

The undersigned has received a memorial from the Tobique Manufacturing Company, Limited, praying upon the grounds therein set forth, that chapter 86, the other statute mentioned, be disallowed. A copy of this memorial is submitted here-

with, but before making any observations upon it, the undersigned considers that it ought to be referred to the Lieutenant Governor of New Brunswick for the information of his government, so that the Lieutenant Governor may submit such reply as he may be advised to the objections of the petitioners.

The undersigned recommends, therefore, that a copy of this report, with a copy of the aforesaid memorial, be transmitted to the Lieutenant Governor of New Brunswick, with a request as to the said chapter 86, for such observations as the Lieutenant Governor may be advised to make upon the memorial of the Tobique Manufacturing Company, Limited.

Respectfully yours,

DAVID MILLS,

Minister of Justice.

Copy of Petition of the Tobique Manufacturing Co. (Ltd.)

The petition of the Tobique Manufacturing Company (Limited.)

HUMBLY SHOWETH:—

That your petitioners are a body corporate under an Act passed by the Dominion parliament in the year 1898, being chapter 116 of that year.

That amongst other things the purpose for which the company was incorporated was to do business throughout the Dominion of Canada, and to purchase certain assets, mines, timber limits, &c., specifically mentioned as being situated in the province of New Brunswick. It was also the intention to purchase the Tobique Gypsum Company, being a company incorporated under the Companies Act of Canada and having its head office in the city of Ottawa.

That power was given by the said parliament under the said Act to the company to dam the Tobique river in the province of New Brunswick.

That the Tobique river is a river in which large sums of Dominion moneys have annually been paid for the purpose of improving the navigation and sufficiently large at and above the place that said dam is built, to be navigated by boats or vessels carrying as much as twenty tons of freight.

That under the powers contained in said Act your petitioners proceeded to prepare plans for the dam authorized thereby to be erected in said river, and the said plans were approved by the Governor General in Council on the 19th day of August, 1899. That your petitioners erected the said dam and have also constructed a large mill thereat and all the necessary booms, piers, &c., as provided by said Act.

That the government of the province of New Brunswick, represented by the Attorney General, prepared a bill in equity and gave notice that they would apply to the judge in equity for an injunction to restrain your petitioners and their agents or contractors from proceeding with said work. That when said motion came to be argued an arrangement was entered into between the counsel on each side that the motion should stand until after the legislature of New Brunswick met, in order that a bill might be passed at such session rectifying and confirming the Act passed by the Dominion parliament, as above mentioned.

That notice of said bill was duly given in the newspapers in New Brunswick and the same was presented at the last session of the provincial parliament.

That the same was however refused to be accepted by the government of New Brunswick who, instead thereof, passed a bill drawn by the Attorney General of the province purporting untruly to be the bill prayed for by your petitioners, which bill is now entitled an Act relating to the Tobique Manufacturing Company (Limited) and is chapter 86, of 63 Victoria, A.D. 1900, of the Acts of the general assembly of New Brunswick.

That said Act recites that, in the opinion of Her Majesty's Attorney General for the province of New Brunswick, the work authorized by the Act passed by the Dominion parliament was *ultra vires* of the parliament of Canada, and it pretends to give the authority to your petitioners to do the same work, provided that said Act should not come into force until such time as shall be by the Lieutenant Governor in Council fixed by Order in Council and publication made in the Royal Gazette, and further, that such order shall not be made until it appears to the satisfaction of the Lieutenant Governor that the company have procured the said Act of the parliament of Canada to be amended by repealing the 6th, 7th, 8th, 9th, 10th subsections of section 2 of said Act.

That the said Act of parliament being an Act to incorporate a company to do business throughout the Dominion of Canada and to place obstructions in a navigable river was an Act clearly within the power of the Dominion of Canada, and the parliament of Canada consequently had power to authorize everything that was necessary or incidental to the Act.

That when the provincial parliament attempted to authorize the obstructing of a navigable river, or declare the parliament of Canada to be legislating in a matter which is *ultra vires* of it, or declares a company incorporated to do business throughout Canada to be a body corporate and politic under a certain name, it is attempting to legislate on matters which are *ultra vires* of it, and are entirely within the purview of the parliament of Canada.

Your petitioners therefore pray that the said Act of the provincial parliament of New Brunswick, being chapter 86, of 63 Victoria, A.D. 1900, intituled 'An Act relating to the Tobique Manufacturing Company (Limited),' may be disallowed. And as in duty bound your petitioners will ever pray.

JOHN COSTIGAN,

President.

A. Z. CONNELL,

Secretary.

Respectfully submitted to the Hon. the Attorney General of New Brunswick upon Chap. 86 of 1900.

DEPARTMENT OF THE ATTORNEY GENERAL—NEW BRUNSWICK.

ANDUM and report of the Attorney General, for the information of the Committee of the Executive Council.

The Attorney General reports that he has had under consideration an extract from a report of a committee of the honourable the Privy Council of Canada, approved by His Excellency the Governor General on 8th December, 1900, together with a copy of a petition of the Tobique Manufacturing Company, Limited, addressed to the Hon. the Minister of Justice, praying, upon the grounds therein set forth, that the Act of assembly of New Brunswick, being Chap. 86 of the Acts passed in session of A.D. 1900, may be disallowed.

By order of His Excellency, the Governor General in Council, the said copy of petition has been transmitted to the Lieutenant Governor of New Brunswick, with a request for such observations as the Lieutenant Governor may be advised to make upon the petition of the said company.

Referring to the said petition, the Attorney General reports that, in his opinion, the said company should, for the reasons herein stated, have applied to the legislature of New Brunswick for authority to construct the works contemplated by it, and referred to in the petition.

The river, across which the company proposed to erect its dam, and on the bed of which it intended to build its piers and other works, is not, in the opinion of the

Attorney General, a navigable river, within the meaning of the British North America Act. It is a branch of the St. John river, emptying into the same a long distance above the ebb and flow of the tide ; and while upon portions thereof small boats of only a few inches draught, towed by horses, are used for the carrying of small quantities of freight, such as lumbermen's supplies, it is no more a navigable river than very many of the small streams in the province, upon which canoes may be used and down which lumber may be floated.

The bed of the river upon which the works of the company are proposed to be constructed belongs to the Crown, as represented by the government of New Brunswick, and in the opinion of the Attorney General the work being entirely of a local character is one in respect of which 'not only' has the legislature of New Brunswick jurisdiction, but it is one peculiarly for that legislature to deal with. It would be calculated to lead to grave consequences, if a company, under the pretense of getting the power to trade throughout Canada, should be able to apply to the Dominion parliament and obtain authority to construct a purely local work in one province, involving as it does the interference with the property of the province and the exportation of private property as well.

The Attorney General also desires to say that it was clearly understood by the government of New Brunswick that the said company concurred fully in the Act which was passed by the New Brunswick legislature ; the only objection which was raised by the company being to the clause which suspended its operation until the Act was brought in force by proclamation. The company has also represented to the government of New Brunswick that it intends to submit itself entirely to the operation of the provincial Act, so far as its works upon the Tobique are concerned, and an understanding has been arrived at with the company that at the next session of the legislature the suspending clause of the Act should be repealed, so that it shall come into force immediately thereafter, and that the company shall seek to obtain a repeal by the parliament of Canada of the sections in the Act incorporating the company, to which the government of New Brunswick takes exception.

The question as to whether or not the river upon which the works of the company are now partially erected, and upon which further erections are to be made, is a navigable river, so that power to erect such works rests wholly with the Dominion parliament, or whether they are as such within the jurisdiction of the provincial legislature, is one of fact.

And the Attorney General respectfully submits that it would not be a proper exercise of the prerogative of His Excellency the Governor General to disallow an Act such as this, which was passed after full inquiry by a committee of the legislative assembly into the facts and circumstances, which appeared to be such as to fully satisfy the legislature that it had the authority to pass the Act in question. Should the power of the legislature to pass the Act be hereafter disputed by the company, it is submitted that recourse should be had to the courts for this purpose.

The Attorney General therefore recommends that his honour be moved to submit the foregoing views to His Excellency the Governor General.

The committee of council concurs in the recommendations of the Attorney General, and His Honour the Lieutenant Governor also concurring therein.

IT IS ACCORDINGLY SO ORDERED.

I, Joseph Howe Dickson, clerk of the executive council, of the province of New Brunswick, do hereby certify, that the foregoing is a true copy of an order in council passed by the Governor in Council of said province on the 25th day of January instant, and that I have carefully compared said copy with the original on file in my office and find it a true and correct copy.

Dated the 29th day of January, A.D. 1901.

JOS. HOWE DICKSON,

Clerk Executive Council, N. B.

The Deputy Minister of Justice to Hon. John Costigan, M.P.

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1901.

SIR,—Referring to the petition of the Tobique Manufacturing Company, seeking the disallowance of the New Brunswick Act, 63 Victoria, chapter 86, I am directed to inform you that a copy of the petition was referred to the Lieutenant Governor of New Brunswick for the observations of his government, and there has been transmitted to the minister copy of the reply of the provincial government, being a report of the Attorney General of New Brunswick approved by a minute of the Executive Council. Among other things stated in this report is the following :—

‘The Attorney General desires to say that it was clearly understood by the government of New Brunswick that the said company concurred fully in the Act which was passed by the New Brunswick legislature ; the only objection which was raised by the company being to the clause which suspended its operations until the Act was brought in force by proclamation. The company has also represented to the government of New Brunswick that it intends to submit itself entirely to the operation of the provincial Act, so far as its works upon the Tobique are concerned, and an understanding has been arrived at with the company that at the next session of the legislature the suspending clause of the Act should be repealed, so that it shall come into force immediately thereafter, and that the company shall seek to obtain a repeal by the parliament of Canada of the sections in the Act incorporating the company, to which the government of New Brunswick takes exception.’

It would appear from the above that an arrangement has been reached between the company and the provincial government for an amendment of the Act, which, as I understand it, would be satisfactory to your company. If this be so, perhaps it will not be necessary for the minister further to consider the objections of the company.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to his previous report of 24th November last, on the statutes of the province of New Brunswick passed in the sixty-third year of Her late Majesty's reign, and particularly to Chap. 86 of the said statutes, intituled ‘An Act relating to the Tobique Manufacturing Company, Limited,’ has the honour to report that a copy of the memorial of the Tobique Manufacturing Company, Limited, having been transmitted to the Lieutenant Governor of New Brunswick in accordance with the recommendation of the above-mentioned report, the clerk of the executive council of New Brunswick on 29th January last, transmitted to the clerk of the Privy Council of Canada a report of the Attorney General of New Brunswick, approved by the Lieutenant Governor in Council, in reply to the said memorial. A copy of the said despatch of the government of New Brunswick is submitted herewith. This despatch having been referred to the undersigned, he caused a communication to be sent to the president of the company on 14th February last, a copy of which is also submitted herewith, and the undersigned calls attention particularly to that portion of the provincial despatch which is quoted in the letter of the Deputy Minister of Justice to Mr. Costigan. No reply to that letter has, however, been received, although the Deputy Minister of Justice has spoken to the solicitor of the company, and another gentleman connected with the company, upon the subject.

From these conversations and in view of the fact that the company have not replied to Mr. Newcombe's letter of 19th February last, the undersigned is under the impression that the company acquiesce in the facts stated by the Attorney General of New Brunswick, and are not further pressing their petition. The undersigned, therefore, deems it unnecessary to consider the legal questions raised by the Attorney General, although he apprehends no difficulty in establishing the position which has always been claimed on behalf of the Dominion, that parliament has no power to incorporate companies which are to do business in two or more provinces, with authority to construct and operate in connection with their business, local works within a province. As it is understood, however, that an agreement has been reached between the province and the company in the present case, and that further legislation is proposed, the undersigned considers that the Act may be left to such operation as it may have.

The undersigned further recommends, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick and to the Tobique Manufacturing Company, Limited, for their information.

Respectfully submitted,

DAVID MILLS.

Minister of Justice.

MANITOBA

62nd and 63rd VICTORIA, 1899.

4TH SESSION—9TH LEGISLATURE.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th day of December, A.D. 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Manitoba, passed in the 62nd and 63rd year of Her Majesty's reign, 1899, and received by the Secretary of State for Canada on the 25th April, 1899.

He observes that by section 1 of chapter 4, intituled 'An Act to amend "The Children's Protection Act of Manitoba,"' it is provided that in certain cases the Attorney General may at the expense of the province, cause a child to be removed to an industrial school or refuge outside of the province to be there kept and educated for a period of time. This enactment can have effect only so far as the territorial and other jurisdiction of the legislative assembly is concerned, and cannot in itself authorize the detention of a child beyond the limits of the province. The undersigned assumes, however, that the provision is intended to be acted upon only in cases where there is corresponding legislation in the province within which the child is to be confined, authorizing such detention, and for that reason he does not consider that the Act ought to be disallowed.

The other statutes do not seem to call for any comment.

The undersigned is of opinion, therefore, that all these Acts may be left to their operation, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province of Manitoba for the information of the government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

63rd and 64th VICTORIA, 1900.

1ST SESSION—10TH LEGISLATURE.

The Deputy Minister of the Interior to the Deputy Minister of Justice.

DEPARTMENT OF THE INTERIOR, OTTAWA, 6th April, 1901.

SIR,—I have the honour to inform you that the attention of the Minister of the Interior has been recently called to certain provisions of the Real Property Act, 63-64 Victoria, chapter 47, passed by the legislature of the province of Manitoba at its session of last year, which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57-64, and especially section 64, which provides amongst other things, that all plans intended for filing or registration under the Act shall be certified as accurate by a provincial land surveyor, under oath, and shall be made in all respects satisfactory to the examiner of surveys.

I inclose a memorandum prepared by the Surveyor General in which the objections to these provisions are pointed out and discussed, and the minister desires me to state that so serious do these objections appear to him that he would ask the Minister of Justice to consider whether they are not sufficient to justify a disallowance of the Act, unless the provincial government undertake to have it amended.

The minister would be satisfied with an amendment declaring that section 64 of the Act, in so far as it provides that plans intended to be filed or registered under the provisions of such Act, shall be certified by a provincial land surveyor and shall be made satisfactory to the examiner of surveys, does not apply to plans of Dominion lands prepared by Dominion lands surveyors under the provisions of the Dominion Lands Act and amendments thereto, provided such plans supply the information which the provincial Act requires. So much he considers essential to the proper and convenient administration of Dominion lands in the province of Manitoba, and in view of the statements in the Surveyor General's memorandum, he does not see that the provincial authorities can object to such a proviso. The minister would not be disposed to insist upon more, although there are other features of the Act referred to which may be open to more or less objection from a Dominion point of view.

I have the honour to be, sir, your obedient servant,

JAS. A. SMART,
Deputy Minister of the Interior.

Memorandum of the Surveyor General.

DEPARTMENT OF THE INTERIOR,

TOPOGRAPHICAL SURVEYS BRANCH, OTTAWA, 29th March, 1901.

MEMORANDUM of the Surveyor General re plan of survey of the E. half section 11, township 11, range 3, for the information of the Minister of the Interior.

A survey of the east half of section No. 11, township 11, range 3, west of principal meridian, which is Dominion land, having been made under instructions of the Minister of the Interior, by Henry Lawe, D.L.S., a copy of the plan was forwarded to the Registrar General of Manitoba, who returned it stating that it could not be registered for two reasons :

1. Under section 57 of the Real Property Act of 1900, this plan must be signed by a provincial land surveyor.

2. Under the above section the plan must be in duplicate, both duplicates must be originals, and in case a river or creek is a boundary line of a lot, there must be a traverse of that river or creek. This traverse line must be shown on the plan. This is very necessary, especially in the case of a small river, such as the Sale is at that point, as the banks and centre of the bed are continually changing.

The provision requiring a plan to be signed by a provincial land surveyor when filed for registration is in section 64 of the Act, which is as follows :—

'All plans intended for filing or registration under this Act must be based on surveys performed with instruments independent of the magnetic needle, and shall be certified as accurate by a provincial land surveyor under oath in the form in schedule M hereto, and shall be made in all respects satisfactory to the examiner of surveys.'

It will be observed that under this clause the Minister of the Interior cannot register any plan of survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

While it is quite proper to require surveys of private property within the province to be made by provincial officers, it does not seem that any useful purpose is served by extending this requirement to surveys of Dominion lands made by the Dominion government. Under the Dominion Lands Act, surveys of Dominion lands have to be made by Dominion land surveyors, who before being admitted to practise, must pass examinations just as stringent, and must possess professional qualifications just as high as those of provincial land surveyors. There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a provincial land surveyor, or that the former is less competent than the latter. The Crown in the right of the Dominion might therefore well be exempted, without any detriment to the interests of the province, from the obligation of employing provincial land surveyors.

It may be pointed out that the provincial land surveyors of Manitoba are formed into an association having the power to regulate admission to its ranks and to prescribe a tariff of fees to be paid to surveyors for their services. Were the Minister of the Interior obliged to have all his surveys in the province made by provincial land surveyors, it would be in the power of the association to make the conditions upon which the services of their members could be obtained as onerous as they might see fit.

The second reason given by the Registrar General for refusing Mr. Henry Lawe's plan refers to matters of detail which can well be adjusted without subjecting the Dominion government surveys to the sweeping requirement of section 64, that 'they shall be made in all respects satisfactory to the examiner of surveys.' There is no reason why the department should refuse to furnish to the Registrar General plans in duplicate, both duplicates being originals, or to show the traverse line upon the plan or to comply with any other request which he may find necessary for his purpose. Whether the Registrar General has or has not under the law the right to make such requests, it is the duty and in the interest of the department to help him in every possible way. His object is to secure surveys which will serve as a basis for perfect titles; that is precisely the object of the department. On the other hand, it must be remembered that the cost of the survey of a mile square may be ten dollars or a thousand dollars according to the degree of accuracy and minuteness of the operations. The interest of the examiner of surveys is to have surveys made as perfect as possible, and, in the case of Dominion government surveys, irrespective of cost which the Dominion government has to pay. He can refuse any survey of Dominion lands and the law does not oblige him to give any other reason than 'that the survey has not

been made in all respects satisfactory to him.' Although the authority to order the survey of Dominion lands and to pay for it remains with the Minister of the Interior, his authority stops there; the examiner of surveys directs how and by whom the survey shall be made and practically what amount of money shall be spent upon it.

Respectfully submitted,

E. DEVILLE,
Surveyor General.

The Hon. the Secretary of State to His Honour the Lieutenant Governor of Manitoba.

OTTAWA, 5th June, 1901.

SIR,—The attention of the government of Canada has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57 to 64 inclusive, and especially 64, which provides, among other things, that 'all plans intended for filing or registration under the Act shall be certified as accurate by a provincial land surveyor under oath, and shall be made in all respects satisfactory to the examiner of surveys.'

It will be observed that under this clause the Minister of the Interior cannot register any plan or survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

While it may be expedient, in the judgment of the legislature, to require surveys of private property within the province to be made by provincial officers, it does not seem right or proper to extend that principle to surveys of Dominion lands made by the Dominion government; particularly as under the Dominion Lands Act surveys of Dominion lands must be made by Dominion land surveyors. It cannot be urged that they are less capable, since before being admitted to practice, they must pass examinations just as stringent, and must possess professional qualifications just as high as those of provincial land surveyors. There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a provincial land surveyor, or that the former is less competent than the latter.

Great inconvenience has already been caused by the enforcement of the provisions referred to, and I trust that an assurance will be given by your government that at the next session of the legislature the Act will be amended by repealing the objectionable features mentioned.

The Privy Council would regret having to advise the disallowance of the Act, but unless an unqualified assurance will be given by your government that at the next session of the legislature the objectionable features to which attention has been called will be repealed, there will be no other alternative than to advise the disallowance of the Act.

I hope it will be convenient for your government to give the subject their early attention.

I have, &c.,

R. W. SCOTT,
Secretary of State.

Report of the Hon. the Acting Minister of Justice, approved by His Excellency the Governor General in Council on the 8th of June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 6th June, 1901.

To His Excellency the Governor General in Council:

The attention of the undersigned, as acting Minister of Justice, has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57 to 64, inclusive, and especially 64, which provides among other things that 'all plans intended for filing or registration under the Act shall be certified as accurate by provincial land surveyor under oath, and shall be made in all respects satisfactory to the examiner of surveys.'

It will be observed that under this clause the Minister of the Interior cannot register any plan of survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

The enforcement of the provisions in the Real Property Act referred to, have already caused great inconvenience in the administration of the Department of the Interior, and in the opinion of the undersigned the government of the province of Manitoba should be informed that, unless an unqualified assurance will be given that the objectionable features, to which attention has been drawn, will be repealed at the next session of the legislature, the Act will be disallowed.

All of which is respectfully submitted.

R. W. SCOTT,
Acting Minister of Justice.

Report of the Hon. the Acting Minister of Justice, approved by His Excellency the Governor General in Council on the 13th June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 6th June, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Manitoba, passed in the 63-64th year of Her Majesty's reign (1900), received by the Secretary of State for Canada on July 21st last, and he is of opinion that these may be left to their operation without comment, except Chap. 47, 'An Act respecting Real Property in the province of Manitoba,' which Act has been the subject of a separate report, and except as follows: Chapter 14, 'An Act respecting protection of Game.'

Under section 17 of this Act, exportation out of the province of any of the animals or birds mentioned in the Act is prohibited, except under special permit from the Minister of Agriculture and Immigration. The predecessors in office of the undersigned have formerly called attention to similar provisions of other provincial Acts, objecting that a provincial legislature had no authority to prohibit exportation from the province. Subject to this objection, which the undersigned reiterates, he considers that this statute may be left to its operation.

Chapter 35, 'An Act to amend "The Assessment Act"'; and

Chapter 55, 'An Act respecting the taxation of corporations and others for the purpose of supplementing the revenues of the Crown in the province of Manitoba.'

Section 2 of the former Act authorizes a special tax not exceeding \$50 on every person or firm doing business as a private banker in the city of Brandon.

The expression 'private banker,' for the purposes of Chap. 55 is defined to mean any person or any number of persons associated together, transacting and doing a general banking business in the province of Manitoba, and by section 3 every private bank is made subject to taxation as therein mentioned.

In the report of the Minister of Justice of 18th May, 1894, recommending the disallowance of an ordinance of the North-west Territories respecting municipal assessment, and collection of taxes and licenses, which report was subsequently approved by His Excellency in Council, reference was made to section 38 of that ordinance, which authorized the collection of license taxes from private or unincorporated banks, and the minister stated he considered that provision *ultra vires* 'because the Bank Act does not intend that private or unincorporated banks shall be permitted to do business.' There were other grounds for the disallowance of that ordinance, and the undersigned does not consider that the extreme remedy should be adopted on account of the enactments of the two statutes now in question relating to private banks. In so far as the business of private banking is made illegal by Dominion statutes, it would be inconsistent that taxes should be levied by local authorities in respect of such business. It would, therefore, in the opinion of the undersigned, be proper for the provincial legislature to modify these provisions.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for the information of his government.

Respectfully submitted,

R. W. SCOTT,

Acting Minister of Justice.

His Honour the Lieutenant Governor of Manitoba to the Hon. the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 12th June, 1901.

SIR,—I have the honour to acknowledge the receipt of your despatch, dated the 5th instant, informing me that the attention of the government of Canada has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province, and that unless unqualified assurances are given by my government that at the next session of the legislature the objectionable features to which attention has been called will be repealed, there will be no other alternative than to advise the disallowance of the Act.

I beg to state that I have transmitted to my government, for their information, a copy of the despatch, with a request to be advised at their earliest convenience of the intentions of my government upon the subject.

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,

Lieutenant Governor.

The Acting Deputy Minister of Justice to the Under Secretary of State.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July, 1901.

Referring to an Order of His Excellency in Council on June 8 last, with reference to the Act of the legislature of Manitoba, 63-64 Vic., Chap. 47, 'The Real Property Act,' and to the despatch which no doubt was addressed by the Department of State to the Lieutenant Governor of Manitoba in relation to the matter, the undersigned has the honour to recommend that, in the event of no reply having been

received, a further communication be sent to the Lieutenant Governor of Manitoba, calling attention to the fact that the time for disallowance will expire on 20th instant, and requesting that an answer be returned at the earliest possible date.

A. POWER,

Acting D. M. J.

The Hon. the Secretary of State to His Honour the Lieutenant Governor of Manitoba.

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 2nd July, 1901.

SIR,—On receipt of your letter of 20th June, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session last year, I referred the communication to the Minister of the Interior, together with the letter from the Provincial Secretary and the report from the district registrar, and I am to-day in receipt of a letter from the Honourable Mr. Sifton, in which he states that he 'does not consider that there is any importance whatever to be attached to the contention that examination by the district registrar or the inspector of land titles offices of Dominion plans is necessary in order to make them correct, nor is there anything whatever in the idea that the plans are not likely to be absolutely correct unless passed upon by a provincial lands surveyor. The Dominion land surveyors have always ranked quite as high or higher in their profession than the provincial land surveyors in Manitoba, and if there should be any technical changes which the district registrar desires to have made in any of our plans, or if there should be any markings which he requires to have put on, all he has to do is to advise the Surveyor General, and any reasonable or proper regulations which they may see fit to make will be promptly complied with.'

The minister has forwarded to me the following proviso to be added to section 64 of the Act :—

'Provided that nothing in this section nor in any other section of this Act shall warrant the rejection of any plan of the survey of Dominion lands which has been made, prepared, certified and approved in accordance with the provisions of the Dominion Lands Act (Chap. 54 of the Revised Statutes of Canada) or of any amendment thereof, but that any such plan which has been so made, prepared, certified and approved and which has been forwarded by the Minister of the Interior to the district registrar or registrar of the district in which the lands shown on such plan are situated, shall be accepted and filed or registered by such district registrar.'

I presume there will be no objection to your government passing an Order in Council containing an assurance that the Act will be amended at the next session by adding to section 64 the provision referred to.

As the time for action is now very short, I hope that immediate attention will be given to the subject, and that I may receive at an early date an Order in Council in the terms suggested.

I have, &c.,

R. W. SCOTT,

Secretary of State.

His Honour the Lieutenant Governor of Manitoba to the Hon. the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 20th June, 1901.

SIR,—With reference to your communication of the 5th instant, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of this province at its session of last year and which have been found to be embarrassing and vexatious, and requesting the government of Manitoba to give assurance to

the Dominion government that the objectionable features of the Act will be repealed at the next session, I now have the honour to inclose, herewith, a copy of a letter received from my Provincial Secretary giving assurance that a certain amendment will be made to the said statute at the next session of the legislature.

I also inclose copy of a communication, bearing on the subject, from W. E. Macara, district registrar, addressed to the Honourable the Attorney General of Manitoba.

I have the honour to be, sir, your obedient servant,
D. H. McMILLAN,
Lieutenant Governor.

The Hon. the Provincial Secretary to His Honour the Lieutenant Governor of Manitoba.

WINNIPEG, 20th June, 1901.

SIR,—I have the honour to acknowledge the receipt of your communication of the 12th instant, transmitting a copy of a despatch from the Honourable the Secretary of State, bearing date the 5th instant, notifying your honour that the Governor General in Council would disallow the Real Property Act, chapter 47 of 63-64 Victoria, passed by the legislature of the province of Manitoba at the session of 1900, unless an assurance would be given by your government, that at the next session of the legislature an objectionable feature, to which attention is called in the despatch, would be repealed.

In reply, I beg to inclose copy of a report on the matter received from W. E. Macara, District Registrar and Registrar General, under the Real Property Act, also copy of a letter from the department of Attorney General, and I have to request that you will transmit to the Secretary of State the assurance of your government that the said statute will be amended at the next session of the legislature by the insertion of the words 'Except in case of land vested in His Majesty in the right of Canada,' after the word 'and' in the third line of section 64 of the Act, if the government of Canada, after perusal and consideration of Mr. Macara's report, shall intimate its desire to have such an amendment made.

I might add that if the government of the Dominion thinks that there should be an Order in Council passed by your honour, I will recommend the passage of an Order in Council to carry out the assurance given in this letter.

I have the honour to be, &c.,

D. H. McFADDEN,
Provincial Secretary.

From Mr. W. E. Macara, District Registrar to the Hon. the Attorney General of Manitoba.

WINNIPEG, 17th June, 1901.

SIR,—I have the honour to acknowledge your communication regarding the proposed disallowance of the Real Property Act on account of the provision therein contained, that the plans to be registered under that Act must be certified as accurate by a provincial land surveyor under oath in a certain form, and must be made satisfactory to the examiner of surveys. I beg leave to give you a brief history of the circumstances which led up to the legislation complained of.

Shortly after the Torrens System came into force here it became apparent that the greatest difficulty in the way of making that system a success was the most incorrect state of the surveys, not only by the Dominion government in laying out sections and river lots, but subsequently by owners in subdividing them into town lots.

To such an extent did these errors prevail that I was obliged to discontinue dealing under the Torrens System with any lots in a large number of the towns and villages in Manitoba or with any lots in at least two-thirds of the area of the city of Winnipeg. In this connection it must not be lost sight of that not only does the government, under the Real Property Act, guarantee the title to land, but it also guarantees the boundaries as described in a certificate of title. It will, therefore, be seen why I found it necessary, not only to deprive a large portion of the province of the benefits of the system, but also to have such legislation passed as would give me complete control of all surveys at a time when errors could most easily be corrected, namely, at the time of and before the registration of the plan. This would prevent further errors occurring, or at least minimize the numbers of such errors in future surveys or plans. In order to cure past defects and errors I obtained the passing of the Special Surveys Act, of which Act several municipalities have taken advantage. The city of Winnipeg had a special survey made under that Act, at a cost of over \$20,000, and I venture to think that no money was ever spent by this city to better advantage. The Dominion government themselves have attempted to take advantage of the same Act in connection with their townsite of Whitemouth, but in this as in all other cases, they sent a man up from Quebec to do the work, and the result was that the special survey was worse than the original, and when it was presented to the Attorney General for confirmation I was obliged to recommend its rejection, and it stands in that position to-day.

The fact is that a very large proportion of the surveys made in this province prior to the time when I obtained control of them under the clause complained of, were very bad. In the case of subdivisions into town lots made by the Dominion government, at least so far as such have come under my notice, and I think I have dealt with all or nearly all such Dominion government townsites in the province, they are all bad without an exception (except one), and this was due largely, as I believe, to the fact that the work was done by Dominion land surveyors sent here from Quebec or Ontario.

I know of only one instance in which the Dominion government laid out a townsite in such a way that I am able to deal with it under the Real Property Act, and that is the townsite of Gimli, which was laid out by Mr. Henry Lawe, a land surveyor residing in this province. It is pointed out in the memo. of the Secretary of State that, 'There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a provincial land surveyor, or that the former is less competent than the latter.' I quite agree with this if the Dominion land surveyor is also a provincial land surveyor of this province. The results as pointed out by me above show that where he is not also a provincial land surveyor he does not do the work properly whether competent or not.

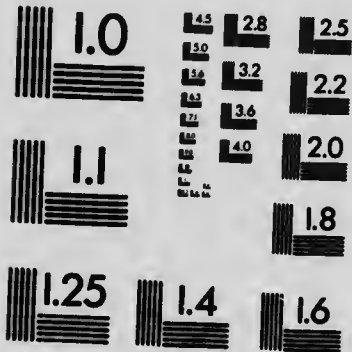
I think from what I have stated, you will agree with me that where titles and boundaries of lands are guaranteed by this province, we must exercise as complete control as possible over surveys and plans, and there does not seem to me any good reason why the Dominion government should be treated otherwise in this respect than any individual would be. On the other hand there does seem to be every reason why they should desire to have their plans registered in such a state that after the title passes from the Crown, it can readily be dealt with by the owner, instead of his being blocked by some defect in the survey, which occurred when the title was in the Crown. To say that the Real Property Act conflicts with the Dominion Land Act, in that the former requires a provincial and the latter a Dominion land surveyor, is begging the question, as most of the provincial land surveyors in this province are also Dominion land surveyors.

I would also call your attention to the statement made in the communication of the Secretary of State that the provision complained of interferes with the survey of townships into sections. This statement is incorrect. Dominion government township plans are not registered, but merely filed, and no such plan was ever refused in any registry office or land titles office in this province, but on the contrary, the filing of such is almost of daily occurrence. The clauses complained of do not affect such



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plans in the slightest degree, but affect only plans of subdivision into city, town or village lot or other lots or blocks of a similar nature.

I also call your attention to the fact that the chief, and I think the only cause of complaint, namely, that section 64 requires the plan and survey to be made by a provincial land surveyor, is not new legislation. The same provision was in the Real Property Act of 1889, and remained there until that Act was repealed by the present one. See sections 63, 65 and 67, Chap. 133 R.S.M. It must, therefore, be observed that if the present Act is disallowed, the old Act, with these sections in it comes into force again. I trust, however, that there will be no disallowance of this Act, as it would lead to very serious confusion by reason of numerous provisions in the new Act which were not in the old, and which have for over a year past been acted upon. If, however, the Manitoba government decides to comply with the request made, I would suggest that the amendment be made by inserting in section 64 after the word 'and,' in the third line the words, 'except in case of land vested in His Majesty in the right of Canada.' Although I am much opposed to any such amendment I would rather have it than have the whole Act disallowed.

I have the honour to be, sir, your obedient servant,

W. E. MACARA,
District Registrar.

His Honour the Lieutenant Governor of Manitoba to the Hon. the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 27th June, 1901.

SIR,—I have the honour to acknowledge the receipt of your despatch, dated the 20th instant, transmitting to me, for the information of my government, a certified copy of a minute of the Privy Council, approved by His Excellency the Governor General on the 13th instant, leaving to their operation certain of the Acts of the province of Manitoba passed in the 63-64 year of Her late Majesty's reign (1900), with exception of Chap. 47, 'An Act respecting Real Property in the province of Manitoba.'

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

His Honour the Lieutenant Governor of Manitoba to the Hon. the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 6th July, 1901.

SIR,—I have the honour to acknowledge the receipt of your despatch, bearing date the 2nd instant, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of Manitoba at its session of last year.

A copy of the despatch has been transmitted to my Provincial Secretary, with a request that the matter contained in the despatch should be given immediate consideration.

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

His Honour the Lieutenant Governor of Manitoba to the Hon. the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 10th July, 1901.

SIR,—With further reference to your letter of the 2nd instant, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, I have the honour to state that my government declines to amend the Act by adding to section 64 the provision referred to in your despatch.

I inclose herewith a copy of the communication just received from my Provincial Secretary.

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

The Hon. the Provincial Secretary to His Honour the Lieutenant Governor of Manitoba.

WINNIPEG, 10th July, 1901.

SIR,—In reply to your communication of the 6th instant, inclosing a copy of a letter from the Honourable the Secretary of State, Ottawa, dated the 2nd instant, respecting certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, I beg to state that the matter of the amendment proposed in the letter of the Secretary of State was referred to the registrar general, and he was consulted as to the advisability of making such amendment. He states that the provision proposed would be very objectionable, and he advises that the government do not give the assurance asked for, even if the threatened disallowance of the whole Act follows as a consequence. He points out that the object of the Dominion government in disallowing the Act could not possibly be attained, as the only result would be the bringing into force again of Chap. 133 of the Revised Statutes of Manitoba, which contains provisions enabling the district registrar to reject plans and surveys if not made by a provincial land surveyor. The Attorney General would, therefore, advise that the Honourable the Secretary of State be informed that the amendments suggested in the letter of 18th June will be made at the next session of the legislature, but that the government of Manitoba will not go any further in the direction proposed by the Honourable the Secretary of State.

I have the honour to be, sir, your obedient servant,

D. H. McFADDEN,
Provincial Secretary.

Report of the Hon. the Acting Minister of Justice, approved by His Excellency the Governor General in Council on the 18th day of July, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 15th July, 1901.

To His Excellency the Governor General in Council:

The undersigned has the honour to refer to his report to Council, dated 6th June, 1901, approved by Your Excellency on 8th June, 1901, in relation to certain provisions of the Real Property Act, 63-64 Victoria, chapter 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and objectionable in so far as they apply to Dominion lands. Pursuant to the terms of Your Excellency's order approving the said report, a despatch was addressed to the Lieutenant Governor of Manitoba calling his attention to the objec-

tionable features of the Act, and stating in effect that unless unqualified assurances were given by his government that at the next session of the legislature the objectionable features to which attention was called would be repealed, there would be no other alternative than to advise the disallowance of the Act. This despatch was acknowledged by His Honour on the 12th June, with the statement that he had transmitted the same to his government with the request to be advised of their intentions at their earliest convenience. On the 15th June a despatch in reply was addressed by the undersigned to the Lieutenant Governor of Manitoba, pressing upon him the necessity of an early reply in the matter, as the time within which action can be taken here was then growing short. On the 2nd July instant, a despatch was addressed by the undersigned to the Lieutenant Governor inclosing the draft of a proviso, the addition of which to section 64 of the Act. it was considered would remove the objections adverted to.

No satisfactory assurance having been received from the government of Manitoba in answer to the suggestions made in the correspondence above adverted to, the undersigned, this being the last day within which such action can be taken, is compelled to advise Your Excellency that the Act of the legislature of Manitoba, 63-64 Victoria, chapter 47, intituled 'An Act respecting Real Property in the province of Manitoba,' be disallowed, and he humbly so advises.

Humbly submitted,

R. W. SCOTT,
Acting Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA, 18th July, 1901.

PRESENT:

His Excellency the Governor General in Council.

Whereas, the Lieutenant Governor of Manitoba, with the legislative assembly of that province, did on the 31st day of May, 1900, pass an Act which has been transmitted, chaptered 47, and intituled 'An Act respecting Real Property in the province of Manitoba ;'

And, whereas, the said Act has been laid before the Governor General in Council, together with a report from the Acting Minister of Justice, recommending that the said Act be disallowed ;

Therefore, His Excellency the Governor General in Council is pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of Manitoba and all other persons whom it may concern are to take notice and govern themselves accordingly.

J. J. McGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the legislature of Manitoba on the 31st day of May, 1900, chapter 47, and intituled 'An Act Respecting Real Property in the province of Manitoba,' was received by me on the 21st day of July, 1900.

Given under my hand and seal this 18th day of July, 1901.

MINTO.

The Hon. the Secretary of State to His Honour the Lieutenant Governor of Manitoba

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 22nd July, 1901

Sir, I beg to inform you that I submitted to His Excellency the Governor General in Council your letter of 10th July instant, advising me that the government of Manitoba declined to give an assurance that at the next session they would amend the Act 63-64 Victoria, chapter 47, by adding to section 64 the short proviso prepared by the laws adviser of the Department of the Interior, allowing plans of the survey of Dominion lands, certified in accordance with the Dominion Lands Act, to be filed or registered.

The concession asked for seemed so reasonable and so necessary for the proper administration of the lands of the Crown in accordance with the provisions of the Dominion Lands Act, that surprise is felt at the refusal of your government to acquiesce in a request that affected only the surveys of lands belonging to the Dominion.

In my letter of 6th June last, you were informed that the Act would be disallowed, unless an assurance was given that the objectionable feature to which attention had been called was amended.

A critical examination of the amendment suggested by the Provincial Secretary did not make it clear to the Minister of the Interior that the proposed amendment would be adequate, and it was believed that if it was the desire of your government to meet the wishes of the federal government, there would be no objection to making the proviso explicit, and with that view a clause was drafted which seemed to answer the case perfectly.

It is a matter of very great regret that so important and useful an Act should have to be disallowed, when a promise on the part of the government of Manitoba to make so slight an amendment affecting only surveys of Dominion lands, would have avoided the necessity for taking that extreme course.

The government of the province having however refused to make the reasonable amendment asked for, there seemed no alternative left than to disallow the Act, and I now therefore beg to inclose the certificate of disallowance bearing date 18th July, 1901, and a certified copy of the Order in Council.

I have the honour to be, sir, your obedient servant,

R. W. SCOTT,
Secretary of State.

BRITISH COLUMBIA

62nd VICTORIA, 1899.

2ND SESSION—8TH LEGISLATURE.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 2nd May, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1899.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a despatch to Your Excellency from the British Ambassador at Washington, inclosing copy of a note received by him from the office of the Secretary of State, inclosing copy of a petition to the President of the United States, from the United States citizens, resident in the Atlin district of British Columbia, representing the hardships to their interests of recent mining legislation of that province.

The undersigned has the honour to report that the British Columbia statutes of the last session have not yet been received at his department, and he is not at present in a position to express an opinion upon the merits of the application set forth in the petition. He recommends, however, that a copy of the documents above mentioned be transmitted to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and also that the British Ambassador at Washington be informed that this course has in the meantime been taken.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Sir Julian Pauncefote to Lord Minto.

WASHINGTON, 7th April, 1899.

MY LORD,—I have the honour to transmit, herewith, to Your Lordship copy of a note which I have received from the United States Secretary of State inclosing copy of a petition to the President from the United States citizens resident in the Atlin district of British Columbia, representing the hardship to their interests of recent mining legislation of that province.

Mr. Hay suggests that the petition be submitted to the Dominion government without thereby raising any issue as to the general effect of the legislation in question.

A copy of the note and petition have been forwarded to Her Majesty's principal Secretary of State for Foreign Affairs.

I have, &c.,

JULIAN PAUNCEFOTE.

The U. S. Secretary of State to the British Ambassador.

DEPARTMENT OF STATE, WASHINGTON, 3rd April, 1899.

EXCELLENCY,—I take the liberty to inclose herewith a copy of a letter of the Commissioner of the General Land Office of the United States and its accompanying paper, which is a petition to the President of the United States by citizens of the United States resident in the Atlin district of British Columbia engaged in mining. It will be seen that the petitioners complain that the recent Act of the assembly of the province of British Columbia as to mining, works upon them great hardship and injustice.

I have thought the petition was of such a nature that you might deem it well, without thereby raising any issue as to the general effect of the Act in question, to submit the representations of the petitioners to the government of the Dominion of Canada, in the hope that it might see such equities in their claims as to find a means of affording them some relief.

I have, &c.,

JOHN HAY.

The U. S. Commissioner of the Interior to the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D.C., 15th March, 1899.

SIR,—I have the honour to acknowledge the receipt of your reference of a petition signed by J. C. Wilber and four other citizens, who represent that they are a committee representing five hundred American citizens now residing at Atlin city, in British Columbia.

Your endorsement upon said petition is to the effect that this office should take such action as might be deemed proper in the premises.

Upon a careful examination of said petition, I am convinced that the statements therein contained are true and that they are not exaggerated.

I am impressed that said petitioners present a case of such merit as to warrant action by this government in their behalf.

These petitioners represent that they went to British Columbia long before the enactment of the local law, dated 18th January, 1899, and complied, in good faith, with every provision of the then existing law, relative to mining rights and privileges, but that it was impossible to have their claims duly recorded and thus maintain their interests, because of the failure of the local government to provide the necessary facilities for recording such claims.

Accepting the petitioners' statements as being true, it would seem that they possess material and valuable equities, which, if urged by the proper officials of this government, the government of British Columbia might be induced to respect and protect.

I am unable to see that it is possible for this office to take any definite action having in view the relief of said petitioners.

Upon our fully considering this matter, I have deemed it proper to return said petition with recommendation that the attention of the Honourable Secretary of State be invited thereto.

Very respectfully,

BINGER HERMANN,
Commissioner.

Petition of Residents of Atlin City, B.C., to the President of the United States.

ATLIN CITY, B.C., 10th February, 1899.

HONOURABLE SIR,—Your petitioners would respectfully represent to your consideration the following facts for such action as may seem just and proper, and for such aid in securing to the citizens of the United States now residing in Atlin mining district, their property and vested rights.

First.—Your petitioners represent some five hundred citizens of the United States now residing in the Atlin gold fields of British Columbia, who have become 'free miners,' by invitation of the government of Great Britain, as embraced in the statutes of British Columbia, a province of the Dominion of Canada, which enactments were made by Her Britannic Majesty Queen Victoria, by and with the advice and consent of the legislative assembly of the province of British Columbia, which enacts as follows :—

EXTRACT OF LAWS.

'Every person over but not under eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a 'free miner' upon taking on a 'free miner's' certificate.

'A 'free miner's' certificate may be granted for one or more years, to run from the date thereof, or from the expiration of the applicants' then existing certificate upon the payment therefor of the fees set out in the schedule of fees to this Act.

'If any person or joint stock company shall apply for a 'free miner's' certificate at the mining recorder's office during his absence, and shall leave the fees required by this Act with the officer or other person in charge of the said office, he or it shall be entitled to have such certificate from the date of such application.

'And any 'free miner' shall at any time be entitled to a 'free miner's' certificate, commencing to run from the expiration of his then existing 'free miner's' certificate, provided that when he applies for such certificate, he shall produce to the mining recorder, or in case of his absence, shall leave with the officer or other person in charge of the mining recorder's office, such existing certificate.

'Every 'free miner' shall during the continuance of his certificate, but no longer, have the right to enter, locate, prospect and mine for gold and other precious metals upon any lands in the province of British Columbia, whether vested in the Crown or otherwise, except government reservations for town sites, land occupied by any building, and any land falling within the curtilage of any dwelling house, and any creek, and any land lawfully occupied for placer mining purposes, and also Indian reservations.

'Every 'free miner' shall be entitled to locate and record a placer claim on each separate creek, ravine or hill, but no more than two claims in the same locality, only one of which shall be a creek claim. He shall be allowed to hold any number of claims (placer) by purchase; any 'free miner' may sell, mortgage or dispose of his claims or any interest therein.'

Second.—Your petitioners would further respectfully represent that, reposing trust and confidence in Her Majesty the Queen of Great Britain, and believing that Her Majesty's government was acting in good faith, and desiring her mines to be developed, and would in common equity and fairness extend a welcome to energetic and law-abiding citizens of the United States, and in good faith execute and carry out the provisions of her said enactments thus advertised to the world, have expended large sums of money and performed great and arduous labours many times at the risk of life and health, and suffered much from hardships and exposure in coming to this remote and inhospitable country in order to secure these privileges.

Third.—Your petitioners would further respectfully represent that Her Majesty has, by and with the advice and consent of the legislature of British Columbia, re-

pealed certain provisions of the Placer Mining Act hereinbefore recited (under which citizens of the United States have become 'free miners') by an Act of said legislature, bearing date 18th January, A.D. 1899, thus abrogating and annulling nearly all the vested rights secured to the citizens of the United States who became 'free miners' under said Acts, prospected and located claims; only allowing them to work claims that are placed on record before 18th January, A.D. 1899.

Fourth.—Your petitioners would further respectfully represent that the mining season closed 15th September last, since which time no recorder's office has been kept here, and no recorder has been accessible to the miners of Atlin district; and much of the time prior to 15th September last, either there was no recorder in this locality, or he was not furnished with the necessary blanks and books of record and could not record claims; and in consequence, a large portion of the claims which have been prospected and located, could not be recorded owing to absence or inability of recorder to make the record; and now the rights of the citizens of the United States are annulled, and a record of said claims refused, although they hold a 'free miner's certificate,' and are entitled to the fruits of their labour under the provisions of the law which constituted them 'free miners,' and after expending much time, labour and capital in prospecting for and locating said claims.

Fifth.—Your petitioners would further respectfully represent that when they accepted Her Majesty's invitation, as evidenced by said enactment, and came into this country at great expense and hardship, and took out and paid for a 'free miner's certificate' for one or more years, with a right of renewal as provided for by said Placer Mining Act, they acquired a vested right as such 'free miner' which secured to them the right to prospect for, locate and have recorded, and work one or more claims, (placer) in accordance with the provisions of said Acts then in force, as long as their then existing 'free miner's certificate' shall run, with the further right to have said 'free miner's certificate' renewed from time to time so long as they complied with the existing Placer Mining Acts in force at that time.

Sixth.—Your petitioners would further respectfully represent that all the capital, labour and knowledge has been rendered valueless, not by any laxness of theirs, but in consequence of Her Majesty's government refusing to recognize the rights and privileges accorded to them under the laws in force when they took out their 'free miner's certificate'; and when said government failed to provide a recorder with proper books and instructions to make record of claims; and when said government refused to acknowledge the validity of said 'free miner's certificate' with all the rights and privileges guaranteed to them by the laws of Her Majesty's government; and when said government refuses to record claims prospected and located under the provisions of said enactments, when said claims are prospected and located by a citizen of the United States as 'free miner' in good standing under the laws of Her Majesty's province of British Columbia.

Seventh.—Your petitioners would further respectfully represent that nearly all of the citizens of the United States now in the Atlin district who have taken out a 'free miner's certificate,' are miners of small means, that not only their rights as 'free miners' to prospect and locate mining claims have been taken away, but also the right to earn their substance by labouring for British subjects is denied them, as they cannot secure a 'free miner's certificate,' except to work out mining claims they had secured and recorded prior to 18th January, 1899, the date of said amended Act.

Eighth.—Your petitioners would further respectfully represent that in consequence of the said recent enactments by Her Majesty's province of British Columbia, excluding citizens of the United States and other aliens from the Atlin mines, the business of the country has been prostrated and the property of the citizens of the United States has become almost valueless; all improvements in Atlin city and other places have been suspended, and large numbers of people are leaving the country; that a large majority of the miners and business men of Atlin district are citizens of the United States; that four-fifths of the claims prospected and located belong to

said citizens of the United States, while extensive improvements have by them been commenced in Atlin city and other places, and that in consequence of said exclusion enactments, no one feels secure in his rights and interests, and no one is disposed to risk capital and labour in the development of the country; and that hydraulic mining and other extensive works requiring large expenditures of capital and labour will be abandoned, or cease to engage the attention of capitalists and miners, on account of the insecurity of the rights of property, and scarcity of labour, owing to the discrimination against aliens; thus causing the tide of emigration to be diverted to other localities where laws are more liberal and the vested rights more sacred.

Ninth.—Your petitioners would further respectfully represent that in consequence of the recent enactments of Her Majesty through the legislative assembly of British Columbia, depriving the citizens of the United States of their vested rights which were guaranteed to them when they took out 'free miner's certificates and prospected and located mining claims, the citizens of the United States in this district alone have been damaged to the extent of many millions; and unless they are relieved from this unjust legislation, many of them will be compelled to ask assistance from their government to remove to other sections, where the rights of labour and property are better protected and respected.

Now your petitioners would respectfully ask and pray that in behalf of the citizens of the United States now in Atlin mining district who have taken out a 'free miner's certificate,' that you bring to the notice of Her Majesty's government of Great Britain the foregoing facts, and ask that the vested rights of the citizens of the United States who became 'free miners' under Her Majesty's enactments, be respected and secured, and that the amended Placer Mining Act of the province of British Columbia, passed the 18th day of January, A.D. 1899, if not repealed, be so modified as to give to the said citizens of the United States who emigrated to this country and took out a 'free miner's certificate,' all the rights and privileges accorded to them under the various enactments of Her said Majesty's government in force at the time said miner's certificate was issued.

Committee :

J. C. MILLER, N.Y. City,
A. HUGHES, N.Y. City,
J. Q. LEIGHTY, Frontin, Ohio,

W. H. FRENCH, California,
D. P. OGILVIE.

The Deputy Minister of Justice to the Under Secretary of State.

DEPARTMENT OF JUSTICE, OTTAWA, 6th July, 1899.

SIR,—An Order in Council was passed on 2nd May, 1899, with respect to a despatch from the British Ambassador at Washington transmitting a copy of a note from the United States Secretary of State and of a petition from United States citizens residing in the Atlin district of British Columbia, complaining of a statute affecting their interests with regard to placer mining passed at the last session of the legislature. The statute is Chap. 50, intituled 'An Act to amend the Placer Mining Act.'

The Order in Council provided that a copy of the document should be forwarded to the Lieutenant Governor of British Columbia for his observations with a view to a further consideration of the matter. I have not yet received any reply, and I presume the government has not answered. As it seems proper for several reasons to report upon these statutes as early as possible, I would be glad if you would call the attention of the Lieutenant Governor to the matter and ask for an early reply.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 10th August, 1899.

The Committee of the Privy Council have had under consideration a despatch, hereto attached, dated 7th April, 1899, from Her Majesty's Ambassador to the United States, transmitting a communication from the Secretary of State for the United States, inclosing a petition to the President of the United States from a number of its citizens resident in the Atlin district of British Columbia engaged in mining, representing that, having taken out free miner's certificates under the laws of British Columbia, they proceeded to locate placer claims in the Atlin district; but before they were able to record their claims, an Act was passed by the legislature of British Columbia, entitled 'An Act to amend the Placer Mining Act,' the effect of which it is alleged was to deprive the petitioners of the proprietary rights to any placer mines which, though staked, had not been recorded prior to the passing of the Act.

The Secretary of State to whom the matter was referred observes that the despatch from the British Ambassador with the inclosures from the Secretary of State at Washington, including a copy of the petition, was sent to the Lieutenant Governor of British Columbia, requesting him to obtain from his ministers an expression of their views on the complaints of the petitioners. An answer has now been received, which in effect declares that the statements in the petition are very much exaggerated; that under the mining laws of the province no right can be acquired until the claim has been recorded, and that all recorded claims are exempted from the operation of the Act referred to.

The government of British Columbia recognizing, however, that possibly through lack of sufficient facilities for recording claims there may have been some instances where locatees were unable within a reasonable time to record their claims, introduced an amending Act in the same session, which was adopted, authorizing the appointment of a judge of the Supreme Court as a commissioner, with full power to settle all disputes in that district in accordance with equity and the spirit of the mining Acts, without being bound by the strict letter of the law. As the report of the judge has not yet been made public, it is impossible to say how wide a discretion he has exercised in considering claims of American miners actually located, but not recorded, prior to 18th January, 1899, the date of the passing of the Act amending the Placer Mining Act. If, however, any reliance can be placed on newspaper reports it would appear from the extracts hereto attached, taken from Victoria 'Daily Times,' of 12th July, 1899, that the judge was disposed to be influenced in his decisions by the equities of the case, rather than by the strict letter of the statute.

The public lands in British Columbia belong to the province, and the policy of granting or of withholding licenses to aliens, is under the exclusive control of its legislature, and it would be contrary to the spirit of the constitution to interfere with a provincial Act dealing with the disposition of its public lands.

For the past thirty years the mining laws of British Columbia have been of the most liberal character, and citizens of the United States have derived larger profits from the mines of that province than other nationalities.

It is no exaggeration to say that over seventy-five per cent of the mineral wealth of the Kootenay district in southern British Columbia has gone to enrich American citizens, and the first restrictive legislation introduced, is the Act referred to, relating to placer mines, and which seems to have been suggested by section 2319 of the Mineral Lands Act of the United States.

The contrast heretofore between the mining laws existing on the north side of the 49th parallel and the laws on the same subject that prevail on the south side of that parallel of latitude, has been so marked as to frequently evoke strong comments. Section 2319 of the revised statutes of the United States relating to mineral lands, reads as follows:—

'All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and

purchase, and the lands in which they are found, to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable, and not inconsistent with the laws of the United States.'

The clause on the same subject in the British Columbia Act referred to, grants the rights and privileges of a British subject in taking up placer mining claims, also 'to those who have declared their intention to become such.' The similarity in the language of the two sections is noticeable.

The public lands in the North-west and Yukon Territories belong to the federal authority, and American citizens have availed themselves of the liberal laws of the Dominion to acquire mineral lands and mining rights in the Yukon, in a greater proportion than any other nationality, and the reports of the gold dust now arriving at Seattle and other American ports confirm the impression that the citizens of the United States are receiving a larger share of the wealth of the Yukon than even Canadians.

It is no doubt true that section 13 of Chap. 299, approved on 14th May, 1898, which reads as follows:—

'Section 13. That native born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the North-west Territory, by the laws of the Dominion of Canada or the local laws, rules and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.'

Congress evinced a desire to extend to native born Canadians mining rights in Alaska similar to those enjoyed by American citizens in the Yukon Territory, but as the system in Canada is to grant mining licenses, and the practise in the United States is to grant the land in fee, and as the dimensions of mining claims in the one country are not equal to the area in the other country, the officials in Alaska have taken advantage of the technical difference between the mining laws in Alaska and the British Yukon, to nullify section 13 referred to, the contention of American officials being that the Canadian law relating to the acquisition of mining rights must first conform to the American statutes, before native born Canadians can take up mining claims in Alaska.

The discrimination against British subjects on one side of the international boundary, compared with the absence of any discrimination against American citizens on the other side of the line has, no doubt, had its effect on public opinion in British Columbia, and has resulted in the passing of the Act to which objection is now taken.

The minister further observes that a like sentiment is growing in other parts of the Dominion, and it will be a cause for great regret if that feeling becomes so general as to force the parliament of Canada to adopt mining laws similar in their discriminating character to those which have been passed by Congress at Washington.

The committee advise that Your Excellency be moved to transmit a certified copy of this minute, and of the report of the government of British Columbia, to His Majesty's Embassy at Washington for communication to the Honourable the Secretary of State at Washington.

All which is respectfully submitted to Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

His Honour the Lieutenant Governor of British Columbia to the Hon. the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 8th June, 1890.

SIR,—Adverting to your letter of the 5th ultimo, wherewith you forwarded copy of a petition to the President of the United States from certain residents of Atlin complaining of recent mining legislation of this province, I have the honour to transmit herewith a certified copy of an approved minute of my executive council, dated yesterday, embodying the views of my government in respect to the alleged grievances of the petitioners, and as to the scope of the said legislation.

I have, &c.,

THOS. R. McINNES,
Lieutenant Governor.

Copy of a Report of the Hon. the Provincial Secretary, approved by the Hon. the Executive Council on the 7th June, 1890.

To His Honour the Lieutenant Governor in Council:

The undersigned has had before him for consideration a communication from the Lieutenant Governor, dated the 12th ultimo, wherewith is transmitted a copy of a petition addressed to the President of the United States, by certain residents of Atlin, complaining of recent mining legislation of this province, as therein set forth.

The undersigned has the honour to report as follows, in regard to said petition:—

The petition states that four-fifths of the claims prospected and located belong to citizens of the United States; thus, according to the petition itself there is only one-fifth left for other aliens and our own citizens. This statement is probably like the other statements in the petition, greatly exaggerated, but there is sufficient truth in it to justify (if this proportion between aliens and citizens should be maintained), the stand which the legislature took to carry out their avowed policy, the reservation of the provincial placer mines for British subjects.

The question whether such policy was in the true interest of the province is one for the legislature and the legislature alone, and the unanimity with which that body endorsed this policy is sufficient to show that the government and the legislature were in complete accord in the matter. There is no attempt to discriminate between the native born and the naturalized citizen, nor to throw any difficulty whatever in the way of an alien desiring to become naturalized; all that is done is to say, our placer mines are reserved for those who are prepared to acknowledge their obligations as citizens of the British Empire.

Taking up the complaints in the petition *seriatim* we would say any rights acquired by the petitioners have been preserved to them. The legislation complained of specifically exempts all claims recorded prior to its passage and provides for the unimpeded working of such claims by the holders, although aliens. A reference to the mining laws will show that their whole tenor is, as it necessarily must be, that no right is acquired until a claim is recorded. As already stated, all such rights are scrupulously respected. It may be well to note this, as a casual reader of the petition, unacquainted with the facts, might naturally suppose that such claims had been confiscated.

The government, with the sanction of the legislature, had an unquestioned right to reserve any lands they might think fit from the prospector and miner. They might have said the Crown retains in its own possession for the present, all mines and minerals the property of the Crown in the northern part of the province; and no one will be allowed to prospect for or appropriate minerals in that section. Such a course might have been taken with a view of working these claims by the Crown for its own direct

benefit, or with the purpose of having these claims in reserve after the mining interests in the other parts of the province had been more fully developed.

Suppose such a course had been adopted, that all the miners had been excluded from the lands in question, the absurdity of the petitioners' claims would be seen at once, and the absurdity exists no less, although the reserve thus made has been relaxed so far as citizens are concerned. The grievance of the petitioners is really, not that they are shut out, but that others are admitted.

The fifth clause of the petition claims that the petitioners had acquired vested rights by taking out 'free miners' certificates, not only to the rights granted by such certificates at the time, but to renewal in perpetuity of such rights. To state this is to refute it; the Crown and the legislature in providing for the granting to free miners the right to prospect for and appropriate minerals, did not, and could not, divest themselves of the power to amend the terms and conditions of such certificates in any manner that might be deemed expedient. When recorded claims were exempted from the operation of the law, everything as already stated, had been done that the most extreme advocate of vested rights could justly claim.

The sixth clause of the petition complains of alleged losses to the petitioners through lack of sufficient facilities for recording claims. This to some extent may have been the case, but so far as it did exist, was caused by unavoidable circumstances, for which no responsibility attaches to the government.

So anxious have the government and legislature been to minimize, as much as possible, any hardship or injustice which may have been occasioned through the sudden rush into the northern country, following on the discovery of rich diggings there, that an Act was passed at the last session of the legislature providing for the appointment of a judge of the Supreme Court, as a commissioner with full power to settle all disputes in that country in accordance with equity and the spirit of the mining Acts, without being bound by the strict letter of the law.

The grievance complained of in the seventh clause of the petition, that aliens cannot obtain work on claims held by citizens, has already been removed. By the legislation of last session the necessity of a labourer in a mine taking out a free miners' certificate is done away with.

The eighth clause of the petition alleges great injury to the interests of the country through the action of the law complained of. This, however, is purely a matter for the legislature to judge of, and is of no concern to outsiders. The government do not consider the statement is true, nor that any present depreciation, even if such exists, is likely to be lasting.

The ninth clause of the petition alleges damage to citizens of the United States to the extent of many millions. This is only necessary to allude to as a good instance of the absurd misstatements and exaggerations of the whole of the document. As already repeatedly stated, the petitioners had acquired no rights which are in any way affected by the legislation complained of.

Dated this 6th day of June, A.D. 1890.

C. A. SEMLIN,
Provincial Secretary.

Mr. Chamberlain to Lord Minto.

DOWNING STREET, 18th September, 1890.

MY LORD.—I have the honour to acknowledge the receipt of your despatch No. 180 of the 24th ultimo, inclosing copy of a despatch in which you forwarded to Her Majesty's Chargé d'Affaires at Washington, copy of an approved minute of the Dominion Privy Council, containing the observations of your ministers and of the government of British Columbia, upon the petition addressed to the President of the United

States by certain United States citizens with regard to the hardship alleged to be caused to them by recent mining legislation of British Columbia.

2. Mr. Tower has been authorized by telegraph to communicate a copy of the minute to the United States government.

3. In the fourth paragraph of the minute your ministers state that 'the policy of granting or withholding licenses to aliens is under the exclusive control' of the provincial legislature. On this point I should be glad if you will refer them to my despatch No. 191 of the 16th ultimo, inclosing copies of the judgment delivered by the Judicial Committee of the Privy Council on the appeal of the Union Colliery Company of British Columbia *vs.* Bryden and the Attorney General for British Columbia. In that judgment it is laid down that section 91 (25) of the British North America Act invests the legislature of the Dominion government with exclusive authority in all matters which directly concern the rights, privileges and disabilities of aliens who are resident in the provinces of Canada. It would appear therefore that in passing the statute which gave rise to the petition, the legislature of the province acted *ultra vires*.

I have, &c.,

J. CHAMBERLAIN.

The Under Secretary of State to His Honour the Lieutenant Governor of British Columbia.

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 20th December, 1899.

SIR,—I have the honour to transmit to you, herewith, a certified copy of a minute of the Privy Council, dated the 14th instant, respecting the statutes passed by the legislative assembly of your province in the 62nd year of Her Majesty's reign, which are left to their operation with the exception of the statute mentioned as affecting Japanese, and chapter 50, intituled 'An Act to amend the Placer Mining Act,' upon which a further report may be necessary upon hearing from your government.

I am, at the same time, to urge Your Honour to reply as speedily as possible to those portions of the report of the Minister of Justice, herewith transmitted, which call for a reply.

I have, &c.,

JOSEPH POPE,

Under Secretary of State.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th December, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 14th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of British Columbia, passed in the sixty-second year of Her Majesty's reign, 1899, and received by the Secretary of State for Canada on 27th April, and he is of opinion that these statutes may be left to their operation without comment with the exception of the following :—

Chapter 16. 'An Act to amend "The Constitution Act."'

Section 2 of this statute amends section 9 of chapter 47 of the revised statutes of British Columbia, 1897, by adding thereto a subsection to the effect that the section amended shall be deemed to include the power of commuting and remitting sentences

for offences against the laws of the province, or offences over which the legislative authority of the province extends.

The undersigned considers that this Act may be left to its operation, but in this connection desires to call attention to the observations of Sir Oliver Mowat, when Minister of Justice, in his report of 16th October, 1896 (approved by His Excellency in Council on 13th November, 1896), upon chapter 1 of the statutes of Nova Scotia, 1896, which statute contained a provision substantially the same as that now under consideration.

Chapter 39. 'An Act respecting Liquor Licenses.'

By section 36 of this Act, it is provided that no license under this Act shall be issued or transferred to any person of the Indian, Chinese or Japanese race.

Chapter 44. 'An Act to grant a subsidy to a railway from Midway to Penticton.'

Section 6 of this chapter provides that no Chinese or Japanese person shall be employed or permitted to work in the construction or operation of any railway subsidized under this Act, under a penalty.

Chapter 46. An Act to amend 'The Coal Mines Regulation Act.'

This Act amends chapter 136 of the revised statutes of British Columbia by inserting the word 'Japanese' after the word 'Chinaman' in the fourth and twelfth sections of the Act amended.

Chapter 78. An Act to incorporate 'The Ashcroft Water, Electric and Improvement Company.'

Chapter 79. An Act to incorporate 'The Atlin Short Line Railway and Navigation Company.'

Chapter 80. An Act to incorporate 'The Atlin Southern Railway Company.'

Chapter 81. An Act to incorporate 'The Big Bend Transportation Company, Limited.'

Chapter 83. An Act to incorporate 'The Kamloops and Atlin Railway Company.'

Chapter 84. An Act to amend 'The Kitimaat Railway Act, 1898'

Chapter 85. An Act to amend 'The Kootenay and North-west Railway Company's Act, 1898.'

Chapter 86. An Act to amend 'The North Star and Arrow Lake Railway Act, 1898.'

Chapter 87. An Act to incorporate 'The Pine Creek Flume Company, Limited.'

Chapter 88. An Act to incorporate 'The South Kootenay Railway Company.'

Chapter 89. An Act to incorporate 'The Vancouver, Northern and Yukon Railway Company.'

Each of these statutes contain a provision in effect that Chinese or Japanese persons shall not be employed by the company.

For the reasons stated in the correspondence which took place between Your Excellency's government and the government of British Columbia with regard to the statutes of that province for the year 1898, and in the orders of Your Excellency in Council with regard to the same, the undersigned considers it undesirable that these provisions affecting Japanese should be allowed to remain in operation. In view of the action taken by Your Excellency's government with respect to the statutes of 1898, containing similar clauses, and the reasons then influencing Your Excellency's government which still hold good, the undersigned entertains the hope that upon the attention of the government of British Columbia being drawn to the matter, that government will undertake to have these statutes amended by repealing the clauses referred to which affect Japanese.

The undersigned considers that the government of British Columbia should be asked to consider the matter and state whether these statutes will be amended as desired within the time limited for disallowance. In the meantime the undersigned withholds any further recommendation as to the statutes in question.

It may be proper to state that communications upon this subject have been received by Your Excellency's government, both from the Principal Secretary of State

for the Colonies, and from His Imperial Japanese Majesty's Consul at Vancouver. Copies of these are submitted herewith, and should, in the opinion of the undersigned, be forwarded as part of the despatch which the undersigned recommends should be sent to the provincial legislature.

Chapter 43. An Act to amend 'The Master and Servant Act.'

This statute enacts that any agreement or bargain which may be made between any person, and any person not a resident of British Columbia for the performance of labour or service, having reference to the performance of labour or service by such person in the province of British Columbia, and made previous to the migration or coming into British Columbia of such other person, whose labour or service is contracted for, shall be void and of no effect as against the person only, so migrating or coming.

There is a provision exempting skilled workmen from the operation of this section under certain circumstances.

The undersigned doubts the authority of a provincial legislature to enact a provision of this kind, because it seems directly to affect the regulations of trade.

The undersigned does not, however, on that account recommend the disallowance of the Act.

Chapter 50 : 'An Act to amend the Placer Mining Act.'

There has been referred to the undersigned copy of a despatch from the British ambassador at Washington to Your Excellency, transmitting copy of a note received from the United States Secretary of State, inclosing copy of a petition to the President of the United States from the United States citizens resident in the Atlin district of British Columbia, representing the hardships to their interests of the legislation contained in this statute. The British ambassador states that Mr. Hay suggests that the petition be submitted to Your Excellency's government without thereby raising any issue as to the general effect of the legislation in question. Copy of the despatch with the inclosures referred to were formally submitted by the undersigned to Your Excellency, and Your Excellency on 2nd May last was pleased to approve the recommendation of the undersigned, advising that a copy of these papers should be sent to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and also that the British ambassador be informed of the course taken in the meantime. The communication so recommended was addressed to the Lieutenant Governor of British Columbia early in May last, as the undersigned is informed, but no reply has been received.

The undersigned at present recommends that the matter be called again to the attention of the Lieutenant Governor with a request for his reply at his early convenience.

The following chapters above mentioned are also subject to another objection, viz. :—

Chapter 79. 'An Act to incorporate the Atlin Short Line Railway and Navigation Company.'

Chapter 80. 'An Act to incorporate the Atlin Southern Railway Company.'

Chapter 83. 'An Act to incorporate the Kamloops and Atlin Railway Company.'

Chapter 84. 'An Act to amend the Kitimaat Railway Act, 1898.'

Chapter 85. 'An Act to amend the Kootenay and North-west Railway Company's Act, 1898.'

Chapter 86. 'An Act to amend the North Star and Arrow Lake Railway Act, 1898.'

Chapter 88. 'An Act to incorporate the South Kootenay Railway Company.'

Chapter 89. 'An Act to incorporate the Vancouver, Northern and Yukon Railway Company.'

These are statutes incorporating railway companies, and each of them contains a provision that in case at any time the railway is declared by the parliament of Can-

ada to be a work for the general advantage of Canada, then all powers and privileges granted by the Act of incorporation of the company or by the British Columbia Railway Act, shall thereupon cease and determine.

The undersigned apprehends that there are cases in which the parliament of Canada may properly declare a railway, otherwise subject to the exclusive authority of a province, to be for the general advantage of Canada, and that when such declaration is properly made, it is intended by the constitution that the work shall cease to be within the legislative authority of the province, and shall fall within the exclusive jurisdiction of parliament. Such being the case it is, in the opinion of the undersigned, incompetent to a provincial legislature to provide as to what is to take place in the event of parliament exercising that constitutional authority, as the result of which the subject of legislation is withdrawn from provincial jurisdiction. These sections, though improper, are therefore harmless, and were it possible that they could have any effect, the whole matter would be within the authority of parliament, upon its declaring the work for the general advantage of Canada, so that parliament might re-enact or confirm in each case the very provisions which the legislature says are to cease and determine.

Chapter 82. 'An Act to incorporate the Chartered Commercial Company of Vancouver.'

Some of the objects of this company, as stated in section 2, appear to relate to the subject of banking rather than to any matter within the legislative authority of the province. The undersigned observes, however, that by section 17 it is enacted that nothing in this statute contained shall authorize, or be construed to authorize, the company to engage in banking, insurance, or the construction of railways. The limitation so introduced seems to render it unnecessary for the undersigned to consider the propriety of disallowing this Act, as he would otherwise feel called upon to do.

With the exception, therefore, of the statutes above mentioned affecting Japanese, and chapter 50 to amend the Placer Mining Act, the undersigned considers that these statutes may, for the reasons above stated, be left to their operation. As to the Acts so excepted, a further report may be necessary upon hearing from the provincial government.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his government, and that the Lieutenant Governor be urged to reply as speedily as possible to those portions of the report which are intended to call for a reply.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

His Honour the Lieutenant Governor of British Columbia to the Hon. the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 27th December, 1899.

SIR,—I have the honour to acknowledge the receipt of your letter of the 20th instant, wherewith you transmit a certified copy of a minute of the Privy Council, dated the 14th instant, respecting the statutes passed by the legislative assembly of this province in the 62nd year of Her Majesty's reign, which are left to their operation with the exception of the statutes mentioned as affecting Japanese, and chapter 50, intituled 'An Act to amend the Placer Mining Act,' upon which you state that a further report may be necessary upon hearing from my government. In this connection would you be good enough to point out to the Hon. the Minister of Justice that he is in error when he states in his report on the said chapter 50, referring to a petition

addressed by citizens of the United States resident in Atlin to the President of the United States, 'Copy of the despatch with the inclosures referred to were formally submitted by the undersigned to Your Excellency, and Your Excellency on 2nd May last, was pleased to approve the recommendation of the undersigned, advising that a copy of these papers should be sent to the Lieutenant Governor of British Columbia for his observations with a view to further consideration of the matter by Your Excellency's government, and also that the British ambassador be informed of the course taken in the meantime.' The communication so recommended was addressed to the Lieutenant Governor of British Columbia early in May last, as the undersigned is informed, but no reply has been received.'

The communication referred to by the minister in the above report was dated 5th May last, acknowledged on the 12th idem, and transmitted the same day to the provincial secretary. On 7th June last I approved of a minute of my Executive Council embodying the views of my government in respect to the alleged grievances set forth in the said petition, and as to the scope of the legislation contained in the said chapter 50. And on the following day I transmitted to you a certified copy of the said minute, which was acknowledged by you on the 16th idem. I have urged upon my advisers to express their views as speedily as possible in regard to such portions of the minister's report as are intended to call for a reply.

I have, &c.,

THOMAS R. MCINNES,

Lieutenant Governor.

Messrs. Daly & Hamilton to the Clerk of the Hon. the Privy Council for Canada.

ROSSLAND, B.C., 8th January, 1900.

DEAR SIR,—We have been requested to send you the inclosed petition in reference to the disallowance of chapter 43, statutes of British Columbia, 62 Vic., entitled 'The Master and Servant Amendment Act, 1899.'

We are advised that similar petitions are being sent from other parts of the province. As the Act in question was assented to on 27th February, 1899, there is not very much time left for its consideration by the Minister of Justice. It will, therefore, be necessary to have the matter referred as soon as possible.

Yours faithfully,

DALY & HAMILTON.

Copy of Petition praying for the disallowance of Chap. 43, Statutes of British Columbia, 62 Vict.

To His Excellency the Governor General in Council:

The petition of the undersigned representatives of incorporated companies owning and operating metalliferous mines in the district of Kootenay in the province of British Columbia, humbly sheweth as follows:—

1. That the companies represented by the undersigned are either incorporated under the laws of British Columbia or under the laws of Great Britain, and in the latter cases are now registered and authorized to do business in the province of British Columbia.

2. That the capital of the companies represented by the undersigned aggregates many millions of dollars. That large sums of money have been invested by the said companies in the purchase of mineral claims in the district of Kootenay, British Columbia, and further large sums in the development of such properties and in the purchase and erection of machinery for the working of their respective mines.

3. That a large number of the mines owned by the companies represented by the undersigned have not been worked for some months past, the operation of the same having ceased owing to the unsettled and unsatisfactory state of the labour market, occasioned by the passing and enforcement of the legislation hereinafter complained of. And the expense of carrying on the work in the mines, that are at present being operated, is so great that the same has become burdensome and unremunerative.

4. That by section 4 of chapter 49 of the statutes of the province of British Columbia, 62 Victoria, entitled 'An Act to amend the Inspection of Metalliferous Mines Act,' it is provided as follows: 'No person shall be employed under ground in any metalliferous mine for more than eight hours in every twenty-four hours.' This enactment will be hereafter referred to as the 'Eight-hour law.'

5. That prior to the enactment of the 'eight-hour law' ten hours constituted a day's work for persons employed under ground in metalliferous mines in British Columbia.

6. That since the enactment of the 'eight-hour law' miners have demanded the same rates of pay for eight hours' work as was previously paid them for ten hours' work.

7. That owing to the conditions of mining existing in that portion of the Kootenays, known as the 'Slocan district,' the owners of mines in that district could not afford to pay miners the same wages for eight hours as they had been paying for ten hours' work. The men who were working in the Slocan mines at the time of the enactment of the 'eight-hour law' refused to continue work at a rate of wages proportionate to the reduction of the hours of labour, and being unable to procure other miners in the province, the managers of the said mines had the alternative of working the said mines at a loss or of closing the same down, and accordingly they chose the latter course.

8. That being unable to get workmen in British Columbia in sufficient numbers to fill the places of the men who had refused to accept such reduced wages, efforts were made by mine managers to procure labour in eastern Canada where, your petitioners are informed and have every reason to believe, the services of skilled and experienced miners can be procured. It was found impossible, however, to make contracts with or bring miners into British Columbia from eastern Canada owing to the provisions of 'The Master and Servant Amendment Act, 1899,' being chapter 43 of the statutes of British Columbia, 62 Victoria. Section 3 of said Act provides as follows:

'3. Any agreement or bargain, verbal or written, express or implied, which may be made between any person and any other person not a resident of British Columbia, for the performance of labour or service, or having reference to the performance of labour or service, by such other person in the province of British Columbia, and made as aforesaid, previous to the migration or coming into British Columbia of such other person whose labour or service is contracted for, shall be void and of no effect as against the person only so migrating or coming.

'(a) Nothing in this section shall be construed as to prevent any person from engaging, under contract or agreement, skilled workmen, not resident in British Columbia, to perform labour in British Columbia in or upon any new industry not at present established in British Columbia, or any industry at present established, if skilled labour for the purpose of the industry cannot be otherwise obtained, nor shall the provisions of this section apply to teachers, professional actors, artists, lecturers or singers.'

9. That the present condition of mining in British Columbia does not, for economic reasons, justify the payment of the rate of wages now demanded by miners in British Columbia. Being prevented by the provisions of section 3 of chapter 43, quoted in the last paragraph, from making agreements or bargains with workmen in eastern Canada for the performance of labour or service in British Columbia and being prohibited by the provisions of chapter 2, 60-61 Vic., of the statutes of Canada, 'An Act to restrict the importation and employment of Aliens' from securing the immigration

of miners from the United States of America under contract or agreement to perform labour or service in British Columbia, the companies represented by your petitioners are practically debarred from any relief in the premises.

10. That as the several companies represented by your petitioners are carrying on the business of mining in British Columbia under the sanction of law, they submit that they are entitled to exercise the rights of contract enjoyed by British subjects throughout the other portions of Canada. That if they desire so to do they are entitled, as of right, to go into any province of the Dominion of Canada and enter into and make agreements or bargains, verbal or written, express or implied, with any person who is a resident of Canada for the performance of labour or service in British Columbia, any law in force in British Columbia to the contrary notwithstanding.

You petitioners therefore pray that Your Excellency in Council will be pleased to disallow chapter 43 of the statutes of the province of British Columbia, passed in the session held in the 62nd year of the reign of Her Majesty Queen Victoria, being the first session of the 8th parliament of British Columbia, upon the following amongst other grounds :—

1. That the provisions of section 3 of the said Act are unconstitutional, inasmuch as they deprive Her Majesty's subjects, resident in British Columbia, of the right of contracting with persons resident in the other portions of the Dominion of Canada for the performance of labour in British Columbia.

2. That the enactment complained against is *ultra vires* of the legislature of British Columbia.

Old Ironsides Mining Company, Limited.
 Knob Hill Gold Mining Company, Limited.
 The Granby Con. M. & S. Company, Limited.
 Montreal Boundary Creek Mining Company, Limited.
 The British Columbia Copper Company, Limited.
 The No. 7 Mining Company, Limited.
 Morrison Gold Mining Company.
 Western Copper Company, Limited.
 The Boundary Creek Mining and Milling Company.
 Royal Victoria Gold Mining Company.
 The Buekhorn Gold and Copper Company, Limited.
 The Goleonda Mines, Limited.
 War Eagle Copper Gold Mining Company, Limited.
 City of Paris Gold Mining Company, Limited.
 Majestic Gold Mining Company, Limited.
 The Pathfinder Mining Reduction and Investment Company, Limited.

Mr. J. J. Campbell to the Clerk of the Hon. the Privy Council for Canada.

NELSON, B.C., 16th January, 1900.

SIR,—I have the honour to transmit herewith a petition to the Governor in Council from the mining companies operating mines in this district praying for the disallowance of an Act passed by the British Columbia legislature, commonly known as the 'Eight-hour law,' and to respectfully request your kind attention to it.

I have, &c.,

J. J. CAMPBELL.

*Copy of Petition praying for the disallowance 62 Vict. (B.C.) Chap. 49.**To His Excellency the Governor General in Council:*

The petition of the undersigned representatives of incorporated companies owning and operating metalliferous mines in the districts of Kootenay and Yale in the province of British Columbia, sheweth as follows :—

1. That the companies represented by the undersigned are either incorporated under the laws of British Columbia or under the laws of Great Britain or the United States of America, and in the latter cases are now registered and authorized to do business in the province of British Columbia.

2. That the capital of the companies represented by the undersigned aggregates many millions of dollars. That large sums of money have been invested by the said companies in the purchase of mineral claims in the districts of Kootenay and Yale, British Columbia, and further large sums in the development of such properties, and in the purchase and erection of machinery for the working of their respective mines.

3. That at the first session of the eighth parliament of British Columbia, an Act was passed entitled 'An Act to amend the Inspection of Metalliferous Mines Act,' being chapter 49, 62 Victoria, the said Act being assented to by His Honour the Lieutenant Governor on the 27th day of February, 1899.

4. That by section 4 of the said Act it is enacted that 'section 13 of said chapter 134 is hereby repealed and the following substituted therefor : 13. 'No person shall be employed under ground in any metalliferous mines for more than eight hours in every twenty-four hours.'

5. That the enforcement of the provisions of said section 4 has seriously and most materially interfered with, and injuriously affected the business of metalliferous mining in British Columbia, and the said business cannot now be carried on successfully and economically in the said province.

6. That by the operation of the said law the rights of contract always enjoyed by the owners of metalliferous mines, and persons employed underground in the same in British Columbia, have been interfered with and restricted to the injury of all concerned.

Your petitioners therefore pray that Your Excellency in Council will be pleased to disallow the said Act, chapter 49 of the statutes of British Columbia, passed in the session held in the sixty-second year of the reign of Her Majesty Queen Victoria, being the first session of the eighth parliament of British Columbia, upon the ground that the provisions of section 4 of the said Act are unconstitutional, for the following amongst other reasons :—

(a.) That by the operation of the said law both the owners of metalliferous mines and persons employed underground in the same, are denied the right to contract, as they have hitherto done under the law, and as others are still allowed to do by the law. The class of persons thus affected are deprived of both liberty and property to the extent to which they are thus deprived of the right of contract. The privilege of contracting is both a liberty and property right. Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts.

(b.) The law complained against is an undue interference with the fundamental rights of personal security, personal liberty and rights of property. The right to contract is the only way by which a person can rightfully acquire property by his own labour. The legislature of British Columbia has, therefore, no right to deprive one class of persons, such as persons working underground in metalliferous mines, of the privilege allowed to other persons under like conditions in coal and other mines in the province of British Columbia.

(c.) The law complained against is an arbitrary restriction upon the fundamental rights of a citizen to control his own time and faculties. It is unreasonable and operates upon one class of individuals ; it is partial, and unjustly discriminates against

one class of employers and employed, inasmuch as persons working underground in coal or other mines in British Columbia are not subjected to the same restrictions.

(d.) The law complained against has imposed an unreasonable and unnecessary burden upon owners of metalliferous mines in British Columbia, inasmuch as such owners had purchased their respective properties prior to the passing of the said law, and invested large sums of money in the development of the same, on the faith and in the belief that they would be allowed to operate the said mines under the laws and conditions operating and existing at the time of such investments being made.

(e.) That the law complained against has deprived the owners of metalliferous mines, and persons employed underground in the same, of vested rights, namely, the rights of the subject, inasmuch as it prevents persons legally competent to enter into subjects throughout the realm.

(f.) That the law complained against is an unjustifiable interference with the rights of the subject inasmuch as it prevents persons legally competent to enter into contracts, from making their own contracts.

(g.) That there is no law in force in British Columbia prohibiting the employment of competent persons underground in metalliferous mines, and such employment is, therefore, not illegal, nor against public policy, nor unfit for competent persons, and in consequence any law restricting the right of contract respecting such employment, is an unjust discrimination against and interference with the rights of persons who desire to work underground in metalliferous mines.

(h.) That the law complained against violates and infringes both the right to enjoy liberty, and to acquire and possess property, and to contract respecting the same. The right to acquire, possess and protect property includes the right to make reasonable contracts respecting the same.

And your petitioners as in duty bound will ever pray.

	Capital invested.
The Hall Mines, Limited.	\$1,447,752.97
Duncan Mines, Limited.	
Granite Gold Mines, Limited. }	500,000.00
Queen Bess Proprietary Co., Ltd.	
Molly Gibson Mining Co., Ltd.	160,000.00
The Fern Gold Mining and Milling Co., Ltd.	200,000.00
Athabasca Gold Mine, Ltd.	288,882.54
Exchequer Gold Mining Co., Ltd.	200,000.00
The London and British Columbia Goldfields, Limited.	1,000,000.00

Figures as to actual capital expenditures were given in evidence by J. R. Robertson, general manager for these companies, before Commissioner R. C. Clute, Q.C., in Nelson. Mr. Robertson is just at present out of town and figures unavailable.

SAMUEL S. LAMBE.

15th January, 1900.

The Ymir Gold Mines, Limited.

The Enterprise (British Columbia) Mines, Limited.

The Silver Lead Mines of British Columbia, per Clarence J. Smith, secretary.

His Honour the Lieutenant Governor of British Columbia to the Hon. the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 9th February, 1900.

SIR,—I have the honour to transmit herewith, for the information of His Excellency's government, certified copy of a minute of my Executive Council, dated

the 8th instant, adopting a report from the Hon. the Attorney General of this province in regard to the minute of the Privy Council, dated the 14th December last, respecting the statutes of this province passed during the year 1899.

I have, &c.,

THOS. R. McINNES,
Lieutenant Governor.

Copy of a Report of the Hon. the Attorney General of British Columbia, approved by His Honour the Lieutenant Governor in Council on the 8th February, 1900.

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to report that he has had under consideration the communication of the Under Secretary of State, dated the 20th December, 1899, transmitting a minute of the Privy Council, dated the 14th December, 1899, respecting the statutes passed by the legislative assembly of the province of British Columbia in the 62nd year of Her Majesty's reign.

The undersigned begs respectfully to call attention to a minute of the Executive Council of British Columbia, approved on the 14th day of February, 1899, and to urge upon the consideration of His Excellency's advisers the following extracts from the said last mentioned minute:

'All that is sought to be attained by the legislation in question is, that Chinese or Japanese persons shall not be allowed to find employment on works, the construction of which has been authorized or made possible of accomplishment, by the granting of certain privileges or franchises by the legislature.'

'It will, therefore, be seen that the restrictive provisions are merely in the nature of a condition in agreements or contracts, between the provincial government and particular individuals or companies, whereby certain privileges, franchises, concessions and in some cases also, subsidies and guarantees are granted to such individuals or companies, in consideration of only white labour being employed in the works which are the subject matter of such agreements.'

'The same causes which have led the legislatures of Natal and the Australian colonies to take measures to restrict the influx of large numbers of labouring people from Asia, exist in British Columbia. They are indeed more potent here, on account of the shorter distance intervening between China and Japan and this province, as compared with that between those countries and Australia or Natal.'

'It may also be pointed out in this connection that the possibility of great disturbance to the economic conditions existing here, and of grave injury being caused to the working classes of this country, by a large influx of labourers from Japan, was so apparent that the government of Canada decided it was not advisable that the Dominion should participate in the revised treaty between Great Britain and Japan, whereby equal privileges were granted to the people of each nation in the country of the other.'

'The economic conditions in British Columbia and Japan, and the standards of living of the masses of the people in the two countries differ so widely, that to grant freedom of employment on such public works as are authorized to be carried out by the Acts of the legislature, would almost certainly result in all such employment being monopolized by the Japanese, to the exclusion of the people of this province.'

'Therefore, while the legislature has scrupulously abstained from any interference with the employment of Japanese by private individuals or companies, and has not sought to put any restriction on their engaging in any ordinary occupation or business, it has deemed it to be in the interests of the province to prohibit their employment on works or undertakings for which it has granted privileges or franchises.'

'That such restrictions are not only judicious, but necessary, has been shown by the manner in which cheap Asiatic labour has in many cases supplanted white labour, on works to which no such restrictions as those referred to were attached.

'While it would be a matter of profound regret if any action of the government or legislature of this province should cause Her Majesty's government any embarrassment, or impair its friendly relations with another power, it may be pointed out that there are other considerations of an Imperial character involved in this matter.

'It is unquestionably in the interests of the Empire that the Pacific province of the Dominion should be occupied by a large and thoroughly British population, rather than by one in which the number of aliens largely predominated, and many of the distinctive features of a settled British community were lacking.

'The former condition could not be secured were the masses of the people subjected to competition which would render it impossible for them to maintain a fair and reasonable standard of living.

'For many years the evil effects of unrestricted Chinese immigration caused great agitation in British Columbia, and the imposition of the capitation tax of \$50 was the consequence.

'Since then, greater facilities of communication with Japan, and the opportunities for employment in British Columbia arising from the development of its forests, mineral and fishery resources have led to an influx of Japanese which has materially and injuriously interfered with white labour, and has caused the legislature to pass the statutes now under consideration.

'There is no reason to believe that this influx of Japanese is likely to diminish. On the contrary, there are many indications that it will become larger, and that Japanese labour will, if some restrictive measures are not adopted, entirely supplant white labour in many important industries, and be used almost exclusively on works carried out under franchises granted by the legislature and which are in many cases aided by subsidies from the provincial treasury, largely with the object of opening up the province and inducing an immigration of desirable settlers.

'The undersigned therefore recommends that a reply be made to the government of the Dominion, that His Honour's government regrets that, in the interests of British Columbia and the labouring classes among its people, it cannot see its way to introduce a measure in the legislature to repeal the provisions restricting the employment of Chinese and Japanese in the statutes referred to in the report of the Minister of Justice, approved by a minute of the Privy Council of Canada on 17th December, 1898, and that, if this recommendation be approved, a copy of it should be transmitted to the Secretary of State for Canada for the information of His Excellency's government.'

The undersigned begs respectfully to submit that the conditions of labour have in no way changed since the report above quoted from was forwarded to His Excellency's government less than one year ago.

Since that time, the undersigned regrets to say, His Excellency's government has seen fit to disallow the 'Labour Regulation Act, 1898,' which had for its main object the protecting of this province from Oriental labour. His Excellency's government asks this government what it is proposed to do with reference to the private legislation passed by this legislature in 1899, and it is intimated that such Acts may be disallowed if this government does not see its way to bring in a Bill excluding Japanese from the operation of the said Acts.

Before consenting to the suggested proceeding the undersigned begs respectfully to urge upon the consideration of His Excellency's government the grave risk of exciting discontent in the province, and political friction between the two governments, should this government bring in such legislation without some assurance from His Excellency's government that it will as soon as possible after the opening of the Dominion House of Commons introduce legislation increasing the capitation tax

upon Chinese to \$600, and that His Excellency's government should also introduce a Bill on the lines of the Natal Act imposing an educational test upon immigrants.

The feeling in this province is so strong against the immigration of labouring classes from the Orient, that this government is convinced that powerful influences will be brought to bear to induce this government to request the legislature to re-enact the 'Labour Regulation Act' above referred to.

The undersigned begs respectfully to submit that such a course might not unreasonably be the means of precipitating an acrimonious discussion between His Excellency's government and the government of this province, which in all probability, would be extremely embarrassing to both.

The undersigned would also urge upon the consideration of His Excellency's government, the Private Acts containing the clause respecting Japanese, to which objection has been taken, and the disallowance of which Acts would seriously injure those in whose interests the legislation was passed.

These parties were all obliged to incur considerable expense before the completion of the legislation, and some of them have expended large sums of money upon the strength of the Bills having passed the legislature.

His Excellency's government will, therefore, readily realize that in some, if not in all of the cases alluded to, great hardship would be inflicted by the disallowance of the Acts referred to in the minute of the Privy Council, dated 14th December, 1899, to which allusion has already been made.

The undersigned, in conclusion, begs respectfully to urge upon His Excellency's government the extreme urgency of the present position, and to request that a reply may be communicated to Your Honour by telegraph.

Dated this 6th day of February, A.D. 1900.

ALEXANDER HENDERSON,
Attorney General.

The Under Secretary of State to His Honour the Lieutenant Governor of British Columbia.

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 1st March, 1900.

SIR,—I have the honour to transmit, herewith, a certified minute of the Privy Council, approved by His Excellency the Governor General on the 10th ultimo, to which is annexed a further report of the Minister of Justice, dated 12th January, 1900, upon chapter 50 of the Acts of the legislative assembly passed in the 62nd year of Her Majesty's reign (1899), intituled 'An Act to amend the Placer Mining Act.'

I am at the same time to request that your honour will inform the Secretary of State whether it is proposed to have the Act amended on the lines suggested by the Minister of Justice within the time limited for disallowance.

I have, &c.,

JOSEPH POPE,
Under Secretary of State.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 10th February, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 12th January, 1900.

To His Excellency the Governor General in Council:

The undersigned has under further consideration chapter 50 of the Acts of the legislative assembly of the province of British Columbia, passed in the 62nd year of Her Majesty's reign (1899), intituled 'An Act to amend the Placer Mining Act.'

Reference has already been made to this statute in two previous reports of the undersigned, viz. : that of 18th April, 1899, approved by Your Excellency on 2nd May, and the report of the 14th November, 1899, approved by Your Excellency on 14th December.

In the former report the undersigned advised that the correspondence which had been received from Her Majesty's ambassador at Washington should be referred to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and these papers were forwarded to the Lieutenant Governor by the Secretary of State on the 5th May last. Afterwards, no reply having been received at the department of the undersigned, the Deputy Minister of Justice on July 6th last wrote to the Under Secretary of State saying that he had not yet received any reply and presumed the government of British Columbia had not answered. The deputy minister stated that it seemed proper for several reasons to report upon these statutes as early as possible and requested the Under Secretary of State to remind the Lieutenant Governor of the matter and ask for an early reply. To this communication the deputy minister received an answer from the Under Secretary of State to the effect that the Secretary of State had telegraphed the Lieutenant Governor on 4th July and on the following day received an answer from the Lieutenant Governor's private secretary saying that Mr. McInnes was then in the Atlin district, but that the matter had been referred to the Premier of the province who would reply at an early day. No further reference having been made to the undersigned upon the subject, he assumed that no answer had been received from the government of British Columbia and therefore in his report of 14th November last the undersigned referring to the statute now under consideration, stated that, according to his information, no reply had been received to the despatch based upon his previous report, and recommended that the matter be again called to the attention of the Lieutenant Governor. That report as approved by Your Excellency having been communicated by the Secretary of State to the Lieutenant Governor, the Lieutenant Governor in a despatch of 22nd December last, addressed to the Secretary of State acknowledging the previous despatch, pointed out that the undersigned was mistaken in supposing that the Lieutenant Governor had not answered the communication of the Secretary of State of 5th May last, and he stated, as the fact appears to be, that on 7th June last he approved of a minute of his Executive Council embodying the views of his government as to the alleged grievances of the American citizens residing at Atlin in British Columbia and as to the scope of the legislation contained in the said chapter 50, and that on the following day he transmitted to the Secretary of State a certified copy of the said minute which was acknowledged by the Secretary of State on the 16th of the same month. Copy of this despatch of 8th June last from the Lieutenant Governor to the Secretary of State and of the approved minute of the Executive Council of the province to which the Lieutenant Governor refers have, within the last few days, been referred to the undersigned, together with a minute of Your Excellency in Council, dated 16th August last, passed upon a report of the Secretary of State dealing with the correspondence which had at that time taken place with respect to the matter aforesaid. At the same time there was referred to the undersigned copy of a despatch, dated 19th September, 1899, from the Right Honourable the Secretary of State for the Colonies to Your Excellency, acknowledging the receipt of Your Excellency's despatch, No. 180, of 24th August last, inclosing copy of a despatch in which Your Excellency forwarded to Her Majesty's Chargé d'Affairs at Washington, copy of the said minute of Your Excellency in Council of 15th August. In this despatch Mr. Chamberlain states that Mr. Tower has been authorized by telegraph to communicate a copy of the minute to the United States government, and he specially refers to the fourth paragraph of the minute in which it is stated that 'the policy of granting or withholding licenses to aliens is under the exclusive control' of the provincial legislature. On that point Mr. Chamberlain remarks that he would be glad if Your Excellency would refer your ministers to his despatch, No. 191, of 16th

August last, inclosing copies of the judgment delivered by the Judicial Committee of the Privy Council on the appeal of the Union Colliery Company of British Columbia *vs.* Bryden and the Attorney General for British Columbia, and he states that it is laid down in that judgment, that section 91 (25) of the British North America Act invests the parliament of Canada with exclusive authority in all matters which directly concern the rights, privileges and disabilities of aliens who are resident in the provinces of Canada. Mr. Chamberlain concludes that it would appear therefore that in passing the statute which gave rise to the petition the legislature of the province acted *ultra vires*.

In these circumstances and before commenting further upon the issues raised with respect to the statute under consideration, it seems proper and necessary to point out that by the statute constituting the office and department of the undersigned, the duty is imposed upon the undersigned of advising Your Excellency upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and that the practice to be pursued with respect to these provincial statutes was established by order of the Governor General in Council at a very early period in the confederation of the provinces. By that Order in Council which is dated 9th June, 1868, and may be referred to at pages 61 and 62 of the volume of Dominion and provincial legislation, 1867-95, it is laid down that, upon receipt by the Governor General of the Acts passed in any province, they should be referred to the Minister of Justice for report, that he, with all convenient speed ought to report as to those Acts which he considers free from objection of any kind, and also as to those Acts which he may consider either wholly or partially objectionable, and that in the latter case communication should be had with the provincial government with respect to such measures, so that the local government may have an opportunity of considering and discussing the objections taken, and so that the local legislature may have an opportunity of remedying the defects found to exist. The practice as so established has been consistently followed, so far as the undersigned is aware, save in the present case, in which the reply of the provincial government has been considered and acted upon without reference to the undersigned. Attention is therefore drawn to the procedure in this case as exceptional and unconstitutional, and the undersigned hopes that for the future it will be remembered that the duty of reporting upon the provincial statutes rests with the Minister of Justice.

Referring now to the minute of the Executive Council of British Columbia, which accompanied the despatch of the Lieutenant Governor of 8th June last, the undersigned finds it stated in terms as follows: 'The provincial government with the sanction of the legislature had an unquestioned right to reserve any lands they might think fit, from the prospector and miner. They might have said the Crown retains in its own possession for the present, all mines and minerals the property of the Crown in the northern part of the province, and no one will be allowed to prospect for or appropriate minerals in that section. Such a course might have been taken with a view of working these claims by the Crown for its own direct benefit, or with the purpose of having these claims in reserve, after the mining interests in the other parts of the province had been more fully developed.' It is suggested by these remarks that the provincial government consider the legislation competent to the legislature, as establishing the policy of the government with respect to the disposal of provincial property, and that appears also to be the view expressed by the Secretary of State in his report upon which Your Excellency's minute of 16th August last was founded. The Secretary of State there remarked that the public lands in British Columbia belong to the province, that the policy of granting or withholding licenses to aliens is under the exclusive control of the legislature, and that it would be contrary to the spirit of the constitution to interfere with a provincial Act dealing with the disposition of its public lands. Upon this statement Mr. Chamberlain interposes the observation above referred to as to the authority of a provincial legislature to legislate affecting aliens.

In the opinion of the undersigned the action to be taken by Your Excellency in the present case does not depend upon the question as to how far a provincial legislature has exclusive authority with regard to the public property of the province. The Placer Mining Act, chapter 36 of the revised statutes of British Columbia, 1897, which is amended by the Act now in question, provided that every person over and not under eighteen years of age, and every joint stock company should be entitled to all the rights and privileges of a free miner, and should be considered a free miner upon taking out a free miner's certificate. No exception is there made for the case of aliens, nor is any such exception made by the mining laws of British Columbia in force at the time of the Union. The ordinance to amend the laws relating to gold mining (revised statutes of British Columbia, 1871, No. 90), enacts that every person over and not under sixteen years of age, shall be entitled to hold a claim and to a free miner's certificate upon payment of the proper fee. Under the ordinance to facilitate the working of mineral lands (No. 123 of the same volume), every person, association or company of persons whosoever are free to enter and explore for silver and all the baser metals and minerals subject to provisions and conditions of the ordinance. There is no restriction as to aliens in either of these ordinances. By the ordinances to assimilate the laws regarding aliens in all parts of the colony of British Columbia (No. 93 of the same volume), it is provided that every alien shall have the same capacity to take hold, enjoy, recover, convey and transmit title to land and real estate of every description in the colony, as if he, at the time of the passing of the ordinance, had been a natural born British subject. It appears therefore that at the time of the Union, which took place in 1871, the common law disability of aliens as to holding, conveying and transmitting title to real estate had been removed, and that so far as acquiring and holding mining rights and privileges were concerned, aliens had been placed upon the same footing as British subjects. So far as the undersigned is informed subsequent legislation of the province, even if it had been competent to do so, has not established any difference in this respect between British subjects and aliens. That achievement has been reserved for the Placer Mining Amendment Act, 1899, which, having regard to the rights of individuals, as distinguished from those of corporations, seems to have been enacted for no other purpose than to disqualify aliens from acquiring mining property of the rights of free miners. This purpose is effected by the repeal of section 2 of the Placer Mining Act and substituting another section. Under the original section as already stated, every person, subject to an age limit, was entitled. Under the substituted section it is enacted that every person who is not less than eighteen years of age and is a British subject, shall be entitled to all the rights and privileges of a free miner under the Act, and shall be considered a free miner, upon taking out a free miner's certificate, for the period of the certificate; also that a certificate taken out by any person not authorized to do so, shall be null and void, and that free miner's certificates issued before the coming into force of the Amending Act, the holders of which are not British subjects, shall not entitle such persons to take up, record, or right mining ditch, drain, tunnel or flume unless he shall have a free miner's certificate shall be valid only with regard to claims recorded prior to the coming into force of the Amending Act. The Placer Mining Act provides in effect that no person shall be recognized as having any right or interest in any placer mine, mining lease, bed-rock flume grant, or any minerals in any ground comprised therein or in any water right, mining ditch, drain, tunnel or flume, unless he shall have a free miner's certificate unexpired. It provides for the issue of free miner's certificates, and that a free miner, during the continuance of his certificate, but not longer, shall have the right to enter, locate, prospect, and mine for gold and other precious metals, upon any lands in the province whether vested in the Crown or otherwise, with certain exceptions which it is not necessary here to mention. It follows, therefore, that by virtue of the Amending Act, if it is to have effect, no person, other than a British subject, may thereafter be recognized as having any right or interest in any of the mining properties to which the Placer Mining Act applies, and this, notwithstanding the fact, that at the time

of the Union and thence down to the passing of the Act, aliens, as well as British subjects, might lawfully have acquired title to such property.

If this amendment of the Placer Mining Act had merely taken away from the executive the authority to grant mining rights to persons other than British subjects, there would be room for the contention that it was intended to affect only the administration of public property, and not the rights or capacity of aliens, but this is clearly not the purpose or result of this statute. The provisions of the original Act requiring miners to take out free miner's certificates, are intended as taxing provisions. The fees are \$5 for each certificate to an individual, and \$50 to \$100 for each certificate to a corporation. Except as to these fees no purpose seems to be served by these certificates. The Placer Mining Act and the Amending Act, now under consideration, have to be construed together. The rights granted or acquired under the Placer Mining Act are assignable, and the consequence of the amending Act is that the right or capacity of an alien to acquire or hold these mining rights, no matter from what source derived, is altogether taken away.

The government of Canada has always contended that, by virtue of the exclusive authority of parliament over the subject of naturalization and aliens, parliament and not the legislature, has the right to legislate respecting property and civil rights of aliens. This view has many times found expression in reports of the Ministers of Justice from time to time, and it has now been sanctioned by the judgment of the Judicial Committee of the Privy Council delivered on 28th July last, in the case to which Mr. Chamberlain refers. That judgment had reference to section 4 of the Coal Mines Regulation Act of British Columbia, 1890, and their Lordships stated that:—

'The leading feature of the enactments consists in this: that they have, and can have, no application, except to Chinamen, who are aliens or naturalized subjects, and that they establish no rule or regulation, except that these aliens or naturalized subjects shall not work, or be allowed to work, in underground coal mines within the province of British Columbia.'

Their Lordships see no reason to doubt that, by virtue of section 91 (25), the legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges and disabilities of the class, or Chinamen who are resident in the provinces of Canada. They are also of opinion, that the whole pith and substance of the enactments of section 4 of the Coal Mines Regulation Act, in so far as objected to by the appellant company, consists in establishing a statutory prohibition, which affects aliens or naturalized subjects, and therefore trench upon the exclusive authority of the parliament of Canada.'

The undersigned considers that this judgment leaves no doubt on the question that the subject of aliens, including their rights, privileges and disabilities, is a matter coming within the classes of subjects enumerated in section 91 of the British North America Act, and which therefore cannot be deemed to come within the matters of a local or private nature comprised in the enumeration of subjects assigned to the legislatures of the provinces. The consequence would seem to be that the legislation in question is *ultra vires*.

It does not of course follow that, in the absence of parliamentary legislation, aliens, where their common law disability has been competently taken away, are not to be subject to the general laws of the provinces respecting property and civil rights, because such legislation is referable to the subject of property and civil rights generally rather than to that of aliens. It does, however, in the opinion of the undersigned, follow that a provincial legislature cannot make exceptional provisions affecting aliens' rights and privileges.

It is stated in the report of the Executive Committee of the province, that provision has been made for the appointment of a judge of the Supreme Court as a commissioner, with full power to settle all disputes in the Atlin district in accordance with equity and the spirit of the Mining Act, without being bound by the strict letter of the law, and the undersigned is informed that inquiry has been made under such a com-

mission, it may be, as a result, that the provincial government propose to offer some amendments to the mining laws.

A further objection to the Act in question arises from the provision that no joint stock company or corporation shall be entitled to take out a free miner's certificate unless the same has been incorporated, and not simply licensed or registered under the laws of the province. This provision has the effect of entirely excluding companies incorporated by the parliament of Canada and it seems directly to affect the regulation of trade and commerce or other matters within the authority of parliament, rather than any matter within exclusive provincial control.

It is true that all these questions affecting the validity of the statute may be submitted for the adjudication of the courts at the instance of the persons or corporations concerned, but not without considerable inconvenience and hardship to them. All difficulties might be removed by a proper Act of the legislature, and the undersigned at present considers that in order to bring the statute within the competency of the legislature, it ought to be amended so as to restore aliens to their former footing, and so as to remove the disqualification which it attempts to place upon companies incorporated by or under the authority of the parliament of Canada. Your Excellency's government has not, however, heretofore submitted to the provincial government the several considerations affecting the validity of the Act which are set forth in this report, and the undersigned therefore considers that he ought not at present to make any recommendation other than that a copy of this report, if approved, so far as it relates to the validity of the Act, be submitted to the Lieutenant Governor of the province, for the answer of his government, and that the Lieutenant Governor be requested to inform Your Excellency's government whether it is proposed to have the Act amended in the particulars suggested by the undersigned within the time limited for disallowance, if such a course should be deemed desirable.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

His Honour the Lieutenant Governor of British Columbia to the Hon. the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 7th April, 1900.

SIR,—I have the honour to transmit, herewith, for the information of His Excellency the Governor General in Council, certified copy of an approved minute of my Executive Council, dated the 6th instant, and adopting the report of the Attorney General of this province, upon the report of the Minister of Justice, dated 12th January, 1900, dealing with chapter 50 of the statutes of British Columbia, 1899, intituled 'An Act to amend the Placer Mining Act.'

I have, &c.,

THOS. R. McINNES,

Lieutenant Governor.

Copy of a Report of the Hon. the Attorney General, approved by His Honour the Lieutenant Governor in Council on the 6th April, 1900.

To His Honour the Lieutenant Governor in Council:

The undersigned has had before him for consideration a communication from His Honour the Lieutenant Governor, dated the 9th day of March, 1900, addressed to the Honourable the Provincial Secretary, inclosing the report of the Honourable the Minister of Justice for Canada in connection with chapter 50 of the statutes of British Columbia, 1899, intituled 'An Act to amend the Placer Mining Act.'

The undersigned has the honour to report as follows in regard to said report :—

The undersigned begs respectfully to differ with the Honourable the Minister of Justice in his view as to the competency of the legislature of the province of British Columbia to pass the said statute, under the provisions of the British North America Act.

The undersigned has not overlooked the decision of the Privy Council with regard to section 4 of the Coal Mines Regulation Act. The undersigned feels confident that there is a wide distinction in law between an attempt to legislate with regard to the nature of the employment in which an alien might engage, in the province, and a law such as said Act, dealing entirely with the public property of the province.

It may be stated, however, that at the recent session of the legislative assembly, which for well known reasons culminated in no legislation being enacted, it was practically the unanimous opinion of the members, that the circumstances which made it advisable to pass the said chapter 50 in the session of 1890, had so changed that it was now advisable to repeal said statute.

The present government have announced as part of their policy, which they have submitted to the electors for consideration at the general election which is about to take place, their intention to introduce a measure to repeal said statute. It is altogether probable that no matter who may constitute the government when the next session of the House takes place, which will have to be not later than June or July of this year, the said chapter 50 will be repealed.

It would seem advisable, however, to the undersigned, for the Dominion government not to exercise its right of disallowance of this particular Act, for the reason that such disallowance would not settle the question; and if the statute is allowed to remain in force, it may be that an opportunity may arise for the legal question to be submitted to the court.

The undersigned also begs respectfully to differ with the Honourable the Minister of Justice in his opinion that the provision requiring a company to be incorporated under the laws of this province before being entitled to acquire rights under the Mineral Acts, is *ultra vires*. It seems to the undersigned that on the same ground as affecting the public property of the province, the courts would hold it to be *intra vires* of the provincial legislature to make laws of this kind.

The undersigned gathers from the papers before him that the time for disallowance expires on the 27th day of April, 1900. As it is not possible to have the general elections over and the new House assembled before that time, it is quite impossible for the government to give any assurance that the Act will be repealed in time to obviate the necessity of the question of disallowance being decided by the Dominion government.

Dated the 3rd day of April, 1900.

JOSEPH MARTIN,
Attorney General.

Report of the Hon. the Minister of Justice, approved by His Excellency the Lieutenant Governor in Council on the 14th April, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 7th June, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of a petition signed by the Dominion Copper Company, Limited, and a number of other mining companies, in which the petitioners pray that chapter 43 of the statutes of British Columbia, 1899, entitled 'An Act to amend the Master and Servant Act,' be disallowed. The undersigned in his report of 14th November last, which was approved by Your Excellency on 14th December, referred to this statute as open to some objection, but did not recom-

mend disallowance. At that time the petition now in question had not been received. The petition states in effect that the petitioners have not, since the enactment of the eight-hour law, hereinafter referred to, been able to employ labourers to work their mines in British Columbia upon profitable terms; that they made efforts to procure labourers in eastern Canada, but found it impossible to make contracts with or bring miners into British Columbia from eastern Canada, owing to the provisions of the Act in question, which would render their contracts void as against the labourers.

There is a question which the undersigned suggested in the report already referred to, as to whether the legislation complained of does not so far affect the regulation of trade and commerce, as to be *ultra vires* of the legislature. Apart from that question it seems clear to the undersigned that the statute is entirely within provincial legislative authority, and the remedy for the grievance complained of lies with the legislature.

Any question of *ultra vires* could be conveniently submitted for the determination of the courts, and the undersigned considers that it would be better to leave the petitioners to apply to the legislature, or to bring the question before the courts, if they be so advised, rather than in a case such as this to invoke the power of disallowance.

There has also been referred to the undersigned a petition addressed to Your Excellency in Council signed by the War Eagle Consolidated Mining and Development Company, Limited, and a number of other mining companies, praying for the disallowance of chapter 49 of the statutes of British Columbia, 1899, intituled 'An Act to amend the Inspection of Metalliferous Mines Act.'

Section 13 of the Inspection of Metalliferous Mines Act, Revised Statutes of British Columbia, 1897, chapter 134, provided that no boy under the age of sixteen years should be employed underground for more than fifty-four any one week, or more than ten hours in any one day.

By section 4 of the Act now in question the said section is repealed and another substituted, by which it is enacted that no person shall be employed underground in any metalliferous mine for more than eight hours in every twenty-four hours, and this is the provision which gives rise to the claim for disallowance, it being urged that the limitation of employment to eight hours per day, is materially interfering with and injuriously affecting, the mining business in British Columbia, and that the Act is unconstitutional for a number of reasons stated in the petition.

The undersigned has attentively considered these grounds, but he is of opinion that none of the reasons urged affect the validity of the Act. It is quite true that there are several decisions of State or United States courts holding similar legislation unconstitutional, but these decisions have proceeded upon reasons which do not apply at all to the constitutional system of Canada. The undersigned considers that it was competent for the provincial legislature to limit the number of hours work to be allowed in mines within the province, as a matter of property and civil rights, or of merely local or private nature, or as coming within some one of the other enumerations of provincial authority.

As in the case, therefore, of the Act previously referred to, the remedy is also in the hands of the provincial authorities, and the petitioners must, in the opinion of the undersigned, be left to their application before that body.

The undersigned therefore recommends that neither of these Acts be disallowed; that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government, and to the solicitors of the petitioners for their information.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 24th April, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, April 12, 1900.

To His Excellency the Governor General in Council:

The undersigned referring to his report of 14th November, 1899, approved by Your Excellency on 14th December, 1899, upon the statutes of the legislative assembly of the province of British Columbia, passed in the year 1899, has the honour to state that in the said report he called attention to the following statute as affecting Japanese or their rights to employment in British Columbia, viz. :—

- Chapter 39. 'An Act respecting Liquor Licenses.'
- Chapter 44. 'An Act to grant a subsidy to a railway from Midway to Penticton.'
- Chapter 46. 'An Act to amend the Coal Mines Regulation Act.'
- Chapter 78. 'An Act to incorporate the Ashcroft Water, Electric and Improvement Company.'
- Chapter 79. 'An Act to incorporate the Atlin Short Line Railway and Navigation Company.'
- Chapter 80. 'An Act to incorporate the Atlin Southern Railway Company.'
- Chapter 81. 'An Act to incorporate the Big Bend Transportation Company, Limited.'
- Chapter 83. 'An Act to incorporate the Kamloops and Atlin Railway Company.'
- Chapter 84. 'An Act to amend the Kitimaat Railway Act, 1898.'
- Chapter 85. 'An Act to amend the Kootenay and North-west Railway Company's Act, 1898.'
- Chapter 86. 'An Act to amend the North Star and Arrow Lake Railway Act, 1898.'
- Chapter 87. 'An Act to incorporate the Pine Creek Flume Company, Limited.'
- Chapter 88. 'An Act to incorporate the South Kootenay Railway Company,' and
- Chapter 89. 'An Act to incorporate the Vancouver, Northern and Yukon Railway Company.'

The undersigned, for reasons stated or referred to in the said report, considered it undesirable that the provisions affecting Japanese contained in these Acts should remain in operation, and has recommended that the British Columbia government should be asked to consider and state whether these clauses would be repealed within the time limited for disallowance. A copy of this report as approved, was duly transmitted to the Lieutenant Governor of British Columbia, but no assurance has been received that any amendment will be made to any of these statutes. The legislature has also been dissolved, and as the time for disallowance will expire within a few days it becomes necessary for Your Excellency to take further action, unless these enactments are to remain.

As in the case of the legislation of British Columbia for the year 1898, which was found objectionable upon the same ground, there are two classes of statutes now in question.

- Chapter 39. 'An Act respecting Liquor Licenses.'
- Chapter 44. 'An Act to grant a subsidy to a railway from Midway to Penticton,' and
- Chapter 46. 'An Act to amend the Coal Mines Regulation Act,' are Acts of more or less general operation, not dealing specially with private interests, and may be disallowed without inconvenience. The other statutes above mentioned, however, are Acts of

incorporation of private companies, or Acts in amendment of such incorporating Acts. The section affecting Japanese has apparently been introduced into these Acts not at the instance of the companies, but in pursuance of the policy of the provincial government, and in these circumstances the undersigned considers it would be unjust and perhaps productive of great hardship, if the charters of these companies or the Acts upon which their powers depend, were disallowed. The reasons which on a previous occasion operated to save the Private Acts from disallowance, may similarly again avail. The undersigned reaches this conclusion the more readily because he is of opinion that the provisions in question are *ultra vires* of the provincial legislature, as affecting aliens.

Inasmuch, however, as certain statutes of British Columbia were disallowed in 1899 on account of provisions, attempting to render illegal the employment of Japanese, and as certain other statutes will, if this report be approved, soon be disallowed for the same reason, the undersigned considers that by the time of another session of the legislature it will be safe to hold that the views of Her Majesty's government and of this government with regard to anti-Japanese legislation, are generally and sufficiently understood in British Columbia, and, therefore, it may well be considered, in case of this objectionable section appearing in future Acts of incorporation or Acts affecting private companies, that these companies' Acts ought not to have exceptional treatment. The applicants may be held to have obtained the legislation at their own risk, and persons dealing with corporations incorporated by charters attempting to impose disabilities upon aliens may also be held to have acted with notice of the views entertained by Your Excellency's government, and of the action which would probably be taken with respect to such measures.

For these reasons, and the reasons stated in previous correspondence and reports, the undersigned recommends the disallowance of the said chapters 39, 44 and 46, and that the other chapters above mentioned be left to their operation.

The undersigned in the same report referred to chapter 50, 'An Act to amend the Placer Mining Act.'

That Act has also been the subject of a special report of the undersigned, dated 12th January, 1900, approved by Your Excellency on 10th February.

By the last mentioned report the undersigned set out the reasons on account of which he considered that the statute was *ultra vires*, and ought to be disallowed. This report, in pursuance of the recommendation of the undersigned, has been communicated to the provincial authorities, and there has just been referred to the undersigned a despatch of the Lieutenant Governor of British Columbia, dated 7th instant, transmitting copy of an approved minute of the Executive Council of the province, dated 6th instant, adopting the report of the Provincial Attorney General upon the communication of Your Excellency's government. The Attorney General states in his report that he differs from the view of the undersigned as to the authority of the legislature to pass the statute in question, both so far as aliens are concerned and as to incorporated companies. He states, however, that at the recent session of the legislative assembly it was practically the unanimous opinion of the members that it was advisable to repeal the Placer Mining Amendment Act, 1899, that the present government of the province has announced as part of its policy an intention to introduce a measure to repeal the said statute, and that it is altogether probable that the statute will be repealed, no matter who may constitute the government when the next session of the legislative assembly takes place. The Attorney General suggests, however, the expediency of allowing the statute to remain in force to afford an opportunity for a legal question to be submitted to the court, and he concludes by stating that it is quite impossible for the government to give any assurance that the Act will be repealed in time to obviate the necessity of the question of disallowance being decided by the Dominion government.

As the Act is in the opinion of the undersigned clearly in excess of provincial authority and ought not to remain in operation, and as the reply of the government

of British Columbia cannot be regarded as a satisfactory assurance that the Act will be repealed, the undersigned considers that, for the reasons stated above and in his previous report, the said chapter 50 ought to be disallowed, and he recommends accordingly.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA,

TUESDAY, the 24th day of April, 1900.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia with the legislative assembly of the said province of British Columbia did on the 27th day of February, 1899, pass certain statutes which have been transmitted, numbered chapter No. 39, intituled 'An Act respecting Liquor Licenses,' chapter No. 44, intituled 'An Act to grant a subsidy to a railway from Midway to Penticton,' chapter No. 46, intituled 'An Act to amend the Coal Mines Regulation Act,' and on the 18th day of January, 1899, chapter No. 50, intituled 'An Act to amend the Placer Mining Act.'

And whereas the said statutes have been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice recommending that the same be disallowed.

Now, therefore, His Excellency, by and with the advice of the Queen's Privy Council for Canada has this day been pleased to declare his disallowance of the said statutes and the same are hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliot Murray Kynynmond, Earl of Minto, Governor General of Canada, do hereby certify that the statutes passed by the legislative assembly of the province of British Columbia and assented to by the Lieutenant Governor of the said province of British Columbia on 27th February, 1899, numbered chapter 39, intituled 'An Act respecting Liquor Licenses,' chapter No. 44, intituled 'An Act to grant a subsidy to a railway from Midway to Penticton,' chapter No. 46, intituled 'An Act to amend the Coal Mines Regulation Act,' and on the 18th January, 1899, chapter No. 50, intituled 'An Act to amend the Placer Mining Act,' were received by me on the 27th day of April, 1899.

Given under my hand and seal this 24th day of April, 1900.

MINTO.

The Under Secretary of State to His Honour the Lieutenant Governor of British Columbia.

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 25th April, 1900.

SIR,—I have the honour to acquaint you that on the 24th of April, 1900, His Excellency the Governor General was pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of chapters thirty-nine, forty-four and forty-six of the session of the British Columbia legislature of 1899, intituled respectively : 'An Act respecting Liquor Licenses,' 'An Act to grant a subsidy to a railway from Midway to Penticton,' and 'An Act to amend the Coal Mines Regulation Act,' which Acts were assented to by you on the 27th day of February, 1899. I have further the honour to inform you that His Excellency the Governor General, by and with the advice of the Queen's Privy Council for Canada, has been pleased to declare his disallowance of chapter fifty of the same session of your legislature, intituled 'An Act to amend the Placer Mining Act,' which Act was assented to by Your Honour on the 18th January, 1899. The Order in Council declaring the disallowance of these Acts is herewith inclosed, together with Lord Minto's certificate as to the date of their receipt by him..

I have, &c.,

JOSEPH POPE,
Under Secretary of State.

63rd VICTORIA, 1900.

1st Session—9th Legislature.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th October, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 20th September, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copies of the following despatches from His Imperial Majesty's Japanese Consul to Your Excellency, viz. :—

(1.) Despatch, dated 15th February, 1900, referring to an Act passed by the British Columbia legislature, No. 59, entitled 'An Act to amend the Tramway Incorporations Act.'

(2.) Despatch, dated 1st September, 1900, calling attention to four Acts, (1) Liquor License; (2) Vancouver Incorporation Amendment; (3) Labour Regulations, and (4) Immigration.

(3.) Despatch, dated 1st September, 1900, calling attention to Acts Nos. 5, 19, 42 and 46.

(4.) Despatch, dated 5th September, 1900, calling attention to his despatch of September 1, 1900, which referred to Acts Nos. 5, 19, 42 and 46, and inclosing copy of a communication, dated 4th September, 1900, received by him from the Attorney General of British Columbia.

These have been referred to the undersigned by Your Excellency in Council, and he recommends that copies of the same be transmitted to the Lieutenant Governor of British Columbia for the report of his government upon the objections urged by the Japanese Consul to the legislation in question.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Japanese Consul for Canada to Lord Minto.

VANCOUVER, B.C., 15th February, 1900

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling your attention to the fact that in the legislative assembly of British Columbia are introduced a Bill entitled 'An Act to amend the Tramway Incorporation Act' and various private Bills, all of which contain sections prohibiting the employment of Japanese in works authorized by such Acts. As will be observed in the copy herewith inclosed the wording of the Bill first named is exactly the same as that of the Act bearing the same name that was disallowed by Your Excellency's government on 5th June last year.

In another Bill entitled 'An Act to amend the Coal Mines Regulation Act,' introduced by Hon. the President of the Council, Your Excellency will observe that an educational test has seemingly been set up in the section three of the Bill for any person to be employed underground in coal mines. But it is openly declared on the floor by the honourable member of the provincial government that 'there was no use

disguising the fact that the Bill aimed at the exclusion of one certain class—the Orientals,' the last word evidently including Japanese. It is clearly elucidated by some members (especially Mr. A. E. McPhillips and Colonel Baker) that the proposer of the Bill intended to do indirectly what was vetoed directly by the highest court of appeal. Your Excellency will see full account of the debate on this Bill in the copies of the press herewith inclosed. Two sample copies of the Private Bills are also inclosed.

And, urging the same objections to those Bills as I had the honour of urging against legislation of the same nature passed at the last session, I most respectfully request you to extend to the present instance the same enlightened and vigorous policy that was pursued in regard to the legislation of late years, and that if those Bills should be passed here, Your Excellency will give that legislation such consideration as will lead to the disallowance of the same.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU

His Imperial Japanese Majesty's Consul.

† Enclosures.

Copy of the Bill No. 15.

Copy of the Bill No. 14.

* Sample copies of private Bills.

Vancouver *World*, 1st and 2nd February.

Vancouver *News Advertiser*, 2nd and 3rd February.

Victoria *Colonist*, 13th and 14th February.

Telegram.

Imperial Japanese Consul to Lord Minto.

VANCOUVER, B.C., 1st September, 1900.

Your Excellency's attention is respectfully called to the Acts re. first, liquor licenses; second, Vancouver Incorporation amendment; third, liquor regulation; fourth, immigration, all of which passed legislature of British Columbia and assent just given by Lieutenant Governor of that province, the two bills last named, directed mainly against Japanese, while the rest affect interests of Japanese residents more or less injuriously. In the name of Imperial Japanese government may I respectfully request Your Excellency's best consideration in the matter. Am writing.

S. SHIMIZU,

Imperial Japanese Consul.

Imperial Japanese Consul, Vancouver, B.C., to Governor General.

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,

VANCOUVER, B.C., 1st September, 1900.

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling your attention to the following bills that were passed by the legislative assembly of British Columbia, and to which assent was given yesterday by His Honour the Lieutenant Governor of the province, namely :—

* Copies inclosed of Bill No. 17, Act to Incorporate the Lake and Atlin Railway and Navigation Company.

Bill No. , Act to Incorporate the North Kootenay Water Power and Light Company, Limited.

† All the inclosures of which only one copy of each was received have been forwarded to the Colonial Office.

(1.) Bill No. 42, an Act relating to the employment on works carried on under franchises granted by private Acts.

The provision embodied in the section 4 of this Bill will wholly deprive those Japanese residents in this province, who are unable to read in any language of Europe, of the opportunity of employment on works specified in the section. It will be readily seen that the regulation is not intended as an educational test, first, because an exception is made to be exempt from the reading test for certain class, as provided in the section 3, and secondly, because the Japanese language is not admitted for the test, in spite of the fact that Japanese may be educated to the highest degree in their own tongue.

Nor is it a test of the vernacular language of this province, because other European languages than the English are admitted for the test. But judging from the debates on the floor, as reported in the press, this Bill is obviously and solely directed against Asiatics, including Japanese. Some clippings from the local press containing reports of the debates on this Bill are herewith inclosed for your information.

(2.) Bill No. 46, An Act to regulate immigration into British Columbia.

It is scarcely necessary to point out that the object of this Bill is to prohibit immigration of Japanese into this province, as Chinese are made to be exempted from the application of this Act.

My objections as stated in the foregoing paragraph will apply to this instance with even stronger force. Should this Bill come into force, not merely immigration of labourers, but movement of Japanese merchants and travellers will also be injuriously interfered with.

Your Excellency is no doubt aware that the Imperial government which I have the honour to represent, entirely forbade emigration of Japanese labourers into Canada for the present. And it will continue to do so as long as it is deemed advisable. Under the circumstances, I fail to see the reason why the government of this province should rush such a legislation.

Some clippings from the local press containing reports of the debates on this Bill are herewith inclosed.

These have at that this Bill will be disallowed before it shall come into force on the 1st day of January next?

(3.) Bill No. 19, An Act to revise and consolidate the Vancouver Incorporation Act.

The section 7 of this Bill deprives the Japanese residents in the city of Vancouver of the franchise of voting in any municipal election.

For your information I may state that there are many Japanese residents in this city, merchants of good standing, missionaries, myself and others, who would thus be deprived of the privileges at present enjoyed.

This enactment, therefore, cannot but be considered as an unfriendly action. In addition I beg to remind you that the annual municipal election of the city is to be held in January.

(4.) Bill No. 5, An Act respecting liquor licenses.

In section 2 of this Bill 'Mongolians' are excluded from the expressions 'householder' and 'inhabitant.' The consequences of these provisions will be seen in the sections 22, 28 and 44 of the Bill. The Hon. the Attorney General of the province, who introduced the Bill, and by whose motion the word 'Mongolians' was substituted for the original words 'Chinese and Japanese,' has seemingly evaded to answer my inquiry, officially made in writing, as to whether the word in question is meant to include Japanese. But some of his colleagues in the cabinet answered me in the affirmative in his presence. Here I beg to add that, though I was informed by a proper authority of the provincial government that this Bill, together with the others passed, received assent of the Lieutenant Governor of the province, it does not appear in the list of Acts, to which assent was given, that is published in the Provincial Parliamentary paper. Now, urging the same objections to these Bills as I had the honour of

urging against legislation of similar nature passed at the late sessions, I would most respectfully request Your Excellency to extend to the present instance the same enlightened and vigorous policy, that was pursued by your government, in regard to the legislation of late years, and to give that legislation such consideration as will lead to the prompt disallowance of the same.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,

His Imperial Japanese Majesty's Consul.

Imperial Japanese Consul to Lord Minto.

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,

VANCOUVER, B.C., 5th September, 1900.

YOUR EXCELLENCY,—With reference to my representation, dated the 1st instant, in regard to certain legislation of British Columbia, I have the honour to inform you that yesterday I have received an answer from the Attorney General of the province, regarding certain word of the Liquor License Act, copy of which is herewith inclosed. I beg also to state that I have found that to that Act, assent was given by the Lieutenant Governor on 10th August last.

I have, &c.,

S. SHIMIZU,

His Imperial Japanese Majesty's Consul.

VICTORIA, B.C., 4th September, 1900.

S. SHIMIZU, Japanese Consul,

Vancouver.

I must beg most respectfully to decline to express an opinion regarding the intention that resulted in introduction of word 'Mongolians' into Liquor License Act, 1900, or as to construction to be placed thereon.

D. M. EBERTS,

Attorney General.

The Right Hon. Jos. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 5th October, 1900.

MY LORD,—With reference to my despatch, No. 186 of 5th July, and to previous correspondence as to the position of Japanese subjects in British Columbia, I have the honour to transmit you, for communication to your ministers, copies of a despatch from Her Majesty's Charge d'Affaires at Tokio and of a note from the Japanese Minister at this court on the subject.

2. Your ministers will observe that the Japanese Minister protests against certain Acts discriminating unfavourably against Japanese subjects, which have recently been passed by the legislature of British Columbia, and I have no doubt that this protest will receive the attentive consideration of your government.

3. The action of the Japanese government in prohibiting the emigration of Japanese subjects to British Columbia, in view of the state of local feeling there, appears to Her Majesty's government to show their desire to deal with this question in a friendly spirit, and to obviate as far as possible the need for such.

4. I shall be glad to be furnished with copies of the Acts referred to in the Japanese Minister's note, and of any similar provincial legislation passed since 1898, with any observations which your ministers may wish to offer on them.

I have, &c.,

J. CHAMBERLAIN.

Mr. J. B. Whitehead to the Most Hon. the Marquess of Salisbury.

TOKIO, 12th August, 1900.

MY LORD,—Having noticed in the local newspapers a statement to the effect that in view of a racial prejudice against the entry of Japanese labourers into the United States and British Columbia, the Japanese Foreign Office had on the 2nd instant ordered the Governors of the provinces to prohibit emigration to those two countries, I took an opportunity of asking Viscount Aoki whether this were the case.

His Excellency confirmed the report and said that he had issued this prohibition because, although the action of the Dominion government had been most friendly in the matter, he had become convinced that popular feeling in British Columbia was so strongly against Japanese emigration that it would be a wise precaution, in order to avoid disagreeable incidents, to suspend emigration to that colony for a time.

I have, &c.,

J. B. WHITEHEAD.

The Japanese Ambassador to the Most Hon. the Marquess of Salisbury.

JAPANESE LEGATION, 18th September, 1900.

MONSIEUR LE MARQUIS,—The Japanese Consul at Vancouver has reported to my government that the legislative assembly of British Columbia had recently passed four Bills which provide discriminating treatment against Japanese subjects. On the 31st of August last the Bills in question have received the approval of the Lieutenant Governor of British Columbia, and they are now waiting the assent of the Governor General of Canada.

The Bills referred to are, first, the Liquor License Act, by which the Japanese undergo the discriminating treatment under the name of Mongolians; second, the Immigration Regulation Act, and the Labour Regulation Acts, in both of which the knowledge of the European language is made a necessary qualification of the immigrants and of the labourers; and third, the Amended Vancouver Incorporation Act, which exclude Japanese from enjoyment of various franchises.

Although the details of the Bills are not before me, the Consul's reports are enough to show that they were all formulated with the object of depriving Japanese emigrants from every facility and enjoyment of equal treatment. The Japanese Consul at Vancouver from the time when the Bills were first presented in the legislative assembly, has not failed to lodge the protest against the legislation so unfair towards the Japanese. His efforts, however, have not been successful and the Bills are now about to become laws.

The Imperial government being deeply sensible of the solicitous attention paid by Her Majesty's government, confidently believe that the legislation so unfriendly to Japan would not be sanctioned by the Governor General of Canada. And yet this renewed action on the part of British Columbia compels my government to instruct me to approach Your Lordship in a friendly spirit, with the view of asking Her Majesty's government to extend their enlightened policy, constantly shown by them towards Japan, to the present instance by inducing the Governor General of

Canada to refrain from giving his assent to the Bills in question. Arguments against these unfair legislations have repeatedly been communicated to Your Lordship by my predecessor Mr. Kato on similar occasions. Therefore I do not here reiterate the reasons which may be said against those Bills, the Bills that only tend, it is feared, to impair the friendly relations now happily existing between Great Britain and Japan.

I have now the honour to ask Your Lordship's good offices so that Her Majesty's government will exercise their influence in order that the aforesaid Bills may not be allowed to take effect of laws.

I have, &c.,

HAYASHI.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th April, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon a statute of the legislative assembly of British Columbia, passed in the 64th year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 17th September, being chapter 1, intituled 'An Act relating to Extra-Provincial Investment and Loan Societies.'

By this chapter the expression 'extra-provincial investment and loan society' is defined to mean 'any society duly incorporated for the purpose of raising moneys by periodical subscriptions from, and loaning the same to the several members only of the society, in shares of a par value of not less than one hundred dollars, nor exceeding five hundred dollars each, other than a society incorporated for the like purpose under the laws of the province of British Columbia.'

Section 3 authorizes such society, when empowered by its charter and regulations, to extend its operations to British Columbia, to obtain a license from the local authorities authorizing it to carry on such business within the province, upon compliance with the provisions of this Act and upon payment of a fee of two hundred and fifty dollars. There are subsequent provisions regulating the application for license and the evidence to be adduced in support of it, also the form of the license and a statement of the powers conferred by this Act upon such licensed societies. The effect of all these provisions appears to leave it optional to a company, otherwise duly authorized to carry on a loan and investment business in British Columbia, to apply for and obtain a license under the Act. There is no requirement that such a company shall take out a license as a condition to its carrying on business within the province. Sections 12, 13 and 14 provide that every society licensed under the Act shall deposit its mortgages and securities with the provincial minister of finance, or, in the event of these securities not being equal in value to the sum of \$25,000 that such society shall deposit cash or satisfactory securities for that sum; that interest, dividends, &c., upon the securities deposited with the Minister of Finance may be collected and retained by the society so long as it shall remain solvent and faithfully comply with the provisions of the Act, and perform the contracts entered into by it with the province; that the provisions of any Act for the time being in force in the province relating to the winding-up of companies shall apply to societies licensed under the Act, and that upon the

appointment of a liquidator of any such society under any such Act, the securities deposited with the Minister of Finance shall be immediately handed over to the liquidator for the benefit of the creditors and members of the society within the province, to be realized and distributed amongst them in accordance with the laws of the province. Section 15 enacts that 'any agent, employee, officer, director or other person whomsoever, offering for sale or attempting to negotiate the sale of any stock of any unlicensed extra-provincial investment and loan society shall, upon summary conviction, before a justice of the peace or stipendiary or police magistrate, be liable to a penalty of five hundred dollars for every such offence, the same to be carried to the account of the consolidated revenue of the province.'

Having regard to the definition of the term 'extra-provincial investment and loan society' above quoted, it seems clear that the offering for sale or attempting to negotiate the sale of the stock of such society is practically the only means by which the proper objects of the society can be advantageously or effectively carried out, and, therefore, the imposition of a penalty of five hundred dollars for each case of so doing, would make it impracticable for any such society, while unlicensed, to carry on its business within the province. The authority of a provincial legislature in respect of the incorporation of companies is expressly limited to provincial objects, and it is clear that parliament alone can authorize and define the powers of companies with larger purposes. The regulation of trade and commerce extends at least to matters of interprovincial concern, and in the execution of this power and other powers arising under section 91 of the British North America Act, it has long been the practice of parliament and the policy of the Dominion government, to incorporate companies with power to do business within the scope of their charters throughout the Dominion, or in two or more of the provinces. Powers which include authority to transact business such as is mentioned in the interpretation clause of the statute now in question have been granted or may be conferred by or with the sanction of parliament, and it appears to the undersigned that for a province to impose a penalty upon the officers or agents of such companies, for no reason other than the execution of the powers vested in them by parliament, cannot be regarded otherwise than as an interference with the jurisdiction of parliament and the established policy of Your Excellency's government.

It is very likely true that a provincial legislature has authority to tax Dominion corporations and to raise such taxes by means of license fees. This statute might possibly be supported as a taxing Act under one or other of these powers, were it not that it attempts to compel extra-provincial societies of the character described, to procure licenses under the Act, and thereupon to make these societies subject to the provisions of sections 12, 13 and 14 above referred to, which impose obligations and liabilities upon the societies which presumably would not be authorized or provided for by their constituting Acts. There is a suggestion also that the business of the company is to depend upon its solvency, and that its business may be stopped and its property dealt with by the local authorities in the event of insolvency. These provisions cannot be upheld under any authority vested in the province to tax or raise revenue by means of licenses, and they are, in the opinion of the undersigned, *ultra vires* as affecting the regulation of trade and commerce, bankruptcy or insolvency, or other matters within the exclusive control of parliament. The undersigned considers, therefore, that sections 12 to 15, inclusive, should be repealed or at least that the Act should be so amended as to declare that these sections do not apply to companies incorporated by or under the authority of parliament, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia with a request that he cause Your Excellency's government to be informed as soon as convenient whether the suggested amendment will be made within the time limited for disallowance.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

From the Japanese Consulate for Canada at British Columbia, to Lord Minto.

VANCOUVER, B.C., 3rd January, 1901.

YOUR EXCELLENCY,—With reference to my representation dated the 1st September last, in regard to certain legislation of British Columbia, I have the honour to inform Your Excellency that by the government of British Columbia regulations to carry out the provisions of the Immigration Act, 1900, referred to in my previous representation, have been promulgated and immigration officers appointed. I beg to inclose herewith some clippings from a local newspaper containing copy of the regulations referred to, and would respectfully suggest that the sooner proper steps be taken by your government on this matter, the better it would be for all concerned.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest considerations.

S. SHIMIZU,
His Imperial Japanese Majesty's Consul.

IT AIMS AT ASIATICS.

Persons who cannot write in European characters must not come to British Columbia.—Transportation companies may fight.

Angus McAllister, of Vancouver, and W. H. Ellis, of Victoria, are immigration officers, appointed to see to the carrying out of the provisions of Mr. Tatlow's British Columbia Immigration Act, 1900. The province is divided into two districts, Island and Mainland. The pivotal section of this Act is as follows :—

‘The immigration into British Columbia of any person who, when asked to do so by the officers appointed under this Act, shall fail himself to write out and sign in the characters of some language of Europe, an application to the Provincial Secretary of the province of British Columbia, to the effect of the form set out in section B of his Act annexed, shall be unlawful.

Section B is as follows :

PROVINCE OF BRITISH COLUMBIA.

SIR,—

I claim to be exempt from the operation of the British Columbia Immigration Act, 1900. My name is . . . My place of abode for the past twelve months has been . . . My business calling is . . . I was born at . . . in the year . . .

Yours, &c..

There are certain exceptions to the rule, such as persons having certificates from the Provincial Secretary, Agent General or officer appointed for the purpose of the Act ; any person specially exempted by the Provincial Secretary ; Her Majesty's land and sea forces ; officers and crew of any ship of war of any government ; any person duly accredited to British Columbia under the authority of the Imperial, Dominion or any other government ; any person the terms of whose entry into Canada have been fixed, or whose exclusion from Canada has been ordered by any Act of the parliament of Canada.

The Act, of course, is aimed at Chinese and Japanese. It may be contested by the transportation companies. If so the preliminary bout will come soon, as two Northern Pacific liners are due this week and an Empress next week.

The regulations promulgated by the government follow :

REGULATIONS.

For the better carrying out of the provisions of the British Columbia Immigration Act, 1900.

For the purposes of the British Columbia Immigration Act, 1900, His Honour the Lieutenant Governor in Council has been pleased to approve the division of the province into two immigration districts, as follows :—

(a) Island District.—To comprise Victoria City, South Victoria, North Victoria, Esquimalt, Nanaimo City, North Nanaimo, South Nanaimo, Cowichan and Alberni electoral districts situated on Vancouver island.

(b) Mainland District.—To comprise all other territory of the said province.

Under the provisions of the said Act the following are appointed immigration officers for the district set opposite their respective names :—

William H. Ellis, of the city of Victoria, Island District.

Angus McAllister, of the city of Vancouver, Mainland District.

And for the better carrying out of the provisions of the said Act, His Honour the Lieutenant Governor in Council has been pleased to approve of the following regulations for the guidance of the said immigration officers :—

1. The immigration officers appointed for the said immigration districts under the provisions of the said Act shall, as soon as possible after the publication of these regulations, recommend for the approval of the Lieutenant Governor in Council such persons as they may seem fit to act as deputy immigration officers for such portions of the said immigration districts as may be designed in such recommendations. Upon such recommendations being approved by the Lieutenant Governor in Council, the persons so approved shall at once proceed to exercise the functions of immigration officers for the districts for which such appointments may be approved.

2. The immigration officers for the said island and mainland districts shall forthwith forward to all transportation companies that are known to engage in the business of bringing or transporting immigrants into the province of British Columbia, either by land or water, a copy of these regulations, and request such transportation companies to designate a person or persons from whom the said immigration officers may obtain notice of the arrival of immigrants into the province of British Columbia. All such transportation companies are hereby notified that the provisions of section 6 of the said Act will, from the 1st day of January, 1901, be strictly enforced.

3. The said immigration officers shall, at all or any time they may consider advisable, meet any boat, train or other vehicle purporting to carry immigrants into the said province, and present to each and every such immigrant a copy of the form 'B' set out in the schedule to the said Act, and upon the person refusing to comply with the provisions of section 4 of the said Act, the said immigration officers shall proceed according to the provisions of the said section.

4. The said immigration officers shall forthwith report to the provincial secretary the names of all transportation companies who may assist in the immigration of persons unable to comply with the provisions of the said Act.

Report of the Hon. the Minister of Justice of 5th January, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 5th January, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of British Columbia, passed in the sixty-fourth year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 17th September; and he

is of opinion that these should be left to their operation without comment, with the exception of chapter 1, intituled 'An Act relating to Extra-Provincial Investment and Loan Societies,' as to which the undersigned has submitted a separate report, and the statutes hereinafter specially mentioned.

Chapter 11. 'An Act to regulate immigration into British Columbia.'

In the preamble of this Act, section 95 of the British North America Act is recited, and it is said to be expedient to regulate immigration into British Columbia.

Section 3 prohibits in effect immigration into British Columbia of any person to whom the Act applies, who, when asked to do so, shall fail himself to write out and sign in the characters of some European language an application to the Provincial Secretary in the form set out in the schedule to the Act. The form of application is printed in the schedule in the English language only.

Chapter 14. 'An Act relating to the employment on works carried on under franchises granted by private Acts.'

Section 4 of this Act provides in substance that as to works to be constructed or performed under provincial franchises conferred during or after the then present session of the provincial legislature, no employer shall engage or employ any workman, who when asked to do so by a duly authorized officer, shall fail to himself read in a language of Europe, the Act now in question. And it is enacted that the employer shall be liable to a penalty upon summary conviction for employing any labourer not so qualified.

It is to be observed that the Act is not to apply to any person possessed of a certificate, signed by the Provincial Secretary or any officer appointed by the Lieutenant Governor in Council for the purposes of the Act, certifying that the person therein named is a fit and proper person to be employed as a workman under the provisions of the Act, but it appears that unless the employer or person employed holds such a certificate, the intention of the Act is that no workman shall be employed upon any of the works mentioned, unless he is able upon demand to read the Act in a European language. There would, of course, be no difficulty about this so far as a person qualified to read the English language is concerned, but to read it in any other language would involve a translation of it first into that tongue; and that might be a matter of considerable difficulty to a person quite able to read the statute in his own language when translated. The Act contains no provision requiring any translation to be made by the provincial authorities.

Chapter 18. 'An Act respecting Liquor Licenses.'

Under this Act Mongolians and Indians are excluded from those who may sign petitions for the granting of licenses, and from those who are reckoned as inhabitants of the district or vicinity within which the license is to be exercised.

Chapter 54. 'An Act to revise and consolidate the Vancouver Corporation Act.'

By section 7 of this Act it is enacted that no Chinaman, Japanese or Indian shall be entitled to vote at any municipal election for the election of mayor or aldermen.

Objection has been made to the four Acts above mentioned, in respect of their provisions particularly herein referred to, by His Imperial Japanese Majesty's Consul at Vancouver, B.C., upon the grounds set forth in his communications, copies of which were recently transmitted to the Lieutenant Governor of British Columbia by Your Excellency's direction, and are attached to the minute of council of 9th October last. The reply of the provincial government has been referred to the undersigned, and a copy of the same is submitted herewith.

The undersigned observes that chapter 11, being an Act respecting immigration, is apparently intended to have effect only in so far as it is authorized by section 95 of the British North America Act, and that the provincial statute would be superseded whenever Dominion legislation repugnant to it is enacted. The educational test imposed by the Act is not perhaps a very severe one, except in so far as it may in any case involve translation from English into another European language, but as parliament has already legislated with regard to the subject of immigration, and has not

seen fit to impose any educational requirement whatever, the present Act seems inconsistent with the general policy of the law, and the undersigned considers that in cases where foreign relations are involved, it is not at present desirable that the uniformity of the immigration laws should be interfered with by special provincial legislation. It must be remarked also, that inasmuch as the provincial Act empowers the Provincial Secretary or any officer appointed by the government of the province for the purpose, to exempt any immigrant from the operation of the Act, the effect of the legislation virtually is to prohibit immigration of those not possessing the statutory qualifications, unless the provincial authorities dispense therewith, which they may do for any cause deemed sufficient, thus really placing in the hands of the officers of the provincial government an absolute discretion to deal differently with different nationalities or with the same or different classes of individuals of the same nationality, thereby giving scope for discrimination, which Your Excellency's government, although not responsible for the administration of the law, might be called upon to explain or justify.

The undersigned considers, therefore, that parliament having undertaken to regulate immigration and not having required any educational attainments from intending immigrants; in view of the objections raised by the Japanese consul, and other similar objections which may arise in the operation or administration of the Act, it would be inadvisable to leave this Act to its operation.

With regard to chapter 14, above mentioned, it is alleged and not denied that it is obviously and solely directed against Asiatics, including Japanese, and no reason is stated in the provincial reply as to the objects or purposes of the Act, or the reasons for requiring labourers to read it as a condition to their employment.

A Bill disqualifying Japanese and Chinese from employment upon similar works was passed by the British Columbia legislature in 1897 and reserved by the Lieutenant Governor, for the Governor General's consideration. The Governor General refused to sanction the measure. A similar Bill was at the following session enacted by the provincial legislature and disallowed after correspondence between Your Excellency's government and the home government. These facts are significant, and support to some extent the ground taken that the object of the present Act is to accomplish the same purpose indirectly, by requiring workmen to read this Act in a European language.

It seems to the undersigned, in view of the remonstrance of the Japanese government, that the grounds upon which the former statute was disallowed apply with practically the same force to the present one. This subject is also very clearly connected with that of immigration, and the undersigned is not at all satisfied, apart from the other considerations upon which he recommends disallowance, that Your Excellency's government ought to leave in operation a statute establishing such a difficult requirement of workmen, who to a very large extent must be drawn from the very class whose immigration into the country is provided for by the laws of the Dominion.

As to chapter 18, it is undoubtedly within the competence of a provincial legislature to regulate the sale of intoxicating liquors, and to define the evidence which must be produced by those applying for licenses, and, although the undersigned has given careful consideration to the representations of the Japanese Consul upon the subject, he is unable to discover any reason why the legislature of British Columbia ought not to be permitted to establish for the purposes of this Act the procedure by which licenses are to be sought or obtained. It seems to the undersigned that the Japanese residents of British Columbia may very well consider their interests in the matter of liquor licenses properly safeguarded. It is difficult to see that any considerable privilege is withheld from Mongolians. The precise provisions which are said to discriminate against them are sections 22, 28 and 44, which have to be read in the light of the interpretation clauses which define the expressions 'householders' and 'inhabitants' as not including Mongolians.

Section 22 provides in effect that no hotel license shall be granted in any locality unless a petition therefor, signed by at least two-thirds of the householders of the

locality shall be presented to the board of license commissioners, unless in any locality there are not at least three such householders, in which case the commissioners may grant hotel licenses without the presentation of petitions.

Section 28 requires that on every application for an hotel license, the inspector shall make a written report to the commissioners, which shall contain among other things, a statement of the number of householders within three miles, and the inhabitants within one mile of the premises sought to be licensed not included in any municipality.

Section 44 establishes the fees which are to be taken by the provincial government for hotel licenses, and those are made to depend upon the number of inhabitants in the locality.

Certainly no right or privilege of the Japanese residents of British Columbia can be prejudicially affected by the requirements that at least two-thirds of the other householders of any locality must have subscribed to a petition for a hotel license before such license can be granted in the locality. Still less can there be any prejudice from the license commissioners receiving the information which is required to be furnished under section 28, and the amount of the fee which should be exacted from any hotel licenses is so entirely in the judgment of the taxing authority, that the undersigned cannot conceive any reason why the Japanese residents of the province, who are not called upon to pay or contribute to the amount, except where they become voluntarily applicants for license, should object to the amount of the fee as established by law, or the standard adopted by the legislature for determining it.

Under section 92 of the British North America Act, among subjects assigned to the exclusive jurisdiction of the legislatures are 'direct taxation within the province in order to the raising of a revenue for provincial purposes,' 'hop, saloon, tavern and auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes,' 'property and civil rights in the province,' and 'generally all matters of a merely local or private nature in the province.'

It is indisputable that the legislation in question falls directly under or properly relates to one or other of these enumerations, and the undersigned does not consider that this statute can be interfered with.

In like manner the establishment of municipal corporations is entirely a matter of local concern, and the method of constituting a municipal council, or the determination of the municipal franchise are not, in the opinion of the undersigned, except perhaps for very exceptional and unusual reasons, subjects of review by Your Excellency's government. Such enactments are entirely local and domestic in their nature, and sufficiently justified, so far as the powers to be exercised by the government of Canada are concerned, by the fact that the local legislature has considered their provisions expedient or desirable. The undersigned apprehends that the withholding of the franchise in any municipality from any class of British subjects would not be made the ground for interference in the internal affairs of the community by Your Excellency's government, and he presumes that foreigners would not expect to stand upon any higher ground.

While referring to the Vancouver Incorporation Act, the undersigned desires to call attention also to section 125 which enumerates, as a subject with regard to which the council may from time to time pass, alter and repeal, by-laws, the regulation of trade licenses, including the licensing and regulating of insurance companies, also the regulating and licensing of any person carrying on the business of a wholesale or retail merchant trader, and the licensing and regulating of other trades, businesses and employments.

These powers of regulation must be construed as intended for local purposes only, and not as embracing or in any wise affecting, the larger subject of the regulation of trade and commerce generally, in respect to the particular trades therein enumerated, which is beyond the power of a provincial legislature and assigned to the exclusive jurisdiction of parliament.

Chapter 47. 'An Act to incorporate the Grand Forks and Kettle River Railway Company.'

This Act professes to authorize the company to construct, maintain and operate a line of railway from a point on the Canadian side of the international boundary line at or near the city of Grand Forks, in the Osoyoos division of Yale, district of British Columbia, thence to a point on the Canadian side of the international boundary line at or near Carson in the same division.

Chapter 55. 'An Act to amend the Vancouver, Northern and Yukon Railway Company Act, 1899.'

It is stated by section 2 that the company may construct and operate a line of railway from the city of Vancouver and other points running northerly to the northern boundary of the province.

The authority of the legislature with regard to local works and undertakings is limited by the exception of 'lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the provinces with any other or others of the provinces or extending beyond the limits of the province.' In view of the fact that the works and undertakings with regard to which a province may legislate must be local, and having regard to the exception quoted, it seems questionable to the undersigned whether it is competent to the province to authorize the construction or operation of a railway to the boundary line of a province or having its two termini upon the boundary. The undersigned does not on that account recommend the disallowance of these statutes, but he commends the matter to the consideration of the provincial government, and the companies concerned, leaving the question to the determination of the courts if necessary.

The undersigned, therefore, recommends that of the Acts referred to or specially mentioned in this report, chapter 11, 'An Act to regulate immigration into British Columbia,' and chapter 14, 'An Act relating to the employment on works carried on under franchises granted by private Acts,' be disallowed, and that all the other Acts be left to their operation. He recommends further that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his government, also that a copy of the report so far as it affects the objections of the Japanese consul be transmitted to him.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

From Mr. Chamberlain to Lord Minto.

DOWNING STREET, 22nd January, 1901.

MY LORD,—With reference to my despatch, No. 272, of 5th October last, I have the honour to transmit to you, for the consideration of your ministers, a copy of a further note from the Japanese Minister at this court protesting against the enforcement of the British Columbia Immigration Act, 1900.

2. I shall be obliged if you will furnish me at the earliest possible opportunity with the report requested in my despatch under reference on this measure and the other mentioned in Baron Hayashi's note of 18th September last.

I have the honour, &c.

J. CHAMBERLAIN.

The Japanese Ambassador to the Most Hon. the Marquess of Lansdowne.

JAPANESE LEGATION, 7th January, 1901.

MONSIEUR LE MARQUIS,—I have the honour to inform you that I am in receipt of a telegram from the Japanese Consul at Vancouver, informing me that regulations have been promulgated in British Columbia to carry out the Immigration Act which has passed the legislative assembly of that province on 31st August last, and that necessary officers have been appointed by the provincial government for that purpose. To that legislation as well as other similar measures adopted by that province my government has taken exception, and I had the honour under its instructions to write on 18th September last, to Your Lordship's predecessor that Her Majesty's government may see its way to exercise its influence to annul those enactments. Her Majesty's government has given prompt attention to my request, and the matter has since been referred to the Dominion government. In view, however, of the steps now being taken by the authorities of that province to enforce those Acts, I have the honour to request Your Lordship that the attention of the Governor General of Canada may be called again, and that his sanction may without further delay be withheld from those Acts.

I have, &c.,

HIYASHI.

From Mr. Chamberlain to Lord Minto.

DOWNING STREET, 22nd January, 1901.

MY LORD,—With reference to my despatch, No. 25, of even date respecting the British Columbia Immigration Act, 1900, I have the honour to request that you will invite the serious attention of your ministers to the question of the competence of a provincial legislature to pass such legislation.

2. It is understood from press reports that the Act is of a restrictive nature, based on the Natal Act, and having regard to the general principles on which the British North America Act is based, it would appear that such a measure is *ultra vires* for any legislative body in Canada, other than the Dominion parliament.

3. The whole scheme of the British North America Act implies the exclusive exercise by the Dominion of all 'national' powers, and though the power to legislate for the promotion and encouragement of immigration into the provinces may have been properly given to the provincial legislatures, the right of entry into Canada of persons voluntarily seeking such entry is obviously a purely national matter, affecting as it does directly the relations of the Empire with foreign states.

I have, &c.,

J. CHAMBERLAIN.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 5th March, 1901.

To His Excellency the Governor General in Council:

There have recently been referred to the undersigned copies of the following despatches from the Right Honourable the Secretary of State for the Colonies addressed to Your Excellency, viz.: Despatch, dated 5th October, 1900, and two despatches dated 22nd January, 1901. These refer to legislation of the province of British Columbia passed during the year 1900, which has been objected to by the Japanese minister at the Court of St. James on behalf of his government.

In the despatch of 5th October, 1900, Mr. Chamberlain asks to be furnished with copies of the Acts referred to in the Japanese minister's note and of any similar legislation passed since 1898, with any observations which Your Excellency's ministers may wish to offer upon them.

The undersigned submits herewith copies of the volumes of the British Columbia legislation for 1898, 1899 and 1900, which contain the statutes to which Mr. Chamberlain wishes to refer.

Previous to the receipt of the despatches above mentioned the undersigned had considered the legislation in question and had prepared a report to Your Excellency, copy of which is appended hereto. (See Report of 5th January, 1901, on pp. 134-138.)

The undersigned also submits with his report copy of the correspondence and Orders in Council with respect to the legislation of 1898. These, in the opinion of the undersigned, together with the Orders in Council passed respecting the British Columbia legislation of 1899, which are of record in the Privy Council office, furnished the information which is called for by the despatches from the Colonial Office above mentioned.

The undersigned desires to direct Mr. Chamberlain's attention to the fact that the statutes of British Columbia for the year 1900 were received by the Secretary of State for Canada on 17th September last; that the time for disallowance will expire within one year from that date, and that in the view of the undersigned, as set forth in his report of 5th January last (see page 134), submitted herewith, the objections raised on behalf of the Japanese government to chapter 18, 'An Act respecting Liquor Licenses,' and chapter 54, 'An Act to revise and consolidate the Vancouver Incorporation Act,' were not of such a serious character as to call for the disallowance of these Acts which contain many other useful provisions.

The undersigned has had some correspondence with the government of British Columbia with regard to these statutes, and that government is now considering, as the undersigned is informed, the propriety of amending chapter 11, 'An Act to regulate immigration into British Columbia, and chapter 14, 'An Act relating to the employment on works carried on under franchises granted by private Acts,' so as to remove the grounds of objection taken on behalf of the government of Japan.

The undersigned recommends that a copy of this report, if approved, with the statutes and exhibits herein referred to, together with the said Orders in Council of 1899, be transmitted immediately to the Right Honourable the Principal Secretary of State for the Colonies with the request that he inform Your Excellency's government as early as possible whether His Majesty's government will be content with the disposition which was recommended to be made by the report of the undersigned of 5th January last, or whether any, and what further action ought to, in the opinion of His Majesty's government, be had in the matter.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

Mr. E. P. Davis, K.C., to the Japanese Consul.

VANCOUVER, 9th March, 1901.

DEAR SIR,—Section 5 of the Vancouver Incorporation Act broadly provides that every male and female soul of the full age of twenty-one years who is the owner or tenant of real property of a certain value shall be entitled to the municipal franchise in the city of Vancouver without any regard whatever to the question of nationality or naturalization. The question that arises then is whether the provincial legislature has the power to prohibit certain people from exercising this right so given, merely and solely because such person is a Japanese or a Frenchman or belongs to some other

foreign nationality; in other words, whether the provincial legislature has power to attach certain restrictions upon particular individuals, solely on account of their nationality.

Section 91 of the British North America Act, subsection 25, gives to the Dominion parliament exclusive jurisdiction with reference to naturalization and aliens. Section 92 of the same Act, subsection 8, gives to the provincial legislature exclusive jurisdiction with reference to municipal institutions in the province. But it is further provided at the end of section 91, that any matter coming within any of the classes of subjects enumerated in that section, shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects in section 92.

Section 7 of the Vancouver Incorporation Act (speaking always with reference to Japanese) is capable of being viewed in two different aspects, according to one of which it appears to fall within the subjects assigned to the provincial parliament by section 92 of the British North America Act, subsection 8, whilst according to the other it clearly belongs to the class of subjects exclusively assigned to the legislature of the Dominion by section 91, subsection 25.

The leading feature, however, of the section consists in this, that it has and can have no application except to Japanese (whether aliens or naturalized), and that it establishes no rule or regulation respecting municipal institutions, except that Japanese, as Japanese, shall not under any circumstances be allowed the right of voting in the city of Vancouver. This, it seems to me, is unquestionably dealing, and dealing only, with the subjects of aliens, which is covered by subsection 25, section 91, of the British North America Act. That section, in other words, establishes a statutory prohibition affecting Japanese who are aliens, and therefore necessarily trenches upon the exclusive authority of the parliament of Canada, the necessary result of which is, in my opinion, that section 7, so far as it relates to Japanese, is *ultra vires* of the provincial legislature and illegal.

I do not see how the Union Colliery case (Privy Council case, 1899), can be distinguished from the present.

I have, &c.,

E. P. LAVIS.

His Honour the Lieutenant Governor of British Columbia to the Hon. the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 20th March, 1901.

SIR,—I have the honour to transmit to you herewith, a copy of an approved minute, dated the 18th instant, which embodies a resolution expressive of the opinion of the legislative assembly of this province that the 'Chinese Immigration Act, 1900,' should be amended so as to require all immigrants to pass an educational test similar to that imposed by the government of the colony of Natal.

I have, &c.,

H. G. JOLY DE LOTBINIERE,
Lieutenant Governor.

Copy of a Report of a Committee of the Executive Council, approved by His Honour the Lieutenant Governor in Council on the 18th day of March, 1901.

The Committee of Council submits for the approval of His Honour the Lieutenant Governor the undermentioned resolution of the legislative assembly of British Columbia, namely:—

'Whereas the Dominion "Chinese Immigration Act, 1900" has proven inadequate to check the immigration of Chinese;

And, Whereas, the said Act leaves the threatening influx of other Asiatics wholly unrestrained'

Be it Resolved, That an humble Address be presented to His Honour the Lieutenant Governor, praying him to advise His Excellency the Governor General of Canada that, in the opinion of this House, the said Act should be amended so as to make all immigrants comply with an educational test, similar to that imposed in the colony of Natal.'

The committee advise that a copy of this minute, if approved, be forwarded to the Honourable the Secretary of State of Canada.

Dated this 16th day of March, 1901.

J. D. PRENTICE,
Clerk, Executive Council.

The Hon. the Administrator of Province of British Columbia to the Hon. the Secretary of State.

VICTORIA, B.C., 15th May, 1901.

Sir,—With reference to your despatch of the 16th ultimo, and its inclosure, conveying a request that the federal government may be informed whether the amendment to 'An Act relating to Extra-Provincial Investment and Loan Societies,' suggested by the Minister of Justice, in his report, dated 27th December, 1900, will be made by this government within the time limited for disallowance, I have the honour to state, for the information of His Excellency's government, that 'An Act to amend the Extra-Provincial Investment and Loan Societies Act, 1900,' which was assented to by me on the 11th instant, provides that sections 12 and 15, inclusive, shall not apply to companies incorporated under the laws of Canada, and thus amends the former statute in the manner suggested by Mr. Mills.

I am, &c.,

GEO. A. WALKEM,
Administrator.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 6th June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 27th December last, approved by Your Excellency in Council on 9th April last, with reference to chapter 1 of the British Columbia statutes, passed in the 64th year of Her late Majesty's reign (1900), intituled 'An Act relating to Extra-Provincial Investment and Loan Societies,' has the honour to state that there has been referred to him copy of a despatch of the 15th instant from the administrator of the government of British Columbia to the Secretary of State for Canada in which he states, for the information of Your Excellency's government, that 'An Act to amend the Extra-Provincial Investment and Loan Societies Act, 1900,' was assented to by him on the 11th instant, and provides that sections 12 and 15, inclusive, of the amended Act shall not apply to companies incorporated under the laws of Canada, thus amending the former statute, as the administrator states, in accordance with the suggestions of the undersigned. Copy of the said despatch is submitted herewith.

The undersigned observes that he stated in his said report of 27th December last, sections 12 to 15 inclusive, should be repealed, or at least that the Act should be

so amended as to declare that these sections do not apply to companies incorporated by or under the authority of parliament. It is understood, therefore, that the statute has been amended according to the alternative suggestion of the undersigned, and it will, in that event, be unnecessary for Your Excellency's government to take any further action in the matter. The undersigned recommends, however, that the administrator of the government of British Columbia be requested to forward to Your Excellency's government a certificate copy of the amending Act as soon as convenient, and within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Mr. Chamberlain to Lord Minto.

DOWNING STREET, 23rd August, 1901.

MY LORD,—With reference to your despatch, No. 199, of the 11th ultimo, in confirmation of my telegram of the 22nd instaut, I have the honour to transmit to you for the information of your ministers, a copy of correspondence with the Foreign Office relating to certain measures, prejudicially affecting Japanese subjects, enacted by the legislature of British Columbia, and objected to by the Japanese government.

I have, &c.,

J. CHAMBERLAIN.

The Colonial Office to the Foreign Office.

DOWNING STREET, 8th August, 1901.

SIR,—With reference to the letter from this department of the 25th ultimo, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquess of Lansdowne, the accompanying despatch from the Governor General of Canada respecting the British Columbia legislation to which the Japanese government has objected.

2. From the printed inclosure, a copy of which was previously sent to your department, of 12th July, 1899, Lord Lansdowne will observe that of the legislation passed in 1898 affecting Japanese, two Acts of a general character (chapters 28 and 44) were disallowed, but other Acts containing similar clauses were allowed to remain in operation for the reason stated in the marked passage on page 31 of the print, viz.: That these Acts being mainly concerned with the incorporation of companies, and having already come into operation, great inconvenience and hardship would have been caused to the companies if they had been disallowed.

3. With regard to 1899 legislation, which is referred to in the Foreign Office letter of 24th April, 1899, and connected correspondence, Lord Lansdowne will see that the Dominion government disallowed chapter 39 (relating to liquor licenses), section 36, of which prohibited the grant of a license to any Indian, Chinese or Japanese; chapter 44 (the Midway-Penticton Railway Subsidy Act), which was objected to, not by the employment of Chinese or Japanese labourers on the railways in question; and chapter 50 (the Placer Mining Act Amendment Act), which was objected to, not by the Japanese government, but by the United States government; but certain Acts of a limited character, similar to the 1898 Acts referred to above, were left in operation for the same reason as was given in those cases, and for the further reason that the clauses in question were *ultra vires* under section 91 (25) of 30 Vic., chapter 3, an opinion which seems to be borne out by the judgment of the Privy Council on the appeal of the Union Colliery Company of British Columbia, Limited, vs. Bryden and

the Attorney General for British Columbia, a copy of which was sent to your department on 18th September, 1899. The British Columbia government was warned that any Act which might hereafter be passed similar to those passed in 1898 and 1899 affecting the employment of Japanese, would probably be disallowed.

4. With regard to the 1900 legislation, it will be seen that the Canadian government intend to disallow chapter 11, regulating immigration, and chapter 14, relative to employment on works carried out under legislative franchises, but to leave in operation chapters 18 and 54; and Mr. Chamberlain proposes, with Lord Lansdowne's concurrence, to acquiesce in the decision of the Dominion government, chapter 18, the Liquor License Act, does not contain the provision prohibiting the grant of a license to any Japanese, which appeared in the Act disallowed in 1899, but only disentitles Mongolians (with Indians) from recommending as 'householders' applications for the issue of licenses, and excludes them from the number of inhabitants in the vicinity of the proposed 'hotel,' which is one of the data on which an application for a license is decided—which provisions do not appear to constitute a disability to which the Japanese government can seriously object. Chapter 54 only disentitles Japanese from voting at Vancouver municipal elections (section 7), and the Dominion government could hardly disallow this long and important Act on the ground of this one objectionable provision; and further as the clause is *ultra vires* (section 91, 24 and 25, of 30 Vic., chap. 3), a Japanese resident in Vancouver, if not otherwise disqualified, can legally enforce his claim to be put in the list of voters.

5. I am to request the favour of an early reply, as it will be necessary to inform the Dominion government of the decision of His Majesty's government before the 17th September next, when the period during which the power of disallowance may be exercised will expire.

I am, &c.,

H. BERTRAM COX.

The Foreign Office to the Colonial Office.

FOREIGN OFFICE, 19th August, 1901.

SIR,—I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 8th instant, forwarding a despatch from the Governor General of Canada respecting the British Columbian legislation to which the Japanese government have objected.

With regard to the 1900 legislation, Lord Lansdowne noted that the Canadian government intended to disallow chapter 11 regulating immigration, and chapter 14, relative to employment on works carried out under legislative franchises, but to leave in operation chapter 18, 'An Act respecting Liquor Licenses, and chapter 54, 'An Act to revise and consolidate the Vancouver Corporation Act.'

Lord Lansdowne concurs in Mr. Secretary Chamberlain's proposal to acquiesce in the decision of the Dominion government.

I have, &c.,

T. H. SANDERSON.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 11th September, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 4th September, 1901.

To His Excellency the Governor General in Council:

The undersigned referring to the order of Your Excellency in Council of 27th June last, respecting certain statutes of the legislative assembly of British Columbia,

passed in the 64th year of Her late Majesty's reign (1900), has the honour to state that in reply to a communication which was sent to the Right Honourable the Principal Secretary of State for the Colonies in accordance with the recommendation of the said Order in Council, a cable reply has been received by Your Excellency from Mr. Chamberlain, dated 22nd August last, stating that His Majesty's government concurs in the decision of Your Excellency's government with regard to these statutes. This decision is stated in the report to Your Excellency of the undersigned, dated 5th January last, in which it is recommended, for the reasons therein stated, that chapter 11 of the said statutes, intituled 'An Act to regulate immigration into British Columbia,' and chapter 14, intituled 'An Act relating to the employment on works carried on under franchises granted by private Acts,' be disallowed, and that the other Acts referred to, or specially mentioned in the said report, be left to their operation.

The undersigned recommends, therefore, that the two statutes above mentioned, viz. : chapters 11 and 14 be disallowed.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA,

THE 11TH DAY OF SEPTEMBER, 1901.

PRESENT :

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia with the legislative assembly of that province, did, on the 31st day of August, 1900, pass a statute which has been transmitted, chaptered 11, and intituled 'An Act to regulate Immigration into British Columbia.'

And whereas the said statute has been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice, recommending that the same be disallowed.

Therefore His Excellency the Governor General in Council is pleased to declare his disallowance of the said statute and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliott, Earl of Minto, Governor General of Canada, do hereby certify that the statute passed by the legislature of the province of British Columbia, on the 31st day of August, 1900, chaptered 11, and intituled 'An Act to regulate Immigration into British Columbia,' was received by me on the 17th day of September, 1900.

Given under my hand and seal this 11th day of September, 1901.

MINTO.

AT THE GOVERNMENT HOUSE AT OTTAWA,

THE 11TH DAY OF SEPTEMBER, 1901.

PRESENT :

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia, with the legislative assembly of that province did on the 31st day of August last, 1900, pass a statute which has been transmitted, chaptered 14 and intituled 'An Act relating to the employment on works carried on under franchises granted by private Acts.'

And whereas the said statute has been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice, recommending that the same be disallowed ;

Therefore His Excellency the Governor General in Council is pleased to declare his disallowance of the said statute and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliott, Earl of Minto, Governor General of Canada, do hereby certify that the statute passed by the legislature of the province of British Columbia on the 31st day of August, 1900, chaptered 14, and intituled 'An Act relating to the employment on works carried on under franchises granted by private Acts,' was received by me on the 17th day of September, 1900.

Given under my hand and seal this 11th day of September, 1901.

MIN'TO.

The Japanese Consul to His Excellency the Governor General.

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,

VANCOUVER, B.C., 22nd September, 1901.

YOUR EXCELLENCY,—With reference to my representation of 1st September, 1901, I have the honour to respectfully express to Your Excellency my sincere gratitude that is no doubt shared by our nation felt at the final action recently taken by Your Excellency's government through which the Immigration Act and the Labour Regulation Act of British Columbia, 1900, have been disallowed. This action cannot but tend, I believe, to strengthen the friendly feeling happily existing, not only between Japan and Canada, but also between Japan and the British Empire at large.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest considerations.

S. SHIMIZU,
His Imperial Japanese Majesty's Consul.

PRINCE EDWARD ISLAND

62nd VICTORIA, 1899.

2ND SESSION—33RD GENERAL ASSEMBLY.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th day of December, A.D. 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Prince Edward Island, passed in the 62nd year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on the 14th day of August, 1899, and he considers that these statutes may be left to their operation without comment with the exception of the following:—

Chapter 4. 'An Act respecting the fisheries and the rights of Fishing in the province of Prince Edward Island.'

Sections 15, 16 and 22, and possibly some other provisions of this Act, appear to affect somewhat the regulation of the fisheries, and, in so far as they have that effect, they are beyond the legislative jurisdiction of the province.

The undersigned does not consider, however, that this objection is of such a character as to justify the disallowance of the Act, particularly in view of the other unobjectionable provisions which it contains respecting the rights of property in the fisheries.

Chapter 19. 'An Act to amend 61st Vic., chapter 3.'

The Act amended by this statute was the subject of a report by the undersigned to Your Excellency in Council, dated 8th November, 1898, in which the undersigned, for the reasons stated in his said report, recommended the disallowance of the Act. The recommendation of the undersigned so made did not come into effect because it was understood that the Act would be amended by the provincial legislature, so as to remove the grounds of objection raised by the undersigned. Upon consideration of the amendment as enacted, it appears that these grounds of objection have been very largely, although not entirely, avoided. The Act as amended still affects to some extent the regulation of trade and commerce, and if the question were still open, the undersigned would think it necessary to consider whether the Act so far infringes upon Dominion authority as to justify its disallowance. The time has expired within which this authority could have been exercised, and inasmuch as the Act now in question leaves the law of Prince Edward Island, so far as it depends upon provincial statutes, in a better condition having regard to the freedom of trade than it previously stood, the undersigned considers that the present Act may be left to its operation.

Chapter 20. 'An Act to amend "An Act to impose a direct tax on certain classes of traders,"'

This Act is to some extent subject to remarks similar to those which have been made with regard to chapter 19. It requires traders not permanently residing within the province, but doing business there as commercial travellers, before entering upon their business within the province, to pay to the provincial treasurer an annual license fee or direct tax of \$20, and in case the goods to be sold consists of liquor, the license fee is to be \$200. The Act 57 Vic., chapter 4, contained the same provisions in effect, except that the license fee was \$15 in all cases. That Act having been left to its operation, and not having been altered in principle by the amendment, although the amendment increases the license fee in ordinary cases by \$5, and in the case of liquor by \$185, the undersigned does not feel called upon to advise disallowance. Any question which may arise as to whether the law as it stands is competent to the legislature, may be conveniently determined by the courts. The question as to whether Your Excellency's government ought to interfere as a matter of policy is not so clearly established, particularly in view of the course taken with respect to the original Act as to lead the undersigned to suppose that Your Excellency would exercise your authority upon that ground.

The undersigned therefore recommends that all these statutes be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900.

3RD SESSION—33RD GENERAL ASSEMBLY.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 3rd January, A.D. 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 10th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Prince Edward Island, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 11th October.

As to chapter 11, intituled 'An Act to further amend "An Act to consolidate and amend the several Acts incorporating the city of Charlottetown,"' the undersigned observes that the power conferred upon the city council to regulate and license traders not resident within the city is stated pretty broadly. The undersigned apprehends that this power can be acted upon only in so far as the regulations to be made under it relate strictly to property and civil rights or private and local matters within the province, and not to the regulation of trade and commerce, which is a subject of exclusive Dominion jurisdiction. The statute ought to be, and, having regard to the competence of the enacting authority, presumably will be, construed accordingly, and the undersigned recommends that it be left to such operation as it may have. The other statutes do not seem to call for any comment and may be left to their operation.

The undersigned recommends that a copy of this report, if approved, be transferred to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

NORTH-WEST TERRITORIES

62nd VICTORIA, 1899.

1ST SESSION—4TH LEGISLATIVE ASSEMBLY.

Copy of Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 14th day of December, A.D. 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of the ordinances of the legislative assembly of the North-west Territories, passed in the 62nd year of Her Majesty's reign (1899), and received by the Secretary of State for Canada, on 30th May, 1899, and he is of opinion that these ordinances may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the North-west Territories for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900.

2ND SESSION—4TH LEGISLATIVE ASSEMBLY.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th day of December, A.D. 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1900.

To His Excellency the Governor General in Council:

The undersigned having had under consideration the ordinances passed by the legislative assembly of the North-west Territories in the 63rd year of Her Majesty's reign (1900), received by the Secretary of State for Canada on 6th June, has the honour to report that, in his opinion, these ordinances may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the North-west Territories for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

YUKON TERRITORY

1898 and 1899.

Copy of Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th January, 1900.

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that by the Yukon Territory Act, 61 Vic., chapter 6, sections 6, 7 and 8, as amended by 62-63 Vic., chapter 11, section 2, the Commissioner of the Yukon Territory in Council is given the same powers to make ordinances for the government of the Territory, as were at the date of that Act possessed by the Lieutenant Governor of the North-west Territories, by and with the advice and consent of the legislative assembly thereof, to make ordinances for the government of the North-west Territories, except as such powers may be limited by order of the Governor in Council. A copy of every such ordinance made by the Commissioner in Council is to be despatched by mail to the Governor in Council within ten days after the passing thereof, and is to be laid before both Houses of parliament as soon as conveniently may be thereafter. Any such ordinance may be disallowed by the Governor in Council at any time within two years after its passage. Certain limitations upon this power of legislation are imposed by section 8, but it is not necessary here to enumerate these. There have been referred to the department of the undersigned, by the Under Secretary of State for Canada, copies of the following ordinances passed by the Commissioner of the Yukon Territory in Council during the years 1898 and 1899, namely :—

ORDINANCES OF 1898.

No. 1. 'An Ordinance respecting the profession of Medicine and Surgery.'
(Assented to 24th December, 1898.)

No. 2. 'An Ordinance to amend Ordinance No. 38 of the Revised Ordinances of the North-west Territories respecting the licensing of billiard and other tables, and for the prevention of gambling.

(Assented to 8th October, 1898.)

No. 3. 'Ordinance to amend Ordinance No. 1 of 1898, respecting the Medical Profession.'

(Assented to 11th October, 1898.)

No. 4. (No title.)

(Assented to 20th October, 1898.)

No. 5. 'Ordinance concerning Legal Profession.'

(No date.)

No. 6. 'An Ordinance respecting Notaries Public.'

(No date.)

No. 7. (No. title.)

(No date.)

No. 8. 'An Ordinance amending Ordinance No. 7 of 1898, respecting the muzzling and transporting of dogs.'

(Assented to 2nd November, 1898.)

No. 9. 'An Ordinance to amend Ordinance No. 37 of the Revised Ordinances of the North-west Territories, respecting Auctioneers, &c.'

(Assented to 4th November, 1898.)

No. 10. 'An Ordinance respecting the suppression of fires.'

(Assented to 25th November, 1898.)

No. 11. 'An Ordinance respecting the sale of intoxicating liquors and the issue of licenses therefor.'

(Assented to 7th December, 1898.)

No. 12. 'An Ordinance to amend Ordinance No. 7, of 1898, respecting the muzzling of dogs.'

(Assented to 7th December, 1898.)

No. 13. 'An Ordinance for the prevention of fires.'

(Assented to 7th December, 1898.)

ORDINANCES FOR 1899.

No. 5. 'Respecting public health.'

(Assented to 3rd March, 1899.)

No. 6. 'To provide for the appointment of Commissioners for taking Affidavits.'

(No date.)

No. 7. 'Respecting ferries.'

(No date.)

No. 8. 'To amend the Yukon Medical Ordinance of 1899.'

(No date.)

No. 9. 'To amend Ordinance No. 13 of 1898.'

(Assented to 17th March, 1899.)

No. 10. 'An Ordinance for granting to the commissioner certain sums of money, &c.'

(Assented to 24th March, 1899.)

No. 11. 'To amend Ordinance No. 13 of 1898.'

(Assented to 28th March, 1899.)

No. 12. 'An Ordinance to incorporate the Yukon, Overland Express and Transportation Company.'

(No date.)

No. 13. 'An Ordinance respecting certain legal officers.'

(Assented to 10th April, 1899.)

No. 14. 'An Ordinance to incorporate the Svendsgaard Drug and Hospital Company, Limited.'

(Assented to 20th January, 1899.)

No. 15. 'An Ordinance to amend the Yukon Medical Ordinance, 1898, and the Liquor License Ordinance.'

(No date.)

No. 15. (An Ordinance of the same number) 'An Ordinance respecting the Yukon Council.'

(Assented to 14th April, 1899.)

No. 16. 'An Ordinance concerning the water supply of Dawson.'

(Assented to 14th April, 1899.)

No. 16. (Another Ordinance of the same number.) No title.

(No date.)

No. 17. 'An Ordinance respecting the sale of liquor on steamboats.'

(Assented to 14th April, 1899.)

- No. 17. (Another Ordinance of the same number.) 'Respecting partnership.'
(No date.)
- No. 18. No title.
(Assented to 20th April, 1899.)
- No. 19. 'An Ordinance respecting bills of sale and chattel mortgages.'
(Assented to 20th April, 1899.)
- No. 20. 'An Ordinance respecting the Yukon hygeia water supply.'
(Assented to 20th April, 1899.)
- No. 21. 'An Ordinance respecting sidewalks in Dawson.'
(Assented to 29th April, 1899.)
- No. 22. 'An Ordinance respecting the legal profession.'
(Assented to 4th May, 1899.)
- No. 23. 'An Ordinance respecting the Dawson water front.'
(Assented to 9th May, 1899.)
- No. 24. 'An Ordinance respecting commissioners to make inquiries concerning public matters.'
(Assented to 10th May, 1899.)
- No. 25. 'An Ordinance to interpret Ordinance No. 16 of 1899.'
(Assented to 22nd May, 1899.)
- No. 26. 'An Ordinance respecting arrest and imprisonment for debt.'
(Assented to 26th May, 1899.)
- No. 27. 'An Ordinance respecting Hunker Creek ferry.'
(Assented to 1st June, 1899.)
- No. 28. 'An Ordinance respecting the Klondike ferry.'
(Assented to 2nd June, 1899.)
- No. 29. 'An Ordinance respecting intoxicating liquors.'
(Assented to 3rd June, 1899.)

Of the above ordinances passed in the year 1898, No. 1, 'An Ordinance respecting the profession of Medicine and Surgery,' was objected to by Dr. Bruner and other physicians residing at Dawson, upon the ground that the ordinance discriminated against British Columbia and some of the other provinces, with regard to the right of physicians qualified in those provinces to become qualified for practice in the Yukon Territory. Correspondence ensued between the Department of the undersigned and the Commissioner of the Territory with regard to these representations, and with the result that the ordinance in question was amended by Ordinance No. 8 of 1898, which provides in effect that the Medical Council of the Territory shall admit to registration any person duly licensed by the proper authority in that behalf to practice medicine and surgery in any province or territory of Canada, or in any British colony. This amendment seems to remove the ground of objection, and the undersigned considers that the ordinance as it stands amended, may be left to its operation.

Ordinance No. 5, intituled 'An Ordinance concerning the legal profession' was disallowed by Your Excellency upon the advice of the undersigned by Order in Council of 14th April, 1899, for reasons stated in the report of the undersigned, and another ordinance governing the legal profession in the Yukon was by Your Excellency in Council enacted in place thereof. (See *Canada Gazette* of 15th April, 1899.)

Ordinance No. 11, intituled 'An Ordinance respecting the sale of intoxicating liquors and the issuing of licenses therefor' was disallowed by Your Excellency in Council on 14th April, 1899, upon the advice of the Minister of the Interior for the reasons stated in his report. (See *Canada Gazette* of 15th April, 1899.) Therefore, although this ordinance had not been previously considered or reported upon by the undersigned, it does not call for comment here. In this connection, however, the undersigned deems it proper to call attention to the practice which has been long

established with respect to the consideration of provincial statutes and territorial ordinances, and which is specially affirmed with respect to the Yukon Territory by Order in Council of 16th August, 1899.

The other ordinances above mentioned, passed in the year 1898, may, in the opinion of the undersigned, be left to their operation without comment.

As to the ordinances above mentioned, passed during the year 1899, the undersigned observes that in Ordinance No. 7, respecting ferries, and in Ordinance No. 27, intituled 'An Ordinance respecting intoxicating liquors' the word 'license' is, in the copies of these ordinances which have been referred to the undersigned interpreted to mean a person holding a license. Obviously, the intention was to so define the word 'license.' Possibly there may be a mistake in the copies which have been transmitted by the commissioner, but such mistakes should not be allowed to occur, and if the copies transmitted be true copies, this artificial interpretation would probably lead to some difficulty and confusion. The undersigned, therefore, recommends that the matter be called to the attention of the Commissioner in Council so that, if necessary, a proper amendment may be made. And here the undersigned deems it proper to observe generally that he has noticed several other apparent mistakes, probably clerical, in the copies of the ordinances which have been forwarded from the Territory, and he desires to draw attention to the importance and necessity of having these ordinances correctly drafted, engrossed and transcribed.

Ordinance No. 16, without title or date, and Ordinance No. 19, intituled 'An Ordinance respecting Bills of Sale and Chattel Mortgages,' both contain retroactive provisions. The undersigned does not on that account consider it necessary to recommend the disallowance of these ordinances, but he expresses a doubt as to whether the Commissioner in Council, who is merely, in passing these ordinances, executing a delegated power, has authority to legislate retroactively. The undersigned considers, in any case, that retroactive provisions ought, if possible, to be avoided.

Ordinance No. 22, intituled 'An Ordinance respecting the Legal Profession' is *ultra vires*, and ought to be disallowed. This ordinance amends the previous ordinance respecting the legal profession which had, as already stated, been disallowed on 14th April, 1899. It is probable, although the disallowance of that ordinance and the new ordinance of Your Excellency in Council which was enacted in its stead, were immediately communicated to the Commissioner of the Territory, that he had not received such communication before the passage of the amending ordinance now in question. In any case, the amending ordinance cannot have effect because it is in some respects inconsistent with the provisions made by Your Excellency in Council, and Your Excellency having previously, by ordinance, made provisions covering the same ground, the legislative powers of the Commissioner in Council as to the points upon which Your Excellency had so legislated were and are, so long as Your Excellency's ordinance remains in force, necessarily suspended.

Ordinance No. 23 intituled 'An Ordinance respecting the Dawson water front' is probably *ultra vires*, as dealing with Dominion lands, a subject over which the Commissioner in Council has no jurisdiction. It provides among other things that the sheriff of the territory may upon requisition from the commissioner take possession of portions of the Dawson water front and of the bank or shore of the Yukon river, and eject therefrom all persons in possession or occupation thereof, and deliver possession thereof to such person or persons as the commissioner of the territory shall direct. The undersigned would consider it necessary to recommend the disallowance of this Ordinance, by reason of the absence of jurisdiction in the commissioner to pass it, were it not that he assumes it is intended merely to protect the water front and remove trespassers therefrom. In this view of the case, the Ordinance is harmless so far as the public interests of Canada are concerned, and the undersigned considers that it would not be improper to leave the Ordinance to such operation as it may have.

The undersigned sees no reason to comment upon any of the other Ordinances above mentioned, passed during the year 1899. It will be noticed, however, that the

undersigned has not yet received Ordinances Nos. 1, 2, 3 and 4, if any such Ordinances were passed.

Attention is directed to the fact that there are duplicate numbers in these Ordinances, as to Nos. 15, 16 and 17. Such double numbering should be avoided as it leads to confusion. The commissioner should be requested to comply as promptly as possible with the requirement of section 7 of the Yukon Territory Act, as to despatching copies of the Ordinances to Your Excellency. The Order in Council above referred to of August 16, 1899, contemplates that those Ordinances will be received by the clerk of the Privy Council, but as the section does not expressly designate the officer who is to receive these Ordinances on behalf of the Governor in Council, the undersigned considers it would not be improper to establish as to the Yukon Territory, a rule in accordance with that which prevails as to all the provinces of Canada including the North-west Territories, by which copies of their Acts or Ordinances are transmitted to the Secretary of State. The undersigned recommends, therefore, that the commissioner be instructed for the future to forward copies of all Ordinances within the statutory period, to the Secretary of State.

For the reasons above mentioned, the undersigned recommends that the Ordinances mentioned in the report be left to their operation with the exception of No. 22, 'An Ordinance respecting the legal profession,' and he recommends that this Ordinance be disallowed.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA,

FRIDAY, THE 5TH DAY OF JANUARY, 1900.

PRESENT:

His Excellency in Council.

Whereas the Commissioner of the Yukon Territory in Council did, on the 4th day of May, 1899, assent to an Ordinance, which has been transmitted, numbered 22, and entitled 'An Ordinance respecting the legal profession';

And whereas the said Ordinance has been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice recommending that the said Ordinance be disallowed.

Now, therefore, His Excellency in virtue of the powers conferred upon him by the Act, 61 Victoria, chapter 6, intituled, 'An Act to provide for the government of the Yukon district,' and by and with the advice of the Queen's Privy Council for Canada, has this day been pleased to declare his disallowance of the said Ordinance and the same is hereby disallowed accordingly.

Whereof the Commissioner of the Yukon Territory, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 14th April, 1899.

On a report dated 12th April, 1899, from the Minister of the Interior, stating that amongst a number of Ordinances which have been passed by the Commissioner in

Council of the Yukon Territory under the provisions of section 9 of the Act, 61 Victoria, chapter 6, and which have been despatched in accordance with the provisions of section 7 of that Act, to be submitted to Your Excellency in Council and to be laid before both Houses of parliament, is an Ordinance, No. 11 of 1898, which is entitled 'An Ordinance respecting the sale of intoxicating liquors and the issue of licenses therefor,' which by virtue of its eighty-seventh section came into force and took effect in the Yukon Territory upon the 7th of December, 1898.

The minister further states that he has had the provisions of this Ordinance carefully compared with the provisions of 'The Liquor License Ordinance,' No. 7 of 1897, which was passed in that year by the legislative assembly of the North-west Territories, and that the latter Ordinance contains many provisions which restrict or control the sale of intoxicants, and which are not contained in the Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, and that such Ordinance contains provisions which are not in the other Ordinance at all, and which lessen the restriction and control of the sale of intoxicants, or which have been so varied in their wording as compared with the wording of corresponding provisions in such other Ordinance, that they lead in that direction.

The minister further submits that under the provisions of the Ordinance in question, also, an unlimited supply of intoxicating liquors may be permitted to be brought within the boundaries of the Yukon Territory, there being no provision to the contrary and no method of controlling it, so that the system which has been inaugurated under such Ordinance must result of necessity in the unrestricted and illicit sale of intoxicants in many parts of the territory because of its great extent, its scattered population, the nature of its country and the difficulties that will arise in watching supplies of liquor, after such supplies have been permitted to be brought into the territory.

The minister therefore recommends that such Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, be disallowed by Your Excellency in Council under the provisions of the said section 7 of the Act, 61 Victoria, chapter 6.

The committee advise that the said Ordinance be disallowed accordingly.

JOHN J. MCGEE.

Clerk of the Privy Council.

AT THE GOVERNMENT HOUSE AT OTTAWA,

FRIDAY, the 14th day of April, 1899.

PRESENT :

His Excellency in Council.

His Excellency in virtue of the provisions of the Yukon Territory Act, and by and with the advice of the Queen's Privy Council for Canada, is pleased to order, and it is hereby ordered as follows :—

1. Until an ordinance respecting the traffic in intoxicating liquors shall have been passed by the Commissioner in Council of the Yukon Territory, and shall have been approved by His Excellency the Governor General in Council, no permits shall be issued authorizing the introduction of any liquor into the Yukon territory.

2. The powers of the Commissioner in Council to pass ordinances in respect to the sale or traffic in intoxicating liquors shall be limited by providing in any such ordinance, that no liquor shall be allowed to be in the possession of any person in the said Territory, unless the same has been imported into the said Territory under a permit signed by the commissioner of the district or an officer appointed by the said commissioner for that purpose, under the penalties provided by section 92 of chapter 50,

of the revised statutes of Canada, as amended by section 18 of chapter 19 of 51 Vic., section 94 of the said chapter 50, as amended by section 15 of chapter 22 of 54-55 Vic., section 95 of the said chapter 50, as provided by section 16, of the said chapter 22 of 54-55 Vic., and sections 96, 97 and 99 of the said chapter 50.

And His Excellency is further pleased to order, declare and enact, that from and after the passage of an ordinance respecting the sale or traffic in intoxicating liquors in the Yukon Territory, no liquors shall be imported into the said Territory, or shall be in the possession of any person therein, unless the same has been imported into the said Territory under a permit, signed by the commissioner of the district, or an officer appointed by the said commissioner for that purpose, under the penalties provided by the sections of the North-west Territories Act as amended as hereinafter mentioned.

JOHN J. MCGEE,
Clerk of the Privy Council.

1900.

Copy of a Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 15th day of June, A.D. 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the ordinances passed by the Commissioner of the Yukon Territory Council, during the year 1900, and numbered from 1 to 43, inclusive, being all the ordinances for that year which up to the present time, have been referred to the undersigned, and he is of opinion that these may be left to their operation without comment, with the exception of number 32, intituled 'An Ordinance relating to proceedings against officers of the Crown.' This ordinance provides as follows:—

'In the case of any ordinance, regulation, rule, order, decision, direction or instruction given or made by the Governor in Council, the Commissioner in Council of the Yukon Territory, or by any minister of the Crown, or by a commissioner of the Yukon Territory, or by any person who now occupies, or formerly did occupy the position of chief executive officer of the government of Canada in the Yukon Territory, relating to the government of the Territory, or the acts or conduct of any of the officers of the government of the said Territory, nothing which has been done prior to the 1st day of July, 1900, under, in pursuance of, or in consequence of such ordinance, regulation, rule, order, decision, direction or instruction, shall be the subject of, or shall sustain or give rise to, or support any action, suit or petition or proceeding for damages against any person whatsoever.'

With regard to this ordinance correspondence has taken place by direction of the undersigned, between the Deputy Minister of Justice, the Commissioner of the Yukon Territory, and the Deputy Minister of the Interior, a copy of which is submitted herewith. From this correspondence the nature of the objections to the ordinance in question will sufficiently appear, as well as the reason stated in support of it by the Commissioner and the Deputy Minister of the Interior.

The undersigned entertains no doubt that the ordinance is *ultra vires*, so far as it is intended to affect causes of action against Your Excellency's government or the ministers or officers thereof, and further the undersigned is not disposed to approve of retroactive legislation, particularly of a character so general and comprehensive as the present ordinance. It is stated by the Deputy Minister of the Interior, however, that Your Excellency in Council has passed a similar ordinance, but the undersigned assumes that the questions to which he has referred must have escaped consideration

at the time. He recommends, therefore, that the matter be reconsidered, with a view to such modification of the ordinance, to be effected under the authority of Your Excellency in Council, as the necessity and justice of the case seem to require.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory and to the Deputy Minister of the Interior, for their information, and for such further action as is herein recommended.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to the Commissioner of the Yukon Territory.

DEPARTMENT OF JUSTICE, OTTAWA, 5th December, 1900.

SIR,—In examining the ordinances of the Yukon Territory for the present year, I have observed No. 33, intituled 'An Ordinance relating to proceedings against officers of the Crown,' which is intended to do away with any cause of action which may have existed for anything done prior to 1st July, 1900, under and in pursuance, or in consequence of any ordinance, regulation, rule, order, decision, direction or instruction of the Yukon Council or the officers of that government.

This legislation seems objectionable as being retroactive, and as interfering without any explanation so far as appears upon the ordinance, with vested rights. I presume it was intended to apply to some particular case or class of cases. It is legislation of a very unusual character, not to be justified, I should think, except by very exceptional circumstances. Therefore, before reporting upon the ordinance, the minister would like to have your report upon it explaining the reasons for the ordinance, and the circumstances under which the council considered it justifiable.

I may add that it seems intended by this ordinance to affect causes of action arising out of regulations, orders or directions of the Governor in Council and ministers of the Crown, and the minister would like to be informed as to the reason, if any, upon which it is apprehended that the territorial council has authority to take away such rights of action.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Commissioner of the Yukon Territory to the Hon. the Minister of Justice.

COMMISSIONER'S OFFICE, DAWSON, Y.T., 7th January, 1901.

SIR,—In reply to yours of 5th December, referring to Ordinance 33, really Ordinance 32, passed by the territorial council, intituled 'An Ordinance relating to proceedings against officers of the Crown,' the only report I can give you is as follows :—

I inclose an exact copy of the document which was transmitted to this office from Ottawa, together with a copy of a letter received from the Deputy Minister of the Interior which accompanied it, referring to it. As to what Acts it was intended to

deal with retroactively I am not aware, but it has been intimated to me that some of the Acts of my predecessor in closing the creeks against further location were considered illegal, and it was intended to bring action against the government for damages through the refusal to record claims on such creeks by parties who located and applied for record. Possibly the Minister of the Interior can give you more definite information on the matter than I can. Council passed the Ordinance at the request of the government at Ottawa, as it was directed at the time, and did not inquire particularly into the reasons for its passage.

Your obedient servant,

WILLIAM OGILVIE,
Commissioner.

DEPARTMENT OF THE INTERIOR, OTTAWA, 1st August, 1900.

Enclosure.

DEAR MR. OGILVIE,—I beg to inclose you herewith draft copy of an Ordinance which it is the wish of the minister should be passed at the earliest convenience of the Yukon council, and a copy certified and returned to this office.

This is an important matter and should be dealt with at once. Your kind attention will therefore oblige.

Yours, &c.,

JAS. A. SMART.

Wm. Ogilvie, Esq., Commissioner, Dawson, Yukon Territory.

Ordinance No. of 1900.

AN ORDINANCE RELATING TO PROCEEDINGS AGAINST OFFICERS OF THE CROWN.

Assented to, 1900.

The Commissioner of the Yukon Territory, by and with the advice and consent of the council of the said territory, enacts as follows :—

1. In the case of any Ordinance, regulation, rule, order, decision, direction or instruction given or made by the Governor in Council, the Commissioner in Council of the Yukon Territory, or by any Minister of the Crown, or by a Commissioner of the Yukon Territory, or by any person who now occupies or formerly did occupy the position of Chief Executive Officer of the government of Canada in the Yukon Territory relating to the government of the said territory, or the Acts or conduct of any of the officers of the government of the said territory, nothing which has been done prior to the first day of July, 1900, under, in pursuance of, or in consequence of such Ordinance, regulation, rule, order, decision, direction or instruction shall be the subject of, or shall sustain or give rise to or support any action, suit or petition or proceeding for damages against any person whatsoever.

The Deputy Minister of Justice to the Deputy Minister of the Interior.

DEPARTMENT OF JUSTICE, OTTAWA, 6th February, 1901.

SIR,—I am directed to inform you that in examining the ordinances of the Yukon Territory for the last year I notice particularly No. 33, intituled 'An Ordinance relating to proceedings against officers of the Crown,' which is intended to do away with any cause of action which may have existed for anything done prior to 1st July, 1900,

under any ordinance, regulation, rule, order, decision, direction or instruction of the Governor in Council, the Commissioner in Council, any Minister of the Crown, or officer of the government of the territory. This ordinance was considered remarkable, not only as being retroactive and interfering without any explanation with vested rights, but also as attempting to take away right of action against the government of Canada, which the minister conceived was beyond the authority of the Yukon Council to do. I accordingly wrote Commissioner Ogilvie asking for explanations to be considered by the minister before reporting upon the ordinance. The minister has just received Mr. Ogilvie's reply, in which he incloses copy of a letter from you to him of the 1st of August last, inclosing a draft copy of the ordinance, and stating that it was the wish of your minister that it should pass at the earliest convenience of the Yukon Council. Mr. Ogilvie adds that the ordinance was passed upon this request, and that the council did not inquire particularly into the reasons for its passage, and he refers the Minister of Justice to the Minister of the Interior for the explanation sought. I presume this ordinance was intended to apply to some particular case or class of cases, but the minister thinks that perhaps the ordinance goes further than is necessary or was intended, and he entertains no doubt that the Yukon Council has no authority to legislate affecting causes of action against the Dominion government. The minister would like to know, therefore, what are the circumstances calling for this ordinance, and whether your department does not consider that the ordinance should be modified.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Deputy Minister of the Interior to the Deputy Minister of Justice.

DEPARTMENT OF THE INTERIOR, OTTAWA, 28th February, 1901.

Re Yukon Legislation, 1900.

SIR,—In reply to your letter of the 6th instant with reference to the Ordinance passed by the Commissioner of the Yukon in Council, No. 32, and intituled 'An Ordinance relating to proceedings against officers of the Crown,' I have the honour to inform you that the above mentioned Ordinance was passed to protect against actions which might be brought in respect of the acts of police officers and others, done under stress of circumstances, which might not possibly be authorized by law, but which were in the general interest of peace and good order in the community. It is considered that it was a wise and proper thing to pass such an Ordinance. The Governor in Council passed a similar one.

It is also considered that the fact that the Yukon council has not authority to legislate in respect of actions against the federal government, would not be sufficient reason for disallowing. That phase of the Ordinance would simply be of no effect.

I have, &c.,

JAS. A. SMART,

Deputy Minister of the Interior.

**MINISTERS OF JUSTICE AND DEPUTY MINISTERS OF JUSTICE,
1896-1900.**

	From	To
Hon. A. R. Dickey, K.C	Jan. 15, 1896	July 8, 1896.
Sir Oliver Mowat, G.C.M.G., K.C.	July 13, 1896	Nov. 17, 1897.
Hon. David Mills, K.C	Nov. 18, 1897. . . .	

DEPUTY MINISTER OF JUSTICE.

	From	To
E. L. Newcombe, M.A., LL.B., K.C.	March 19, 1893 . . .	

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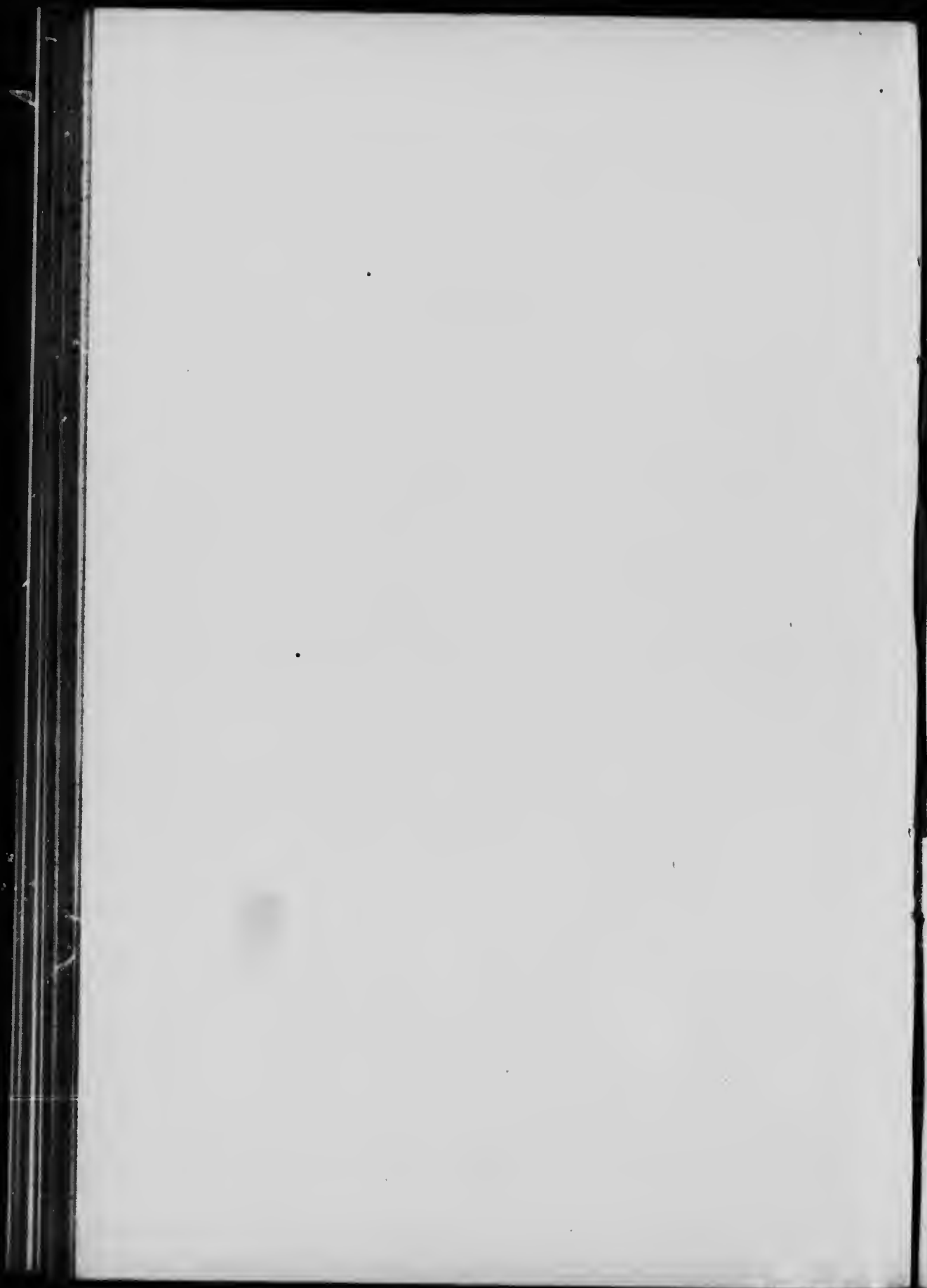


TABLE OF DISALLOWED ACTS, 1899-1900.

MANITOBA.

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
63-64 Vict., 1900, chap. 47.	An Act respecting real property in the Province of Manitoba.	Certain provisions relating to plans and their registration have been found to be embarrassing and vexatious in so far as they apply to Dominion Lands in that Province.	6 June, 1901 15 July, 1901	88 91

BRITISH COLUMBIA.

62 Vict., 1899, chap. 39.	An Act respecting Liquor Licenses.	Considered undesirable that certain provisions in these Acts respecting Japanese should remain in operation.	14 Nov., 1899 12 Apr., 1900	103 122	
Chap. 44.....	An Act to grant a Subsidy to a Railway from Mid- way to Penticton.				
Chap. 46..	An Act to amend the Coal Mines Regulation Act.	Provisions of the Act are <i>ultra vires</i> as directly affecting the regulation of trade and commerce and other matters within the authority of Parliament.	18 Apr., 1899 16 Aug., 1899 14 Nov., 1899 12 Jan., 1900 12 Apr., 1900	94 99 103 114 122	
Chap. 50 . . .	An Act to amend the Placer Mining Act.				
63 Vict., 1900, chap. 11.	An Act to regulate Immi- gration into British Col- umbia.				
Chap. 14.... .	An Act relating to Employ- ment on Works carried on under Franchisees granted by Private Acts.		Inadvisable to leave Act to its operation ; and Act is inconsistent with general policy of Dominion respecting immi- gration, and involves question of foreign relations. Act obviously and solely directed against Asiatics, including Japanese. Policy of Act contrary to Imperial interests and might interfere with International relations. Legislation affects aliens and therefore <i>ultra vires</i> of Provincial legislation and also interferes with general policy of Dominion respecting immigration.	20 Sept., 1900	126
				5 Jan., 1901	135
				5 Mar., 1901	139
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Chap. 14.... .	An Act relating to Employ- ment on Works carried on under Franchisees granted by Private Acts.	Inadvisable to leave Act to its operation ; and Act is inconsistent with general policy of Dominion respecting immi- gration, and involves question of foreign relations. Act obviously and solely directed against Asiatics, including Japanese. Policy of Act contrary to Imperial interests and might interfere with International relations. Legislation affects aliens and therefore <i>ultra vires</i> of Provincial legislation and also interferes with general policy of Dominion respecting immigration.	20 Sept., 1900	126	
			5 Jan., 1901	135	
			5 Mar., 1901	139	
Chap. 14.... .	An Act relating to Employ- ment on Works carried on under Franchisees granted by Private Acts.	Inadvisable to leave Act to its operation ; and Act is inconsistent with general policy of Dominion respecting immi- gration, and involves question of foreign relations. Act obviously and solely directed against Asiatics, including Japanese. Policy of Act contrary to Imperial interests and might interfere with International relations. Legislation affects aliens and therefore <i>ultra vires</i> of Provincial legislation and also interferes with general policy of Dominion respecting immigration.	28 May, 1901	142	

YUKON TERRITORY.

1899-99. No. 22.	An Ordinance respecting the Legal Profession.	Inconsistent with provisions of Ordinance previously passed on same subject by Dominion Government and is therefore <i>ultra vires</i> .	11 Dec., 1899	155
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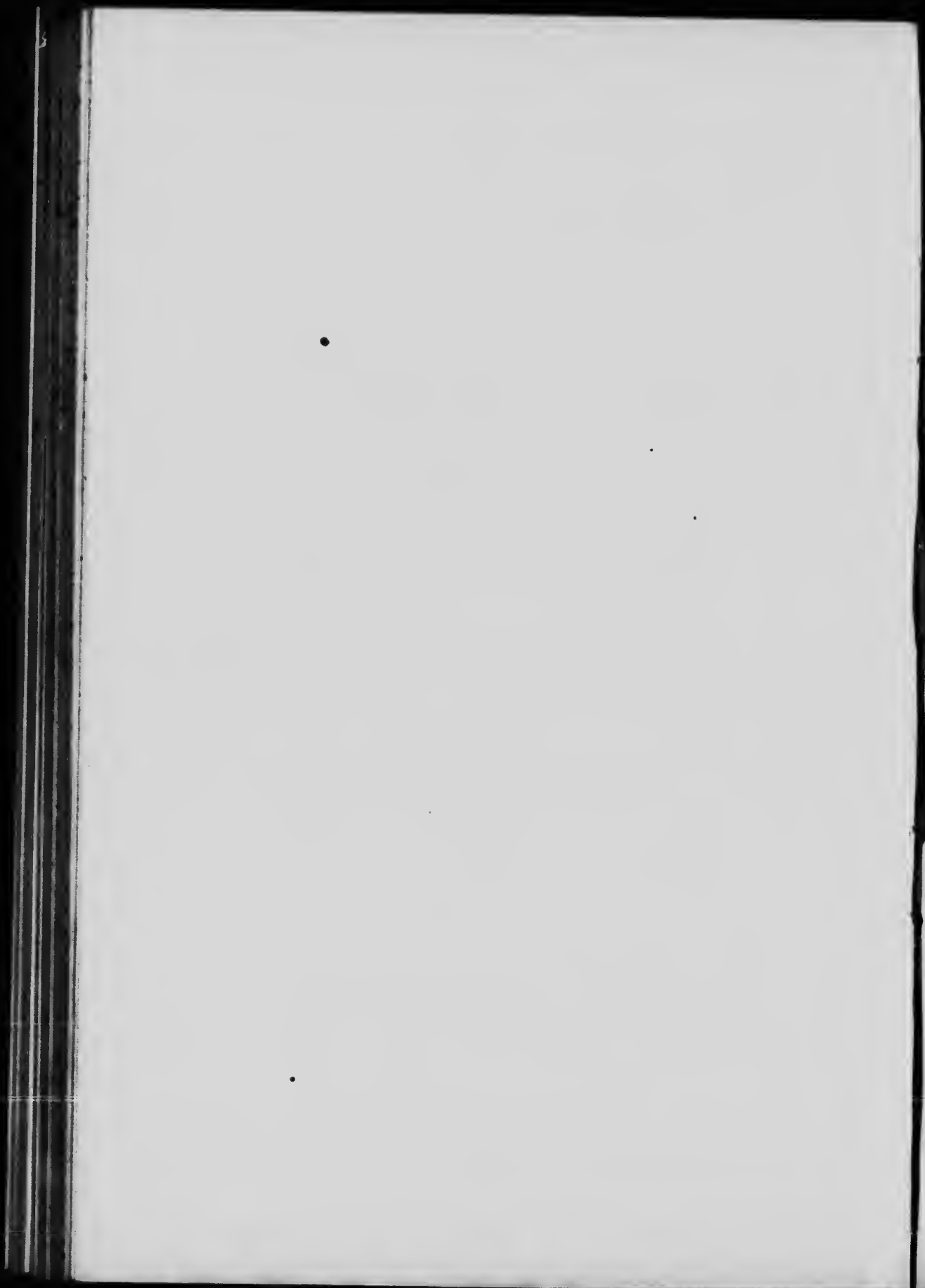


TABLE OF ACTS, 1899-1900.

ONTARIO.

Acts.	Title.	Reasons for Objections or Comments.	Page.
62 Vict. 1899, chap. 10.	An Act to amend the Mines Act.	Infringes on subject of Trade and Commerce. Provincial Legislature cannot limit Parliament in choice of name of company incorporated by it.	3
Chap. 34.....	An Act to improve the law relating to the Fisheries of the Province.	Sections 6, 7 and 14 seem to affect the regulation of fishing which is <i>ultra vires</i> of Provincial Legislature.	3
Chaps. 92, 93, 94, 96, 100, 103-106.	Relating to the incorporation of certain railway companies therein mentioned.	Contains provisions relating to aliens, which is a subject within jurisdiction of Parliament by Sec. 91, B.N.A. Act.	4
63 Vict., 1900, chap. 24	An Act respecting the licensing of Extra Provincial corporations.	Provincial Legislature cannot prevent or limit the exercise of powers of a company conferred by Parliament of Canada relating to subjects enumerated in Sec. 91 of B.N.A. Act. Interprovincial trade or trade that concerns Dominion cannot be restricted or prohibited by Province. Act is <i>ultra vires</i> .	11, 36
Chap. 50.....	An Act respecting the Fisheries of Ontario.	Enactment of Fishery Regulations and Restrictions is within exclusive competence of Parliament and therefore <i>ultra vires</i> of Provincial Legislature, and conflicts with policy and legislation of Dominion.	10, 41
Chap. 13.....	An Act to amend the Mines Act.	Imposes an export duty on nickel, and nickel and copper ores and matte exported from the Dominion. Infringes on the subject of Trade and Commerce.	10, 44
62 Vict., 1899, chap. 23.	An Act respecting Fisheries and Fishing.	Some of provisions seem to constitute regulations respecting mode and manner of fishing, which are under the jurisdiction of Parliament.	49
Chap. 43.....	An Act to amend the law respecting Railways, with reference to the payment of certain debts incurred in their construction and to the sale of such railways in certain cases.	Act can have no application to Railways incorporated by Parliament of Canada, or declared by Parliament to be for general benefit of Canada. Incompetent for Provincial Legislature to provide for registration or sale of a company's property, or for winding up of company's affairs by reason of insolvency, the subjects of bankruptcy and insolvency being one within exclusive authority of Parliament.	49

NOVA SCOTIA.

62 Vict., 1899, chap. 16.	An Act to amend Chap. 86 of the Revised Statutes 'of the property and civil rights of aliens.'	Deals with the subject of aliens, which being within exclusive jurisdiction of Parliament is <i>ultra vires</i> of Provincial Legislature.	52
Chap. 126.....	An Act to incorporate the Cape Breton Railway Extension Co. (Limited).	Doubtful if Provincial Legislature can incorporate a company to build and maintain bridge over Straits of Canso, the Straits being a navigable channel of the sea, are so far as shipping and navigation are concerned within exclusive jurisdiction of Dominion Parliament.	52
Chap. 4. ...	An Act respecting Fore-shores and Beds of Rivers.	Especially authorizes or impliedly sanctions Lieutenant Governor in Council to grant or lease beds of harbours and appropriate income arising therefrom. As harbours belong to Canada and not to Provinces, this provision is <i>ultra vires</i> . Also authorizes leasing of fish traps or weirs on any part of coast, so <i>ultra vires</i> as affecting regulation of Fisheries.	56

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NEW BRUNSWICK.

Act.	Title.	Reasons for Objections or Comments.	Page.
63 Vict., 1900, chap. 63.	An Act relating to the Town of Newcastle.	Sections 4 and 5 authorize town council to make by-laws and regulations, to regulate and license traders, manufacturers, firms and persons who shall carry on trade or employment within town and to fix amount to be paid by same. Section 6 prohibits persons, companies or corporations from engaging or carrying on a business for which a license is required, until such license is paid. Provincial Legislature is incompetent to enact laws for regulation of Trade and Commerce, or delegate any authority to make such laws.	75
Chap. 86....	An Act relating to the Tobique Manufacturing Company (Limited).	Act recites that work authorized by Act of Dominion Parliament incorporating company was <i>ultra vires</i> , and provincial act purports to authorize company to do same work. Dominion Act incorporates company to do business throughout Canada and authorizes obstructions being placed in navigable streams. Provincial Act is therefore <i>ultra vires</i> and deals with matters entirely within purview of Parliament.	75, 79

MANITOBA.

62-63 Vict., 1900, chap. 4	An Act to amend 'The Children's Protection Act of Manitoba.'	Section 1 authorizing Attorney General to remove child to industrial school or refuge outside of province, can only have effect so far as the territorial and other jurisdiction of Legislature is concerned and cannot authorize detention of child outside limits of the Province.	81
Chap. 14 ...	An Act respecting the protection of game.	Doubtful if Provincial Legislature has power to prohibit the export of any articles produced in province. See Dominion and Provincial Legislation, Vol. I., pp. 929, 1124, 1152.	85
Chap. 35....	An Act to amend 'The Assessment Act.'	Imposition of license taxes from private or unincorporated banks is <i>ultra vires</i> , as Bank Act does not contemplate that these classes of banks should be permitted to do business.	85
Chap. 55 ...	An Act respecting the taxation of corporations and others for the purpose of supplementing the revenues of the Crown in the Province of Manitoba		

BRITISH COLUMBIA.

62 Vict., 1899, chap. 16.	An Act to amend 'The Constitution Act.'	See Dominion and Provincial Legislation 1867-95, pp. 206-213, and 1896-98, p. 15.	103
Chap. 43....	An Act to amend 'The Masters and Servants Act.'	Doubtful if Provincial Legislation has power to enact legislation which appears to affect the regulations of Trade and Commerce.	105 120
Chaps. 78-81, 83-89 in- clusive.	Relating to the incorporation of certain railway companies therein mentioned.	Contain provisions relating to aliens: a subject within the jurisdiction of Parliament by section 91, B.N.A. Act also contains provisions that if any railway should at any time be declared by Parliament to be for general benefit of Canada, all powers and privileges granted by Act of Incorporation or British Columbia Railway Act should cease. Incompetent to Provincial Legislation to enact what is to take place in the event of Parliament exercising its constitutional authority in respect of railways declared to be for the general benefit of Canada.	104 105 122

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Chap. 82....	An Act to incorporate the Chartered Commercial Company of Vancouver.	Some of the objects of this company appear to relate to subject of banking, which is exclusively within Dominion jurisdiction, rather than to any matter within Legislative authority of Province.	106
63 Vict., 1900, chap. 1.	An Act relating to Extra Provincial Investment and Loan Societies.	Provisions of Act imposing penalty upon officers of company or society not possessing Provincial license for offering for sale or negotiating sale of stock, is an interference with jurisdiction of Parliament and established policy of Dominion. Provisions are <i>ultra vires</i> as affecting regulations of Trade and Commerce.	131 142
Chap. 54....	An Act to revise and consolidate the Vancouver Corporation Act.	Provisions respecting power of regulating trade licenses, licensing of insurance companies, business of whole sale or retail merchant trader and of other trades, businesses and employments must be construed as intended for local purposes only and as embracing or affecting large subjects of regulation of Trade and Commerce generally.	135
Chap. 47....	An Act to incorporate the Grand Forks and Kettle River Railway Co.	Authority of Provincial Legislature with regard to 'local works or undertakings' by the exception mentioned.	138
Chap. 55 ..	An Act to amend the Vancouver, Northern and Yukon Railway Co.	Questionable whether it is competent to Province to authorize construction or operation of railway to boundary line of Province, or having its two termini upon the boundary.	

PRINCE EDWARD ISLAND.

62 Vict., 1899, chap. 4.	An Act respecting the fisheries and rights of fishing in the Province of Prince Edward Island.	Some of the sections appear to be outside the regulation of the Fisheries and may have that effect are beyond the jurisdiction of the Province.	147
Chap. 19....	An Act to amend the 61st Vict., chap. 3.	Act affects to some extent the regulation of Trade and Commerce.	147
Chap. 20....	An Act to amend 'An Act to impose a direct tax on certain classes of Traders.'	Act is to some extent subject to the same as those which have been made respectively by Chap. 19.	148
63 Vict., 1900, chap. 11.	An Act to further amend an Act to consolidate and amend the several Acts incorporating the city of Charlottetown.	Power to regulate and license traders not resident within the city can be acted upon only in so far as the regulations to be made under it relate strictly to property and civil rights or private and local matters within Province and not to the regulation of Trade and Commerce.	149

YUKON TERRITORY.

No. 7.	An Ordinance respecting Ferries.	Artificial interpretation of word "license" would probably lead to some difficulty and confusion.	155
No. 27.....	An Ordinance respecting Intoxicating Liquors.		
No. 16.....	(Without title)....	Contain retroactive provisions. Doubtful if the Commissioner in Council, executing a delegated power, has authority to legislate retroactively.	155
No. 19.	An Ordinance respecting Bills of Sales and Chattel Mortgages.		

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No. 23.....	An Ordinance respecting the Dawson Water Front.	Probably <i>ultra vires</i> , as dealing with Dominion Lands, a subject over which Commissioner in Council has no jurisdiction.	155
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No. 32.....	An Ordinance relating to proceedings against officers of the Crown.	Ordinance is <i>ultra vires</i> so far as it is intended to affect causes of action against Dominion Government or the Ministers or officers thereof, and legislation is also retroactive.	158

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