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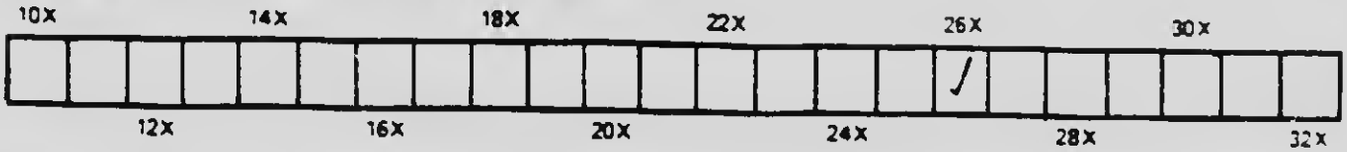

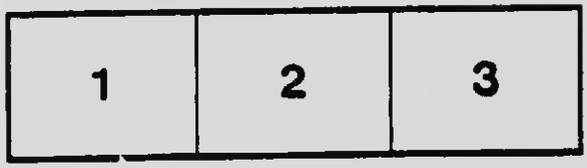

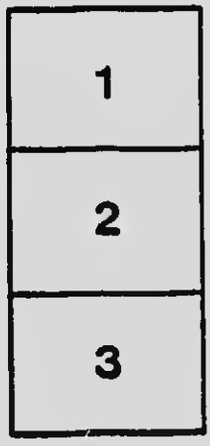

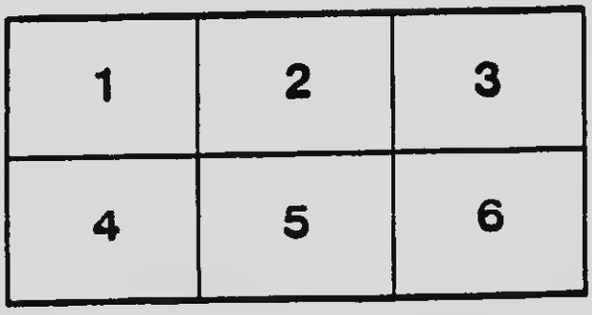

THE CREDIT OF CANADA

HOW IT IS AFFECTED BY THE ONTARIO POWER LEGISLATION

VIEWS OF BRITISH JOURNALS

AND OF ENGLISH AND CANADIAN WRITERS AND CORRESPONDENTS

THE CREDIT OF CANADA

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AND OF ENGLISH AND CANADIAN WRITERS AND CORRESPONDENTS

1909

R. G. McLEAN, PRINTERS
TORONTO

INDEX.

INTRODUCTION.

Petitions for the disallowance of the Power Commission Act of 1909, passed by the Government of the Province of Ontario, have been forwarded in great numbers to the Governor General of the Dominion of Canada.

Very many grounds have been taken upon which the Dominion Government has been asked to veto the legislation, some of them raising important Constitutional questions, but the one main ground which seems to be common to all of the Petitions, and which perhaps is of chief importance in the matter, is that by the legislation in question, the credit of the Dominion of Canada as a whole is injuriously affected in England, and in the money centres of the world.

The question of injury to the credit of the Dominion is one which can only be determined by weighing the opinions of men competent to judge, who have expressed themselves on the subject.

The whole matter has been exhaustively discussed in the English press; articles have appeared in the leading British financial journals, also in Canadian newspapers and many letters have been written on the subject by prominent financial and public men in England and in Canada and in the United States.

For convenient reference, this compilation has been made, embodying extracts from such articles and letters; quotations only are given because of the multiplicity of the writings referred to, and because of the repetition of points, inevitable in a discussion of this character.

PROFESSOR DICEY'S OPINION.

Extracts from the Opinion of Professor A. V. Dicey, K.C., LL.D., Vinerian Professor of English Law, University of Oxford, etc., etc.

Answer to Fifth Question. The injustice and impolicy of these Acts is almost patent. It is clear, further, that though they may directly affect only property and civil rights in a particular Province, they must affect the credit and interest of the Dominion of Canada as a whole.

Persons who suffer from unjust legislation of a Provincial Legislature have the following remedies:

1. They may, if a given Act, *e.g.*, the Power Commission Act, 1909, is still liable, as I believe from the papers sent me it is, to disallowance by the Governor-General, petition for its disallowance. It is hardly, I may add, possible to conceive a stronger case in favor of disallowing an Act.

LORD RIDLEY'S LETTER.

LETTER FROM LORD RIDLEY TO THE HONORABLE W. S. FIELDING. LORD RIDLEY IS PRESIDENT OF THE TARIFF REFORM LEAGUE, AND ONE OF THE FOREMOST PUBLIC MEN IN GREAT BRITAIN.

10 Carlton House Terrace,
London, May 4, 1909.

The Hon. W. S. Fielding, Ottawa:

SIR,—I have received from Canada a copy of an Act recently passed by the Ontario Government entitled "An Act to provide for the transmission of Electrical Power to Municipalities, to validate certain contracts entered into with the Hydro Electric Power Commission of Ontario, and for other purposes."

The proposals in this Act, overriding the views of the ratepayers, making contracts without their consent, and enacting very unusual legislation staying pending actions, are of so novel and far-reaching a character that I venture to hope the Dominion Government will give very serious consideration to the question. I am reluctant to draw attention to a matter which primarily is a purely Canadian concern, but as one largely interested in Canadian matters, both as an Investor and as a Legislator, I feel very strongly that the effect of such an Act on the mind of the British Investor may be most prejudicial, and that it is a matter of Imperial concern that this effect should not be produced.

I venture to hope that the Dominion Government will give this Act its most serious consideration.

Yours faithfully,

(*Signed*) RIDLEY.

FROM SIR SEYMOUR KING.

Letter from Sir Seymour King to the Honorable W. S. Fielding.

Sir Seymour King is a banker, and a member of Parliament for one of the divisions of London. He is the head of large and influential financial and banking interests in London.

To the Hon. W. S. Fielding, Minister of Finance, Ottawa:

Sir, I have just received from Canada a copy of the Act recently passed by the Ontario Legislature entitled "An Act to amend an Act passed in the 7th year of His Majesty's Reign, Chaptered 19, intituled 'An Act to provide for the transmission of Electrical Power to Municipalities' to validate certain contracts entered into with the Hydro Electric Power Commission of Ontario, and for other purposes," and feel such alarm over the situation that I am constrained to draw your very special attention to it, and ask if your Government cannot intervene to veto it. Unless this can be done, I feel satisfied that the effect on the credit of the Dominion as a whole will prove most injurious.

Financiers in London have been for the last three years following the actions of the Ontario Government in regard to the question of Electrical Power with a great deal of concern. The securities of companies incorporated by the Province for the development of Niagara Power are widely held in England. These securities have been very much depreciated by the threatened competition of the Government undertaking and as such competition is understood to be in violation or at any rate in derogation of the terms of the charter granted by the Ontario Legislature, the favorable opinion formerly entertained here of Canadian Institutions has received a severe shock which will reflect on the credit, not only of the Province immediately implicated, but of the Dominion as a whole.

The proposals of the recent Act of 1909 are legislative innovations of a most unheard-of character.

This Act assumes to make for several of the principal municipalities of the Province a contract they have not made for themselves, and imposes upon the ratepayers, without their consent, a very serious liability, the ultimate limits of which are unascertained and unlimited.

The Act also contains extraordinary provisions forbidding resort to the courts and staying pending actions.

Such disregard of fundamental principles of legislation is calculated to awake grave distrust in the mind of the British Investor and the contemplation of such levity in dealing with grave matters of legislation cannot fail to produce a serious distrust of Canadian investments. The British public does not discriminate nicely between the Provinces and the Dominion in matters of this sort and the latter will inevitably find itself involved in the odium attaching to the Provincial Legislation.

As a banker, a member of parliament, and one who is largely interested in Canadian investments, I feel justified in urging upon you with all earnestness, the desirability of your Government disallowing this legislation in order that investors may be reassured and potential damage to the Dominion averted.

(*Signed*) Seymour King.

VIEWS OF INVESTMENT BROKERS.

LETTER FROM H. EVANS GORDON & COMPANY TO THE RIGHT HONORABLE LORD STRATHCONA, LORD HIGH COMMISSIONER FOR CANADA.

Messrs. H. Evans Gordon & Company are a well-known and highly respected firm of investment brokers in London.

1 Sun Court, Cornhill, E.C.,
London, 29th April, 1909.

The Right Hon. Lord Strathcona and Mount Royal, Lord High Commissioner for Canada, 28 Grosvenor Square, W.

My Lord, As many of our clients and friends are largely interested in Canadian Securities, we are naturally alarmed for ourselves and their interests, in the recent Bill that has been passed by the Ontario Provincial Legislature, a copy of the Bill being now before us. If this Bill is allowed to remain unchallenged, we fear it will have a fatal effect upon all Ontario Securities and indirectly also upon Dominion Securities as a whole.

In the face of vested interests, the local government entered upon the doubtful expedient of offering to supply municipalities with cheap power at about $22 per horsepower, and several municipalities accepted this offer. Subsequently finding it necessary to modify this contract, the Government submitted other contracts agreeing to supply the power at the Falls, leaving the cost of transmission, etc., to be borne by the municipalities. This being a very uncertain cost, many of the municipalities refused to sign the new contract, the mayor of Galt, for instance, refusing to do so. The Government (by Section 3 in the Act) ordered as follows:

> "The said contract as so varied as aforesaid, shall be treated and conclusively deemed to have been executed by the said Corporation of the Town of Galt."

and further in Clause 6:

> "That it shall not be necessary that the said contract as so varied as aforesaid be approved of by the Lieutenant-Governor of Canada."

As Judge Anglin, in an exhaustive judgment, stated that the new contract substituted for the old without an appeal to the people was invalid. Section 8 in the Bill enacts:

> "Every action which has been heretofore brought and is now pending wherein the validity of the contract or any By-law passed or purporting calling in question the jurisdiction, etc., by whomsoever such action is brought shall be and the same is hereby forever stayed."

Where is the security for vested interests or the right to appeal under an injustice if such sweeping Provincial Laws are to be placed on the Statute Book?

We shall feel it a special favor if you will inform us how we can bring an influentially signed protest from investors and others interested in Canadian Securities before the Dominion Government, as we feel sure such very arbitrary and inconsiderate legislation must have a very adverse influence if persisted in.

We are, my Lord, yours faithfully,

(*Signed*) H. EVANS GORDON & Co.

FROM A MANAGER OF ESTATES.

EXTRACT FROM LETTER FROM J. W. PALMER TO THE RIGHT HONORABLE LORD STRATHCONA, LORD HIGH COMMISSIONER FOR CANADA.

Mr. J. W. Palmer was Manager of the Estate of the late Lilian Warren, Duchess of Marlborough the sum invested throughout is $1,750,000. Mr. Palmer is now the Manager for the present Duke of Marlborough.

The Decoplene, Dorking, May 5th, 1909.

MY LORD, I have the honor to address your Lordship, as the Lord High Commissioner of Canada, upon a subject which at the present moment is exercising the thoughts and fears not only of myself, but, as I have reason to believe, of a large body of English investors in Canadian securities, and that subject is the trend and effect of Canadian Provincial legislation as it bears upon English capital invested in Canada.

I am one of the executors of the late Lilian Warren, Duchess of Marlborough. During her lifetime (she died on the 11th January last) I acted as her Resident Estate Agent and business adviser, and during that period I came in contact with several Canadian gentlemen, having large interests in electrical companies in the Province of Ontario, Canada.

After discussing with these gentlemen very fully the facts relating to the charters and concessions granted to the Toronto Electric Light Company and the Electrical Development Company of Ontario, Limited, and the future possibilities of those two companies, I readily assented on the apparent good faith of the said charters and concessions, to advise the Duchess to invest money in both companies.

I also advised some of my friends to invest, and I myself invested nearly the whole of my capital in the two concerns.

The sum so invested amounts to between £25,000 and £30,000.

For some months past I have in consequence of the action taken by the Provincial Government of Ontario re the Hydro-Electrical Commission, been in fear as to the value of the securities in which the before mentioned investments were made, and I regret to say my fears have become grave doubts after reading an Act recently passed by the Provincial Government and cited as "The Power Commission Amendment Act, 1909."

If your Lordship has not seen the Act, perhaps I may so far presume as to request you to obtain and peruse a copy of it.

With the knowledge which your Lordship probably possesses of what has been antecedent to the passing of this Bill, I venture to suggest you will probably arrive at the conclusion that it is an extraordinary effusion and one which if its sense and tenor were generally known and realized in this country, would do more to prevent the introduction of English capital into Canada than any

measure I can possibly imagine. It undermines the stability of contracts and of the power of the courts to uphold them or to decree against them.

I will mention a few of its extraordinary provisions. It makes valid the Hydro-Electrical Commission's contracts which had previously been declared by the courts of Ontario to be illegal and different to those which had been voted upon by the people, without giving the people the right to vote upon them again, and declaring that such contracts should not be open to question in any court. It also dispenses with the assent of the Lieutenant-Governor in Council, and what is still worse and of infinitely more importance, it stays proceedings forever in important cases which might and probably would be brought forward for adjudication by the Privy Council in England.

From the above, your Lordship will, I am sure, readily realize that my fears for the safety of the investments in which I am interested are well founded and that these investments are threatened, and seriously threatened if legislation of the character referred to is possible under the Canadian Constitution.

I need hardly say that if such legislation is adopted, nothing will ever induce me to invest a further penny in any Canadian securities, nor could I advise any of my friends to do so; and it appears reasonable to suppose that my feeling and my action would be the feeling and action of my countrymen who had money to invest.

The real gist of my letter is to enquire of your Lordship if:

1. It would not be possible for and according to the Constitution of Canada for the Dominion Government to intervene in a matter of such far-reaching importance with the view of annulling the confirmation of the said Bill, or

2. Is this a matter that should be brought before the Colonial Secretary by English investors, or

3. Ought I to address a protest to the Dominion Government of Canada, or

4. Might I ask your Lordship to make such a protest on behalf of the Executors of the late Duchess, and of my friends and of myself and of others interested in a similar manner in this country, or

5. Would it be possible for your Lordship to request the Dominion Government to delay assenting to the measure until such time as English bondholders and stockholders of the two electrical companies mentioned herein, prepared, signed and submitted to the Dominion Government a petition against the confirmation of the Bill.

Trusting your Lordship will forgive the length of this letter and will give it your favorable consideration.

I have the honor to be,

Your Lordship's most obedient servant,

(*Signed*) J. W. Palmer.

A BRITISH INVESTOR.

LETTER FROM MR. C. F. K. MAINWARING, A BRITISH INVESTOR IN CANADIAN SECURITIES, TO THE HONORABLE LORD STRATHCONA, LORD HIGH COMMISSIONER FOR CANADA

3rd May, 1909.

The Rt. Hon. Lord Strathcona and Mount Royal, Lord High Commissioner for Canada, 28 Grosvenor Square, W.

My Lord,—I have received from my financial agents the copy of an Act of Parliament passed by the Province of Ontario, relating to the Hydro Electric Commission, and they have advised me regarding the provisions it contains. As an investor in Canadian securities, I am much concerned to find that, apparently, this legislation is un British and unfair. It is in support of plans of the Government to supply power to the municipalities, and not only does it seem to disregard vested rights and interests, but it makes contracts for several municipalities different in form and in substance from what had been authorized by the ratepayers by their votes when the matter was formerly submitted to them, and declares that these contracts shall not be open to question in any court. I am further advised that certain pending suits attacking the proceedings of the Government have been stayed, so that the litigants are prevented from bringing the matter to the Privy Council. I am further told that the assent of the Lieutenant-Governor in Council to the contracts has been dispensed with, when by former legislation it was required as a safeguard in the interests of the public. I do not fully understand the matter, but such extraordinary legislation is alarming, and if permitted, must necessarily affect the financial interests of the Dominion of Canada. I make this representation to you, feeling sure that you will take whatever steps are necessary and proper in the matter.

I am, my Lord, your obedient servant,

(*Signed*) C. F. K. MAINWARING.

FROM MIDDLE TEMPLE.

LETTER FROM MR. H. BRENT GROTRIAN TO THE RIGHT HONORABLE LORD STRATHCONA, LORD HIGH COMMISSIONER FOR CANADA.

Mr. Grotrian is a member of the Bar, and represents a number of trust estates, and has the direction of the investment of large sums of money.

6 Pump Court, Middle Temple Lane, Temple, E.C.

To the Rt. Hon. The Lord Strathcona and Mount Royal, G.C.M.G., G.C., V.O., etc., Lord High Commissioner of Canada:

My Lord, It is with feelings of concern and misgivings that I have recently seen the provisions of an Act passed by the Government of Ontario, an Act to amend an Act passed in the seventh year of His Majesty's reign, Chaptered 19, entitled "An Act to provide for the transmission of Electric Power to Municipalities," etc.

It has come as an unpleasant surprise to people in this country that such legislation should be possible in any part of Canada, and I fear that if the Act is allowed to remain upon the Statute Book in its present form a damaging blow will be struck not only at the financial credit of the Province of Ontario, but at the whole Dominion. For this reason the matter cannot be regarded as one of purely local concern, and I trust, therefore, that your Lordship will be willing to make representations in the proper quarter with a view to the serious consideration of this legislation by the Government of the Dominion.

I am, my Lord, your obedient servant,

(*Signed*) H. BRENT GROTRIAN.

"THE LONDON STANDARD."

Extracts from an Article in "The London Standard," of May 7th, 1904, Headed "British Capital and Canadian Enterprise."

Having regard to the importance which attaches to the free financing by the Home Country of commercial and industrial enterprise in the various parts of the Empire, it is always to be regretted when circumstances occur which have a restraining effect upon the readiness of the British public to invest in such enterprises. We have frequently drawn attention in these columns to the fact that insufficient information is sometimes responsible for restricting the amount of British capital flowing to Canada and other parts of the Empire, and when to these difficulties have to be added occasional sharp controversies affecting the financial interests of concerns in which British capital has been embarked, it seems of the utmost importance that the greatest pains should be taken to present to the public here the fullest details concerning the points at issue.

But having frankly admitted these two cardinal points, which have to be borne in mind by British investors, it remains fair matter for consideration as to whether the Canadian provinces—and, for that matter, the Canadian Government—should not recognize the disturbing effect of these disputes (which, it must be noted, concern themselves not with one or two trumpery companies, but with concerns representing millions of money) upon the minds of British investors, who are, after all, in a position to expedite or retard commercial development in the various parts of the Empire, according as they lend freely or in niggardly fashion the sums necessary to finance such enterprises.

In the months of August and September of last year we made some reference to the affairs of the two companies already mentioned, and the dispute which had arisen with regard to the supply of power to municipalities in Ontario, but we are led to take up the matter once again by reason of a bill which has been passed by the Ontario Legislature, the bill being an amendment of a previous Act. Some of the clauses of this amending bill are so extraordinary that while fully admitting that there may be, and probably is, another side to the controversy responsible for the bill, it seems highly desirable in the interests of Canadian enterprise that the true facts should be presented from some authoritative quarter in such a fashion that the justice or injustice of this Act of the Province of Ontario may be decisively determined.

As we have already said, we have not the slightest wish to prejudge the case, and shall be only too glad to give space in our columns for the views of the other side. It is conceivable that the Electrical Development Company of Ontario may have manifested a disposition to charge monopoly rates for the power supplied, in

which case, of course, it is easy to understand that the Socialistic feeling in the Province would be the more prompted to take steps in defence. At the same time, it will readily be seen that the whole question is one which cannot be ignored by British investors in Canadian securities, and we believe that we are acting quite as much in the interests of the Province of Ontario as we are in the interests of home investors when we suggest that the matter is one calling for a publication of all the facts.

Moreover, while we are referring to this question of the apparent unfair treatment by the Province of Ontario of companies in which British capital is largely invested, we should certainly like to know the precise meaning of the schemes which it is affirmed are now being pushed by the City of Toronto for erecting plant in that city in direct opposition to the Toronto Electric Light Company, also a company backed by British capital. For all these things there must, we feel sure, be some explanation, but such explanation is certainly due and that very promptly to British investors who have embarked capital in Canadian industrial enterprises.

"THE FINANCIAL POST."

EXTRACT FROM "THE FINANCIAL POST" OF JUNE 19TH, 1909, HEADED "AN ENGLISH VIEWPOINT."

AN ENGLISH VIEWPOINT.

An English investor, who was sent a May bond list by one of the local firms, in his reply says that when speaking of Canadian securities he is "met with the answer that the late action of the Ontario Legislature has alarmed investors in this country, who have lost confidence in the security that they had fully believed was assured to them in Canada. It was the general opinion that Canada was a thoroughly safe country in which to invest, and that its legislators and its government were themselves guarantees of security. You may obtain investors here, but people are much alarmed, and there is great hesitation in the financial world.

"It has been a great disappointment as it was not expected that any Province of Canada would so act."

"THE FINANCIER AND BULLIONIST."

EXTRACT FROM "THE FINANCIER AND BULLIONIST," LONDON, ENGLAND, OF JULY 30TH, 1909, FROM AN INTERVIEW WITH MR. CHAS. W. FIELD, MANAGING EDITOR OF "THE MONETARY TIMES."

"We can quite understand the alarm of the many British holders of bonds of Ontario's electrical companies. Such extraordinary and un-British law-making is necessarily a blow to Canadian credit in England. Ontario will not be the lone sufferer; the investor thinks of Canada as a whole. He should be able to feel confident that, in whatever part of the Dominion his capital is placed, that money is safe.

Premier Whitney must surely recognize the importance of our good credit in London. Politics should be sidetracked when a nation's financial credit is concerned. Canada comes to London for its Government, Municipal and Railroad loans. It is a quiet and frequent borrower in other directions in this metropolis. Anything, then, that smacks of extreme Socialism, confiscation or legislative tyranny will make borrowing less easy and cause the investor to seek other lands.

The whole controversy has excited much bitterness, as so many interests are involved. Private corporations do not like to observe their undertakings being approached by the wide swallow of Government competition. The Government has no love for hard knocks. One can make certain allowances for both; one can accordish much reading between the lines; one can wink at the political heroics which are sometimes thought to be necessary to Parliamentary reputation, but it is impossible to overlook and allow to stand bullying legislation which takes away the first right of the British subject, and at the same time delivers a serious blow to Canadian credit, and that in the market where a very large part of Canada's monetary requirements are obtained.

"THE FINANCIER AND BULLIONIST."

EXTRACT FROM AN EDITORIAL IN "THE FINANCIER AND BULLIONIST," OF LONDON, OF MAY 7TH, 1909.

"The Ontario Government's policy in reference to electrical power supply excites growing wonder and indignation. Not only is it resented in the province affected, but it is condemned throughout the Dominion as an arbitrary exercise of power. Western opinion is expressed in a long extract we publish to-day from the "Manitoba Free Press," and copies of the "Canada Law Journal" are to hand in which the situation created by the high-handed action of the Government is declared to be illegal—as, indeed, the courts have held. Other Canadian journals assail it on the ground of its flagrant injustice to capital and the consequent ill-effect it may have on industrial, provincial and national credit. As English capital is jeopardized by the Ontario Government's policy, Canadian indignation is shared here, and the incident will not be quickly forgotten or forgiven. That, of course, is bad for legitimate enterprise in Canada; it may have a damaging effect on Ontario's credit, and it may be injurious to the financial interests of the Dominion as a whole, for once capital is scared from any field of investment it cannot easily be attracted back again. Canada has been the favorite with the British investor just because it was believed to be not only a country of vast resources, but one where capital was secure from predatory tactics. Unfortunately the Ontario Government seems bent on shattering his faith and alienating him to the other countries that are clamoring for his support. In that respect the Ontario Government is out of harmony with the rest of Canada, and if there be any constitutional check on an autocracy which violates the law, bewilders the public and drives away needed capital it should be applied by the Dominion authorities without delay."

"THE FINANCIAL TIMES."

ARTICLE BY MR. W. R. LAWSON IN "THE FINANCIAL TIMES," OF LONDON, ENGLAND.

In commenting on the Florence Mining Company's case, to which I referred in a previous article, Mr. Aylesworth, the Dominion Minister of Justice, said that a Provincial Legislature might, if it liked, repeal Magna Charta. Sir James Whitney at once took the hint and rushed through the Ontario Legislature an Act which practically has that effect. He selected the most vital and fundamental clause in it for special repudiation. Article 40 makes King John promise: "To none will we sell, to none will we deny, to none will we delay right or justice." But that happened long ago—the actual date was 1215—and such ancient laws does not suit the present Conservative Legislature of Ontario. It very appropriately concluded its last session by passing a Bill with this amazing clause in it:

(Mr. Lawson here quotes the notorious section eight.)

In its English as well as in its law the above section compares unfavorably with the terse and vigorous language of 1215. Before doing away altogether with Magna Charta and consigning it to the lumber room, Ontario legislators might study it as a model of Bill-drafting. In that important art they certainly do not shine. But in time they may acquire greater skill and come to be imitators of King John. If he had been in Sir James Whitney's place he would not have wasted time on long-winded palaver. He would simply have issued his royal decree that the courts of Ontario "shall be and the same are hereby for ever closed."

This feudal legislation is the latest and most remarkable development of the notorious Hydro Electric Commission scheme. When the Commission started on its wild career as purveyor of cheap power to the municipalities of Ontario it entered into contracts with a number of them to deliver current at the municipal limits at fixed prices. They were then to provide their own distributing plants. Fifteen contracts of this kind were entered into, calling for from 1001 to 10,000 horse power, the latter in the City of Toronto. The contracts were submitted to the ratepayers and confirmed by a popular vote.

So far all was lawful and straightforward. But the Hydro Electric Commission, when it began its share of the work—namely, the purchase of current at Niagara Falls and its transmission to the various municipalities—found that it was undertaking bigger risks than it had bargained for. Whereupon it went back to the various City Councils and induced them to enter into new and entirely different contracts. These were for current at Niagara Falls instead

of at the municipal limits, and their effect was to throw on the municipalities all the risk of the transmission lines without having any control over the building of them; they were to be responsible for the cost, whatever it might be. In each case current was to be charged such a price as would cover the initial cost at Niagara Falls plus the cost of transmission to the points of consumption.

No City Council not fatally infected with the craze for municipalism could have accepted such a wild risk. Most of them did, however, the chief exception being Galt, the Mayor of which refused to sign the new contract. The City Council of Toronto, being red hot on municipal ownership, "shot Niagara," and is now considering how it is to find the money to pay the unknown score. The Mayor and the City Treasurer are at present in London reconnoitering for a three and a half million dollar loan, but Sir James Whitney's repeal of Magna Charta is proving a serious obstacle in their path. The freak Act by which the new contracts have been forcibly validated over the heads of the Ontario courts and in the teeth of repeated decisions against them, has been circulated in the city and is producing its natural effect.

Bankers, trust company directors, finance houses and dealers in Canadian securities have been shown actual proof of what they could never have credited otherwise. Lord Ridley and Sir Seymour King, acting on their behalf, have addressed to the Finance Minister of the Dominion Government, and to Lord Strathcona, the Dominion agent in London, a strong protest against the Act. It finishes with an urgent request for the intervention of the Dominion Government, and here a very important constitutional question arises. From what was said by Mr. Aylesworth about the Florence Mining Company's case, it may be gathered that the present Dominion Government is very chary of exercising its right to disallow Provincial legislation. Where the Act is purely local and affects nobody outside of the Province it holds that it has no power of disallowance. This case cannot, however, be regarded as purely local. It may seriously prejudice the credit of all Canadian securities in London, and thereby hamper not only Government borrowing, but corporate and private finance as well.

The new contracts have been twice before the Ontario courts, and on both occasions they have met with unflattering criticism. In the Galt case a mandamus was applied for to compel the Mayor to execute the substituted contract. Mr. Justice Anglin, in refusing it, said:

"I think the by-law of the town of Galt (authorizing the signing of the contract) could only be passed in breach of faith with the electorate, and that the contract which it purported to require the Mayor to execute would be illegal and contrary to the requirements of the statute. . . . The Mayor, in my view, was justi-

fied in refusing to become a party to the perpetration of their illegal acts."

One of the special objects of Sir James Whitney's Anti-Magna Charta Bill was to validate the illegal acts thus characterized by one of the leading judges of Ontario. The other court case was a suit brought by a ratepayer of Toronto, on behalf of himself and other ratepayers, to set aside the substituted contract, on the ground that it was not in accordance with the by-law of the ratepayers in that behalf. The City of Toronto set us a technical defence that the action was not properly constituted, as the Hydro Electric Commission, the other party to the contract, had not been made joint defendant. Then, when the plaintiff asked leave to amend his plea, another technical difficulty was raised. In the Act constituting the Commission there was a shrewd little clause which indicated some foresight on the part of its authors. It read thus: "Without the consent of the Attorney-General no action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office."

Plaintiff's solicitor applied to the Attorney-General, but he was from home, and the Premier, Sir James Whitney, was Acting Attorney-General *pro tem.* He, of course, refused leave to prosecute his own particular child, but he did more. He gave a reason for his refusal, which for many a year to come should enliven the somewhat dull annals of Ontario jurisprudence: —

"The plaintiff's contention in each case rests upon the view that the municipal council had not the power under the statute to finally enter into contracts with the Hydro Electric Power Commission without submitting the terms of them to the ratepayers. I have personal knowledge that this was not the intention of the Legislature, and I cannot divest myself of that knowledge. It may be that at its next session, which cannot now be long delayed, the Legislature may make a declaration on this subject."

The Legislature did make a declaration on the subject. It passed the illegal contracts validation Act containing the remarkable section 8 above quoted, which stops all proceedings, past or future, with regard to them. "By whomsoever such action is brought it shall be and the same is hereby for ever stayed." Sir James Whitney would have been a Prime Minister and an Attorney-General after King John's own heart. As the Pooh-Bah of Runnymede he would have been in his element, and an interview between him and the bold, bad barons of Magna Charta would have been worth listening to. Few men are born at the proper time and live in the century they really belong to. There is, at least, one Ontario politician of to-day who is seven hundred years behind his age.

Such an outrageous parody of law-making must inevitably provoke energetic resistance. How a Conservative Legislature, and Scotch to boot, could ever have been cajoled into passing it is a

psychological puzzle. The only explanation conceivable is that Ontario is having a very severe fit of municipalizing mania. In order to get a power plant "of the people's own" it is prepared to run any financial risk, to enter into any kind of contract and to declare legal any kind of illegality. This all means a lovely time for the lawyers, but a bad time for investors, who may by chance get into "validated" Ontario securities. Manifestly the whole question must be thoroughly threshed out and satisfactorily settled before any important Ontario loan, whether provincial or municipal, can be offered again in London.

The shortest way out of the difficulty would be for the Dominion Government to disallow the freak Act. With that view the highest financial authorities in the city should let their views be known. There is no need to do it in an ostentatious or offensive way. A private communication to the Finance Minister at Ottawa or to Lord Strathcona at Westminster will serve the purpose quite as well as newspaper correspondence. There is a probability that the Dominion Government may on its own initiative disallow the Act. The injury it threatens to many important interests outside of Ontario, including those of the Dominion Government itself, would be quite sufficient ground for disallowance. But should there be any hesitation at Ottawa a judicious word or two from London would quickly overcome it. In fact, they might be welcomed, and in any case they could not be resented.

It is, however, necessary to consider the other alternative also — the possible refusal of the Dominion Government to disallow the Act. In that event a grave constitutional crisis would be inevitable. The parties who have been thus brutally denied "right and justice" are not going to lie down under it. If the Act should be allowed to come into operation they will challenge it in the local courts, and a constitutional conflict may arise, the end of which cannot be foreseen. Assuming the Act to be declared constitutional, they will have to appeal from court to court until they reach the Privy Council. The decision of no lower court than that can be accepted as final.

In the unthinkable event of the Act being sustained all the way up, the local question will transform itself into a much larger and more difficult question as to the powers of the Provincial Legislatures of Canada. It is highly creditable to the Canadian statesmen of a past generation that any serious friction between the Dominion and the Provincial Legislatures has so far been avoided. Now and again there has been occasion for it, but by judicious handling a crisis has been averted. The possibility and even probability of it still remains. There is no definition of the respective powers of the two bodies clear enough to prevent a collision. Section 91 of the British North America Act enumerates about thirty special subjects which are to be reserved "for the exclusive

legislative authority of the Parliament of Canada." Clause 91 then gives a list of the non-Imperial subjects reserved for the exclusive jurisdiction of the Provincial Legislature. They include:

1. Amendments of the Provincial Constitution.
2. Direct taxation within the Province for Provincial purposes.
3. Borrowing money on the sole credit of the Province.
4. The establishment and tenure of Provincial offices.
5. The management and sale of public lands.
6. The administration of reformatories and public prisons.
7. Hospitals, asylums, charities, etc.
8. Municipal institutions in the Province.
9. Licenses of shops, saloons, taverns, etc., for the purpose of raising Provincial or municipal revenues.
10. Certain kinds of local works and undertakings.
11. The incorporation of joint stock companies with Provincial objects.
12. Solemnization of marriage within the Province.
13. Property and civil rights in the Province.
14. The administration of justice within the Province.
15. The infliction of penalties and punishments.
16. "And generally all matters of a merely local or private nature in the Province."

The legislative powers of a Provincial Parliament are thus very wide, and there was small excuse for Provincial politicians trying to widen them as they have been doing of late. But as a check on them a large power of disallowance was conferred on the Governor-General in Council. At least so the first generation of Canadian jurists thought and taught. Dr. Bourinot, the Clerk of the Dominion Parliament, published in 1888 a very lucid manual of the constitutional history of Canada, in which he said with reference to disallowance of Provincial Acts: "It is now admitted beyond dispute that the power of confirming or disallowing Provincial Acts has been vested by law absolutely and exclusively in the Governor-General in Council."

The Liberals of that day, under the leadership of Mr. Edward Blake, held that the Governor-General could only exercise this power with the advice and approval of his responsible Ministers. Later on they made it a ministerial function, and it is so regarded still. But the ultimate right of appeal to the Privy Council has not yet been interfered with. In the evolution of the new doctrine of "nationhood," old theories and customs are being pushed on one side. Provincial Legislatures are every session standing up for greater autonomy and independence. In due time the Dominion Government will have to draw the line and assert its own rights. It will be a very difficult and puzzling line to draw, especially with the Legislature of Ontario continuing in its present aggressive mood.

"THE STATIST."

EXTRACTS FROM AN ARTICLE APPEARING IN "THE STATIST," OF LONDON, ENGLAND, THE GREAT BRITISH FINANCIAL JOURNAL, IN ITS ISSUE OF JULY 10TH, 1909.

MOST ASTOUNDING LEGISLATION.

In the last session of the Ontario Legislature, however, an Act was passed of a most astounding character, for, *inter alia*, it provided that the contracts which the courts had declared invalid were to be considered as valid. Not only so, it also provided that no appeals with regard to them could be made to the courts. It also declared in the case of one municipality, at any rate, that though the municipality had refused to sign the amended contract, the contract should have full force as if it were signed. Lest our readers should imagine that we are making a travesty of what actually occurred, we reproduce herewith the clauses of the Act verbatim. Clause 5 reads as follows:

"The said contract as so varied as aforesaid shall be treated and conclusively deemed to have been executed by the said corporation of the town of Galt."

Clause 6 is as follows:

"The said contracts as so varied as aforesaid shall be conclusively deemed to be a contract executed by the corporation mentioned in section 3, within the meaning of the said recited Acts, and the Commission therein named may carry out and execute the same, and shall have power and authority to do all acts necessary for that purpose, and it shall not be necessary that the said contracts as so varied as aforesaid be approved of by the Lieutenant-Governor in Council."

And Clause 8 reads as follows:

"Every action that has been heretofore brought and is now pending, wherein the validity of the said contract or any by-law passed or purporting to have been passed authorizing the execution thereof by any of the corporations hereinbefore mentioned is attacked or called in question, or calling in question the jurisdiction, power or authority of the Commission, or of any municipal corporation, or of the Councils thereof, of any or either of these, to exercise any power or to do any of the acts which the said recited Acts authorize to be exercised or done by the Commission or by a municipal corporation, or by the Council thereof, by whomsoever such action is brought, shall be and the same is hereby forever stayed."

IN A HIGH-HANDED FASHION.

It must be pointed out that the grounds on which British capital has already been placed by means of the Electrical Development Company of Ontario, Limited, in Ontario, was a purchase by the company from the Government of certain franchises and rights for

a cash payment of a royalty embodied in a contract between parties in which the conditions were explicitly set forth. It will thus be seen that not only is the Government of Ontario entering into direct competition with a trading concern which is working by faith of a charter granted by the Government, but it is attempting to use its powers in a high-handed fashion, whereby security granted by the Government, and for which payment was duly made, is endangered. If the Ontario Government persists in the course which it apparently has marked out for itself, we fear it will have a detrimental effect on British investors, and that the credit of the Dominion as a whole will suffer. For it should be pointed out that in such a case the British public will be slow to discriminate between Provinces and the Dominion as a whole. In the last resort, therefore, it seems pertinent to inquire whether the Dominion Parliament has powers whereby such an astounding piece of attempted legislation may not be vetoed.

BRITAIN'S CONFIDENCE NECESSARY.

Our strictures are intended not primarily in the interests of the Electrical Development Company of Ontario, Limited, but in the interests of the Province itself, and of the Dominion as a whole. It is scarcely necessary to labor the point that it is largely by means of the capital that Great Britain has poured without stint into the Dominion that the progress of Canada has been so rapid, and it can hardly be considered that the time has yet arrived when the Dominion can dispense with further supplies of British capital. In order to insure that such shall be forthcoming, however, it will be necessary that British investors shall have full confidence that perfect fairness and stability will be assured to any company seeking capital. So far as the Province of Ontario itself is concerned, we would ask, In what way does the Province propose to find the new capital which will still be required, and that in large amounts, for the further development of the Province?

HASTY, ILL-CONSIDERED AND CRUDE.

Does it desire that British investors should still be willing to provide such supplies as it may need? If this is the case, stress must again be laid on the fact that to insure further supplies perfect confidence must be forthcoming. Such confidence will be entirely wanting if we are to witness the advent of hasty, ill-considered and crude legislation such as that which we have quoted above. We venture, therefore, to direct the attention of the members of the Ontario Cabinet to the features that we have detailed, and to urge the importance of seeing that no act of theirs shall in any way destroy the confidence which British investors have hitherto placed in Canada and its various Provinces.

MR. W. R. LAWSON.

EXTRACT FROM AN ARTICLE BY MR. W. R. LAWSON IN "THE FINANCIAL TIMES" OF JULY 26TH, 1909.

Meanwhile no little harm has been done to Canadian interests in London through this ill-starred episode. Its effect was seen in every new issue made during the past half-year. The Dominion Government, the Provincial Governments, the municipalities, the railway companies and all Canadian borrowers, public or private, have had to pay a substantial penalty for Sir James Whitney's action. Every single loan—and they number at least a dozen—would have realized 2 or 3 per cent. more but for the Ontario bogey. On an aggregate of twenty millions sterling, which is within the mark, that represents a loss of £600,000 to Canada.

Every succeeding issue suffers more and more severely through Ontario's attempt to side-track Magna Charta. Take as a special example the very latest issue—the Grand Trunk Pacific two millions sterling with a 3 per cent. Dominion guarantee. That was a second instalment of the Government's quota of the loads for the Prairie and Mountain sections of the main line. The first instalment—£3,200,000—was offered four years ago at 95, and well taken. This time the price had to be reduced to 82½—a loss to the Grand Trunk Pacific Company of 12½ points—equal to a quarter of a million sterling. Nor can the drop be explained away by reference to external causes, such as different conditions of the money market, for, strangely enough, the bank rate was the same on both occasions—namely, 2½ per cent.

Canadians might do well to reflect on the instructive, if unpleasant fact that though they are now at a great height of credit and prosperity, they are having to pay for borrowed money quite as high rates as they did a quarter of a century ago. That is, no doubt, chiefly due to their being such lavish borrowers, but recently there have been aggravating causes as well, and the Ontario bogey has been one of them. They can hardly feel flattered as a nation when a 3 per cent. Dominion guarantee is not valued in London higher than 82½. Even the Ontario Ministers must see something wrong in that.

In the two months' interval since our last reference to the Ontario bogey it has undergone some important developments, both here and in Canada. A number of strong protests against the Stoppage of Justice Act were sent from London to the Dominion Government, which still has them under consideration. They begged the Government to exercise its right of veto on the ground that such legislation is bound to prejudice the general interests of the Dominion. This, it may be explained, is practically the only ground which the law officers of the Dominion nowadays recognize as sufficient justification for disallowance. The passage quoted in

a previous article from the Hon. Mr. Aylesworth's decision in a similar case—that of the Florence Mining Company—showed how chary the Dominion authorities are of exercising their undoubted prerogative in this respect. A very strong case, and some strong pressure as well, may be needed to screw them up to the point of disallowance. It is hardly conceivable, however, that such a freak of Legislature should be ignored at Ottawa, for that would be to condone it and accept a joint share for responsibility for it.

Should the Ontario Government spurn the easiest and most natural escape from the pit they have dug for themselves—namely, voluntary retreat—the other alternative will be to press the question of disallowance on the Dominion Government. This is, in fact, being done. Influential memorials have been sent to Ottawa by a number of public bodies, whose opinions should have weight financially and politically. Among them is the Montreal Stock Exchange, a very capable and impartial authority on questions of this sort. Quite a host of British capitalists and investors have taken part in the protest against the Stoppage of Justice Act—Lord Ridley, Sir Seymour King, Mr. J. W. Palmer, as one of the executors of the late Duchess of Marlborough, Messrs. Evans Gordon and Company, Mr. Mainwaring, etc.

Finally the Canadian Press—which, with one or two honorable exceptions, like the "Financial Post" of Toronto, was at first rather lukewarm on the subject—is now waking up to its importance. Sir James Whitney is being gravely admonished by the organs of his own party, including the oldest of them and the most esteemed—the "Montreal Gazette." It tells him straight that "legislation to take away from a man his right to have his grievance actually before the courts adjudicated on is rare and liable to be dangerous whenever it is used." If the moral feeling of a community ever showed itself outraged by legislation, this is a case. And however reluctant the Dominion Government may be to exercise its indisputable, though invidious right of veto, there is surely ample warrant in the facts which have been submitted to it.

SIR JAMES WHITNEY'S STATEMENT.

STATEMENT MADE BY SIR JAMES WHITNEY, PUBLISHED IN "THE ECONOMIST" OF THE 28TH OF AUGUST, 1909.

"Respecting the Electric Power legislation of the Ontario Government, which has been criticized in certain quarters in England and Canada, Sir James Whitney, the First Minister of that Province, has been good enough to furnish the subjoined statement for publication in "The Economist." As will be seen, the statement is not intended as a reply to his critics—that will doubtless come later on—so much as a protest against what he regards as their sensational and unfair methods."

THE PREMIER'S STATEMENT.

The text of Sir James' statement is as follows:

"Interested persons have for some time been making attacks on the Government of the Province of Ontario with a view to, first, damaging the financial credit of the Province in London, and, second, destroying what is known as the power scheme of the Government.

"As a matter of fact, the Government is not interested in the power scheme beyond being the agent for certain municipalities—a sort of conduit pipe by which cheap electrical power is to be conveyed to them at their expense. The attack was made ostensibly in the interest of the Electrical Development Company, a company the value of the bonds of which it was alleged had been lowered by the power scheme, but Mr. Wm. Mackenzie, the railway magnate, some time ago guaranteed the bonds of the Electrical Development Company, removing that cause of complaint, if cause there was. It may be well to state here that Mr. Mackenzie repudiates in emphatic language all connection with, and responsibility for, the attacks made upon the Government in this matter.

"The attack has been directed against an Act passed at the last session (1909) of our Legislature, and which was rendered necessary by a defect in an Act of the previous session (1908), passed at the request of fifteen municipalities and dealing with the same subject. Application has been made for the disallowance of this Act.

A SAMPLE INDICTMENT.

"For reasons which I shall give later on, I do not propose to enter into explanations in reply, but in order to show the methods of these gentlemen I will refer to just one point in illustration, and quote from the indictment against us with reference to the statute I have mentioned. Their statement in "The Statist" says: "It is also declared, in the case of one municipality at any rate, that, though the municipality had refused to sign the amended contract, the contract should have full force as if it were signed. Lest our readers should imagine that we are making a travesty of what

actually occurred, we reproduce herewith the clause of the Act verbatim. Clause 5 reads as follows: "The said contract as so varied as aforesaid shall be treated and is exclusively deemed to be executed by the said corporation of the town of Galt."

"Now, the facts are, and the truth is, that when the Legislative Assembly passed the Act of 1908, as it did unanimously, it was understood by the members and made as clear as specific declarations in debate could make it that its provisions did not require the submission to a vote of the ratepayers of the contracts entered into by such municipalities with the Hydro Electric Commission where by-laws authorizing such contracts had already been passed by the vote of the ratepayers of such municipalities. In other words, fifteen municipalities acted upon the original legislation, by-laws in each case were carried by votes of the ratepayers, the contracts in thirteen cases were approved and entered into by five municipalities, with the exception that the Mayor of the town of Galt refused to sign the contract after it had been passed by the municipal council of the town. Then a mandamus to compel him to sign the contract was applied for, but a Judge held that under the Act such contracts should be again submitted to a vote of the ratepayers. The twelve municipalities at once petitioned the Government and the Legislature to remedy the defect by legislation. Their request was complied with, and there was nothing strange or unusual or improper in the amending legislation, as all English financiers who deal in municipal securities know very well. These are the bald facts. Surely the *suppressio veri* and *suppositio falsi* apparent in the extract I have given from the attack made by 'The Statist' are not necessary to a good cause.

PRESS CAMPAIGN MISLEADING.

"I regret being compelled to say that the carefully-drawn statements appearing in several English journals and containing the charges against us are materially false and grossly misleading. I do not complain of this. Such conduct always brings its punishment. We shall put in our reply to the application for disallowance in due course, and in the meantime we regard the situation here with equanimity. At the same time we cannot repress our astonishment that reputable financial and other journals in London should accept without question and publish as true allegations of the most serious character regarding the action of the Legislature and of the Government of a great Province, and this without having first made some inquiries—some attempt at least to verify the statements published by them, all of which, by the way, are couched in practically identical language. In this manner the Government and the Legislature of Ontario have been held up to public reprobation.

QUOTES BRITISH LEGISLATION.

"As I have shown, our legislation was merely incidental and necessary to correct a defect, the existence of which was not sus-

pected. But what do our journalistic detractors think of the following substantive, constructive legislation taken from the last English Education Bill? 'Section 11 (5). Every decision of the Board of Education purporting to be given on any matter which is to be determined, fixed or computed by them, or on which they have to be satisfied under this Act, shall be final, and shall not be liable to be called in question in any court of law or otherwise.' Or what have they to say regarding several other instances of similar legislation proposed by the British Government, which I could quote? Surely we will now hear the voices of those two very eminent publicists, Lord Ridley and Sir Henry Seymour King, raised in denunciation of such legislation.

"It may be a matter of interest to the journals I have referred to to know that all the watered-stock experts and stock gamblers in Canada are on the side of our opponents in this matter, and that the latter are paying toll rates per line for every word published in their interest by the newspapers in this country.

"Under these circumstances, then, the Government of Ontario, mindful of the self-respect which is necessary to the mental and moral equipoise alike of Governments as well of individuals, has no explanations to make. We have been gratuitously attacked. All the facts and the entire truth can be easily obtained by those who wish to ascertain them, and whose objects are not the injury of the financial credit of Ontario, and the destruction of its great electric power scheme.

VESTED RIGHTS SAFEGUARDED.

"The Government of Ontario is a Conservative Government in a party sense as well as in intention and action. Should it become necessary, it can point to its record. The inviolability of property rights and private rights will be upheld by it under all circumstances. At its last session the Legislature, under its guidance, adopted a well-digested scheme of law reform in which it gladly retained the right of appeal to the Judicial Committee of the Privy Council, to which tribunal these people can take their alleged grievances.

"It is possible that they will succeed in inflicting some injury on the financial credit of the Province in London, and in that event, we shall in the future perhaps have to fall back on our knowledge that there are financial centres other than London. The people of Ontario and of all Canada as a body at this moment earnestly desire and are striving to aid in the Imperial work of recasting and consolidating the relations between the great communities and groups which together compose the empire, and to that end are willing and anxious to assume their share of Imperial burdens. The 'dodekart justice' which a few British newspapers have meted out to us in this matter is not in the nature of encouragement, and may, I fear, cause some of the three millions of British subjects in Ontario to ask themselves: Cui bono?"

"THE ECONOMIST," OF ENGLAND.

EDITORIAL COMMENT BY "THE LONDON ECONOMIST" UPON THE STATEMENT OF SIR JAMES WHITNEY

SIR JAMES WHITNEY'S STATEMENT.

Elsewhere will be found a statement forwarded to us by Sir James Whitney, Premier of the Canadian Province of Ontario, concerning the electric power policy of his administration, which is being criticized with severity in Canada, as well as by Lord Ridley, Sir Seymour King, and others in England. The facts, of considerable interest to the British investor in Canadian securities, are briefly these:

In 1903 the Electrical Development Company of Ontario contracted with the Niagara Falls Park Commission, a body appointed by the Ontario Government, for a supply of power for sale and delivery to Toronto and other municipalities. To construct its works, the company sold $8,000,000 of bonds in England and Canada, while upon the remaining $2,000,000 it had authority from the Provincial Legislature to issue $10,000,000 worth. Advances were obtained in London. The Park Commission, which is the Government under another name, covenanted not to compete with the company, save under circumstances that have not arisen. Nevertheless, the Government established quite recently at Niagara another agency of its own, known as the Hydro Electric Commission, with a Minister of the Crown at its head, and is proceeding to build transmission lines for the delivery to a number of western Ontario municipalities, Toronto included, of power which this new commission derives from an American plant on the Canadian shore, that in turn generates it from the water of the Niagara River under an arrangement with the Park Commission.

The English and Canadian investors in the Electrical Development Company say that this is a breach of contract, that under no circumstances would the Government have a moral right to institute competition with a private enterprise, without affording compensation or expropriating the whole investment on fair terms; but that the case is all the worse in view of the positive pledge of the Park Commission that there should be no competition on its part, it, as said, being, like the Hydro Electric Commission, the Government under an alias.

THE GALT CASE.

By-laws were voted for by the ratepayers of certain municipalities whereby they agreed to purchase power from the Hydro Electric Commission at a fixed maximum in each case, the price varying with the distance from Niagara Falls. But when the contracts based on the by-laws were submitted for signature to the municipal authorities, it was found that the all-important clause respecting price had been omitted. The Council of the town of Galt, a brisk manufacturing centre, was willing to accept the contract thus emptied of its vital clause, but the Mayor refused to

execute it, and the Superior Court, on being appealed to, held that the contract in that shape was invalid, that for the Mayor to sign it would be tantamount to fraud upon the ratepayers and that a new by-law should be submitted. At the session of the Legislature last spring, however, the Government passed an Act declaring that the contract, with the maximum price omitted, should be deemed to have been duly executed by the town of Galt, and likewise enacted, in order to shut off ratepayers in other municipalities who were complaining of the contracts, that all suits of the kind against the Hydro Electric Commission should cease and be forever stayed. It will be observed that our version of the facts differs slightly from Sir James Whitney's, but, with all respect, ours is the correct one. A number of Galt ratepayers now allege, in a signed paper, that the Council did not ask Sir James, as he says, to pass the Act overriding the decision of the court, and that the recital to the contrary in the preamble was entirely unwarranted. But this, of course, has no more to do with the prime facts at issue than Sir James' reference to what the President of the Toronto Street Railway and the Canadian Northern Railway, Mr. William Mackenzie, has done for the bondholders of the Electrical Development Company.

WOULD DAMAGE CANADA'S CREDIT

Petitions praying for the disallowance by the Federal Government at Ottawa of much or all of the Ontario electric power legislation have been signed by the members of the Toronto and Montreal Stock Exchanges and other influential persons, on the ground that, whether *intra vires* or not of the Provincial Legislature, it is likely to damage the public credit of Canada. Further, the whole of the legislation may be unconstitutional for another reason, that by it the Government of Ontario has throughout assumed jurisdiction over the water in the Niagara River, which, first, as a navigable stream above and below the cataract, and, second, as constituting the boundary between Canada and the United States from Lake Erie to Lake Ontario, is surely within the exclusive jurisdiction of the Dominion Government and Parliament.

By the Dominion Constitution, known as the British North America Act, a veto upon Provincial legislation is vested in the Federal Cabinet, or, as it is styled in this connection, the Governor-in-Council. Until 1896 the Federal Ministers vetoed not only Provincial bills that were *ultra vires*—that is, which trenched upon Federal jurisdiction—but bills which, although *intra vires*, were considered prejudicial to the general interests of Canada. But in Opposition the Liberal party stood for Provincial rights as against a supposed tendency to centralization, and when it entered office resolved to disallow only such Provincial statutes as are *ultra vires*, leaving all that are *intra vires* to become law, even where they are plainly contrary to good morals, on the philosophical theory that the people of the Province will ultimately redress the wrong at the polls. Under this policy the Provincial Legislatures have become omnipotent within their allotted sphere. In a case where the

Whitney administration had determined by an Act a question of title to a mining property that was before the courts, Mr. Justice Riddell declared that the Legislature was now, within its jurisdiction, absolutely independent and supreme to the extent that it can ignore Magna Charta and the Ten Commandments.

LIMITATION OF STATE POWERS.

In the United States, the State Legislatures, all of which are bicameral, whereas the Provincial Legislatures in Canada are all, with one exception, single-chambered, are restricted by the State and Federal constitutions, which contain, among other things, declarations of public policy, drawn in some instances from Magna Charta and the Bill of Rights, and which are interpreted, as occasions arise, by the Federal and State Judiciary. Such an attack upon its investment as the Electrical Development Company complains of would at once be declared invalid, on the ground that it was a violation of contract, while the staying of appeals to the courts by Act of a State Legislature or by Congress itself would be equally impossible. Sir James Whitney cites the English laws giving finality to the decisions of the executive departments of the British Government in certain matters in justification of his legislation in that respect. He is, apparently, not aware that this new practice is very generally condemned in England, and that in June last the Lord Chief Justice entered a dignified protest against it, saying that, whereas in times past the Judiciary had stood between the people and the Crown, and had protected the people, it might be necessary for it some of these days to stand between the people and the Executive, in order that the Executive might not presume to be the final interpreter of Acts of Parliament.

Besides, there is an important difference between refusing access to the courts from the decision of a Government department in England and refusing it from an Act of a Provincial Legislature in a British dominion possessing a Federal system of government, under which the Legislatures, though subordinate politically, exercise original jurisdiction over property, civil rights, and other matters counted amongst one's dearest possessions. If for nothing else, for the sake of their credit in the English money market, Canadians should lose no time in procuring such amendments to the British North America Act as, without reducing the Legislatures to impotence, shall curb their propensity to run foul, by accident or design, of the principles of justice and fair dealing.

Sir James says his present statement is not a reply to his critics so much as a complaint against their methods, and that he and his colleagues intend at their own time to make a detailed answer. We hope it may not be delayed too long, and that it will show that the facts above given are susceptible of a different gloss and conclusion from those at which we reluctantly arrive. He is an able and honest man, but has, perhaps, been led astray by his public-ownership friends in Toronto, some of whom are disposed to regard the private investor in public services as a noxious monopolist to be got rid of in as shabby a fashion as the law allows.

"THE ECONOMIST."

EDITORIAL IN "THE LONDON ECONOMIST" OF OCTOBER 9TH, 1909, CONCLUDING WITH THE FOLLOWING REMARKS:

"Enough has been said, we think, to prove that the local autonomy may be extended beyond [illegible] limits, and that the Dominion as a whole may suffer unless the Federal Government exercises some effective supervision [illegible] the interests of Canadian credit."

CANADIAN LAW AND ENGLISH CASES.

Are there any limits to the powers of a Provincial Legislature and a Provincial Government within its own Province? This question, raised in an acute form by Sir James Whitney's remarkable electric power legislation in the Canadian Province of Ontario, is discussed in a pamphlet which reproduces the substance of several letters which have recently appeared in "The Financial Post" of Toronto. There are other journals in Toronto which take a different view of the question, and find fault with the opinion expressed by "The Economist." Thus "The Mail and Empire," in a very temperate article, disagrees with our statement of the facts, but does not, we think, itself put them in a very different light. "No agreement," it says, "was made with the Electrical Development Company. . . . What the Government agreed to was that it would not 'produce' power at the Falls, save under certain conditions that have not arisen." These two sentences cannot easily be reconciled, and "The Mail" continues: "Certain municipalities wanted to buy power, and asked the Government to form a Commission through which they might unite for the purpose of effecting the purchase and of distributing the power in an economical manner." It was by agreeing to this request, and by appointing the Hydro Electric Commission, that Sir James Whitney raised the storm. "The Evening Telegram," in a fiery article, talks about the "ignorance," "inaccuracies," and so forth of "The Economist," and declares that "Sir James Whitney has neither gone as far nor as fast as the best friends of public rights would have had him go." But the best friends of public rights are not necessarily those who break public engagements.

Neither journal, however, meets the constitutional argument. It may be right for the municipalities to supply themselves, for they have made no agreement with the Electrical Development Company. But it is not right that the Government which has itself made a definite agreement, as "The Mail" admits, should come forward and organize the competition.

All this, however, is a discussion of a particular case, and we set out to deal with the general question of the relation between the central and the Provincial Legislatures. We have nothing in England corresponding to these latter bodies, and to realize the

situation we must imagine the Lancashire County Council with an executive and legislative power of its own. The American Republic presents a certain similarity, but with important differences, of which the chief is that the separate States claim the original rights, and have constituted the Federal Legislature and Government by a delegation of specified powers. In Canada a precisely opposite theory was adopted, the Central Government and Legislature hold the original powers, and the rights of the Provinces are subordinate. Strangely enough, the Liberal party, which now controls the Dominion Parliament and is much embarrassed by provincial legislation, was the one which originally favoured the theory of provincial rights, while it is the Conservative party which now carries that theory to its logical conclusion in Ontario. Both parties, however, are tarred with the same brush, for we read that in this Province, "when the Liberals were in office, the Legislature levied a tax of 100 per cent. of the value of their produce upon the Sudbury nickel mines, but was willing to remit it if they agreed to have their crude nickel smelted to purity within Ontario—really at Hamilton, in a refinery in which prominent politicians were interested." It should be remembered, too, that, not content with establishing a competing electric supply, the Ontario Government took upon itself to forestall or nullify the decision of the courts of law by passing an Act which prohibited the bringing of law-suits on this point. What the Canadian constitutionalists, as distinct from British investors, protest against is the usurpation, as they regard it, of an absolute power of confiscation, and the closing of access to justice by the Government of the day. This Hydro Electric case is the second instance of apparent usurpation, the Cobalt mine being the first. Other instances of a similar kind are quoted which go to prove the author's two contentions that Provincial Legislatures cannot be trusted to deal fairly with the rights of property, and that they have given just cause of alarm to the English capitalist, who is supposed to have 1,500 million dollars invested in Canada.

The framers of the Canadian Federation started work in 1864, during the American Civil War, and they were determined not to adopt the State rights theory. As Sir John Macdonald put it, "We have given the General Government all the great subjects of legislation. We have conferred on them not only specifically and in detail all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the Local Government and Local Legislatures shall be conferred upon the General Government and Legislature." This sentence expresses most admirably the relations which ought to exist between the Provincial and Dominion Parliaments in Canada, and a political machinery was adopted which promised to make the distinction of powers an effective one. Provincial Lieutenant-Governors and Judges, in-

stead of being elected locally, as in the United States, were appointed from Ottawa, and the Governors were authorized to reserve provincial legislation for review by the central authority, which expressly retained power to disallow any Bills that it considered either *ultra vires* or prejudicial to the general well-being of Canada. "This power of negative," said Sir John Rose, "this controlling power on the part of the Central Government, is the protection and safeguard of the whole system."

For 30 years after federation the Ottawa Government exercised a more or less active supervision over Provincial law-making, but it has now abandoned its veto power, except where an Act is *ultra vires*, thus confining itself to a function which might be quite well discharged by the courts of law. In the particular case of the Hydro Electric legislation, no legal difficulty exists if Sir Wilfrid Laurier chooses to exercise his powers, and to declare that the control of the Niagara, as a navigable river, and as a boundary stream, belongs to the Crown or Federal authority. He may even avoid this active interference by referring the case to the Supreme Court, thus leaving a judicial tribunal to decide whether the Provincial action was or was not *ultra vires*. But even when this case is settled there will remain to be determined "the more important question as to whether a Provincial Legislature is omnipotent within its sphere." The writer of the pamphlet is probably not a lawyer, or he would not put his problem in this ambiguous shape. It really includes two questions: (1) What is the sphere of a Provincial Legislature? and (2) ought it to be omnipotent within that sphere? Enough has been said, we think, to prove that local autonomy may be extended beyond safe limits, and that the Dominion as a whole may suffer unless the Federal Government exercises some effective supervision in the interests of Canadian credit.

"THE FINANCIER AND BULLIONIST."

EXTRACTS FROM LETTER OF R. J. BARRETT, EDITOR OF "THE FINANCIER AND BULLIONIST," ADDRESSED TO "THE FINANCIAL POST," IN WHICH HE MAKES AN EARNEST PLEA FOR CONCILIATION BETWEEN THE GOVERNMENT AND THE PARTIES INTERESTED.

Surely, if the most despotic Powers of Europe shrink from repudiation or confiscation, it even Central American Republics realize now that honesty is the best policy, it ill becomes the Government of a free, enlightened and progressive Province like Ontario to treat the British investor in ruthless and arbitrary fashion.

Sir James Whitney complains that "reputable financial and other journals" in London have condemned the policy of his Government without endeavoring to elicit all that might be said in its favor. Well, he has now been given the opportunity of presenting his own case, but the judicial instinct of the British public perceives that he has neither explained the motives of aggression nor justified the extraordinary action of his Government. The essential facts still uncontroverted are:

1. That the Ontario Government, after contracting with the Electrical Development Co., of Canada, to supply Toronto and other municipalities, created a competitive organization of its own for the same purpose.

2. That it refuses adequate compensation to the company it first authorized and now endeavors to supplant.

3. That it persists in its policy, notwithstanding that actions decided in the courts have established the illegality thereof.

4. That in order to debar the aggrieved from the redress the law allows, the Government has passed an Act that over-rides the law and precludes the action of the courts and the course of justice.

5. That in consequence of such policy and procedure condemned alike by the jurists of the Dominion and the United Kingdom many thousands of pounds sterling staked by British investors in the Electrical Development Co., of Canada, on the strength of the contract since violated, have been lost and other investments are now imperilled.

Is it surprising, under the circumstances, that "reputable financial and other journals" in London condemn the action of the Ontario Government? That the incident is regarded as the most deplorable in recent financial history? That Canadian credit has suffered in the dominating money market of the world? That unpleasant comparisons are being made between Ontario and certain Latin-American Republics that are held in odium by the British investor?

Imagine how embarrassing it must be for anyone who, like myself, has been persistently commending Canada as a field for

investment, clear the reproaches of those who acted on such advice. As editor of "The Financier and Bullionist," I made my first Canadian tour of investigation in the autumn of 1906. I was so impressed by what I saw that I committed the paper to the whole-hearted advocacy of Canadian investments, and in my book entitled "Canada's Century," I was still more emphatic. I contended that nowhere in the world could capital reckon on better security against loss or confiscation than in Canada. I even urged the inclusion of Canada's provincial loans within the scope of the Trustee Act, and I cited Ontario as par excellence the Province whose bonds were entitled to rank as gilt-edged securities! But now that the Government of Ontario has irked the good opinion of British investors, such improved status for provincial loans on the London market no longer seems feasible. It is a fact, however, that, during the past three years—thanks to strenuous advocacy here—there has been an enormous increase in the flow of British capital to Canada; hence the great uneasiness excited by the Ontario incident.

That incident is regarded as a test of Canada's probity—of its claim to prime consideration from British capital. I doubt whether Sir James Whitney and his colleagues realize the surprise and mortification their action has excited here—whether they apprehend the ill-results that may ensue. Well-wishers of Canada are grieved beyond measure that the British investor has been smitten in the house of a friend—that his reliance on Canadian integrity may seem to him a broken reed, that Canadian credit has suffered in the Homeland's estimation. It is useless to argue that only one instance of seeming repudiation has occurred. The answer is that if the Government of a Province like Ontario vindicates and riches roughshod over property rights, and declines to play the fair game, then anything may happen in Canada. The staunchest friends of your great and noble Dominion most ardently desire, therefore, that the Government of Ontario, on patriotic grounds, as well as for reasons of justice and expediency, may even yet discover some means whereby a seeming wrong may be righted, a most unpleasant controversy ended, and the fair fame of Canada vindicated.

Consider what the estrangement of British capital from Canada means. At a meeting of the Royal Statistical Society in June a paper was read showing that the total of Britain's capital investments in other lands amounted to £2,700,000,000; that its increase to £3,000,000,000 by the close of the current year was expected; and that the increase in the seven years from 1905 to 1911 would average £100,000,000 per annum.

Is Canada disposed to forego participation in that magnificent overflow of fertilizing capital—one that is yearly increasing in volume? Has her limit of expansion been reached? Or is not a very much larger proportion than hitherto of Britain's surplus

wealth an absolute necessity if Canada is to fulfil her own great aims and the hopes of her most ardent friends? If so, it scarcely seems wise or kindly to alienate the British investor by treatment he resents.

"It is possible," says Sir James Whitney, referring to the investors in the Electrical Development, whom he identifies with "watered stock experts and stock gamblers," "that they will succeed in inflicting some injury on the financial credit of the Province in London, and in that event we shall in the future, perhaps, have to fall back on our knowledge that there are financial centres other than London." That Ontario's credit has been affected here is certain, but the aggressors not the objects of aggression are blamed for it. Sir James Whitney speaks lightly of London and its disposable capital; but considering what this centre has already done in promoting Canada's development, it scarcely seems kind to flout London now and give it a curt dismissal. There are other money centres no doubt; but those of Europe are closely related, and it is impossible to excite prejudice in one without creating the like disposition in others. Besides, neither the European continent nor the United States is so much interested in Canada's development as the United Kingdom is, and political, as well as financial, considerations suggest that if Canada goes further than London she may fare worse.

"THE INVESTORS' REVIEW."

EXTRACTS FROM AN ARTICLE IN "THE INVESTORS' REVIEW" OF LONDON, ENGLAND, OF SEPTEMBER 11TH, 1901, IN CONNECTION WITH THE RECENT WORK OF MR. A. J. WILSON ON THE INDEBTEDNESS OF THE EMPIRE. "THE INVESTORS' REVIEW" IS A FINANCIAL JOURNAL OF VERY HIGH STANDING, AND IS CONSIDERED TO BE THE ORGAN OF THE SMALL INVESTORS IN ENGLAND.

I spoke just now of the erratic doings of our Provincial Legislatures. This is a subject of peculiar interest to the British investor. Amongst other mistakes, the founders of Confederation vested in the Federal Cabinet the power of vetoing Provincial legislation. For 30 years the power was exercised where the legislation trespassed upon Federal jurisdiction, and was therefore *ultra vires*, and also when, although *intra vires*, it was manifestly unsound in itself, and consequently prejudicial to the general interest. Unfortunately, the Provinces remain Provincial, having little national pride and no particular concern for the common welfare when it runs counter to their fancies. Accordingly a Provincial rights movement appeared, which demanded in effect that Provincial legislation should be disallowed only when *ultra vires*, or, to put it in another way, that within its constitutional limits a Provincial Legislature should be absolutely supreme. This doctrine was preached by the Liberals, then in opposition to the Federal Parliament, though in control of the principal Legislatures, and since they came into office at Ottawa in 1896 they have adhered to it.

Some strange things have consequently been done by the Legislatures and allowed to become law. One has rewritten a dead man's will; another has taxed the railways operating within its boundaries, offering, however, to remit the tax if they will buy coal from a certain mine belonging to certain politicians; a third levied an impost of 100 per cent. on the value of the output of nickel mines, but agreed to rescind it in the case of such mines as were willing to have their ore treated in a refinery owned by politicians; and so on. And now the Ontario Legislature, fresh from deciding a question of title that was before the courts, has set up Government competition with the Electrical Development Company of Ontario, which was financed in part in London, although the Government agency from which the company buys its power had practically covenanted that there should be no Government competition. Government contracts with municipalities for the purchase of power by the latter, which a Superior Court Judge had held to be invalid, an important part of the by-law on which the contract was based having been omitted, have been validated by Act of the Legislature; and, to complete the jobs, suits

that had been entered to challenge this proceeding have been forever stayed by the Legislature.

The Minister of Justice and one of the Judges, in dealing officially with these matters, declared in their *obiter dicta* that, within its constitutional sphere of action, a Provincial Legislature "is not bound by Magna Charta, the Ten Commandments, or any other code, human or divine;" it may resort to confiscation without compensation, steal A's house and give it to B, or commit any other outrage it likes, and leave the victim without means of redress, although, to be sure, he may appeal to the people at the polls. As all questions relating to property and civil rights belong exclusively to the Provinces, this new theory of Provincial omnipotence within that large field is frightening capital, more especially as we are entering upon an era of public ownership that will necessitate constant legislative action, and call for huge outlays by Provinces and municipalities already top-heavy from debt. The Legislatures, nine in number, are filled with country lawyers, storekeepers and farmers, usually honest enough personally, but always ready to follow their leaders when their leaders are doing wrong, on the principle that party loyalty is then more admirable than when the leaders are doing what is right.

"THE LONDON OUTLOOK."

EXTRACTS FROM AN ARTICLE IN "THE LONDON OUTLOOK" OF MARCH 13TH, 1909, BY MR. W. R. LAWSON, HEADED "CANADA'S COMPETITIVE BORROWING."

Evidently 1909 is to be a great year for Canadian borrowing. The Canadians themselves frankly warned us beforehand that it would be, and they are living up to their warning. Though the first quarter of the year is yet unfinished, the aggregate of Canadian issues already runs into tens of millions. From the Dominion Government downward everybody with any credit to pledge has been trying to raise the wind on it. We have had quite a rush of borrowing—national, provincial, municipal and industrial. It has proved just a little too much for the market, and with one or two exceptions the issues have had a rather dubious reception. Even the six millions asked for by the Dominion Government was not enthusiastically subscribed. On the contrary, it was only saved from recoiling on the underwriters by the Canadian Pacific Railway Company taking up a round million sterling of it.

The municipal loans have been still less cordially welcomed. Apart from the fear that this class of debt is being too freely manufactured throughout the Dominion, there is in certain cases a special cause for lukewarmness. Toronto, for instance, is accused of trying to borrow with both hands—first through corporations to which it has granted concessions, and then for schemes of its own to compete with the corporations. This competitive borrowing is at once bad finance, bad business, and bad politics. As there seems to be a craze for it, especially in Ontario, and as serious evils may arise from it if it is not checked in time, I feel constrained to speak thus plainly about it.

The so-called Niagara Power scandal will serve for an illustration. Just as the Dominion elections were fought last year mainly on charges of "graft," so the Ontario elections of 1905 turned chiefly on Niagara power. That was made a burning Provincial question and at the same time a red-hot municipal question. Toronto, Hamilton, London, Berlin, Woodstock, and all the other ambitious cities of Ontario were told that Niagara was their electrical birthright and that it had been sold for a mess of pottage. They were exhorted to rouse themselves and recover it—not by fair purchase, which would have been honest and honorable, but by a scheme of competitive confiscation which, to say the least, is unprecedented.

The question is now practically reduced to this: "Can the Ontario Government safely undertake to carry out all the pledges which the promoters of cheap municipal electricity have been giving out broadcast in its name?" Political promises, engineers' estimates, and electrical schemes are all very well, but they are not business. They are not good enough to borrow money upon, either in Toronto or in London. Such an intricate, mixed-up affair is not for British investors to meddle with at all. It is a domestic muddle which the Ontario politicians have made entirely for themselves and which they should scorn to draw anybody else into. Any attempt to borrow for it in London might provoke controversy of a sort which, for the sake of Canadian credit, is to be avoided.

"THE MONTREAL GAZETTE."

EDITORIAL FROM "THE MONTREAL GAZETTE," THE LEADING CONSERVATIVE PAPER IN CANADA.

MONTREAL, Thursday, July 8.

AN ONTARIO LAW.

One of the bills passed by the Ontario Legislature at its recent session has created an amount of discussion the authors probably did not anticipate when they brought it forward. The Province also has something of a record in unusual legislation. In the dying years of the late Liberal administration it went back to the early years of Queen Anne for a precedent to extend beyond the time for which the members had been elected the existence of the Legislature to which they belonged. In the case of the Florence Mining Company, it passed an Act to prevent the courts from proceeding to adjudicate on the claim of certain mining prospectors or promoters to properties which the Government had disposed of to others. It has gone somewhat further in connection with the contracts between the Hydro Electric Power Commission and the municipalities with which the commission made contracts. The facts, which are set out at some length elsewhere, appear to be that after by-laws sanctioning contracts for [illegible]ric power had been approved by the ratepayers and adopted by the city and town councils interested, a change was made in the terms of the contracts. To this in some cases interested parties made objection, and appealed to the courts. In one case, that of the town of Galt, there was a decision on a side issue, by Mr. Justice Anglin, to the effect that the by-law voted on by the ratepayers did not justify the contract approved of by the council, and which the Mayor, because of a divergence in the terms, had refused to sign. The Legislature met the situation thus created by passing an Act declaring that the validity of the contracts as they had been varied should not be open to question and should not be called in question on any ground whatever in any court, but should be held and adjudged to be valid and binding on all the corporations mentioned. A further clause explains that every action brought or pending wherein the validity of the contracts or by-laws is questioned, and any action calling in question the jurisdiction, power or authority of the Hydro Electric Commission or of any municipal corporation or of the councils thereof shall be and is for ever stayed. Legislation to settle doubts as to the meaning of a law or to indemnify those who have without wilful intention broken the provisions of a statute is neither unusual nor necessarily harmful. Legislation to take away from a man his right to have his grievance actually before the courts adjudicated on is rare and liable to be dangerous whenever it is used. That to pass such laws is within the power of the Legislature, as declared by Judges and admitted by constitutional authorities, does not alter

the situation. The Legislature has theoretically the power to say that property which one man has legally won shall be taken from him and given to another. It would not be well, though, that use should be made of it. The wisdom of an enactment is as important as the making of it. The protests against the enactments in question have been widespread and vigorous. Whatever their immediate result, it can be presumed that they will have the effect of making legislators and governments more careful when they are called on to deal with the fundamental of civic freedom, the right of a man when he thinks he is aggrieved to go to the courts and get judgment on his claim in accordance with the law.

EXTRACTS FROM AN ARTICLE IN "THE MONTREAL GAZETTE," OF JULY 8TH, 1909.

The grounds of objection to the measure petitioned against are double. The financial interests contend that to permit it to remain in force will injure Canadian credit in the money markets of the world. Constitutionalists hold that in some of its provisions, which take from litigants their right of having their causes dealt with by the courts and declare to be legal things which Judges have declared to be illegal, the Act does a public wrong and establishes a precedent full of mischievous possibilities. In the former category are included some of the largest holders of Canadian municipal and other securities. In the latter are leading students of constitutional law in Canada and Great Britain.

The parties interested have taken Mr. Dicey's second alternative. They are backed in their contention that the legislation they condemn is liable to injure the credit of Canada by articles that have appeared in many of the London (England) financial and general newspapers, and by leading financiers, some of whom have written to Mr. Fielding, Minister of Finance, pointing out that the legislation, particularly where it forbids resort to the courts and stays pending actions, is of a character to awaken grave distrust in the mind of the British investor, and cannot fail to injure Canadian investments, as the public will not discriminate nicely between the Provinces and the Dominion in matters of this sort.

The grounds on which the Government of Canada may disallow an Act of a Provincial Legislature were stated in Sir John Macdonald's report of 8th June, 1868, submitted for the purpose of settling the course to be pursued with respect to Acts passed by Provincial Legislatures. Only four cases are stated, as proper subjects for consideration, with a view to disallowance viz., Acts which the Minister may consider;

"1. As being altogether illegal or unconstitutional.
"2. As illegal or unconstitutional, in part.
"3. In cases of concurrent jurisdiction as clashing with the legislation of the general Parliament.
"4. As affecting the interest of the Dominion generally."

"THE MONTREAL DAILY STAR."

"The Daily Star," in its issue of July 7th, 1909, under the heading "Petition Filed Against Ontario Power Scheme," gives a full account of the extraordinary legislation, quoting sections of the Act complained of, and enumerating the petitions which have been filed for disallowance, setting out in detail all the grounds taken by the various petitioners.

"THE MANITOBA FREE PRESS."

ARTICLE FROM "THE MANITOBA FREE PRESS" OF WINNIPEG, OF APRIL 12, 1909.

EXTRAORDINARY LEGISLATION BY ONTARIO

In working out its policy for the establishment of a system by which electrical power generated at Niagara Falls may be supplied to municipalities in Ontario, by them to be furnished for industrial purposes within their limits, the Ontario Government finds itself in a position in which it is assailed with accusations of invasion of the rights of municipalities, and of violation of the right of municipalities and of individuals to have recourse to the courts, by passing legislation which "The Canada Law Journal," of Toronto, declares "likely to injure the fabric of our body politic." The matter is one of which much is likely to be heard, and the facts in the case claim attention from the people of the Dominion at large.

In order to effect the object of supplying electric power, the present Ontario Government, of which Sir James Whitney is the head, created the Hydro Electric Power Commission. This body made contracts with a number of municipalities for the supply of power for a fixed sum per horse power delivered to the municipality by-laws to that effect having been submitted to the ratepayers of the municipalities in question, and carried. The City of Toronto was among the municipalities whose ratepayers thus empowered the municipal authorities to undertake to accept electrical energy from the Commission at a fixed price. Subsequently the Commission, finding that it could not safely undertake to carry out its contracts, changed its terms by making a fixed price per horse power at the place of development and not at that of delivery, leaving an undetermined sum to be paid by the municipalities for transmission. The municipal councils which had made contracts with the Commission in accordance with the by-laws passed by the ratepayers in each were then called upon by the Commission to enter into new contracts; the Commission declared the first contracts off [illegible] in their place contracts naming a fixed price per horse power of electric energy delivered not in the municipality, but delivered at the Niagara Falls end of the long distance transmission system to be carried to the municipality, the cost of transmission to be determined later, after the system should be in operation.

The Mayors of all the municipalities which had entered into contracts with the Commission signed the new contracts, except in the case of the town of Galt, whose Mayor refused to sign. A ratepayer of Toronto, on behalf of himself and other ratepayers, entered a suit to have the new contract entered into between the city and the Commission set aside, on the ground that it was not in accordance with the by-law which the ratepayers had voted for.

Just as the action of the Mayor of Toronto in signing the new contract was followed by the entering of the suit referred to, so the action of the Mayor of Galt in refusing to sign the new contract was followed by an application to the courts for a mandamus to compel him to sign it. The application was refused, Mr. Justice Anglin declaring that the action of the town council of Galt in passing a by-law authorizing the mayor to sign the new contract was illegal, because of its being "a breach of faith with the electorate." He held that "the contract which it purported to require the Mayor to execute would be illegal, and contrary to the requirements of the statute," and he gave it as his decision that the mayor "was justified in refusing to become a party to the perpetration of their (the council's) illegal acts."

In the case of the suit entered by the Toronto ratepayer, the city authorities made application to the courts to have it set aside on the ground that the Hydro Electric Commission should have been joined with the city as parties defendant. That, however, could not be done without a fiat from the Attorney-General of Ontario, as the statute constituting the Commission expressly provides that no action can be brought against the Commission or against any member of that body for anything done or omitted in the exercise of his office without the Attorney-General's permission being obtained. To Sir James Whitney, then the Acting Attorney-General, application was made for a fiat. He refused to grant it. The application of the city to have the suit thrown out was, however, refused by Mr. Justice Latchford, before whom it was made. His judgment was appealed against, but was upheld by the court above. Mr. Justice Anglin, who in this case, too, delivered the judgment of the court, said, after declaring that Mr. Justice Latchford's judgment was sustained: "Whatever may be done towards validating these contracts by legislation, the court should, I think, assume that, pending litigation in which the power of the municipalities to make the contracts is questioned, the Lieutenant-Governor would not by Orders-in-Council declare them binding upon the Commission; and that, in the event of the courts declaring them to be *ultra vires* of the municipal corporations, such Orders-in-Council would not thereafter be passed."

But at the present session of the Ontario Legislature Sir James Whitney has introduced and carried through the House an amendment to the statute constituting the Hydro Electric Power Commission, validating all the new contracts. In addition to the general validating clause, this statute provides further that "the validity of the contracts as so varied shall not be open to question in any court," that "it shall not be necessary that the said contracts as so varied shall be approved of by the Lieutenant-Governor-in-Council," and that "every action now pending wherein the validity of the said contract is called in question is hereby for ever stayed."

This legislation is of very serious import: it elicits attention because of its extraordinary character in that it cuts off remedial rights of recourse to the courts. It is this aspect of it, an aspect having nothing to do with any question of the public advantageousness of the Whitney Government's power policy, which compels attention. "Such an extraordinary abuse of legislative power," says a writer in "The Canada Law Journal," "is believed to be wholly unexampled in any of the British possessions. That no precedent for it can be found in any enactment passed by the Parliament of the mother country since the time when the British Constitution was finally established on its existing basis by the Revolution of 1689, is at all events a proposition which is beyond dispute."

The only parallel to this legislation is the statute that was passed by the Ontario Legislature last year giving the title to the Florence mine in Cobalt to the defendants in a suit then pending in the courts to determine the title to that mine, the statute depriving the plaintiffs of any remedial rights whatever. The question at issue is of the greatest public importance, in view of the extensive powers possessed by the Provincial Legislatures, and the possibility of an arbitrary and high-handed use being made by a Government of a submissive majority in the Legislature in trespassing upon the rights of individuals and municipalities and imposing burdens upon them, while at the same time depriving them of the right of recourse to the courts to secure the remedying of their wrongs. The question raised by this legislation in Ontario is, as already stated, wholly apart from any question of the power policy of the Whitney Government. Sir James Whitney, indeed, in defending the validating statute, says that he has sufficient grounds for supposing that the municipalities concerned are in favor of accepting the contracts in their altered form. That may very well be; but the fact remains that, as declared in the judgments given in the cases carried before the courts but now "forever stayed," the contracts in their altered form have not been submitted to the ratepayers of any of the municipalities. As for the Dominion Government's power of disallowance, it is a power which is used rarely; the use of it as a merely supervisory power is practically abandoned. The powers of the Provincial Legislatures are very extensive, as the Minister of Justice pointed out in explaining why the Federal authority did not disallow the Ontario legislation regarding the title to the Florence mine. The great extent of the powers possessed by the Provincial Legislatures makes it all the more necessary that there should be vigilant public watchfulness that those great powers are not in any way abused.

"THE CANADIAN JOURNAL OF COMMERCE" OF MONTREAL.

ARTICLE FROM "THE CANADIAN JOURNAL OF COMMERCE" OF OCTOBER 29TH, 1909.

The British North America Act of 1867 provides of necessity in Clause 132: "The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any Province thereof as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries." The Treaty of Ghent in 1842, which gave Goats Island to the United States, and a major proportion of the Niagara Falls themselves to Canada, as well as the proposed Waterways Treaty of this year, shows plainly that the Niagara River, and indeed all boundary rivers, are necessarily involved under this Clause, and must be held at the disposition of the Canadian Federal Government. As the Canadian Section of the International Waterways Commission reported in 1895: "It is quite evident, in the view of the Commission, that the jurisdiction to deal with international waters must be vested in the Federal Government of each country. Changed conditions and the greatly increased demand for power, owing to electrical developments, have rendered it absolutely essential that there should be an authoritative body controlling the diversion of such waters. The interests of navigation must be paramount, and the Federal Government alone must ultimately decide what those interests are." Clause 91 of the British North America Act, which, with following clauses, contains the limiting portions of its provisions, collates as pertaining to the Federal Government: "Regulation of Trade and Commerce;" "Militia, Military and Naval Service and Defence;" "Beacons, Buoys, Lighthouses and Sable Island;" "Navigation and Shipping;" "Sea Coast and Inland Fisheries;" "Ferries between a Province, and any British or foreign country, or between two Provinces." Every one of these provisions implies Federal jurisdiction over international waterways as is the Niagara River at the Falls. In the United States, as in England, such waters are under the immediate control of the central government. Clause 92 (10) directly exempts from Provincial action "Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other, or others of the Provinces, or extending beyond the limits of the Province," and 92 (16) stipulates that Provincial Legislatures are to be concerned with "Generally all matters of a merely local or private nature in the Province." There will not be many amongst our readers who will dispute our contention that the British North America Act, which gave being to the Dominion of Canada, never intended that a Provincial Government should assume any rights or powers over international or boundary waters, and that the Ontario Ministry has gone beyond its powers in its hydro-electric policy. It is a bad feature in its case that the Ministry has secured the passage of legislation pro-

hibiting the bringing of lawsuits against it, in cases which might arise under its policy, which legislation, by the way, might easily be proven to be opposed to the basic principle of British constitutional liberty.

But we venture to go beyond this point, though we believe the simple terms of the British North America Act will be found to be in themselves destructive of all the contentions, as to ownership, of the Ontario Government in the case. We assert fearlessly that nothing more inimical to the commercial progress of the Dominion could be imagined, than for its several Provincial Governments to make use of their legislative powers, for the purpose of enabling them to embark upon competitive manufacturing industries. The iniquity of granting charters of incorporation to companies to produce something within the Province, and then with the Provincial public funds and backed by special legislation to enter into direct competition with them, is evident, and makes an irreparable breach in that conception of rightfulness, which is an honest man's best heritage. At Niagara are developpment companies, which with their charters as the very first exhibits of their assets, have induced British and other capitalists to entrust them with moneys by assuring these gentlemen of the protective rights these charters confer. Canadian good faith will become synonymous with "Punic faith," if the impression is allowed to go forth unchecked, that when foreign gold has been induced to flow into the Province by such means, the "Government" actually betrays all confidence by using a super-exalted position to make its investment unprofitable.

We do not care to characterize such action, which does not appear to us to be fair to the investors. No commercial journal can afford, however, to fail to draw attention in the most pointed manner to a subject which threatens national honour and commercial integrity. There must be a limit set to the peculiarities of provincial politicians. No country can afford to furnish such an exhibition of assumption and bad faith, as according to some competent observers the "London Economist," for instance appears to be implied in this case. We say "appears to be implied," because no one will doubt that the initial idea of preventing a costly, evil monopoly, was no wrong thing of bad faith, in itself. It is, however, not always difficult to make the facile descent to where it becomes really possible to say, "good o'erstepped the mark, and ill became."

The British North America Act, as above quoted, appears to indicate a way out of the anomalous position in which the country apparently finds itself. The Dominion authority over the Niagara River, might be declared, and claimed forthwith. Some holding company could speedily be found for the hydro-electric business of the Province, so that acquired rights need not be imperilled. And by every means possible, should the *bona fide* character of all canal company charters be established and continuously maintained. This last is essential to the prosperity of the Dominion, as indeed is all that pertains to our national honour. No doubt, the Prime Minister of Canada is as keenly alive to that fact as man can be, and, doubtless, we may heartily trust in his good faith, and future action in this matter.

PROFESSOR GOLDWIN SMITH.

THE FOLLOWING ARTICLES HAVE APPEARED IN "THE WEEKLY SUN," WRITTEN BY PROFESSOR GOLDWIN SMITH UNDER THE NAME "A BYSTANDER."

August 4th, 1909.

In the "Toronto Financial Post" will be found a very able and instructive article on the course of arbitrary legislation into which the Province is being drawn. What the Provincial Government claims, and is apparently upheld by its followers in claiming, is an Imperial power of confiscation and excluding parties aggrieved from the courts of justice. That any community of British freemen will be found to submit to such a claim on the part of such a body as our Provincial Government and Legislature seems incredible. The silence of our press hitherto has been ominous. Membership of an Empire of which we are always boasting would be more splendid than either respectable or profitable if in matters so vital as the possession of property and the right to justice we were liable to be treated as serfs. This is partly the consequence of having a constitutional law framed on the other side of the Atlantic and not submitted to considerat on here. No citizen of this Province in his senses would, with h eyes open to the consequences, vote a local Legislature Imperial powers. What is the leader of the Opposition about? Has he nothing to say in the matter?

One is happy to see the "Globe" quoting from the "London Statist," a paper of high financial authority, an article expressing what everyone who is true to British principles must think of the assumption by a Provincial Assembly of powers of confiscation and closing the door of justice. The "Statist" warns us, and we may be sure with authority, against the effect which the proceedings of the Ontario Government and Legislature cannot fail to have on Canadian investments. The high-handed way in which the thing has been done cannot fail to be an additional cause of mistrust.

August 25th, 1909.

VALIDATING STATUTES.

The statement that the Ontario Statutes contain many Acts validating by-laws of municipalities which have been voted on by ratepayers, is no doubt correct, but an examination of the cases cited as precedents for the power validating statutes shows that they are quite different, both in their origin and effect.

The cases cited all appear to have been passed at the instigation and on the petition of the parties who had created the by-laws, and who were to be bound by them, and after public notice and an opportunity to be heard had been given to all persons affected. We believe none have ever been passed at the request of parties who were to secure contracts or other benefits under the by-laws.

The Power Acts, on the other hand, were introduced and passed, as Government measures, by the Government, who by their own instrument, the Hydro Electric Commission, were the other parties to the contracts purporting to be made under the authority of the by-laws.

But a more important difference is that previous validating Acts were strictly confined to rendering effectual the wishes of the ratepayers, as expressed in the by-laws, which wishes were in danger of being defeated or unduly delayed by mere technical objections. The Power Validating Acts, however, go very far beyond this, for while the Act passed in 1908 merely validating the by-laws, and so might be supported by the precedents cited, this was found not to effect what was desired, and the drastic Act of 1909 was put through, again as a Government measure. This Act declares, not that the by-laws are valid, but that an agreement varying so greatly from the by-laws that the court (on this ground) refused to direct the Mayor of Galt to sign it, is a valid contract and binding on the ratepayers; thus in effect invalidating the by-laws approved of by them and substituting for the agreement approved of by the ratepayers what one of our Judges calls a "new agreement." And to prevent any ratepayer disputing the binding force of this substituted agreement, the Act goes on to stay forever all appeals by ratepayers or others to the courts for relief.

August 18th, 1909.

In England would it have been possible for the most powerful of Prime Ministers to do what the Prime Minister of a single Province does here? Would it have been possible for him to over-ride the law and shut the door of justice in the face of complainants, without offering a word of apology or explanation? It is perhaps not wonderful, considering the mixture of elements here, and the general circumstances of a colony, that there should be a change in political spirit. But so, apparently, it is.

Are the Prime Ministers of Provinces to follow suit, and our right to property and to legal redress everywhere to be at a Provincial Minister's mercy?

Whether it is the intention or not, it is the manifest tendency of the present Government of Ontario to aggress upon what has hitherto been deemed the rights of all under British Government. This, after showing itself in the Cobalt case and the now celebrated "validating" statute, is showing itself in the treatment of the farmers of this Province through the Hydro Electric Commission, on which a very important article has appeared in the "Hamilton Times."

The Bystander does not himself pretend to give judgment on a legal point, but he sees clearly enough that there is urgent need of intervention. It is to be hoped that the vicious, and worse than vicious, plea of promoting the interests of the public at the expense

of the rights of individuals or special interests will not be allowed to lead the people of this Province astray on questions of public right.

It is unfortunately easy to get up a belief that the Government, when it plunders or oppresses a private interest, is fighting for the public against a private claim. Bad things have passed muster on that plea. But nothing can be more shallow or false than such a notion. Public rights and liberties are the aggregate of private rights and liberties, and the blow of oppression, though aimed at a particular person or interest, strikes all.

The idea that investors will not hear of these things, or will take no notice of them, is surely a dream.

Where is the leader of the Opposition? Where, we must sorrowfully ask, is much of the Provincial Press?

September 1, 1909.

All that the Bystander had to say about the questions between the Ontario Government and the community respecting the right of the Government to deal with private property and the privilege of access to public justice has now been said. That these questions were such as called upon a conscientious journalist to do his duty to the public will hardly be denied; and it appeared to the Bystander that his duty as a journalist would be done at once most effectually and least offensively by submission of the case to a first-rate English jurist. Had the Provincial constitution been submitted to the people before it was made law, two questions so important as that of the right to private property and that of access to public justice, could hardly have failed to receive full consideration. We shall probably be told that the people have shown little feeling on this occasion. It must be owned that they have, and that constitutional principle seems to have been less considered than immediate gain. Canada, though an English colony, is not wholly a land of English traditions. It is not the birthplace or the historic and devout upholder of the Great Charter. The classical saying that those who cross the sea change their sky but not their character may be largely, but is not altogether, true.

Sir James Whitney tells the English public that "all the watered-stock experts and stock gamblers in Canada" are on the side of his opponents in this matter, and that "the latter are paying full rates per line for every word published in their interest by the newspapers in this country." He, perhaps, thinks that the Government power of stopping access to justice applies to the case of libel. What does the general press of Canada say to this aspersion? Which is most likely to be bought, free dealing with a great constitutional question or ominous silence?

The By-stander feels sure that in dealing with the Cobalt case he said not a word at which a Government desirous of acting constitutionally could take umbrage. The Dominion Minister of Justice said that there had been an act of confiscation without compensation. A Provincial Judge showed plainly that in his opinion the gate of justice had been wrongfully closed. No explanation came from the Ontario Government in a case in which the prompt est and fullest explanation would at once have been made by a British Minister. An independent journalist had surely a duty to perform. Nor, it would seem, could that duty have been more fitly or more respectfully performed than, as it was, by the submission of the case to a jurist of the highest reputation. Sir James Whitney must surely see that such questions as the right of private property and that of access to justice cannot in any community be safely left unsettled. A journal friendly to the Government frankly admits that "in the case of the power by-laws a contract is made legal which differs materially from the by-law which the people passed." This shows beyond question that there is an assumption on the part of Government which cannot be allowed to pass unchallenged, and calls for strenuous protest on the part of the independent press. What has been done, be it remembered, is not a simple Act, but one which makes a precedent.

That the Premier of Ontario when he over-rides the law, as he unquestionably has done, and disregards private rights, believes that he is doing his best for "the people," need not be disputed. "The people," whose majesty in such cases is invoked, are a multitude without individual responsibility, without special knowledge, without concert, without foresight; easily led away by professions of devotion to them and desire to assert their supremacy. If the form of Government is arbitrary, you must be content to obey the ruler, only praying that his rule may be just. But, of popular institutions and interests held under them, the only safeguard is universal respect for law. If the law needs amendment, amended in a constitutional way let it be. But the politician who breaks through it or over-rides it on pretence of doing the will of "the people," is the people's worst enemy.

"The Sun" is independent. It was brought out on that line, and it is hoped it will never swerve from it. Here was a clear case in which an independent journal had to do its duty; and its duty, to the best of "The Sun's" ability, has been done.

THE POWER QUESTION.

In our issue of the 18th of August we animadverted upon an article in which an attempt was made to defend the Validating Acts by referring to several instances in which the Provincial Parliament had, as was alleged, passed other statutes of substantially the same description. It was pointed out that the statutes thus cited could not be treated as precedents for the recent legislation with regard to the contracts between the municipalities specified and

the Hydro Electric Commission. We showed that the earlier and the later statutes were distinguishable in two respects.

The first difference on which we laid stress was, that, while the earlier statutes had been passed at the request of the municipalities themselves, after reasonable notice had been duly given, and all the parties affected had had an opportunity to be heard, it would be impossible to affirm that these incidents were predicable in respect of the later statutes. Putting aside the question whether any of the municipalities concerned did, as a matter of fact, make a request which a court would recognize as a legally effectual expression of their wishes, it is, at all events, notorious that some of them, so far from being in favor of the final validating Act, were strongly opposed to it.

It was not, however, upon this ground of distinction that our main reliance was placed. To every candid reader of our remarks it must have been fully manifest that our principal object was to direct attention to the fact that the statutes which had been so triumphantly adduced as authorities affording an ample vindication of the Ontario Government were simply designed to preserve the by-laws in question from being nullified by certain defects of a merely technical character, whereas the final validating Act operated so as to impose upon the municipalities affected contracts essentially different from those previously sanctioned by the vote of the ratepayers. There is a fundamental distinction between legislation which merely purports to cure technical defects and legislation which affects substantive rights.

"Alarm has been created in England, as it was sure to be, by the legislative action of our Government, with respect to the faith of financial contracts and access to public justice. Before long the effect on Canadian securities will be felt. Our own people, it is to be feared, have been largely induced to connive at this violation of British rights, and their enfranchisement in the Great Charter, by the paltry sum, about half a dollar a piece, which in the Cobalt case they gained by the action of the Government. It must also unhappily be said that the silence of the Toronto Board of Trade and of the Toronto Press, with the exception of "The Financial Post," has been very disappointing. To what quarter are we to look for protection of chartered rights against Government violation?

The tendency of our Provincial Government to disregard private right was manifested in its dealing with the Cobalt case, and not less in the manner of doing the thing than in the thing done. Secure possession of property, and free access to justice, are the first and most fundamental rights of citizens. Nor have the citizens of this Province ever consented to the infraction of those rights. The Act of the British Parliament on the wording of which the Provincial Government relies never was submitted to our people. There is now alleged to be a second case of the same usurpation. A petition has been presented to the Ottawa authorities for disallowance of the Provincial Act relating to the Ontario Power scheme as a

flagrant violation of private rights and natural justice. We know of what materials our Provincial Legislatures are, and must be, composed, and how much security there would be felt to be in their perfectly sound judgment in a great case of jurisprudence. In the Gamey case it appeared that to somebody it seemed possible that a member of the Provincial Legislature could be bought. But without endorsing that extreme proposition it may be thought possible that local or personal influence might prevail. We should prefer a higher tribunal, as well as more regular process, in a great question. Will the Toronto Press speak on the present occasion, or will it continue to hold that a case, which unquestionably involves the right of private property and of access to justice, its duty to the public is silence?

We hear, as it was certain we should, of protests of commercial men against the attempt of the Provincial Government to introduce legislative powers of confiscation of property and of closing the door of public justice. But why do not these gentlemen openly come forward and call for an explanation, which they might do without accusing the Government of any evil design or conscious violation of principle? In the mother country, which we take to be our model of political character, this would at once be done. The poet's saying that the emigrant changes his sky but not his character surely requires qualification in the case of certain classes, at least in this country.

Another point of difference, and a very serious one, between the Englishman's political character and ours is that when a question of public justice is raised, the Englishman does not ask to whom the injustice is done: he at once demands that it be righted. The Canadian does ask to whom the injustice has been done, and if he finds that it has been done to some person or commercial company which is an object of popular jealousy, he is apt to be content.

BANGLABOUR'S LEGISLATION ALSO TELLS AGAINST US.

The British investor is also well aware of the vagaries of some of the Provincial Legislatures under the new doctrine that, so long as a Legislature keeps within its allotted sphere, it can do as it likes with property and civil rights, to the extent of starting Government ownership against private enterprise, reversing the decisions of the courts or deciding questions in litigation and barring an appeal—in fact, as Mr. Justice Riddell said, it may go the length of confiscating a man's house and bestowing it upon another, since it is not bound by Magna Charta, the Ten Commandments, or any other law, human or divine. Capital dreads nothing so much as a law-making body given to running wild, unless it be such "fads" as public ownership in a community where the conditions are not ripe for them. In that case the investor is disposed to say with the prophet: "It is the land of graven images, and they are mad upon their idols;" and to put his money elsewhere

"THE WEEKLY SUN."

EXTRACTS FROM AN ARTICLE HEADED "THE DOMINION FINANCIAL POSITION" IN THE ISSUE OF SEPTEMBER 1ST, 1909.

Dangerous Legislation Also Tells Against Us.

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The Dominion Government, after spending lavishly for some years, has become more economical, and unless our other public bodies follow suit without delay, the British investor may raise the price of money to us or even conclude that our patronage is no longer desirable. Let us not forget that it would be impossible to borrow as cheaply elsewhere. British connection has been of untold value to us if only as a means of introducing us to the English bankers; and should they ever talk at our paper, we shall find ourselves in a predicament too serious to contemplate just now.

FROM THE UNITED STATES.

LETTER FROM N. W. HARRIS & COMPANY, OF CHICAGO, ONE OF THE LEADING FINANCIAL INSTITUTIONS IN THE UNITED STATES, TO THE RIGHT HONORABLE SIR WILFRID LAURIER, K.C.M.G., P.C.

May 29th, 1909.

Sir Wilfrid Laurier, K.C.M.G., P.C.,
Premier of Canada, Ottawa:—

SIR,—We are engaged in financial operations in the United States of America, in England, Canada and elsewhere, and have been the means of financing several Canadian enterprises, and of introducing a considerable amount of capital into Canada.

We have some information regarding the recent Act passed by the Legislature of the Province of Ontario concerning the Hydro Electric Commission, and we regard the provisions of that Act as a menace to the security of invested capital in the Dominion of Canada.

As we understand it, the Act in question validates certain contracts for power, which are in terms and conditions different from the contracts voted for by the ratepayers in the different municipalities interested, and declares that these contracts and by-laws upon which they were founded, should not be open to question in any court, also puts an end to certain pending litigation in which the legality of the various proceedings was being tested in the courts.

If the Provinces are permitted under the Constitution of the Dominion of Canada to legislate in this arbitrary manner, it creates a feeling of anxiety and unrest, which must necessarily influence foreign capitalists in their consideration of the merits of the securities issued in that country.

We, therefore, take the liberty of directing your attention specially to this piece of legislation, in the hope that something may be done by the supreme power in the Dominion to mitigate, or to entirely prevent the mischief which otherwise must result to all securities issued in the Dominion of Canada.

Yours truly,

(*Signed*) N. W. HARRIS & Co.

MR. J. S. WILLISON IN "THE TORONTO NEWS."

THE FOLLOWING ARE EXTRACTS FROM "THE TORONTO NEWS," PUBLISHED BY MR. J. S. WILLISON, AN INDEPENDENT WRITER OF MUCH FORCE AND CHARACTER.

December 6th, 1907.

Therefore as the public interest must be considered before all private interests, the Government should make arrangements for the protection of the public. But the private company has the Government guaranty in its letters patent. Investments have been made on that security. Whatever, therefore, is to be done by the Government for the public interest, it will not be keeping faith to injure in any way the private interest or to cause the loss of a single dollar invested. For that reason the proposal of the Ontario Government to become a competitor of the Electrical Development Company is indefensible. If it is believed that this Company's ownership and operation of a development and transmission plant will be a danger to the public, let the Government expropriate the plant and thus end the danger. But no loss should be entailed to the shareholders or bondholders. In general, public credit has no business in competition with private investment.

December 10th, 1907.

No Government has the right to use the power of legislation and of taxation to assail private enterprises. The contracts of one Government are binding upon its successors. We are a borrowing country, and if we plunder British investors it will be at our own cost.

December 12th, 1907.

The whole cost of the Government's operations is imposed upon the taxpayers. Even the stockholders of the Electrical Development Company and of the Toronto Electric Light Company will be responsible for the obligations assumed on account of the public companies. This is neither British, honorable nor decent. The transaction would be condemned in a South American Republic. If the United States Government undertook to deal in this fashion with invested capital Great Britain would ring with condemnation and Canada would swell the denunciatory chorus. Moreover, capital would shun such communities, and they would sink to the level of outlaw states.

Is it possible that we have a Government in Ontario which does not understand that faith must be kept with private inves-

tors, and that the public honor must not be tarnished? Is a Conservative Government, the hereditary guardian of the rights of property, to persist in a course of action which is admitted to be unjust even by British Socialists? The question comes with equal significance to the Council and the ratepayers of Toronto. This city must continue to make heavy borrowings in London, and it cannot afford to engage in confiscatory enterprises. So, many of the municipalities of Ontario must go from time to time to the London money market, directly or through private companies organized to establish public utilities, for necessary accommodation, and it is of vital consequence that their financial reputation should not be impaired.

December 18th, 1907.

An Improper Transaction. Absolutely, therefore, the Government of Ontario enters into a contract with a private company for a consideration, and now proposes to provide capital for competition by an indirect method. With one hand it takes the money of the Canadian company and with the other hands it over to the municipalities to provide transmission lines for the American enterprise in order that it may compete with the Canadian company. The rental now payable by the Electrical Development Company amounts to over $25,000 per year, and, according to the amount of power generated, may reach $100,000 or $125,000. This money, as we have said, the Government received on a guarantee that it will not compete, and then proceeds to provide the competition against which the contract provides. If a private individual attempted to engage in a transaction of this kind he would be promptly haled to court and certainly convicted and punished. It remains to be seen if the Ontario Government can set up a standard of ethics in face of the British money market lower than that which obtains in the ordinary, every-day business of the people. If the Government and the Provinces were slow to discover the true bearings of the Beck policy, the responsibility must be shared in common, but the facts cannot be evaded.

December 26th, 1907.

A phase of the power question which has not received the attention it deserves is the effect of the policy of repudiation which the action of the Government involves. The Government of Ontario entered deliberately into a contract with a company entitling the company to erect certain works and explicitly undertook that the Government should not itself engage in the same business as competitor. The business was that of the generation of electric power. It is futile for the Government to argue as it

does, that it is not generating power, but is only proposing to buy it from someone else who does. Various opinions may exist as to the expediency of having entered into any bargain with the company at all. It was open to the Government to erect the works on its own account; but it is not now legitimately open to it to repudiate a bargain solemnly entered into.

So far as risks are concerned which are due to technical conditions the investors must be held to have counted the cost. But the persons who have supplied the money, largely by way of loan in England and Scotland, cannot be expected to have taken into account the risk of repudiation by the Provincial Government of its obligations under the contract. Moreover, not merely the English lender has to be considered, but the large number of bondholders for small amounts who are scattered throughout the Province, and whose investment has, at present, been simply deprived of value through the action of the Government.

Advocates of the "power policy" have been very derisive over the complaint of those who have put their money in this enterprise relying upon the faith of the Government; but the investors are not the principal sufferers. The loss of a few millions in an unfortunate enterprise has occurred before, and though individuals have been ruined by such losses, no generally calamitous results have ensued. This, however, is another case. When the faith of the Government is involved and is broken, the Government in question may escape by a verbal quibble or by misguided public approval from the consequences of its action, but the effect remains, and sometimes permanently.

The effect in this case must inevitably be a serious blow to Canadian credit in the money markets of the world. Perhaps for many years every private enterprise in Canada, industrial or otherwise, will find it difficult to obtain money no matter how promising the enterprise may appear. Sometimes such enterprises will find it impossible so to obtain it. All street or steam railways, all electric lighting companies and other so-called public service corporations will be condemned either to pay excessive rates of insurance against the risk of confiscation or will be obliged to go unassisted. Whether the municipalities or the Province like it or not they will be driven at all costs to undertake these services for themselves and to become constant suitors for money in the very markets from which they have driven private enterprise.

But they go to these markets with a besmirched character. After having perpetrated one act of spoliation, they need not complain if they are suspected of planning another. Repudiation of municipal indebtedness by American cities is not unknown, and investors are not likely to lend at low rates to municipalities which are liable to be stampeded into extravagances which may

any moment land them in municipal bankruptcy. For this reason the agitation, which has been most disingenuously based ostensibly upon the public interest, is indeed violently and thoroughly opposed to it. If the policy of spoliation is persisted in we may look for dear money in Canada for a long time to come. Favorably disposed as the British investor is to this country, he is not foolish enough to trust his resources where once he has been deceived.

December 27th, 1907.

Moreover, in the contract of the Commissioners of the Queen Victoria Niagara Falls Park (that is the Government), with the Electrical Development Company, this clause appears:—

"The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic, or other power except for the purposes of the Park, provided that in case the said Commissioners shall have granted or at any time may have granted to any other person or corporation license to use the waters of the said Niagara or Welland Rivers, and by reason of failure of such person or corporation to carry on the works so licensed, the said Commissioners find it necessary to forfeit said license and take over said works, this clause shall not prohibit said Commissioners from operating such works for the generation and transmission, sale or lease of electricity or power."

Surely this constitutes an exclusive contract in so far as generation or energy at Niagara by the Government is concerned and it does appear in any plain reading of the English language that when the Government buys the surplus power of a rival American company and supplies public money for its distribution throughout Ontario, it is guilty of a direct breach of the honor of the Crown and deliberate violation of a public engagement.

January 6th, 1908.

In the contract between the Ontario Government and the Electrical Development Company there is a clear and unequivocal agreement based upon a fixed annual rental that the Government will not generate energy at Niagara in competition with the private company.

But the Government, which is bound by a solemn agreement not to compete with the Electrical Development Company, has arranged to buy the surplus power of the American company, and to build transmission lines, by assessment upon the municipalities, for its distribution throughout the Province, thus relieving the American company from a great capital outlay and

heavy interest charges, making it impossible for the Electrical Development Company to make connection with the Western municipalities, cutting off one-half or two-thirds of its natural market, and dividing the market which its transmission line reaches by establishing a competitive transmission system.

The situation is not affected in the least degree by the character of the capitalists concerned, by their financial methods or by any evidence that their design was to establish a monopoly. That they aimed at a monopoly seems to be undoubted. That is the habit of modern corporations, but power to regulate lies with the Government. "The News" has always held that their concession was obtained without proper provision for regulation. We have not spared the politicians by whom the concession was granted. We have always maintained that a private monopoly at Niagara should not be tolerated. Public contracts, however, must be observed, and the faith of the Province must be kept inviolate. The remedy for the situation which has been created lies, therefore, in regulation or expropriation, not in repudiation and confiscation.

The course of the Government is immoral and dishonest, and such as the courts would not tolerate in a private individual. The words are strong, but no milder words meet the case. The Government, by deliberate juggling, is seeking to accomplish a desirable end, and is endeavoring to impose upon a group of private investors the consequences of our own mistake in public policy. For the first time in our history we have a Government deliberately and mercilessly driving a great enterprise into liquidation, and carrying on its propaganda with a juvenile enthusiasm and a cheap casuistry which it is pitiful to contemplate. We look for such examples of public irresponsibility to the raw Western States and the anarchical South American Republics, not to the chief Province of the chief colony of Great Britain.

British investors in over-sea enterprises often lose heavily, and must expect to lose heavily by their own ignorance of conditions, by the false representations of eager and unscrupulous promoters, by failure of markets, by unproductive mines and uncommercial railway enterprises, by changing conditions and all the uncertainties surrounding many classes of investments in new countries. But hitherto they have had absolute confidence in British Colonial Governments, and have looked to them to protect rather than to destroy their securities. The most alarming fact in the situation is that the Ontario Government, headed by a Prime Minister, who is essentially honest and thoroughly devoted to the public welfare, seems totally to misunderstand the character of its own legislation and the certain results of its policy. The same curious and youthful conception of its obligation to regard the interests of private citizens is manifest in certain

features of its shifting and temporizing mining legislation. However honest and public-spirited they may be, such men may become dangerous and do great mischief.

January 20th, 1908.

"The News" is not wearing sackcloth and ashes because the financial returns of the Electrical Development Company have not been up to expectations. But the Province bound itself to the Electrical Development Company not to compete against it. And in the face of that agreement the Government proposes to build a transmission line—for the municipalities—for the express purpose of competing against this Company. It is a policy which does not accord with the traditional "honor of the Crown."

January 24th, 1908.

Mr. Adam Beck, perhaps the greatest statesman that ever was situated on the Thames, is now asking to have the Hamilton Radial Railway debarred from competing with the Hydro Electric Commission for the supply of power to Western municipalities. There is said to be an identity of interest between the promoters of the railway and the Cataract Power Company. Even if this be true, no public grievance is established. If the Radial Railway or the Catarnct Company sells power and light in competition with the Hydro Electric Commission it must be at lower figures and the public will benefit. It is hard to think that this result should be prevented by legislation. A year ago legislation was demanded to prevent extension of the Electrical Development Company's transmission system throughout Western Ontario. Later it was proposed to confine the operations of this Company to Toronto. The fact that the Company has a contract with the Government to generate and sell electrical energy throughout the Province and is guaranteed against Government competition by one of the vital provisions of the contract carries no significance with the Provincial authorities.

December 14th, 1907.

It has to be remembered also that when the early concessions were granted, it was regarded as a great public advantage to interest private capitalists in the exploitation of Niagara for electrical purposes, that any proposal to accomplish this object by Provincial or municipal action would have been treated as political madness, that the whole enterprise was regarded as highly experimental and speculative. Indeed the promoters of the pioneer enterprise found it practically impossible to secure capital for the undertaking. This concession gave an absolute

monopoly of the Falls for electrical purposes for one hundred years and practically stipulated that the Government itself would not enter into competition with the private Company. All this at least has this significance, that as it was the deliberate policy of Government and Legislature to grant concessions at Niagara to private capitalists, it is unfair now to visit the consequences of our short-sightedness or timidity upon the men who have invested under the faith and authority of solemn public contracts.

Furthermore, there is a direct engagement by the Legislature not to enter into competition with the Electrical Development Company, and upon the strength of this contract millions of Canadian and British money have been invested.

The Government does not propose to engage directly in generation of power at Niagara. It does not propose direct competition with the Electrical Development Company. It does propose, however, to purchase energy from a competing enterprise and to supply public money in order to build transmission lines for its distribution throughout the Province. The Ontario Power Company, with which the Government will make its contract has failed to make any provision for supplying the Canadian market. This is a practical violation of its agreement with the Provincial Government. It is there provided that the Niagara companies authorized to generate power from the Falls shall supply consumers at equal prices at equal distances from the point of production. In so far as Ontario is concerned the American company has not put itself into a position to fulfil this feature of the contract. On the other hand, the Electrical Development Company has spent $10,000,000 mainly in order to reach the consumers of this Province. Furthermore, the Province accepts from the Company an annual rental which now amounts to $25,000, and eventually may reach $100,000. It is true that the Electrical Development Company is also selling energy on the American side. But its transmission lines have not been built with money supplied from the New York State Treasury. The American company has its profitable market in the United States and is able to sell its surplus power to the Ontario Government and to have it distributed without any expenditure for a transmission service in this Province, and therefore escapes the interest charge which the Canadian company must meet on this portion of its investment. Altogether, therefore, if the Government does not generate power in direct violation of the contract with the Electrical Development Company it supplies the capital and creates the organization by which the American enterprise does business in this country. The chances are that any court of equity would pronounce this proceeding improper and invalid. *It is pretty certain that it would receive short shrift before any British tribunal.* There is one straightforward course open to

the Government: that is, regulation or expropriation of the works of the Canadian Electrical Development Company. If the Company refuses to submit to regulation or expropriation the Government is free to give its policy effect, the British investor is not unfairly treated, and the public honor is safeguarded.

December 21st, 1907.

But if the Government line is constructed the Government will be competing with the Electrical Development Company—in spite of the fact that it accepts a yearly rental of $25,000 from that Company under the pledge that it will not compete. What kind of business is this? Even aside from the economies of municipal trading, what kind of morals is it? The only honest course for the Government to adopt is to expropriate the works of the Electrical Development Company generating plant and transmission line. Then let the city buy the plant of the Electric Light Company and the problem of cheap power is solved. Competition with private interests either by the Government or the municipality is unjust and tyrannous. But neither Mr. Beck nor Mr. McNaught cares to deal with these trifling details.

"THE FINANCIAL POST."

EDITORIAL FROM THE ISSUE OF "THE FINANCIAL POST" OF FEBRUARY 18TH, 1909.

The Shifting of the Scheme.

The Hydro Electrical Scheme of the Ontario Government is assuming an equivocal position. Its chief protagonist, Hon. Adam Beck, is now moving in his own city of London and is apparently again making whatever statements that occur to him as most likely to improve the force of his argument. It will be remembered that under his inspiration the plant of the Toronto Electric Light Company was condemned as behind the times and not up to date, whereas the real fact is that it is one of the complete and best organized plants to be found anywhere among the companies that distribute electrical energy. Following the same plan we find a Cabinet Minister now condemning the plant of the London Electric Company. Able experts who have recently examined the plant testify that it is well up to all requirements. It seems a highly indecorous procedure for any Cabinet Minister to go around the country condemning the properties of existing companies, and were it not that the investor has come to realize the lack of foundation for statements from this quarter, such public announcements would have an unfortunate effect.

EXTRACT FROM "THE FINANCIAL POST," JUNE 5TH, 1909.

The action of the Ontario Government over this Hydro Electrical project has been calculated to strike the worst blow at Canadian credit which could well have been devised. The welfare of this country is too greatly bound up in its ability to secure funds from abroad. Its natural resources are its greatest asset, but only secondary to these is the credit which will enable us to develop these natural resources.

Grounds of the highest public policy demand that the Dominion Government should exert its power of disallowance.

It is fortunate that legislation such as chapter 19 contains in its essential viciousness the flaw which vitiates it.

While many other grounds have been urged we venture to submit the following point. Chapter 19 renders nugatory the power of the courts in this Province, in so far as the matters covered by this particular Act are concerned. If it is reasonable or competent for the Legislature to declare away the power of the courts in one Act, there is no reason to prevent it from so doing in every Act on the Statute Book. The courts are thus rendered of no account, the judiciary becomes a nullity. The British North America Act, while giving very wide powers to the Pro-

vincial Legislatures, retained in the hands of the Dominion Government the appointment of the Judges, thus demonstrating the principle that there should be a certain power or prerogative retained in the Dominion Government over the Provincial courts. It is contrary to this principle if a Provincial Government is permitted to exercise a power delegated to it in such manner as to render nugatory the power or prerogative of the Dominion Government or the Supreme Body.

EDITORIAL FROM THE ISSUE OF "THE FINANCIAL POST," OF JUNE 26TH, 1909.

The Ontario Loan.

The Ontario Government should realize from the failure of its power loan of $3,500,000 that however much their unfair policy may for the time appeal to the yellow journalist and that large section of the public which is influenced by a partizan press, it does not meet with the approval of the substantial people of the Province. We understand that the response from private investors in this Province is less than one-fifth. In order to avoid the publication of a failure the Provincial Treasurer has, it is reported, had recourse to the banks. We understand that the leading institutions have expressed their opinion of the project in no uncertain terms. Some of them doubtless consider that they are in such a position towards the Government that they cannot refuse a certain modicum of response. The amount is very small compared to what would have been accorded had the Government been able to come as a supplicant with clean hands and not in furtherance of a project which has in the course of its frenzied career violated every principle of fair play and British equity and has in its last phase shut the doors of the courts and abrogated even the principles of the British North America Act.

In time the Ontario Government will find that unfairness and confiscation will receive their just deserts. The difficulty will be to repair the real loss already entailed on the innocent investor and the damage to our credit which is instanced in the present failure of a people's loan.

In any case the feeling between the Governments and the banks is not cordial, the former placing the onus for lack of an entente cordiale on the banks because they wanted to make too much money out of the loan.

Editorial from the Issue of "The Financial Post," of July 3rd, 1909.

Collapse of the Power Loan.

The Ontario Government's effort to raise $3,500,000 for its power project by a popular loan has proved an absolute failure. Finding that the individual investor would not respond the Government next had recourse to the banks. In spite of the very potential character of the request the banks did not respond to any appreciable extent and leading bankers did not hesitate to express their disapproval of the character of the scheme. Institutions which might not be impressed with the nature of the damage to Canadian credit caused by the Government's scheme were loth to take on any considerable quantity of bonds and thus render unavailable funds which according to present indications will be required for the ordinary necessary needs of the country (provided that the expected harvest matures), in fulfilment of the very excellent promise now offered. There was no occasion for the Government authorities to suggest as was stated in last week's "Post" that the banks did not favor the loan because they were greedy for larger profits. The statement is in line with the attack upon bank stocks as an investment, which was thoughtlessly made by the Provincial Treasurer three weeks ago.

The failure of the loan should be a warning to the Government that Ontario people possessed of any degree of material substance do not approve of the unfair and competitive public power project.

Editorial from the Issue of "The Financial Post," of August 7th, 1909.

To carry out its project the Province had to strike the Development Company investors. First, it granted the company a charter authorizing it to carry on the business of distributing Niagara power. Then after the company had sold its bonds in England and the United States, the Province decided to go into competition with it and to sell power at cost in the company's constituency. So the profits of the company were threatened with destruction, and an injury done to the holders of its securities. This item of the bill of costs, injury done to innocent investors, which many supporters of Sir James Whitney believe to constitute the whole cost, is only the beginning. Powerful English papers, wielding an immense influence in the British investment circles at once began to champion the cause of the injured holders. They did so because they

considered that in this case the British investor was not getting a square deal from the Province of Ontario. So far from abating, the agitation in London against the power scheme appears to be steadily spreading. One after the other, the leading financial organs are joining the opposition. Their voicings must have a profound effect on the attitude of the investment public. That effect probably would not be seen at once. Canada has been making such a strong, steady headway in the favor of the British that her credit could hardly be overthrown at once, by an occurrence of this kind. But it should be clear to everybody that if the British journals which mould the opinion of the investing classes persist in their present attitude the Dominion will most surely lose its favorable position. Suppose the Ontario Cabinet holds stubbornly to its determination to press on its course, and suppose the Federal authorities refrain from disallowing, what may be expected? Remember, the friends of Canada in Britain have always considered Ontario to be the best risk amongst the Provinces. It is the most populous, the wealthiest, has the greatest resources, and up to now has had an unblemished reputation for fair and honorable dealing. The loss of that fine reputation is the second item of what has to be paid to get the problematical cheap power. Then, when the executive officers of some important Canadian industrial company, accustomed to getting new capital in London, cross the ocean in search of more funds to finance a much needed extension of the plant, and broach their project to the gentlemen who have in the past provided capital for their requirements, they might very likely be met with an explanation of this kind. "I am sorry, Mr. , but some of our clients were injured by the Ontario Government's course in that power affair, and we find it rather difficult in consequence to dispose of Canadian bonds and stocks. I know your securities are excellent, but as the market has been thus cut away, we cannot offer you anything like the terms we formerly gave."

This illustration shows a third big item of the price that will be paid for the power. Not only Ontario industrials, but industrials belonging to the other Provinces in Nova Scotia, in British Columbia and all the others, will probably be met with similar explanation. In all probability the credit of the railroads, of the utility corporations, and of the other Provinces and of the cities and towns, will be affected. Some won't be able to get money in London at all; others will pay a higher rate for the accommodation.

PROTESTS OF FINANCIAL CORPORATIONS.

Short Quotations from Petitions by Financial Institutions for Disallowance of the Bill on the Ground, Among Others, that it Will Injure the Credit of Canada as a Whole in England, and in European Financial Centres.

Members of Toronto Stock Exchange:

"An Act which imposes, as this does, a burden upon ratepayers which they never authorized, and which it was their privilege under the municipal law to impose or not impose as they might think fit, is such a high-handed and mischievous use of legislative power as to cause alarm to all persons having vested interests or dealing with securities in this Dominion."

Members of Montreal Stock Exchange:—

"Your petitioners from the nature of their business are necessarily cognizant of the effect of conditions and circumstances which affect municipal and other securities, and have no hesitation in asserting that legislation such as that above referred to must, if allowed to remain on the Statute Book, have a baneful effect upon the credit of Canada in the money markets of the world, and will be more and more harmful as its mischievous character is more widely known and better understood."

North American Life Assurance Company:—

"That in the opinion of your petitioners a liability of the character above referred to will seriously affect municipal securities as well as those of public utility companies and enterprises in the Province of Ontario."

Canada Permanent Mortgage Corporation:—

"That legislation of such a reckless character which ignores and sets aside the right of every citizen to audience in the courts of the land must create alarm and distrust in the minds of capitalists, and must tend to destroy their confidence in securities such as those above referred to and in all Canadian securities."

MR. J. L. BLAIKIE.

EXTRACT FROM A LETTER DATED JUNE 11TH, 1909, FROM MR. JOHN L. BLAIKIE, PRESIDENT OF THE NORTH AMERICAN LIFE INSURANCE COMPANY, AND OF THE CONSUMERS' GAS COMPANY, AND OF THE CANADA LANDED AND NATIONAL INVESTMENT COMPANY, TO THE RIGHT HONOURABLE SIR WILFRID LAURIER, K.C.M.G., P.C.

Dear Sir Wilfrid,—

Yesterday our Company (The North American Life Ins. Co.) signed a petition asking the careful consideration of your Government as to the advisability of disallowing special legislation passed at the last Session of the Ontario Legislature. Allow me to say, although a life-long Liberal, I was not influenced by my political leanings in taking this course, but did so from a sense of duty to the people of this Province, whose rights have been so seriously, and in my judgment, improperly interfered with by this drastic piece of legislation.

I have been a resident of this city for over fifty years, and in conjunction with my former partner, Mr. Alexander, was among the early financiers to induce British capital to take up investments in Ontario. I therefore naturally feel interested in any legislation that may at some future time seriously affect Canadian interests in the British and foreign markets. At the present time money is very plentiful in the old land and rates of interest low, consequently there should be no difficulty about floating any kind of desirable investment in Great Britain, but this state of affairs will not continue, and when conditions are reversed it is likely investors will take a different view of the situation, and if the existing legislation, to which I have referred, is allowed to remain on the Statute Books of Ontario, it may seriously prejudice the ability of Canadians to secure money at reasonable rates in Great Britain.

MR. WALLACE NESBITT.

Extract from a Letter from Mr. Wallace Nesbitt, K.C., to the Honorable Sir Frederick Borden, K.C.M.G., Dated June 17th, 1909.

Recently the Ontario Legislature passed an Act by which certain contracts entered into with the Hydro Electric Commission of Ontario were declared valid, and the courts were restrained from passing upon the validity, and any actions that were then pending were directed to be forever stayed. In other words, for the first time in the history of the British Empire, so far as I know, a Legislature dealing with a subject-matter within its jurisdiction has said that no matter how right a party was in seeking relief the courts were to be closed against him and he could not question the contract. Such legislation standing will, to my mind, do incredible harm to Canada as a whole in England. The English law-maker, the English investor, will not distinguish between Province and Dominion. It has happened in Canada, and so sure as you and I are citizens of this country so certain it will be said that it is possible for a Parliament in Canada to say that a man shall not be allowed to take his case to court to see whether he is right or wrong. Any South American Republic legislation of this kind would not be tolerated by the nations of Europe.

Your Minister of Finance is trying to raise forty or fifty million pounds in England. If the Federal Cabinet says, and it is heralded abroad, that it has the power to disallow such legislation and has disallowed it, it puts the seal of its approval on the preservation of vested rights and the right of every subject to have his case heard, and it announces to the world generally that Canada will not stand for such legislation.

I am not going into the merits or demerits of the particular legislation. That is beside the mark. The broad question I am asking you to consider is, there being the power of disallowance, this is a case for its exercise if it ever existed. It will not do to play the part of Pontius Pilate and turn your back and wash your hands and say it is not your affair. It is in the interests of all Canadian citizens to see that the right to have their case tried is preserved.

FROM A PAMPHLET ON CANADIAN FINANCE.

A Well-known Public Writer says in a Pamphlet Which he has Written on the Subject Which has been Discussed Editorially in "The Toronto Daily Mail and Empire" under the Heading, "The Risk to the Dominion," as Follows.

That we have been going too fast and too far of late on piling up Provincial and municipal debts, I think, only too obvious, and with the Legislature now free to do as it pleases without let or hindrance within its wide sphere, and our public men now content to follow rather than to guide, to be not the rudder of the ship but the sail, tossed to and fro and carried about by every wind of doctrine, we may expect to witness a prodigious waste of money on the public-ownership measures now in fashion unless, indeed, the home and foreign investor takes fright and brings the orgy to a sudden and perhaps calamitous termination. What I am pleading for is that we should save ourselves from that day of wrath by turning to more economical practices and by inducing the Federal authority to resume its former policy of keeping an eye upon the loose and erratic Provincial legislation which threatens us with a surplus of financial evils.

It may be said by Mr. Aylesworth, whom everyone respects, that if a Province or a municipality chooses to go head and ears in debt, that is its own affair; the Dominion, if concerned at all, is only concerned in a remote degree. That is doubtless true from a lawyer's standpoint. But the foreign investor does not distinguish between our different loans, charging them all up, Federal, Provincial and Municipal, to the borrowing entity known to him as Canada. A short time ago an influential London newspaper, commenting on such facts as that Winnipeg's debt is greater than the combined debts of St. Paul and Minneapolis, while the debt of the Province of Quebec is double that of the State of New York, sinking funds deducted, said that "Canada is certainly going too fast" and "displaying a tendency to spend too freely"; the Dominion being confounded with its units. It was the same in the days when the State Legislatures and municipalities were recklessly incurring liabilities for public improvements—the British capitalist confounded their borrowings and expenditures with those of the Government at Washington, charging everything to the account of "America." In his standard work, "Public Debts," Professor H. C. Adams, an American scholar, relates that when an agent from Washington went to England to float a loan, Baring

Bros. told him that, "if the States were left to control their own finances," many of them being at the time embarrassed, "the Federal Government could secure no money in London at any price." He quotes a similar case in 1844, where the European capitalists declined lending money to the Federal Government, "partly perhaps from real doubts as to the solidity of our institutions, and partly, probably, with a view to make us feel discredit so sensibly that our National Government should be induced to assume, as it has no right to do, the debts of the delinquent States." I need not labor the point. Any Canadian financier, including his worthy colleague, the Finance Minister, can tell Mr. Aylesworth that we are judged in London, not alone by the debts contracted by the Ottawa Government, but by the debts and general financial standing of the Provinces and municipalities as well. Hence such Provincial legislation as that connected with the [illegible] rie Power experiment of the Ontario Government may [illegible] readily affect the credit of the Dominion as a whole, and, lest it do, should be disallowed whether *intra vires* or not. Just now, indeed, Canadian credit in London is not what it was a few years ago, and Provincial laws should be scrutinized with unusual care.

Technically, it may be within the competence of the Legislature to do such things, but is the doing of them in the general interest? It would be difficult, I think, to conceive of a misuse of authority better calculated to bring Canadian institutions into disrepute at home and abroad.

OPINIONS OF MR. E. R. WOOD.

LETTER FROM MR. E. R. WOOD, PRESIDENT OF THE CENTRAL CANADA LOAN & SAVINGS COMPANY, VICE-PRESIDENT OF THE DOMINION SECURITIES CORPORATION, AND DIRECTOR OF THE CANADIAN BANK OF COMMERCE, TO THE RIGHT HONORABLE SIR WILFRID LAURIER, K.C.M.G., P.C.

Right Hon. Sir Wilfrid Laurier, K.C.M.G., P.C.:-

MY DEAR SIR,—In calling your attention in this personal way to the power legislation (9 Edw. VII. ch. 19) of the Ontario Legislature last year I feel fully warranted by the importance of the issues which have been raised. The matter is of great moment not only to those on both sides of the ocean who have in good faith invested their money in Niagara power development, but to all enterprises requiring the investment of British capital, and to the Dominion, the Provinces and the municipalities as extensive borrowers abroad.

The situation need not be recounted at length. The Electrical Development Company is a Canadian concern and has developed power at Niagara Falls with Canadian and British capital. When the demand for public or Governmental control arose, the Government did not see fit to regulate prices nor to take over the property, but created the Hydro Electric Commission and entered into competition with the private company. In that competition the Commission was protected from all legal actions without the consent of the Attorney-General (7 Edw. VII. ch. 19, sec. 23). It was freed from liability for errors in the estimated cost (section 24), the cost of the works, whatever that might be, being put on the municipalities (7 Edw. VII. ch. 19, sec. 23). The municipalities were thus allowed to assume certain debts by votes of the ratepayers. They were empowered to enter into contracts with the Commission which would have been illegal with the Electrical Development Company. After these uncertain bargains had been approved by votes of the municipal ratepayers they were varied by the Legislature to the injury of the municipalities. For example, the agreement, Schedule B, 8 Edw. VII. c'h. 22, clause 2*b*, requires the municipalities to pay interest and sinking fund on the cost of the transmission line. This is varied (Schedule A, 9 Edw. VII. ch. 19, sec. 2*b*) so as to make the municipalities pay interest and sinking fund on cost of transmission line, transformer stations and "works for nominally 30,000 horsepower with total capacity of 60,000 horsepower." Against this change in the agreement the ratepayers are denied redress by legislation providing that "the validity of

the said contract as so varied as aforesaid shall not be open to question on any ground whatever in any court" (9 Edw. VII, ch. 19, sec. 4), and by section 8 which provides: "Every action which has been heretofore brought and is now pending wherein the validity of the said contract or any by-law passed or purporting to have been passed authorizing the execution thereof . . . is attacked . . . shall be and the same is hereby forever stayed."

These direct and indirect attacks on private property and municipal rights may be regarded by you as matters of policy with which you would be reluctant to interfere. This may not be affected by the fact that the unsettling of confidence in Britain through this attack brought the Electrical Development Company face to face with a default from which it was saved by the surrender of half the common stock to Mr. William Mackenzie, whose money saved the situation and the credit of the Company.

But there is a broader issue involved than that of Provincial policy, even when the sacredness of private property is disregarded. The right of Federal veto was incorporated in our constitution as a safeguard for private property, and it may serve at the same time to save the credit of the Dominion in the financial centre of the world. The wealth of this country must be developed and our great transportation and other enterprises must be financed by British and foreign capital. This is absolutely essential. And it will be absolutely impossible if there is as much as a suspicion that our Governments will break faith with investors.

During the past year British investors took Canadian bonds, Government, municipal and corporation, to the surprising aggregate of $196,376,401. Of these, Government issues alone aggregated $77,598,401. Your own Government appealed for funds three times during the year and made sales aggregating $67,000,000. The municipal issues made a total of $17,435,911, and although Western development is attracting most attention and is certain to increase, more than half this borrowing was by Eastern municipalities. Of corporation issues aggregating $21,325,000, steam railways secured $50,485,000 and tramway, light and power companies $11,965,000. The balance was made up of issues by industrial and navigation companies. If issues of $17,850,000 by Canadian companies operating abroad is included it makes a grand total of $214,007,411 borrowed on the good faith of this Dominion.

This line of investment must be continued if our natural wealth and attendant transportation and other enterprises are to be developed. And I need not tell you that absolute good faith must be kept or the necessary confidence of British investors will be lost.

That faith has not been kept is shown by the condition into which the Electrical Development Company has been forced by Provincial legislation. It is also shown by letters (which I see by the press have been sent in to your Government) to Lord Strathcona and the Hon. W. S. Fielding from Lord Ridley, President of the Board of Trade, Sir Seymour King, H. Evans Gordon & Co., Mr. C. F. K. Mainwaring and others, all of whom have expressed the strongest opinions on this Provincial legislation.

The direct interest of the Dominion Government as a present and prospective borrower and the broader interests of the many Canadian enterprises dependent on British capital and British confidence demand, it is respectfully submitted, that you consider the suggestion of Lord Ridley and save the credit of the Dominion by exercising the power of veto.

Yours truly

E. R. Wood.