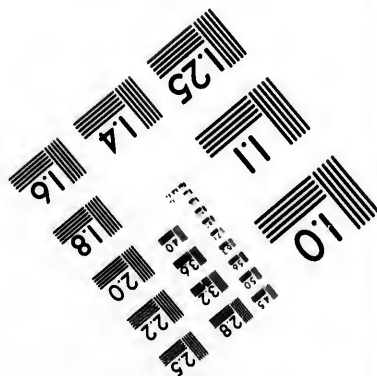
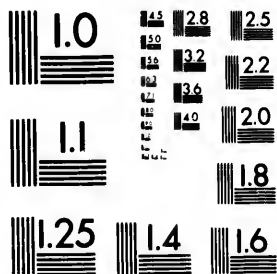


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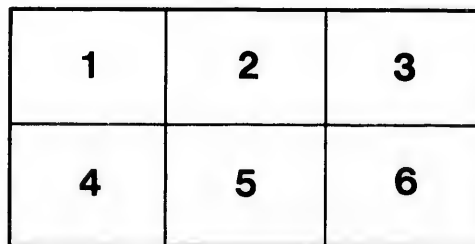
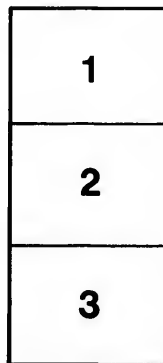
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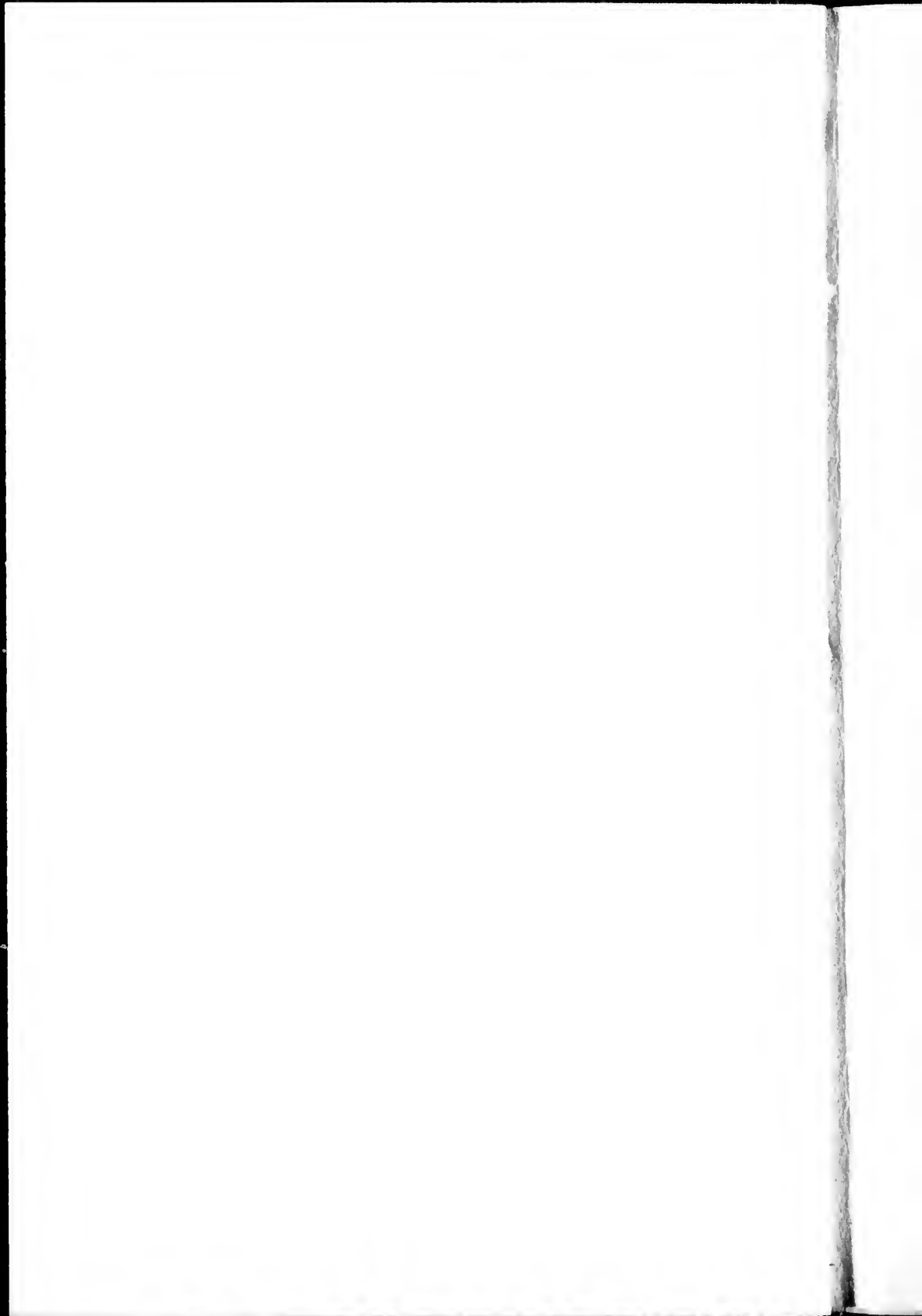
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8

REPORT
OF
ARGUMENT
SUBMITTED TO
THE HONORABLE THE EXECUTIVE COUNCIL
FOR THE PROVINCE OF QUEBEC,
BY
HONORABLE L. RUGGLES CHURCH, Q.C., M.P.P.
ON PRESENTATION OF A MEMORIAL RESPECTING THE VESTED
RIGHTS OF
LIMIT HOLDERS IN THEIR LIMITS.
MARCH 16th, 1880.

8

The following is a copy of the Stenographer's notes of the argument of the Honorable L. Ruggles Church, Q.C., M.P.P., before the Executive Council on the 16th March, 1880, at Quebec, and which have been put into type at the request of some of the Members of the Executive Council for convenience of reference, owing to absence of certain Members of the Council on that occasion.

MR. PREMIER AND GENTLEMEN :

The number and respectability of the gentlemen by whom I am surrounded, is the best guarantee of the importance of the subject which I desire to present to you and to your colleagues. It, no doubt, has reached your ears that in England a question has arisen among capitalists with regard to the tenure which lumbermen enjoy of their limits ; a feeling of insecurity has sprung up amongst banking corporations and holders of licenses with regard to the interpretation which, in 1889, may be put upon the character of the tenure by which they hold their licenses to cut timber. The object of the delegation here present on this occasion is to submit a memorial on the subject, and to ask from you, and from the Legislature subsequently, an explicit statement as to the views you entertain respecting the tenure which they enjoy, and to obtain from you a declaration that it is not limited, but is a continuous tenure in the spirit in which the Legislature originally intended it.

Although it may be somewhat tedious for you, Mr. Premier, and your colleagues, yet I think the subject of

such importance that I claim from you the privilege of submitting for your consideration the legislation, and orders-in-council under that legislation, which have been passed from time to time respecting this subject.

I find, on reference to a report of the Commissioner of Crown Lands in Ontario, submitted in 1872 to the Legislature of that Province, a partial history of that tenure; and inasmuch as the report was official, and was made at a time when the statutory provisions respecting limits were substantially the same in both Provinces, I apprehend that a declaration coming from an official source, by a gentleman of large experience in connection with the Department of Crown Lands in that Province, and with the legislation of the heretofore Province of Canada, will be of value and importance on an occasion such as this. With your permission, I shall read to you some of the remarks contained in that report:—

On page xi will be found the remarks I refer to, and which are as follow:—

“ The impression is entertained by many who are not familiar with the Timber License system, and whose attention has been drawn to cases of real or apparent grievance alleged to be experienced by settlers from the scarcity of timber for the supply of saw mills manufacturing lumber for local use, in consequence of the pine lands where settlement has penetrated being covered by timber licenses, the holders of which they point out are exporting large quantities of the article to foreign markets, that the government, as a remedy, should abolish the system and partition out the pine districts so covered by license for the use of settled localities, forgetting in their commendable zeal for the welfare of the settler, that by so doing they would wrest from those who had been the actual pioneers of settlement rights honestly and legitimately acquired and recognized from year to year so long as they had complied with conditions imposed by established regulations. +

It must be borne in mind that *since the year 1825*, when the granting of licenses to cut timber was first introduced, down to and including the Crown Timber Regulations, promulgated by the government of the late Hon. John Sanfield Macdonald in April, 1869, the right to renewal of license has been continuously acknowledged, the only condition insisted upon to ensure such renewal being compliance with existing regulations.

In 1845 an Order in Council was passed, in which it was provided that licenses were to be issued for one season only, but with the distinct under-

standing that renewals of licenses were to be granted on due compliance with conditions imposed with respect to them.

An order in council, passed in March, 1849, not only repeats the right to renewal of license, but permits the licentiate to transfer his limit by simple assignment.

Under Act 12th Victoria, cap. 30, an Order in Council was passed in August, 1851, in which the right to renewal is distinctly recognized; again in an Order in Council passed in August, 1855, it is stated, that in order to perfect the ground rent system adopted in 1851, with a view to its stability and permanence increased rent should be charged on limits on which the licentiate had not operated the previous season, the increased rent charged for non-occupation being again reduced to the minimum rate, should the licentiate subsequently operate on the limit, a regulation clearly establishing the fact that as between the license holder and government the right to renewal of license was beyond question.

The Crown Timber Regulations of June, 1866, provide that "License holders who have duly complied with all existing regulations shall be entitled to a renewal of their licenses;" and the regulations now in force, dated 16th April, 1869, recite in the 5th clause that "License holders who shall have complied with all existing regulations shall be entitled to have their licenses renewed on application to the Commissioner of Crown Lands."

From the above it will be seen that holders of timber licenses have certain vested rights recognized for many years; never disturbed by any government, except for cause, or in the interests of settlement, and which cannot in justice or equity be abrogated."

This is a short *resumé* of the views which that gentleman (Hon. Mr. Scott) officially declared as to the tenure which license holders had, and contains a historical summary of that tenure.

Thanks to the courtesy of the gentlemen of the Crown Lands Department, and especially of the Hon. the Commissioner, I am enabled to place before you the text of some of these regulations and statutes to which reference has been made.

The order-in-council of 1845, limited the granting of licenses to one year only, but expressly provided for their renewal, as will be seen in reference to section 7 of the Regulations then in force, and in 1849 a statute was passed, the details of which I will shortly refer to; I may say, however, that it is well, in interpreting it, to start with a well-defined idea of the object which led to the passing

of this statute. Without a knowledge of the motive which led to its enactment, it is extremely difficult to get at the purport and correct interpretation of the statute in question. You will find that as early probably as 1825, and certainly in 1849, the Legislature determined to raise a revenue out of the timber on the Crown Lands, and for that purpose passed a statute in which the preamble explicitly and expressly declares that its object was to provide for the sale of the timber on Crown Lands.

The general form of license which was in use at that time seems to have continued up to the present day. I therefore think it reasonable to suppose that the intention of the Legislature, as declared on that occasion, and as confirmed by subsequent legislation, was to grant the timber on the Crown Domain to such persons, at such rates, and subject to such conditions, regulations and restrictions, as from time to time might be established by the Lieutenant-Governor of the Province and his Council. Up to that time, between 1825 and 1845, although it is somewhat difficult to get very precise information, it would seem as if the granting of Crown licenses was considered as a matter of very small importance. The power of granting them was conferred upon local agents, and the right to have them was unquestioned. If any individual wished to possess himself of the right to manufacture timber on the Crown domain, he was not under the necessity of going to some high official, such as the Commissioner, but merely to some local agent, and obtain from him what he desired. Nor does there seem, by legislative authority, at least, to have been fixed any length of time for which these rights were granted. But in 1845 there seems to have been engrafted on the system the idea of granting an annual license.

I think it important, that we should have a clear idea of what is meant by the term license, as contra-distin-

guished from the tenure which individuals enjoy. The moment that the legislature of the province determined upon selling the timber upon the Crown Domain, and conferred upon the Commissioner the authority to make such sale, the grant made by him was quite different and distinct from the method of enforcing the idea of revenue. In other words, the license is quite a different thing from the tenure. The tenure is understood by referring to the preamble of the Act which declared that the purpose of the legislation was the sale of the timber, and the exercise of that right is between the representatives of the Province and the actual holder of it. It is declared by the Legislature that this license shall, issue to him for one year, subject to such terms and conditions as shall from time to time be determined upon by the Executive. The legislature might increase the obligations of the holder, and it might increase the amount of money he would have to pay, but it could never deprive him of a tenure which had become a vested right, and which was recognized from 1825 up to the present time.

On reference to the regulations of 1845, to the 7th section of them, it will be found that the following regulation was passed: "licenses will be granted for one season only, " but with the understanding that the holders will be entitled to a renewal of same as long as they continue to cut " on the limit, and otherwise fulfil the conditions imposed " on them." There is no limitation to this right; it says that they will be entitled to a renewal from time to time. The license shall issue for only one season, and for determined purposes, but not the right to the timber which was perpetual. The purpose the Legislature had in view should be remembered.

In 1849, and I may say apropos of this, that this is the interpretation that Mr. Scott put upon it, and Mr. Scott had excellent opportunities for understanding the charac-

ter of this tenure and the intention of the legislation, and the understanding which the trade had. Mr. Scott had been the representative of an Ottawa constituency over twenty years ago, and had taken part in the legislation in question, and had, moreover, taken part in the conference which took place between the Government and the lumbermen in 1868, to which I shall hereafter refer. In 1849 a change was introduced in the regulations, and it is important to consider whether the regulations in any way altered the tenure, or whether, on the other hand, they confirmed it. In 1849 the legislature also dealt with the subject; the Act 12 Vic. cap. 30 was passed some two or three months before the regulation which I am about to read. In 1849 a new feature, I may say, was introduced, for the vested right to renewals was recognized not alone by the declaration which I have read, but also was extended in favor of third parties who might become transferees of that right, and by the 5th clause the right to transfer this right which had been conferred for the first time, seems to have been recognized. The clause says :

“Transfers of Limits to be in writing, and if not found objectionable by the Crown Land Department or Timber Agent, to be valid from the dates on which they may be deposited in the hands of the latter, but no transfer to be valid until after one year's actual occupation by the parties transferring them. It being however well understood that in granting Timber Licenses the Government contract no other obligation than that of allowing the party to cut and carry away the quantity of timber mentioned, if found within its limits.”

You will remark that this was a declaration and recognition in favor of transferees, of vested rights held by the transferor. And there was, moreover, in these new regulations on the part of the Executive, a solemn recognition of the right of the lumbermen to a renewal of their licenses, for in the 8th sub-section the following words will be found :—

“Licentiates who shall have strictly complied with all the requirements of the office, will be considered as having a *claim to a renewal* of their license in preference to all others, on their making application to

“ that effect in writing on or before the 31st May, and depositing the money
 “ and bonds required on or before the 30th September, (except that for this
 “ season, they will be received until the 31st December,) failing which the
 “ limits to be considered vacant and to be disposable by Public Auction on
 “ the 10th of October following, or subsequently to first applicant.”—(*Extract
 from General Timber Regulations, dated Montreal, 5th Sept., 1849.*)

I said that these regulations were prepared under the authority of the Act 12th Vic., cap. 30. I have said that the policy of the Legislature would be found declared in the preamble. I would like, again, to draw the attention of the Executive to the words. I shall read the preamble :

“Whereas it is deemed expedient and proper to provide by law as well for the sale of the timber growing on the public lands of the Province, as for the protection of the said timber against the frequent and extensive depredations committed upon it in various parts of the Province : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada and for the Government of Canada*, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Commissioner of Crown Lands, or any officer or agent under him, duly authorized to that effect, to grant licenses to cut timber on the ungranted lands of the Province, at such rates, and subject to such conditions, regulations and restrictions, as may from time to time be established by the Governor of the Province, by and with the advice of the Executive Council, and of which due notice shall be given in *The Canada Gazette* : Provided always that no license shall be so granted for a longer period than twelve months from the date thereof ; And provided further, that in consequence of any incorrectness of survey or other error, or cause whatsoever, a license shall be found to cover grounds already included in a license of a prior date, the license last granted shall become null and void, in so far as it may interfere with the one previously issued, and the holder or proprietor of the license, so rendered null and void, shall have no claim whatsoever upon the Government for indemnity or compensation by reason of such cancellation.”

Now, it seems to me that if the Legislature at that time could have looked forward to this date, and had been desirous of putting into the hands of the gentlemen who surround me a solemn declaration of the character of their title, it would have been difficult for it to have formed more apposite words. It declares, first of all, that by law

provision shall be made for the sale of timber on Crown Lands; it further provides that the Commissioner of Crown Lands may grant such sales from the ungranted lands of the Province, and that these sales shall be made subject to such conditions and regulations as may from time to time be established.

This Act was passed on May 30, 1849.

The rules and regulations to which reference is made there are to be found in the book which I hold in my hand, and which belongs to the Crown Lands Department, and were passed three months after, viz., on the 5th September, 1849, the Executive of that day, under the authority of that Act, having passed the rules and regulations under which these titles were to be granted. Here I may say that if we were to apply to this statute the strict rules for the interpretation of statutes, there could be but one meaning attached to it, that is, that for all future time such licenses granted under this statute, and renewable under the regulations then in force, continued to be ruled by these rules only, and that any attempt to impose other rules was a limitation of the vested rights given by the sale under this act, and inconsistent with rights derived at the time the sale was made. But I will not press the argument on this occasion, because I think it unnecessary. But I think it necessary to apply the strict legal interpretation to the legal rights of the parties as acquired at that time, so far at least as renewals are concerned.

In 1849 this right to a renewal of licenses was solemnly recognised by the Executive Council of that day, as I have before shown in the Order in Council which is above quoted.

In 1850 the statutes regulating the management of the Crown domain were, with the other statutes of Canada, consolidated. In cap. 23 C. S. C. the same words will be

found as those which I have just read to you from the Act 12 Vict. cap. 30.

Up to that time it was not a matter of grace on the part of the Executive of Canada or the Commissioner of Crown Lands to grant licenses, it was a matter of right. The possession of that right had attached to it certain onerous conditions. These conditions were sufficiently onerous to make no great greed manifested, on the part of individuals, to hold any very large portion of the domain. Therefore it was that at that time the Legislature made it a matter of obligation, on the part of the Commissioner of Crown Lands, to grant to the first applicant the territory asked for.

In 1851 the Executive again dealt with this subject. The various rules and regulations respecting the granting of licenses were abrogated, and on the 8th August, 1851, a new order-in-council was passed.

You will understand that the orders-in-council which existed previous to that time were suppressed by this latter.

It is curious to enquire whether the recognition of the rights of lumbermen was continued. We find that in the 11th section of this order-in-council it is enacted that:—

“Licentiates who have complied with all the regulations *will be entitled to renewal of their licenses* for their berths in preference to other applicants for them, if they apply in writing for such renewal before the first of June next ensuing their previous license, and complying with the conditions mentioned in last clause before the 1st of November following; failing which, the berths they held will then become vacant, and will be offered for sale on the 10th November following, to the highest bidder making immediate payment, and if not then sold will be granted to the first applicant thereafter, as usual.”—(*Extract from the General Timber Regulations, dated Toronto, 8th August, 1851.*)

The order-in-council of 1849, declared that the licentiate should have “*a claim to a renewal*” of his license. Here it declares that he “*will be entitled to it.*” This is as formal a declaration as it is possible to find words to express. It declares without hesitation or circum-

locution, and in the most clear manner possible, that he *shall be entitled to it.*

That was the tenure which continued to exist from 1860 to 1866. In 1866 there was a repeal of this order-in-council. These things had become fashionable, and it was reasonable to infer that the in-coming Commissioner would deal with the subject as his predecessors had done. In 1866 this order-in-council of 1851 was repealed—it was superseded by the following under Sir Alexander Campbell :

“ Notice is hereby given that the Regulations for granting licenses to cut timber on public lands, dated 8th August, 1851, are superseded, and that from and after the date hereof, timber licenses and the renewals thereof shall be granted in the manner and under the conditions prescribed in the following Regulations, sanctioned by His Excellency the Governor-General in Council, by Order dated the 12th inst., in addition to the requirements of the Act, Consolidated Statutes of Canada, cap. 23.”

It may be remarked that the term which was permissive before “ will be granted ;” is here imperative “ shall be granted.”

The 8th section follows with the subject of the renewal of licenses.

“ License holders who shall have duly complied with all existing Regulations shall be entitled to renewals of their licenses, provided they shall have made and delivered to the Crown Timber Agent of the locality, before the thirtieth day of September, or such prior date in any locality as the Commissioner may fix, sworn statements of the number and description of pieces of timber and saw-logs cut by themselves or by others to their knowledge upon the berths held by them, during the season, and shall have paid to the Crown, on or before the fifth day of December following, the ground rent payable for renewal of their licenses for the ensuing season ; but should they fail to comply with these conditions in respect to any berths held by them, such berths shall thereby become vacant and the right to license therefor forfeited, and they shall be sold at public auction or be otherwise disposed of as before mentioned, excepting that if double the ground rent otherwise chargeable be paid for omitting to furnish the statement above-mentioned, and payment be made before the day of sale, with ten per cent. in addition for each month of the delay in payment, the berth may be re-licensed to the former holder.”

There were certain new features introduced in the management of the Crown Domain under this order ;

for instance, it provided that all vacant and forfeited timber limits would be sold by auction. This was subsequently repealed, and it is not worth while to occupy your time much about it. But here there was also the introduction of that form of annual license which had been referred to in the regulations of 1849. It says, "all timber licenses shall expire on the 30th April following the date thereof." In the 8th section it says: "license holders shall be entitled to a renewal of their licenses." Sections 9, 10 and 11 also deal with the matter: section 9 provides that;

"License holders desirous of obtaining renewal of licenses must make application for such renewal to the Crown Timber Agent of the locality before the 1st July in each year, stating what berths have been duly occupied, failing which such berths shall be charged with the rate of ground rent payable on non-occupation."

Section 10 provides that;

"Crown Timber Agents shall keep registers of all licenses granted or renewed by them, and transfers thereof, which, together with their plans of licensed berths and vacant ground, shall be open for public inspection."

and section 11 provides for the transfer of timber limits.

"Transfers of timber berths to be made in writing, and if not found objectionable by the Crown Land Department or Agent for the granting of licenses, to be valid from the date on which they may be deposited in the hands of the latter; but no transfer to be accepted while the party transferring is in default for non-payment of dues on timber to the Crown."

But it is not alone in the words of the order-in-council that we are to seek for the interpretation of what was meant by the Executive of that day. We fortunately have the official declaration which I hold in my hand made by the Commissioner of Crown Lands, on an occasion similar to this, when certain doubts with regard to the fixity of tenure arose. A man named Clark who had become a purchaser of some limits in Canada, and who, I gather from the context, must have been an American, and proposed to increase his investments in this country, applied to the Commissioner for an authoritative declaration as to the character of the tenure he would hold. Here is

the reply, signed by the Commissioner in his official capacity, forming part of the authentic records of the Department of Crown Lands of this Province, which I will take the liberty of submitting to your attention.

" DEPARTMENT OF CROWN LANDS,
WOODS AND FOREST BRANCH,

Ottawa, 11th Oct., 1866.

Sir,

" I have the honor to acknowledge receipt of the letter of E. C. Clark, Esquire, dated Albany, N. Y., August 30th, 1866, asking 1st, to be assured against interruption for the period of ten years in the enjoyment of the Timber Berths acquired by himself and partners on the River Meganetewan.

2nd, Authority to build a dam across the river at or near its junction with Byng Inlet, and to purchase sufficient ground adjoining thereto for a lumber yard, erection of buildings, &c.

3rd, An extension of his present timber berths on both sides of the river, westward.

In reply, I have the honor to refer Mr. Clark and yourself to the copy of the Timber Act, under which licenses are granted, and of General Timber Regulations respecting the granting of such licenses, enclosed herewith. I would at the same time observe 1st, that timber licenses in unsurveyed lands are renewable, season after season according to the Regulations, until such time as the land is disposed of by the Government, preliminary to such disposal, the lands (except in townships, sold *en bloc* now mentioned) are surveyed and sold in lots of 100 acres each, more or less subject to conditions of actual settlement for the greater part.

Thus timber licenses in Canada have from usage and the action of the Department a more permanent and continuous character than would appear from the licenses themselves. From page 28 of the Departmental Report for the year ended 30th June, 1865 herewith, you will observe that 32,347 square miles of territory were then under license throughout the Province, in connection with which large sums, as you are aware, are invested for saw-mills and river improvements. Those making such improvements must consider the tenure they held of their timber berths sufficiently secure to have warranted the outlay. In fact, American firms have now very large amounts of capital employed in the trade on the Ottawa and elsewhere.

" 2nd, Mr. Clark may rely with confidence on the permission of the Government being given for the construction of any dam which will not interfere with the use of the river for the passage of timber and logs belonging to other persons.

" 3rd. With regard to the extension of his present berths on both sides of the river westward, the Department would be prepared to consider a distinct proposition on this point, but no Indian Reserve to be interfered with.

" The first mill-site from the mouth of the river belongs to Mr. Harris ;

but Mr. Clark is at liberty to select a site further up, and to have it surveyed, and any reasonable quantity of land which he desires to hold in connection with it will be sold to him at 20 cents an acre.

"I shall be much pleased to learn that the many advantages which our country affords to capitalists embarking in the manufacture of lumber, will have induced Mr. Clark and his friends to avail themselves of them. The tracing fyled by you is returned herewith.

"(Signed,) A. CAMPBELL,
"Commissioner.

"JAMES LITTLE, Esq.,
"London, C.W.

"Agent for E. C. Clark, Esq., of Albany, N.Y."

This is the official and authoritative declaration of the order-in-council, and I think it is the best interpretation which it is possible to have at this day.

There came now an entirely new political order of things. Confederation was at hand. I have brought the history of this subject up to the date of Confederation. It is interesting to know whether when the Imperial Parliament came to deal with the subject of the future political destiny of this country, any regard was had by that Parliament for the rights of individuals who had become licentiates of any portion of the Crown Domain. I find that it did. I find that these rights obtained a positive and solemn recognition in the Imperial Statute which inaugurated Confederation. On reference to the 109th Section of that Act it will be found that the Provinces of Quebec and Ontario, and the other Provinces which entered into Confederation, had transferred to them by that Act all the lands which were within their limits. But they were given subject to certain conditions and certain rights. Here are the words of the Statute:

"All lands, mines, minerals and royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals or royalties shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same."

I have shown that the Legislature as far back as 1849 created the right of renewal. I have shewn that it created the authority for the transfer of that right; that afterwards orders-in-council made provision for the transfer, and that that right of renewal was recognized by the official head of the Department of Crown Lands a few months at most before Confederation took place. I now show by the quotation from the B. N. A. Act of 1867, that the Imperial Parliament recognized and reserved the vested rights of third parties, and I have no doubt that if any question arose and it became necessary to appeal to the Imperial Privy Council, that the Privy Council would recognize these rights, but I do not think any such necessity will occur.

One would suppose that these regulations, so often the subject of change would have at least reached a quiescent state, and that gentlemen who were called upon to preside over the destinies of the Crown Lands Department would not have thought themselves called upon to modify them. But in July, 1868, another order-in-council of a somewhat sweeping character was passed, but had a very short existence. In 1868 there evidently arose a necessity for expanding the revenue. Vague rumors were afloat that the gentlemen around me were getting rich a little too fast, and the idea occurred to the Executive of the day that a little taken from their superfluities would not be disadvantageous to the provincial revenue. Any way, no matter what the reason was, the idea of increasing the dues payable by these gentlemen seems to have taken form. An order-in-council was passed first of all regulating that for the future all licenses to cut timber on the "vacant" Crown Lands should be put up to auction. We have no official interpretation of what was meant by "vacant" lands. If these lands then under license were to be held only until the 30th April as granted, then at that date the whole Crown Domain would be vacant. It might be so

interpreted by some Commissioner coming into office, who might put all these licenses up to auction. Not only that, but it was provided also by this order-in-council further for an increase of dues, and that the ground rent, which before was fifty cents a mile, should be increased to one dollar a mile; and, by-the-way, I may say that there was a system of what was called doubling up for non-occupancy. This was a sort of penalty upon lumbermen if they did not waste their lumber. If they did not occupy their limits, and cut their timber, they were to pay the double ground rent as a penalty. It was a bonus to induce them to waste the Crown timber; it was a bonus to deprive the Crown of all future revenue—it was a provision to deprive individuals of their vested rights. It was a senseless provision, that the gentleman who was then Commissioner of Crown Lands did well in casting about him to find a remedy. It was an absurd regulation in every manner in which it could be contemplated.

Mr. CHAPLEAU,—You all approved of it.

Mr. CHURCH,—No, I do not think any of us approved of it, but we had to submit to it.

What was done was, for instance on white pine timber, which previously had paid a duty of one half-penny, under this regulation the duty was increased 50 per cent.; other timber was raised in proportion. That order-in-council had a short life, and that which provided for the sale of vacant timber limits was revoked by an order-in-council which was introduced in October following.

We now come to the most difficult point in the whole case. It is not difficult to understand or explain the pretensions of the trade if a person will look at the whole case, but most difficult if considered from a narrow standpoint. At that time, viz., in 1868, it appears that the then Commissioner of Crown Lands consulted some of the gentlemen engaged in the trade, as well as some of the

members of the Legislature, with regard to certain advantages which he thought the Province might fairly demand from the lumbermen, and certain guarantees which the Province was willing to offer to lumbermen, in consideration of these advantages being acquired by the Province. The doubling up system was considered; all agreed that it was a foolish one, and that it was desirable to get rid of it. It was also agreed that the Government should not have the arbitrary power to increase the duties whenever an apparent necessity to add to the revenue arose. For a man to hold a property requiring a large investment of capital to work it profitably, to hold that property at the mere whim, or caprice, or political necessity of any Government, is a very objectionable tenure, and the manifest undesirability of such a system seems to have come up for consideration. The result was that certain concessions were made on both sides. On the part of the Government this objectionable doubling up system was abandoned. In return for that, instead of paying fifty cents per mile, as under the old order-in-council they were compelled to do, or submit to the doubling-up of the ground rent, the lumbermen agreed to pay two dollars a mile. They were relieved from the necessity of working each one of their limits, very often at a great disadvantage and always at great loss to the Province and themselves. They consented to an increase of dues, and in return they got the guarantee that these dues should not be increased for ten years at least, and not more than once in the twenty years succeeding.

The question next came up between the parties as to what way they should give effect to that agreement. The form they took did not commend itself at that time to my judgment, it commends itself still less to my judgment now, and will not commend itself to the judgment of any person who will consider the difficulties which have arisen in connection with the interpretation of it.

Mr. CHAPLEAU,—Matter of opinion.

Mr. CHURCH,—To my knowledge the gentlemen around me have but one opinion on the subject.

Mr. CHAPLEAU,—They had not at that time.

Mr. CHURCH,—There were very few who took part in it, and of those that did take part in it, a portion foresaw the difficulties which would arise, although every person told them there was not the least difficulty about the matter, and although there were special declarations of the Commissioner of Crown Lands, that the tenure would continue for all time, or until the land was required for settlement. The form chosen was to engraft upon the old license a declaration that the license should be renewable until the 30th April, 1889, annually, and it was made an obligation on the part of the holder that he should hold it during these twenty years.

There was another feature ; previous to that time, if an individual exhausted the timber on any section of the country he was at liberty to abandon it. After the passing of the order-in-council he could not ; the Commissioner could relieve him of it if he chose, but if he did not, the holder was obliged to pay the amount of ground rent till 30th April, 1889.

It was under this order-in-council, or rather under the preceding one, but incorporated into this one, that another idea was introduced, and that was the idea of a bonus on the transfer of the limits. Of course the idea of a transfer of a right recognized the existence of that right, and that is the only redeeming feature of this clause. It recognized the existence of the right of third parties to these limits after transfer had been duly made, and the bonus paid, but each individual transferring limits was obliged to pay eight dollars a mile. We were told that this was to put down speculation. Speculation may be a very reprehensible thing on the Stock Exchange when it deals with

the fortunes of widows and orphans, but when it comes to the right to cut timber, I do not see that in itself it is a very baneful or a very dangerous thing which the Executive should frown down. Whatever may have been the reason, we were told it was to put down speculation. Whether this has been the only result or not, it is curious to note. During the commercial depression which has passed over this country, and the depression which this, the only staple trade of the Province, has undergone, if gentlemen were able to hold on to their limits up to the present time, they felt that they were extremely fortunate. In the ruin which surrounded them, it was not to be supposed that they would speculate in what was unsaleable, or only saleable at ruinous loss. These gentlemen now approach you, and they say that the experience of the Department will show that this bonus system has not been very remunerative in revenue; it, on the other hand, cripples trade. When everything was "*booming*" in the trade, the lumbermen invested in large tracts of timber limits which they are now unable to use, and which they cannot transfer without paying as bonus a larger sum in many instances than they are worth. The advantage to them if this clause of the order-in-council were revoked, and if they were permitted to part with these limits, would be, that they would be able to pay their creditors, resume business, and manufacture lumber and saw-logs, and thus the revenue would be augmented; or the new purchaser would engage in the trade, now that things look as if they were somewhat reviving. The effect of the present regulation is that you shut out the holder of these limits from using them himself, you prevent his making sale of them to others, and you deprive the Province of the revenue which might thus be acquired if they were worked.

There was another idea which was well known to gentlemen who had to deal with that matter, and which

moved the Executive to adopt the policy it did adopt, of granting these licenses renewable for twenty years; it gave stability to the revenue of the province. During all this time of depression, this trade, owing to the fixity of the dues, has been contributing as much as in the most prosperous times. To-day over 50,000 square miles pay this revenue, irrespective of whether they are used or not. It is known to the trade that a very large portion of this territory is really not tenanted—if I may use the expression—with pine; there is no pine there. Of course, when the sale was made by the Province, it was wise, as far as the revenue was concerned, that that form should be adopted, which, by obliging the holder of the license to renew during the twenty succeeding years, and to pay the ground rent, whether he worked the territory or not, would thus give stability to the revenue, however onerous it might be under the circumstances which succeeded to those who accepted it.

There is a form of expression, which has been adopted in all these licenses, from 1851 to the present day, and perhaps before that time, which I think it is well to make a few remarks upon, viz: that the license granted, say on the 30th December, would be in force until the 30th April succeeding, "and no longer." The words "no longer" have one of two meanings; either they mean that the rights of the individual holding that territory cease at that time, or they do not. If they do, then I would like to know by what power the Commissioner of Crown Lands for forty years, or thereabouts—upwards of thirty certainly—has renewed these licenses. If he answer me by saying that he does so in virtue of the declaration of the Legislature and order-in-council, which entitles limit-holders to a renewal, I say that is equivalent to an admission they have a vested right which the Legislature and the Legislature alone can deprive them of, and even the Legislature could only deprive them of it by constitutional

means and after due indemnity. And I say that I find in the history of the legislation of this Province that there has been no attempt at legislative confiscation such as that. These words must be interpreted by the whole of the regulations in force, and not by any one of them, and it is not possible to suppose that that expression "no longer" can divest individuals of rights secured in the most solemn manner, and if that construction be put upon them now, or in future times, it is a construction of spoliation, confiscation and wrong, which no Legislature and no people will sanction for a moment.

I have said that this new system was the result of a conference between gentlemen engaged in the trade and gentlemen who controlled the legislation of the country. I hold in my hand a statutory declaration, (which of course has the value of an oath), of a gentleman who was then a member of the legislature, and engaged in the timber trade, with an experience of forty years, who declares what was his understanding, and what he believed to be the understanding of the Hon. Mr. Beaubien, then Commissioner of Crown Lands, and of the Executive of that time. Allow me to read it.

"I, John Poupore, of the township of Chichester, in the county of Pontiac, trader, do solemnly declare that in the year eighteen hundred and sixty-eight I was a member of the Legislative Assembly of Quebec, and a lumber merchant and limit-holder.

"That, as such, I have had many years experience and knowledge of the interpretation of the various Commissioners of Crown Lands of the rules and regulations in force regulating the granting of licenses to cut timber and their renewal.

"That I have been a holder of licenses about forty years.

"That in 1868, the then Commissioner of Crown Lands, the late Hon. J. O. Beaubien, and I had repeated conversations with regard to a feeling of anxiety which had arisen amongst lumbermen respecting the dues which might be exacted from the trade, and also as to the propriety of removing a very objectionable feature of the regulations then in force by which the ground rent on unoccupied limits doubled annually for non-occupancy.

"That the Commissioner was willing to afford an assurance to the trade that the dues should not be arbitrarily augmented within the succeeding

twenty years, and, moreover, that the doubling of ground rents should be abolished, provided the trade would consent to an uniform increase in ground rents from fifty cents per mile to two dollars per mile, and the Crown dues from a half-penny per cubic foot to one cent and a quarter, and corresponding increase in saw logs, and hence the present form of lease was resolved upon; but I declare that it was not at the time contemplated by me, and believe that it was not contemplated by the Commissioner, that the rights of a renewal of the lease from year to year, or the tenure of the limit-holder, were in any sense affected or abrogated.

"That, in fact, had any such view been promulgated or even suggested, no one having large investments of capital in limits, river improvements, mills, &c., would have thought of consenting to or of accepting the change.

"And I make this declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled 'An Act for the suppression of voluntary and extra judicial oaths.'

"(Signed) JOHN POUPORE."

"The foregoing declaration was made before me at the city of Ottawa on the 20th day of February, 1880.—G. E. HAY, J.P."

That is Mr. Poupore's declaration,

Mr. CHAPLEAU,—You remember the discussion in the House at that time?

Mr. CHURCH,—Yes, I was just about to refer to the discussion which took place in the House at that time, and I hope your recollection of the discussion is favorable to the interpretation I wish to give to it.

The legislation with regard to the rights of lumbermen is to be regarded as an interpretation of the Act and regulations and orders-in-council, as previously passed in 1849, 12th Vic. cap. 36 These are the words of the Act 32 Vic. cap. 12:

"According to the true intent and meaning of Chapter twenty-three or Consolidated Statutes of Canada in so far as it applies to this Province, the Commissioner of Crown Lands always had, and still has, the power of issuing licenses to cut timber, subject to the privilege of their being renewable annually, for any fixed period of years, and in that respect, as well as in all other respects, the modifications of the Crown timber regulations, sanctioned by the Lieutenant-Governor in Council, by Order in Council bearing date the second day of October, one thousand eight hundred and sixty-eight, as published in the *Canada Gazette*, are hereby confirmed and declared to be and to have always been legal."

This is a very valuable contribution at a time such as

this. When people pretend that the rights of lumbermen terminated with each year, that their holding was an annual holding, and when they point to the legislation of 1849, and orders-in-council of 1851 and 1866, and other regulations respecting it, I say it is fortunate that the legislature has set aside any difficulty upon this point, and has interpreted the Act in a manner which cannot be contradicted.

Mr. CHAPLEAU,—What do you put as the real practical interpretation of the legislation of 1869?

Mr. CHURCH,—What I say is this: when an individual has a right for all time to a thing, another cannot limit his right by recognizing it for only ten or twenty years. It was a stupid thing for sixty-five wise men to say that a man having a recognized right for all future time should enjoy it for a shorter period only, or that the Commissioner who, notwithstanding an order-in-council requiring that licenses should be granted for one year only, but with the right to renewal, had granted virtually a twenty years' lease, was right in so doing, under the law and the order-in-council as they then stood. Certainly there was no harm in it, and certainly by the principles of law it could not be supposed or contemplated that in making a declaration of the Commissioners' powers such as that, the Legislature was thus taking away the rights of men guaranteed to them and enjoyed by them for forty years.

Mr. CHAPLEAU,—You mean to say that the legislation was limitative of acquired rights?

Mr. CHURCH,—Not limitative: all principles of law would forbid that any such interpretation be put upon it. It merely declared that what the Commissioners had done heretofore was legal, and one of the things which they did, was to pass the orders-in-council which made these licenses practically renewable for ever.

I have read the declaration of persons who were outside the Department; I shall now read the declaration

of a gentleman who was in the Department, within the charmed circle.

"I, Louis Adolphe Robitaille, of the City of Quebec, gentleman, do solemnly declare that I entered the Woods and Forest Branch of the Department of Crown Lands, Canada, in the year eighteen hundred and fifty-five, and remained as an employee in that branch until the year eighteen hundred and sixty-seven, when I became superintendent of the same branch for the Province of Quebec, and continued as such until the year eighteen hundred and seventy-four.

That from my long connection with the Department of Crown Lands, I have acquired intimate knowledge of the law and regulations governing the granting of licenses to cut timber, of the renewal of said licenses and of the customs regulating said renewal.

That notwithstanding that timber licenses were renewable annually, it was always understood in the Department that lumbermen were entitled *as of right* to a renewal of their licenses until such time as the lands were required for settlement, the reason of a yearly license being granted was to ensure compliance by the licentiate with the rules and regulations from time to time issued by the Commissioners of Crown Lands.

That in the year eighteen hundred and sixty-eight new regulations were adopted, establishing an uniform rate of ground rent and also of timber dues.

That the trade had several interviews in that year with the then Commissioner of Crown Lands, the late Hon. J. O. Beaubien, respecting the proposed regulations, and that I in my official quality was fully cognizant of all that passed at these interviews, when it was always well understood that at the expiration of the twenty years' lease the limits would remain in the possession of the then licentiate, subject to such regulations as might then be enacted, but it was never contemplated that the rights of lumbermen to a renewal of their licenses should cease after 30th April, 1889.

That having taken communication of the declaration made by John Poupore, at the City of Ottawa, on the 20th February, A. D. 1880, before George Hay, J. P. I declare that the said declaration contains a true statement of the facts relating to the adoption of the twenty years lease.

"And I make this declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled: 'An Act for the suppression of voluntary and extra judicial oaths.'

"(Signed) L. A. ROBITAILLE."

"The foregoing declaration was made before me at the city of Quebec on the 25th day of February, 1880.—(Signed) V. BELANGER, J.P."

It may be asked why were these words "no longer" in these licenses, to be held annually, introduced? Any gentleman who has an experience of the working of that Department, will not search long. The reason is that,

by making the licenses annual, and obliging them to be renewed each year, the Department took the most efficient means of collecting their dues. Instead of going and knocking at the offices of the lumbermen for their Crown dues, they made these gentlemen come and solicit a renewal of their license, which could only be had after payment of all dues. It thus made the lumberman collector of his own debt.

In 1872 an Act was passed ordering that "timber limits within the unoccupied territory of the Crown should be sold by auction." We have had before to deal with "un-granted lands" of the crown—we have had to deal with the "vacant lands" of the Crown, and we have found what was the meaning of ungranted and vacant. It is interesting to know what was meant by "*unoccupied*" territory of the Crown.

Mr. FLYNN,—The French version says *vacant*.

Mr. CHAPLEAU,—It seems very much as if the Crown asserted that it was proprietor, and disposed of it as it liked.

Mr. CHURCH,—I do not interpret it in that way. I think this statute refers to such portions of the Crown domain as had not previously been licensed; as to the portions which had been licensed, they claimed they had a right over that territory, but they also recognized the rights of others. The Crown has the right to take away your property or mine, on granting an indemnity, but not otherwise, and then only for public purposes, and in the public interest.

Mr. CHAPLEAU,—The word *vacant*, unoccupied, means what was not conceded by the Crown for settlement, should remain to the Crown, limited by the time for which the Crown gave licenses.

Mr. CHURCH,—It is important to understand the value of words. In the English language its very copiousness

sometimes makes it very difficult to understand the full meaning intended to be conveyed by a word. But we have certain words that when used there is no difficulty in understanding their meaning; they remove all doubt as to what it is intended to convey by their use. In relation to property we have the word *grant*. Whether you use the words sell, bargain, convey, enfeoff, their use conveys a greater or less restriction of the right in the thing sold. But when the word grant is used, it means that the whole thing is given. The word grant is used by the Legislature, in the statute of 1849, under which licenses were authorized to issue, and they were made subject to certain rules and regulations which the Governor in Council might make from time to time as to the payment of dues, not inconsistent with the grant which had been made.

Mr. CHAPLEAU,—The property which I have the Crown cannot give to another; but the property which I have for ten or twenty years, the Crown can take and give to you without the great question of *pro bono publico* coming up.

Mr. CHURCH,—If the Crown, when it makes the grant, limits it to twenty years, very well; but if it says we will grant you a territory, and the license conveying that grant shall be renewable so long as I comply with certain requirements, it grants it forever.

Mr. CHAPLEAU,—If the Legislature said that this right was good for twenty years, they would have a right to renew it, or give it to other parties.

Mr. CHURCH,—That would be an expropriation. If you are dealing with the abstract principle of expropriating for public purposes, all right; if dealing with vested rights, it would be all wrong. You cannot expropriate the right of an individual without indemnity, whether he holds under a license or otherwise. We hold not by a license, the license is only proof of the previous grant, but by the grant made by the Commissioner under the authority

vested or conferred on him by the statute to make grants of the timber on the Crown Domain. My right to that license existed before I obtained it, and my right to a renewal existed also; to take either of these rights away would be to divest me of my property.

There cannot be any difficulty about the interpretation of the Act of 1872. It must have referred to that portion of the Crown Domain which was then vacant. We have 130,000,000 acres of land belonging to this Province, less than half is under license.

Mr. CHAPLEAU,—What do you suppose they mean by the term “unoccupied” in the Crown Lands Department?

Mr. CHURCH,—I do not know what the employees of the Crown Lands Department may call unoccupied, but what a lawyer or a judge would call unoccupied would be that portion which was not granted to, or occupied by another person.

Mr. CHAPLEAU,—What was accepted by the Legislature for years as unoccupied ground, was what was not granted for settlement.

Mr. CHURCH,—I think not. I submit that the policy of this country was to use the Crown Domain for Colonization and Revenue. It divided it between two classes of individuals: the individual who wanted to colonize had a preferential right, and the individuals who merely wished to purchase the timber might acquire and enjoy that right also. And I insist that these two tenures were recognized by law. If I paid the ground rent and Crown dues upon the timber cut on my territory, I have a right to it under my license, and I have a right by the renewal of my license to continue to occupy it.

Mr. CHAPLEAU,—You are not serious in saying that that means territory which was under license for twenty years.

Mr. CHURCH,—I understand that there is a large portion

of this territory occupied for the purposes of the lumber trade, and I understand that that is the occupied territory to which the statute refers, as distinguished from the unoccupied territory.

Mr. CHAPLEAU,—No.

Mr. CHURCH,—Perhaps not, but that is my interpretation.

Mr. CHAPLEAU,—It affected only territory not then under license.

Mr. CHURCH,—That is what I am contending for.

In 1874 other regulations were passed. You are perhaps curious to see whether individuals may transfer their limits under these new regulations. They may. The old regulations are preserved almost verbatim. The legislation of 1869 is virtually reproduced that of 1849 and 1851 is consecrated and re-asserted. There has been throughout the whole of this matter, from 1845, if not from 1825, up to the present time recognitions of the vested rights of the licentiate to a renewal. The world changed; men came and went; Executives were formed, and Legislatures were disbanded, and still the dominant idea went through all, that the licentiate, once the grant was made to him, continued, so long as the price of sale was paid and conditions fulfilled, to be the owner of the timber, and entitled to have his license annually renewed.

Such has been the law of the Province of Quebec; the lumbermen hold under that law. The law in Ontario and here are substantially the same. At the present time the lumberman in Ontario holds his tenure in a manner which is neither open to cavil nor suspicion. The Assistant Commissioner of Crown Lands in Ontario has had occasion recently to declare these rights. Here is his official declaration.

“ Toronto, 25th Oct., 1879.

Sir,

In connection with your letter of 15th inst, intimating that Messrs. Cook Bros. are desirous of making a sale in England of their Ontario

timber limits, and asking the Department to define for the information of parties on the other side of the Atlantic the rights and privileges of exercises, I herewith enclose.

No. 1, printed copy of the "Crown Timber Regulations" of 16th April, 1869.

No. 2, Crown Timber Act on which the above "Regulations" (now in force) are based.

No. 3, printed form of license.

No. 4, printed notices of two Orders in Council of date 27th May, 1869.

With regard to the continuous proprietorship of a license in a timber limit, you will observe by the eleventh clause of the "Regulations" that all licenses expire and become inoperative on the 30th April in each year; and by the fifth clause that "License holders who shall have complied with all existing regulations *shall be entitled to have their licenses renewed* on application to the Commissioner of Crown Lands or to such local agent as he may appoint for that purpose."

"With respect to transfers of timber limits (or berths), I refer you to the seventh clause of the "Regulations," and state that a transfer is always promptly approved by the Department on the transferor having paid all his liabilities to the Crown for timber dues and other charges, such as ground rent, surveys, and costs of inspection of the whole or part of any season's operations in the woods, when necessity for such may arise, and the expense found properly chargeable to the license.

"Your obdt. servant,

(Signed,)

"THOS. H. JOHNSON,

"Asst. Commissioner."

"HON. R. M. WELLS,

"Toronto."

These regulations are essentially the same as the old regulations in force here. With regard to the rights of license holders, they are identical. The expression "shall be entitled" is especially the expression used in our law.

This is the official declaration of Thomas H. Johnson, Assistant Commissioner; so that here is the official declaration of 1879 of the meaning of words which exist there as they do here, and which defines beyond all question the rights of limit-holders in Ontario.

We have some judicial declarations bearing on this subject, but I fear I am growing tedious, and I shall merely draw your attention to *Watson vs. Perkins*, 18, *L. C. J.*, p. 261, in which the decision was a confirmation of the

judgment in the Court below. Also Perkins *vs.* Thompson, and Stevenson *vs.* Moorhead.

I have thus looked at the terms of the Act of 1849, when the Legislature declared that it was its purpose to sell the timber, and which in effect says to the individual: "you shall have the exclusive right against all parties of enjoying the timber granted, but you shall pay us a certain sum of money and fulfil certain conditions;" and it goes on to say that on their fulfilment, "we will renew this lease from year to year." It must be obvious from the citations which I have made from the British North American Act of 1867, that it not only recognized that right, but confirmed it for all time, and conveyed to the Legislature of the Province of Quebec the public lands, subject to the acquired or vested rights of third parties. If the Legislature of the Province of Quebec were to be so forgetful of the public interest as to endeavor to confiscate that right, or impose on it conditions which the trade is not bound to accept, it would be *ultra vires*, and a remedy exists at the foot of the Throne in England to have these rights respected by the Legislature.

I think it must be obvious that this whole matter must be examined from a high standpoint. No statute can alone provide for the wise administration of the Crown Domain; the exercise of the sovereign power which is given to the Executive under our system, must be coordinate to that dominant idea of progressive development which the subject has a right to expect will be observed in matters of great public policy.

It is of the last importance that the legislation and the interpretation of laws respecting limits, should be the same in Ontario and Quebec. The lumbermen from both Provinces meet in a common market; if you burden the trade in this Province with burdens which do not exist in Ontario, you place them in an unfair position to com-

pete with their rivals, and you lessen the chances of prosperity, and of developing this staple trade.

It seems to me perfectly evident that these vested rights for which I contend, have been recognized by all statutes and regulations respecting the matter.

It now only remains for me to deal with this petition which I now hold in my hand, and which, I may say, is an unanimous expression of the views and feelings of the trade. There is scarcely a man of any importance engaged in the trade but his name appears on it. They all ask an explicit declaration from the Executive of their rights; they ask also that that declaration shall find expression in the form of a declaratory statute.

I propose this, and the gentlemen around me propose it with a certain degree of confidence. If we came here to ask any thing selfish, if we were moved by mere selfish considerations, we might approach the Executive with a great deal less confidence than we do. But when we approach you with a common bond of interest; when our interests and yours are identical, there should be no hesitation and no difficulty in our conferring together from a common standpoint.

What must be the natural results were our demands refused? These gentlemen are now in possession of the limits, and they are entitled to remain in possession until 1889. Many of them have paid thousands of dollars to obtain their possession, have spent thousands upon thousands of dollars to improve the small streams, to build mills and to acquire the plant necessary for their trade, and now to be told by the Executive that it is indifferent to their rights, and that in five or six years their rights will be cancelled, would be a cruel wrong, and the result would only be that these men will meantime strip the Crown Domain of the property which belongs to them;—there will be a temporary increase of the revenue, if you will,

but also a glutting of the market, and a lowering of values, and this Crown Domain which, if wisely husbanded, would yield for generations an enormous revenue to the Province, will be entirely ruined in the succeeding ten years.

These gentlemen ask you for a solemn declaration of their rights by the Legislature. They have no hesitation in saying that any delay to recognize these rights will be attended with serious consequences to the trade, and perhaps serious consequences to the Crown Domain.

When people, like the lumbermen of this country, have contributed so largely to the revenue of the Province in times of general commercial depression, when their trade did not even afford remuneration for their outlay; when these men, I say, have gallantly and valiantly fought against the obstacles which surrounded the trade in the past five years, and honestly fulfilled their obligations, and performed their duty towards the country, I have no hesitation in presenting their claims in the manner I have done; and feel sure that at the earliest possible moment there will be an unequivocal declaration of their rights, which the Honorable Commissioner will make in his official capacity, and which the Legislature will be asked to approve of.

