THE

MANITOBA LAW JOURNAL.

VOL. II. MARCH, 1885. No. 3.

A SYNOPSIS OF THE MORE IMPORTANT IMPERIAL ACTS, &c., RELATING TO MANITOBA AND THE NORTH WEST TERRITORIES.

(*Continued from page 23.*)

43 GEO. 3, c. 138.—*An Act for extending the jurisdiction of the courts of justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes within certain parts of North America.*

Repealed by the Stat. Law Rev. Act, 1872. It enacted that offences committed within any of the Indian Territories, &c., should be tried in the same manner as if committed within the Provinces of Upper and Lower Canada. The Governor of Lower Canada might empower persons to act as justices for the Indian Territories, &c.. for committing offenders until conveyed to Canada for trial, &c. Subjects of His Majesty should be tried, although offence were committed in another European State.

---

1 & 2 GEO. 4, c. 66.—*An Act for regulating the Fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America.*

This Act empowered His Majesty to make grants for exclusive trade with Indians in certain parts of North America.

Sec. 5 extended 43 Geo. 3, c. 138, to territories granted to Hudson Bay Co. Sec. 6 established courts of judicature in Upper Canada to take cognizance of causes in Indian territories. Sec. 11 authorized His Majesty to issue commissions empowering justices to hold courts of record for trial of criminal and civil offences.

The Stat. Law Rev. Act, 1874, repeals sec. 5 and sections 6 to 13.

---

3 GEO. 4, c. 119.—*An Act to regulate the trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces.*

Repealed by Stat. Law Rev. Act, 1874, except sections 31 and 32, which enact that lands held in fief and seignory may, on petition of owners, be changed to the tenure of free and common socage; and that His Majesty may commute with persons holding lands at *cens et rents.*

---

6 AND 7 VIC., c. 22.—*An Act to authorize the Legislatures of certain of Her Majesty's colonies to pass laws for the admission in certain cases of unsworn testimony in civil and criminal proceedings.*

By this Act it is enacted that laws or ordinances made by the Legislatures of British colonies for the admission of the evidence of certain persons residing therein shall have the same effect as other colonial laws.

---

14 & 15 VIC., c. 99.—*An Act to amend the law of evidence.*

By sec. 7, all proclamations, treaties and other acts of State, of any foreign State, or of any British colony, and all judgments, decrees, orders, and other judicial proceed-

The Judges of the Court of Queen's Bench for Manitoba do hereby, in pursuance and execution of all powers and authorities enabling them in that behalf, order and direct as follows:—

1. General Orders of this Court—on its Equity side—179, 180, 405, 406, and General Order 38 of the 17th of February, 1883, are hereby repealed.

2. General Order of this Court—on its Equity side—248 is hereby amended by striking out the words, "to the presiding Judge in Chambers on any day that he may sit in Chambers"; also the word "decree," whenever the same occurs; and also the words, "and the presiding Judge may then hear, or adjourn into Court, or otherwise dispose of such matters on such terms as he thinks proper."

3. Terms for the hearing of cases, including examination of witnesses, are to be held five times a year, on such days as the Court from time to time appoints.

4. A Judge will sit in Court every Wednesday, except during vacation, for the purpose of disposing of the following business in Equity: Injunctions; Motions for Decree; Hearings *pro confesso* on Bill and Answer; On further directions; Petitions; Demurrers; and appeals from any Order, Report, Ruling or other determination of the Master.

5. Appeals from the Referee in Chambers, and such Chamber applications in Equity as cannot be disposed of by the Referee may be brought on for hearing upon any day before the Judge presiding in Chambers.

Dated 26th August, 1884.

LEWIS WALLBRIDGE, C. J.
J. DUBUC, J.
T. W. TAYLOR, J.
R. SMITH, J.

ings, of any court of justice in any foreign State, or in any British colony, and all affidavits, pleadings, and other legal documents, filed or deposited in any such court, may be proved in any court of justice, as therein mentioned.

By sec. 11, every document admissible in evidence in any court of justice in England or Wales, or Ireland, without proof of the seal or stamp, or signature, authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent, and for the same purposes, in any court of justice of any of the British colonies, without proof of the seal or stamp, or signature, authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

---

22 & 23 Vic., c. 26.—*An Act to make further provision for the regulation of the trade with the Indians, and for the administration of justice in the North Western Territories of America.*

This Act recites 43 Geo. 3, c. 138, and 1 & 2 Geo. 4, c. 66, and authorizes justices of the peace in the British American Indian Territories to try offences summarily, and punish by fine or imprisonment: and makes it lawful for Her Majesty, by Order-in-Council, to make regulations for trade with the Indians.

---

28 & 29 Vic., c. 63.—*An Act to remove doubts as to the validity of Colonial laws.*

This Act recites that doubts have been entertained respecting the validity of laws enacted by the Legislatures of certain colonies, and enacts that any colonial law in any

respect repugnant to any Act of parliament extending to the colony to which such law may relate, or repugnant to any order or regulation, shall be read subject to such Act, order or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative: no colonial law to be void for repugnancy unless same repugnant to some Act or order; no colonial law to be void for inconsistency with instructions given to the Governor of any colony: every colonial Legislature to have full power to establish courts of law: certified copies of laws to be evidence that they are properly passed: and any proclamation signifying disallowance of any colonial law, or assent to any reserved bill, shall be *prima facie* evidence of such disallowance or assent.

---

30 & 31 Vic., c. 3.—*An Act for the union of Canada, Nova Scotia, and New Brunswick, and the government thereof, and for purposes connected therewith.*

This Act is cited as The British North America Act, 1867.

Sec. 18 repealed by 38 & 39 Vic., c. 38, s. 1.

Sec. 146 enacts, that it shall be lawful for the Queen, by and with the advice of Her Majesty's Privy Council, and on address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North Western Territory, or either of them, into the union, on such terms and conditions in each case as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect, as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

---

31 & 32 Vic., c. 105.—*An Act for enabling Her Majesty to accept a surrender upon terms of the lands, privileges, and rights of The Governor and Company of Adventurers of England trading into Hudson's Bay; and for admitting the same into the Dominion of Canada.*

This Act gives power to Her Majesty to accept a surrender of lands of the Hudson's Bay Company; upon such acceptance all rights of the company were to be extinguished; power given to Her Majesty, by Order-in-Council, to admit Rupert's Land into, and to form part of, the Dominion of Canada.

---

32 & 33 Vic., c. 101.—*An Act for authorizing a guarantee of a loan to be raised by Canada for a payment in respect of the transfer of Rupert's Land.*

Imperial Order-in-Council, dated 23rd June, 1870.

This Order-in-Council, after reciting that by the B. N. A. Act, 1867, it was enacted, that it should be lawful for the Queen to admit Rupert's Land into the Union; that by the Rupert's Land Act, 1868, it was enacted that it should be competent for the Hudson's Bay Company to surrender to Her Majesty, and for Her Majesty to accept a surrender of, all lands granted to said company within Rupert's Land; that the said Company did, by deed, dated 19th November, 1869, surrender to Her Majesty, all the rights of government and other rights granted to the said Company, and also all similar rights exercised or assumed by the Company in any parts of British North America not forming part of Rupert's Land or of Canada, and that such surrender had been duly accepted by Her Majesty, it was ordered and declared by Her Majesty, that from and after the 15th day of July, 1870,

the said North Western Territory should be admitted into, and become part of, the Dominion of Canada, and that the Parliament of Canada should, from the day aforesaid, have full power and authority to legislate for the future welfare and good government of the said Territory. And it was further ordered, that Rupert's Land should, from and after the said date, be admitted into and form part of the Dominion of Canada, upon the terms and conditions therein set forth.

---

34 & 35 VIC., c. 28.—*An Act respecting the establishment of Provinces in the Dominion of Canada.*

This Act empowers the Parliament of Canada to establish new Provinces, and to provide for the constitution and administration thereof. It confirms the Acts of the Parliament of Canada, 32 & 33 Vic., c. 3, as to the temporary government of Rupert's Land, and 33 Vic., c. 3, which provides for the government of Manitoba.

---

36 & 37 VIC., c. 45.—*An Act to authorize the Commissioners of Her Majesty's Treasury to guarantee the payment of a loan, to be raised by the Government of Canada for the construction of Public works in that country, and to repeal the Canada Defences Loan Act, 1870.*

Sec. 9 repealed by Stat. Law Rev. Act, 1883.

---

38 & 39 VIC., c. 38.—*An Act to remove certain doubts with respect to the powers of the Parliament of Canada, under section eighteen of the British North America Act, 1867.*

This Act repeals sec. 18 of 30 & 31 Vic., c. 3, as to the powers of the Senate and House of Commons, and substi-

tutes a new section therefor. It confirms the Act 31 Vic., c. 24, of the Parliament of Canada, being "An Act to provide for oaths to witnesses being administered in certain cases, for the purposes of either House of Parliament."

---

44 & 45 Vic., c. 69.—*An Act to amend the law with respect to fugitive offenders in Her Majesty's dominions, and for other purposes connected with the trial of offenders.*

This Act provides for the surrender from the United Kingdom to a British Possession, or from a British Possession to the United Kingdom, of fugitives who are charged with having committed treason, piracy, or some offence which (whether felony, misdemeanor, or other crime,) is, in the part of Her Majesty's dominions where it was committed, punishable by imprisonment with hard labour for twelve months or more, or by some greater punishment.

W. A. TAYLOR.

NEW ORDER.

The following new order has been promulgated:—

Order 457 of the equity general orders of this court is hereby amended, by adding thereto the following words,—"but where costs at law, or costs incurred in and about the exercise of a power of sale contained in a mortgage, are claimed by the bill, and by the special endorsement upon the office copy thereof served, the master may, under a decree issued upon præcipe, allow such costs, where it is shown to his satisfaction that the same were *bona fide* and reasonably incurred."

A JURY CHANGE THEIR VERDICT.

An extraordinary case came before Mr. Justice Stephen at Chester assizes yesterday. A coal agent, named Angus Gordon McLean, had been put upon trial charged with embezzling sums of money belonging to the Lancashire coal company. Mr. Marshall made a forcible defense for the prisoner, representing that the accounts had only been muddled. The whole deficiencies discovered amounted to £230.

The jury found McLean guilty, and the judge commenced to pass sentence, when the prisoner appealed to his lordship to allow him to make a statement. His explanation was that the deficiency was quite accounted for by the fact that three hundred customers had left Birkenhead owing to bad trade who had not paid him. Several witnesses were recalled, and the judge said, whether the proceeding was regular or not, he would undertake the responsibility of asking the jury whether, after the prisoner's statement, they wished to hear him (the judge) with reference thereto, and to reconsider their verdict.

Having decided in the affirmative, his lordship again addressed them, and the jury reconsidered their verdict, with the result that they now found the accused not guilty, and he was discharged.—*London Telegraph.*

"TRAVIS ON CANADIAN CONSTITUTIONAL LAW."

PAPER BY ITS AUTHOR.

IN the various criticisms of this work, I have met with several references to the freeness of my criticism, and to the elevated opinion I entertained of the ability of the Chief Justice of the Supreme Court of Canada.

I propose to deal with both of these matters.

As regards the first, I saw at the outset that there was but one course to be adopted if I wished the discussion to be of any practical benefit; namely, honestly and unreservedly to examine the judgments delivered in the different courts, on questions under the Act (B. N. A. Act, 1867); and to treat them, just as I intimated in my book I should do, as though I were reviewing a book written by one with whom I had not, personally, the slightest acquaintance; acting independently, on the principle contained in the Shakspearianism I quoted, "Nothing extenuating, nor setting down aught in malice." To sustain my right, in taking this course, I quoted from Lord Justice Bramwell, in *Reg.* v. *Bishop of Oxford, 4 Q. B. Div. 556*, where he laid down the principle that the opinion and sentences of the Court of Appeal of England, "may, and ought to be, and are, criticised by laymen." I, surely, had an equal right to fairly criticise judgments of courts of only equal or much less high authority.

My success in this respect was recognised in the ablest criticism of my book with which I have yet met; and which was contained in a leading editorial in the St. John *Globe*. The very able editor of that journal says:—

"Mr. Travis deals with all the decisions and writings which he dissects, as a critic does who discusses a subject

on a scientific basis, without any reference to the individuals or persons concerned."

And, again :—

"Mr. Travis' treatment of the subject may be considered the purely scientific one, inasmuch as it is made without any regard to the persons whom he discusses."

In an article I wrote, in reply to one of the earliest criticisms, as to my freedom of discussion, I then disposed of that matter as follows :—

"In my discussion of the different arguments of counsel, and judgments of courts and judges, all were treated with equal impartiality. When, in the judgments of Ritchie, C. J., in the Supreme Court of N. B., I found principles laid down that seemed to me unsound, I pointed out such instances with the same plainness that I used in directing attention to a fallacy in the argument of Mr. Blake. When I found a series of Privy Council judgments, extending over a number of years, establishing what seemed to me, in the exercise of my highest intelligence, sound principles, I quoted from those judgments very fully; and, of course, recognized their high authority. But, when I found later judgments of the same court, which, in the exercise of the same degree of intelligence, I could not honestly express the opinion were correct, I did not shirk the responsibility of expressing an honest opinion even of them; and of giving, very fully, the reasons on which my honest opinion was founded; being able, too, in more than one instance, to quote the Privy Council against themselves.

"If, in discussing my subject, I had refrained from showing that judgments which *are* absurd, and which have tended so greatly to create the confusion in which the subject has been involved, are really as I have represented them, the discussion, certainly, would have been of extremely little utility. I preferred, honestly, from my conviction and best judgment on the particular decision, frankly telling the truth; and that, not with 'bated breath,' nor 'whispered humbleness.'"

And, again :—

"If the critic in question, or any one else, has any intelligent objection to make to the opinions expressed by me of any of the judgments examined by me, or to any of the conclusions at which I have arrived; I would be only too happy, in the very best spirit, to meet such objection, and either to justify my opinion, or to frankly acknowledge its incorrectness. My one object in the matter is to come to sound conclusions; and, with all deference to my critic, I see nothing in his article, as pretentious as, towards the close, it becomes, to cause me to question that I have done so."

"The critic in question," having elected to act on the principle that "discretion is the better part of valor," and not having accepted my invitation, my proposition to the "any one else," still remains open; with a renewal, on my part, of the undertaking, as made in the above quoted passage.

On the other point, as to the implication, rather than the positive assertion, of something bordering on servility, or toadyism, in my approval of the judgments, generally, of Ritchie, C. J., delivered in the Supreme Court of Canada; I saw no more servility or toadyism in that than I did in pointing out what the law is as established by the well-decided Privy Council cases of *Cushing* v. *Dupuy*, *Valin* v. *Langlois*, *&c.*, *&c.* Certainly, as a matter of mere feeling, it would have been much more pleasant for me to have been generally able to agree with the very able Judge, and one of the kindest and most courteous of gentlemen (I beg his pardon; I allude to Mr. Justice Gwynne), than with one whose proverbial rudeness amounts at times to almost boorishness. But, I had nothing to do with mere *feeling* in the matter. The duty with which I had charged myself was to ascertain the *law*.

But, with reference, further, to the idea of my tamely following the learned Chief Justice of Canada, right or wrong, nothing is further from the truth. In two cases,

E. & N. A. R. Co. v. *Thomas, 1 Pugs., 52,* and *The Queen* v. *Dow, Ibid., 300,* the former of which was not appealed, and the latter of which was reversed on appeal to the Privy Council; I was of the opinion, and still am so, that Ritchie, C. J., in his judgment in these two cases, in the Supreme Court of New Brunswick, was wrong. See *Candn. Cons. Law, pp. 14 & 15.* And, in his celebrated case, in that court, of *Regina* v. *The Justices of King's*, I questioned (*Ibid., p. 54,*) whether he would now use such language as he then employed; and also questioned his accuracy in doing so, if he would now employ such language as that to which I took exception. Again, in *The Queen* v. *Chandler*, he uses language which I did not hesitate to say (*Ibid. p. 14,*) was "not strictly critically accurate." Enough, however, on these points.

I shall now, more directly, refer to the article in the February number of this journal, entitled "Mr. Travis justified and condemned." It strikes me that the justification of Mr. Travis would, as far as *The Legal News*, referred to, is concerned, have been even more marked, had the sentence immediately preceding that quoted by the JOURNAL, been also quoted. I beg to supply it, as follows:—

"Mr. Travis has evidently studied his subject with much care, and his examination of the decided cases, whether his readers agree with his conclusions or not, will be found interesting and valuable."

The tables are very fairly turned, in the JOURNAL'S article, against *The Legal News*, in showing that while that journal deprecates "the trenchant style" in which, it alleges, I deal with adverse views, its own style is not, by any means, less trenchant.

Perhaps, after all, the editor of *The Legal News* has been, unwittingly, more favorably impressed with the "trenchant style," to which he refers, than he has been inclined to admit; and the statement of one of the able journals of Ontario,*

* The *Advocate-Adviser*, of Watford, of June 27, 1884.

with reference to my book, that "Those who have hitherto regarded the decision of the Privy Council as infallible and beyond criticism, will change their views after a perusal of the book," may have been literally accurate with respect to the editor of *The Legal News*.

But, while accepting the "justification" of Mr. Travis, as discovered by the JOURNAL, and for which I tender due acknowledgments; the "condemnation" of Mr. Travis, I beg to submit, is by no means so apparent as the JOURNAL seems inclined to think that it is. Of course, not at all unkindly.

With reference to two Privy Council cases, *Dobie* v. *The Temporalities' Board*, and *Russell* v. *The Queen*, which I claimed, and still claim, are improperly decided; and my very plain criticism of which has so much shocked some of the weak-kneed members of the profession; Ritchie, C. J. is reported to me, by a prominent lawyer in St. John, as having stated to him just after my book appeared, that "the gravest doubt exists as to the soundness of those two cases." Again. On the argument of the Dominion License case, the same unquestionably learned judge is credited with saying: "I presume it will be scarcely considered high treason in us if we say that *Russell* v. *The Queen* is not law."

I might here add, on the "condemnation" question, that, in a conversation at Ottawa, in October last, which I had, with, admittedly, one of the ablest lawyers in the Dominion; and from whom I derived the information as to the statement of Ritchie, C. J., as above, the following took place between him and me:—

"Have you read my book?"

"Yes; with great pleasure and profit."

"Do you agree with it?"

"Yes; with every word."

"Including what I say about those two Privy Council cases?"

"Yes; most certainly!"

From the same gentleman, who was present, in an important position, on the argument of the Dominion License Act case, I learned, in the same conversation named above, that it was then his expectation that the Supreme Court would hold precisely as they have since done; and that they would so hold on the authority of what they considered was the holding of the Privy Council in *Hodge* v. *The Queen.*

I asked him if the attention of the Court had been called to the fact, that, in *Hodge* v. *The Queen,* while the right of the local legislatures to make regulations of a mere local or municipal character, with reference to taverns, was sustained; their lordships carefully guarded themselves by saying, that, in the localities in question, the Canada Temperance Act did not appear to have been adopted; and that there was nothing in that case which over-ruled *Russell* v. *The Queen.*

He replied, that that point had been strongly insisted on; but that the indications were that the court looked upon the two cases as irreconcilable, and would probably follow what they considered was the holding in the later of the two cases —*Hodge* v. *The Queen*—which, it seems, they have done. But, as to whether they have been right in so doing, I would beg, very gravely, to question; even though the judgment has been that of Ritchie, C. J., as well as of the rest of the Court.

As to my having expressed an opinion in my book that the License Act is valid; and that my "condemnation" on that point is determined by the holding of the Supreme Court of Canada; I beg to submit that the JOURNAL, in its February article, is in error.

In my book I showed that two entirely different principles are established with reference to the validity of the Canada Temperance Act, by the Supreme Court of Canada, in the *City of Fredericton* v. *Barker;* and, by the Privy Council, in *Russell* v. *The Queen.* I, then, p. 181 of my book, applied

the tests derived from these cases to ascertain, whether, *under those tests*, the License Act were or were not valid; and concluded—and I think from that conclusion there is no escape—that, *under either of those tests*, the Act is *intra vires*. What I then stated, as to the application of the test under the holding in *Russell* v. *The Queen*, is as follows,—

"By what we think, as we have plainly intimated, is the absurd Privy Council test, the Act is undoubtedly good; from the fact, alone, that the several legislatures could not pass it, being an Act for the whole Dominion; which is, as we have seen, according to the Privy Council, equivalent to a declaration that Parliament can pass it; and, therefore, assuming that the Privy Council's test is a sound one, or, *adopting it as an authoritative statement of the law*, the License Act of 1883 would be *intra vires* Parliament. But, we confess that we shall be somewhat surprised if the Privy Council themselves do not abandon their rule; which, we think we have clearly shown, is utterly unsound and worthless."

I then applied the test from what I considered the wiser holding of the Supreme Court of Canada, in the *City of Fredericton* v. *Barker*, and found, that, *under that test*, the Act was also good.

As I learn, the Supreme Court of Canada have not "condemned," but have quite agreed with me; and are of the opinion that *Dobie* v. *The Temporalities' Board* and *Russell* v. *The Queen* are wrongly decided; and, therefore, that any test derived from these cases, is, like the cases themselves, as I claimed, "utterly unsound and worthless." And, further, that they did not test the validity of the Act under their own holding in the *City of Fredericton* v. *Barker*, but followed what they conceived to be the holding of the Privy Council in *Hodge* v. *The Queen*. So, that, not having tested, as I did, the Act under their own decision; and having, as I am advised, declined—according here, too, to what I predicted in my book must necessarily be the case—to follow the decision in *Russell* v. *The Queen*, they are very far, in their decision, from having "condemned" me; but, I submit, very much the reverse.

This much, though, I will say, with all deference, that I cannot escape the conclusion that they have utterly misconstrued the holding in *Hodge* v. *The Queen*; and that the decision which, "without rhyme or reason," they have given, uncoupled with any statement of their grounds, and by which decision they, in effect, dissent from the holding in their own case of the *City of Fredericton* v. *Barker*, as well as from that of the Privy Council, in *Russell* v. *The Queen;* while it utterly unsettles the law as previously established, is also entirely worthless (given in the bald—not to say "prudent"—way, that it has been) as regards the establishing of any sound or intelligible principle of construction of the B. N. A. Act, 1867.

To my mind, in such a state of affairs, no other course is open to Sir John A. Macdonald, than to refer the whole matter to the Judicial Committee of the Privy Council, for their decision; when it is to be hoped there will sit, at that Board, such brilliant lawyers as Lord Selborne, Lord Cairns, Brett, &c.; and not such mere nonentities; old broken-down East-India-men, &c., as sat there in establishing the monstrous doctrines laid down in *Dobie* v. *The Temporalities' Board*, and *Russell* v. *The Queen;* holdings which are beneath contempt, and which, it is confidently submitted, can be no more followed by the Privy Council themselves, than they could by the Supreme Court of Canada.

J. TRAVIS.