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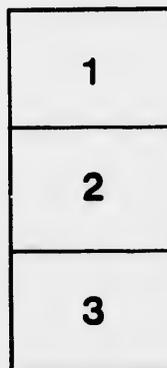
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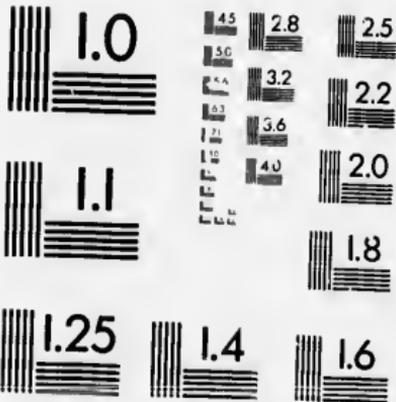
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REPORTS OF THE MINISTER OF JUSTICE

AND

ORDERS IN COUNCIL

UPON THE SUBJECT OF

PROVINCIAL LEGISLATION

1896-1898

COMPILED UNDER THE DIRECTION OF THE HONOURABLE
THE MINISTER OF JUSTICE

BY

W. E. HODGINS, M.A.,

Barrister at Law, of the Department of Justice

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ONTARIO.

59TH VICTORIA, 1896.

2ND SESSION—8TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 12th day of December, A.D. 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Acts of the Province of Ontario, passed in the fifty-ninth year of Her Majesty's Reign, assented to on the 7th day of April, 1896, and received by the Secretary of State for Canada, on the 22nd day of April, 1896, and he is of opinion, that with the exception of Chapters 16 and 92, all the said Statutes may be left to their operation without comment.

The two excepted Chapters, viz., 16 and 92, will be reported upon separately.

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

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 22nd December, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his Report upon Chapter 16 of the Statutes of the Province of Ontario, passed in the fifty-ninth year of Her

Majesty's Reign (1896), assented to on the 7th of April, 1896, and received by the Secretary of State for Canada on the 22nd day of April, 1896:—

"An Act respecting the Canadian Historical Exhibition."

This Act provides for the holding of an Historical Exhibition within the Province of Ontario.

It is enacted by section 25, that the Commissioners shall have the exclusive right of publishing catalogues, photographs, illustrative or descriptive reports relating to the exhibition, except as may be stipulated with individual exhibitors, and may grant assignments and licenses in respect thereof.

This provision appears to be *ultra vires*, because it proposes to give copyright, and the subject of copyright has been committed to the exclusive legislative authority of the Parliament of Canada. The subject of copyright is also regulated by Imperial and Dominion Statutes. The section, however, seems unlikely to do harm, and the undersigned, therefore, and in view of the other important provisions of the Act which seem unobjectionable, considers that it is not necessary to do more than point out the invalidity of the section, and suggest the propriety of its repeal by the Legislature of Ontario at its next session.

The undersigned, therefore, recommends that Chapter 16 be not disallowed, but that a copy of this report, if approved, be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

WILFRID LAURIER,

Acting Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 23rd day of March, A.D. 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th March, 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to state that in his report of 30th November last, upon the Statutes of the Legislature of the Province of Ontario, passed in the fifty-ninth year of Her Majesty's reign (1896), it is stated that Chapter 92 is reserved for a separate report. The said statute was so reserved because the undersigned desired to consider certain representations which had been made to him on behalf of the Chippewa Band of Indians, of Sarnia, to the effect that adequate provision had not been made by the said Act for the assessment and payment of damages suffered by the Indians by reason of the closing of Thistle Street. Upon further inquiry, however, and upon considering the claims of the Indians, the undersigned has reached the conclusion that the Act contains reasonable provision for the ascertainment and payment of all such damages, and he accordingly recommends that the Act be left to its operation.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

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60TH VICTORIA, 1897.

3RD SESSION—8TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 8th day of November, A.D. 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1897.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Statutes of the Province of Ontario, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 23rd day of April, 1897, and has the honour to report that with the exception of the statutes herein specially referred to, they may be left to their operation without any observations.

The following statutes, however, appear to call for some observations:—

Chapter 3. "An Act to provide for the Consolidation of the Statutes of Ontario."

This Statute provides for the bringing into effect, by means of a proclamation of the Lieutenant Governor in Council, a consolidation of the Statutes of the Province of Ontario, which has been prepared or is being prepared by Commissioners appointed for that purpose.

It is provided that the Commissioners in consolidating the Statutes may make such alterations in their language as are requisite in order to preserve a uniform mode of expression, and also such minor amendments as are necessary to bring out more clearly what they deem to be the intention of the Legislature, or to reconcile seemingly inconsistent enactments, or to correct clerical or typographical errors. It is also enacted that these Revised Statutes shall not be held to operate as new laws, but shall be construed and shall have effect as a consolidation of the law as contained in the Acts and parts of Acts repealed, and for which the Revised Statutes are substituted.

It does not seem to be intended, therefore, that the Commissioners shall in the revision make any substantial change in the Statute law of the Province. The various enactments with which the Commissioners have to deal have, from time to time, as they were assented to, been considered by the Government of Canada in the manner provided by the Constitution, and they have been left to their operation generally without comment, but in many cases subject to remarks which the Ministers of Justice have thought proper to make with regard to them.

The undersigned recommends that the Act be left to its operation, the consolidated Acts being subject to the observations which were made with respect to the Acts consolidated when these were originally enacted.

Chapter 9. "An Act respecting the Fisheries of Ontario."

This Chapter appears to contain a consolidation of the previous Statutes of the Province respecting fisheries. It does not in various respects conform with the views heretofore urged on behalf of Your Excellency's Government in respect of Provincial jurisdiction in the matter of fisheries, nor is it in all respects consistent with the judgment of the Supreme Court of Canada recently pronounced

upon the fisheries reference as that judgment has been understood, but the whole question is now pending before the Judicial Committee of the Privy Council upon appeals from the judgment of the Supreme Court of Canada which have been argued.

The present Statute is not to go into operation until a day named by the Lieutenant Governor in Council, and the undersigned assumes that the Provincial Government does not intend to give effect to the Statute until the Judicial Committee has given judgment. He considers, therefore, without on the part of the Government admitting the legislative authority of the Province with respect to the various provisions of this Statute, that the Statute may in the meantime be left to such operation as it may have. It may be necessary, however, to make a further recommendation with respect to this Statute in case judgment be pronounced by the Judicial Committee within the time limited for disallowance.

Chapter 14. "An Act to make certain amendments to the Statute Law."

Section 1 provides that in any action respecting property or civil right whether for damages or for specific relief, the judgment of the Court of Appeal for Ontario shall be final, except in certain cases therein mentioned.

While it is quite proper for the Legislature to declare that such judgments shall be final as far as provincial jurisdiction is concerned, the undersigned desires to point out that it is only the Parliament of Canada which can give or take away the right of appeal to the Supreme Court of Canada, and that the provision is *ultra vires* in so far as it intends to affect the Royal Prerogative with respect to appeals or any right of appeal to which a party may be entitled under authorized Dominion legislation.

Chapter 38. "An Act to consolidate and amend the law respecting Building Societies and other Loan Corporations."

Section 50 provides that this Act shall for all purposes extend to aliens.

Chapter 96. "An Act to incorporate the Fort Francis and Pacific Railway Company."

Chapter 97. "An Act to incorporate the Petewawa Lumber, Pulp and Paper Company."

Chapter 98. "An Act to incorporate the Seine River, Foley and Fort Francis Telegraph and Telephone Company of Ontario."

Each of these Chapters contains a section providing that aliens may be shareholders in the Company. It is a question whether this provision is within the competence of a Provincial Legislature, as the subjects of naturalization and aliens are named amongst the matters belonging to the exclusive legislative authority of the Parliament of Canada.

The undersigned does not consider, however, that the Statutes containing these provisions should on that account be disallowed.

Chapter 106. "An Act to enable Edward Spencer Jenison to develop and improve a Water Privilege on the Kaministiquia River."

This Chapter contains several provisions authorizing the Company to erect dams or weirs in the Kaministiquia and Mattawin Rivers, and to divert the channels and waters of these rivers. Such provisions are subject to the observations which have been heretofore stated as to the authority of a Provincial Legislature to legislate with regard to the beds and waters of the rivers, which are claimed to be subject to the exclusive legislative authority of Parliament, but following the course heretofore pursued in regard to such legislation and in view of the question now pending before the Judicial Committee of the Privy Council, the undersigned recommends that the Statute be not disallowed.

The referred if appropriate information

The undersigned, therefore, recommends that the Statutes mentioned and referred to in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

61ST VICTORIA, 1898.

4TH SESSION—8TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th day of September, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 23rd August, 1898.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his Report upon the Statutes of the Province of Ontario, passed in the sixty-first year of Her Majesty's reign (1898), assented to on 17th January, 1898, and received by the Secretary of State for Canada on the 24th February, 1898, as follows:—

Chapter 33. "An Act to prevent the spread of the San José Scale."

Section 3 provides that no person shall import or cause to be imported into the Province of Ontario for any purpose any plant infested with scale.

The undersigned considers that the validity of this provision is questionable, but having regard to the object of the legislation, he does not recommend its disallowance.

Chapter 59. "An Act respecting the Chatham City and Suburban Railway Company," and

Chapter 63. "An Act to incorporate the Smith's Falls, Rideau and Southern Railway Company."

Each of these Statutes contains a provision in effect that, notwithstanding any other provision to the contrary in any other Act, the company's railway may cross the railway of any other company upon a level therewith, with the consent of such other company, or with the authority of the Railway Committee of the Privy Council of Canada.

This provision may doubtless have its operation with regard to railways within the exclusive legislative authority of the Province, but it should not be construed to apply to railways crossing each other, either one of which is within the legislative authority of Parliament, as in such cases Parliament has assumed exclusive authority. The Railway Act provides that such railways may not cross each other except by leave of the Railway Committee of the Privy Council, and it is doubtful whether the provision in question is consistent in this respect with the Railway Act. The undersigned has no reason to suppose, however, that the Legislature intended the provision in question to have effect except to the limited extent which he has indicated, and he, therefore, considers that the Act should not be disallowed.

The undersigned recommends that the remaining Statutes, and also those specially mentioned in this report, be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

QUEBEC.

59TH VICTORIA, 1896.

5TH SESSION—8TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 27th November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Quebec in the fifty-ninth year of Her Majesty's reign (1896), received from the Secretary of State for Canada on the 21st of March last, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 9, 73 and 74, which are the subjects of a separate report.

The undersigned recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report upon the following Acts of the Province of Quebec, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 21st of December, 1895, and received by the Secretary of State for Canada on the 21st of March last.

Chapter 9. "An Act respecting the Election of Members of the Legislative Assembly of Quebec."

Section 311 enacts that every person shall be liable to a penalty, not exceeding \$2,000 and imprisonment for twelve months in default of payment, who illegally or maliciously, either by violence or stealth takes from any officer or person having the lawful custody thereof, or from the place in which they have been deposited, any ballot box, list of electors or other document or paper prepared in conformity with this Act or who illegally or maliciously destroys, injures or obliterates them, or who makes or causes to be made any erasure, addition, or interpolation of names in any such documents or papers, or aids or abets in these things being done.

Those provisions, or some of them, relate to offences which are already punishable under the Criminal Code, 1892. The constitutionality of such provisions by a Provincial Legislature is on that account open to consideration and doubt, but the undersigned does not recommend that the Act containing them should be disallowed.

Chapter 73. "An Act to incorporate the Drummondville Hydraulic and Manufacturing Company."

Section 2 authorizes the Company to construct dams along the rapids of and across the River Saint Francis, and to conduct water therefrom by canals or flumes, to construct locks, piers and other works on the river, enter upon and take possession of the bed and beach of the said river at the entrance of the canals or flumes, and otherwise to occupy the bed of the river and construct works therein.

Chapter 74. "An Act to incorporate the Coulonge and Crow River Boom Company, Limited."

Section 6 authorizes the Company, upon payment of compensation to any one injured or affected thereby, to construct or maintain booms, dams, slides, piers, wharves, or other works necessary to facilitate the transmission of timber in the Coulonge and Crow Rivers, and to blast and remove shoals and other impediments and otherwise improve the navigation and floatibility of the said waters.

It has been pointed out on several occasions by preceding Ministers of Justice in their reports upon the legislation of the various Provinces that provisions similar to the above are objectionable in so far as they relate to rivers which are claimed on behalf of the Dominion to have become the property of the Dominion under the British North America Act. The objection has also been made that it is not within Provincial authority to authorize the construction of works in navigable water.

The Supreme Court of Canada has recently given its opinion upon certain questions referred to that Court for determination by Your Excellency in Council. Some of the questions involve the respective legislative authority of the Dominion and the Provinces with regard to rivers and navigable waters. Your Excellency's Government intend to have these questions submitted to the Judicial Committee of Her Majesty's Privy Council upon appeal, and pending their final determination there, the undersigned considers that it would not be proper to disallow either of the Statutes containing these questionable provisions.

The undersigned recommends, therefore, that none of the Statutes mentioned in this report be disallowed.

The undersigned further recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MCWAT,
Minister of Justice.

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60TH VICTORIA, 1897.

6TH SESSION—8TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General on 3rd September, A.D. 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Statutes of the Province of Quebec, passed in the Sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the twenty-first day of January, 1897, and he is of opinion that they may be left to their operation without any observations, except Chapters 62, 77, 79 and Chapter 48. With regard to the last-named Statute, the undersigned observes that it provides for bringing into effect, by means of a proclamation of the Lieutenant Governor, a code of civil procedure of Lower Canada, which has been drafted by Commissioners appointed for that purpose. The objection, if any, to this enactment will depend upon a consideration of the provisions of the Code to which it refers, which has not been printed with the Statute, or submitted to the undersigned. The undersigned will, therefore withhold any further report upon this Statute until he has had an opportunity of considering the provisions of the Code to which it refers.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th November, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 9th September, 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon the following Statutes of the Province of Quebec, passed in the Sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the twenty-first day of January, 1897 :—

Chapter 62. "An Act to amend and consolidate the Acts respecting the Incorporation of the City of St. Henri."

By Section 286 the Council is empowered to make By-laws with reference to a number of subjects enumerated in the sections which follow, among others, to provide for the arrest and punishment of keepers and inmates of houses of ill-fame and gambling-houses, and of vagrants. These are subjects which concern the criminal law, and in respect of which criminal legislation has been enacted by Parliament. The authority of a Provincial Legislature to enact provisions covering the same ground is, therefore, at least doubtful. The undersigned does not con-

sider, however, that on that account the Statute should be disallowed, seeing that if the provision referred to is *ultra vires*, the Courts would not give effect to it, and no harm will be done, so far as the undersigned is aware, from such enactment being on the Statute-book meantime.

Chapter 77. "An Act to incorporate the North Shore Power Company."

Section 6 and 7 profess to authorize the construction of works upon or over water-courses and water-ways in the District of Three Rivers.

Chapter 79. "An Act to incorporate the Coaticook Electric Light and Power Company."

Sections 6 and 7 contain similar provisions with reference to the Construction of works upon or over water-courses and streams for the purposes of the Company.

Attention has heretofore been called to similar enactments upon the ground that Provincial legislative authority is doubtful in respect of rivers and other waters, exclusive authority over which is claimed on the part of the Dominion. It is probable that these claims of conflicting jurisdiction will shortly be settled by the judgment of the Judicial Committee of the Privy Council, and the undersigned does not feel called upon to do more now than reiterate the objection heretofore stated.

The undersigned recommends that the Statutes mentioned in this report be not disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th October, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 14th October, 1897.

To His Excellency the Governor General in Council :

The undersigned, referring to his previous report, approved by Your Excellency in Council on the 3rd of September last, relating to the Statutes of the Province of Quebec for the year 1897—which were received by the Secretary of State for Canada on the 21st January, 1897,—has the honour to report that, having examined the Code of Civil Procedure of Lower Canada, referred to in Chapter Forty-eight of the above-mentioned Statutes, intituled, "An Act respecting the Code of Civil Procedure of the Province of Quebec," he is of opinion that the Statute in question may be left to its operation without further observations, and he recommends accordingly.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

61ST VICTORIA, 1898.

1ST SESSION—9TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 9th September, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 27th August, 1898.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Statutes of the Province of Quebec, passed in the Sixty-first year of Her Majesty's reign (1898), assented to on 15th January, 1898, and received by the Secretary of State for Canada on 26th February, 1898, and he considers that these Statutes may be left to their operation without comment.

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

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

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59TH VICTORIA, 1896.

2ND SESSION—31ST GENERAL ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 19th November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 30th September, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his Report on Chapter 17 of the Statutes of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 15th February, 1896, and received by the Secretary of State for Canada on 8th June, 1896, intitled:—

"An Act to amend Chapter 104, Revised Statutes, entitled 'The Judicature Act, 1894.'"

Section 2 of the Act is as follows:—

"Subsection 2 of Section 2 of Chapter 104, Revised Statutes, 5th Series, is hereby amended by inserting the words 'before the Court *in banco* at Halifax' next after the words 'as such' in the fourth line; also by inserting the word 'next' between the words 'years' and 'before' in the fourth line, and by inserting the words 'as Attorney General or' next after the word 'office' in the last line."

Subsection 2 of Section 2 of Chapter 104, Revised Statutes, Nova Scotia, 5th Series, as it stood previously to this amendment, is as follows:—

"No person shall be appointed a Judge of the Supreme Court unless he shall have been a resident barrister of the Province for 10 years, and shall have been practising as such for five years before such appointment, or shall have held office as a County Judge in the Province."

The effect of the amendment, therefore, is, so far as it is within Provincial competency, to further limit the class from which judges of the Supreme Court may be selected to those barristers of the Province who have been resident barristers in the Province for 10 years, and who have been practising as such before the Court *in banco* at Halifax for five years next before appointment, or have held office as Attorney General or County Court Judge in the Province.

The undersigned observes that at the time of Confederation there was a Statute in operation in the Province of Nova Scotia by which it was provided

that no person should be appointed a Judge of the Supreme Court unless he had been a barrister of the Province for 10 years, and had been practising as such for five years next before such appointment. (R. S. of N. S., 3rd Series, Chapter 37, Section 1.)

By Sections 96, 97 and 98 of "The British North America Act" it is enacted that the Governor General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of Probate in Nova Scotia and New Brunswick. That until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the Courts of those Provinces is made uniform, the Judges of the Courts of those Provinces, appointed by the Governor General, shall be selected from the respective bars of those Provinces, and that the Judges of the Courts of Quebec shall be selected from the bar of that Province.

It may perhaps be open to question whether Your Excellency in the appointment of the Judges pursuant to these provisions would be limited by Provincial legislation not inconsistent therewith existing at the union and subsequently continued prescribing the qualifications of Judges. It is clear to the undersigned, however, that, except as to pre-union legislation, the effect of which the undersigned has not now to consider, the scope of selection cannot be limited by Provincial enactment.

This view has been heretofore expressed by several of the predecessors of the undersigned in their reports upon the legislation of the various Provinces.

The Right Honourable Sir John A. Macdonald, commenting upon a Statute of the Province of Manitoba, 35 Vic., Chap. 3, intitled "An Act to amend an Act to establish a Supreme Court in the Province of Manitoba," referred to the 5th section which provided in effect that no Chief Justice or Puisne Judge of the Supreme Court of that Province should be appointed unless able to speak both the English and French languages, and he stated his opinion as follows:—

"This provision in the opinion of the undersigned, is *ultra vires*, as by reference to 'The British North America Act, 1867,' Clause 97, it will be found that the only limit upon the discretion of the Governor General, in selecting such Judges for the several Provinces, is, that they shall be from the bars of the Provinces respectively. It would appear, therefore, that this provision is ineffectual, as being beyond the jurisdiction of the Legislature of Manitoba." He did not, however, recommend the disallowance of the Act, but that the attention of the Government of Manitoba should be called to it with a view to amendment, and he added: "The Government of Manitoba should also, in the opinion of the undersigned, be given to understand that His Excellency the Governor General does not consent to the limitation of his power of selection of Judges contained in the Act (Chapter 3), and will not feel bound by it in any appointments to the bench." (Approved Report of the Minister of Justice of 16th April, 1873. Volume of Reports upon Provincial Legislation, 1867-1895, p. 774.)

Subsection 2, above quoted, was enacted by Chapter 25, Section 3, subsection 2 of the Statutes of Nova Scotia (1884), and in commenting upon it Sir Alexander Campbell made the following observations:—

"At the same time he desires to observe that some of the provisions of Section 3, relating to the qualification of the Judges, the offices they may hold, and their precedence and the oaths to be taken by them are, in his opinion, not within the authority of the Legislature, and very considerable doubt exists with respect to others. The same powers, however, have been exercised by other Legislatures, and as the provisions in regard to them form part only of an Act to improve the administration of justice of general importance, the disallowance of

which would probably give rise to much inconvenience, he recommends that the Act be left to its operation." (Approved report of the Minister of Justice of 4th April, 1895. Volume of Reports upon Provincial Legislation, 1867-1895, p. 523.)

The Right Honourable Sir John Thompson, with reference to a Statute of the Province of Ontario, being Chapter 8 of the Statutes of 1887, intitled "An Act to give early effect to certain amendments of the law recommended by the Statute Commissioners," states as follows:—

"The undersigned desires to call attention to the provisions of this Chapter, so far as it amends Section 33 of Chapter 90, of the Revised Statutes of Ontario (1st series) Chapter 91, Section 52 (present series).

"This legislation assumes that, although the appointment of Superior, District and County Court Judges in each Province, is, by 'The British North America Act,' vested in the Governor General, and that the only limitation imposed by the Act in the choice of Your Excellency is, that Judges of Provincial Courts in the original Provinces of Canada must be selected from their respective bars, a Provincial Legislature has power to limit the choice of Your Excellency by such provisions and qualifications as to it may seem proper."

"The undersigned is of opinion that a Provincial Legislature has no such authority, and that the power of appointment to the bench is absolute in Your Excellency, subject only to the limitations prescribed by 'The British North America Act.'"

"The undersigned, however, does not deem this objection to Chapter 8 to be a sufficient reason for advising Your Excellency to exercise your power of disallowance." (Approved Report of the Minister of Justice of 7th June, 1888. Volume of Reports upon Provincial Legislation, 1867-1895, p. 204.)

The undersigned concurs in the opinion of his predecessors hereinbefore set forth, and is of opinion that the enactment now in question is *ultra vires*, and it appears to him that if its provisions were allowed to govern they might unduly limit the range of selection for appointments to the bench, while, if on the other hand, the provisions being regarded as ineffectual are not to be observed, questions might arise as to the jurisdiction of Judges who might be appointed not possessing the qualification required by the Statute under consideration.

It appears to the undersigned, therefore, that in the public interest this Statute should be disallowed, its only provision in addition to that set forth being a clause authorizing the Supreme Court to make rules for providing juries.

Before recommending the exercise of the authority vested in Your Excellency, however, the undersigned recommends that a copy of this Report, if approved, be transmitted to the Lieutenant Governor of the Province with a view to ascertaining whether Section 2 of the Statute in question will be repealed within the time limited for disallowance.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit a report upon certain Statutes of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's

reign (1896), assented to on 15th February last, and received by the Secretary of State for Canada on 8th June last.

Chapter 1. An Act respecting the Executive Administration of the Laws of this Province.

This Statute is in terms the same as Sections 1, 2 and 3 of 51 Vic., Chap. 5 (Ontario). The latter Statute formed a subject of correspondence between the then Minister of Justice of the Dominion and the Attorney General of Ontario, a copy of which correspondence is printed on pages 206 to 213 of the volume of correspondence and reports upon Provincial legislation, 1867 to 1895, and contains a statement of the objections which were then urged to the legislation from the Dominion standpoint as well as the reasons which were stated in support on behalf of the Province of Ontario. The Statute was in the result left to its operation, and the question as to its validity was referred to the High Court of Justice for determination under the provisions of the Revised Statutes of Ontario, 1887, Chap. 44, Section 52. The reports of the arguments and decisions in that case in the several courts will be found in 20 Ontario Reports, 232; 19 Ontario Appeal Reports, 31, and 23 Supreme Court of Canada Reports, 258.

The legislation was upheld in the Provincial Courts, both below and upon appeal, and it was also held by a majority of the Judges of the Supreme Court of Canada, although for reasons differing somewhat from those upon which the previous decisions had been based that the enactment was not *ultra vires* of the Legislature. No application was made for leave to appeal to the Judicial Committee of the Privy Council, although it was open to the Dominion Government to make such application.

In view of the decisions of the Courts referred to upholding the Ontario Statute and the acquiescence of the Dominion Government therein, the undersigned considers that the present Act should be left to its operation.

Chapter 44. An Act to provide for supplying the Town of North Sydney with water.

Section 2 authorizes the town council, among other things, to enter upon the bed of any river, lake or stream, whatsoever in the County of Cape Breton, and to build dams, reservoirs or other works, and to cause the water of such river, lake or stream to overflow, and to take from such river, lake or stream such quantity or quantities of water as may be required.

Chapter 97. An Act to incorporate the Oxford Water and Power Supply Company, Limited.

Section 9 authorizes the Company to build such dams and reservoirs as may be necessary to obtain and preserve a sufficient supply of water for the purposes of the Company, and to take water from any river, brook, stream or lake within certain limits.

Chapter 101. An Act to incorporate the Young Brothers Company, Limited. Section 20 authorizes the Company to build dams and sluices on certain rivers therein mentioned and their tributaries, and to improve such rivers and make them navigable for logs, timber and lumber.

Similar enactments have been heretofore objected to in so far as they might affect rivers which under "The British North America Act," it is contended became the property of Canada. The undersigned would refer to the approved report of the Right Honourable Sir John Thompson, of 8th January, 1894, at page 1147 of the volume above mentioned, and to other reports appearing in the same volume in which the objections are stated as to similar legislation of several of the respective provinces.

The questions of right involved in these objections, among others relating to waters and fisheries is now before the courts for adjudication, and pending final judgment, the undersigned does not consider it necessary to say more than that Your Excellency's Government does not admit the authority of a Legislature to enact these provisions as to rivers which are subject to the authority of Parliament under "The British North America Act."

For the reasons above mentioned the undersigned recommends that the Statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 27th November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Nova Scotia, in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 8th June, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 1, 17, 44, 93, 97 and 101, which are the subjects of separate reports.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 22nd December, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report upon Chapter 93, intituled "An Act to incorporate the Home Fire and Marine Insurance Company, Limited," of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on 15th February last, and received by the Secretary of State for Canada on 8th June last.

This Statute incorporates a Fire and Marine Insurance Company.

Section 11 provides that the principal office of the Company shall be in the City of Halifax, and that the Company may establish agencies or branch offices, as the Directors may deem advisable.

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Section 15, defining the power of the Company, is as follows:—

"The Company may make and effect contracts of insurance with any person or persons, body politic or corporate, against loss or damage by fire or lightning, on any house, store or other building whatsoever, and in like manner on any tenants' risk, rents, goods, chattels or personal estate whatsoever, for such time or times, and for such premiums or considerations, and under such modifications and restrictions, and upon such conditions as may be bargained and agreed upon and set forth by and between the Company and the person or persons agreeing with them for such insurance; and the Company may in like manner make and effect contracts of insurance with any person or persons, body politic or corporate, against loss or damage by fire, storm or tempest or other peril of navigation or carriage, or any other cause whatsoever, of or to the hull, rigging, machinery, furniture and apparel of ships, boats, vessels or other craft navigating the oceans, lakes, rivers or high seas or other navigable waters whatsoever, from any port or ports in Canada to any other ports or port in any part of the world, or from any port or ports, place or places in the world, for any period of time; and against any loss or damage of or to the cargoes, including live stock, or property conveyed in or upon such ships, vessels, boats or other craft or conveyance, and the freight due, or to become due, in respect thereof, or of or to timber or other property of any description conveyed in any manner upon any of the oceans, seas, lakes, rivers or navigable waters of the world, or on any railway, or conveyed partly by land and partly by water, between any points by any mode of transport, or stored in any warehouse or railway station—and generally may do all matters and things relating to or connected with fire and marine insurance as aforesaid—the whole, for such premiums or considerations, and with such modifications, restrictions and conditions as may be bargained or agreed upon or set forth, and may grant all policies therein and thereupon—and may cause themselves to be insured against any loss or risk they may have incurred in the course of their business—and generally may do and perform all other necessary matters, and things connected with and proper to promote such objects, and all policies or contracts of insurance issued or entered into by the Company shall, under the corporate seal, be signed by the President or Vice-President and countersigned by the managing Director or Secretary, or otherwise as may be directed by the by-laws, rules and regulations of the Company; and being so signed and countersigned shall be deemed valid and binding upon the Company according to the tenor and meaning thereof."

The powers, which in regard to the business of fire and marine insurance, this Act purports to confer upon this Company are practically unlimited; and with regard to marine insurance the Company is expressly empowered to insure property in any part of the world. The jurisdiction of a Provincial Legislature to incorporate Companies is in the British North America Act expressed to be to incorporate "Companies" with Provincial objects, and this has been construed to mean objects located within the Province and to be locally carried on by such Companies within the Province. In this connection the undersigned begs leave to refer to the remarks of the Honourable Edward Blake upon certain Statutes of the Province of Nova Scotia, 38 Victoria, Chapter 76, 77, 78 and 79, and upon a Statute of the Province of Quebec, intituled "An Act to incorporate the Atlantic Insurance Company of Montreal," 38 Victoria, Chapter 61; also to the observations of the Right Honourable Sir John Thompson upon a Statute of the Province of Nova Scotia, intituled "An Act to incorporate the Fisherman's Insurance Company of Lunenburg, Limited," 56 Victoria, Chapter 167 (approved reports of the Ministers of Justice of 25th October, 1875, 19th September, 1876, and 27th

January, 1894. Volume of Reports upon Provincial Legislation, 1867-1895, at pages 263, 264, 265, 491 and 635).

A Statute of Nova Scotia incorporating a Company for the purpose of running steamers on the coast of the Province and elsewhere was disallowed upon the recommendation of the late Mr. Justice Fournier, when Minister of Justice, because there was no limit to the operations of the Company within the Province, and because of the word "elsewhere." (See his approved report 31st March, 1875, on page 188 of the Volume of Dominion and Provincial Legislation.)

The question, however, not being free from doubt, the undersigned is not prepared to recommend the disallowance of the Act now under consideration, but recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

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60TH VICTORIA, 1897.

3RD SESSION—31ST GENERAL ASSEMBLY.

Messrs. Harrington, Chisholm & Fullerton, to the Honourable the Minister of Justice.

187 HOLLIS STREET, HALIFAX, N.S., 19th March, 1897.

The Honourable Sir Oliver Mowat, Minister of Justice, Ottawa:

SIR,—We beg to transmit herewith a Memorial on behalf of the Dominion Cotton Mills Company, Limited, and Miss Piers, praying for the disallowance of an Act of the Legislature, entitled, "An Act to expropriate lands for an annual Provincial Exhibition"; also copy of the *Royal Gazette*, containing, on page 108, a copy of the Act and the Proclamation thereof; also copies of the several judgments or opinions of Weatherbe and Ritchie, J.J, bearing on the proceedings which that Act purports to validate. It will be necessary to refer to Statutes of this Province, namely, Statutes of 1896, Chapter 3, and those of 1891, Chapter 58. If necessary, we shall forward copies. We respectfully request that the matter shall receive due attention.

We remain, your obedient servants,
HARRINGTON, CHISHOLM & FULLERTON,
Attorneys of Memorialists.

Memorial of the Dominion Cotton Mills Company, Limited, and Mary Piers, for disallowance of Chapter 3.

In the matter of an Act intituled, "An Act to expropriate lands for an Annual Provincial Exhibition," passed by the Legislature of the Province of Nova Scotia, and assented to by the Lieutenant Governor on the first day of March, 1897, and coming into force by Proclamation on the 10th day of March, 1897.

The Honourable Sir Oliver Mowat, Minister of Justice, Ottawa:

The Memorial of the Dominion Cotton Mills Company, Limited, and Mary Piers, for the disallowance of said Statute,

RESPECTFULLY REPRESENTS :

The Provincial Exhibition Commission was incorporated by Chapter 3 of the Acts of the Legislature of Nova Scotia, passed in the year 1896.

By the eighth section of the Act the Commission is required to hold an Annual Exhibition in the City of Halifax.

Section 21 of the Act enables the Commission to acquire lands necessary for the object of the Act and certain sections of Chapter 58 of the Acts of 1891 are incorporated, with the necessary modifications, to empower the Commission to expropriate lands should they be unable to acquire the same by private contract.

The Commission took certain steps and proceedings in the summer of 1896, with the view of expropriating the lands described in the Act of Parliament of

1st March, 1897, under the procedure provided by the sections of Chapter 58 of the Acts of 1891. These proceedings were resisted by the Dominion Cotton Mills Company, Limited, by Mary Piers, and others, whose lands were sought, and on the 23rd day of October, 1896, an Order in Council was passed by the Governor in Council of the Province of Nova Scotia, granting leave for the expropriation of the lands described in the Act of 1st March, 1897. This Order in Council is referred to, and the essential parts of it are set out in the opinion of Honourable Mr. Justice Ritchie, Judge of the Supreme Court of this Province, a copy of which will accompany this communication.

On the 20th day of November, 1896, the Dominion Cotton Mills Company, Limited, commenced an action in the Supreme Court of Nova Scotia against the Commission, by which it was claimed amongst other things, that the Commission had unlawfully expropriated the plaintiff's lands. The Dominion Cotton Mills Company, Limited, in said action asked for an Injunction or Restraining Order, restraining the Commission from expropriating the plaintiff's lands. The Commission appeared to the writ of summons in said action, and afterwards a statement of claim was delivered on behalf of the plaintiffs, to which the Commission pleaded a defence. On the 5th and 6th days of March, 1897, an application for an interim injunction was heard before said Mr. Justice Ritchie, which was opposed on behalf of the Commission. On the 10th day of March, 1897, said Mr. Justice Ritchie filed his opinion above mentioned. On the 10th day of March, an Interim Restraining Order was granted in pursuance of said opinion or judgment of the learned judge.

On the 10th day of March, 1897, the Act passed on the 1st day of said month was brought into force by proclamation of the Lieutenant Governor, published in the *Royal Gazette*, a copy of which, and the Act itself, is transmitted herewith.

The action brought by the Dominion Cotton Mills Company, Limited, has not yet been brought on for trial.

Mary Piers, who resides on the lands in question, has also brought an action against the Commission, seeking similar relief, which has not yet reached the stage of a trial.

Memorialists respectfully represent that the said Statute, passed on the 1st of March, 1897, and brought into force on the 10th day of said month, should be disallowed as an arbitrary and unjustifiable exercise of power, for the reasons following:—

1. The Legislature of Nova Scotia can only appropriate private property for the public good or for public uses. It takes the properties of citizens and gives it to a corporation for purposes other than the public good or public necessity. Assuming that an exhibition, as such, is a matter of public concern, then the Exhibition Commission have ample powers as large as the Sovereign power itself by the operation of their own Act, Chapter 3, Acts of 1896, combined with Chapter 58 of the Acts of 1891, to expropriate all lands "necessary" for that purpose. But, because it was proved to the satisfaction of two Judges of the Supreme Court of Nova Scotia, that the lands were being taken for purposes other than exhibition purposes, this vesting Act has been passed so that the lands may be used for any purpose. Memorialists are prepared to show that they are to be used for a race track, for circus tents, and gambling purposes. A vital objection to the expropriation proceedings which culminated in the Order in Council referred to in the Vesting Act is the absence of evidence or proof that the lands, or all of them, are necessary. See the opinion of Honourable Mr. Justice Ritchie, delivered in *Dominion Cotton Mills Company, Ltd. vs. The Provincial Exhibition Commission*. Had the Commission produced the statutory proof before the Governor in Council that all the lands vested were necessary for exhibition purposes, in that case the Order in Council would not require ratification, and no Vesting

Act would be necessary. As the facts appear, it is clear that by force of this extreme exercise of the legislative power (Statute, 1st March, 1897), lands are given to the Commission which they could not acquire under their Act of Incorporation, and for purposes other than those connected with any matter of public utility. The Commission evaded giving any proof of necessity for the obvious reasons pointed out in Mr. Justice Ritchie's opinion, and to repair defective proceedings they invoke an Act of Parliament to arbitrarily deprive citizens and corporations of ownership of property.

The Act of 1st March, 1897, does not pretend to assert that the lands are necessary for exhibition purposes; it recites that there are doubts existing as to the regularity and validity of the Order in Council. If such doubts (*viz.*, as to regularity of proceedings) existed, they might well have been set at rest by an amending Act. But the Act in question makes the Legislature take sides in a dispute going forward in the courts as to the public need for the lands in question, and by purporting to vest them in the Commission irrevocably binds the Commission to take them, whether needed or not, and whether or not much more suitable grounds were available for the purpose in view. Further, it purports to give power to take these lands without a moment's notice to the owners, to enter and demolish buildings, &c., so that Miss Piers may find her homestead pulled down from over her head, without an opportunity of providing another, and the Cotton Company, a large industry, find itself deprived of lands necessary for its work. These unprecedented powers are granted, as will be shown, without adequate provision for compensation; all of which is contrary to natural justice, and to the first principles upon which legislation should proceed.

2. It will appear from the opinion of Mr. Justice Ritchie, which was delivered subsequently to 1st March, 1897, another learned Judge of the Supreme Court of Nova Scotia, having previously expressed an opinion with regard to the Order in Council (copy of which is submitted herewith) that the defects in the procedure prior to the date of the Order in Council go to the very root of the matter and that instead of there being doubts as to the validity of the Order the fact is the order is wholly null and unsustainable. If it were a question before the Legislature of confirming and ratifying the Order in Council (without more), and the Legislature actually by its solemn Act of Parliament interposed and ratified the order, notwithstanding its nullity, would not that be a sufficiently strong case for applying the vetoing power? How much stronger is the case made when the ratifying Act proceeds further and takes the form (by way of comparison) of a deed confirming a previous deed which was not executed in accordance with the provisions of the Statutes relating to conveyances, and therefore ineffective and null. The Act of 1st March, 1897, in one of its recitals says: "And whereas, by a judgment of the Supreme Court, some doubt has been thrown as to the regularity and validity of said Order in Council." On this very recital, suggesting as it does, not the irregularity alone, but the invalidity of the Order in Council as well, the want of competency on the part of the Legislature to pass the enactment of 1st March, 1897, is self-manifest. It is an elementary proposition that a Legislature cannot retrospectively cure by a healing Statute any defects in legal proceedings which, under a prior Statute of the same Legislature, rendered such proceedings void. Cooley, at page 458, states the rule thus:—"If the thing wanting or which failed to be done and which constitutes the defects in the proceedings is something the necessity for which the Legislature might have dispensed with by prior Statute, then it is not beyond the power of the Legislature to dispense with it by subsequent Statute." The position here is that the Commission failed, under their Act of Incorporation and the sections of Chapter 58 of the Statutes of 1891 (sections 432 to 437) to acquire the lands in question not by reason of irregularities or informalities in the proceedings, but of a total failure

to comply with the requirements of these Statutes in essential particulars (as found by Mr. Justice Ritchie), and that the Order in Council was, in fact, granted without jurisdiction; it is obvious, therefore, that if the Order in Council is invalid from want of jurisdiction, or under the construction of the expropriation clauses contained in the Statutes of 1891, the healing Act cannot either confer jurisdiction or legalize the order.

3. The Commission have power to acquire lands for exhibition purposes (see Chapter 3, Acts 1896, Sections 6 and 21). The Act of 1st March, 1897, has a clause as follows, namely, clause 5:—

“The track or course to be constructed on the land hereby vested in the said Commission shall be used solely for the purpose of a County, Provincial or Dominion Exhibition, including the exhibition of horses, cattle and other animals, and shall not be used or let for any other purpose, and the same shall not be used or let for use except at a time when an exhibition is being held.”

It is strenuously contended on behalf of the memorialists that a track or course and circus tents which the official programme of the exhibition announces are to be erected are not required, at all events not necessary for exhibition purposes, are not matters of public moment, and are not such objects as to justify the exercise of the right of eminent domain, especially in the harsh and unjust manner sought to be adopted by the Act in question. For the construction of a track it is self-evident that a considerable tract of land must be had. The maintenance of a track or course was not contemplated by the original Act of Incorporation. Hence, it could not be shown before the Governor in Council by affidavit or otherwise that all the lands embraced in the Order in Council were necessary for public purposes, simply because a lesser acreage would suffice for that purpose. The validity of the Order in Council is attacked by reason of the lack of such evidence. The Order, if not in fact, is prospectively, at least, invalidated by judicial decision. Should the Commission be permitted by the expedient of an Act of Parliament, passed *ex post facto*, not only to defeat the rights of litigants, but at the same time, add to their corporate powers, by being enabled to acquire lands for a track or course, while there is no pretence of amending the original Statute with a view of extending such powers.

4. Certain moneys were paid into Court by the Commission to respond the awards that may be made for compensation to the proprietors whose lands have been taken. (See section 4 of the Act, 1897.) The compensation, as a general rule, should precede the divesting of the title out of the owner, but by this Statute of 1897 the title is divested the moment it becomes law—while the initiatory steps towards compensation are left wholly to the Commission. It will be seen by reference to the 9th and 10th sections of Chapter 3, Acts of 1895, that the resources of the Commission are \$60,000 altogether; one-half of this sum is to be provided for by the City of Halifax, the other half by the Government of the Province of Nova Scotia. As to the amount to be contributed by the City of Halifax, it does not appear that the same has been received by the Commission, or in any wise secured to them. *Non constat* that the Corporation of the City of Halifax may refuse to provide for the assessment thereof. True, they have authority from the Legislature to do so, but it still remains discretionary with that body to levy that sum. As a matter of fact, the amount paid into court as representing the value of the property of the Dominion Cotton Mills Company, Limited, is the sum of \$11,250, while that Company claims that the lands of which it is divested are of the value of at least \$25,000, and Miss Piers holds that her lands, in respect of which the Commission paid into court the sum of \$3,000, are of much greater value. Assuming, as will undoubtedly be the case, that the sums are deficient as compensation, being the mere offers of the Commission, and even that the insufficiency be not very marked, what security have the parties divested absolutely

of their titles for the payment of the residue of the compensation? The whole of the Commissions may be expended before the arbitration is held and the value determined. There is no provision in the Act for this exigency, and the parties divested of their lands will have no remedy. "The exercise of the power to take private property," says an eminent Judge, Chancellor Waldworth, 18 Wend, at page 16, "even for uses which are confessedly public, should not be resorted to in any case unless the benefit which is to result to the public is of paramount importance in comparison with the individual loss or inconvenience, and an ample and certain provision should always be made for a full and adequate compensation to the individual whose property is thus taken"; and at page 19, "there must be a certain and adequate remedy," and owner is not to be compelled to trust to the "solvency of an incorporated company."

And your Memorialists pray that such Act may be disallowed or suspended, because (regard being had to the powers of expropriation already existing) it is an unnecessary exercise of the power of eminent domain; because it takes the land of citizens for no purpose of public utility; because it prevents lands better suited for the purpose in view from being taken, by irrevocably binding the Commission to take those mentioned; because it interferes with and destroys the rights of suitors before the courts of the Province; because of its harsh and unjustifiable method of giving possession without notice; and, finally, because no adequate compensation is provided for, but the owners are first to be turned out of their homes, and afterwards to depend on the will of the Commission to proceed with the arbitration, and on their ability to pay such sum as may be awarded.

THE DOMINION COTTON MILLS CO.,
(LIMITED),

and

MARY PIERS.

By their Attorneys :

HARRINGTON, CHISHOLM & FULLERTON.

Dated at Halifax, 19th March, A.D., 1897.

Judgment of Honourable Mr. Justice Ritchie.

THE DOMINION COTTON MILLS COMPANY, LIMITED, vs. THE PROVINCIAL EXHIBITION COMMISSION.

This action is brought to set aside certain proceedings commenced by defendants to expropriate lands of the plaintiffs and for an injunction to restrain the defendants from entering into said lands and taking possession thereof, and from proceeding further in said expropriation proceedings.

The application now before me is for an interim injunction to the same effect, until the trial.

The defendants' rights depend entirely upon the construction and effect of Chapter 3 of the Local Acts of 1896, and the sections of the charter of the City of Halifax which are made applicable to expropriation proceedings by defendants. This Act recites that it is expedient to provide for an annual Agricultural and Industrial Exhibition for the Province, to be held in the City of Halifax. It then incorporates and gives certain powers to the defendants, and in the 21st section it provides that "for the purpose of obtaining lands necessary for carrying out the purposes of this Act the Provincial Exhibition Commission shall have the same power and authority as affects the expropriation of lands as is now possessed by the City Council of Halifax under the provisions of Chapter 58 of

the Acts of 1891 (City Charter), and the provisions of section 432 to 437, both inclusive, of said chapter shall apply to such expropriation, &c., &c. Section 432 just referred to, authorizes defendants to contract and agree with the owners in respect of any lands they *may require*, and makes such agreements valid. Section 433 goes on to provide for the expropriation of the lands, &c., in case no agreement can be made, &c., and the three following sections provide for the payment of the value thereof after it has been ascertained by arbitration. Then follows Section 437, which, after making the changes in it required by Section 21 of Chapter 3 of the Acts of 1896, will read as follows:—

“No property of any kind shall be taken or expropriated under the provisions of this Act unless or until the Provincial Exhibition Commission shall have submitted to the Governor in Council a duplicate plan of said lands proposed to be so taken, together with an application on behalf of said Provincial Exhibition Commission, supported by affidavit of the President of the Commission, or any Engineer or Land Surveyor authorized to act for the Commission, referring to such plan, and stating that the land or property thereon is necessary for the purposes of providing for an annual Agricultural and Provincial Exhibition Commission for the Province, to be held in the City of Halifax, or some or one of such purposes, and that the Provincial Exhibition Commission and the owners of the same are unable to agree on the price thereof, and requesting the Governor in Council to authorize the taking thereof for said purposes, and like notice as in Sections 433 and 434. provided, if such application be given by the Provincial Exhibition Commission to the owner or possessor of such property, and the giving of such notice shall be certified by the President or Secretary of the Provincial Exhibition Commission. The Governor in Council shall inquire into the correctness of the plan and the truth of the allegations of such application and, if satisfied thereof, shall, by Order in Council, approve of the taking of such property, or any part thereof, and upon such approval the Provincial Exhibition Commission may proceed in the manner stated in the preceding sections.”

The principles applicable to the construction of Acts of this description were settled by Lord Eldon in *Blakmore vs. Glamorgan Canal* (1 My. & K. 154) and Jervis, C. J., in giving judgment in the Exchequer Chamber in *York and U. Midland Railway Company vs. The Queen* (1 E. & B. 856) said: “We agree with my brother Alderson, who, in *Lee vs. Milner* (2 Y. & Col. Ex., Eq., 611) said these Acts of Parliament have been called Parliamentary bargains made with each of the land-owners. Perhaps more correctly they ought to be treated as conditional powers given by Parliament to take the lands of the different proprietors through whose estate the works are to proceed. Each land-owner, therefore, has a right to have the powers strictly and literally carried into effect as regards his own land, and has the right, also, to require that no variation shall be made as to his prejudice, in carrying into effect the bargain between the undertakers and any one else. This, he adds, I conceive to be the real view of the law taken by Lord Eldon in *Blakmore vs. Glamorganshire Canal Co.* See also *Plymouth vs. Davenport* (52 L. T. 162), *Bostock vs. North Staffordshire Railway Company* (1 Jurist N. S. 248), and *Webb vs. Manchester Railway Company* (4 My. & Cr. 120), where Lord Chancellor Cottenham, referring to similar powers of taking land, said: “The powers are so large—it may be necessary for the benefit of the public—but they are so large and so injurious to the interest of individuals that I think it is the duty of every court to keep them most strictly within those powers, and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers. but they will get none from me by way of construction of their Act of Parliament.” This judgment is also approved by Lord Chancellor Westbury, in *Simpson vs. Staffordshire Water Co.* (4 De G. J. & S. 685).

I think it is clear that a compliance with Section 437, above mentioned, is a condition precedent to the taking or expropriation of any land—except under an agreement, and the only steps defendants can take before applying to the Governor in Council is to attempt to make an agreement with the owners and, perhaps, enter the land to survey it, although this latter step is somewhat doubtful.

The application must be made (in writing, I think, because the truth of the allegations in it are required to be verified) to the Governor in Council, accompanied by a plan and supported by an affidavit referring to the plan and stating that the land or property therein (in the plan) is necessary for carrying out the object of Chapter 3 of the Acts of 1896, that is, to provide for an Annual Agricultural and Industrial Exhibition for the Province, to be held in the City of Halifax, and for the establishment and maintenance thereof on the joint account of the Provincial Government and the corporation of the City of Halifax, in equal parts. On such application, and after notice to the owners of the property, the Governor in Council shall inquire into the correctness of the plan and the truth of the allegations of the application, and if satisfied shall approve the taking, &c. It is, I think, necessary in order to give the Governor in Council the jurisdiction to inquire into the matter that the application should be made as directed and the necessity of taking the land for the purposes mentioned sworn to, either by the President of the Commission or an Engineer or Surveyor authorized to act for the Commission.

The granting or refusal of an injunction in case like this is based upon different grounds from those which govern ordinary cases, they will be found fully set out in Kerr on Injunctions, at pages 118 and 119, and in the cases there recited, and in my opinion this case is within the principles there enunciated.

The Order or Minute of the Governor in Council, under which defendants claim is in this form :

“The Council have had under consideration the application of the Provincial Exhibition Commission, dated the 6th day of August, 1896, for power to take and expropriate under the provisions of Section 21 of Chapter 3 of the Acts of 1896, the following lands (here follows the descriptions of several lots of land, numbered on a plan of proposed exhibition grounds filed in the city engineer's office in Halifax). The Council being satisfied of the correctness of the plan and the truth of the allegations of such application, respectfully recommend that the taking of the four following lots by the Provincial Exhibition Commission be approved under the provisions of Section 21 of Chapter 3 of the Acts of 1896 (then follow the descriptions of a portion of the lots before described).

It will be observed that the allegations in the application, with the truth of which the Council are satisfied, are not disclosed, nor is it anywhere stated that the lots, the taking of which are approved, are necessary for the purposes of the exhibition. There is no reference made to the production of any plan before the Council, nor is it stated that the application was supported by affidavit, as required by Section 437.

The document submitted to me which is alleged to be a copy of the application to the Governor in Council, is a resolution authorizing F. W. W. Doane, Engineer for the Commission, to make certain offers for the purchase of certain properties for the purpose of providing a site for a Provincial Exhibition, and that the Engineer reported that he had made the offers, none of which were accepted, concludes as follows :—“Therefore, resolved that this Commission request and hereby requests the Governor in Council to authorize this Commission to expropriate all the estate, right, title, interest and possession of the owners or occupants thereof, in and to the several lots of land hereinafter described (then follows the descriptions of the lots).

An affidavit was read before the Council, made by Mr. Doane, an Engineer employed to act for the Commission, in which he swears, "that certain lots of land (describing them, and including the plaintiffs) are required by the said Commission for the purposes mentioned in said Chapter 3 of the Acts of 1896 of the Legislature of Nova Scotia, according to the provisions of Section 437, the affidavit in support of the petition must state that the land or property is necessary for the purposes, &c., and this, which is the basis of the application, must, in my opinion, be strictly complied with.

In my mind there is a good deal of difference between the two expressions. A conscientious person with the resolution of the Commission before might, without hesitation make affidavit that the Commission required (that is, demanded or requested or insisted upon having, or needed) the property, but might decline to swear that the same property was necessary (that is, indispensable, or essential, or requisite). Besides this, in the affidavit the deponent swears that he believes the Commission requires the land, while the Act says he must swear that the land is necessary, that is from his personal knowledge a far different thing.

There are other questions, too, with reference to the intended use of the property for purposes outside the Exhibition, and an agreement alleged to have been entered into between the parties before the Council, on which the Order, so far as regards the plaintiffs' property, is based. The affidavits on these points are conflicting, but the questions will have to be settled before the expropriation proceedings are perfected, as the validity of the Order in Council may depend largely upon them.

Taking all things into consideration, and without deciding as to validity of the proceedings before the Council and the Order thereon, I think there is sufficient grounds for granting an interim injunction to prevent defendants from disturbing the plaintiffs in the possession of their lands, and proceeding further with the expropriation proceedings until the trial of this cause.

On the principle the injunction should extend to the whole of plaintiffs' land but as, in reality, the contention affects only a portion of it, the plaintiffs being willing that the defendants should have the remainder on paying its fair value, the injunction will be restricted to that portion of the lot lying to the eastward of the red line drawn on plan "B," referred to in the affidavit of John Taylor, and shall not prevent the defendants from entering into the possession of sufficient land at the north-east corner to enable a track to be laid from the existing railway siding, so that cars may pass and re-pass into the grounds of the westward of the red line. If the necessary descriptions cannot be agreed upon by the parties, I will settle them on application.

My attention has been called to the fact that an Act has been passed at the last session of the Local Legislature bearing upon the questions in litigation in this suit, but as that Act is not yet in force, and may never be put in operation, it cannot at present affect, in any way, my decision.

Costs of both parties will be costs in the cause.

10th March, 1897.

Judgment of Honourable Mr. Justice Weatherbe.

Opinion of Mr. Justice Weatherbe on application to him to appoint an arbitrator on behalf of Miss Piers, whose lands were expropriated.

Chapter 3 of the Acts of 1896 styled "An Act to provide for an annual Provincial Exhibition" incorporates twelve persons by the name of "The Provincial Exhibition Commission."

The preamble states that it is expedient to provide for an Agricultural and Industrial Exhibition, to be held in Halifax, and for its maintenance on the joint account of the Provincial Government and the City of Halifax.

Beyond this mere statement in the preamble of the expediency of providing for such an exhibition, and that it is to be held on the joint accounts of the City and the Government there is nothing whatever to define its purpose, character or object.

The corporation is empowered to purchase land and erect buildings, and by Section 21, for the purpose of obtaining lands necessary for carrying out the object of this Act, power of the expropriation is conferred, such as that now possessed by the city under Sections 432 to 437, inclusive of Chap. 58 of the Acts of 1891.

These clauses give power where agreement is impossible or the owner is unknown to expropriate lands for water and street purposes.

By attending carefully to these sections (which being far from happily expressed are obscure) in connection with Chapter 3 already mentioned, it becomes obvious that it will at the outset be necessary to inquire what are the objects of the Act, and secondly to find out what lands are necessary for such purpose. Then it will be necessary to ascertain if an agreement can be made with the owner. If not there must be a resolution of the corporation authorizing some one to enter upon and survey lands. Plans must then be made, upon which I suppose the next proceeding will be a petition to the Governor in Council supported by affidavit setting out the necessity for taking the lands and the impossibility of agreement on the price.

The property cannot be taken previous to the inquiry on this petition, which involve, I should think, under the circumstances, a most difficult task. It involves at any rate the question as to what are the objects of the Act and whether the particular land required is necessary. In the compulsory taking of lands for water supply, or for streets which was the primary object in passing these sections, it is not difficult to find whether the land is necessary. You find the lake and know the depth required to overflow, and the precise locality and areas are matters of certainty, and so of the street. No other place will suit, and the object to be attained is definite. The same may be said in respect of Mines and of a Railway. The object sought is beyond doubt. Only one spot will suit. You are not tied to one site for an exhibition, and every one may have a different view as to the objects of the Act. The matter is left in the greatest uncertainty. It is suggested, for example, that the lands of Miss Piers may be required for a race course within the meaning of this Act. All this at any rate would be involved in the investigation before the Governor in Council. And from time to time hereafter lands under this Act may be demanded by expropriation from any citizen.

The object to be attained by application to and investigation by the Governor in Council is to obtain an order for approval on the part of the corporation to proceed according to Sections 432 to 436, inclusive.

Then must follow resolutions, in the terms of the legislation of the corporation, authorizing some one to take possession, after which I suppose there must be notice. A reasonable sum in payment of the lands required must be paid into the Supreme Court, and notice must follow this before further proceedings are proper.

If after this the original proprietor is not satisfied, the next step I think is for the corporation to appoint one arbitrator. The other party upon this has the right to appoint one if he desires. If he declines to do so application may be made to a Judge.

Down to this point I think the proceedings are not ripe for application here. I have no doubt there must be a refusal, after the selection by the corporation, by the "owner" as a condition precedent to this application.

Moreover, I must point out, and it is hardly necessary to say that no application can be successful to a Judge until the provisions of the Statutes are strictly complied with.

That document produced to me as an Order of the Governor in Council is clearly not in compliance with law. It entirely fails to disclose for example any inquiry whatever into the truth of the allegations of the application to the Governor in Council.

That application the Statute requires should be verified by an affidavit that the required lands were necessary. There is no recital in the Order that even this was done. An affidavit, it is true, was read on the application to me stating that the lands are necessary. I am not now called upon to say whether a Judge of this Court is to determine that question. Counsel for Miss Piers requested that before so determining, Mr. Doane, the Engineer, should be cross-examined on the difficult point of necessity for taking these lands. The proper point in this inquiry is not reached to say how the "necessity" mentioned in the law is to be determined. If it is to be upon an inquiry here a mere statement in an affidavit is wholly insufficient. The necessity must be shown, which involves a disclosure, of the objects of the enactment of 1806.

The application is dismissed with costs.

The Honourable the Attorney General of Nova Scotia to the Honourable the Minister of Justice.

HALIFAX, N.S., 29th April, 1897.

DEAR SIR,—I have to acknowledge receipt of a communication: from the Deputy Minister under date of the 24th March, inclosing a copy of a memorial from the Dominion Cotton Mills Company, Limited, and Mary Piers, for the disallowance of an Act passed at the last session of the Provincial Legislature, entitled "An Act to Expropriate Lands for an Annual Provincial Exhibition," and asking me to forward such observations as I might see fit to make in respect to the allegations of such memorialists.

I have carefully perused this document and I may state frankly that I do not find in its contents anything which either would justify the disallowance on constitutional grounds or as affecting public policy. It is, I hope, needless for me to point out that the matter of providing for an Annual Provincial Exhibition is one essentially within the competency of the Provincial Legislature, that the power of expropriation of land for public purposes of a Provincial character is vested beyond all doubt or question in the Provincial Legislature as fully indeed, perhaps more so, than that of the Federal Parliament to expropriate lands for federal purposes.

When the Act providing for a Provincial Exhibition was originally passed its framers adopted the proceedings usually available for the expropriation of lands for public purposes by the City of Halifax. It happened, however, that the processes embodied in the clauses of the Halifax Act, which were borrowed for that purpose, gave latitude to litigation, which, if permitted to go on, would have postponed for a year or two the inauguration of this Provincial Exhibition, which is believed to be greatly in the interests of the people of Nova Scotia. It became necessary, therefore, in order to stop litigation, which indeed had no merits what-

ever, but was introduced and carried on for purely factious purposes, that a special Act be passed distinctly vesting in the Exhibition Commissioners such land as was necessary for the purposes of such exhibition.

So far as any merits are concerned in respect of the Dominion Cotton Mills Company, I may state that prior to expropriation proceedings, that Company through its agent and representative, had agreed to the transfer of all the surplus land which it possessed in that vicinity to the Commission. A stipulation was made that certain lands should be reserved out of it for the purpose of extending their buildings, and if necessary, enlarging their works, and a considerable portion of their lands, more than abundantly ample for such purposes, was accordingly reserved. Hence the action for expropriation proceedings could have been inaugurated, in so far as I am able to form an opinion, solely for the purpose of forcing a settlement upon terms of specially large remuneration, which the Commissioners did not feel disposed to agree to, and which attempt was promptly thwarted by the action of the Legislature.

The case of Mary Piers does not differ in any respect from that of other private persons whose land is expropriated for public purposes. So far as Miss Piers herself is concerned she has no other interest in the business than the sale at fair terms of her land. Her brother has resided on the property for a considerable number of years and professes to have special attachments to the spot. In order to meet in the fullest degree these sentimental considerations, the Commission offered that the present residence and homestead of Mr. Piers should be occupied by him, rent free, to the end of his mortal life, provided that the land attached to it was made available for exhibition purposes. This very reasonable offer was refused, but a counter offer was made by Mr. Piers to the effect that if instead of leaving the matter to arbitration the sum of six or seven thousand dollars was paid for his land and house further proceedings would be withdrawn. This will be a clear indication that the litigation in this case was prompted less by any deep-seated sentimental attachment to the land in question than the desire to extort money from the Commission.

I can scarcely believe that it will be deemed within the range of bona fide constitutional dispute that the Legislature can only expropriate private property for public good or for public uses, and that in fixing the amount of land necessary for the purpose of a Provincial Exhibition the Legislature is not the sole and final judge. Under the expropriation clause of the charter of the City of Halifax it may have been open for the Court to inquire into the question of whether a certain amount of land was necessary for the purposes of a Provincial Exhibition, but when the Legislature by meets and bounds has by solemn Act declared certain lands within these meets and bounds duly vested in the Commission for the purposes of a Provincial Exhibition, it would indeed be a startling proposition if His Excellency the Governor General should, on the advice of his Ministers, constitute himself a judge of whether the amount was reasonable or not.

If any doubt should possibly arise on this point, let me say that the total amount covered in the Expropriation Act does not exceed thirty acres; that the exhibition grounds in the City of Ottawa cover already a larger space than that, and the demand for more room is so keen that I am advised that the authorities are preparing to extend their borders. In the City of Toronto the land for exhibition purposes already, as I am advised, covers at least 140 acres, and I have been informed that the Board of Control are finding it necessary to acquire a still larger area. The proposition then that the land taken is too much for this purpose is certainly entirely without foundation.

I feel that it would be inconsistent with the recognized prerogatives of the Legislature to discuss the question of whether there should be speeding tracks

and other grounds for recreation and amusement connected with and part of the exhibition. I submit that that is a matter entirely within the scope of the legislative control of the Province, and not properly subject to review or inquiry under the spirit of the veto power vested in His Excellency the Governor General. The same observation applies to the resources of the Commission, which are a matter of no concern to the Dominion Cotton Mills Company or to Miss Mary Piers.

The authorities quoted I do not deal with for the reason that they do not seem to me to have the slightest bearing upon the matter now under consideration. They refer to technical points raised in test law cases in the courts. In this case it must be understood that there is another distinction. The Legislature have by stated meets and bounds vested certain lands in the Commission absolutely, unreservedly and without limitation. The amount of land so compassed is not excessive. No pretence for private injustice is established, and, even if it were, it seems to me that it is yet a question which concerns the Legislature of the Province of Nova Scotia solely and entirely.

The statement that no adequate compensation is provided for is entirely at variance with the facts. Provision is made that the value of land is to be determined by arbitrators, one appointed by the Commission, one appointed by the owner, and a third, in case of dispute, by a Judge of the Supreme Court. Surely such a tribunal can be relied upon at all times to give ample value for property taken away from the owner unwillingly and for public necessities. For these reasons I submit that not a pretence of a case for disallowance has been made out, but on the contrary, if the veto power were exercised in this case it would be an unprecedented and flagrant interference with Provincial rights, which has had no precedent since Confederation.

I have the honour to be,
Your obedient servant,

J. W. LONGLEY,
Attorney General.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th September, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 18th August, 1897.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Acts passed by the Legislature of the Province of Nova Scotia in the sixtieth year of Her Majesty's reign (1897), and which were received by the Secretary of State for Canada on the second day of July, 1897, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 2, 3, 27, 52, 63, 81, 82, 83, 95, 97, 98, 100, 102, 103, 104, 105, 106, 107, 109, 111, 112, 113, 157, upon which he will make a separate report.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 27th August, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 18th August 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon the following Statutes of the Province of Nova Scotia, passed in the sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the second day of July, 1897.

Chapter 3. An Act to expropriate lands for the purpose of an Annual Provincial Exhibition.

The undersigned has received a letter from Messrs. Harrington, Chisholm and Fullerton, Solicitors, of Halifax, Nova Scotia, inclosing a memorial from the Dominion Cotton Mills Company, Limited, and Miss Mary Piers, seeking the disallowance of this Statute. These communications together with copies of the opinions of the Honourable Mr. Justice Weatherbe and the Honourable Mr. Justice Ritchie of the Supreme Court of Nova Scotia, which accompanied the same, are submitted herewith. Copies of those papers were by direction of the undersigned referred to the Attorney General of the Province for his observations, and a copy of the Attorney General's letter in reply is also submitted.

It will be observed that the memorialists base their claim for disallowance of the Act upon several grounds. It appears that previous to this enactment proceedings had been taken in the Supreme Court of Nova Scotia at the instance of the memorialists to restrain the Provincial Exhibition Commission from expropriating the lands described in this Statute, the Commission having taken certain steps for such expropriation under Statutes then in force; that upon an interlocutory motion, Mr. Justice Ritchie granted an interim restraining order upon the ground that the Commission had not in its proceedings for expropriation satisfied the requirements of the Statutes under which it professed to act. The same view seems to have been taken by Mr. Justice Weatherbe, who heard an application on behalf of the Commission to appoint one of the arbitrators to settle the compensation for the lands which it was proposed to take. While these proceedings in the Court were pending, the Statute complained of was enacted, and shortly afterwards brought into force by Proclamation, the effect of which is to vest the lands absolutely in the Commission irrespective of the questions at issue in the pending litigation, and to render hopeless the further prosecution of those proceedings, so far as concerns the main object sought to be attained by them.

The objections now urged by the memorialists in effect are: That the lands expropriated are required for other than exhibition purposes, and are not necessary for purposes of the exhibition; that the Act contains no provision for reasonable notice to the proprietors before possession taken by the Commission; that the Statute is *ultra vires* of the Legislature, because it professes to retrospectively cure defects in the previous expropriation proceedings; that the Statute unjustifiably interferes with pending litigation between the memorialists and the Commission, and that there is no adequate provision for payment of compensation to the proprietors for the lands taken.

The undersigned considers that the question as to the public utility or convenience of vesting these lands in the Exhibition Commission is one entirely for the consideration of the Provincial Legislature, and that it is not his province to review the reasons which have led the Legislature to make the expropriation. There can be no doubt as to the constitutional authority of the Legislature to enact this Statute. The authorities mentioned in the memorial are from the

United States Courts and depend upon reasons which have no application to the Legislatures constituted by the British North America Act.

As to the compensation for the lands taken, it appears that the Commission had paid into Court a sum of money representing, according to their view, the fair value of the lands taken. Section 4 provides that the proprietors are entitled to be paid out of this money, and, if the amount awarded by the arbitrators is greater than the sum paid into Court, that the Commission shall forthwith pay such additional amount to the proprietors. This, to the undersigned, seems to be a fair and ordinary mode of providing and securing compensation.

The undersigned does not apprehend, upon a perusal of all the papers, and having regard to the previous proceedings, that the proprietors will be prejudiced by the absence of provision in this Statute for notice to them previous to the accruing of the Commission's right to take possession.

This Act could scarcely be regarded as an exception from the ordinary class of Expropriation Acts were it not for the pending proceedings affected thereby, and for the direct method by which the lands are divested. These exceptions are, however, said to be justified by the necessity of the case, and the urgency of making immediate provision for the Exhibition Grounds.

The undersigned does not consider, in view of the undoubted authority of the Legislature, that a case has been made out in which the power of disallowance should be exercised.

Chapter 27. An Act to amend Chapter 70 of the Revised Statutes of Nova Scotia, Fifth Series, entitled "Of Joint Stock Companies."

Chapter 81. An Act to incorporate the Dominion Eastern Railway Company, Limited.

Chapter 82. An Act to incorporate the Granville and Victoria Beach Railway and Development Company, Limited.

Chapter 83. An Act to incorporate the Inverness Railway Company, Limited.

Chapter 95. An Act to incorporate the Acadia Pulp and Paper Mills Company, Limited.

Chapter 102. An Act to incorporate the Victoria Oil Company, Limited.

Chapter 103. An Act to incorporate the Bridgewater Power Company, Limited.

Chapter 104. An Act to incorporate the Shelburne Lumber Company, Limited.

Chapter 105. An Act to incorporate the Dominion Granite Company, Limited.

Chapter 109. An Act to incorporate the Cow Bay Gold Mining Company, Limited.

Chapter 111. An Act to incorporate the S. P. Benjamin Company, Limited.

Chapter 112. An Act to incorporate Gunn and Company, Limited.

Each of these Statutes contains a section professing to confer capacity upon aliens. The undersigned considers that the authority of these provisions is open to doubt, in as much as exclusive legislative authority with regard to aliens has been committed to Parliament.

The undersigned would here refer to the Report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on the 13th November, 1895, in which comment is made upon certain Statutes of the Province of Nova Scotia, passed in the year 1895, containing similar provisions.

Chapter 52. An Act to enable the Inhabitants of Lawrencetown to supply themselves with Water for Domestic, Fire and other purposes.

Chapter 63. An Act to provide for supplying the Town of Parrsboro' with water.

Chapter 103. An Act to incorporate the Bridgewater Power Company, Limited.

Chapter 104. An Act to incorporate the Shelburne Lumber Company, Limited.

Chapter 106. An Act to incorporate the Enterprise Water Supply Company, Limited.

Each of these Acts contains a provision in effect authorizing the Company to enter upon the beds of rivers and take water therefrom or construct works therein. The question upon which the validity of such provisions depend is now awaiting decision by the Judicial Committee of the Privy Council.

The undersigned does not consider it necessary to do more than call attention to the fact that these provisions in so far as they refer to navigable waters or to rivers which belong to the Dominion are claimed by the Dominion authorities to be *ultra vires*, and he refers to his remarks upon Chapters 44, 97 and 101 of the Statutes of Nova Scotia, passed in the year 1896, as set forth in his Report upon those Statutes, approved by Your Excellency on 13th November last.

Chapter 95. An Act to incorporate the Acadia Pulp and Paper Mills Company, Limited.

Chapter 97. An Act to incorporate the Cape Breton Oil Company, Limited.

Chapter 98. An Act to incorporate the Cape Breton Iron Company, Limited.

Chapter 100. An Act to incorporate the Nova Scotia Lumber Company, Limited.

Chapter 102. An Act to incorporate the Victoria Oil Company, Limited.

Chapter 105. An Act to incorporate the Dominion Granite Company, Limited.

Chapter 107. An Act to incorporate the Oriental Gold Mining and Development Company, Limited.

Chapter 109. An Act to incorporate the Cow Bay Gold Mining Company, Limited.

These Statutes contain provisions authorizing the Companies to construct railways or telegraph and telephone lines without defining the points between which such works are to be constructed. Some of these Acts also authorize the Companies to acquire or construct ships and transport freight and passengers from places in Nova Scotia without indicating the places to which such freight and passengers may be carried.

The undersigned observes that the authority of a Provincial Legislature to legislate with regard to local works and undertakings is limited so as to exclude lines of steam or other ships, railways, canals, telegraphs and other works or undertakings connecting the Province with any other or others of the Provinces or extending beyond the limits of the Province, and he observes that the authority conferred by these provisions, must be, and he presumes is, intended to be construed as limited to works and undertakings which may competently be authorized by a Legislature.

The undersigned considers it sufficient at present to call attention to the absence from these Statutes of any express limitation to Provincial territory of the undertakings mentioned, and to suggest the propriety of enacting proper limiting clauses at the next Session of the Legislature so that no one may be misled as to the nature or extent of the power intended to be conferred.

Chapter 113. An Act to incorporate the Missiquash Marsh Company, Limited.

By the first Section of this Act certain persons are incorporated for the purpose and with the power as therein expressed "to purchase or otherwise acquire bog, lake, marsh and other lands, and water power, and privileges in the Counties of Cumberland, Nova Scotia, and Westmoreland, New Brunswick, or elsewhere, and to drain, irrigate, cultivate and improve, lease and sell the same in whole or in parts; to purchase, own and operate steam or other dredges or ditching machines and excavators, or any other machinery advisable, and to acquire and make sale of any real or personal property, easements, leases, rights or privileges, necessary or incidental to the business of the Company, to make aboideaux, ditches, canals, dykes, breakwaters, bridges, embankments, roads, reservoirs, aqueducts for draining, irrigating or other purposes connected with the business of the Company." The only authority conferred upon a Provincial Legislature to incorporate Companies is for "the incorporation of Companies with Provincial objects." The undersigned construes this authority to mean objects provincial as to the Province creating the corporation. In the case of the Colonial Building Investment Association versus the Attorney General of Quebec, 9 Appeal cases, 157, the appellat Company had been incorporated by the Parliament of Canada with power throughout the Dominion to acquire and hold lands, construct houses, sell and dispose of such property, lend money upon mortgages, and deal in public securities. There can be no doubt that a Provincial Legislature could have incorporated a Company with authority to exercise the same powers within the limits of the Province, yet in delivering the judgment of their Lordships of the Judicial Committee, Sir Montague E. Smith held that inasmuch as the Company was incorporated to carry on its business throughout the Dominion, the Parliament of Canada could alone constitute a Company with these powers.

It would seem to follow that the Statute in question which confers upon the Company authority to acquire, cultivate, improve and sell lands not only in the Province of Nova Scotia, but also in the Province of New Brunswick and elsewhere, is not limited to Provincial objects in the sense in which that expression is used in the British North America Act, and, therefore, that the enactment is *ultra vires*.

The undersigned considers that this view should be submitted to the Provincial Government, and that the Statute should be disallowed unless Your Excellency's Government is assured that it will be amended within the time limited for disallowance by repealing the authority so far as extra Provincial territory is concerned.*

Chapter 157. An Act to incorporate the Indian Point Cemetery Company, in the Township and County of Lunenburg.

This Statute incorporates a Cemetery Company. Section 17 provides that any person who shall wilfully destroy or injure or carry away any fence, monument, mound, embankment, tree or plant, or any property in the burying ground shall be punished by a fine not less than four dollars nor more than forty dollars, or be committed to the common jail for the space of not more than sixty days, according to the nature of the offence. This Section appears to relate to the subject of criminal law, and the subject of wilful and malicious injury to property has already been dealt with by the Parliament of Canada under the Criminal Code, 1892. The undersigned does not, however, consider the objection sufficiently serious to warrant the disallowance of the Act, the object aimed at being the preservation of property, and the question being one which may be determined by the courts in any case in which it may arise.

The undersigned recommends that the Statutes mentioned in this Report, other than Chapter 113, be not disallowed, and that a copy of this Report, if ap-

* See letter from Attorney General Longley of date 7th October, 1897, on page 39.

proved, be transmitted to His Honour the Lieutenant Governor of the Province for the information of his Government, with the request that he should inform Your Excellency's Government, as soon as convenient, whether or not the amendment suggested will be made in respect of Chapter 113.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th September, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 24th August, 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon Chapter 2 of the Statutes of the Province of Nova Scotia, passed in the sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State on the 2nd July, 1897.

The undersigned has received two letters from His Honour Judge Savary, Judge of the County Court for District No. 3 in the Province of Nova Scotia, also a letter from Mr. T. C. Shreve, Q.C., enclosing a copy of a letter from Judge Savary addressed to him and which he has forwarded to the undersigned upon the Judge's request. In these letters Judge Savary urges certain objections to this Statute. The letters are submitted herewith.

The undersigned observes that before and since Confederation, there have been in Nova Scotia, Courts known as Probate Courts, which have exercised the ordinary jurisdiction with reference to letters of probate and administration and the settlement of the estates of deceased persons. In most cases a Court has been established for each County with a Judge and Registrar for each Court, but in one or two cases a County has been divided into two districts, each with a separate Court. No salaries have been paid to the Judges or Registrars, but they have been allowed to take fees established by law. The present Act confers new jurisdiction in non-contentious matters upon the Registrars of Probate, and continues the jurisdiction of the Probate Courts substantially as heretofore, but provides that when the office of Judge of any Probate Court shall become vacant, the Judge of the County Court within whose jurisdiction the vacancy occurs shall become Judge of such Probate Court. Except as to the County of Halifax, the district of each County Court Judge comprises three counties.

Under Section 96 of the British North America Act, the Governor General is to appoint the Judges of the Superior, District and County Courts (except those of the Courts of Probate in Nova Scotia and New Brunswick), and under Section 100 the salaries, allowances and pensions of the Judges of the Superior, District and County Courts (except in the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof are for the time being paid a salary, shall be fixed and provided by the Parliament of Canada. Nothing is said as to the appointment or salary of Probate Judges in Nova Scotia and New Brunswick, but it was doubtless intended that they should be appointed by the Province and that the Province should have authority to legislate with regard to their salaries, and that is the construction of the Act which has heretofore been acted upon.

The offices of County Court Judge and the office of Probate Judge do not conflict, and it does not seem to be seriously urged that a County Court Judge

cannot perform his duties as such consistently with the execution of the additional office imposed upon him by this Act. Judge Savary, who is the only person who has offered any complaint, says that the Judges would undertake the Probate work in connection with their other work if an allowance were made by way of increase of salary and for travelling expenses, and in his later communication he states that he proposes to discharge the Probate duties with all the energy and zeal in his power, but in his own chambers at Annapolis, where he resides, until the Local Legislature makes provision for his expenses while out of the County, and he states that upon his construction of the Act he is not required to hear Probate cases elsewhere than at his chambers, except in his own discretion. If a Provincial Legislature should impose on County Judges duties which may not consist with the interests of the Dominion, the Dominion has protection in the power of disallowance; but the undersigned sees no sufficient reason for the exercise of such a power on that ground here.

In the case of *Valin vs. Langlois*, 5 Appeal cases, 115, the Judicial Committee decided that the Parliament of Canada has power to impose new duties upon existing Provincial Courts, and give them powers as to the matters coming within the classes of subjects over which Parliament has jurisdiction, and, therefore, that Parliament might confer upon the Provincial Courts the jurisdiction of the Controverted Elections Act.

In like manner it seems to the undersigned that the Provincial Legislatures may impose new duties upon Provincial Courts as to matters within the jurisdiction of the Provincial Legislatures. The fact that a County Court Judge is required to perform the additional duties under another name does not appear to the undersigned to present any real difference.

The undersigned is of opinion, therefore, that there is no constitutional objection to this Act, and that the grounds urged by Judge Savary do not afford any reason for disallowance, although they may support a claim against the Provincial authorities for remuneration for the extra work imposed.

The undersigned has the honour to recommend, therefore, that the Statute in question be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

His Honour Judge Savary to the Honourable the Minister of Justice.

ANNAPOLIS ROYAL, N.S., 26th February, 1897.

The Honourable Sir Oliver Mowat, K.C.M.G., Minister of Justice for Canada.

SIR,—May I respectfully ask leave to call your attention to a Bill now before the Local Legislature of Nova Scotia, copy of which I enclose. By this measure it is proposed to cast on the County Court Judges of Nova Scotia, who are the Officers of the Government of Canada, all the work of the Probate Court without any remuneration; but on the contrary, to make the salary and allowance made to these Judges by the Dominion Government available for the payment for their services as Judges of Probate. I would in this connection further call the attention of His Excellency in Council to Section 100 of the British North America Act. By that section the Government of Canada is exempted from paying the

salaries of the Judges of Probate of Nova Scotia and New Brunswick. Can it be possible that it was contemplated by this Act that it should be in the power of a Provincial Legislature to compel Judges appointed and paid by the Dominion Government and Parliament, to perform the duties of another well-known and long established Court gratuitously. I submit the case is by no means the same as the conferring on us jurisdiction under the Speedy Trials Act. The latter was only an enlargement of our jurisdiction as Magistrates, and was accepted by the County Court Judges without any complaint, and being in the way of administering the criminal law of the Dominion, was fairly included in the services for which the Judges are paid their salaries by the Dominion Government. But the "contentious business" of the Court of Probate, which means all the real work done in that Court by the Judge, will about double the labour entailed on the County Court Judges of this Province, and render an increase in our number necessary; and as the Judges are to be paid by the Dominion Government and by provision of the Parliament of Canada, I beg to suggest that by reason of this measure the Dominion Parliament will be obliged, in that indirect way, to provide the salaries of the Judges of Probate in this Province. Should an Insolvent Act pass it will be impossible for a County Court Judge to do the work of the three Courts, and it may become necessary for the Dominion Parliament to constitute a separate Court to administer the Insolvent Act; while the time of the Judges paid by provision of Parliament is occupied in the work of the Probate Court, with which Parliament has nothing to do under Section 100, British North America Act.

It may be necessary to explain that outside of Halifax the Judges of the County Courts have each three Counties grouped together in a District, to provide over, except in one instance, where a Judge has two large and extensive Counties, and these additional Counties, the Court in each of which is a Separate Court, are in lieu of Division Courts—the Judge merely hearing an appeal and trial *de novo* in small matters, which are tried in the first instance in inferior tribunals—stipendiary and other magistrates, and that the jurisdiction of the County Courts extend from \$20 to \$400 in amount in all cases of contract and *tort*, except those few generally excepted from the jurisdiction of the inferior courts.

The popularity of this Bill, it is acknowledged by its promoters consists in the abolishing the fees which the present Judges of Probate, of which there is one in each County, receive out of the Estates, and compelling the Dominion paid Officer to do it in part return for the salary which he receives from the Government of Canada. In a similar spirit an agitation was long kept up in the Local Legislature to compel the Dominion Government to pay the expense of criminal prosecutions in the Province. There is more reason in that contention than there is for what is now proposed in respect to the Probate Court which is purely a local Court, with which, or the laws which are administered by it, the Parliament of Canada has nothing to do.

The fees in each of the three Counties over which I preside, collected by the present Judges of Probate, are probably about \$500 for each County. No doubt the Judges would undertake this work in conjunction with their other work, at considerably less than the gross amount of these fees, with an allowance for travel to the Counties in which he does not reside; but it is submitted that to pass this Bill without providing either by fees or out of the local revenue for their services and expenses, would be contrary to the provisions of Section 100, British North America Act; and to the general policy of the laws regulating the relations of the Provincial and Dominion Parliaments, and the position of the Judges in respect to each.

By another Act, not to be pressed this Session, it is proposed to abolish the present County and Supreme Courts, and to substitute an Appeal Court and a Superior Court, increasing the whole number of Judges by two, increasing the number of County Judges; so there will be one for every two Counties. I submit this increase must be intended to accommodate the business of the Probate Court, and indirectly compel the Parliament of Canada to provide for the salaries of the Judges of Probate. I humbly submit that neither of these measures should receive the assent of His Excellency the Governor General, without some provision, and that not merely a colourable one, for the services of the Judges as Judges of Probate, by the Local Government. The Act complained of seems cleverly framed to prevent a general complaint from the County Court Judges by providing that the duties shall not devolve on the Judge of the County Court in any County, until a vacancy occurs in the office of Judge or Registrar of Probate; but two vacancies are likely in the course of nature to occur in my district soon, and that not in the County in which I reside, but adjacent Counties, one of them 87 miles distant.

I am anxious to be heard by Counsel or in person before you, unless your mind is sufficiently clear from the facts I have stated, that this measure, in view of Section 100, British North America Act, and other considerations of policy, should not be allowed to become law.

All of which is very respectfully submitted by your obedient servant,

A. W. SAVARY,

*Judge of the County Courts for the Counties of Annapolis,
Digby and Yarmouth, Nova Scotia.*

Mr. T. C. Shreve to the Honourable the Minister of Justice.

DIGBY, N.S., 22nd July, 1897.

STR,—I have just received a letter from Judge Savary, of Annapolis, Nova Scotia. The Judge wished me to send it to you after reading it, but I forward instead a copy. I need make no comment upon the letter, as it speaks for itself.

Your obedient servant,

T. C. SHREVE.

His Honour Judge Savary to Mr. T. C. Shreve.

ANNAPOLIS, N.S., 21st July, 1897.

MY DEAR MR. SHREVE,—Your favour of the 21st is received. Can you point out anything in the Probate Act of 1897 which requires me to try contentious Probate business outside of the County where I reside, without any indemnity for my travelling expenses? I believe if there are any provisions of the kind, they are of doubtful validity.

I will be happy to appoint a day here in Annapolis for the hearing of the contentious business in the estate of the late Honourable C. Campbell, but I don't think the Local Legislature has the power to compel me to go to Digby to do this business on my own expenses.

I would be glad to have you send this letter to the Honourable Sir O. Mowat, Minister of Justice, to whom I have forwarded a memorial in relation to the extraordinary legislation of last session on this subject.

Meanwhile I am willing to appoint any day after my vacation in order to hear the matter of the Campbell estate, at my chambers in Annapolis—perhaps earlier.

Yours truly,

A. W. SAVARY.

His Honour Judge Savary to the Honourable the Minister of Justice.

ANNAPOLIS ROYAL, N.S., 26th July, 1897.

The Honourable the Minister of Justice:

SIR,—The "Act to amend and consolidate the Acts respecting the Probate Courts of Nova Scotia," concerning which I memorialized the Department during its passage through the Local Legislature, was, I find, very materially amended after my complaint was made, of which I was not aware during my correspondence with Mr. Russell on the subject during the recent Session of Parliament. The provision to compel the Judge to attend outside of his County to do the work arising in any other County, seems to be omitted from the Act, as it does not appear in the copy as printed in the local Acts of 1897. By Section 8 of the Act, the Judge of the County Court is to sit for the hearing of "contentious business" in the County in which the business arises *or at his chambers*, in his own discretion. As the Registrar of Probate for the County of Digby had died, and the Judge there has become Registrar, the duties in contentions business devolve on me, and I shall discharge them with all the energy and zeal in my power, but at my own chambers at Annapolis until the Local Legislature make provision for my expenses out of the County. And I have yet a hope that in view of the remuneration given such Judges in Ontario, the Local Legislature, under the advice of your Department to the Attorney General, may yet make some allowance to us for our work. With great respect.

Your obedient servant,

A. W. SAVARY.

The Honourable Attorney General Longley to the Under Secretary of State.

HALIFAX, N.S., 7th October, 1897.

SIR,—Referring to the report of the Honourable Sir Oliver Mowat, Minister of Justice, under date of 18th August, 1887, and of the minute of the Privy Council of Canada under date of 28th August, 1897, respecting the provisions of Chapter 113 of the Acts of Nova Scotia, 1897, entitled "An Act to incorporate the Miquash Marsh Company, Limited," I beg to report as follows:—

I have examined carefully the report of the Honourable the Minister of Justice touching the provisions of that Act, and I beg to advise that I think his objections are well founded. I have put myself in communication with the corporators, and I find that they are disposed to recognize the fairness of the objections urged by the Minister.

I therefore advise that it would be desirable to intimate to the Secretary of State for the information of the Department of Justice that a measure would be introduced at the next Session of the Legislature repealing all that portion of the Act which gave the Company corporate rights in the Province of New Brunswick, and so amend the Act as to limit its application entirely to the Province of Nova Scotia.

J. W. LONGLEY,
per L.E.P.

NOTE.—The Act in question was amended in the manner indicated in the above letter.
See N. S. Statutes, 61 Victoria (1898), chapter 171.

61ST VICTORIA, 1898.

1ST SESSION—32ND GENERAL ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th day of December, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 21st November, 1898.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Statutes of the Province of Nova Scotia, passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 15th July, 1898, and he is of opinion that these Statutes may be left to their operation, without comment, with the exception of 'wo, viz.:

Chapter 38. "An Act to amend Chapter 106, Revised Statutes, of Juries."

Section 1 of this Chapter provides that hereafter the number of grand jurors to be summoned at any term of the Supreme Court in any County shall be twelve and no more, instead of twenty-four as at present; and Section 2 provides that seven grand jurymen shall be competent to find a true bill in any matter, instead of twelve.

It is provided by Section 662 by the Criminal Code as amended by 57-58 Victoria, Chapter 57, Section 1, that "notwithstanding any law, usage or custom to the contrary, seven grand jurors, instead of twelve as heretofore, may find a true bill in any Province where the panel of grand jurors is not more than thirteen." It follows that Section 2 of the Act in question is therefore a restatement of Dominion law upon the subject. If Section 1, reducing the number of grand jurors to twelve is *intra vires*, and it may be implied from the amendment of Section 662 of the Criminal Code referred to that it was considered by Parliament that Provincial Legislatures had authority to legislate as to the numbers constituting the panel of grand jurors.

The undersigned does not, however, consider the question free from doubt, but as similar legislation has been left to its operation in one or more of the other Provinces, and in view of the provision of the Criminal Code above mentioned, the undersigned considers that it would not be proper to disallow the present Statute, but that the propriety of confirming such legislation by Parliament should be considered.

Chapter 153. "An Act to Incorporate the Maritime Transportation and Salvage Company, Limited."

Among the powers conferred upon the Company are included the power to purchase, hire, charter, navigate and maintain steamships, sailing vessels, and all other kinds of craft, including tugs and barges, for the carrying and conveying of passengers, mails, goods, chattels, wares and merchandise between Halifax and other ports in the Dominion of Canada and Newfoundland, and to and from and between said ports, and to prosecute and carry on the business of common carriers of goods, &c.

The power of a Provincial Legislature to legislate with regard to local works and undertakings is subject to the exceptions stated in the following terms: "(a)

Lines of steam or other ships * * * * * connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province; (b) Lines of steamships between the Province and any British or Foreign Country."

It is clear, therefore, that the conferring of the powers referred to is in excess of the authority of a Provincial Legislature, and for that reason it would become the duty of the Undersigned to recommend disallowance of the Statute were it not that the Attorney General of Nova Scotia has undertaken to introduce legislation at the next Session of the Provincial Legislature to amend the Statute.

The undersigned submits herewith copies of the correspondence which has taken place between the Deputy Minister of Justice and the Attorney General, which set forth the grounds of objection, and the agreement arrived at.

For these reasons the undersigned recommends that these Statutes be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

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

DEPARTMENT OF JUSTICE, OTTAWA, 13th October, 1898.

SIR,—In perusing the Statutes of the Province of Nova Scotia, passed at the last Session of the Legislature, I have noted Chapter 153, intituled "An Act to incorporate the Maritime Transportation and Salvage Company, Limited," as one which should be called to your attention. You will observe that this Statute professes to authorize the Company, among other things, to acquire and maintain steamships and other vessels for the carrying of passengers between Halifax and other ports in the Dominion of Canada and Newfoundland, and generally between such ports to carry on the business of common carriers. At present I do not think of any reason for holding that powers of this character are not excluded from Provincial authority by the exception under paragraph 10 of Section 92 of "British North America Act," and if so, the case would seem to be one for disallowance. If you differ from my view, will you be good enough to submit the reasons for your opinion for the consideration of the Minister.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

D.M.J.

The Honourable the Attorney General to the Deputy Minister of Justice.

HALIFAX, N.S., 29th October, 1898.

DEAR SIR,—I beg to inclose an elaborate legal argument from Mr. G. A. R. Rowlings, barrister, who is one of the incorporators of the Maritime Transportation and Salvage Company, whose charter you seem to think open to question.

I only wish to add that Mr. Rowlings in a letter desired me to say to the

Department that if they were not satisfied with this exposition of the law, he wished to be especially heard before disallowance should take place.

Yours very truly,

J. W. LONGLEY.

E. L. NEWCOMBE, Esq.,
Deputy Minister of Justice.

The Deputy Minister of Justice to the Hon. Attorney General of Nova Scotia.

DEPARTMENT OF JUSTICE, OTTAWA, 7th November, 1898.

SIR,—I have the honour to acknowledge the receipt of your letter of the 29th ultimo, inclosing Mr. Rowlings' argument with regard to the charter of the Maritime Transportation and Salvage Company.

I had previously received a communication from Mr. Rowlings dated 22nd ultimo, inclosing a copy of what seems to be the same argument, covering thirteen typewritten pages, in which he states that he has been somewhat pressed for time in the matter, and has not had an opportunity to cover all the grounds that he would like. He adds that if I desire additional arguments he would be pleased to furnish me with what matter he can obtain. I had acknowledged his letter with the inclosure and informed him that the matter would be considered. I have not asked him for any additional argument, however, because a perusal of the one submitted has not led me to desire any, and because I conceive that in these matters we should look to the provincial authorities for reasons upholding their legislation rather than to private individuals who may be interested in sustaining it, though, of course, the Minister will always be glad to consider any reasons from whatever source produced which the Attorney General of the Province may consider proper to put forward.

I observe that you do not advance any reasons of your own in support of the Statute. You inclose Mr. Rowlings' memorandum and state that he desires to be specially heard before disallowance. I may say that such a hearing would be an unusual proceeding, and, so far as I am concerned, I doubt whether any advantage would accrue from it. It may be, however, that you would desire to hear Mr. Rowlings and afterwards consider whether you should make any representation in the matter.

I observe that Mr. Rowlings concludes his memorandum with the statement that he presumes that the exercise of the power of disallowance in this case would in any event be confined to the words in section 2 (a) reading "between Halifax and other ports in the Dominion of Canada and Newfoundland." But His Excellency could not, as you are doubtless aware, use the power of disallowance for the purpose of amending the Statute. The power if exercised must affect the Statute in its entirety. I am under the impression, however, that this Government would be satisfied to leave the Statute to its operation in the meantime if you would undertake on behalf of the Legislature to amend the Statute within the time limited for disallowance by striking out the words "between Halifax and other ports in the Dominion of Canada and Newfoundland, and to and from and between said ports" in section 2 (a), and by adding a proviso applicable to the whole Statute that nothing therein contained shall authorize the company to establish, maintain or operate any line or lines of steam or other ships connecting the province with any other or others of the provinces or extending beyond the limits of the province, or between the province and any British or foreign country.

If such a proposal would be satisfactory to you, I shall be glad to submit it for the consideration of the Government.

Awaiting your reply,

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

D.M.J.

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

HALIFAX, N.S., 12th November, 1898.

DEAR SIR,—I have your communication touching the legislation embraced in an Act to incorporate the Maritime Transportation and Salvage Company, and I beg to say that I concur in your proposition and I shall be prepared at the next Session of the Provincial Legislature to introduce an Act to make the amendments proposed in your letter,* and I think that this affords the best solution in respect of the matter in dispute.

Yours very truly,

J. W. LONGLEY.

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

DEPARTMENT OF JUSTICE, OTTAWA, 21st November, 1898.

SIR,—I have the honour to acknowledge the receipt of your letter of the 12th instant, with regard to the Statute incorporating the Maritime Transportation and Salvage Company, Limited, in which you state that you concur in my proposition, and will be prepared at the next session of the Legislature to introduce an Act making the amendments proposed in my former letter.

In these circumstances I am to state that the Minister will not at present recommend the disallowance of the Act.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

D.M.J.

*NOTE.—The Act in question was amended by 62nd Victoria, chapter 161, Nova Scotia statutes, 1899.

NEW BRUNSWICK.

59TH VICTORIA, 1896.

1ST SESSION—2ND LEGISLATIVE ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 1st December, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Acts of the Province of New Brunswick, passed in the 59th year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, received by the Secretary of State for Canada on the 2nd day of July, 1896, and he is of opinion that, with the exception of Chapters 5, 8, 42, 44, 96 and 106, all the said Statutes may be left to their operation without comment.

The six excepted Chapters, viz., 5, 8, 42, 44, 96 and 106 will be reported upon separately.

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

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 24th day of December, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 17th December, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon the following Statutes of the Province of New Brunswick, passed in the 59th year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, and received by the Secretary of State for Canada on the 2nd day of July, 1896.

Chapter 5. "An Act to consolidate and amend the law respecting the sale of intoxicating liquors."

Upon further consideration of this Statute the undersigned does not consider any comment necessary. It may be left to its operation.

Chapter 42. "An Act to consolidate and amend the Acts to provide for the payment of Succession Duties in certain cases."

This Act, as its title indicates, provides for the payment of Succession Duties.

Section 4 exempts from the operation of the Act estates not exceeding in value \$5,000, property given for religious, charitable or educational purposes, and property passing to certain relatives of the deceased therein mentioned where the aggregate value of the property of the deceased does not exceed \$50,000.

The first paragraph of Section 5 is as follows:—

"Save as aforesaid all property, whether situate in this Province or elsewhere other than property being in the United Kingdom of Great Britain and Ireland, and subject to duty, whether the deceased person owning or entitled thereto had a fixed place of abode in or without this Province at the time of his death, passing either by will or intestacy, or any interest therein or income therefrom, which shall be voluntarily transferred in contemplation of the death of the grantor or bargainer, or made or intended to take effect, in possession or enjoyment after his death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled, in possession or expectancy, to any property or the income thereof which shall have been or shall be voluntarily transferred, or transferred without adequate consideration, for the purpose of evading the payment of Succession Duty to the Crown, or any transfer the effect of which shall have been or shall be to enable the transferee to escape payment of duty to the Crown, shall be subject to a Succession Duty, to be paid for the use of the Province over and above the fees provided by Chapter 52 of the Consolidated Statutes, or any Acts in amendment thereof or in addition thereto as follows:—"

Then follows a statement of the rates of duty which shall be paid, varying according to the value of the property and the manner of its disposition.

The undersigned is unable to construe that part of Section 5 above quoted otherwise than as including authority to tax property situate outside of the Province and belonging to deceased persons having no fixed place of abode within the Province. The provision seems to be general enough to include, and seems to be so expressed, as to comprise property of any deceased person passing in the manner therein mentioned other than property being in the United Kingdom of Great Britain and Ireland, wherever such property may be situate and wherever such deceased person may have had his abode at the time of his death, and it is not limited so as to apply, in case of property situate beyond the Province, of deceased persons who did not reside within the Province, to such portions of the property as might pass to persons residing within the Province.

Although the section is so expressed as to have the construction above stated, the undersigned does not consider that the Legislature could have intended to tax property over which it had no control, and the Undersigned, therefore, recommends that the attention of the Legislature be called to the enactment so that at its next Session a proper amendment may be made limiting the application of the section to property which it is within the authority of the Legislature to tax.

Chapter 44. "An Act to provide for the incorporation of Towns."

By Section 64 the town council is authorized to make by-laws for certain specified purposes including the following:—

"14th.—To regulate the anchorage, wharfage, lading and unloading of vessels and other craft arriving at the town;

"22nd.—To restrain or repress gambling houses, or to enter into them and seize and destroy *rouge et noir* roulette tables and other devices for gambling;

"23rd.—To restrain and punish all vagrants, drunkards, mendicants and street beggars."

These provisions although they may admit of a construction under which they would be within the authority of the Legislature, are nevertheless expressed in terms general enough, as apparently to authorize by-laws, power to make which could not be conferred by a Provincial Legislature. They appear to relate strictly to navigation and shipping, criminal law and other subjects of Dominion legislation, but it is difficult to say that they may not include some authority which could be granted by a Provincial Legislature. Thus, as to No. 14, it may be competent for provincial authorities, as a matter of municipal or police regulation, to impose some restrictions as to the loading and unloading of vessels; for example, that oil or explosives should not be handled except during the day time or subject to certain regulations for ensuring safety. As to 22, the local authorities might prevent the establishment of gambling houses, although they could not impose a penalty for keeping a gambling house, that matter being already governed by the Criminal Code. See Sections 196 *et seq.* Section 23 may apply to other persons than those defined in Section 207 of the Criminal Code, and may also authorize the restraint of such as are likely to commit offences.

The undersigned considers it sufficient to point out that the authority by these clauses delegated to town councils cannot be legally acted so as to authorize by-laws affecting matters which have been committed to the exclusive legislative authority of Parliament.

Section 106 provides in effect that any person who shall resist a Police Officer in the execution of his duty shall incur a penalty of \$80. The authority of this section is questionable as relating to the subject of criminal law, and because it establishes a penalty for an offence under the Criminal Code of Canada for which a penalty is also provided by the Code. Section 263.

Certain provisions of Section 109 are open to the same objection.

It does not appear to the undersigned, however, that the Statute should upon any of these grounds be disallowed. It would be open to any person affected by those provisions to test their validity in the courts where such questions could be conveniently decided.

Chapter 96. "An Act to continue a boom across the Jacquette River, and to incorporate a Company for the purpose."

Section 3 authorizes the Company to build and maintain a boom across the Jacquette River near the mouth thereof, and also piers and side booms for the purpose of stopping and collecting logs which may float down the river.

Chapter 106. "An Act to incorporate the New Water and Electric Company."

Section 16 empowers the Company to acquire water powers and to construct and to maintain any dam or dams across any stream or river flowing in or through the County of Kings.

The provisions referred to are questionable from a Dominion point of view for reasons which have been frequently stated, and for which the undersigned begs to refer to the approved reports upon certain previous Statutes of the Province of New Brunswick of Sir Charles Hibbert Tupper, when Minister of Justice, bearing date 7th January, 1895, and 24th October, 1895. (Vol. of Dominion and Provincial Legislation, 1867-95, pp. 764 and 766. See also pp. 244, 635, 645, 1146-7, 1149-50 and 1152.)

The existence of unconstitutional provisions in the Provincial Statute Books is apt to mislead and thereby cause trouble, but the danger of this consequence varies according to the nature of the objectionable provisions.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government, and that as to Chapter 42 herein mentioned, the Lieutenant Governor be requested to inform Your Excellency's Government whether the desired amendment will be made within the time limited for disallowance.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 22nd December, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 17th December, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon Chapter Eight (8) of the Statutes of the Province of New Brunswick, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, and received by the Secretary of State for Canada on the 2nd day of July, 1896.

Chapter 8. "An Act to revive and codify an Act to provide for the division of the Province into counties, towns and parishes." The first section of this Statute purports to enact what shall be the line of division between the Provinces of New Brunswick and Nova Scotia.

The Legislature of New Brunswick has no authority either to establish, vary or declare the boundary line between that Province and the Province adjoining. The undersigned assumes, therefore, that the provision in question is intended merely to be declaratory, but it does not correspond in terms with the description in the commission to Governor Carleton as set out in 3 Cartwright's cases, p. 572. It would seem proper to direct the attention of the Lieutenant Governors of Nova Scotia and New Brunswick to this Statute in order that they may submit for the consideration of Your Excellency's Government such observations as they may think proper, and in the meantime that the undersigned should defer further observations.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governors of Nova Scotia and New Brunswick for the information of their Governments.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th July, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 24th June, 1897.

To His Excellency the Governor General in Council :

The undersigned has the honour to refer to his report to Council, approved on the 24th December, 1896, relating to certain Acts of the Legislature of the

Province of New Brunswick, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on 20th day of March, 1896, and received by the Secretary of State for Canada on 2nd day of July, 1896, and particularly to that portion of the report which concerns—

Chapter 42.—“An Act to consolidate and amend the Acts to provide for the payment of Succession Duties in certain cases.”

It is stated in the report that the Act purports to authorize the taxation of property over which the Legislature has no control, and the undersigned recommended that the attention of the Legislature should be called to the enactment, so that a proper amendment might be made limiting the application of the Statute to property which is within the authority of the Legislature to tax.

The Lieutenant Governor of the Province was also requested to inform Your Excellency's Government whether the suggested amendment would be made within the time limited for disallowance.

The undersigned has now received from the Attorney General of the Province a copy of a Statute passed at the last Session of the Legislature (60th Victoria, Chapter 36), intitled “An Act in amendment of ‘The Succession Duty Act, 1896,’” by Section 2 of which it is provided that Section 5 of the said Chapter 42 is amended by adding at the end thereof the following paragraph:—

“(a.) The provisions of this section are not intended to apply, and shall not apply to property outside this Province, owned at the time of his death by a person not then having a place of residence within the Province, except so much thereof as may be devised or transferred to a person or persons residing within the Province.”

The undersigned considers that the amendment so made complies only partially with his recommendation, and is not broad enough to relieve the original Act of the imputation of extra territorial effect. The limitation made by the amendment relates only to property outside the Province owned at the time of his death by a person not then having a place of residence within the Province, and to so much of such property only as may be devised or transferred to a person or persons residing within the Province.

It seems to the undersigned that the amendment should have provided in effect that the provisions of Section 5 should not apply to any property situate outside the Province, except in so far as such property might be brought into the Province for the purpose of administration or distribution, or for the purpose of payment or satisfaction of any bequest to a legatee domiciled within the Province, and it would, in the opinion of the undersigned, be necessary to so limit the general provisions of Section 5 in order to bring them within the authority of the Legislature. It is a question for the Legislature also whether as a matter of justice it should not be provided that property situate outside of the Province which had already paid succession duties in the place where it was situate should not under this Act be held liable to taxation, except where the tax levied in the outside jurisdiction was less than that imposed under this Statute, and then only to the extent of the difference.

While, therefore, the amending Act fails to meet the views of the undersigned as to what is necessary, the undersigned regards the amendment as evidence of an intention on the part of the Legislature not to exceed its powers. It has also been represented to the undersigned that if the present amendment be considered insufficient by Your Excellency a further limitation will be enacted at the next Session of the Legislature removing the defects of the present amendment to which the undersigned has called attention.

In view of these circumstances, and having regard to the serious inconvenience and loss which disallowance of the Act might cause to the Province, the

undersigned considers that the Act should not be disallowed, although no further amendment can be made within the time for disallowance.

The undersigned is further induced to refrain from recommending the disallowance of the Act, because the objections to which he has referred, in so far as they relate to the question of the authority of the Legislature, are objections which could be considered judicially, and because the Courts would be bound in the construction of the Act to reject any interpretation which would have the effect of taxing property beyond the jurisdiction of the Legislature.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60TH VICTORIA, 1897.

2ND SESSION—2ND LEGISLATIVE ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th November, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1897.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Statutes of the Province of New Brunswick, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 18th June, 1897, and he has the honour to report that these Statutes may be left to their operation without any remarks, with the exception of the following which seem to call for some observations.

Chapter 5. "An Act to provide fishing facilities for Provincial and other Sportsmen, and for the re-stocking with fish of certain Lakes and Waters of the Province.

Chapter 20. "An Act to amend Part VI. of Chapter 115 of the Consolidated Statutes, relating to Sewers and Marsh Lands."

Chapter 83. "An Act to incorporate the Upper South-west Miramichi Log Driving Company."

Chapter 93. "An Act to incorporate the Chatham Water Company."

Chapter 94. "An Act to consolidate, continue and amend the several Acts relating to the North-west Boom Company."

Chapter 95. "An Act to authorize the Town Council of the Town of Chatham to provide a system of Water Works for said town."

These Statutes contain provisions with reference to fisheries or affecting rivers or other waters which, for reasons stated in reports upon previous enactments of the same character, are not, in the view urged on behalf of Your Excellency's Government, within the legislative jurisdiction of the Province.

The undersigned does not consider, however, that any action should at present be taken with regard to these Acts.

Chapter 24. "An Act to consolidate and amend the law relating to the Supreme Court."

Section 25 reads as follows:—"Section Two of the Act of Assembly sixth William IV., Chapter Fourteen, is unrepealed, which section is as follows:—

"The sole liberty of printing and reprinting and publishing such reports shall be, and the same is hereby vested in and secured to the author and compiler thereof, his heirs and assigns, and if any person shall print, reprint or publish any such reports without the consent of the author and compiler or proprietor thereof, he shall be liable to an action on the case at the suit of such proprietor, in which action such proprietor shall recover double the damages he may have sustained by any such infringement of the copyright hereby secured to him."

The undersigned observes that the subject of copyright being within the exclusive legislative authority of the Parliament of Canada, and being governed by Canadian legislation already enacted, it is *ultra vires* of the Provincial Legis-

lature to confer or declare any rights of copy. If, as is stated in the section quoted, Section two of the Act of Assembly of Sixth William IV. be still unrepealed, it doubtless remains in effect so far as not inconsistent with the legislation of the Dominion, but in so far as it may have been repealed either expressly or impliedly by subsequent legislation it cannot be revived by a Provincial enactment declaring that it is unrepealed.

Subject to these remarks the undersigned considers that this Statute should be left to its operation.

Chapter 28. "An Act to consolidate and amend the law relating to County Courts."

Section 94 purports to give the several County Courts within the Province jurisdiction in criminal matters. The jurisdiction so stated to be conferred is the same, however, as that provided for the County Courts of New Brunswick, under the Criminal Code, 1892, and the undersigned considers the section referred to as merely intending to declare the jurisdiction already vested in the County Courts under Dominion legislation, and not as intended to legislate inconsistently, or to confer any new or different authority.

Chapter 29. "An Act in further amendment of the Law of Evidence, in relation to the evidence of Husband and Wife."

This Chapter provides in effect that the disability heretofore existing of any husband or wife to give evidence for or against each other in any civil proceeding instituted in consequence of adultery is removed, and that the husband and wife shall hereafter be competent to give evidence for or against each other on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in the Court of Divorce and Matrimonial Causes, or in any other court of justice, or before any person authorized to take evidence. This provision in so far as it intends to make the evidence of the husband and wife admissible in proceedings for divorce is in the opinion of the undersigned *ultra vires*, the subject of divorce being one of the enumerated subjects in Section 91 of the British North America Act, and the rules of evidence by which the right to divorce is to be established appertaining strictly to the subject of divorce. The objection stated, however, is one to which the Courts may give effect, and as there is room for the operation of the Act in matters within the competence of the Provincial Legislature, the undersigned does not consider that it should be disallowed.

Chapter 36. "An Act in amendment of 'The Succession Duty Act, 1896.'"

The undersigned in recommending that this Act be left to its operation refers to his former report to Your Excellency with regard thereto, approved on 13th July, 1897, from which it appears that the undersigned has received assurance that a further amendment to "The Succession Duty Act, 1896," will be made in order to comply with his former recommendation. The undersigned anticipates that such further amendment will be made at the next Session of the Legislature.

Chapter 65. "An Act to amend 30th Victoria, Chapter 28, intituled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes.'"

This Statute refers to previous legislation by which the City of Fredericton was authorized to issue debentures to an amount not exceeding \$1,500 to be appropriated in assisting the York County Agricultural Society in raising funds to pay off a balance due on the exhibition building in the City of Fredericton. It recites that the city did not issue the debentures so authorized, and that John H. Reid, President of the York County Agricultural Society has claimed that he is

entitled to receive from the City Council of the City of Fredericton the sum of \$1,500 with interest. The Statute proceeds to provide that Mr. Reid's claim shall be referred to the arbitration of three arbitrators, one to be appointed by Mr. Reid, one by the city, and the other by the Judge in Equity, that the arbitrators shall proceed to take evidence with respect to the amount of the claim which Mr. Reid has either personally or as President of the York County Agricultural Society by reason of money expended by him in connection with the building of the Exhibition Palace (so called) in the year 1863 and the following years; and that it shall be the duty of the arbitrators, after hearing the matter to decide what amount, if any, the City of Fredericton should in honour and good conscience pay to Mr. Reid, in determining which amount the arbitrators are to decide irrespective of the Statute of Limitation and without regard to legal forms or technical objections. The amount found due upon such reference is to constitute a legal claim against the city for which the city is to cause debentures to be issued to Mr. Reid.

There has been referred to the undersigned, copy of a memorial addressed to Your Excellency by the Mayor, Aldermen and Commonalty of the City of Fredericton in which the memorialists complain of the injustice of this Statute, and they pray "that the Bill may not receive Your Excellency's assent, but that the action of the said Bill may be withheld."

The undersigned observes that the Statute has been assented to by the Lieutenant Governor and has gone into effect, and that its operation cannot, therefore, depend upon any assent on the part of Your Excellency. The power of disallowance which is the only power vested in Your Excellency by the exercise of which the operation of the Statute could be interfered with has not heretofore been exercised upon grounds such as are urged by Your Excellency's memorialists. There can be no doubt that the legislation complained of is exclusively within Provincial authority, either as matter of property and civil rights or private and local matters within the Province, and although the provision is somewhat an unusual one by which the city is compelled to submit to arbitration, a claim of upwards of thirty years' standing upon conditions under which the arbitrators are to decide, apparently not upon legal grounds, but upon the grounds of honour and good conscience, yet the undersigned does not consider that the injustice complained of is such, or so apparent, as would justify Your Excellency in interfering by the exercise of the power of disallowance with a matter which is otherwise entrusted entirely to Provincial authority. Fair provision is made for the appointment of the arbitrators and the hearing of both sides. The decision is to proceed upon the grounds of honour and good conscience, and if the arbitrators are faithful in the discharge of their duty, as the undersigned assumes they will be, no great injustice can come from compelling the parties to submit to the award.

The undersigned does not, however, feel called upon to justify the legislation, but upon the grounds already stated, he considers that the Act should be left to its operation.

The undersigned has the honour to recommend that none of the Statutes referred to in this report be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted.

O. MOWAT,

Minister of Justice.

Memorials from the Mayor and Corporation of Fredericton respecting Chapter 65.

To His Excellency the Right Honourable Sir John Campbell Hamilton Gordon,
Earl of Aberdeen, &c., &c., Governor General of the Dominion of Canada.

The Memorial of the Mayor, Aldermen and Commonalty of the City of Fredericton, in the County of York, Province of New Brunswick, Dominion of Canada, most respectfully sheweth:—

That at the last Session of the Provincial Legislature of the said Province of New Brunswick, a Bill was introduced intituled "An Act to amend the Act 30 Victoria, Chapter 28, intituled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes,'" having for its object the compelling of the Corporation of the said City of Fredericton to issue debentures to the amount of twenty-three hundred dollars, said debentures to be delivered over to the York County Agricultural Society or to one John H. Reid.

That your memorialists presented a Petition to the said Provincial Legislature, praying that said Bill might not pass or become law, but that said Bill did pass the said Provincial Legislature in an amended form, and received a third reading.

Your memorialists thereupon presented a Memorial to His Honour the Honourable Abner Reid McClellan, the Lieutenant Governor of the Province of New Brunswick, setting forth the facts connected with the said Bill, and the passage thereof, the grounds of objection to the legislation therein embodied, and praying that His Honour would be pleased to disallow the said Bill, a copy of which Memorial marked (A) is hereto attached.

Your memorialists received an answer to their said Memorial from His Honour the Lieutenant Governor on the thirteenth day of March instant, a copy of which answer is hereto attached marked (B), and the said Bill received the assent of His Honour the Lieutenant Governor on the said thirteenth day of March instant. Attached hereto marked (C) is a certified copy of the Bill as assented to by His Honour the Lieutenant Governor.

Your memorialists believing that an injustice has been done them, by the exercise by the Provincial Legislature of judicial function not within their constitutional authority, and by the passage of an Act most prejudicial to the private rights of your memorialists for the sole benefit of a private individual, hereby respectfully solicit an inquiry into the said legislation, on the grounds submitted by them to His Honour the Lieutenant Governor of the Province of New Brunswick in their said Memorial.

Your memorialists, therefore, pray that the said Bill passed by the Provincial Legislature of the Province of New Brunswick, intituled "An Act to amend the Act 30 Victoria, Chapter 28, intituled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes,'" may not receive Your Excellency's assent, but that the action of the said Bill may be withheld.

And your memorialists, as in duty bound, will ever pray, &c.

Dated at the City of Fredericton, in the Province of New Brunswick, this twenty-fourth day of March, A.D. 1897.

WESLEY VANWART,

Mayor.

CHAS. W. BECKWITH,

City Clerk.

To His Honour the Honourable Abner Reid McLelan, Lieutenant Governor of the Province of New Brunswick.

The Memorial of the Mayor, Aldermen and Commonalty of the City of Fredericton, most respectfully sheweth:—

That during the present Session of the Provincial Legislature, a Bill was presented and passed with amendments entitled "An Act to amend Chap. 28 of 30th Vic., entitled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes,'" and having for its object the compelling of the City of Fredericton, to arbitrate upon, and if an arbitration, to pay one John H. Reid the sum awarded, and assess the inhabitants of the said city for the purposes of making such payment.

Your memorialists respectfully request Your Honour's consideration of the following statements of facts in connection with this Bill:—

(1). That in the year one thousand eight hundred and sixty-four the York County Agricultural Society erected in the City of Fredericton an Exhibition Palace, towards the erection of which the citizens of Fredericton voluntarily contributed and paid by subscriptions and bonds issued by the then City Corporation a large sum of money amounting in the aggregate to four thousand dollars.

(2). That the York County Agricultural Society subsequently finding that the means at their disposal were insufficient to complete the said palace building, and that a large indebtedness has been incurred by them beyond their available means, solicited aid from the Provincial Government, the County Council of York County and the City of Fredericton, which resulted in the Provincial Government, eventually granting the sum of five thousand dollars, and the County Council of the County of York granting an issue of debentures to the amount of fifteen hundred dollars unconditionally.

(3). On the twenty-ninth day of March in the year one thousand eight hundred and sixty-six, at a special meeting of the City Council of the City of Fredericton, a petition was presented and read from three hundred and fourteen rate-payers of the city, praying: "That there is a prospect of the balance due on the exhibition building being settled, that a Bill be presented to the Legislature at its present session for authority to assess the City of Fredericton for the sum of fifteen hundred dollars. This resulted in the passing of the Act on the ninth day of July in the year aforesaid, entitled "An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes," which Act reads as follows:—

(Here follows text of the Act.)

(4). The City Council of the City of Fredericton at a meeting held on the ninth day of October, in the year one thousand eight hundred and sixty-six, passed the following resolution:—

Resolved, that the City Council will issue debentures according to the terms of the Act of Assembly to the amount of fifteen hundred dollars, so soon as it shall be shown to the satisfaction of the Council, that the York County Agricultural Society has raised, or can raise from other sources a sum of money, including the debentures, sufficient to pay off the existing claims against the exhibition building.

(5). It never having been shown to the City Council that the requirements of the Act, or of the resolution of the City Council had been complied with, the City Council have never issued the said debentures.

(6). Mr. John H. Reid was President of the York County Agricultural Society for a number of years, and was also in the year one thousand eight hundred and sixty-four the Superintendent of the erection of the said Exhibition

Palace, and was at that time, and has been from thence continuously, and is still a resident of the City of Fredericton and the owner of valuable real estate therein, but has never until the year one thousand eight hundred and ninety-four presented any claim to the City Council, either for the York County Agricultural Society or on his own behalf for the debentures to issue under the above recited Act of Assembly.

(7). In the year one thousand eight hundred and ninety-four, Mr. John H. Reid presented a petition signed by himself as President of the York County Agricultural Society, praying that the City Council of the said City of Fredericton do order the issue of the debentures under the said recited Act, and claiming that the said York County Agricultural Society were indebted to him in a large sum of money for services rendered, and money expended in connection with the erection of the Exhibition Palace in the said year one thousand eight hundred and sixty-four. This petition was referred to a Special Committee of the City Council, who, after a full hearing of Mr. Reid, reported back to the Council that they could find no authority from Mr. Reid's statements upon which the debentures could be legally issued under the said recited Act, and further that the said York County Agricultural Society had no legal existence. This report was received and confirmed by the City Council.

(8). At the Session of the Provincial Legislature held last year (1896), the City of Fredericton had introduced a Bill for certain city purposes to which it was sought during the passage thereof through the House of Assembly to have an amendment added, requiring the City of Fredericton to issue debentures to the amount of twenty-three hundred dollars to the York County Agricultural Society, but this amendment was reported against, and the City Bill passed without amendment.

(9). At this present Session of the Legislature the following Bill was introduced by Mr. Fowler, being the representative of the County of King's: "An Act to amend Chapter 28 of 30th Victoria, entitled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes.'"

(Here follows text of the Act and amendments.)

Your memorialists respectfully protest against the said last recited Bill passing and becoming law for the following reasons, and on the following grounds, viz:—

(1). Neither previous to nor at the time of the passing of the Act 30th Vic., Chap. 28 (1866), was the city legally, equitably or morally bound or committed to assist in liquidating the debt of the Exhibition Palace.

(2). The city consented to the Act of 1866 only on the conditions that it should be permissive, and the special provisions set out in Sections 3, 4 and 5 be embodied therein.

(3). Under the said Act the York County Agricultural Society has all the legal and equitable rights accorded or given by law to any other corporation.

(4). The Act defines *when and only when*, and to whom any debentures should issue, by whom and to whom any such moneys should be paid; and, it being a private Act, its provisions should not be changed or varied without the consent of those whom any such change would affect.

(5). The Bill just passed wipes out the whole of the Act of 1866, excepting the enacting clause and Sections 2 and 3, thereby absolutely destroying the provisions of the fifth section of the said Act, which was the most important provision of that Act.

(6). It would divert the moneys sought (if any) from the channel the Act of 1866 intended, and for the purpose for which that Act was passed.

(7). It makes any moneys payable to one John H. Reid, and not to the York County Agricultural Society, which society now exists only in name.

(8). It is admitted that Mr. Reid never had or preferred any claim against the City of Fredericton.

(9). It was wholly contrary to the spirit, intentions and provisions of the Act, 1866, by and under the special provisions of which, and subject thereto, could the city only be asked to issue debentures, and under the present Act the city could not pay any money as directed and provided under the Act of 1866.

(10). That the passing of the said Act is a breach of good faith of the provisions of the Act, 1866, under which the City Council had discretionary powers vested in them.

(11). That the preambles of the Bill are misleading, have a suppression of material facts, and do a great injustice to the city.

(12). That it is class legislation of the vicious and dangerous character; it takes away the legal right of the city guaranteed by the constitution, and deprives it of a defence in a regular constituted court established for such purpose, and compels it by class legislation to defend itself before a statutory tribunal, established to meet this case alone.

(13). It forces the city to large expense, without cause.

Your memorialists, therefore, pray that the said Bill be not assented to or become law.

And your memorialists, as in duty bound, will ever pray, &c.

Dated this twelfth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

By order of the City Council of the City of Fredericton.

WESLEY VANWART,

Mayor.

CHAS. W. BECKWITH,

City Clerk,

His Honour the Lieutenant Governor to the City Clerk of Fredericton.

GOVERNMENT HOUSE, FREDERICTON, N.B., 13th March, 1897.

SIR,—I have the honour to acknowledge receipt of the memorial from the Mayor, Aldermen and Commonalty of the City of Fredericton, requesting the Lieutenant Governor to consider a statement of facts in connection with the Bill now before the Legislature, entitled "An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes."

The Lieutenant Governor has examined said Bill, and, without giving expression to his individual views thereon, feels unable to officially interfere with the action of the Legislature, and the advice of his Council; and regrets, therefore, that he cannot accede to the request to disallow said Bill.

I have the honour to be, sir,

Your obedient servant,

A R. McCLELAN,

Lieutenant Governor.

61ST VICTORIA—1898.

3RD SESSION—3RD LEGISLATIVE ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 8th November, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 17th October, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of New Brunswick, passed in the sixty-first year of Her Majesty's reign (1898), received by the Secretary of State for Canada on 25th May, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of Chapter 55, intituled "An Act relating to the Town of Chatham," as to which he observes that by Section 1 the Town Council is authorized to make such by-laws and regulations as they deem proper for the purposes, among other things, of regulating and licensing the sale of goods brought into the town or for sale by non residents; of regulating and licensing transient traders, or other persons, firms or corporations whose names have not been entered on the assessment book of the town in respect to income or personal property for the current year, and of regulating and licensing all persons not being residents of the town or parish of Chatham or County of Northumberland whose names are not so entered in the assessment book and who shall carry on any trade within the town.

These provisions are, in the opinion of the undersigned, capable of a construction which would confer upon the Town Council powers in excess of those which may be granted by a Provincial Legislature. In so far as they may be construed as directly affecting the regulation of trade and commerce they are inoperative. The provisions in question cannot, however, be construed as confined to matters in excess of Provincial authority, and, inasmuch as lawful regulations may be made under them, and as the courts can conveniently afford relief in case of regulations which are *ultra vires*, the undersigned does not recommend the disallowance of the Statute.

The undersigned recommends that a copy of this report, if approved, be sent to the Lieutenant Governor of the Province, for the information of his Govern-

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

MANITOBA.

59TH VICTORIA—1896.

1ST SESSION—9TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 19th day of November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 3rd October, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the several Acts passed by the Legislature of the Province of Manitoba, in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 30th March, 1896, and he is of opinion that they may be left to their operation without any observations.

The undersigned recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60TH VICTORIA—1897.

2ND SESSION—9TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 8th day of November, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1897.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Statutes of the Province of Manitoba, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 5th of April, 1897, and he is of opinion that they may be left to their operation without any observations with the exception of:

Chapter 2. "An Act respecting Corporations incorporated out of Manitoba in respect of which the undersigned will make a separate report."

Respectfully submitted,

O. MOWAT,

Minister of Justice.

The Solicitor of the Canadian Pacific Railway to the Honourable the Secretary of State re Chapter 2 of 1897.

MONTREAL, 10th December, 1897.

SIR,—I have the honour to inform you that the Canadian Pacific Railway Company has instructed me to submit for the consideration of His Excellency the Governor General the following reasons for the disallowance of an Act lately passed by the Legislature of Manitoba, assented to on the 30th March last, and entitled "An Act respecting corporations incorporated out of Manitoba."

The said Act is substantially the same as an Act of the same Legislature and bearing the same title which was disallowed by Order in Council published in the *Canada Gazette* of 11th April, 1896.

The Parliament of Canada granted to the Canadian Pacific Railway Company as a subsidy in aid of the construction of its railway a large quantity of land situate in Manitoba.

At the making of the agreement for this construction (which agreement was confirmed by the Act 44 Victoria, Chapter 1), it was understood by the Company, and the language of the said Statute shows that it was also assumed and intended by the Parliament of Canada, that the Company could own and dispose of those lands without any such restraint as is now sought to be imposed by the legislation of the Province of Manitoba, and it is hardly necessary to point out that if this restraint could be validly exercised it might be exercised in such a way and to such an extent as would be highly injurious to the Company.

Clause 9 of the Act in question is as follows:—

"No company, institution or corporation, not incorporated under the provisions of the Statutes of this Province, and not having obtained a license under this Act, except those mentioned in subsection 2 of section 2 of this Act, shall be capable of taking, holding or acquiring any real estate within this Province or of exercising the powers mentioned in Section 11 of this Act, 49 Victoria, Chap. 11, Sec. 4."

This exception does not apply to the Canadian Pacific Railway Company.

It is submitted that this clause is *ultra vires* inasmuch as it purports, amongst other things, to prevent a Railway Company taking any of the land owned by Canada in Manitoba, although the Parliament of Canada has granted that land in aid of the construction of a railway, over which construction the Parliament of Canada has exclusive jurisdiction; and this in face of the enactment by the Canadian Parliament in subsection (s) of section 90 of the Railway Act as amended under 55-56 Victoria, Chapter 27, Section 3, which subsection (s) is as follows:—

"(s.) Any Company which has obtained from the Crown by way of subsidy or otherwise in respect of the construction or operation of its railway, a right to any land or to an interest in land has, and from the time of obtaining such right has had, as incident to the exercise of its corporate powers, authority to acquire, sell or otherwise dispose of the same or any part or parts thereof; and such Company may convey the same, or any part or parts thereof, to any other Company which has entered into any undertaking for the construction or operation, in whole or in part, of the railway in respect of which such land or interest in land was given; and thereafter such other Company shall have, in respect of such land or interest in land, the same authority as that of the Company which has so conveyed it; and as to any lands given to the Company by any corporation or other party, as aid towards, or as consideration in whole or in part for the construction or operation of the Company's railway, either generally or with respect to the adoption of any particular route or on any other account, the authority of the Company and of any other Company to which it may convey its rights in any of the said lands shall be the same as if such lands had been obtained by the Company from the Crown as aforesaid."

It is submitted that the Parliament of Canada having the undoubted jurisdiction and the sole jurisdiction over the construction of such a railway as I have described, must also have the power of declaring that as one of the aids to such construction the Company shall have the right to receive and hold or dispose of such lands belonging to the Crown in the interest of Canada as the Parliament of Canada thinks fit to give.

The objection to the legislation now under discussion is, however, not confined to its being *ultra vires*—indeed, the most serious objection would hold good if the legislation were admitted to be *intra vires*.

If, for instance, it be assumed that the Legislature of a Province has power to enact that although the Parliament of Canada has authorized a designated Company to construct a particular railway—of which no other Parliament could authorize the construction—and although Parliament has granted in aid of that construction certain lands belonging to Canada (situate within the Province), and has declared that the Company may acquire and sell or dispose of those lands, nevertheless that Company shall not be able to do so unless or until the Provincial Government has formally given its consent, and then only on such terms and conditions as it may choose to impose; still there remains the important question whether such an enactment is or is not contrary to the policy of Canada as a whole.

It is submitted that the mere description of the enactment shows conclusively that it must be contrary to the policy of Canada.

In *Bank of Toronto vs. Lambe*, Lord Hobhouse adopts an interpretation of the British North America Act which I believe has always been given to it by the Government of Canada. He says it:

"Provides for the federated provinces a carefully balanced constitution under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor General."

In a letter to the Honourable the Secretary of State, dated 16th December, 1890, I had the honour of urging the propriety of disallowing an Act of the Legislature of Manitoba (53 Victoria, Chapter 23) entitled "An Act to authorize Companies, Institutions or Corporations, incorporated out of this Province to transact business therein," and I then stated at some length what were considered to be good reasons for the disallowance of that Act.

I do not desire to trouble you now with all that was submitted on that occasion, but it may not be out of place for me to say that the arguments then advanced seem to me to apply with still greater force to the Act now under consideration, inasmuch as it repeats in a more positive way the objectionable features of the former Act.

I have the honour to be, Sir,

Your obedient servant,

GEO. M. CLARK.

Memorandum of Sir Oliver Mowat, Minister of Justice, upon Chapter 2, Manitoba Statutes, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th November, 1897.

The undersigned has had under consideration Chapter 2 of the Statutes of the Province of Manitoba, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 5th of April, 1897, entitled "An Act respecting Corporations incorporated out of Manitoba."

This Chapter appears to be an exact re-enactment of a Statute of Manitoba, 58-59 Victoria, Chapter 4, entitled "An Act respecting Corporations incorporated out of Manitoba," which was disallowed, the only difference being that the present Statute does not contain any provision corresponding with Section 13 of the former Act, but contains all the provisions which occasioned the disallowance of the previous Act.

In the report of the then Minister of Justice, approved 25th March, 1896, the Manitoba Statute 58-59 Victoria, Chapter 4, was stated to be *ultra vires*, and one of the grounds was that it was beyond the authority of a Provincial Legislature to prohibit the exercise of powers conferred by the Parliament of Canada upon a corporation within the scope of subjects enumerated in Section 91 of "The British North America Act" by the Parliament of Canada.

The Act provides that no company, institution or corporation not incorporated under the provisions of the Statutes of Manitoba, and not having obtained a license under the Act, except certain corporations incorporated for religious purposes, shall be capable of taking, holding or acquiring any real estate within the Province or of exercising the powers mentioned in Section 11 of the Act. The powers mentioned in Section 11 are among others the same powers and privileges with regard to lending money and transacting business within the Province as a private individual might have and enjoy so far as they may be within the corporate powers of the Company, and within the competence of the Legislature of Manitoba to grant.

The Lieutenant Governor is by the Statute empowered to grant a license to any company incorporated under the laws of Great Britain and Ireland or of the Dominion of Canada authorizing it to carry on its business within the Province on compliance with the provisions of the Act, and he is authorized to restrict the license in any manner that may seem desirable.

These provisions would apply to companies incorporated by Parliament under its general authority, and also to every bank, railway company and other corporation incorporated under its special and exclusive authority.

It has been held that the Dominion has power to incorporate a company for the whole Dominion though the objects of the Company are provincial, a Provincial Legislature having no power to authorize a company to do business outside of the Province, as regards each Province. Sir John Thompson mentioned the cases in his Report of the 16th July, 1887, on a Quebec Act.

It may be competent for a Provincial Legislature to require that a license shall be obtained by such a company before it shall do business in the Province. As to that, it is not necessary at present to express any decided opinion either way; but there can be no doubt that where a company is incorporated by the Dominion in the execution of any one or more of its special and exclusive powers of legislation enumerated in Section 91, a Provincial Legislature has no authority to impose any such condition, and the Act should be amended so as to apply, so far as Dominion corporations are concerned, to such companies only as have been incorporated for provincial objects within the authority of a Provincial Legislature so far as relates to the Province.

Provincial legislation has to be considered with reference not merely to its constitutionality but as affecting the interests of the Dominion generally, and there are some other important matters of policy to be considered as affecting the interests of the Dominion which I should not like to advise upon definitely without having the benefit of some prior consideration thereof in Council. These matters are discussed in a very able report of Sir John Thompson, dated 21st March, 1891, on another Manitoba Act of which he recommended the disallowance, and which was disallowed accordingly. (*See "Correspondence respecting Dominion and Provincial Legislation, 1867-1895," p. 941 et seq.*)

If the views of the preceding Government on these matters are substantially approved of, the Manitoba Act should be further amended by excepting from its operation the lands which the Dominion owns in Manitoba or has mortgages or security upon; and also lands which the Dominion has conveyed to railway companies and other companies, and by exempting these companies and the Hudson's Bay Company from the operation of the Act. The report referred to is printed at p. 941 of the "Correspondence respecting Dominion and Provincial Legislation, 1867-1895."

O. MOWAT,
Minister of Justice.

Memorandum of Mr. E. L. Newcombe, Q.C., Deputy Minister of Justice, upon the Manitoba Statute, Chap. 2, of 1897. (66th Vict.)

DEPARTMENT OF JUSTICE, OTTAWA, 19th November, 1897.

Since preparing the report upon which Sir Oliver Mowat's memo. of 15th instant is founded, the following additional reasons have occurred to me which I had not an opportunity of submitting to Sir Oliver:—

In the case of the Citizen's and Queen Insurance Company *v.* Parsons, 1 Cartwright at p. 278 the Judicial Committee held that "Regulation of Trade and

Commerce" would include regulation of trade in matters of interprovincial concern, and it may be, would include general regulation of trade affecting the whole Dominion.

It has also been held by the same authority that the Parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (Loranger vs. Colonial Building and Investment Association, 3 Cartwright at p. 128). This statement refers to companies incorporated not under the powers conferred within the scope of any of the subjects specially enumerated in Section 91, as to which the exclusive authority of Parliament was never doubted, but to companies the incorporation of which, but for the fact that their powers or capacity to do business are to extend beyond the limits of any one Province, would be solely within Provincial authority.

It may be questionable whether Parliament in the constitution of such a company can do more than create the company and enable it to exercise powers. There can be no doubt that to that extent Parliament has exclusive authority. If it has the larger right which may be contended for not only to confer capacity but also, notwithstanding conflicting Provincial enactments, to sanction the exercise of the powers conferred, then I apprehend that Provincial legislation limiting the exercise of such powers must be *ultra vires*. Doubtless such companies are incorporated by Parliament in pursuance of exclusive authority, and if such authority extends to the exercise of the powers conferred as well as to the capacity to exercise them, it must be that a Province cannot prohibit or fetter the execution of those powers.

If, therefore, the Dominion Parliament has the same authority with regard to the class of companies now under consideration as it has with respect to companies incorporated under the enumerated subjects, such as banks and railway companies, this Statute would be quite *ultra vires* so far as Dominion corporations are concerned. But the reasons in favour of a more limited construction of Dominion authority are grave enough to justify the Dominion Government in leaving the Act to its operation and the question here suggested to the determination of the Courts, were it not that the Act extends to companies incorporated under the special and exclusive powers of the Dominion, and for the other considerations which I am about to mention.

Assuming that the incorporation of companies with other than provincial objects is one of the general powers of the Dominion and that it must be exercised subject to Provincial legislation within the scope of the Provincial enumerated subjects, yet the Provincial legislation to which it is sought to make the Company subject may affect matters strictly relating to some one or more of the enumerations of Section 91, and if so, cannot have effect. Some force must be attached to the regulation of trade and commerce as a subject of exclusive Dominion jurisdiction. There is a singular absence in the decisions of the Judicial Committee of any affirmation as to what authority these words carry. Several matters have, however, been excluded which the Dominion considered were as a matter of intention and should be as matter of general expediency included. In the case of the Liquor Prohibition Appeal, 1895, Lord Watson, delivering the opinion of the Committee and referring to Citizen's Insurance Company vs. Parsons, says: "It was decided that in the absence of legislation upon the subject by the Canadian Parliament the Legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance which was admitted to be a trade so long as those conditions only affected Provincial trade." Construing this decision with that in the Citizens' case, I apprehend that legislation affecting interprovincial trade or affecting trade in mat-

ters of interprovincial concern, would be *ultra vires* of a Provincial Legislature as being comprehended within the regulation of trade and commerce. The question, therefore, arises whether legislation can be upheld by which a Province professes to take power to prohibit the right of trading within the Province of a company incorporated by the exclusive authority of Parliament to trade throughout the Dominion or in two or more of the Provinces. Such a company has capacity within the scope of its charter to trade in the Provinces and elsewhere in the Dominion just as any individual has. An enactment by a Province forbidding residents of or persons doing business in any other Province to trade in the first named Province would seem to affect more than Provincial trade. It would be a matter of interprovincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce, otherwise all interprovincial trade which the Privy Council seem to think the Dominion has the right to regulate could be rendered impossible by the Provinces.

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

It is, I think, safe to say that interprovincial trade or trade which concerns the whole Dominion cannot be prohibited or restricted by a Province. There may, however, be something left as to which in respect of a Dominion Company this Statute might constitutionally operate. I suppose that a Dominion Company might carry on business within a Province in such a way and for such purposes that the prohibition of such trade would be authorized as property and civil rights or private or local matters within the Province. If the Province of Manitoba wish to legislate so as to prohibit or restrict business of that kind by Dominion Companies it will, of course, be the duty of the Minister of Justice to consider the Statute by which effect is sought to be given to such a proposal, meantime it would seem, however, that the present Act should be disallowed unless indeed the Provincial Government undertake to make satisfactory amendments within the time limited for disallowance.

E. L. NEWCOMBE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 14th March, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 8th March, 1898.

To His Excellency the Governor General in Council :

The undersigned has had under consideration Chapter Two (2) of the Statutes of Manitoba, passed in the 60th year of Her Majesty's reign, and received by the Secretary of State for Canada on the 5th of April, 1897, intitled "An Act respecting Corporations incorporated out of Manitoba."

This Chapter appears to be a re-enactment of the Statutes of Manitoba, 58-59 Victoria, Chapter 4, intitled "An Act respecting corporations incorporated

out of Manitoba," which was disallowed, the only difference being that the present Statute does not contain any provision corresponding with Section 13 of the former Act, but contains all the provisions which occasioned the disallowance of the previous Act.

In the Report of the Minister of Justice at that time, which report was approved on the 25th of March, 1896, the Manitoba Statute, 58-59 Vict., Chapter 4, was stated to be *ultra vires*, and one of the grounds put forward was that it was beyond the authority of a Provincial Legislature to prohibit the exercise of powers conferred by the Parliament of Canada upon a corporation within the scope of subjects enumerated in Section 91 of the British North America Act.

The Act provides that no Company, Institution or Corporation not incorporated under the provisions of the Statutes of Manitoba, and not having obtained a license under the Act, except certain corporations incorporated for religious purposes, shall be capable of taking, holding or acquiring any real estate within the Province, or of exercising the powers mentioned in Section 11 of the Act. The powers mentioned in Section 11 are, among others, the same powers and privileges with regard to lending money and transacting business within the Province as a private individual might have and enjoy so far as they may be within the corporate powers of the Company and within the competence of the Legislature of Manitoba to grant.

The Lieutenant Governor is by the Statute empowered to grant a license to any Company incorporated under the laws of Great Britain and Ireland, or of the Dominion of Canada, authorizing it to carry on its business within the Province on compliance with the provisions of the Act, and he is authorized to restrict the license in any manner that may seem desirable. These provisions would apply to companies incorporated by Parliament under its general authority, and also to every bank, railway company and other corporation incorporated under its special and exclusive authority.

It has been held that the Parliament of Canada has power to incorporate a company for the whole Dominion, though the objects of the company are provincial, while a Provincial Legislature has no such power. The cases where this rule applies are mentioned in a Report of Sir John Thompson of the 16th of July, 1887, in the consideration of a Quebec Act.

When the objects of a corporation are provincial, but it desires corporate existence extending over the Dominion of Canada, it may be doubted whether the Parliament of Canada can do more than create a company with the capacity to exercise such powers; and the undersigned is of opinion that any powers which may be conferred by Parliament in such cases can be exercised only so far as the exercise of them is consistent with the general laws of the Provinces; otherwise the Provincial Legislature would have no greater authority to prohibit the exercise of those powers than it has to prohibit those falling within the enumerated subjects of Section 91 of the British North America Act.

There can be no doubt that as to companies incorporated under the enumerated powers of the Parliament of Canada, such as banks and railway companies, this Statute of the Legislature of Manitoba is *ultra vires*, but on account of the reasons in favour of the more limited construction, when the Parliament of the Dominion undertakes to incorporate a company for two or more Provinces for objects that would otherwise be provincial, the Crown might well leave such a Statute to its operation and the parties interested to the remedies which the Courts afford.

Assuming then for the purpose of considering this Statute that the incorporation of companies by the Parliament of Canada with provincial objects is within the legislative authority of the Dominion and that it must be exercised

subject to provincial legislation within the scope of provincial authority, yet such legislation may be of a character to hamper the Parliament of Canada in respect to matters lying within its exclusive jurisdiction, and if allowed to go into operation might defeat the settled policy of the Federal Government and Parliament.

It may be competent for a Provincial Legislature when the franchises sought by a Dominion corporation are of a provincial character to require that a license shall be obtained by such company before it is permitted to do business in the Province. Upon that question it is not at present necessary to express an opinion, but there can be no doubt, where a company is incorporated by the Dominion in the execution of one or more of its special and exclusive powers of legislation, enumerated in Section 91, that the Provincial Legislature has no authority to impose any such condition, and this Statute should be so amended as to release companies incorporated by the Parliament of Canada or under its authority from such restraints.

Provincial legislation is to be considered also with reference to the question of public policy as well as the question of *ultra vires*, and the provisions of this Act as they now stand might very seriously interfere with the proprietary interests of the Dominion within the Province of Manitoba.

In the opinion of the Minister this Act before it can be permitted to remain upon the Statute-book must not, in its operation, extend to lands which the Crown in the right of the Parliament of Canada owns in the Province of Manitoba, or upon which it has mortgages or security, nor must it extend to lands which the Dominion has to convey to railway companies and other companies, in so far as such a Statute may be incompatible with any contracts into which the Government of Canada has entered with these companies.

It may be open to controversy whether in respect to such lands the Government of Canada ought to have entered into contracts which may have encroached upon the authority of the Government and Legislature of a Province in the pursuit of any line of public policy arising from the exercise of their local jurisdiction and which they may believe to be for the advantage of the Province, but the Government of Canada having entered into such contracts, largely in the interests of the Province, and the Parliament of Canada having sanctioned them, it may well be that it has become the duty of the Government under the circumstances to see that the public faith is kept.

There is the further question which has been suggested as to whether legislation can be upheld by which a Province proposes to take power to prohibit the right of trading within the Province of a company incorporated by the exclusive authority of Parliament to trade throughout the Dominion, or in two or more of the Provinces. This question, the undersigned considers, may be more properly left to the judgment of the Courts than be invoked as a reason for disallowance.

The Minister submits that the present Act should be disallowed unless the Government of Manitoba undertakes to make satisfactory amendments within the time allowed for such disallowance, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for his information, and in order to ascertain whether such amendments will be made within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 2nd day of April, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 1st April, 1898.

To His Excellency the Governor General in Council :

Referring to the Order of Your Excellency in Council of 14th March, 1898, with respect to Chapter 2 of the Statutes of Manitoba, 1897, intituled "An Act respecting Corporations incorporated out of Manitoba," the undersigned has the honour to report that the Order in Council having been communicated to the Government of the Province of Manitoba, he has received a communication from the Attorney General of the Province, copy of which is herewith submitted. In view of what is stated by the Attorney General and of the fact that the time for disallowance will expire within a few days, the undersigned, for the reasons mentioned in the Order in Council of 14th ultimo, recommends that the said Statute be disallowed.

Respectfully submitted,

DAVID MILLS.

Minister of Justice.

The Honourable the Attorney General of Manitoba to the Honourable the Minister of Justice.

WINNIPEG, 28th March, 1898.

MY DEAR MR. MILLS,—With reference to our Foreign Corporations Act, the time for consideration being so very short now it seems to me that the best course to be pursued, if you are still bent upon disallowing the Act, is to disallow it, and at once. Within such a limited time it would be quite impossible for us to negotiate as to the amendments which you might think satisfactory. Immediately upon its disallowance we will amend the Revised Statute by extracting from it the stringent forfeiture clause, which is one of the principal objections. I think, therefore, that the best course would be for you to proclaim at once the disallowance of the Act and advise me to that effect so that I can at once proceed to amend the old Act.

Yours truly,

J. D. CAMERON.

AT THE GOVERNMENT HOUSE AT OTTAWA.

SATURDAY, 2nd day of April, 1898.

PRESENT :

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the Province of Manitoba with the Legislative Assembly of that Province, did on the 30th March, 1897, pass an Act which has been transmitted, Chaptered 2, and intituled "An Act respecting Corporations incorporated out of Manitoba."

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

His Excellency the Governor General has thereupon this day been pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

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

JOHN J. MCGEE,

Clerk of the Privy Council.

I, Sir John Campbell Hamilton Gordon, Earl of Aberdeen, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the Province of Manitoba on the 30th day of March, 1897, Chaptered 2, and intituled "An Act respecting Corporations incorporated out of Manitoba" was received by me on the 5th day of April, 1897.

Given under my hand and seal this 2nd day of April, 1898.

ABERDEEN.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 3rd May, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1898.

To His Excellency the Governor General in Council :

The undersigned has had under consideration copy of a despatch from His Honour the Lieutenant Governor of Manitoba, addressed to the Honourable the Secretary of State for Canada, inclosing copy of an Order of the Executive Council of the Province, passed on 29th March last, with reference to the disallowance of Chapter 2 of 60th Victoria of the Statutes of Manitoba, intituled "An Act respecting Corporations incorporated out of Manitoba." The Act having been disallowed, the undersigned does not consider it necessary at present to make any observations upon the statements contained in the report approved by the said Order in Council, and he recommends that no further action be taken in the matter.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

CERTIFIED REPORT of the Honourable the Attorney General of Manitoba to the Lieutenant Governor in Council, approved on 29th March, 1898, and transmitted to the Secretary of State for Canada by letter of the Lieutenant Governor dated 2nd April, 1898.

The undersigned has had under consideration copy of a Report from the Honourable the Minister of Justice to His Excellency the Governor General in Council, dated 8th March, 1898, upon the subject of disallowance of Chapter 2 of the Statutes of Manitoba, passed in the sixtieth year of Her Majesty's reign, entitled "An Act respecting Corporations incorporated out of Manitoba."

With respect to the matters dealt within the said report, the undersigned begs to submit the following:—

The Statute in question was passed at the last session of the Provincial Legislature for the purpose of consolidating the law relating to Foreign Corporations, and of eliminating from it certain features that were considered objectionable. It will be observed that the stringent forfeiture clause, Section 14, Chapter 24, R.S. M., was wholly struck out in the consolidation. Sir John Thompson, in his report, dated 21st March, 1891, strongly criticised this section which was also found in the Act then under consideration, and made it one of the principal grounds upon which he recommended its disallowance. The Bill was considered carefully in Committee where the Companies interested were fully represented by agents and counsel, who were satisfied with the law as amended. The result of disallowance of the Act is simply to restore the Revised Statute with its features as to forfeiture which have been considered so objectionable. The disallowance of the Act cannot effect any improvement in the law, but absolutely the reverse.

The Minister states:—"There can be no doubt that as to companies incorporated under the enumerated powers of the Parliament of Canada such as banks and railway companies, this Statute of the Legislature of Manitoba is *ultra vires*, but on account of the reasons in favour of the more limited construction, when the Parliament of the Dominion undertakes to incorporate a company for two or more Provinces for objects that would otherwise be provincial, the Crown might well leave such a Statute to its operation, and the parties interested to the remedies which the Courts afford." And further: "There can be no doubt where a company is incorporated by the Dominion in the execution of one or more of its special and exclusive powers of legislation enumerated in Section 91, that the Provincial Legislature has no authority to impose any such condition, and that the Statute should be so amended as to release companies incorporated by the Parliament of Canada, or under its authority, from such restraint."

With this statement, the undersigned takes direct issue upon the grounds, amongst others, set forth in the Report of the Attorney General of Manitoba, dated 7th February, 1896, in reply to a Report of the Minister of Justice, dated 24th October, 1895, when a similar Statute was under consideration.

The undersigned submits that the Act in question is clearly within the powers of the Legislature to enact, and that any Corporation, Dominion, Imperial or Foreign, that carries on business in this Province is subject to the laws of the Province, in respect to licensing, taxation, and otherwise, to the same extent as a natural person. Creating a corporation cannot be said to be making a law, nor can greater and higher privileges in this respect be given by the Dominion Parliament to a corporation than to a natural person. The Judicial Committee of the Privy Council in the case of Citizen Insurance Company vs. Parsons, 9 Appeal Cases, pages 165, 166, said:—"What the Act of Incorporation has done is to create a legal and artificial person, with capacity to carry on certain kinds of business, which are defined, within a defined area, namely, throughout the Dominion. Among other things, it has given to the association power to deal in land and buildings, but the capacity so given only enables it to acquire and hold land in any Province consistently with the laws of that Province relating to the acquisition and tenure of land. If the company can so acquire and hold it, the Act of Incorporation gives it capacity to do so."

Since this case the current of the decisions has been changed. On the contrary, the dicta in the Parsons case have been strengthened by the very clear judgments of the Privy Council in the Colonial Building and Investment Association vs. The Attorney General of Quebec, 9 Appeal Cases, page 157: The

Bank of Toronto *vs.* Lambe, 12 Appeal Cases, page 575; and The Brewers and Malsters' Association *vs.* The Attorney General of Ontario, Appeal Cases, 1897, page 231. Mr. Lefroy deals with the subject very exhaustively and lucidly in his recent work on The Law of Legislative Power in Canada, pages 617, *et seq.* It is held that these authorities establish beyond any reasonable doubt that the enactment now in question is perfectly valid and constitutional.

The Minister of Justice objects to the Act not only as being unconstitutional, but also as being contrary to public policy. He states in his report:—"Provincial legislation is to be considered also with reference to the question of public policy, as well as to the question of *ultra vires*, and the provisions of this Act as they now stand might very seriously interfere with the proprietary interests of the Dominion within the Province of Manitoba. In the opinion of the Minister, this Act, before it can be permitted to remain on the Statute-book, must not in its operation extend to lands which the Crown in the right of the Parliament of Canada owns in the Province of Manitoba, or upon which it has mortgages or security, nor must it extend to lands which the Dominion has to convey to railway companies and other companies, in so far as such a Statute may be incompatible with any contracts into which the Government of Canada has entered with these companies."

The undersigned submits that the Act in question does not and cannot, under the constitution interfere with the proprietary interest of the Dominion in Manitoba. The undersigned also holds that the Act does not and could not under the constitution extend its operation to Dominion lands in Manitoba; nor could it extend to lands upon which the Dominion has "mortgages or security," because at the present time there are no such lands to which the Act by any possibility could apply, nor could it extend to lands that the Dominion has to convey to railway companies. It is further submitted that the Act is in no wise incompatible with any contract into which the Dominion has entered. If it is, the incompatibility has never yet been pointed out.

With reference to the statement that the Government of Canada may have encroached upon the authority of the Government and Legislature of the Province, the undersigned submits that such encroachment is impossible so long as the provisions of The British North America Act stand.

The undersigned, therefore, holds that the Act is within the unquestioned powers of the Legislature, and that it is in no way contrary to public policy. That to disallow upon the former ground is for the Dominion Government to usurp the functions of the Courts, and an unwarranted interference with the constitutional rights of the Legislature of the Province.

Respectfully submitted,

J. D. CAMERON,

Attorney General.

COUNCIL CHAMBER, 29th March, 1898.

61ST VICTORIA—1898.

3RD SESSION—9TH LEGISLATURE.

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1898.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the sixty-first year of Her Majesty's reign (1898), received by the Secretary of State for Canada on 7th May, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of:

Chapter 31. "An Act to amend the Manitoba Act."

Objections have been urged to Section 40 of this Statute by the Winnipeg Water Works Company and the bondholders of that Company.

The undersigned has the honour to submit herewith copies of the petitions of the Company and the bondholders, which have been referred to the undersigned. Copies of these petitions have been submitted to the Attorney General of the Province of Manitoba for his remarks thereon, and the undersigned has the honour to submit the reply of the Attorney General, dated 29th September, 1898, also copy of a letter which the undersigned has received from Messrs. Hough and Campbell, Solicitors of the City of Winnipeg, dated 23rd September, 1898, inclosing newspaper clippings of a report adopted by the Winnipeg City Council.

It appears from the petitions and correspondence submitted that the Winnipeg Water Works Company and its bondholders claim that their rights and securities are prejudiced by the section in question which authorizes the City of Winnipeg to lay down a system of Water Works and to purchase the system of the Winnipeg Water Works Company.

The undersigned considers that these provisions confer authority upon the City which did not previously exist, and that so far as they authorize the City to commence the construction of a new system of water works before 23rd December, 1899, they are inconsistent with legislation in the nature of a monopoly which had formerly been granted to the Winnipeg Water Works Company. It is to be observed, however, that the section does not interfere with the exclusive authority granted to the Company to supply water for the period of twenty years terminating on the date above mentioned. Arguments on both sides as to the original understanding between the City and the Company, and as to the intention of the Legislature seem to have been urged before the Assembly with reference to the legislation now in question. The matter is unquestionably one within the exclusive legislative authority of the Province, and the undersigned does not consider that a case has been made out which would justify Your Excellency in disallowing a Statute passed in the exercise of such authority. In the judgment of their Lordships of the judicial Committee in the case of the Attorney General of Canada *vs.* the Attorneys General of Ontario, Quebec and Nova Scotia, 1868, Appeal Cases 713, their Lordships, referring to exclusive provincial authority observe: "The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The supreme legis-

lative power in relation to any subject-matter is always capable of use, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the Legislature is elected."

It would seem, therefore, that the objections urged by the petitioners are for the consideration of the Provincial Legislature, which has power to grant a remedy for any grievance which may be established.

The undersigned, therefore, recommends that the Statute be left to its operation.

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

Respectfully submitted,

DAVID MILLS,

Minister of Justice

BRITISH COLUMBIA,

59TH VICTORIA—1896.

2ND SESSION—7TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th day of November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1898.

To His Excellency the Governor General in Council :

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of British Columbia in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on the 8th July, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 10, 21, 37, 50 and 55, which are the subjects of a separate report.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 30th day of November, 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1896.

To His Excellency the Governor General in Council :

The undersigned has the honour to report upon the following Acts of the Province of British Columbia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 17th April last, and received by the Secretary of State for Canada on the 8th July last.

Chapter 10. "An Act respecting Co-operative Associations."

Section 17 provides, among other things, that if any person obtains possession by false representation or imposition of any property, moneys, securities, books, papers, or other effects of an Association, he shall be liable on conviction to a penalty not exceeding one hundred dollars and costs, and in default of payment to imprisonment.

This legislation appears to affect the subject of Criminal law and the offence stated has been declared criminal by the Criminal Code, 1892, and punishment has been thereby prescribed for such an offence. The objection, however, is not of sufficient importance to call for the exercise of the power of disallowing the Act which contains it, but the undersigned recommends that the provision be considered by the Provincial Legislature with a view to its repeal.

Chapter 21. "An Act to preserve the Forests from Destruction by Fire."

Section 6 provides that all locomotive engines used on any railway which passes through any fire district shall be provided with the most approved and efficient means to prevent the escape of fire from the furnaces of such engines, and that the smoke-stack of each engine shall be provided with a bonnet or screen of a certain description.

Section 7 provides that it shall be the duty of every engine-driver in charge of such locomotive engines passing over a railway within the limits of any fire district to see that such appliances are properly used and applied; and Section 8 enacts a penalty for neglect or refusal to comply with the provisions above mentioned.

The undersigned observes that, while these requirements are undoubtedly applicable to railways within the legislative authority of the Province, it is doubtful, or more than doubtful, whether they can have effect as to railways to which the Railway Act of Canada applies.

Chapter 37. "The Municipal Clauses Act."

In recommending that this Act be left to its operation the undersigned would observe that some of the powers to make by-laws which the Act purports to confer upon Municipal Councils are expressed in terms so general as to include authority which a Provincial Legislature could not confer. For instance, power is given to make by-laws with respect to the following matters, among others:—

(21.) The Prevention of Cruelty to Animals;

(69.) For regulating, with a view of preventing the spread of infectious or contagious diseases, the entry or departure of boats or vessels, and the landing of passengers and cargoes, from such boats or vessels, or from railway carriages or cars, and the receiving of passengers or cargoes on board of the same;

(75.) For preventing the posting of indecent placards, writings or pictures, or the writings of indecent words, or the making of indecent pictures or drawings on walls, fences, trees, or rocks, in streets of public places;

(76.) For preventing vice, drunkenness, swearing, obscene, blasphemous or grossly insulting language and other immorality and indecency.

It is doubtless open to the municipality in the execution of the powers granted by these clauses to make by-laws which would not be *ultra vires*, and the undersigned does not consider it necessary to do more than point out that the authority cannot legally be so acted upon as to affect subjects which belong to Dominion legislation under Section 91 of "The British North America Act."

Chapter 50. "An Act to incorporate the Alberni Water, Electric and Telephone Company, Limited."

Section 8 authorizes the Company to appropriate and use the waters of Stamp and Sproat Rivers.

Chapter 55. "An Act to amend an Act to incorporate the Consolidated Rail way and Light Company, and to consolidate certain Acts relating thereto, and to change the name thereof to the Consolidated Railway Company."

Section 42 empowers the Company to take and divert the water of Seymour Creek and Capilane River.

The undersigned in his report of even date herewith upon Section 2 of Chapter 73, and Section 6 of Chapter 74 of the Statutes of the Province of Quebec, 1895, states as follows:—

"It has been pointed out on several occasions by preceding Ministers of Justice in their reports upon the legislation of the various Provinces, that provisions similar to the above are objectionable, in so far as they relate to rivers which are claimed on behalf of the Dominion to have become the property of the Dominion under the British North America Act."

"The Supreme Court of Canada has recently given its decision upon certain questions referred to that Court for determination by Your Excellency in Council. Some of these questions involve the inquiry as to the legislative authority of the Dominion and the Provinces respectively with regard to rivers and navigable waters. Your Excellency's Government intend to have these questions submitted to the Judicial Committee of Her Majesty's Privy Council upon appeal, and pending their final determination there, the undersigned considers that it would be improper to disallow either of the Statutes containing these questionable provisions."

The Statutes containing the sections now in question should, for the reasons thus stated, likewise be left to such operation as they may legally have.

Section 59 of Chapter 55 purports to cover ground which had previously been occupied by provisions of the Criminal Code, 1892, and the constitutionality of the section is on that account open to objection or to question.

Notwithstanding these objections or questions the undersigned is of opinion that the Acts containing the sections mentioned in this report should not be disallowed, and recommends that a copy of the report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

60TH VICTORIA 1897.

3RD SESSION 7TH LEGISLATURE.

His Honour the Lieutenant Governor of British Columbia to the Honourable the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, 14th May, 1897.

SIR,—I have the honour to inform you that I prorogued the Legislative Assembly of this Province on the 8th inst., at which time I assented to a number of Bills, duplicate copies of which I am forwarding to day by Registered Mail.

I have thought it advisable to reserve for the pleasure of His Excellency the Governor General in Council, Bill No. 40, an Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts.

My reasons for doing so are that its provisions appear to me to be exceptional, and I am in doubt whether they come within the competence of the Local Legislature.

Clauses 4 and 5 of the Bill appear to affect the standing of Aliens in the Province after becoming British subjects, and should I be correct in my conclusions, legislation of this character, should it become law, might seriously interfere with our International relations and Federal interests.

I have the honour to be, Sir,

Your obedient servant,

E. DEWDNEY,

Lieutenant Governor.

The Consul General for Japan to His Excellency the Governor General.

CONSULATE OF JAPAN, VANCOUVER, B.C., 1st June, 1897.

SIR, YOUR EXCELLENCY,—In reference to my telegraphic despatch of the 17th and also to my despatch under date of the 19th ult., I have the honour of informing Your Excellency that I have been instructed by H. I. Japanese Majesty's Government to protest against Your Excellency giving assent to the particular clauses containing the word "Japanese" in the so-called Oriental Labour Bill, submitted by the Lieutenant Governor Dewdney to Your Excellency's decision, on the ground that the said Bill, so far as it concerns the Japanese, is the most unjust and unfriendly measure ever taken by any civilized Government against a friendly nation of Great Britain and her dependencies.

I have therefore the honour of protesting against Your Excellency giving assent to the Bill above referred to, and also of calling your serious attention to the various facts in connection with the passage of the said Bills by the British Columbia Legislatures and the insertion of the word "Japanese" thereto.

The Bill originally had not contained the word "Japanese," but an amendment of inserting them was made by a member, and then it was effected without

a discussion and even an explanation why this insertion of the words "Japanese" was declared necessary was not given by the members.

The action on the part of the Local Legislature proves that the insertion of the words "Japanese" in the Bill was entirely uncalled for and never for a moment warranted by any facts whatever. They are, it appears, solely planned to do wrong and injustice to the interest and dignity of the Japanese subjects residing in this Province.

Although hardly necessary, I may point out that the passage of such a Bill by one of the Provincial Legislatures, and of Your Excellency granting the Royal assents thereto will tend eventually to the manifestation of an unfriendly feeling by the local people towards the Japanese residents and especially in the form in which the said Bill has passed the British Columbia Legislatures it will be obvious to Your Excellency that the Japanese subjects are to be discriminated alike the Chinese and that the full rights and liberty provided for in the Treaty between Japan and Great Britain will no longer be respected. The result of such unfair and unfriendly measures on the part of the Canadian Government had they become law, would very naturally have led to the serious complications between the nations interested.

It is my sincere and earnest desire, therefore, that Your Excellency's fair and just decision will result in the Royal assent being withheld from a measure which would be grossly unjust and unfriendly to the people of one of Her Britannic Majesty's friendly powers, while being of no real benefit to the welfare and prosperity of the Province concerned.

I have, &c.,

TATSZGORO NOSSE,

H. I. J. M.'s Consul General for Canada.

His Excellency
The Earl of Aberdeen.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th October, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of British Columbia in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st day of May, 1897, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 1, 2, 17, 62 and 67, which will form the subject of separate reports.

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

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th December, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a reserved Bill passed by the Legislative Assembly of the Province of British Columbia at the last sittings of the Legislature (1897) intitled "An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts," and also the report of His Honour the Lieutenant Governor of the Province to the Honourable the Secretary of State, in which His Honour reports that he has thought it advisable to reserve the Bill for the pleasure of Your Excellency in Council, because its provisions appear to His Honour to be exceptional, and he is in doubt whether they come within the competence of the Local Legislature. His Honour further states that Sections 4 and 5 of the Bill appear to affect the standing of aliens in the Province after becoming British subjects; and that, should he be correct in his conclusions, legislation of this character, should it become law, might seriously interfere with international relations and Federal interests.

There has also been referred to the undersigned in connection with the Bill, a copy of a communication addressed to Your Excellency by His Imperial Japanese Majesty's Consul General for Canada, in which the Consul General states that he has been instructed by his Government to protest against Your Excellency giving assent to the clauses of this Bill containing the word "Japanese" upon the ground that the Bill, so far as it concerns the Japanese, is the most unjust and unfriendly measure ever taken against a nation friendly to Great Britain and her dependencies. The Consul General also refers to the Treaty between Great Britain and Japan and some matters connected with the passage of the Bill through the House of Assembly.

The first clause of the Bill provides that it may be cited as the "Alien Labour Act, 1897." The Bill proceeds to provide in effect that in case of any Act passed thereafter granting to any person, or body corporate the right of constructing certain works therein mentioned, or the right to carry on any trade, business, occupation or calling, or granting to any person, or body corporate any property, rights or privileges whatsoever, no Chinese or Japanese person shall be employed in connection with or in relation to any of the works, rights, trade, business, occupation or property so authorized, and in the event of such employment that the person by whom such Chinese or Japanese shall be employed, shall be liable to a penalty. The word "Chinese" is defined to mean any native of the Chinese Empire or its dependencies, not born of British parents, and to include any person of the Chinese race; and similarly the term "Japanese" is defined to mean any native of the Japanese Empire or its dependencies not born of British parents, and to include any person of the Japanese race.

The undersigned observes that by Section 4 of "The Coal Mines Regulation Amendment Act, 1890," of British Columbia, it was enacted in effect that no Chinamen should be employed in or allowed to be for the purpose of employment in any mine to which the amended Act applies below ground. The validity of that Act has recently been considered by the Supreme Court of British Columbia, under a reference from the Executive Council of that Province, and the Court has pronounced judgment, declaring the enactment constitutional. The undersigned is informed that an appeal is now pending to the Supreme Court of Canada

from the said judgment, the appeal being entitled in the cause of the Union Colliery Company of British Columbia, limited liability appellants, against the Attorney General for British Columbia, and others, respondents.

The judgment of the Supreme Court of British Columbia in so far as it is applicable to the enactment under consideration is favourable to its validity. That judgment is, however, under appeal, and the undersigned considers also that there are reasons affecting the authority of the Legislature to enact the present measure which may not apply to "The Coal Mines Regulation Amendment Act, 1890."

The Legislature in adopting a short title for the Bill in question has considered "Alien Labour Act, 1897," to be an appropriate and comprehensive description and the Bill if allowed to go into operation would affect principally the right to employment of Chinese or Japanese who are aliens. The main intention appears to be to disqualify Chinese and Japanese aliens from employment. The legislation may, therefore, aptly be regarded as affecting aliens, but the subject of naturalization and aliens has been referred to the exclusive legislative authority of the Parliament of Canada, and the undersigned apprehends that, unless the measure in question can be more appropriately classed under the category of property and civil rights, or some one or more of the other enumerations contained in Section 92 of "The British North America Act," it may be regarded as included in the subjects belonging to the exclusive authority of the Dominion. The undersigned does not, however, consider it necessary at present to determine whether Section 92 contains any better fitting classification, because the doubt which must exist in such an inquiry constitutes sufficient reason for Your Excellency declining to take any action with regard to this Bill which if assented to by Your Excellency would operate, if at all, by reason of the authority of the Provincial Legislature under Section 92.

There are other considerations referred to by the Lieutenant Governor and by the Consul General affecting the propriety of the legislation, assuming it to be *intra vires*.

It is stated that the Bill should it become law might seriously interfere with international relations and Federal interests, and that the measure is unfair and unfriendly and will tend to disagreement between residents of the Province.

For the reasons already stated the undersigned is not prepared to recommend that the Bill should come into effect by reason of any action on the part of Your Excellency's Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 20th October, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the following Acts passed by the Legislature of the Province of British Columbia, in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st day of May, 1897, viz.:-

Chapter 17. "An Act to amend and consolidate the law relating to Lunatic Asylums and the Care and Custody of the Insane."

Section 51 provides that certain persons who may sign orders, statements or certificates under any section of the Act shall not be liable to any civil or criminal proceedings on the ground of want of jurisdiction, or on any other ground if they have acted in good faith and with reasonable care.

The undersigned observes that a Provincial Legislature has no authority to exempt any person from such criminal proceedings as are authorized by the Dominion Parliament, and that this section in so far as it attempts to make any such exemption is *ultra vires*. The undersigned does not consider, however, that the Statute should on that ground be disallowed.

Chapter 62. "An Act to incorporate the South Kootenay Water Power Company."

Chapter 67. "An Act to incorporate the Okanagan Water Power Company."

Each of these Statutes contains a section, namely 33, providing a penalty for malicious injury to the property of the Company. The Parliament of Canada under its authority to legislate with regard to Criminal Law has already dealt with the subject of malicious injury to property, and that legislation would cover the offences sought to be created by the sections in question. These sections seem strictly to relate to Criminal Law, and occupying ground which has been already traversed by Parliament are, in the opinion of the undersigned, *ultra vires*. If a question should arise with regard to them they may be so declared by the Courts, and the undersigned does not consider that any harm would ensue from leaving these Statutes to their operation.

The undersigned recommends that the Statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted.

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 8th November, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 2 of the Statutes of the Province of British Columbia, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st of May, 1897, intitled "An Act for the Incorporation and Regulation of Joint Stock Companies and Trading Corporations."

This Act provides for the incorporation and regulation of joint stock companies. The word "company" as used in the Act is defined to mean any company incorporated under the Act for any purposes or objects to which the legislative authority of the Legislature of British Columbia extends, except the construction and working of railways and the business of insurance; and the expression "extra-provincial company" is defined to mean any duly incorporated company other than a company incorporated under the laws of the Province of British Columbia.

Part VI. of the Act, which is entitled "Licensing and Registration of Extra-Provincial Companies," provides among other things, that unless otherwise provided by any Act, no extra-provincial company having gain for its purpose and object shall carry on any business within the scope of this Act in the Province unless and until it shall have been duly licensed or registered under the Act, and thereby expressly authorized to carry on such of its business as is specified in the license or certificate of registration, and any such company which fails or neglects to obtain such license or certificate of registration shall incur a penalty of \$50.00. There are special provisions with regard to companies incorporated under the laws of Great Britain or Ireland or of the Dominion of Canada, of the old Province of Canada, or of any of the Provinces of Canada, which provide in effect that any extra-provincial company so incorporated and authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may obtain a license authorizing it to carry on business within the Province on compliance with the provisions of the Act, and on payment to the Registrar of certain fees set forth in a schedule to the Act. The provisions of the Act, compliance with which is required, in order to the obtaining of such a license, are in addition to payment of the required fees, the filing with the Registrar of the charter and regulations of the company, an affidavit or statutory declaration that the company is still in existence and authorized to transact business under its charter, a copy of the last balance sheet of the company, the auditor's report thereon and a power of attorney from the company to some person residing within the Province where the head office of the company in the Province is situate to act as attorney of the company.

The Act appears to intend, therefore, that upon compliance with these conditions the company shall be entitled to a license.

The general scope of the Act appears to provide for the incorporation of companies, which may be incorporated under the authority of the Province, the distribution of the capital and liability of the shareholders of such companies and their powers, management and administration.

It appears to the undersigned, therefore, that the provisions of the Statute with regard to the licensing of companies incorporated by the Dominion Parliament are not intended to affect the execution of powers which could not be competently conferred by the Provincial Legislature, and that the Act was not intended to impose any condition upon the exercise by a Dominion Corporation of powers conferred by Parliament within the scope of the subjects specially enumerated in Section 91 of the British North America Act. If the Act were intended to apply to such companies it would be necessary to consider the propriety of its disallowance upon the grounds which led to the disallowance of a recent Statute of the Legislature of Manitoba (58-59 Victoria, Chapter 4). See the report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on 8th November, 1895, and the report of Mr. Dickey, his successor, approved on 25th March, 1896.

It is true that the Parliament of Canada has authority, not apparently by reason of any of the special subjects of legislation enumerated in Section 91, but by force of its general authority to legislate for the peace, order and good government of Canada, to incorporate companies with powers which would otherwise be exclusively within Provincial authority where such powers are to be exercised by the company within two or more Provinces of the Dominion, and it may be that such companies under the provisions in question would be required to take out licenses in order to entitle them to carry on their business in British Columbia.

The undersigned observes, however, that no power is attempted to be conferred by this Act which would authorize the licensing authority in refusing a license to such a company where the company had complied with the requirements of the Act which seem not unreasonable as to the filing of information and payment of fees, and although there may be different views as to the power of a Provincial Legislature to impose such a restriction upon any company incorporated under the legislative authority of Parliament, yet the undersigned considers in view of the reasons which may be urged in favour of the Provincial right he would not be justified in recommending the disallowance of this Act, and he recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

The Governor General's Secretary to the Honourable the Privy Council for Canada.

OFFICE OF THE GOVERNOR GENERAL'S SECRETARY,
CANADA.

To the Honourable the Privy Council:

The undersigned has the honour to request for the information of His Excellency that it be explained whether it be the intention of the Committee of the Privy Council to allow the Bill, passed by the British Columbian Legislature in 1897 relating to the employment of Chinese and Japanese persons, to become law owing to no action being taken on the part of His Excellency in Council.

By Command.

DAVID ERSKINE,

Governor General's Secretary.

GOVERNMENT HOUSE,

TORONTO, 18th December, 1897.

Report of the Honourable the Minister of Justice on Memo. of Governor General's Secretary on Reserved Bill above mentioned.

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1897.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a copy of a communication of the 18th instant from Your Excellency's Secretary, requesting for the information of Your Excellency that it be explained whether it be the intention of the Committee of the Privy Council to allow the Bill passed by the British Columbia Legislature in 1897, relating to the employment of Chinese and Japanese persons to become law owing to no action being taken on the part of Your Excellency in Council.

The undersigned presumes that this inquiry relates to the Bill which was the subject of a report on the 15th of October last by the late Minister of Justice, which report is now before Your Excellency for approval.

The undersigned observes that if effect were given to the recommendation contained in that report the Bill would not become law; it would simply remain inoperative by reason of the absence of any assent thereto by the constitutional representative of Her Majesty.

The Governor of a Province, when a Bill which has passed the Legislature is presented to him for assent may in his discretion, subject to the provisions of "The British North America Act," and to his instructions, either assent thereto in the Queen's name or withhold the Queen's assent, or reserve the Bill for signification of Your Excellency's pleasure.

In the present case the Lieutenant Governor of British Columbia saw fit to adopt the latter course and he reserved the Bill. The Bill, if it is to go into operation at all, must therefore have effect by force of Your Excellency's assent, but the advice tendered by the Committee of the Privy Council is that Your Excellency take no action with regard to the Bill.

It will remain for the Provincial Legislature to re-enact the measure if it should see fit to do so, and then if the Bill as re-enacted be assented to by the Lieutenant Governor the question as to the propriety of its disallowance may be considered by Your Excellency in Council. Without the assent of Your Excellency, however, the present Bill can never receive the force of law.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

61ST VICTORIA—1898.

4TH SESSION—7TH LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 17th December, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 8th November, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of British Columbia, passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 8th June, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of those hereafter specially referred to.

Chapter 40. "An Act to give effect to the Revised Statutes of British Columbia."

This Statute relates to the recent revision of the Provincial Statutes and gives effect to the revision. Without referring particularly to the various objections which have been stated in the reports of the undersigned's predecessors in office upon the Statutes contained in the revision from time to time as they were enacted, the undersigned intends that these objections, so far as applicable, shall be considered to apply to the Revised Statutes. Having regard to previous comments and to the above observation, the undersigned does not consider it necessary to make any special remarks with regard to any of the Revised Statutes other than Chapter 107, "The Jurors' Act," as to which he observes that Sections 75 to 82 inclusive relate to juries in criminal cases, and appear to contain substantially re-enactments of the corresponding provisions of the Criminal Code, 1892. These affect matters of criminal procedure and are *ultra vires* of the Legislature. The undersigned does not propose on that account that the Statute should be disallowed, because the provisions in question are not inconsistent with the Criminal Code, and to disallow the Statute which gives effect to the revision might cause serious inconvenience. It is very undesirable, however, that a Provincial Legislature should enact rules of criminal procedure, even although they be copied from the Criminal Code. Such rules can receive no effect from Provincial enactment, and as amendments are being frequently made to the Code, the Provincial rules might soon become inconsistent therewith, in which case there would be a liability to error from having incompatible rules affecting the same subject appearing upon the two Statute-books. The undersigned considers, therefore, that the sections in question should be repealed, and he recommends that the Provincial Government be requested to introduce the necessary legislation at the next session of the Legislature.

Chapter 49. "An Act respecting the Canadian Pacific Navigation Company, Limited."

Among the powers conferred upon the Company is one stated in the following terms:—

"(a.) To purchase, charter, hire, build or otherwise acquire steamships and other vessels of any description, and to employ the same in the conveyance of passengers, mails, cattle, produce and merchandise of all kinds, and in towing

vessels of all kinds, and lumber, between any parts of British Columbia, and elsewhere, as may seem expedient, and to acquire any postal or other subsidies.

It is beyond the authority of a Provincial Legislature to authorize the establishment or operation of a line of steam or other ships connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province or between the Province and any British or Foreign Country. The words "and elsewhere as may seem expedient" in the paragraph quoted, would seem to indicate that it is intended to authorize the company to carry on a shipping business between the Province and other places outside the limits of the Province, and they should, for that reason, be struck out. The undersigned recommends that the matter be called to the attention of the Provincial Government, and that the Government be requested to state whether a proper amendment will be made within the time limited for disallowance. Meantime the undersigned withholds any further recommendation with regard to this Act.

Chapter 28. "An Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts."

The Act is given the short title of the "Labour Regulation Act, 1898," and is in effect similar to the Bill passed by the Legislative Assembly of the Province of British Columbia in 1897, entitled "An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts," which was reserved by the Lieutenant Governor for the pleasure of His Excellency in Council, and which was the subject of a report by the predecessor in office of the undersigned, approved by His Excellency in Council on 15th December, 1897, and as to which His Excellency's Government declined to give effect.

The Act defines the terms "Chinese" and "Japanese," as meaning any native of the Chinese or Japanese Empires, or their dependencies, not born of British parents, and as including any person of the Chinese or Japanese races. It disqualifies from employment by persons or companies exercising Provincial franchises Chinese or Japanese persons as so defined, and renders such persons or companies employing them liable to penalties for such employment.

Chapter 10. "An Act to confirm an agreement between Her Majesty in right of Her Province of British Columbia, and Frank Owen and William John Stokes, and to incorporate the Cariboo-Omineca Chartered Company."

Section 30 of this Chapter provides that "No Chinese or Japanese person shall be employed in the construction or operation of the undertaking, hereby authorized, under a penalty of five dollars per day, for each and every Chinese or Japanese person employed in contravention of this section, to be recovered on complaint of any person under the provisions of the 'Summary Convictions Act.'"

Chapter 39. "An Act to amend the 'British Columbia Public Works Loan Act, 1897.'"

Chapter 44. "An Act to amend the Tramway Incorporation Act."

Chapter 46. "An Act to incorporate the Alice Arm Railway."

Chapter 47. "An Act to incorporate the Arrowhead and Kootenay Railway Company."

Chapter 48. "An Act to incorporate 'The British Columbia Great Gold Gravels Dredge-Mining Corporation.'"

Chapter 50. "An Act to incorporate the Canadian Yukon Railway Company."

Chapter 52. "An Act to incorporate the Downie Creek Railway Company."

Chapter 53. "An Act to incorporate the East Kootenay Valley Railway Company."

- Chapter 54. "An Act to incorporate the Kitimaat Railway Company (Limited)."
- Chapter 55. "An Act to incorporate the Kootenay and North-west Railway Company."
- Chapter 56. "An Act to incorporate the Mountain Tramway and Electric Company."
- Chapter 57. "An Act respecting the Nanaimo Electric Light, Power and Heating Company, Limited."
- Chapter 58. "An Act to incorporate the North Star and Arrow Lake Railway Company."
- Chapter 59. "An Act to incorporate the Portland and Stickin Railway Company."
- Chapter 60. "An Act to incorporate the Red Mountain Tunnel Company, Limited."
- Chapter 61. "An Act to incorporate the Revelstoke and Cassiar Railway Company."
- Chapter 62. "An Act to incorporate the Skeena River and Eastern Railway Company."
- Chapter 63. "An Act to incorporate the Skeena River Railway, Colonization and Exploration Company."
- Chapter 64. "An Act to incorporate the South East Kootenay Railway Company."

Each of these Statutes contains a provision similar to Section 30 of Chapter 28 prohibiting the employment of Chinese or Japanese persons by the respective companies.

These enactments have been the subject of complaint by the Japanese Minister at the Court of St. James, and the Japanese Consul at Vancouver. Copies of the communications of these gentlemen upon the subject are submitted herewith. In a despatch to His Excellency the Governor General from the Right Honourable the Principal Secretary of State for the Colonies, dated 20th July last, referring to this legislation, His Excellency is requested to impress upon his Ministers that restrictive legislation of the type of which the legislation in question appears to be, is extremely repugnant to the sentiments of the people and Government of Japan. It is stated that His Excellency should not fail to impress upon his Ministers the importance if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion on the lines of the Natal Act, copy of which accompanies the despatch of the Colonial Secretary, and which, it is stated, is likely to be generally adopted in Australia. The undersigned submits herewith copy of the Natal Act in question.

It appears, therefore, that this matter is regarded by Her Majesty's Government as one of Imperial interest, and the representations of that Government upon the subject should, accordingly be carefully considered in determining upon the course to be pursued with regard to the legislation. In the meantime it may be well to communicate with the Government of British Columbia upon the subject, enclosing copies of the complaints of the Japanese Minister and Consul and of Mr. Chamberlain's despatch of 20th July, 1898, in addition to the communication which has been sent pursuant to the recommendation made by the undersigned on 28th October last. The Provincial Government should be asked to give the matter early consideration, and state, for the information of Your Excellency's Government, any facts or reasons which they desire to be considered. It is also important to ascertain whether the Provincial Government would be prepared to recommend the repeal of Chapter 28, and of the anti-Japanese and Chinese sections of the other Chapters above mentioned. A communication should also, in



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the opinion of the undersigned, be addressed by Your Excellency's Government to the Right Honourable the Principal Secretary of State for the Colonies, stating what has so far been done with regard to this legislation, and a copy of the Statutes should be forwarded to him. Further action, the undersigned considers, may be delayed until a reply has been received from the Provincial authorities.

The undersigned recommends that a copy of this report, if approved, and of the papers accompanying the same, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

His Imperial Japanese Majesty's Consul for Canada to His Excellency the Governor General.

VANCOUVER, B.C., 10th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to a provision in the several Railway Bills and other Private Bills which have passed or may pass through the Legislative Assembly of the Province of British Columbia and to which assent may be given by His Honour the Lieutenant Governor of that Province, prohibiting the employment of subjects of Japan in the construction or operation of the various railways or other undertakings which may be built or carried out under the sought for charters. I, in the name of His Imperial Japanese Majesty's Government, most respectfully protest, as far as Japanese persons are concerned, against any such discrimination against the subjects of a friendly nation whose Government I have the honour to represent here, on the following grounds:—

1. That no satisfactory reason has been or can possibly be given for such discrimination in the Legislative Assembly above stated.

2. That the Article of the Revised Treaty of Commerce and Navigation between Japan and Great Britain provides that "the subjects of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the Dominions and possessions of the other Contracting Party, and shall enjoy full and perfect protection for their person and property," and the Article 15 of the same that "the High Contracting Parties agree that, in all concerns, commerce and navigation, and privilege, favour, or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Government, ships, subjects or citizens of any other state shall be extended immediately and unconditionally to the Government, ships, subjects or citizens of the other Contracting Party, it being their intention that the trade and navigation of each country shall be placed in all respects by the other on the footing of the most-favoured nation."

3. That though the Dominion of Canada does not participate in the revised treaty referred to, it is contradictory to international usage that a nation, subject to the duties and privileges of international law, be adversely discriminated in legislation in a friendly country.

4. That while the Legislators of the Province of British Columbia apparently look upon the Japanese in the same light as Chinese, it is a well-known fact that the education and character, customs and manners of Japanese are entirely differ-

ent from those of Chinese, so that the principal argument of the Legislators is contradicted by the fact.

5. That the number of Japanese residents in British Columbia, not exceeding one thousand and odd persons, is less than one-tenth that of Chinese.

6. That the Government of Japan controls the movements of emigrants, by enforcing the Emigration Regulations, no intending emigrant being allowed to leave the country, unless the proper authorities are satisfied that he has good reason to emigrate to a certain country, so that the emigration into any country can be restricted to proper extent by the Government of Japan.

7. That such discrimination would tend to be detrimental to some extent to the development of the international trade between Canada and Japan which the Governments of the two countries are now endeavouring to foster.

I therefore most respectfully request that Your Excellency will give these provisions in the Bills referred to such consideration as will lead to Your Excellency's disallowance.

I avail myself, &c., &c.,

S. SHIMIZU,
H. I. J. M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to His Excellency the Governor General.

VANCOUVER, B.C., 16th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to a section of a Bill intituled "An Act to amend the British Columbia Public Works Loan Act, 1897," which passed through the Legislative Assembly of the Province of British Columbia, and to which assent may be given by His Honour the Lieutenant Governor of that Province, prohibiting Chinese or Japanese persons to be employed or permitted to work in the construction or operation of any undertaking thereby subsidized. I, in the name of His Imperial Japanese Majesty's Government most respectfully protest as far as Japanese persons are concerned, against such discrimination against the subjects of a friendly nation, whose Government I have the honour to represent here, on the same grounds as those that I have propounded in protesting against a provision of the same nature contained in the various Railway Bills and several Private Bills, in my despatch addressed to Your Excellency on the 10th instant, and most respectfully request that Your Excellency will give the section referred to such consideration as will lead to Your Excellency's disallowance.

I avail myself, &c., &c.,

S. SHIMIZU,
H. I. J. M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to His Excellency the Governor General.

VANCOUVER, B.C., 20th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to the "Alien Labour Bill," which has passed through the Legislative Assembly of the Province of British Columbia, and to which the assent has been given this day by His Honour the Lieutenant Governor of that Province. The object of the Bill obviously is "to prohibit the employment of Chinese and Japanese persons on works carried on under Franchises granted by Private Acts."

I, in the name of His Imperial Japanese Majesty's Government, most respectfully protest, as far as Japanese persons are concerned, against any such discrimination against the subjects of a friendly nation, whose Government I have the honour to represent here, on the following grounds:—

1. That no satisfactory reason has been or can possibly be given for such discrimination in the Legislative Assembly above stated.

2. That the Article I. of the Revised Treaty of Commerce and Navigation between Japan and Great Britain provides that "the subjects of each of the two Contracting Parties shall have full liberty to enter, travel or reside in any part of the Dominions and Possessions of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property," and the Article 15 of the same that "the High Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favour, or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Government, ships, subjects, or citizens of any other state shall be extended immediately and unconditionally to the Government, ships, subjects, or citizens of the other Contracting Party, it being their intention that the trade and navigation of each country shall be placed, in all respects, by the other on the footing of the most-favoured nation."

3. That though the Dominion of Canada does not participate in the Revised Treaty referred to it is contradictory to the international usage that a nation subject to the duties and privileges of international law, be adversely discriminated in legislation in a friendly country.

4. That while the Legislators of the Province of British Columbia apparently look upon the Japanese in the same light as the Chinese, it is a well-known fact that the education and character, customs and manners, of Japanese are entirely different from those of Chinese, so that the principal argument of the Legislators is contradicted by the fact.

5. That the number of Japanese residents in British Columbia not exceeding one thousand and odd persons, is less than one-tenth of that of Chinese.

6. That the Government of Japan controls the movements of emigrants, by enforcing the Emigration regulations, no intending emigrant being allowed to leave the country, unless the proper authorities are satisfied that he has good reason to immigrate to a certain country, so that the emigration into any country can be restricted to proper extent by the Government of Japan.

7. That such discrimination would tend to be detrimental, to some extent, to the development of the international trade between Canada and Japan, which the Governments of the two countries are now endeavouring to foster.

I, therefore, most respectfully request that Your Excellency will give these provisions in the Bill referred to such consideration as will lead to Your Excellency's disallowance.

In addition hereto, I beg to state that "British Columbia Public Works Loan Act Amendment Bill" and all the "Railway Bills and other various Private Bills" containing a section prohibiting the employment of Japanese persons in works specified in such legislation, against all of which I have, in my despatches of the 10th instant and of the 16th instant protested, have this day received the assent of His Honour the Lieutenant Governor, and that I respectfully reiterate my request that Your Excellency will give these provisions in the Acts referred to such consideration as will lead to the disallowance of such legislation by Your Excellency.

I avail, &c.,

S. SHIMIZU,

H. I. J. M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to His Excellency the Governor General.

VANCOUVER, B.C., 28th May, 1898.

YOUR EXCELLENCY,—As a supplementary to my despatch of 10th inst., protesting against a provision in the several Railway Bills and other Private Bills of the Legislative Assembly of British Columbia, I have the honour of forwarding to Your Excellency herein inclosed a list of the Acts that have passed the Legislative Assembly in its last session and received the assent of His Honour the Lieutenant Governor of that Province on the 20th instant, in which anti-Japanese clauses will be found.

I have, &c.,

S. SHIMIZU,

H. I. J. M.'s Consul.

List of Acts in which the anti-Japanese clauses will be found:—

4. An Act to incorporate the Mountain Tramway and Electric Company.
5. An Act to incorporate the Kitmat Railway Company, Limited.
7. An Act to incorporate the Alice Arm Railway.
8. An Act to incorporate the South-East Kootenay Railway Company.
9. An Act to incorporate the Kootenay and North-west Railway Company.
12. An Act to incorporate the Revelstoke and Cassiar Railway Company.
13. An Act to incorporate the Skeena River and Eastern Railway Company.
14. An Act to incorporate the Arrowhead and Kootenay Railway Company.
15. An Act to incorporate the East Kootenay Valley Railway Company.
16. An Act to incorporate the North Star and Arrow Lake Railway Company.
17. An Act respecting the Nanaimo Electric Light, Power and Heating Company, Limited.
19. An Act to incorporate the British Columbia Great Gravel Dredge Mining Corporation.
20. An Act to incorporate the Skeena River Railway Colonization and Exploration Company.
21. An Act to incorporate the Downie Creek Railway Company.
26. An Act to incorporate the Canadian Yukon Railway Company.
28. An Act to incorporate the Red Mountain Tunnel Company, Limited.
37. An Act to authorize the Cowichan Lumber Company, Limited, to construct a dam and works on the Cowichan River, in the Quamichan District, and also to construct a tramway to connect the said dam and works with a point at or near the mouth of the Cowichan River.
39. An Act to incorporate the Portland and Stickine Railway Company.
41. An Act to amend the "Tramway Company Incorporation Act."

The Right Honourable J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 20th July, 1898.

MY LORD,—I have the honour to acknowledge the receipt of your despatches of the numbers and dates noted in the margin, in which you forwarded copies of various communications received by you from the Japanese Consul for Canada

respecting the anti-Japanese legislation recently passed by the Legislature of British Columbia.

2. I shall be glad if you will lose no time in transmitting, in accordance with the request contained in my telegram of the 18th June, copies of the Acts to which M. Shimizu takes exception, together with the observations of your Ministers thereon.

3. In the meantime, I have to request that you will impress upon your Ministers that restrictive legislation of the type of which the legislation in question appears to be, is extremely repugnant to the sentiments of the people and Government of Japan, and you should not fail to impress upon them the importance, if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion Parliament on the lines of the accompanying Natal Act which is likely to be generally adopted in Australia.

I have, &c.,

J. CHAMBERLAIN.

THE IMMIGRATION ACT, 1897.

ARRANGEMENT OF CLAUSES.

Preamble.

1. Short title.
 2. Exemptions.
 3. Prohibited Immigrants.
 4. Unlawful entry of prohibited immigrants.
 5. Entry permitted on certain conditions.
 6. Persons formerly domiciled in Natal.
 7. Wives and children.
 8. Liability of Master and Owners of ship for illegal landing of immigrants.
 9. Disabilities of prohibited immigrants.
 10. Contract for return of prohibited immigrants.
 11. Offence of assisting in contraventions.
 12. Offence of assisting contravention by persons named in Section 3.
 13. Bringing insane persons into Colony.
 14. Powers of police to prevent entry.
 15. Officers for carrying out Act.
 16. Rules.
 17. Punishments.
 18. Jurisdiction of Magistrates.
- Schedule A.
Schedule B.

WALTER HELY-HUTCHINSON,

Governor.

(No. 1. 1897.)

ACT.

“To place certain restrictions on Immigration.”

Whereas it is desirable to place certain restrictions on Immigration:—

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

SHORT TITLE. EXEMPTIONS.

1. This Act may be known as "The Immigration Restriction Act, 1897."
2. The Act shall not apply to:
 - (a.) Any person possessed of a certificate in the form set out in the Schedule A to this Act annexed and signed by the Colonial Secretary, or the Agent General of Natal, or any officer appointed by the Natal Government for the purposes of this Act whether in or out of Natal.
 - (b.) Any person of a class for whose immigration into Natal provision is made by law or by a scheme approved by Government.
 - (c.) Any person specially exempted from the operation of this Act by a writing under the hand of the Colonial Secretary.
 - (d.) Her Majesty's land and sea forces.
 - (e.) The officers and crew of any ship of war in the service of any Government.
 - (f.) Any person duly accredited to Natal by or under the authority of the Imperial or any other Government.

PROHIBITED IMMIGRANTS.

3. The immigration into Natal, by land or sea, of any person of any of the classes defined in the following sub-sections, hereinafter called "prohibited immigrants" is prohibited, namely:—
 - (a.) Any person who, when asked to do so by an officer appointed under this Act, shall fail to himself write out and sign, in the characters of any language of Europe, an application to the Colonial Secretary in the form set out in Schedule B. of this Act.
 - (b.) Any person being a pauper, or likely to become a public charge.
 - (c.) Any idiot or insane person.
 - (d.) Any person suffering from a loathsome or a dangerous contagious disease.
 - (e.) Any person who, not having received a free pardon has within two years been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude, and not being a mere political offence.
 - (f.) Any prostitute, and any person living on the prostitution of others.

UNLAWFUL ENTRY OF PROHIBITED IMMIGRANT.

4. Any prohibited immigrant making his way into, or being found within Natal, in disregard of the provisions of this Act, shall be deemed to have contravened this Act and shall be liable, in addition to any other penalty, to be removed from the Colony, and upon conviction may be sentenced to imprisonment not exceeding six months without hard labour: Provided that such imprisonment shall cease for the purpose of deportation of the offender, or if he shall find two approved sureties, each in the sum of Fifty Pounds Sterling, that he will leave the Colony within one month.

ENTRY PERMITTED ON CERTAIN CONDITIONS.

5. Any person appearing to be a prohibited immigrant within the meaning of Section 3 of this Act, and not coming within the meaning of any of the sub-

sections (c), (d), (e), (f), of the said Section 3 shall be allowed to enter Natal upon the following conditions:—

(a.) He shall, before landing, deposit with an officer appointed under this Act the sum of one hundred pounds sterling.

(b.) If such person, within one week after entering Natal, obtain from the Colonial Secretary, or a Magistrate, a certificate that he does not come within the prohibition of this Act, the deposit of one hundred pounds sterling shall be returned.

(c.) If such person shall fail to obtain such certificate within one week, the deposit of one hundred pounds sterling may be forfeited, and he may be treated as a prohibited immigrant.

Provided that, in the case of any person entering Natal under this section, no liability shall attach to the vessel or to the owners of the vessel in which he may have arrived at any port of the Colony.

PERSONS FORMERLY DOMICILED IN NATAL.

6. Any person who shall satisfy an officer appointed under this Act that he has been formerly domiciled in Natal, and that he does not come within the meaning of any of the sub-sections (c), (d), (e), (f), of Section 3 of this Act, shall not be regarded as a prohibited immigrant.

WIVES AND CHILDREN.

7. The wife and any minor child of a person not being a prohibited immigrant shall be free from any prohibition imposed by this Act.

LIABILITY OF MASTER AND OWNERS OF SHIP FOR ILLEGAL LANDING OF IMMIGRANTS.

8. The master and owners of any vessel from which any prohibited immigrant may be landed shall be jointly and severally liable to a penalty of not less than one hundred pounds sterling, and such penalty may be increased up to five thousand pounds sterling by sums of one hundred pounds sterling each for every five prohibited immigrants after the first five, and the vessel may be made executable by a decree of the Supreme Court in satisfaction of any such penalty, and the vessel may be refused a clearance outwards until such penalty has been paid, and until provision has been made by the master to the satisfaction of an officer appointed under this Act for the conveyance out of the Colony of each prohibited immigrant who may have been so landed.

DISABILITIES OF PROHIBITED IMMIGRANTS.

9. A prohibited immigrant shall not be entitled to a license to carry on any trade or calling, nor shall he be entitled to acquire land in leasehold, freehold, or otherwise, or to exercise the franchise, or to be enrolled as a burgess of any borough, or on the roll of any township; and any license or franchise right which may have been acquired in contravention of this Act shall be void.

CONTRACT FOR RETURN OF PROHIBITED IMMIGRANTS.

10. Any officer thereto authorized by Government may make a contract with the master, owners or agent of any vessel for the conveyance of any prohibited

immigrant found in Natal to a port in or near to such immigrant's country of birth, and any such immigrant with his personal effects may be placed by a police officer on board such vessel, and shall in such case, if destitute, be supplied with a sufficient sum of money to enable him to live for one month according to his circumstances in life after disembarking from such vessel.

OFFENCE OF ASSISTING IN CONTRAVENTIONS.

11. Any person who shall in any way wilfully assist any prohibited immigrant to contravene the provisions of this Act shall be deemed to have contravened this Act.

OFFENCE OF ASSISTING CONTRAVENTION BY PERSONS NAMED IN SECTION (F).

12. Any person who shall wilfully assist the entry into Natal of any prohibited immigrant of the class (f) in Section 3 of this Act shall be deemed to have contravened this Act, and shall upon conviction be liable to be imprisoned with hard labour for any period not exceeding twelve months.

BRINGING INSANE PERSONS INTO COLONY.

13. Any person who shall be wilfully instrumental in bringing into Natal an idiot or insane person without a written or printed authority, signed by the Colonial Secretary, shall be deemed to have contravened this Act, and in addition to any other penalty shall be liable for the cost of the maintenance of such idiot or insane person whilst in the Colony.

POWERS OF POLICE TO PREVENT ENTRY.

14. Any police officer or other officer appointed therefor under this Act, may, subject to the provisions of Section 5, prevent any prohibited immigrant from entering Natal by land or sea.

OFFICERS FOR CARRYING OUT ACT.

15. The Governor may from time to time appoint, and at pleasure remove, officers for the purpose of carrying out the provisions of this Act, and may define the duties of such officers, and such officers shall carry out the instructions from time to time given to them by the Ministerial head of their Department.

RULES.

16. The Governor in Council may from time to time, make, amend, and repeal rules and regulations for the better carrying out of the provisions of this Act.

PUNISHMENTS.

17. The penalty for any contravention of this Act, or of any rule or regulation passed thereunder where no higher penalty is expressly imposed, shall not exceed a fine of fifty pounds sterling, or imprisonment, with or without hard labour, until payment of such fine or in addition to such fine, but not exceeding in any case three months.

JURISDICTION OF MAGISTRATES.

18. All contraventions of this Act or of rules or regulations thereunder and suits for penalties or other moneys not exceeding one hundred pounds sterling shall be cognizable by Magistrates.

SCHEDULE A.

Colony of Natal.

This is to certify that
of _____ aged _____
by trade or calling a _____
is a fit and proper person to be received as an immigrant in Natal.
Dated at _____ this _____
day of _____

(Signature)

SCHEDULE B.

To the Colonial Secretary:
Sir,—I claim to be exempt from the operation of Act No. _____, 1897.
My full name is _____
My place of abode for the past twelve months has been _____
My business or calling is _____
I was born at _____
in the year _____

Yours, &c.,

Given at Government House, Natal, this fifth day of May, 1897.
By command of His Excellency the Governor.

THOS. K. MURRAY,
Colonial Secretary.

Mr. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 11th August, 1898.

My LORD,—With reference to my telegram of the 18th June and my despatch No. 214 of the 20th ult., I have the honour to transmit to you for communication to your Ministers copies of correspondence with the Foreign Office respecting a note from the Japanese Minister at this Court complaining of the recent Bills of the Legislature of British Columbia aimed at the exclusion of Japanese subjects from employment in that Province.

I shall be glad if you will move your Ministers to give their early consideration to this matter.

I have, &c.,

J. CHAMBERLAIN.

Mr. F. Bertie to the Under Secretary for the Colonies.

FOREIGN OFFICE, 6th August, 1898.

SIR,—I am directed by the Marquis of Salisbury to transmit, to be laid before the Secretary of State for the Colonies, copy of a note which has been received from the Japanese Minister at this Court, complaining of recent legislation in British Columbia for the exclusion of Japanese subjects from employment in that Province.

His Lordship would be glad to be informed what answer Mr. Secretary Chamberlain would suggest to be returned to the Japanese Minister's note.

I am, &c.,

FRANCIS BERTIE.

The Japanese Ambassador to the Marquis of Salisbury.

JAPANESE LEGATION, 3rd August, 1898.

M. LE MARQUIS,—The Legislative Assembly of the Province of British Columbia, in the Dominion of Canada, passed in the month of May last an Act "to prohibit the employment of Chinese and Japanese persons on work carried on under the franchises granted by Private Acts," also another Act "To amend the British Columbia Public Works Loan Act, 1897," and several Railway and other Private Bills, all of which contain provisions prohibiting the employment of Japanese subjects in several works, public and private, under the penalty of a fine for each Japanese so employed. The Japanese Consul at Vancouver has, therefore, under instructions of the Imperial Government entered a protest to the Lieutenant Governor of the Province in the hope that the necessary approval of the Governor might be withheld from those enactments. His representations were, however, fruitless, and the Acts were approved by the Lieutenant Governor, and are now awaiting the assent of the Governor General of Canada.

My Government, although they confidently believe that the legislation so unfriendly and discriminating against Japanese subjects would not receive the sanction of the Governor General, have instructed me to call the attention of Her Majesty's Government to the matter.

The impropriety of such discriminating legislation against the subjects of a friendly State is evident in itself and requires hardly any comment on the part of my Government. The Japanese subjects in Canada are not large in number. So far as my Government are aware they have always been law-abiding and have done nothing that might necessitate a legislative action adverse to their interests. Moreover, in the opinion of my Government, such measures if allowed to become law, cannot but injuriously affect the cordial and commercial relations which now happily exist between Japan and the Dominion of Canada and which have every prospect of further developments in the near future. I have therefore the honour to ask the good offices of Your Lordship, so that Her Majesty's Government may see their way to exercise their influence with the Governor General of Canada in order that his assent may be withheld from the aforesaid legislation of British Columbia.

I have, &c.,

KATO.

The Foreign Office to the Colonial Office.

DOWNING STREET, 11th August, 1898.

SIR,—In reply to your letter of the 6th instant inclosing a copy of a note from the Japanese Minister at this Court protesting against recent legislation in British Columbia for the exclusion of Japanese subjects from employment in that Province, I am directed by Mr. Secretary Chamberlain to acquaint you for the information of the Marquis of Salisbury that no reply has yet been received to the communications addressed to the Governor General on this subject.

A copy of M. Kato's note will, however, be sent to him, with a request that he will press his Ministers for early consideration of the matter, and in the meantime I am to suggest that M. Kato should be informed that Mr. Chamberlain is in communication with the Governor General of Canada on this subject.

I am, &c.,

C. P. LUCAS.

The Imperial Japanese Consul to His Excellency the Governor General.

VANCOUVER, B.C., 9th February, 1899.

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling Your Excellency's attention to a paragraph in the speech of His Honour the Lieutenant Governor of British Columbia, delivered at the opening of the present session of the Legislative Assembly of that province, stating that "For the better protection of the miners in coal mines, a Bill will be laid before you prohibiting the employment underground of Japanese in these mines." I would at the same time beg to call Your Excellency's attention to the Bill No. 43, entitled "An Act to amend the Coal Mines Regulations Act," which was recently proposed, seemingly in accordance with the statement of the paragraph above cited, by the Honourable the President of the Council to the Legislative Assembly of that province, and passed through that Assembly on the 8th day of this month. And also to the various private Bills that are before the House at present containing sections which prohibit the employment of Japanese in works authorized by such Acts. I respectfully beg to inclose herewith copies of the Bill No. 43, and also a sample of the private Bills referred to.

And urging the same objections to this legislation as I had the honour of urging against legislation of the same nature passed at the last session, I most respectfully request that Your Excellency will give this legislation such consideration as will lead to Your Excellency's disallowance of the same.

I avail, &c.,

S. SHIMIZU,

H. I. J. M's. Consul.

BILL.

(No. 43, 1899.)

An Act to amend the "Coal Mines Regulation Act."

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. Section 4 of chapter 138 of the Revised Statutes of British Columbia is hereby amended by inserting after the word "Chinaman," in the second line thereof, the words "or Japanese."

2. Section 12 of the said Act is hereby amended by inserting after the word "Chinamen," in the fourth line thereof, the word "Japanese."

BILL.

(No. 11, 1899.)

An Act to incorporate the "Vancouver Northern and Yukon Railway Company."

* * * * *
37. No Chinese or Japanese persons shall be employed in the construction of the undertaking or the working of the railway.

38. The preceding two sections are hereby declared to be the conditions upon which this Act is passed, and shall be binding upon bondholders and all other persons in any way interested in the said company or its property. In case either of said preceding two sections are violated, such violation shall work a forfeiture of all privileges granted by this Act, but no such forfeiture shall operate except upon proceedings instituted in the Supreme Court of British Columbia by the Attorney General.

* * * * *

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,
VANCOUVER, B.C., 28th February, 1899.

YOUR EXCELLENCY,—In addition to my protest recently presented against the legislation of the Province of British Columbia aimed at the prohibition of Japanese labour in certain undertakings I respectfully beg to call Your Excellency's special attention to the Bill 60, intituled "An Act respecting Liquor Licenses," in which Japanese subjects are included among those declared ineligible to hold liquor licenses (*vide* the sections 22, 23 and particularly 36 of the Bill No. 60). This Bill was introduced to the House by the Honourable the Attorney General of the province, and passed through it on the 25th day of this month. To this, together with other Bills of a similar nature passed at the closing session, assent was given yesterday by His Honour the Lieutenant Governor of the province.

Your Excellency will observe that the discrimination in Bill No. 60 is a decided advance upon the former measures aimed against Chinese labour, inasmuch as this Bill now imposes restrictions on Japanese subjects in matters of trade also. It may also be taken, I think, as an indication that these anti-Japanese measures will not stop here in this province, unless the higher authorities are pleased to exercise their power.

I, therefore, respectfully beg leave to more emphatically reiterate my request that Your Excellency will give this legislation such consideration as will lead to Your Excellency's disallowance of the same.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,
H. I. J. M's. Consul.

The Rt. Hon. J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 8th March, 1899.

MY LORD,—With reference to your despatch No. 1 of 3rd January, transmitting copy of an approved minute of the Dominion Privy Council submitting a report of the Minister of Justice on the anti-Japanese legislation passed during the last session of the Legislature of British Columbia, I have the honour to transmit to you, to be laid before your Ministers, copy of a further note which the Marquis of Salisbury has received from the Japanese Minister at this court, calling attention to a Bill passed during the present session of the same Legislature, entitled "Coal Mines Regulations Amendment Bill."

2. Monsieur Kato states that the object of this Bill is to prohibit the employment underground of Japanese in coal mines, and he expresses the hope that Her Majesty's Government may extend to this instance the policy pursued in regard to the legislation of last year.

3. Her Majesty's Government will be glad if your Ministers will consider the question of this Bill with that of the others to which their attention has already been called.

I have, &c.,

J. CHAMBERLAIN.

The Japanese Ambassador to the Most Hon. the Marquis of Salisbury.

JAPANESE LEGATION, 18th February, 1899.

M. LE MARQUÈSS.—The Japanese Consul at Vancouver has reported to me that the Legislature of the Province of British Columbia has recently passed a Bill at the instance of the Provincial Government entitled "Coal Mines Regulations Amendment Bill." The details of the Bill are not before me, but I understand that it has been formulated with the object of prohibiting the employment underground of Japanese in the coal mines, and thus it appears to be another instance of discrimination aimed at Japanese subjects in that province.

Several Bills with a similar purport, passed by the Legislature of the same province last year, have formed the subject of correspondence between Your Lordship and myself, and while my Government is deeply sensible of the solicitous attention which Her Majesty's Government, and, at their instance, the Government of Canada are paying with respect to the issue of those Bills, I feel compelled by this renewed action on the part of British Columbia to call the attention of Her Majesty's Government once more to the subject.

The exceptions which the Imperial Government have taken against the legislation of last year apply in the present case in their full scope and extent. Therefore, without reiterating the reasons which I set forth against such legislation in the letter which I had the honour to address to Your Lordship under date of August 3rd, 1898, I take the liberty of calling your attention to the fact, and requesting Her Majesty's Government to extend to the present instance the same enlightened policy which they have pursued in regard to the legislation of last year, with the confident assurance that such a policy cannot fail in augmenting the neighbourly relations existing between Japan and the Dominion of Canada.

I have, &c.,

KATO.

Copy of a Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 17th March, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 8th March, 1899.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a communication addressed to the Honourable the Secretary of State for Canada from the Lieutenant Governor of British Columbia, transmitting a copy of a minute of the Executive Council of the province, approved on 24th February last, together with a report of the Provincial Attorney General referring to the observations of the undersigned contained in his report to Your Excellency of the 8th November last with regard to sections 75 to 82 inclusive of the Jurors' Act, chapter 107 of the Revised Statutes of British Columbia.

The undersigned has the honour to submit herewith copy of the said report of the Attorney General of British Columbia which was approved by the Executive minute.

The undersigned, in his report of 8th November last, referred to the sections in question, which re-enact certain provisions of the Criminal Code, 1862, with regard to juries in criminal cases, including those relating to challenges, keeping the jury together, and their maintenance and other proceedings during the trial, and the undersigned observed that these provisions affected matters of criminal procedure and were *ultra vires* of the Legislature. The undersigned, however, stated that he did not propose on that account that the statute should be disallowed, because the provisions in question were not inconsistent with the Criminal Code, and to disallow the statute which gave effect to the revision might cause serious inconvenience. He recommended, however, that these sections be repealed by the Provincial Legislature.

The Attorney General of British Columbia in his report states that the opinion of the undersigned as so expressed is open to serious dispute, and he states that there is much argument to support the view that these sections relate to the constitution of the court rather than to criminal procedure, and that if his view should be sustained they would undoubtedly be within the jurisdiction of the Provincial Legislature. The Attorney General does not, however, reveal the argument by which he considers his view to be upheld and in the absence of that information the undersigned entertains no doubt that the sections in question do strictly relate to the subject of criminal procedure, and that whatever argument there may be for provincial authority to enact such provisions as connected with the constitution of the court previous to Parliament dealing with the subject under its authority in matters of criminal procedure, there can be no reason for supposing that Dominion legislation is not to prevail. Moreover, some of these sections cannot by any process of reasoning which the undersigned can imagine be referred to any matter connected with the constitution of the court.

The Attorney General states that these sections do not appear first in the Revised Statutes, and that they were originally passed a number of years ago. The Attorney General gives no reference, however, to the original enactments, but it is quite immaterial whether they had been previously enacted or not. The observations made by the undersigned with regard to them would equally hold in either case.

The statement of the Attorney General that it is unfair for the Minister of Justice to take advantage of the revision of the statutes to review statutes with a view to disallowance is not pertinent to the matter of discussion, because the undersigned stated expressly that he did not propose that the statutes should be disallowed. When a case arises, however, of an enactment appearing in the revised

statutes of a province which, in the opinion of Your Excellency's Government, ought to be disallowed, it will be proper to consider how far the inconvenience of disallowing the whole revision in order to get rid of the objectionable enactment ought to affect the course which Your Excellency's Government should pursue. Cases certainly may be imagined where it would be in the public interest to disallow the whole revision. It will, however, be time enough to discuss such cases when they arise. In the meantime, the question raised by the Attorney General is of no practical importance, and has reference to no case which has yet occurred. The undersigned, therefore, declines to discuss it.

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

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Copy of a Report of the Honourable the Executive Council, approved by His Honour the Lieutenant Governor on the 24th day of November, 1899.

To His Honour the Lieutenant Governor in Council :

The undersigned has the honour to report, with regard to the report of the Honourable the Minister of Justice, dated the 8th day of November, 1898, as to sections 75 to 82 (inclusive) of Chapter 107 of the Revised Statutes (being the Jurors' Act), which relates to juries in criminal cases. The Minister of Justice is of the opinion that these sections affect matters of criminal procedure, and are *ultra vires* of the Legislature.

The undersigned begs to suggest that this opinion is open to serious dispute. If the sections in question are, as the Minister states, matters of criminal procedure, they would undoubtedly be *ultra vires* of the Provincial Legislature. The undersigned, however, contends that there is much argument to support the view that these sections relate to the constitution of the court rather than to criminal procedure, and if that view should be sustained, they would undoubtedly be within the jurisdiction of the Provincial Legislature.

It must be remembered that these sections do not first appear in the Revised Statutes, but were originally passed a number of years ago. They were not at the time disallowed by the Dominion Government.

It seems to the undersigned entirely unfair for the Minister of Justice to take advantage of the revision of the statutes to review statutes with a view to disallowance. Once the year had been allowed to lapse by the Dominion Government, it should be taken for granted that the statute in question is not to be disallowed. This view, it seems to the undersigned, must be clear when it is remembered that the only course for the Dominion Government now to pursue is to disallow the whole of the Revised Statutes if in the opinion of the Dominion Government any particular section was a fit subject for disallowance.

The undersigned cannot, in view of the unsettled question as to whether these sections are *ultra vires* or not, recommend that they should be repealed, as suggested by the Minister of Justice.

JOSEPH MARTIN,
Attorney General.

Dated the 22nd day of February, 1899.

REPORT of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 13th March, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, March 7th, 1899.

To His Excellency the Governor General in Council :

The undersigned has had under consideration a copy of a Minute of the Executive Council of the Province of British Columbia, dated 16th February, 1899, approving a Report dated the 13th of the same month from the Minister of Finance and Agriculture, with regard to certain statutes of the said province passed in the year 1898, affecting the Chinese and Japanese.

These statutes are enumerated in a Report of the undersigned on the 8th November, 1898, approved by Your Excellency in Council on 17th December, 1898, and the Report of the provincial Minister is in reply to that portion of the Report of the undersigned which refers to the statutes in question.

The undersigned observes, referring to the Immigration Restriction Act, 1897, of Natal, copy of which accompanied the despatch of the Right Honourable the Principal Secretary of State for the Colonies of 20th July, 1898, that, while the provisions of the Act are well adapted to exclude paupers, diseased persons and criminals, yet the Act does contain a provision (section 3a) which would probably have the effect of excluding all Asiatics of the class which would be affected by the British Columbia statutes in question.

Before determining, however, what course ought to be pursued by Your Excellency's Government in regard to these Acts, the undersigned is of the opinion that a copy of the Executive Minute of British Columbia and of the Report of the provincial Minister of Finance and Agriculture should be submitted to Her Majesty's Government, and he, therefore, recommends that they be transmitted, together with a copy of this Report, if approved, to Mr. Chamberlain, in order that he may submit any observations which he may deem proper for the consideration of Your Excellency's Government. Mr. Chamberlain should be informed at the same time that the time for disallowance of these Acts will expire on the 8th June, 1899.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

COPY of a Report of a Committee of the Honourable the Executive Council approved by His Honour the Lieutenant Governor on the 16th day of February, 1899.

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to report that he has had under consideration the communication from the Government of His Excellency the Governor General to His Honour the Lieutenant Governor, inclosing copies of a minute of the Committee of the Privy Council of Canada in reference to a despatch from Her Majesty's Principal Secretary of State for the Colonies, inclosing copies of correspondence which has passed between the Foreign Office and the Japanese Minister in London and between the Foreign Office and the Colonial Office on the subject of certain statutes passed by the Legislature of British Columbia in the sixty-first year of Her Majesty's reign, and which contained provisions prohibiting the employment of Chinese or Japanese persons on works carried on under franchises granted by the said Legislature.

In his despatch of 20th July, 1898, to His Excellency the Governor General of Canada, Mr. Chamberlain states that "restrictive legislation of the type of which the legislation in question appears to be is extremely repugnant to the sentiments of the people and Government of Japan," and asks His Excellency to impress on his Ministers the importance, if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion Parliament on the lines of the Natal Act.

It may be stated that legislation on the lines of the "Immigration Restriction Act, 1897," passed by the Legislative Council and Legislative Assembly of Natal, would not be within the power of the Legislature of this province, but would be within the competence of the Parliament of Canada, being somewhat similar to the Act passed by that body imposing a capitation tax of \$50 on each Chinese person coming into the Dominion.

While the Legislature of British Columbia would doubtless welcome any action by the Parliament of Canada designed to effect objects similar to those aimed at by the provisions in the statutes which are the subject of his communication from His Excellency's Government, it may be suggested that the provisions embodied in the Immigration Restriction Act of Natal would not be effectual for the desired purpose, although such legislation would impose restrictions on Japanese immigration that would probably be more repugnant to the views of the Government of Japan than those complained of in the legislation passed by the Legislature of this province.

The undersigned would point out that the statutes passed by the Legislature of this province imposing certain restrictions on the employment of Japanese in British Columbia, while, it is respectfully submitted, clearly within the power of that body, do not impose restrictions nearly as onerous or far-reaching as would be the case were registration enacted by the Parliament of Canada on the lines of the Immigration Restriction Act of Natal, which appears not to be considered objectionable by Her Majesty's Government. No limitation on the number of Japanese persons who may come into Canada is suggested by the statutes passed by the Provincial Legislature. No restriction is placed by those statutes on such persons pursuing any calling, occupation or employment—with one exception—which is not carried on under the authority of privileges or franchises conferred by the Legislature of British Columbia. That exception is working in coal mines, the Legislature, from the evidence placed before it, having come to the conclusion that the employment of Chinese or Japanese underground in coal mines is a source of danger.

All that is sought to be attained by the legislation in question is that Chinese or Japanese persons shall not be allowed to find employment on works, the construction of which has been authorized or made possible of accomplishment by the granting of certain privileges or franchises by the Legislature.

It will, therefore, be seen that the restrictive provisions are merely in the nature of a condition in agreements or contracts between the Provincial Government and particular individuals or companies whereby certain privileges, franchises, concessions, and, in some cases, also subsidies and guarantees are granted to such individuals or companies in consideration of only white labour being employed in the works which are the subject-matter of such agreements.

The same causes which have led the Legislatures of Natal and the Australian Colonies to take measures to restrict the influx of large numbers of labouring people from Asia, exist in British Columbia. They are indeed more potent here on account of the shorter distance intervening between China and Japan and this province as compared with that between those countries and Australasia and Natal. It may also be pointed out in this connection that the possibility of great disturbance to the economic conditions existing here, and of grave injury being caused to the working classes of this country by a large influx of labourers from

Japan, was so apparent, that the Government of Canada decided it was not advisable that the Dominion should participate in the revised treaty between Great Britain and Japan, whereby equal privileges were granted to the people of each nation in the country of the other.

The economic conditions in British Columbia and Japan and the standards of living of the masses of the people in the two countries differ so widely, that to grant freedom of employment to Japanese on such public works as are authorized to be carried out by Acts of the Legislature would almost certainly result in all such employment being monopolized by the Japanese to the exclusion of the people of this province. Therefore, while the Legislature has scrupulously abstained from any interference with the employment of Japanese by private individuals or companies, and has not sought to put any restriction on their engaging in any ordinary occupation or business, it has deemed it to be in the interests of the province to prohibit their employment on works or undertakings for which it has granted privileges or franchises. That such restrictions are not only judicious but necessary has been shown by the manner in which cheap Asiatic labour has in many cases entirely supplanted white labour on works to which no such restrictions, as those referred to, were attached.

While it would be a matter of profound regret if any action of the Government or Legislature of this province should cause Her Majesty's Government any embarrassment or impair its friendly relations with another power, it may be pointed out that there are other considerations of an Imperial character involved in this matter. It is unquestionably in the interests of the Empire that the Pacific province of the Dominion should be occupied by a large and thoroughly British population, rather than by one in which the number of aliens largely predominated and many of the distinctive features of a settled British community were lacking.

The former condition could not be secured were the masses of the people subjected to competition which would render it impossible for them to maintain a fair and reasonable standard of living.

For many years the evil effects of unrestricted Chinese immigration caused great agitation in British Columbia, and the imposition of the capitation tax of \$50 was the consequence. Since then greater facilities of communication with Japan and the opportunities for employment in British Columbia, arising from the development of its forest, mineral and fishing resources, have led to an influx of Japanese which has materially and injuriously interfered with white labour and has caused the Legislature to pass the statutes now under consideration. There is no reason to believe that this influx of Japanese is likely to diminish. On the contrary, there are many indications that it will become larger and that Japanese labour will, if some restrictive measures be not adopted, entirely supplant white labour in many important industries and be used almost exclusively on works carried out under franchises granted by the Legislature, and which are in many cases aided by subsidies from the provincial treasury, largely with the object of opening up the province and inducing an immigration of desirable settlers.

The undersigned, therefore, recommends that a reply be made to the Government of the Dominion that His Honour's Government regrets that in the interests of British Columbia and of the labouring classes among its people, it cannot see its way to introduce a measure in the Legislature to repeal the provisions restricting the employment of Chinese and Japanese in the statutes referred to in the report of the Minister of Justice, approved by a minute of the Committee of the Privy Council of Canada on 17th December, 1868, and that if this recommendation be approved a copy of it should be transmitted to the Secretary of State for Canada for the information of His Excellency's Government.

F. CARTER-COTTON,

Minister of Finance and Agriculture.

Dated this 13th day of February, A.D. 1899.

The Rt. Hon. J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 23rd March, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 40, of the 27th February, forwarding copy of a letter from the Japanese Consul at Vancouver, in which he calls attention to certain measures which have been introduced into the Legislative Assembly of British Columbia during its present session prohibiting the employment of Japanese and renewing with regard to these measures the objections which he urged against the legislation of the same nature passed by the Legislature of that province last year.

2. Her Majesty's Government must regret to find the Government and Legislature of British Columbia adopting a course which is justly regarded as offensive by a friendly power, and they hope that your Ministers will be able to arrange for the cancellation of the objectionable provisions and the substitution of a measure which, while it will secure the desired exclusion of undesirable immigrants, will obtain that result by means of some such general test as that already suggested in my despatch No. 214 of the 20th July, 1898. In any case, Her Majesty's Government strongly deprecate the passing of exceptional legislation affecting Japanese already in the province.

I have, &c.,

J. CHAMBERLAIN.

The Rt. Hon. J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 19th April, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 54, of the 16th March, forwarding copy of an approved minute of the Dominion Privy Council, to which is appended an approved report of the Executive Council of British Columbia, expressing the concurrence of the Government of that province in a report drawn up by the Minister of Finance and Agriculture on the subject of the Acts passed by the Provincial Legislature in 1898 containing provisions prohibiting the employment of Japanese on certain works.

2. The Provincial Government represent that these provisions are required by the economic conditions of British Columbia, and they regret their inability to introduce legislation for their repeal.

3. Her Majesty's Government fully appreciate the motives which have induced the Government and Legislature of British Columbia to pass the legislation under consideration, and recognize the importance of guarding against the possibility of white labour in the province being swamped by the wholesale immigration of persons of Asiatic origin. They desire also to acknowledge the friendly spirit in which the representations they have felt compelled to make have been received by the Government of British Columbia, and regret that after carefully considering the minute of the Executive Council they feel unable to withdraw the objections they have urged to the legislation in question.

4. There is no difference between Her Majesty's Government and the Government of British Columbia as regards the object aimed at by these laws, namely, to ensure that the Pacific province of the Dominion shall be occupied by a large and thoroughly British population rather than by one in which the number of aliens largely predominates, and many of the distinctive features of a settled British community are lacking.

5. The ground of the objection entertained by Her Majesty's Government is that the method employed by the British Columbia Legislature for securing this object, while admittedly only partial and ineffective, is such as to give legitimate offence to a power with which Her Majesty is, and earnestly desires to remain, on friendly terms. It is not the practical exclusion of Japanese to which the Government of the Mikado objects, but their exclusion *nominatim*, which specifically stamps the whole nation as undesirable persons.

6. The exclusion of Japanese subjects either from the province or from employment on public or quasi public works in the province by the operation of an educational test, such as embodied in the Natal Immigration Law, is not a measure to which the Government of Japan can take exception. If the particular test in that law is not regarded as sufficient, there is no reason why a more stringent and effective one of a similar character should not be adopted, so long as the disqualification is not based specifically on distinction of race or colour.

7. Any attempt to restrict immigration or to impose disqualifications on such distinctions, besides being offensive to friendly powers is contrary to the general principles of equality which have been the guiding principle of British rule throughout the Empire; and, as your Ministers are aware, Her Majesty's Government were unable to allow the Immigration Restriction Laws passed by some of the Australasian colonies in 1896 to come into operation for the same reasons as they are now urging against these laws in British Columbia.

8. Her Majesty's Government earnestly trust that on consideration of these explanations the Government of British Columbia will at once procure the repeal of the provisions complained of and the substitution of legislation on the lines indicated above.

9. If this is impossible, Her Majesty's Government feel compelled, however reluctant they may be to cause inconvenience to the province, to press upon your Ministers the importance in the general interests of the Empire of using the powers vested in them by the British North America Act, for cancelling these measures to which Her Majesty's Government object on grounds both of principle and policy.

I have, &c.,

J. CHAMBERLAIN.

Copy of a Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 5th June, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 20th May, 1899.

To His Excellency the Governor General in Council:

The undersigned, referring to his report respecting the statutes of the Province of British Columbia of 1898, dated the 8th of November last, which was approved by Your Excellency in Council on 17th December, has the honour to state that as to chapter 49: "An Act respecting the Canadian Pacific Navigation Company, Limited," the undersigned has been informed that the Provincial Legislature at its last session pursuant to the recommendation of the said report, passed an amendment* removing the grounds of objection to which the undersigned called attention, and that the Act may, therefore, be left to its operation.

The Acts which are stated by the said report to be objectionable as affecting Japanese in British Columbia are chapters 10, 28, 30, 44, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64.

As to these statutes the recommendations of the said report have been carried into effect and Your Excellency's Government have communicated with Her Majesty's Government and with the Provincial Government.

* Amended by 62 Vict., chap. 12, B.C. Statutes, 1899.

The undersigned, by his report of 7th March last, which was approved by Your Excellency on the 13th March, submitted copy of the reply of the Provincial Government, and recommended that it be transmitted to the Right Honourable the Principal Secretary of State for the Colonies in order that he might submit any observations which he might deem proper for the consideration of Your Excellency's Government.

There has been referred to the undersigned copy of a despatch from Mr. Chamberlain to Your Excellency, dated 23rd March last, acknowledging the despatch of Your Excellency of the 27th February, No. 40, forwarding copy of a letter from the Japanese Consul at Vancouver in which he calls attention to certain measures which were introduced by the Legislature of British Columbia during the last session prohibiting the employment of Japanese, and renewing with regard to these measures the objections which he urged against the legislation now in question. It is stated in this despatch that Her Majesty's Government much regret to find the Government and Legislature of the Province of British Columbia adopting a course which is justly regarded as offensive by a friendly power, and that Her Majesty's Government strongly deprecates the passing of exceptional legislation affecting Japanese already in British Columbia.

The undersigned has carefully considered the reasons stated in support of the legislation by the Government of British Columbia. He observes that the statutes in question have not rendered unlawful the employment of Japanese generally, yet they have that effect so far as the companies incorporated by the Provincial Legislature and within the application of these statutes are concerned. Such legislation may operate to diminish Chinese and Japanese immigration into the province, which, as appears by the statement of the Provincial Government, is the main object, or if, as is to be inferred from the provincial despatch, the conditions are such as to induce employers to prefer Asiatic labour, the result might be such as to cause employers to carry on their business as individuals or partnerships rather than as corporations under the laws of the province. The undersigned does not consider, however, that the reasons urged on behalf of the province, or any other reasons which occur to him, are such as to justify Your Excellency's Government in approving of the legislation, in view of the strong objections urged against it by the Government of Japan, which objections have been so far upheld by Her Majesty's Government, as the correspondence upon the subject shows. The advantages to be derived by the Province of British Columbia from these enactments are, in the opinion of the undersigned, very doubtful, and not at all corresponding in importance to the advantages which may be expected both for the province and the Dominion at large from a friendly sentiment on the part of Japan in matters of commerce and otherwise. When it is considered further that these enactments may affect not only the relations between the Dominion and Japan, but also the relations of the Empire with the latter country, as Her Majesty's Government seem to apprehend they may do, the duty of Your Excellency's Government to provide a remedy so far as the circumstances fairly permit, becomes apparent.

It is pertinent here to remark also that the authority of a province to legislate in relation to immigration in the province is, by the British North America Act, made subordinate to the authority of Parliament, and as these Acts are upheld largely as affecting immigration, the case seems to be one in which it is intended that Dominion policy should prevail.

The power of the Legislature to enact these statutes is not by any means free from doubt, because they principally affect the rights of aliens, and the subject of aliens is not within provincial authority. It is not, however, in view of the foregoing considerations, necessary at present to determine the question of *ultra vires*.

The undersigned observes that chapter 28, to which the short title is given of "*The Labour Regulation Act, 1898*," is confined in its provisions to the employ-

ment, in British Columbia, of Chinese or Japanese, and chapter 44, entitled the Tramway Incorporation Amendment Act, 1898. These Acts may, therefore, be disallowed without serious inconvenience. The other statutes mentioned in the report of the undersigned, of 8th November last, are mainly concerned with the incorporation of companies, and they came into effect upwards of a year ago. In these cases, or some of them, doubtless, companies have been organized and property acquired, debts and obligations incurred and business transacted, on account of which great inconvenience, confusion and loss would result if the Acts upon which these companies depend were now disallowed. The corporations themselves and the persons who have dealt with them cannot properly be held responsible for the objectionable provision in the constituting Acts, because this section seems to have been introduced in pursuance of a policy of the Government to disqualify Chinese and Japanese from employment by provincial corporations. The effect of such a provision also, being confined to a few corporations, is comparatively limited. The undersigned, therefore, considers that the justice of the case will be met by disallowing the General Act, namely chapter 28, cited as "The Labour Regulation Act," and also chapter 44 entitled "The Tramway Incorporation Amendment Act, 1898;" and on account of the inconvenience, confusion and loss which would otherwise ensue, leaving the other statutes to their operation, with an earnest recommendation to the Provincial Government based upon the reasons stated in this report that at the next ensuing session of the Legislature they introduce legislation in each case to repeal the clause in question.

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

Respectfully submitted,

D. MILLS,

Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA,

MONDAY, the 5th day of June, 1899.

Present: His Excellency in Council.

Whereas the Lieutenant Governor of the Province of British Columbia, with the Legislative Assembly of that province, did on the 20th day of May, 1898, pass an Act has been transmitted, chaptered 28, and intituled: "An Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts":

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

Therefore, His Excellency, by and with the advice of the Queen's Privy Council for Canada, has this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

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

JOHN J. MCGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliott Murray-Kynnmound, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the Province of British Columbia on the 20th day of May, 1898, chaptered 28, and intituled: "An Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts," was received by His Excellency the Governor General of Canada on the 8th day of June, 1898.

Given under my hand and seal this 5th day of June, 1899.

MINTO.

AT THE GOVERNMENT HOUSE AT OTTAWA,

MONDAY, the 5th day of June, 1899.

Present: His Excellency in Council.

Whereas the Lieutenant Governor of the Province of British Columbia, with the Legislative Assembly of that province, did on the 20th day of May, 1898, pass an Act which has been transmitted, chaptered 44, and intituled: "An Act to amend the Tramway Incorporation Act";

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

Therefore, His Excellency, by and with the advice of the Queen's Privy Council for Canada, has this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

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

JOHN J. MCGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliott Murray-Kynnmound, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the Province of British Columbia on the 20th day of May, 1898, chaptered 44, and intituled: "An Act to amend the Tramway Incorporation Act," was received by His Excellency the Governor General of Canada on the 8th day of June, 1898.

Given under my hand and seal this 5th day of June, 1899.

MINTO.

NOTE.—Mr. Chamberlain's despatch of April, 1899, had not been referred to the Minister of Justice and was not before him when the foregoing Report of 29th May, 1899, was written.

PRINCE EDWARD ISLAND.

59TH VICTORIA—1896.

3RD SESSION—32ND GENERAL ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th November, A.D. 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Prince Edward Island in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 15th July, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapter 8, which is the subject of a separate report.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 13th November, A.D. 1896.

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon Chapter 8 of the Statutes of Prince Edward Island, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 30th of April last, and received by the Secretary of State for Canada on the 15th July, 1896, entitled "The Victoria Park Roadway Act, 1896."

It recites a Statute of the Legislature of Prince Edward Island, passed on the 29th April, 1876, by which it was enacted that a certain parcel of shore front of a width not exceeding one hundred feet should be vested in the City of Charlottetown for the purpose of a carriage or roadway to what is known as Victoria Park, which Statute was reserved by the then Lieutenant Governor of the Province for the consideration of His Excellency the Governor General, and afterwards duly presented to by the Governor General in Council.

The Statute further recites that litigation arose between the Province and the City as to boundaries of the parcel of land referred to in the above mentioned Statute; that judgment has been given by the Supreme Court of the Province in favour of the Lieutenant Governor, from which the City has appealed and that the appeal is still pending; that the City has consented to accept, in lieu of the land claimed by it under the Statute of 1876, a parcel of land bounded as set forth in the present Act, and it is enacted that the parcel of land so described shall be vested in the City in fee simple for the purposes of a carriage or roadway from the Park to the City, and that the construction placed upon the Statute of 1878 by the Supreme Court is affirmed.

As this measure has already received the assent of the Lieutenant Governor of the Province, and as the reasons which led His Excellency the Governor General of the time to assent to the Statute of 1876 exist with regard to the present Act, the undersigned recommends that the Act be left to its operation.

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

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60TH VICTORIA—1897.

4TH SESSION—32ND GENERAL ASSEMBLY.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 4th November, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Prince Edward Island, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 16th of June, 1897, and he is of opinion that they may be left to their operation without any observations.

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

Respectfully submitted,

O. MOWAT,
Minister of Justice.

61ST VICTORIA, 1898.

1ST SESSION—33RD GENERAL ASSEMBLY.

Copy of a Report of the Honourable the Minister of Justice upon the Acts of Prince Edward Island, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 8th November, 1898.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the statutes of the Province of Prince Edward Island passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 19th August, 1898, and he is of opinion that these statutes may be left to their operation without comment with the exception of chapter 3, intituled : " An Act to amend 'An Act respecting Witnesses and Evidence.' "

The undersigned has received a communication dated 30th May, 1898, from the Secretary of the Dominion Commercial Travellers' Association, enclosing a copy of a letter from the solicitors of the association at Charlottetown, P.E.I., in which it is stated by the association that the statute in question will be detrimental to the trade of the Dominion at large and make it almost impossible to collect payment for goods sold in the Province of Prince Edward Island, when, through ignorance or otherwise, travellers who sold the goods within the province had failed to take out a license. The solicitors of the association in their letter state that the Act seems very objectionable on several grounds : that it will undoubtedly place difficulties in the way of collecting debts as well as increase the expenses of suitors ; that the provision that a certificate under the hand of the Provincial Treasurer is to be sufficient evidence that the agent holds a license seems to be of little or no assistance, because under the Act imposing the tax the agent through whom the goods are sold is to take out the license, and not the firm for which he acts. They suppose a case in which a suit is brought at Charlottetown by a firm in Montreal for recovery of the price of goods sold by an agent, say A. B., in Charlottetown, and they state that while a certificate may be obtained that A. B. held a license, yet the certificate will not show that A. B. was the agent by whom the goods were sold, and that to prove the latter fact a witness must attend court or a commission must be issued to take evidence abroad. They further state that proof must be given of the date at which the goods were sold, so as to establish the fact that the agent at that particular time held a license, and this, even if the debtor had signed a note or accepted a bill for the price of the goods.

The undersigned has also received communications complaining of the hardship of this statute from the President of the Board of Trade of Toronto, the Halifax Board of Trade, the Maritime Commercial Travellers' Associations and from several other quarters. The Canadian Bankers' Association have also, through their solicitors, represented to Your Excellency's Government that this statute is awkwardly worded, and is open to a construction restricting the right of the holder in due course of a bill of exchange or promissory note transferred to him in the usual course of business to recover the amount thereof from the maker or endorser, unless the proof be given which the Act requires ; that if such a construction is to be adopted the legislation is *ultra vires*, and that if such be not the intention the Act should be so amended as to make the intention clear.

The undersigned caused to be referred to the Attorney General of the province, copies of the communications received on behalf of the Dominion Commercial Travellers' Association and the Dominion Bankers' Association, in order that the Attorney General might submit his observations thereon for the consideration of Your Excellency's Government, and he has received a reply from the Attorney General in which he states in effect that chapter 4 of the Acts of Prince Edward Island, 1894, intitled "An Act to impose a direct tax on certain classes of traders," was left to its operation; that that Act has been ever since in force, and its provisions have been very well observed by every business house of repute without the province doing business therein; that it imposed a license fee of only fifteen dollars; that a number of traders and commercial travellers have repeatedly resorted to every kind of scheme to evade the payment of this small license fee, and that it was owing to these attempts to evade the law and in justice to those who promptly paid this annual tax that the present statute was passed. The Attorney General denies that the Act will be detrimental to the trade of the Dominion, and he states that it is clear from the reading of the Act that it is not intended to restrict the right of the holder in due course of a bill or note. The Attorney General further contends that the legislation affects civil rights and matters of a merely local or private nature in the province, and that it comes within the authority of the Legislature to regulate the contracts of any particular business or trade in the province, and the conditions to which such contract shall be subject.

The undersigned observes that the Act of 1894, intitled "An Act to impose a direct tax on certain classes of traders," requires in effect that every trader not permanently residing within the province who, either in his own right or on behalf of any other person, sells any goods within the province, or solicits orders for goods within the province, shall, before selling such goods or soliciting orders therefor, pay to the Provincial Treasurer an annual license fee of \$15, and a penalty of \$200 is imposed for breach of this requirement. It was pointed out in the approved report of the Minister of Justice of the time, dated 24th December, 1894, that these provisions might be open to question in view of the exclusive authority of Parliament in matters affecting the regulation of trade and commerce, but the Act was not disallowed. The present Act prevents any creditor not permanently residing within the province from recovering the price of his goods from any person doing business within the province in the absence of proof that the creditor or the person who sold the goods for him had first taken out the license required by the Act of 1894, and this is so, whether the creditor is claiming upon the original contract of sale, or upon any promissory note or bill of exchange given for the price of the goods sold.

The undersigned apprehends that the power to regulate trade and commerce conferred upon Parliament must include, according to any limitation which may properly be placed thereon, the authority to regulate interprovincial trade, and this expression must be held to include trade between the residents of the different provinces. Hitherto, unless it may be incidentally, Parliament has not dealt with this subject, because, it must be assumed, Parliament has been satisfied with the conditions hitherto prevailing under which perfect freedom of trade has existed. The imposition of an annual license fee of \$15 by the Province of Prince Edward Island as against outside traders was a comparatively small matter, possibly justified under the power of taxation vested in the Provincial Legislature, and not—at all events, in the opinion of the advisers of His Excellency for the time being—calling for the exercise of the power of disallowance. The provisions of the Act now in question, however, seem to go beyond anything which can be implied in the power of taxation, and to impose a very burdensome restraint upon trade between other provinces and Prince Edward Island. It makes the right to recovery for goods sold to depend not only upon payment of the tax, but also upon the production of evidence that the tax has been paid and that the person directly

engaged in the sale of the goods in question had procured a license as required by the Act of 1894. The difficulty and expense attendant upon such a proceeding is reasonably represented to be such as may seriously embarrass and discourage trade with Prince Edward Island. The undersigned entertains no doubt that Parliament might by competent legislation override the provisions both of the Act complained of and that of 1894, and it is a serious question, whether these Acts do not so far directly affect or appropriately belong to the regulation of trade and commerce as to exceed provincial authority even in the absence of Dominion legislation. The power of disallowance has, however, been vested in Your Excellency, not only for maintaining the constitutional lines of legislative authority, but also for preventing the provincial legislatures from interfering with Dominion policy in matters in which it is competent under the constitution to the Dominion Government to have a policy. There may be provincial legislation which can have effect until superseded by Parliament, and as to such the undersigned apprehends the power of disallowance may be properly exercised if the legislation be in the opinion of Your Excellency's Government prejudicial to Dominion interests. The statute now under consideration is in the opinion of the undersigned either *ultra vires*, or it falls within the class to which reference has just been made, not only for the reasons already mentioned, but because it may be held to prejudice the *bona fide* holders of the promissory notes and bills of exchange to which the Act refers.

For these reasons the undersigned recommends that said chapter 3 be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

NOTE.—No action was taken on this Report, because it was understood that a satisfactory amendment to the Act in question (Chap. 3) would be made by the Provincial Legislature.

The Act has been amended by 62 Vic., Chap. 19, of the Acts of P. E. Island, 1899.

NORTH-WEST TERRITORIES.

60TH VICTORIA—1896.

2ND SESSION—3RD LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 22nd February, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 17th February, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the several Ordinances passed by the Legislative Assembly of the North-west Territories in the sixtieth year of Her Majesty's reign (1896), assented to on the 30th October, 1896, and received by the Secretary of State for Canada on the 30th day of November, 1896, and he is of opinion that they may be left to their operation without any observations.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

61ST VICTORIA—1897.

3RD SESSION—3RD LEGISLATURE.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 1st September, 1898.

DEPARTMENT OF JUSTICE, OTTAWA, 12th August, 1898.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the Ordinances of the North-west Territories, passed in the year 1897, and received by the Secretary of State for Canada on the 24th day of January, 1898, as follows:—

Ordinance No. 8. "An Ordinance respecting Municipalities."

By Section 98 of this Ordinance the Council of every municipality is empowered to pass by-laws for certain purposes, amongst others, under paragraph 63 of the said section, for regulating the rate of speed of railway trains and engines along or across any of the streets or avenues of the municipality, and for other purposes touching the operation of railways upon the streets of the municipality, and precautions to be observed at crossings.

The undersigned observes that while the power so conferred may have application with reference to railways within the jurisdiction of the Legislative Assembly of the North-west Territories, it is at least very questionable whether it can have any application to railways under the exclusive authority of the Parliament of Canada, especially in view of the fact that Parliament has already legislated with respect to the subjects as to which the municipalities are by the section in question empowered to make by-laws. The undersigned does not consider, however, that the inconvenience which may arise from leaving this Statute to its operation is such as to justify Your Excellency in the exercise of the power of disallowance.

Ordinance No. 17 entitled "An Ordinance respecting the Department of Public Works."

Section 28 purports to authorize the Commissioner of Public Works to stop the construction of, or cause to be removed, works being constructed, or which have been constructed, in any river which will obstruct the navigation of such river.

The subject of navigation being one of the exclusive subjects for Dominion legislation, and no authority with regard to that subject having been conferred upon the Legislative Assembly, the undersigned considers that the provision referred to is *ultra vires*. The Courts may, however, conveniently give effect to this view, and having regard to the other provisions of this Ordinance, which are unobjectionable, the undersigned does not recommend disallowance.

Ordinance No. 36 entitled "An Ordinance respecting Justices of the Peace."

Section 11 provides that every Justice of the Peace who convicts and imposes any fine, forfeiture or penalty shall make a return thereof to the Attorney General and to the Territorial Treasurer, and that, except where otherwise specially provided, the amount of such fine, forfeiture or penalty shall be transmitted to the Territorial Secretary by the Justice of the Peace.

The undersigned assumes that this provision is intended to apply only to fines, forfeitures or penalties imposed upon the authority of Territorial Ordinances. It can have no application to cases arising under the laws of the Dominion. It is, however, expressed in terms so general as to include such cases, and the undersigned recommends that the attention of the Legislative Assembly be called to this section with a view to a suitable amendment limiting its application to cases within the jurisdiction of the Legislature.

The undersigned sees no reason to comment upon the remaining Ordinances, and he recommends that they, together with those specially referred to in this report, be left to their operation.

Respectfully submitted,

DAVID MILLS.

Minister of Justice.

62ND VICTORIA, 1898.

4TH SESSION—3RD LEGISLATIVE ASSEMBLY.

Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 17th April, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 7th March, 1899.

To His Excellency the Governor General in Council :

The undersigned has had under consideration the Ordinances of the Legislative Assembly of the North-west Territories, passed in the year 1898, and received by the Secretary of State for Canada on 4th October, 1898, and he is of opinion that these Ordinances may be left to their operation without comment with the exception of—

No. 30—"An Ordinance respecting Irrigation Districts."

Section 29 of this Ordinance provides that occupants of town lands in respect of which homestead or purchase rights have been granted shall be liable to taxation in respect of their occupancy of the same, in the same way as owners of other lands.

This section, as the undersigned construes it, contemplates only a personal taxation, and not a taxation of the lands. The taxes would be recoverable in the manner provided by sections 67 and 68, and it is not intended that they should be a charge upon the land or collected as provided by sections 70-73.

Upon that construction the section is unobjectionable. Any interpretation which would charge these taxes upon the lands would give the section an effect beyond the authority of the Legislative Assembly, and this it would be the duty of the courts to prevent.

Section 77 is in terms wide enough to authorize regulations being made which would be inconsistent with section 34 of the North-west Irrigation Act, 1898, and it would have been better if the power given by that section had been stated to be subject to the provisions of the latter Act, as the present expression is somewhat misleading. The undersigned recommends that the matter be called to the attention of the Legislative Assembly, so that they make a proper amendment.

No. 39—"An Ordinance respecting the Consolidated Ordinances of the Territories."

This Ordinance provides for the consolidation of the public Ordinances of the Territories and for bringing the consolidation into effect by proclamation of the Lieutenant Governor.

The Ordinance in itself is unobjectionable, but the consolidation which is to be made under it has not yet been submitted to the undersigned, and he cannot, therefore, express an opinion upon it.

The undersigned assumes, however, that it is not intended to enact new laws by the consolidation, and existing Ordinances contained therein will be considered as subject to comments which were made upon them in the ordinary course.

The undersigned does not consider that either of these Ordinances should be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Territories for the information of his Government.

Respectfully submitted,
DAVID MILLS,
Minister of Justice.

YUKON TERRITORY.

1893.

Report of the Honourable the Minister of Justice approved by His Excellency the Governor General in Council on the 14th April, 1899.

DEPARTMENT OF JUSTICE, OTTAWA, 8th April, 1899.

To His Excellency the Governor General in Council :

The undersigned has had under consideration Ordinance No. 4 of the Commissioner in Council of the Yukon Territory, entitled "An Ordinance respecting the Legal Profession," assented to on 26th October, 1898, and received by the Clerk of the Privy Council for Canada on 13th January, 1899.

This Ordinance provides in effect that barristers, advocates or solicitors of any of the provinces of Canada or of the North-west Territories who on 26th October, 1898, were residents of the Yukon Territory may, upon producing evidence of good character and taking the oath of office, be entitled to practise the legal profession in the said territory. They are, however, required to pay a fee of \$100, and an annual fee of \$10 thereafter, unless they happen to be advocates of the North-west Territories, in which case an annual fee of \$10 only is required. In other cases the Ordinance provides for the admission of barristers or solicitors of England, Ireland or Scotland, or of any of the provinces of Canada, or of the North-west Territories, upon production of evidence of admission, and of good moral character, provided they have first been residents of the territory for a term of not less than six months, during which they shall have been engaged in the practice of their profession in the office of some qualified advocate, and shall pay a fee of \$200.

The undersigned considers that a term of residence in the Yukon Territory ought not to be required as a condition to the right to practise there, of any barrister or solicitor entitled to practise in any court in the United Kingdom, or in any of the provinces or the North-west Territories of Canada, who produces satisfactory evidence of such qualification. The present Ordinance requires six months' residence, and it may be intended to exclude such barristers and solicitors altogether, because the Ordinance seems to require that a person shall be admitted to practise before practising, and that before being admitted to practise he shall have practiced in the Yukon Territory for a term of not less than six months, a condition impossible of performance.

The undersigned can scarcely suppose that the Ordinance, although perhaps so expressed, was intended to have the effect of entirely excluding these gentlemen, but since it would operate at least to postpone the right of a man, otherwise perfectly qualified, for a period of six months after his arrival in the territory, the undersigned considers it expedient that the Ordinance should not be allowed to remain in operation. He recommends, therefore, that it be disallowed, and that Your Excellency in Council, pursuant to the authority of section 8 of the Yukon Territory Act, enact in lieu thereof the Ordinance, a draft of which is herewith attached.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Copy of Order in Council disallowing Yukon Territory Ordinance No. 4 of 1899, published in "Canada Gazette," Vol. xxvii. No. 42.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Friday, the 14th day of April, 1899.

PRESENT :

His Excellency the Governor General in Council.

Whereas the Commissioner of the Yukon Territory in Council did, on the 26th day of October, 1898, assent to an Ordinance which has been transmitted, numbered 4 and entitled "An Ordinance respecting the Legal Profession";

And whereas the said Ordinance has been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice recommending that the said Ordinance be disallowed.

Now therefore His Excellency, in virtue of the powers conferred upon him by the Act 61 Victoria, Chapter 6, entitled "An Act to provide for the Government of the Yukon District," and by and with the advice of the Queen's Privy Council for Canada, has this day been pleased to declare his disallowance of the said Ordinance, and the same is hereby disallowed accordingly.

Whereof the Commissioner of the Yukon Territory, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. MCGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliott Murray-Kynynmond, Earl of Minto, Governor General of Canada, do hereby certify that the Ordinance passed by the Commissioner of the Yukon Territory in Council on the 26th day of October, 1898, numbered 4, and entitled "An Ordinance respecting the Legal Profession," was received by me on the 13th day of January, 1899.

Given under my hand and Seal this fourteenth day of April, 1899.

MINTO.

AN ORDINANCE RESPECTING BARRISTERS AND SOLICITORS IN THE YUKON TERRITORY.

His Excellency the Governor General of Canada, by and with the advice and consent of His Privy Council of Canada, enacts as follows :—

1. Except as hereinafter otherwise provided no one shall practice as an Advocate within the Yukon Territory unless he shall have been duly admitted by order of the Territorial Court.

2. Every person who at the time of the disallowance of Ordinance No. 4, entitled "An Ordinance respecting the Legal Profession," assented to by the Commissioner of the said Territory in Council on the 26th of October, 1898, was entitled to practise within the said Territory as an Advocate under the provisions of the said Ordinance shall continue to be entitled to practise as such Advocate.

3. The disallowance of the said last mentioned Ordinance shall not affect nor be deemed to have affected the right or qualification to practise of any person who shall have been admitted to practise pursuant to the provisions of the said Ordinance previous to the 1st day of July, 1899.

4. The following persons and no others shall hereafter be entitled to be admitted to practise as Advocates within the said Territory, viz. :

(a.) Every Barrister, Advocate, Solicitor or Attorney of any Court in Great Britain and Ireland, or of any Court in any Province of Canada or of the Northwest Territories upon filing a satisfactory certificate of his being such Barrister, Advocate, Solicitor or Attorney at the time of application, and of his good moral character, and upon payment of a fee of fifty dollars.

(b.) Any law student of the full age of twenty-one years who shall have served under articles of clerkship for a period of three years within the said territory with an advocate practising there, and shall have passed such preliminary and final examinations as may be prescribed by competent authority, and who shall have filed satisfactory certificates to that effect, and of his good moral character from the advocate with whom he shall have served, upon payment of a fee of twenty-five dollars.

5. Every person hereafter admitted to practise within the said territory shall be required to take the following oath :—

"I, A. B., do swear that I will truly and honestly demean myself in the practise of an advocate in all and every of the courts of the Yukon Territory in which I shall be employed as such, according to the best of my knowledge and ability. So help me God.

6. Within the first fifteen days of January in each year a fee of ten dollars shall be payable by each advocate practising within the said territory. Such annual fee, together with the other fees, payment of which is hereinbefore provided for, shall be paid into and form part of the territorial funds.

7. Advocates of the territorial courts shall be counsel, advocates and solicitors of all the courts within the territory, and as such shall be entitled to prosecute and defend all cases therein, and shall have such seniority and precedence therein as they are entitled to in the territorial court, but nothing herein contained shall interfere with or affect the wholesome control which Her Majesty's courts are authorized to exercise over the several practitioners therein, or to prevent the court from suspending, silencing, dismissing or striking off the roll any advocate for malpractice or misconduct.

8. The several proceedings mentioned in the fourth section of the said disallowed Ordinance are hereby confirmed and made good and valid to the same

extent as they were intended to be confirmed and made good and valid by the said fourth section.

9. This Ordinance shall come into effect on the first day of July, 1899.

JOHN J. MCGEE,

Clerk of the Privy Council.

Copy of Order in Council disallowing Yukon Ordinance No. 11 of 1899, published in the "Canada Gazette," 15th April, 1899, Vol. xxvii, No. 42.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Friday, the 14th day of April, 1899.

PRESENT :

His Excellency the Governor General in Council.

Whereas the Commissioner in Council of the Yukon Territory did on the 7th day of December, 1898, pass an Ordinance which has been transmitted, numbered 11, and entitled "An Ordinance respecting the sale of Intoxicating Liquors and the Issue of Licenses therefor";

And whereas the said Ordinance has been laid before His Excellency the Governor General in Council together with a Minute of Council recommending that the same be disallowed;

Now therefore His Excellency the Governor General, in virtue of the authority conferred upon him by Section 7 of the "Yukon Territory Act," 61 Victoria, Chapter 6, has thereupon this day been pleased, by and with the advice of the Queen's Privy Council for Canada, to declare his disallowance of the said Ordinance, and the same is hereby disallowed accordingly.

Whereof the Commissioner of the Yukon Territory and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. MCGEE,

Clerk of the Privy Council.

I, Sir Gilbert John Elliott Murray-Kynnmmond, Earl of Minto, Governor General of Canada, do hereby certify that the Ordinance passed by the Commissioner in Council of the Yukon Territory, numbered "11 of 1898," hereinbefore referred to, entitled "An Ordinance respecting the sale of Intoxicating Liquors and the Issue of Licenses therefor," was received by me on the 21st day of March, 1899.

Given under my hand and Seal this fourteenth day of April, 1899.

MINTO.

REPORT of the Honourable the Minister of Justice, presented by His Excellency the Governor General in Council on the 6th August 1899

DEPARTMENT OF JUSTICE, OTTAWA, 17 April, 1899

The undersigned has the honour to report that by Section 6 of the Yukon Territory Act the Commissioner of the Territory in Council is given authority to make ordinances for the government of the territory, and by the following section a copy of every such ordinance is to be despatched by mail to the Governor in Council within ten days after the passing thereof, and it is provided that any such ordinance may be disallowed by the Governor in Council at any time within two years after its passage.

The corresponding provision of the British North America Act, and of the North-west Territories Act, requires that a copy of each enactment shall be transmitted to the Secretary of State, and the established practice with regard to all the provinces and the North-west Territories is that the Secretary of State, upon receipt of a certified copy of a statute or ordinance, shall refer the same to the Minister of Justice in order that he may consider and report thereon to Your Excellency in Council. The duty of advising upon the legislative Acts and proceedings of each of the Legislatures of the provinces and the North-west Territories of Canada is imposed upon the Minister of Justice by the Act respecting the Department of Justice, Revised Statutes of Canada, chapter 21.

The undersigned considers that a similar duty devolves upon him with respect to the Ordinances of the Commissioner in Council of the Yukon Territory, and that those ordinances ought to be referred to him upon being received by Your Excellency's Government. If, as may often be the case, questions of policy in which any other department of Your Excellency's Government is specially concerned arise with respect to any of such ordinances, it would be proper for such department to submit the objections and reasons for the consideration of the Minister of Justice, as has always been the practice with regard to the provinces and the North-west Territories; but unless an exception is to be made, which in the opinion of the undersigned is justified neither by the constitution nor the expediency of the case, the reports to Your Excellency upon the Yukon Ordinances ought to be made by the undersigned, and he recommends, therefore, that it be made the duty of the Clerk of the Privy Council, upon receiving from the Commissioner of the Yukon Territory a copy of any ordinance, to transmit the same to the Department of the undersigned for consideration and report.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

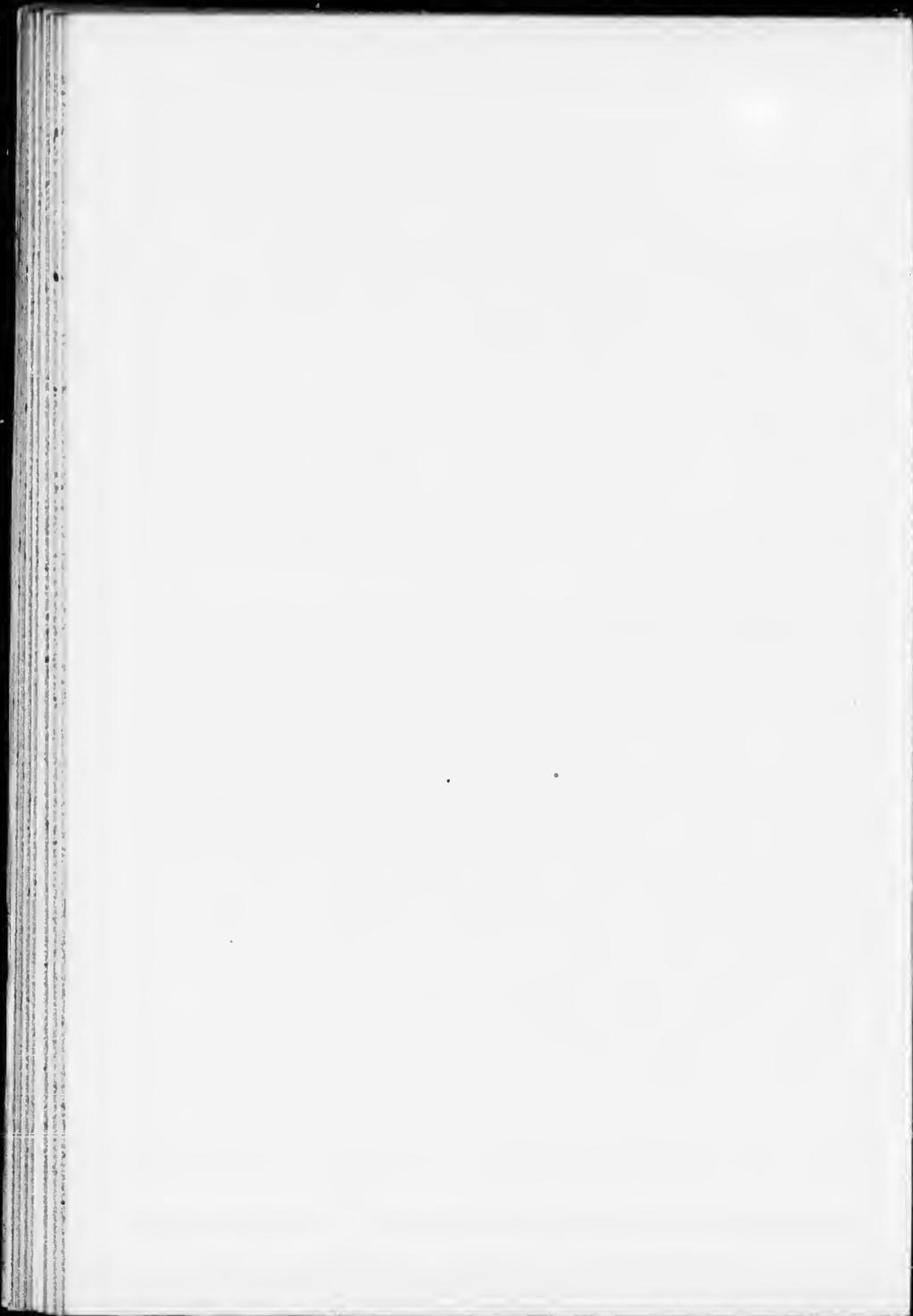


TABLE OF DISALLOWED ACTS, 1896-98.

MANITOBA

Act.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
60 Viet., chap. 2.	1897, An Act respecting corporations incorporated out of Manitoba.	Act is <i>ultra vires</i> of Provincial Legislature.	15 Nov., 1897 8 Mar., 1898 1 April, 1898	62 65 68

BRITISH COLUMBIA.

61 Viet., chap. 28.	1898, An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts.	Power of Legislature to enact is not free from doubt. Policy of Acts contrary to Imperial interests. Inconvenience, loss and confusion which would ensue if left to operation.	8 Nov., 1898 7 Mar., 1899 29 May, 1899	85 103 107
61 Viet., chap. 44.	1898, An Act to amend the Tramway Incorporation Act.	do do		

YUKON TERRITORY.

1898, Ordinance No. 4.	An Ordinance respecting the Legal profession.	Provisions of Ordinance unnecessary and inexpedient.	8 April, 1899	121
Ordinance No. 11	An Ordinance respecting the sale of Intoxicating Liquors and the issue of Licenses therefor.		No Report appears to have been made by Minister of Justice.	124

RESERVED

BRITISH

Act.	Title.	Reason for Reservation.
60 Vict., 1897, Bill, No. 49	An Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts.	Provisions exceptional and doubtful as to whether they are within competence of Provincial Legislature.

BILLS.

COLUMBIA.

How dealt with	Reasons for Action.	Date of Report of Minister of Justice.	Page.
No action taken	Provisions might interfere with International relations and Federal interests. Legislation affects aliens and therefore <i>ultra vires</i> of Provincial Legislature.	15 Oct., 1897	79
		22 Dec., 1897	83

TABLE OF ACTS, 1896-98.

ONTARIO.

Act.	Title.	Reasons for Objection or Comment.	Page.
59 Viet., chap. 16.	1896. An Act respecting the Canadian Historical Exhibition.	Section 25 deals with subjects of copyrights and is therefore <i>ultra vires</i> of Provincial Legislature.	2
60 Viet., chap. 3.	1897. An Act to provide for the consolidation of the Statutes of Ontario.	No substantial alteration made in Statute Law of the province and therefore enactments have been previously considered by Government of Canada.	3
Chap. 9	An Act respecting the Fisheries of Ontario.	Is consolidation of Provincial Statutes respecting Fisheries. Does not conform to views of Dominion Government nor consistent with Supreme Court Judgment. Question still <i>sub judice</i> .	3
Chap. 14	An Act to make certain amendments to the Statute Laws.	Section 1 in so far as it intends to affect Royal prerogative of appeal to which party is entitled under Dominion Legislature is <i>ultra vires</i> .	4
Chaps. 38, 96, 97 & 98.		Deal with question of Aliens.	4
Chap. 106	An Act to enable Edward Spencer Jenison to develop and improve a water privilege on the Kaminisatiqua River.	Trenches on subject of legislation with respect to beds and waters of rivers, claimed to be the exclusive legislative authority of Parliament.	4
61 Viet., chap. 33.	1898. An Act to prevent the spread of the San Jose Scale.	Provisions of Section 3 are questionable.	6
Chap. 59	An Act respecting the Chatham City Suburban Railway Company.	Provision authorizing crossing of these railways with other railways, trenches on legislative authority of Dominion Parliament.	6
Chap. 63	An Act to incorporate the Smith's Falls, Rideau and Southern Railway Co.		6

QUÉBEC.

59 Viet., chap. 9.	1896. An Act respecting the Election of the Legislative Assembly of Quebec.	Certain provisions relate to offences punishable under Criminal Code, 1892, and appear to be <i>ultra vires</i> of Provincial Legislature as trenching on Criminal Law.	8
Chap. 73	An Act to incorporate the Drimmondville Hydraulic and Manufacturing Company.	Provisions relate to rivers, claimed by Dominion under B. N. A. Act, and authority to construct works in navigable waters not within Provincial authority.	8
Chap. 74	An Act to incorporate the Coulonge and Crow River Boom Co. (Limited).		8
60 Viet., chap. 62.	1897. An Act to amend and consolidate the Acts respecting the incorporation of the city of St. Henri.	Trenches on subject of Criminal Law.	9
Chap. 77	An Act to incorporate the North Shore Power Company.	Trench on authority of Parliament to legislate with respect to construction of works upon or over water courses and streams.	10
Chap. 79	An Act to incorporate the Coaticook Electric Light and Power Company.		10

TABLE OF ACTS, 1896-98—Continued.

NOVA SCOTIA.

Act.	Title.	Reasons for Objection or Comment.	Page.
59 Vict., 1896, chap. 17.	An Act to amend chapter 104, Revised Statutes, entitled: "The Judicature Act, 1891."	Subsection 2 of section 2 is <i>ultra vires</i> as limiting the class from which Judges of the Supreme Court may be selected. Scope of selection cannot be limited by Provincial enactment.	12
Chap. 1.	An Act respecting the Executive Administration of the laws of this Province.	Statute is similar to 51 Vict., chap. 5 (Ontario). Legislation upheld by Provincial Courts and by Supreme Court. See Dominion and Provincial Legislation 1897-98, pp. 206-213.	15
Chap. 11.	An Act to provide for the supplying the Town of North Sydney with water.		
Chap. 97.	An Act to incorporate the Oxford Water and Power Supply Co. (Limited).	Sections of Act authorize construction of certain works on rivers. As Legislation affecting rivers which under B. N. A. Act, are claimed by Dominion.	15
Chap. 101.	An Act to incorporate the Young Brothers Company (Limited).		
59 Vict., 1896, chap. 93.	An Act to incorporate the Home Fire and Marine Insurance Company (Limited).	Powers granted as to business of Fire and Marine Insurance are practically unlimited, and Company is authorized to do Marine Insurance anywhere in the world. Business authorized to be done is therefore not strictly confined to province. B. N. A. limits jurisdiction of Provincial Legislature as to incorporation of companies.	17
60 Vict., 1897, chap. 3.	An Act to expropriate lands for an Annual Provincial Exhibition.	Act objected to by petitioners as being unnecessary exercise of power of eminent domain, takes land of citizens for no object of public utility, prevents lands better suited being taken, and on other grounds. On examination considered not within undoubted authority of Provincial Legislature.	31
Chapters 27, 81, 82, 83, 95, 102, 103, 104, 105, 109, 111, 112.	For titles of these Acts. See page 32.	Acts contain sections dealing with question of aliens.	32
Chapters 32, 63, 103, 104, 106.	For titles of these Acts. See pages 32 and 33.	Contain provisions authorizing companies to enter on beds of rivers, take water therefrom or construct works therein. Validity of such provisions depend upon a question which is still <i>sub judice</i> .	33
Chapters 95, 97, 98, 100, 102, 105, 107, 109.	For titles of these Acts. See page 33.	Acts contain provisions authorizing companies to construct railways, telegraph and telephone lines without defining limits. Also authorizes companies to acquire ships, streams, ports, freight, &c. without defining limits or terminal points. Absence of express limitation to provincial territory of undertakings mentioned, should be rectified.	33
Chap. 113.	An Act to incorporate the Missisquash Marsh Company (Limited).	Company authorized to acquire and sell lands elsewhere than in province. Is there <i>lopo ultra vires</i> of powers conferred on Legislature by B. N. A. Act.	34

TABLE OF ACTS, 1896-98—Continued.

NOVA SCOTIA—Continued.

Act.	Title.	Reasons for Objection or Comment.	Page.
Chapter 2.....	An Act to amend and consolidate the Acts respecting the Probate Courts of Nova Scotia.	Act objected to as providing that County Court Judges should act as Judges of Probate without any remuneration or travelling allowances. Act considered as <i>intra vires</i> of Legislature and the objections not considered as affording reasons for disallowance.	36
61 Vict., 1898, chap. 38.	An Act to amend chapter 106, Revised Statutes of Juries.	Question as to whether Local Legislatures have power to legislate as to numbers constituting the panel of Grand Jurors not free from doubt.	41
Chap. 153.....	An Act to incorporate the Maritime Transportation and Salvage Company (Limited).	Powers conferred by Act was in excess of authority of a Provincial Legislature, as defined by B. N. A. Act.	41

NEW BRUNSWICK.

59 Vict., 1896, chap. 42.	An Act to consolidate and amend the Acts to provide for the payment of succession duties in certain cases.	Legislature assumes to tax property over which it has no control.	46
Chap. 44.....	An Act to provide for the incorporation of towns.	Act assumes to authorize passage of By-laws relating to navigation and shipping, the Criminal Law and other subjects of Dominion Legislation.	47
Chap. 96.....	An Act to continue a Boom across the Jacquette River, and to incorporate a company for the purpose.	Contain provisions authorizing the building and maintenance of piers and booms which are questionable from a Dominion point of view.	47
Chap. 106.....	An Act to incorporate the Sussex Water and Electric Company.		
Chap. 8.....	An Act to revive and codify an Act to provide for the division of the Province into counties, towns and parishes.	Act purports to enact what shall be the line of division between the provinces of New Brunswick and Nova Scotia, which is <i>ultra vires</i> of the Legislature.	48
60 Vict., 1897, chapters 5, 20, 83, 93, 94 and 95.	For titles of these Acts. See page 51.	Contain provisions with reference to Fisheries, or affecting rivers or other waters, which are not, from Dominion standpoint, within legislative jurisdiction of the Province.	51
Chap. 24.....	An Act to consolidate and amend the Law relating to the Supreme Court.	Trenches on subject of copyright which is within exclusive legislative jurisdiction of the Parliament of Canada.	51
Chap. 28.....	An Act to consolidate and amend the Law relating to County Courts.	Section 94 purports to give the County Courts jurisdiction in criminal matters, but section is considered as merely intending to declare jurisdiction already vested in County Courts, and not as intended to legislate inconsistently or to confer new or different authority.	52
Chap. 29.....	An Act in further amendment of the Law of Evidence in relation to the evidence of husband and wife.	Provision in Act, in so far as it intends to make the evidence of husband and wife admissible in divorce proceedings is <i>ultra vires</i> , the subject of divorce being one exclusively within legislative jurisdiction of Parliament.	52

TABLE OF ACTS, 1896-98—Continued.

NEW BRUNSWICK *Continued.*

Act.	Title.	Reasons for Objection or Comment.	Page.
Chap. 65. . . .	An Act to amend 30 Victoria, chapter 28, intituled: "An Act to authorize the City Council of the City of Fredericton to assess for agricultural purposes."	Objection made as to injustice of the Act, but as legislation complained of is exclusively within jurisdiction of Provincial Legislature, Act left to its operation.	52
61 Vict., 1898, chap. 55.	An Act relating to the Town of Chatham.	Provisions of Act contained in Section 1, are capable of a construction which would confer upon Town Council powers in excess of those which may be granted by a Provincial Legislature.	58

MANITOBA.

61 Vict., 1898, chap. 31.	An Act to amend the Manitoba Act	Objections urged against Section 19, that rights and securities of Winnipeg Water Works Company and bondholders are prejudiced. Objections are deemed matter for consideration of Provincial Legislature, and Act left to its operation.	72
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BRITISH COLUMBIA.

59 Vict., 1896, chap. 10.	An Act respecting Co-operative Associations.	Section 17 appears to affect the subject of Criminal Law.	75
Chap. 21. . . .	An Act to preserve the Forests from destruction by fire.	Doubtful of the provisions of sections 6 and 7 can have effect as to railways to which Railway Act of Canada applies.	
Chap. 37. . . .	The Municipal Clauses Act.	Some of powers which Act purports to confer upon Municipal Councils are expressed in terms so general as to include authority which Provincial Legislature could not confer.	75
Chap. 50. . . .	An Act to incorporate the Alberni Water, Electric and Telephone Company (Limited).	Assume to legislate with regard to rivers which are claimed to have become property of the Dominion under the B. N. A. Act.	75
Chap. 55.	An Act to amend an Act to incorporate the Consolidated Railway and Light Company, and to change the name thereof to the Consolidated Railway Company.		
60 Vict., 1897, chap. 17.	An Act to amend and consolidate the Law relating to Lunatic Asylums and the care and custody of the Insane.	Section 51 assumes to exempt persons from criminal proceedings which are authorized by Dominion Parliament, and is therefore <i>ultra vires</i> .	80
Chap. 62. . . .	An Act to incorporate the South Kootenay Water Power Company.	Contain sections providing penalty for malicious injury to property of Company. Is legislation respecting Criminal Law and therefore <i>ultra vires</i> .	81
Chap. 67. . . .	An Act to incorporate the Okanagan Water Power Company.		

TABLE OF ACTS, 1896-98—Continued.

BRITISH COLUMBIA—Continued.

Act.	Title.	Reasons for Objection or Comment.	Page.
Chap. 2.	An Act for the incorporation and regulation of Joint Stock Companies and Trading Corporations.	General scope of Act appears to provide for incorporation of companies, which may be incorporated under authority of Province. Provisions with regard to licensing of companies incorporated by Dominion Parliament are not intended to affect execution of powers which could not be competently conferred by Provincial Legislature. Act not intended to impose any condition upon exercise by Dominion corporation of powers conferred by Parliament under section 91, B. N. A. Act.	81
61 Vict., 1898, chap. 10.	An Act to give effect to the Revised Statutes of British Columbia.	Chapter 107, The Juror's Act, Sections 75-82, relate to juries in criminal cases. These affect matters of criminal procedure and are <i>ultra vires</i> of the Legislature.	85
Chap. 20, . . .	An Act respecting the Canadian Pacific Navigation Company (Limited).	It is <i>ultra vires</i> of Provincial Legislature to authorize establishment or operation of line of steamships connecting province with any or other of the provinces.	86
Chapters 10, 30, 44, 46-48, 50, and 87, 52-61.	For titles of these Acts. See pp. 56	These Acts contain provision prohibiting employment of Chinese or Japanese by companies mentioned.	86

PRINCE EDWARD ISLAND.

61 Vict., 1898, chap. 3.	An Act to amend an Act respecting Witnesses and Evidence.	Objected to on grounds that provisions are detrimental to the trade of the Dominion. Impossible to collect payment of goods sold in P. E. I. if vendors failed to take out a license. Open to construction of restricting the right of holder of bill of exchange or promissory note transferred in ordinary course of business, to recover amount from maker or endorser unless proof which Acts requires be given. Minister of Justice recommended disallowance of Act, but same was amended in 1899. See page 116.	114
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NORTH WEST TERRITORIES.

61 Vict., 1897, Ordinance No. 8.	An ordinance respecting Municipalities.	Question whether powers granted to municipalities to pass by-laws respecting railways, can have any application to railways under exclusive authority of Parliament of Canada.	118
Ordinance No. 17.	An ordinance respecting the Department of Public Works.	Power conferred on Commissioner of Public Works to stop construction of, or remove works in any river which will obstruct navigation is <i>ultra vires</i> , as subject of navigation is one of the exclusive subjects for Dominion legislation.	118

TABLE OF ACTS, 1896-98—*Concluded.*

NORTH WEST TERRITORIES—*Concluded.*

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81	Ordinance No. 36	An ordinance respecting Justices of the Peace.	Section 11 authorizes Justices of the Peace to transmit fines, penalties and forfeitures to Territorial Secretary. It is assumed that this provision applies to fines, penalties and forfeitures imposed under authority of territorial ordinances and not to cases arising under authority of Parliament.	118
85	62 Vict., 1898, An Ordinance No. 30	An ordinance respecting Irrigation Districts.	Interpretation that taxes imposed by section 29 would be chargeable upon lands would give section an effect beyond authority of Provincial Legislature. Section 47 is wide enough to authorize regulations being made which would be inconsistent with North-west Irrigation Act, 1898.	120
86	Ordinance No. 39	An ordinance respecting the consolidated Ordinances of the Territories.	Proposed consolidation not submitted. It is assumed it is not intended to enact new laws, and existing ordinances will be considered as subject to comments made on them in the ordinary course.	129

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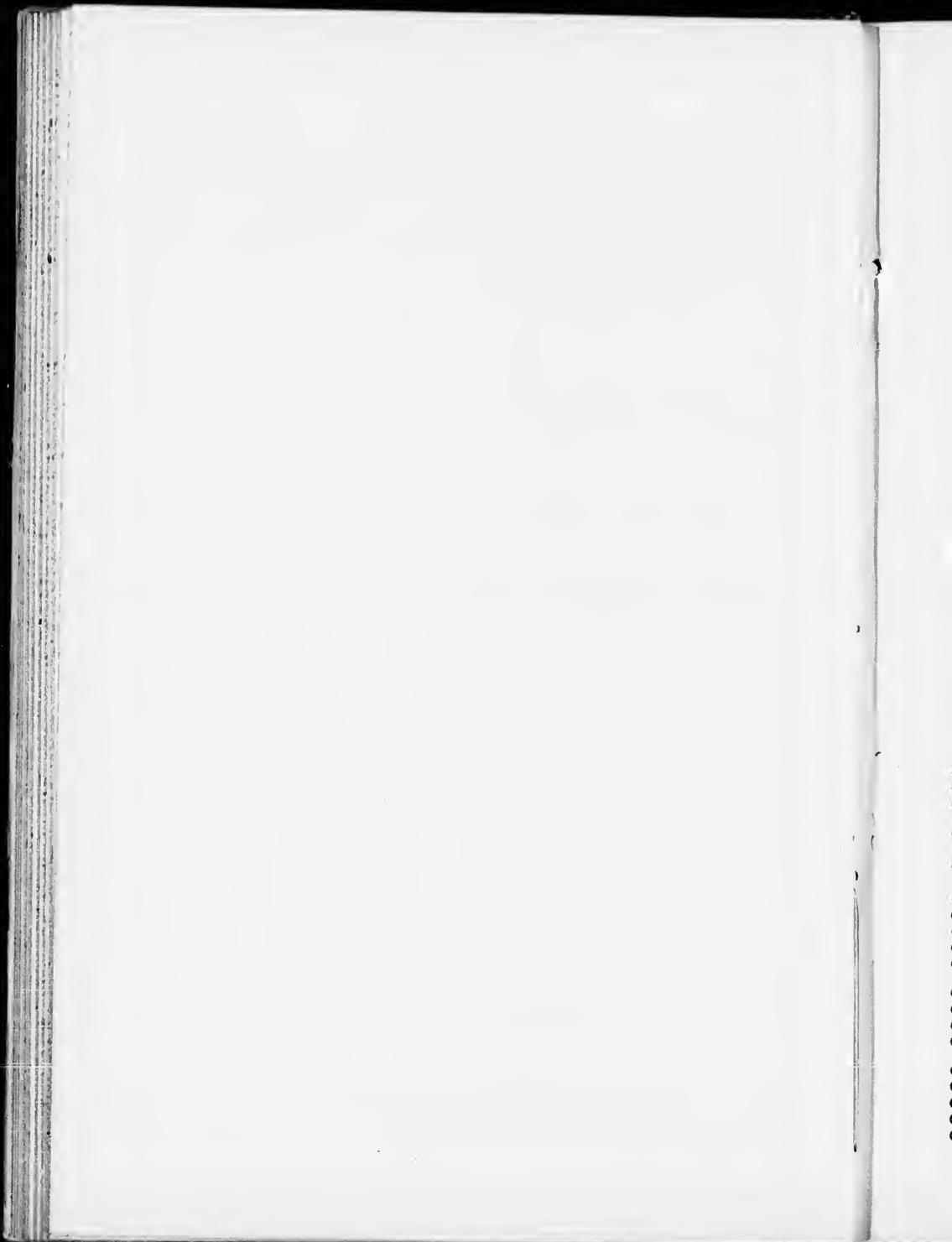
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