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OBITER DICTA

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Legislation in Canada Relating to Combines

HISTORICAL DEVELOPMENT AND RESULT

J. M. MAGWOOD.

Closely following the mushroom growth of mergers and trusts in the United States during the last half of the Nineteenth Century, a similar tendency towards the development of monopolistic and heavily capitalized combinations in industry became apparent in Canada. This transition from the era of small and independent manufactories was in no small degree fostered by the National Policy of MacDonald, which smothered foreign competition and encouraged the banding together of domestic producers in order to effect a more systematic distinction of their products. The inevitable result was the sky-rocketing of prices and all the evils attendant thereto. The great mass of consumers demanded consideration, and naturally looked to that body which is supposed to be capable of providing a panacea for all ills. But Parliament was much too busy, and complaints were far too numerous to allow of individual consideration. In the result, a Select Committee on Combinations was appointed by the Federal Legislature in 1888 with wide powers to inquire into the whole question.

The American influence upon the subsequent development cannot be over-estimated. Mr. Wallace, in moving the appointment of the Select Committee of 1888 (of which he became chairman) referred to the introduction of a bill for the suppression of combines in the New York State Legislature at Albany, and made the following statement: "After the House of Commons has investigated this matter, if necessary, if we cannot accomplish our purpose in any other way—and perhaps we cannot—we can follow the example set by the United States by bringing in a bill which will have the effect of destroying and making illegal all these combines, which not only raise the prices to the people of Canada, but interfere with the trade of the country and are an excrescence in the National Policy."

The Committee referred to brought in a strong report showing the existence of combines setting the retail prices in many of the key industries in Canada, and resulted in the introduction of "An Act for the Prevention and Suppression of Combines Formed in Restraint of Trade of 1899," sponsored by Mr. Wallace. This statute made it a misdemeanor punishable by fine or imprisonment to be a party to a combination defined by the Act subsequently in terms of the present first sub-section of section 498 of the Criminal Code.

By way of further example of the American influence upon this legislation, I quote from Mr. McMullen's speech in committee on the bill: "When we look at the history of the United States, and see the evils which have arisen there in connection with these combines, I think that we will decide that it is high time something should be done here to prevent the implanting of these evil pernicious systems in

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New Regulations

The attention of students and the legal profession is drawn to a new rule adopted by Convocation on November 15th, 1934. The rule is set forth as follows:

Rhodes Scholars.

(136A) Any person may be called to the Bar on any ordinary Convocation Day, and may be admitted and enrolled as a solicitor, who,

(A) Produces testimonials of good character and conduct to the satisfaction of the Society, and sufficient evidence

(I.) that he was selected as a Rhodes Scholar for the Province of Ontario;

(II.) that he thereafter pursued a course of study at the University of Oxford as a Rhodes Scholar, and obtained there the degree of Bachelor of Arts in the Honour School of Jurisprudence or the degree of Bachelor of the Common Law, and

(III.) that he was called to the Bar at one of the Inns of Court of England.

(B) Has served six months under Articles of Clerkship in Ontario and has passed the regular examinations in Constitutional Law, Practice and Criminal Procedure at Osgoode Hall Law School.

University of Toronto To Publish Law Journal

An announcement of considerable importance to students at Osgoode Hall appeared in the Toronto press a short time ago. The University of Toronto Press announced that the first number of the first volume of a new annual publication would be published soon after the New Year. This new publication is to be known as "The University of Toronto Law Journal."

The "Law Journal" is intended to supplement the "Law Reports," the "Weekly Notes" and other legal publications at present in existence in Ontario. The "Law Journal" is designed to provide an opportunity for the publication of articles, notes and documents dealing with the science of law and for the encouragement of legal research. It is the intention of the editorial board to make a special appeal to students of law and the legal profession.

The announcement intimated that a wide programme is planned to include articles on comparative law, the common law, international law and the many other branches into which legal research can be divided. Special attention will be given to legal developments within the British Empire and the United States.

Dominion and Provincial legislation will be surveyed and important cases will be annotated so as to illustrate their significance.

It is also the intention of the board to include complete reviews of legal books and other similar material of interest to the legal profession. The editorial office is situated at the University of Toronto and the "Law Journal" will be in charge of a board of Editors, under the chairmanship of Dr. W. P. M. Kennedy, Professor of Law in the University. The appearance of this "Law Journal" will be of interest to students at Osgoode Hall for reference purposes, and as a source of general information on subject matters of a technical and practical nature.

ANNOUNCEMENT

The Osgoode Hall Legal and Literary Society is holding the January luncheon at the Oak Room of the Union Station, on January 17th. The usual high standard of guest speakers is more than upheld by Sir Alfred Morine, K.C.

The Society hopes that all students will turn out to enjoy an excellent luncheon and an interesting speech, all for twenty-five cents.

Appeals to Judicial Committee of the Privy Council

SOME ARGUMENTS FOR AND AGAINST

(By D. A. McIntosh).

The principle that an appeal lies to the King in Council from all judgments of colonial courts is an old one. The origin of this principle as applied to the colonies can probably be found in the desire of England to retain as much control as possible over her possessions beyond the seas, a desire which contributed in no small degree to the destruction of the first British Empire. The power, which originally rested on the prerogative, that is on the common law, was made statutory under the Judicial Committee Acts in 1833 and 1844. These acts created the Judicial Committee of the Privy Council and imposed on it the duty of advising the King in Council as to the decisions to be given in appeals from the colonies. These acts are still in force as far as Canada is concerned and will probably remain so until repealed, insofar as they affect this country, by virtue of the powers conferred on the Dominion by the Statute of Westminster, 1931.

Many arguments have been advanced both for and against the retention of appeals to the Judicial Committee. It is the purpose of this article to present both sides and then to try and determine which has the most force and to conclude with a short survey of the strictly legal aspect of the subject.

One of the strongest arguments advanced in favour of the retention of the appeal is the fact that the Privy Council in early days did fine and beneficient work in rounding out and interpreting the provisions of the British North America Act. It was undoubtedly the Privy Council that rescued the Provinces from the inferior status of municipalities to which Sir John A. Macdonald would have assigned them. During the years following the passing of the Confederating Act it was probably a very good thing that an impartial body was in existence to settle the contests which raged around the interpretation of the Dominion constitution, especially questions affecting religion, language or race. However this argument has lost much of its force over the years and to-day we hear very little of the Privy Council as a protector of minority rights.

However the Judicial Committee has done and can still do good work in giving a uniform interpretation to British Acts adopted by the Dominion. In view of the otherwise inevitable deviation between parts of the Empire in construing the same statutes, this influence must be admitted to be of value. More valuable, however, is the work of interpreting the common law, which lies at the base of the legal systems of all the Dominions, Provinces and States, except Quebec and the Union of South Africa. The ill-effects of diverse interpretations is quite evident in the United States where the various state courts are at liberty to interpret the common law in any way they choose.

The profession in Canada as a whole seems to be opposed to the abolition of appeals to the Judicial Committee. It might not be amiss

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Sir Alfred Morine, K.C., Our Guest Speaker at January Luncheon

Sir Alfred Morine, K.B., LL.B., K.C., cannot be categorized as one who needs no introduction to us, as our chairmen usually introduce the after-dinner speaker. Such a glib introduction will not suffice for Sir Alfred, whose legal legerdemain was exercised in Eastern Canada at a time when we were fully occupied in learning to walk. This "stormy petrel" of Newfoundland is one of the most colourful figures in the affairs of the British Empire in its colonial aspect. We in Ontario know all too little of the political life and affairs of our Imperial sister, Newfoundland, and consequently many of us are not familiar with this courageous, two-fisted Imperialist, who is to be the guest speaker at the Student's luncheon to be held on Thursday, January 17.

Of United Empire Loyalist stock, Sir Alfred was born in Port Medway, in Nova Scotia, the son of a sea captain, whose father served under Captain Broke of the Shannon in that historical naval conflict between the Chesapeake and the Shannon. Sir Alfred was graduated from Dalhousie University, and headed for St. John, Newfoundland, obtaining a position there with the St. John's "Mercury" as a journalist. He followed newspaper work with considerable success for ten years, when he decided to study law and returned to Dalhousie University. He received his call to the Bars of Nova Scotia and Newfoundland, in 1894, and was called to the Bar in Ontario in 1906. He practised law in Newfoundland for some time and took a great interest in politics, being the member for many years for Bonavista. He was Minister of Justice, Attorney-General and Colonial Secretary at various times in the government of Newfoundland. In 1906 he resigned from the Government and came to Ontario, and took up the practice of law in Ontario.

Around 1911 he was appointed Chairman of a Public Enquiries Commission, when he was forced to retire owing to certain alleged misdealings during his political regime in Newfoundland. Dauntless and unafraid he resigned his post and returned to Newfoundland. His political record was vindicated when he returned to his old riding of Bonavista, and was returned by acclamation as an independent candidate. His vigour in debate, his forensic fury, and consummate command of the English language, made him feared both in parliament and in court The St. John's "Daily Star," a deadly political foe of the then Hon. A. B. Morine, made the following comment: "As a debater he is supreme in the present assembly, he has no peer as a speaker and knows all the tricks of repartee, innuendo and retort."

No longer able to stand the rigours of parliamentary life, he resigned and came to Toronto. In 1928 he was knighted for the unstinting service he had rendered to Newfoundland and the British Empire, and to-day he is one of her most courageous and loyal sons. His career offers a stimulus and challenge to all young men entering the legal world. His versatility made him an outstanding counsel, and an expert in Crown practise and with this attribute he combined an amazing grasp of the more academic phases of law. He was for many years one of the consulting editors of the Dominion Law Reports, as well as being the author of a book on the mining law of Canada, and the author of the "Canadian Notes of Russell on Crimes." Although practising law in Toronto to-day, his platform appearances of late have been few and far between, and the executive of the Legal and Literary Society are to be congratulaed for making it possible for the students to have him as their guest speaker.

Judicial Interpretation of the British North America Act

(By Robert Muir, Jr.)

If we are to accept the classification enunciated by such noted Jurists as Sir John Salmond, C. K. Allen, and Paul Vinogradoff, we may conclude, that, generally speaking, English Law has emanated from four main sources, namely Custom, Precedent, Legislation and Equity. Of Legislation, it may be said, that, though it did not precede custom and precedent in its development, nor, even to-day, is it a more voluminous source than precedent, yet we may be dogmatic to the extent of saying that Legislation is to-day the most important source of law, in so far as it can abrogate, or vary any of the principles derived from the other three sources.

Legislative Acts, as a source of law, however, are not sufficient in themselves, because, due to the inability of the legislator to foresee all possible eventualities pertaining to any particular enactment, it is, of necessity, imperative that these measures be interpreted by the Courts. The necessity for such judicial interpretation is emphasized, more particularly, when we consider Constitutional Enactments, such as the British North America Act and the Constitution of the United States, which by their nature, must be adaptable, by means of judicial interpretation, to the changed social, economic and political conditions, which are bound to arise in the development of a nation.

The desire to create a strong legislative union in Canada is exemplified by the provision in Section 90 of the Statute, by which the Governor-General in Coucil was empowered to disallow certain Provincial Acts. This provision was merely the means of carrying to a logical conclusion the prerogative power of the Imperial Parliament to dissallow certain measures passed by the Dominion House. In spite of the marked tendency of Sir John A. Macdonald to give full effect to the essence of this Section, the Privy Council, by repeatedly upholding dissallowed Provincial Acts, negatived the intention of the provision, so much so that it would be a form of political suicide for any Prime Minister to give full effect to this power clearly granted, by the Section, to the Dominion House. It is true, that it is a fundamental principle of the Constitution that the Provincial Legislatures are supreme within their own legislative sphere, as long as their measures do not conflict with a validly passed Federal Enactment. It was certainly never intended that they should be mere delegates of the Federal Government, but, by virtue of Section 90, it seems equally true that the Provinces should not be permitted to give effect to measures in direct conflict with Dominion policy and Dominion interests.

The effect of judicial interpretation upon the British North America Act is most particularly emphasized when we consider the construction placed upon the Residuary or Peace, Order and Good Government Clause of Section 91, and the Property and Civil Rights provision of Section 92. While the Residuary Clause contained in the Constitution of the United States, by which the Federal Government was given power to make all laws necessary and proper for carrying into execution certain specified powers, was not nearly as general a grant of jurisdiction as that contained in the Canadian Residuum Clause, nevertheless, the Supreme Court of the United States by a liberal interpretation of the words "necessary and proper" (cf. Gibbons v. Ogden; McCullough v.

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OBITER DICTA

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EDITORIAL BOARD.

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TORONTO, TUESDAY, JANUARY 15, 1935.

EDITORIAL

This editorial is suggested by a notice which appears on the notice-board opposite the third year lecture room. The substance of the particular notice is that all students who desire to participate in some activity involving public speaking, and who are not able to take part in a debate or a moot court, are requested to submit their names to the proper authorities so that a contest may be arranged, which would afford an opportunity to speak in public to all those interested.

The art of public speaking has always attracted great attention, and it is of tremendous importance to the legal profession. The most consistent criticism levelled at barristers is that the court usually has the greatest difficulty in hearing the arguments. A few hours spent in the Ontario Court of Appeal will convince anyone that this is a valid criticism. The great majority of barristers add much to the difficulties of their case and their argument loses much of its effectiveness by their delivery and the manner in which they address the court. To listen to some counsel is actually a painful experience and their task must be the more difficult because of this.

On the other hand, there are many counsel who have captured the art of public speaking and, because of this fact, command the attention of the court before which they are pleading and are able to lead the way through their argument with comparative ease. Whether or not these gentlemen acquired their ability to speak naturally or by practice, they set an example for every law student. Apart from the everyday advantages to be derived from the cultivation of this art, the work in court, which is the goal to which most students aspire, should demand some study of and practice in public speaking.

Unless one is a natural born speaker, the essential requirements such as diction, grammar, enunciation, etc., can only be obtained by practice. Law school authorities have not seen fit to include lectures on this subject in the curriculum of law schools, and students must make their own opportunities for the practice of this art. The worry and anxiety of an important case must be greatly decreased by the self-confidence which comes from the knowledge that one is able to speak well in public and in court.

Interpretation B.N.A. Act

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Maryland), have succeeded in construing a much more liberal grant of power for the United States Federal House, than that possessed by its Canadian counterpart.

Contrast with this the Provincially minded attitude of the Privy Council, which has, by a strict interpretation of a much more general power, almost succeeded in creating the Property and Civil Rights Section the true Residuum Clause of the Canadian Constitution. To support this latter contention in true legal fashion, it would seem necessary to attempt a brief perusal of some of the more important of the decisions on the question.

Firstly, in Citizens Insurance Co. v. Parsons (1882) 51 L.J.P.C. 11, in which the Privy Council was asked to decide the validity of an Act of the Ontario Legislature, the wide construction placed on the words "Property and Civil Rights" made it obvious that practically any legislation which it is possible for the Federal House to enact must in some way trench upon the provisions of that clause. This case was a virtual granting of a residuum of unspecified power to the Provincial Legislatures greater than that possessed by the Dominion under the general heads of Section 91.

But, in Russell v. The Queen (1882), 51 L.J.P.C. 77, where it was alleged that the Canada Temperance Act encroached upon "property and civil rights in the Province," it seemed for the moment that the Privy Council had undergone an apparent change of heart with regard to the respective connotations of the Residuum and Property and Civil Rights clauses, for an eminently sane decision resulted. Of the Temperance Act it was said that it could not be regarded as legislation in relation to Property and Civil Rights. The Committee ruled that laws of this nature designed for the promotion of public order, safety and morals fell within the general authority of the Federal Parliament to make laws for the Peace, Order and Good Government of Canada.

However, in the Liquor Prohibition Appeal Case, (1896), A.C. 348, we see for the first time a distaste for applying the principles of Russell v. The Queen. The Board emphasized that the latter case must be applied cautiously, that the General Power in Section 91 must be strictly confined to such matters as are unquestionably of "national importance and interest," and must not encroach upon Property and Civil Rights unless these matters have attained such dimensions as to affect the body politic of Canada.

The trend of opinion noted in this case reaches its climax in Toronto Electric Commissioners v. Snyder, (1925), A.C. 396, in which the Industrial Disputes Act of 1907, passed by the Dominion for the purpose of establishing a Board of Investigation and Conciliation for settling widespread industrial disputes, was declared by Lord Haldane to be ultra vires the Dominion Parliament as an infringement upon "property and civil rights in the province." This was certainly an Act for the "promotion of public order," but the Privy Council distinguished Russell v. The Queen by saying that that decision could not be supported on the assumption that the Judicial Committee considered that when the Canada Temperance Act was

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CHRISTMAS DANCE A COMPLETE SUCCESS

The first formal dance of the Osgoode Hall Legal and Literary Society was a largely attended affair and was an outstanding success. One hundred and twenty couples carried on the tradition of the Osgoode parties and the dance set an unusually high precendent for the annual formal which takes place in the Spring.

The Christmas Party was held this year on Tuesday, December 18th, 1934, in the Roof Gardens of the Royal York Hotel. This day marked the final day of the Christmas examinations, and the dance provided a pleasant respite to the more academic pursuits of the preceding three or four weeks.

Stan St. John provided the music, and this outstanding Toronto orchestra contributed greatly to the success of the evening. The distinctive piano playing of Mr. St. John is well known and appreciated in Toronto, and the music of his orchestra leaves nothing to be desired.

The evening was graced by the presence of Mr. and Mrs. D. W. Lang, and Mr. and Mrs. Wilfred Heighington, who very kindly acted as patrons and patronesses for the dance.

A buffet supper was served during the evening and the committee are to be congratulated on the excellence of all the arrangements. The combination resulting from the release from the bogey of examinations, the music and the general enjoyment of the whole affair resulted in the committee engaging the orchestra for an additional hour; an action caused by popular demand.

There is little doubt that the attendance at the formal, an announcement of which appears elsewhere in these pages, will break all records and the committee is hard at work to ensure a similar success. Certainly all those who obeyed the writ of summons, cleverly contained in the programme, and attended the Christmas Dance, will be on hand and that alone ensures an enjoyable dance.

The committee responsible for the dance was composed of Nat Shaw, the Social Director; R. A. Standish, Miss Agnes Weir; Fred Hume, Cam. Calder, Gord. Bradshaw, Bill Stiles, Stu McKenzie, Henry White and Fred Dreger.

DEBATING

W. Smith and W. C. Grant, of Osgoode Hall, upheld the resolution, "Resolved, that the proceedings of the Stevens' Commission are futile," in the Victoria College Parliament on Monday, Dec. 10th, 1934, and were opposed by Miss Helen Babe and Ken. Woodsworth.

The government attempted to establish that the unorganized forces of reform were helpless in face of the power held by the financial and industrial interests, and hence no real results could be expected from Mr. Stevens' efforts, while the opposition was content to rely on the actual, though slight improvement in working conditions, in reply.

After an interesing and lively debate in which a diversity of opinion was expressed, the resolution was defeated by a vote of 60 to 25. W. G.

Conservative Club

Plans are under way to hold a gigantic meeting at the Albany Club near the end of this month.

WATCH THE BLUE BOARD.

The Parking Problem

A topic which has been the subject of much discussion among those who are fortunate enough to bring cars to lectures each morning is the problem of parking the said cars. At intervals, the long arm of the law reaches out and plucks a fine from Osgoode students who park their cars on the streets surrounding the Hall.

It has been suggested that the President of the Legal and Literary Society be held responsible to wipe off the chalk marks on the tires before the second mark is left on the windshield. This suggestion, although not acceptable, has caused the Executive to take the matter into consideration, with the result that certain members thereof are attempting to negotiate with the officials in the Armouries, in an attempt to make some arrangements whereby student's cars may be parked in the space to the south of that building.

These negotiations are still pending so that there is nothing definite to report at the time of writing. It is to be hoped that some agreement can be reached so that students can park their cars during lectures without the trouble of finding a parking space by the curb and the danger of incurring a parking fine.

The Winter Dance

The largest social event of the Osgoode Year, the Winter Dance, will take place at the Royal York Hotel on Friday, March 1st, 1935. At the time of writing the orchestra has not yet been selected, but will be shortly. It is still too early in the year to give the rest of the arrangements, chiefly because most of them haven't yet been made. (Note —this is because Ye Ed., one of the worst slave drivers we have ever seen, has insisted on our writing this notice during what the Law Society humorously calls Vacation).

The only things certain are the time and place and the fact that it will be a good party. Reserve the date in your little green Bibles, and let's have a good turn out at the last large party of the year before all of us have to turn our minds to more serious and less amusing things. N. H. S.

Problems of Nationality and Naturalization

(By Howard Douglas).

First we will deal with the early development of our problem following which the present situation and its problems will be discussed.

With the creation of the various Dominions within the British Empire, and with the development of the privileges which apertained thereto, it became necessary to distinguish the nationality of the members of these Dominions, both for international and inter-Empire reasons. In 1870 it was formally enacted that local nationality might be conferred by the authority of the colonial Legislatures. This was not similar to naturalization in the United Kingdom, which conferred the status of a British subject throughout the Empire. To be naturalized in a colony did not mean that one was a British subject in the United Kingdom. A person in such a position was only entitled to the civil rights which were extended to other aliens. He could not, for instance, exercise the franchise nor was he eligible for the Privy Council, nor could he benefit by the Wills Act of 1861. He was not a British subject in places where jurisdiction was exercised under the Foreign Jurisdiction Act, 1870. Sir Wilfrid Laurier stressed the injustice of this position at the Conference in 1911, but his solution that persons naturalized anywhere should have British status throughout the Empire, was not acceptable. The reason for this was that the period of residence necessary for naturalization varied in the different Dominions, and that the colour bar had to be considered. The ensuing investigation resulted in the passing of the British Nationality and Status of Aliens Act, 1914, which has since been amended in 1918 and 1922. The Secretary of State is empowered to grant naturalization in the United Kingdom to any person who has been resident in the preceding eight years, at least five years in the British Dominions, or been in the service of the Crown. The last year of residence must have been in the United Kingdom, and the person must be of good character, know English and intend to reside in the British Dominions. If the Dominion Governments accepted this Act they were to have similar powers and any person naturalized by them was to have the status of a natural-born British subect. A woman who, through marriage, loses her nationality and whose husband is dead or who is divorced may be qualified without residence. Since the passing of the Act it has been adopted by Canada, New Zealand, Australia, Newfoundland and the Union of South Africa. If there are two official languages, spoken in any Dominion, both are acceptable. The Act itself may be repealed by any Dominion if so desired.

A natural-born British subject is one who is born under His Majesty's allegiance in any of his Dominions. A person who is born outside of any of the Dominions is a British subject providing his father is a British subject who was: (1) Born within His Majesty's allegiance; or (2) was naturalized; or (3) became a British subject through the annexation of territory; or (4) was serving the Crown when his son was born; or (5) if his own birth is registered at a British Consulate within a year after its occurrence. In the latter case British nationality must be formally acknowledged on reaching the age of 21, and, if possible, any other nationality acquired by birth, must be disclaimed. Any person born on a British ship, even though it be in territorial waters, is a British subject.

British nationality is lost by naturalization in a foreign country, or, if the person is born with a double nationality, within a British Dominion, by disclaiming British nationality on reaching the age of 21. The Act also secures the right of the alien to hold, acquire or dispose of real and personal property with the same freedom as is possessed by a British subject. An alien cannot become the owner of a British ship or qualify for a public office, or the franchise. He must be granted the same method of trial as is secured to a British subject.

Let us now look at the position of citizens of Canada and the question as to whether or not the general status of a British subject forbids any special connection with some territory. Changing circumstances have necessitated the distinguishing of a Canadian citizen from citizens of other Dominions, who are equally British subjects. The Dominion of Canada is free to legislate regarding immigration, and in deciding which immigrants could be deported, it was found desirable to have a definition of a Canadian citizen. In 1910, following the enactment that any person who had a Canadian domicile, or was a Canadian citizen, should have unrestricted rights of entry into Canada, there was a definition of a Canadian citizen as being one who was born in Canada, who had not become an alien; a British subject who had Canadian domicile, and an alien naturalized under the laws of Canada, who had not become an alien, and had not lost Canadian domicile. Domicile was granted to all who had been domiciled in Canada for three years. These regulations did not extend to wives and children. It is to these sections of the Immigration Act

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Appeals to Judicial Committee

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to suggest that one of the reasons for this is that the arguing of appeals before the Committee is a very lucrative branch of the law. This, combined with the honour and distinction attached to the arguing of these appeals, is probably the reason why every young lawyer has some vain far-off hope of some day pleading before the Privy Council.

Last but not least is the sentimental value attached to these appeals. The argument that the Judicial Committee of the Privy Council forms a link of Empire is not very convincing since a tie founded on anything so flimsy as this is not likely to be very enduring. However, some weight must be given to the popular view, even if it is only a myth that the subject is appealing to the King for justice. It does wield some influence in the minds of many and the idea is carried out by the fact that His Majesty in Council still delivers the decision, even though it is on the advice of His Privy Council.

The arguments advanced against the appeal are many and varied.

It has been said by those agitating for the abolition of the appeal, that it is a sign of Dominion dependence on the Mother Country. If this were so it would be a strong point in favour of abolition. However, it has not been so since the passing of the Statute of Westminster in 1931. Since that date it seems that Canada may effectively bar the appeal if she so desires. This point, however, will be discussed more fully later.

But this does not dispose of the point, as to whether or not the retention of the appeal is a sign of Dominion dependence. On this question the abolitionists, if we may refer to them as such, point out that since 1867, at least, Canada has been considered capable of making laws for the regulation of her internal affairs. But in spite of this it seems that Canada is incapable of interpreting these laws. In order to obtain a decision on a particular point of law the Canadian litigant may be forced to place his case before a Board some 3,000 miles away in another country. The Board is then called upon to make a ruling on some statute framed and passed in Canada to meet Canadian conditions.

This brings us to the personnel of the Judicial Committee. It is supposed to be made up of the best legal brains in Great Britain. But this cannot always be so, since the Law Lords who sit in the House of Lords and those who sit on the Judicial Committee are both drawn from the same source. If these two bodies are sitting at the same time one must suffer for the benefit of the other. This fact is pointed out by Mr. Haldane (later Lord Chancellor), while speaking in the House of Commons on the Australian Commonwealth Bill. He said: "If there are two tribunals sitting for the despatch of the same business, the one is starved in order to keep up the other, and the judicial strength inevitably gravitates toward the House of Lords: and until you make the colonials feel that the tribunal to which they come is the same as that to which you yourselves appeal, you will never get their confidence. The result has been that though the Privy Council is considered good enough for the colonies, it is not allowed in Great Britain and Ireland to be good enough for us."

Furthermore the Board, for the most part, is made up of persons singularly unfamiliar with Canadian conditions. This may give rise to that impartiality which, according to those who favour the retention of the appeal, makes for unbiased decisions. However, unbiased decisions may quite conceivably work a hardship in a country such as Canada. The common law and our statutes must be interpreted in the light of present-day conditions as they exist in the Dominion. Surely the Judicial Committee is not better fitted for this task, by reason of background or training, than are the judges of our own Supreme Court?

The fact that Canadians still go beyond the bounds of their own country for the final determination

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Appeals to Judicial Committee

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of legal disputes leads to the implication that Canadian judges are not capable of dealing satisfactorily with appeals. It is admitted that the Supreme Court of Canada needs strengthening before it can be regarded as a truly competent final court of appeal. This strengthening would come in time with the barring of the appeal and an increase in remuneration, but as long as our Supreme Court remains as it is now it cannot hope to attract the very best intellects of the bar. As an example of how other countries view their Supreme Court judges the "I'm Alone" Arbitration Case of two years ago may be cited. The United States objected to the appointment of Mr. Lafleur as the Canadian arbitrator on the grounds that he was not a judge and it was necessary to explain that Mr. Lafleur had a reputation in all cases equalling and in most cases exceeding any Canadian judge for legal knowledge.

Consideration of the personnel of the Board brings to mind another argument in favour of barring these appeals. It is the opinion of many that the Judicial Committee is not a strictly judicial body, but is influenced to a certain extent, by political motives. This is not wholly untrue. If we review the whole history of the Board in its Canadian aspect since 1867, we shall see that the period divides itself into three parts. The first part covers the first few years after Confederation. During this time it was the policy of the Board to so interpret the British North America Act that the powers of the Dominion parliament were strengthened. Following that there was a period during which the Board sought, by its interpretation of Candian cases, to enlarge the powers of the provincial legislatures. This period terminated with the death of Lord Haldane, who gave his name to the latter part of the period, which is known as the "Haldane Regime." During this period the Judicial Committee in a series of opinions so refined the interpretation of the British North America Act that the provinces became stronger than the individual states of the American Union before the Civil War. The Privy Council was in fact transforming the Canadian federation into a loose confederation of states. We are at present in the third period, and the policy of the Board, at present, in constitutional questions, seems to be to strengthen the federal powers. It is not contended that these reversals in interpretation were detrimental, but they certainly do not make for consistency, an attribute which the law must possess.

The final argument advanced in favour of the abolition is the great expense attached to the carrying of a case to the Privy Council. It is a court for the wealthy litigant and large companies and corporations can coerce an opponent into surrender or compromise by the power to take him to the Privy Council. Litigation in Canada is

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Interpretation B.N.A. Act

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passed, the evil of intemperance constituted a national emergency, that is to say, it imperilled the whole national life of Canada. This distinction was not only silly but showed that the Privy Council, in their desire to protect provincial rights, were blind to the advantages of a Dominion-wide means of settling industrial disputes.

The Privy Council carried this ridiculous interpretation one step further in the Board of Commerce Case (1922) A.C. 191, and restricted the circumstances, in which interference with Property and Civil Rights was to be permitted, to such highly exceptional and unusual circumstances, as war and famine. Similarly, in Fort Frances Pulp and Power Co. v. Manitoba "Free Press," (1932) A.C. 341, in which the validity of the War Measures Act of 1914, was challenged, it was implied that it was only in the event of a nation-wide catastrophe such as the Great War, that the sacred provincial field of Property and Civil Rights could be entrenched upon by the Federal Government when legislating under the Peace, Order and Good Government Clause.

These judgments would lead one to believe that in normal times the residuary clause is non-existent, the actual residuary clause being "property and civil rights." In times of great national peril or great emergency, however, the Dominion can, under this Section, override the provincial power, and there is a suggestion in recent cases (cf. The P.A.T.A. Case), that the Judicial Committee may revert to a true interpretation of Russell v. The Queen and allow the Dominion a really effective power to legislate for the general welfare and advantage of the people of Canada.

It is interesting to compare the above interpretations and results, with the effect that judicial interpretation has had on a similar Commerce Clause contained in the Constitution of the United States. There the Supreme Court has so extended the scope of the Clause that the Federal Government has been granted the power to pass legislation against monopolies, restraints, and unfair competition, while the individual states are confined to jurisdiction over their own internal commerce and are strictly forbidden to impose any limitations or restrictions upon foreign or interstate commerce, or to interfere with or contravene, the regulations established therefore by Congress.

The Provinces, not content with their unwarranted interference in the Federal field have even gone to the extent of attempting interference in the International field. For example, we have the famous Radio and Aviation cases, where the Provinces of Ontario and Quebec challenged a Dominion attempt to control radio and aviation as an unconstitutional intrusion into the sphere of Property and Civil Rights. It is to be noted that the Dominion's claim was upheld under Section 132 of the British North America Act (which states that "The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or any Province thereof, as part of the British Empire towards foreign countries, arising under treaties between the Empire and such foreign countries"), and not under the supposed Federal authority to legislate for the Peace, Order and Good Government of Canada.

Thus, we may say that the Privy Council is not entirely to blame for the insidious interpretations placed on the British North America Act. The people of Canada have always been very provincial-minded, and have in the past been content to allow a foreign tribunal to decide their own constitutional questions. It is to be hoped, however, that they will take advantage of the authority clearly granted by the Statute of Westminster and permit the abolition of all appeals to the Privy Council, and that in the near future, when an amendment to the Constitution corrects these errors in judicial interpretation, the Supreme Court of Canada will have the supreme authority to decide all Canadian Constitutional questions, and, unlike Lord Haldane, will no longer interpret the British North America Act in the light of German Political Theory.

Nationality Problems

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that we owe our only definitions of "Canadian Citizens" and "Canadian Domicile," the latter of which in future might be claimed by a person having his domicle for at least five years in Canada after having been landed therein within the meaning of the Act. Again, in 1921, Canada deemed it necessary to define the term Canadian National. Two members of the same nationality could not be elected to the Permanent Court of International Justice, and to avoid trouble, if both Canadian and British nominees were to be elected, a Canadian National was defined in an Act of Parliament as being: (a) Any Canadian citizen within the meaning of the above Immigration Act; (b) the wife of any such citizen; (c) any person born out of Canada whose father was a Canadian National at the time of his birth or, in the case of anyone born before the Act, would have been a national had the Act then been in force. The Canadian national is still a British subject, but is distinguished from other members of the Empire for purposes of the League of Nations.

Let us now consider various problems raised by the above Acts. The first deduction that one can make is that one may be a Canadian national and yet not be a Canadian citizen. For the wife of a "Canadian Citizen," unless landed in Canada or born in Canada, and the children of a Canadian Citizen unless born in Canada or landed there, are excluded from the category of "Canadian Citizens," yet they are also classed as being Canadian Nationals. This confusing state of affairs is due to the fact that "Canadian Citizens" were never defined in a separate act for the purpose of all other Dominion legislation. Instead, a definition, drawn up by the immigration department for their own use, has been accepted in other Dominion legislation, and has led to the present anomalous situation. Consider the case of a Canadian-born man and wife, who, while abroad, have children born. These children, although they are British subjects, are only "Canadian Nationals" not "Canadian Citizens." It is quite within the power of the immigration department to refuse them entrance to Canada. If a foreign country were to deport them, would it be fair for Canada to refuse them entrance or to expect that the United Kingdom should accept them. Surely there is no other place in the British Empire, which might more reasonably be expected to accept them for, although they are British subjects, this very status is based on that of their parents. who are Canadian citizens and Nationals, who may return to Canada whenever they so desire.

The laws regarding the nationality of married women have led to many problems which at the moment are in need of a solution. In Canada many of our difficulties arise because of the present state of the law of the United States, which, in ordinary cases, leads either to double nationality or statelessness of married women. For instance a Canadian citizen marries a citizen of the United States. By so doing she loses her status as a British subject and a Canadian citizen. According to the laws of the U. S. she does not become a citizen of the latter country, and she is therefore stateless. The problem arises as to whether we need accept her or can we refuse her in case the United States wishes to deport her. It is quite possible that she may have only spent a few months in the U. S., when she is deserted by her husband. All her friends, relatives and traditions are centred in Canada, and yet if she tries to return she may be refused admittance by the immigration department. This treatment results in hardships which are unnecessary. Again take the case of X—, a British subject and a Canadian subject, who marries a Greek and continues to reside in Canada. Later her husband leaves the country and never returns. By Canadian law she has acquired Greek nationality, though she may not know the language or customs of that race. Can Canada deport her to a country of which she knows nothing, and in which she would be a foreigner without any friends or relatives? Such and similar situations are likely to rise at any time and should be met by legislation which would lead to a more sane and equitable result.

At present there has been placed before parliament a suggestion which it seems will do much to remedy the situation. It is that: "(1) An alien woman marrying a British subect shall be deemed to be a British subject unless under the law of her country of origin, she does not, by virtue of her marriage, cease to be a national of that country. She shall, however, become a subject of His Majesty, when, if at all, the operation of the law of her state of origin deprives her of her status as a national of that State. This would remedy the situation where a female citizen marries a British subject and a Canadian citizen, thereby acquiring a double nationality; (2) A natural born or naturalized female British subject marrying an alien shall be deemed to be an alien. She shall, however, retain her status as a British subject if, (a) under the law of her husband's country she does not, by virtue of her marriage, acquire her husband's nationality, or until she may and does, under the law of her husband's country, acquire his nationality; (b) if, while acquiring, on marriage, her husband's nationality under the laws of her husband's country, she yet continues to reside within His Majesty's allegiance, and does not during coverture depart from the same to take up residence in the country of her husband's origin, or elsewhere outside His Majesty's allegiance." These alterations leave the present principles substantially the same and yet remedy situations which should not be permitted to continue to arise.

Since the passing of the Statute of Westminster in 1931, which gave the Government of Canada full extra-territorial power, it is suggested that the Secretary of State for Canada could grant Canadian nationality to persons in foreign countries in certain circumstances. That is where, for instance, X—, a Canadian citizen and a British subect, goes to live in the United States, but does not acquire the citizenship of that country. In the course of time children are born who, besides acquiring American citizenship, "jure soli," are also British subjects. One of the children wishes, under our law, within one year after attaining his majority, to make a declaration of his desire to retain his status in allegiance to His Majesty, and so he writes to the Secretary of State for Canada to this effect. Before the passing of the Statute of Westminster, the validity of the certificate, had it been issued, might have been questioned, but now that the Dominion of Canada has definitely received extra-territorial power, the difficulty is removed.

Appeals to Judicial Committee

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an expensive business as it is and it would better serve the purposes of justice if this weapon were put beyond the reach of rich and powerful corporations.

In conclusion let us touch for a moment the strictly legal aspects of the subject. Before the passing of the Statute of Westminster, Canada could not effectively bar the appeal. The stumbling block was the combined effect of the Judicial Committee Acts and the Colonial Laws Validity Act, which latter Act prevented the passing of a Canadian statute, repugnant to any Imperial statute, which was intended to apply to Canada. However, with the passing of the Statute of Westminster the situation seems to have changed. The Act did not deal specifically with appeals to the Privy Council but it did enact that the Colonial Laws Validity Act no longer applied to any law made by the legislature of Canada or by the legislatures of any of its provinces, and that no Act of any legislature of Canada would be void as being repugnant to a statute of the Parliament of Canada. In addition the Canadian legislatures acquired the right to repeal any such Act of the Parliament of the United Kingdom insofar as it is law in Canada, subject, of course, to the condition that the powers conferred on the Parliament of Canada or upon the legislatures of its provinces should be restricted to matters within their respective legislative competency. The statute further enacts that nothing therein contained shall be construed as giving power to alter or amend any of the provisions of the British North America Act or any rule, order or regulation made thereunder. However, it is submitted that this protecting clause does not prevent the Federal Government from taking action to bar the appeal. With the Colonial Laws Validity Act no longer applicable it will be possible for the Federal legislature to override the Judicial Committee Acts, which probably control the appeal. It seems therefore that Canada could by a properly framed statute effectively bar appeals from the Supreme Court of Canada.

In the same way and for the same reasons the provinces could probably provide that the decisions of their Supreme Courts should be subject to no other appeal than to the Supreme Court of Canada.

This method would, however, practically speaking, be unsound unless all the provinces and the Dominion agreed to take steps to bar the appeal. If this were not done, a situation could easily arise where a Supreme Court of one of the provinces or the Supreme Court of Canada had given a decision one way and the Privy Council, on the same set of facts, had given a decision in another way. This would only lead to chaos as it did in Australia where they had the High Court taking one view of a situation and the Privy Council, by virtue of hearing an appeal from one of the State courts, taking an entirely opposite view of the same situation.

If the method suggested above was found ineffective, the course followed by the Irish Free State could always be adopted. In the Irish case of Lyman v Butler (1925) 2 I.R. 231, the Privy Council granted leave to appeal. The Parliament of the Irish Free State then legislated to declare that the law as set out by the Supreme Court was the correct view. In these circumstances the Privy Council had no alternative but to apply the Irish Statute and as a result the appeal became useless and was dropped. This method however, is not one that would appeal to Canadians and the chances of it ever being adopted here are negligible.

It must be admitted that the purpose of this article, namely, to set out both sides fully, has not been achieved. The arguments against the appeal have, to all appearances, been treated more fully. However, a justification for this may lie in the submission that the arguments in favour of barring the appeal carry much more weight than those in favour of retaining it.

Finally it might not be out of place to include a quotation from an address delivered to the Canadian Bar Association in Sept. 1931 by Mr. L. S. Laurent, a former president of that Association. He adopts a middle course in dealing with the question and advocates the Supreme Court of Canada as a final court of appeal in ordinary cases but leaves the Privy Council open to the Dominion and the Provinces for the settlement of constitutional disputes between them. He said in part: "There is without doubt a growing feeling in Canada that at least in ordinary disputes between parties, final decisions should be arrived at in our own Courts . . . . I have no doubt that some day it will be found that the inconvenience outweighs the conveniences, and ordinary clients will be satisfied to let us stay at home and to accept their fate from our own Canadian Courts. . . . If I may venture to express a personal opinion, without attempting to commit anyone to it but myself, I should like to see all our constitutional disputes go to the Supreme Court of Canada, or at least such of them as are considered of sufficient importance to justify the intervention of His Majesty's Attorneys-General of the Dominion or any one or more of the provinces. I should like to see the decision given in the Supreme Court, if it were allowed to become a final decision, henceforth looked upon as a binding authority both on that Court and on the Privy Council in all future cases. That would be a first step in making our Supreme Court really supreme, and I am confident that with such a ruling, many constitutional questions would be finally determined here, whilst there would remain open to the Dominions and the Provinces, as autonomous and independent governments in their respective spheres, for the disposal of such disputes as any of them felt had not been satisfactorily disposed of by the Supreme Court, a further tribunal quite as satisfactory and as expeditious and in every way as convenient as one which might be set up under the resolution of the Imperial Conference of 1930," for dealing with disputes between members of the British Commonwealth of Nations.

Combines Legislation

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Canada." He referred to specific instances of combines in the United States, as did Mr. Sproule and others speaking to the Bill.

It is to be noted that the Act of 1889 provided nothing new. It was stated by Sir John Thompson, the Minister of Justice, to be merely declaratory of the Common Law on Conspiracy. It is also to be noted that the words 'unduly' and 'unreasonably', as they appear in the Criminal Code (section 498) to-day, were not to be found in the original draft of the bill as it was presented by Mr. Wallace, but were inserted by the Senate.

To lend teeth to the measure, it was incorporated verbatim as section 520 of the Criminal Code of 1892. This lends support to the view of the Government that placed the 1889 Act on the statute books, to the effect that nothing was being added to the Common Law on conspiracy, since the Criminal Code professed to be declaratory only of the Common and Statute Law on Crime.

The Criminal Code Amendment Act of 1899, sponsored by Mr. Sproule, struck out the words 'unduly' and 'unreasonably' from section 520 of the Code, partly because it was felt that these words cast a shadow of doubt on Trade Unions, and partly because, in the view of some, it rendered enforcement of the Act impossible. However, these words were restored in 1900, and the slur upon Trade Unions was removed by the addition of subsection 2 to section 520 of the Code: "Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees." This section, as amended, was incorporated into the Revised Statutes of 1906 as section 498 of the Criminal Code, and has not been altered since.

It was soon found that the ordinary Common Law method of prosecution with its sanctions of fine and imprisonment were not sufficient to meet the situation. Accordingly, a new method of prosecution was provided through section 18 of the Customs Tariff Act of 1897 as replaced by section 12 of the Customs Tariff Act of 1907: Where the Governor in Council suspected the existence of a combine, he could empower any judge of the Supreme Court or Exchequer Court of Canada, or of a Provincial Superior Court, to inquire into the existence thereof. At such a hearing the attendance of witnesses and the production of books and papers was compelled. On a report being made to the Governor in Council, the Government could place articles affected on the free list if advantage would thereby accrue to the consumer. The Inland Revenue Act of 1904 empowered the Minister of Inland Revenue to declare forfeit a licence issued under the Inland Revenue Act in case of sale or consignment of goods under restrictive conditions. This latter amendment came as the direct result of an investigation into the tobacco industry under the 1897 Act by His Honour Judge McTavish of Ottawa.

In 1910, by the Combines Investigation Act of that year, a marked change was made in the machinery of prosecution, though the definition of 'combine' remained substantially as it had been. In addition to the sanctions already provided by the Criminal Code and the Customs Tariff Act and Inland Revenue Amendment, provision was made for the revocation of patents, a logical extension of the Inland Revenue Amendment, and for the imposition of a maximum penalty of $1,000 per day for evasion of orders of the Combines Board. The administration of the Act was placed in the hands of the Minister of Labour, and a Registrar of Boards of Investigation appointed. Provision was made for application by six or more complaints of an alleged combine to be made to any Provincial Superior Court judge, who, if he decided that a prima facie case had been made out, could order an investigation under the Act. Such investigation was made by a Board of three nominated by the Minister, each party to the dispute having the privilege of nominating one and chairman of the Board was required to be a judge of any investigator. The third member and chairman of the board was required to be a judge of any Superior Court of Record in Canada.

It is clear from the speech in the House of W. L. M. King, who

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Combines Legislation in Canada

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sponsored the Bill, that the experience of the past twenty years in the United States as well as in Canada, had not been disregarded. In particular, the Sherman Anti-Trust Act of 1890 in the United States, was dealt with. This enactment declared trust combinations to be illegal per se, and evidence was given to show that nine-tenths of the large amalgamations in the United States came within the terms of the Anti-Trust Act, and were consequently illegal regardless of the fact that some of them were of definite benefit to the public. The only method of prosecution was by the Federal Government, and naturally, in many cases, it refused to take proceedings.

A quotation from Mr. King's speech in moving the Bill, serves to illustrate how it was intended that this difficulty should be circumvented: "This legislation differs in some particulars from legislation of a like nature which has been introduced in other countries, in that it is not aimed against combines or mergers as such, but rather the exercise on the part of combines, mergers, or monopolies, in an unfair manner, of the powers which they may get from that form of organization."

The different approach necessitated a wider frame of investigation, and much of the blame for the failure of earlier legislation in Canada to truly effectuate its purpose was placed upon its almost total lack in this regard.

In the words of Mr. King, "The only alternative plan is to appoint a permanent commission—like the Railway Commission. There is much to recommend that proposal; but the time has hardly come yet for taking such a step. . . . . The present legislation may be a step in the right direction."

Apparently, in 1919, it was felt that the time had arrived for the taking of a step in the direction indicated by Mr. King. The Board of Commerce Act of that year, in erecting the machinery for the administration of the Combines and Fair Prices Act of the same session, provided for just such a permanent board of investigation, consisting of three commissioners appointed by the Governor in Council to hold office for ten years during good behaviour. By the Combines Investigation Act of 1910, application for an investigation had to be made by six or more, but this Act provided for such an application being made by one British subject resident in Canada and of full age. In addition, the Board or Chief Commsisioner could of its own motion issue a complaint and hold an investigation.

The Combines and Fair Prices Act, 1919, came by way of public demand following the unprecedented period of profiteering during the World War. Prices hit their all-time peak and remained there even with the post-war glut in the labour market and consequent fall in wages. For this reason perhaps, the Legislature went too far in its zeal to end the depression. Then too, its hand was forced, and the following words of Mr. Donald Sutherland, a member of the Committee on the Bill indicate the general attitude in Parliament: "If the people want a new toy and are bound to have it, and they think this is going to satisfy them, I am not going to stand in the way of their getting it." The 1919 Act went further than to declare combinations in restraint of trade illegal. It forbade the unreasonable accumulation of the necessaries of life, providing for sale of the excess; it directed the restraint of unfair prices and practices to enhance prices. In the words of its sponsor, Right Honourable Arthur Meighen, its purpose was: "If one order is evaded another is passed which the offender cannot evade."

In performing its duty, the Board attempted to restrain clothiers in Ottawa from combining to raise prices whereby they would obtain an unreasonable profit. The merchants appealed, and the case was carried to the Privy Council. It was decided that to "hoard undue profits" was clearly a matter of 'Property and Civil Rights,' and so ultra vires the Parliament of Canada. Little value was attached to the argument that the matter might be brought within the jurisdiction of the Dominion per section 91 subsection 27 of the British North America Act, reserving criminal matters to the Federal Legislature. It was declared that once a particular subject was found to be within the provincial orbit per section 92, the Dominion could not usurp jurisdiction therein by purporting to bring the matter within section 91 as well. The contention that the legislation in question might be upheld under subsection 2 of section 91, viz., "The regulation of Trade and Commerce," was in like manner disposed of; it was decided that this section could only be invoked to support another independent power conferred on the Parliament of Canada.

Braving these hostile judicial decisions, the Liberal Government of the day attempted to replace the outlawed legislation, making only what adjustments were necessary in order to escape the interpretation placed upon the British North America Act by the Privy Council. A quotation from the judgment of Lord Atkin in the Judicial Committee in P. A. T. A. v. Attorney-General of Canada [1931] A.C. serves to illustrate the retreat made from the advanced position taken in 1919 to the position occupied prior to that date. "The legislation of 1919 not only dealt with Combines which had operated or were likely to operate to the detriment of the public, as the present Act does, but it also gave power to a Board to prohibit accumulations in case of non traders, to compel surplus articles to be sold at a price fixed by the Board, to regulate profits, to exercise their powers over articles produced for his own use by the householder himself, to inquire into individual cases without applying any principles of general application."

The Combines Investigation Act of 1923, which is our present day Act, repealed the Board of Commerce Act and the Combines and Fair Prices Act. Administration of the Act was placed in the hands of a Minister of the Crown to be nominated by the Governor-in-Council. Provision was made for complaint and investigation as under the previous Acts, but certain changes were incorporated. Application is made to the Registrar who causes an enquiry to be held, and reports to the Minister, who decides if further investigation will be necessary. Full powers of investigation are given to the Minister, Registrar and Commissioners, appointed by the former, as well as to appointed experts to be heard on oath, and to hear on oath. A report of the findings is made to the Minister and published at his discretion. The Governor-in-Council and Provincial Attorneys-General may take action as provided for by the 1910 Act, and in addition, the Solicitor General may apply to the Minister of Justice for action. Power is given to the Governor-in-Council to make regulations for the carrying out of the Act. The 1922 Act was incorporated verbatim into the Revised Statutes of Canada, as Chapter 26, and the only change since this date has been by the Tariff Act of 1930, which provides for a Tariff Board to hear appeals from the Registrar.

It is only since 1927 that the unquestioned validity of this Statute has been established. The P.A.T.A. investigation brought matters to a head, and the Minister of Justice submitted the Act to the Supreme Court of Canada on a stated case. Two questions were referred: "Is the Combines Investigation Act, 1927, R.S.C. ch. 26 ultra vires the Parliament of Canada, and if so in what respects?"; "Is section 498 of the Criminal Code ultra vires the Parlament of Canada?" The Court delivered a unanimous judgment answering both questions in the negative, which was based upon a wider than heretofore interpretation of subsection 27 of section 91 of the B.N.A. Act, reserving jurisdiction in regard to Criminal Law to the Dominion Parliament. The meaning of subsection 13 of section 92 —the 'Property and Civil Rights' section—was considerably limited, and, generally, the lie direct was given to the interpretation put upon a conflict between these two sections by the Judicial Committee in In Re Board of Commerce, [1922] A.C. The decision of the Supreme Court of Canada in the P.A.T.A. case was upheld by the Privy Council, and it would seem that in view of this important indecision, as well as of subsequent ones based upon it, that the constitutional validity of the present Combines legislation is now unquestioned.