otherwise a confusion of ideas will ensue, prejudicial to a correct judgment of the case. The extinction of the Committee is being denounced as the worst feature of the transaction by persons who are ready to admit that prorogation was perhaps a necessity, and they insensibly transfer their dissatisfaction with the result to the circumstances which occasioned it. The same class of minds probably conjecture that the destruction of the Committee was the main inducement with my Government for insisting on prorogation but with speculation of this kind I have nothing to do. I prorogued Parliament for what I considered not only full and sufficient, but imperative reasons. The subordinate consequences incident to the transaction do not therefore come under review.

There is one further point it may be well to remember. I see it is asserted that the Government purposely kept its sixty members away. Of course I have no means of knowing how far this may have been the case. It is probable that, having concluded that the session could not be prolonged, Ministers may have notified their followers to that effect; but it is an indisputable fact that the absence of a considerable portion was unavoidable.

In another despatch I propose to address Your Lordship on the subject of the Commission.

I have the honour to be, my Lord, Your Lordship's most obedient servant,

(Signed)

Dufferin

"The Right Hon. The Earl of Kimberley, et cetera, et cetera, and et cetera."

The following further documents are appended:—Letters of Hon. Sir Francis Hincks in answer to the charges made against him personally; the correspondence between the Government and the two incorporated companies; the Pacific charter; the Allan and McMullen letters; Mr. McMullen's narrative and accompanying documents, and the report of the meeting of members of Parliament held at Ottawa on the 13th of August.

LORD DUFFERIN, the Governor General, transmits for the information of the Senate and House of Commons, the accompanying papers relative to the issue of a Commission to enquire into certain charges made against members of Her Majesty's Privy Council for Canada, respecting the grant of a charter and contract to the Canada Pacific Railway Company:—

Government House,

Ottawa, 23rd October, 1873

"No. 198, Canada, Aug. 18, 1873"

My Lord,—In my previous despatch of the 15th of August, I had the honour of informing your Lordship of the circumstances under which Parliament was prorogued on the 13th.

As a consequence of that event the Pacific Railway Committee of enquiry became extinct, and as I have already mentioned, an interval of eight or ten weeks was to elapse before the re-assembly of Parliament. A question consequently arose as to whether during this short recess, anything could be done to forward the hitherto abortive enquiry touching the Pacific Railway Charter.

When I was at Prince Edward Island, and in communication with my two ministers, Messrs. Tilley and Tupper, – shortly after the publication of the McMullen correspondence I had intimated to them that should the Committee of the House of Commons find itself unable to prosecute the investigation, the truth must be got at somehow, and that, perhaps an enquiry conducted before three Judges of the land might prove a satisfactory issue out of the difficulty. In making this suggestion I was actuated by a double motive; in the first place I was deeply distressed at the embarrassing relation which existed between my ministers and myself. The gentlemen were being assailed by irresponsible newspaper correspondents, with accusations of the most injurious description. Documents, which perhaps in themselves proved nothing, had been brought into an alleged connection with a narrative that invested them with very great significance. The Parliamentary Committee that had undertaken to discover the truth appeared to be paralysed, and the accused were thus shut out from all means of vindicating their characters; yet it was to those persons I was bound to look for advice in all matters affecting the administration of public affairs. Again, as an Imperial officer it was my duty to watch with especial care over Imperial interests. The allegation current against my Ministers and others was that they have fraudulently dealt with certain monetary trusts, voted indeed by the Parliament of Canada, but guaranteed to a considerable extent by the Imperial Government. This being so, I was evidently bound, apart from any action of the Canadian House of Commons, whose powers of scrutiny seemed for the present of small avail, to obtain satisfaction in regard to this matter by any constitutional method within my reach. Indeed from this point of view, it was not the Ministry of the day, who are but an evanescent committee of Parliament, but the Parliament of Canada itself that was responsible to Great Britain in respect of any malversation which might have occurred, as having confided the disposal of these interests to improper agents.

At the same time, as long as the Parliamentary Committee was in existence, even though it had ceased to act, the resort to any other instrument of investigation was not desirable. Beyond, therefore, the casual suggestion to which I have referred, nothing further was volunteered by me in this sense. When, however, the prorogation of Parliament being decided on, and the Committee of the House of Commons being about consequently to become extinct, my Government undertook on its responsibility to advise the issue of a commission to three judges of character, standing, and acknowledged integrity, I had no difficulty in acquiescing in their recommendation.

I have now, therefore, to inform Your Lordship that on the 14th of August, I signed a commission at the instance of my responsible advisers, and by virtue of the powers vested in the Governor General by the Canada Act of the 31st Vic., Cap. 38, to the Hon. Judge Day, the Hon. Judge Polette, and Judge Gowan, authorizing them to inquire into the various matters connected with the issue of the Pacific Railway charter. A copy of this Commission I have the honour to append.

On referring to it, your Lordship will observe that the purview of the Commission is very wide and inquisitorial, and there is nothing to restrict its reception of anything that may appear to deserve the name of evidence. The professional antecedents of these gentlemen are set forth in the accompanying document, which had been prepared for me by my Ministers. One of them is personally known to me, viz, Judge Day, who, as Chancellor of the McGill University, received me on my visit to that institution. Since then we have improved our acquaintance, and I have no hesitation in stating, both from what I know and have learnt, that I have every confidence in Judge Day's high sense of honour, capacity, and firmness.

I have also considered it my duty to satisfy myself as to the qualifications of the two other gentlemen with whom he is associated, and I am in a position to inform your Lordship that they are generally regarded as persons of unblemished integrity, sound judgment, and professional ability, while the length of time all three have been removed from politics frees them from the suspicion of political partisanship.

Notwithstanding the creditable antecedents of these personages, they have been sharply assailed by the Opposition press, for which the praises of the Ministerial organs are scarcely an adequate consolation. Perhaps, however, it may not be amiss that I should append two or three articles from newspapers bitterly opposed to the Government, who, nevertheless, are compelled to bear a scant and niggard testimony to the high qualities of these gentlemen.

Under ordinary circumstances I should have thought it sufficient to have terminated my despatch at this point, but, as matters now stand, it is necessary that I should describe to your Lordship the chief features of the controversy to which the issue of this Commission has given rise.

The objections urged against it seem to be three in number—

1st. That the present investigation is not of the kind contemplated by the Act. This point is so entirely a question of legal interpretation, that I can only be guided in regard to it by my law officers.

2nd. That the issue of the Commission is an invasion of the privilege of Parliament; that Parliament being seized of the matter, no other authority has a right to concern itself in the investigation.

I apprehend that this view cannot be sustained. The powers with which the Commission is vested being legal, and granted by Parliament without limitation, it is difficult to believe that their exercise can be held an interference with the privileges of Parliament. It is not a criminal suit, but a simple enquiry that has been instituted by the House of Commons, at the instance of my Ministers; moreover, Parliament has ceased to conduct this enquiry. The Crown possesses no absolute guarantee that it will be renewed, or that when renewed it will be effectual. If Ministers fall on a vote of want of confidence on the Address, it might prove the interest of so many persons to let the matter drop, that the Committee may not be re-appointed. Unless conducted under oath, the investigation will certainly prove ineffectual, and I am advised that it is doubtful whether any device exists by which a mere Committee of the House of Commons can be enabled to swear its witnesses. If, therefore, an immediate investigation will promote the "good Government of Canada", to quote the words of the Act, I do not apprehend that Parliament can denounce the Commission as a breach of privilege. The House of Commons may declare the issue of the Commission to be inopportune and unadvisable, and may visit with its displeasure the Ministers who counselled its appointment, but it can have no *locus standi,* as against the Crown itself.

Moreover, it must be remembered that the Commission can in no way intercept or supersede the jurisdiction of the House of Commons. It will be quite competent for Parliament to ignore the fact of it having existed; its influence on the present situation will entirely depend on the way in which it discharges its functions. If the public is convinced that it has elucidated the truth, no matter with what result, its position will be unassailable; if it fails to do so, it will not require the action of Parliament to proclaim its *déchéance*.

There is yet another way of looking at the matter. Few people will deny that individually I have the right to require an explanation from my Ministers in regard to these transactions, but it is evident that in respect of so complicated a business, I have neither the time nor the knowledge nor the professional acuteness necessary to unravel the tangled web of incriminatory matter presented to me. If then I possess the legal power, and if by undertaking to answer for the act, my Ministers endow me with the constitutional power, can Parliament complain if I take advantage of these circumstances to subject my Ministers, through the Commission that represents me, to such an interrogatory as I may deem advisable, or if I order the collection of such other evidence as may be forthcoming, and is calculated to throw light upon the business.

Nor has Mr. Huntington himself any ground to dispute my right to take cognizance of the affair. While the Parliamentary Committee was still in existence, he approached me officially and directly with communications incriminating sworn members of my Privy Council. It is true I returned him the documents he forwarded, and declined to take personal cognizance of a matter then before a Committee of the House of Commons; but I retain his covering letter, and it is scarcely competent for him—the Committee having ceased to exist—to decline the jurisdiction of the Commission, so

far as it is concerned with what he himself brought to my notice. By his own act he had invited my intervention, and submitted the matter to the direct cognizance of the Crown.

Thirdly. The *personnel* of the Commission is complained of as partial to the Government, and as having been chosen by the accused. Into the personal question I need not enter further than I have done. That the Commissioners should have been named by the Government is an accident inevitable to the anomalous situation of affairs; but when we consider the character and antecedents of these gentlemen, that they sit in open court, that their powers of inquiry are unlimited, that they will act under the eyes of unsparing critics, that any appearance of flinching on their part will only stimulate the desire both in and out of Parliament for further inquiry, and that in such an event a review of the case by the House of Commons is extremely probable, I don't think than any practical objection can be taken to them on this account.

I should have much preferred that Sir John's previous offer to the House of Commons Committee should have been renewed, for although this Committee cannot be pronounced free from those characteristics which adhere to all Parliamentary Committees on such occasions, it might possibly possess greater vigour of evisceration than a Commission, though its ultimate verdict might not prove unanimous. It would moreover, have been able to command the appearance of Mr. Huntington as a willing prosecutor. That gentleman, as I understand, intends to question the jurisdiction of Judge Day and his colleagues. Of course the Ministerialists asseverate that he fears being brought to book; that having thoroughly prejudiced the public mind through the agency of Mr. McMullen's letters, he would willingly let the Government lie as long as possible under the odium of a vague charge which accurate enquiry would dispose of. But this seems a groundless assertion. Hon. Mr. Huntington may be, and indeed, I trust, and so far believe, is mistaken. He may have got hold of the wrong end of the stick, and have been too quick in drawing inferences. It may be doubtful if he is well advised in declining to appear if that should be his determination; but that, after all he has said and done, he should have misgivings as to his case, is not credible, and such an injurious supposition is unjustifiable. But the difficulties in the way of making a second offer to Messrs. Blake and Dorion appeared insuperable, for both these gentlemen, in declining Sir John's former proposal to make them Commissioners, grounded themselves, not only on the necessity of obtaining the House's sanction to their change of status—an objection which, though somewhat subtle was perhaps sustainable—but furthermore asserted that, as Commissioners, their independence would be destroyed. Mr. Blake, moreover, had stated that on personal grounds he could not consent to act on a Commission appointed under the advice of Sir John Macdonald. As there was no reason to suppose that these gentlemen had changed their minds in these respects, it did not appear advisable to reproach them on the subject.

Under these circumstances it was evident, if the interval that must elapse before the reassembling of Parliament was to be utilized, that any enquiry which might be possible must be confided to fresh hands.

That my Ministers should desire an opportunity of making themselves heard can be well understood. The language used on their behalf is something of this sort:—"For months past we have been the objects of the vilest calumnies; our most confidential documents have been purloined by an informer, and dishonestly connected with a narrative which is itself untrue. Hitherto we have had no opportunity of rebutting these accusations. The instrument appointed by the House of Commons to do justice between us and our traducers has proved powerless for the object. Considering with whom we have to deal, we require the evidence against us to be substantiated by an oath; we are not willing to place our honour at the mercy of our accusers unless protected against perjury; we ourselves are anxious to be heard upon our oaths; we doubt whether a Committee of the House of Commons can acquire the power of swearing in its witnesses without an Imperial Act. We think it but fair before Parliament reassembles that we should have an opportunity of answering, point by point, the injurious allegations brought against us. This cannot be done by mere statements. We desire, therefore, to subject ourselves to as searching an interrogatory as a skilled tribunal, or our most bitter opponents can apply. Unless we have this opportunity we shall meet Parliament at a disadvantage. Our enemies have possessed themselves of the ear of the public for months. We have had no opportunities of counteracting these influences; let at least our story be heard before a premature decision is snatched from Parliament, saturated as it may have become with these calumnies. We do not wish to escape from the scrutiny of the House of Commons, we know we could not do so, did we so desire; but since its action is for a time suspended, do not condemn us to remain, during the interval, under the opprobrium of such accusations."

It is not my province to examine the force of this pleading, I merely report it for your Lordship's information; but no one can fail to see that my Ministers are fairly entitled, so far as the law allows them, to do whatever in them lies to dissipate the impression occasioned by the enforced silence entailed on them by the inaction of the late Parliamentary Committee.

I have now concluded my narrative of the two important occurrences in which I have found myself so unexpectedly engaged. My anxieties have been very great, and my position most embarrassing. If I have erred in the conduct of these affairs, I feel I can count upon your Lordship's indulgence to put a favourable construction on my intentions. Trained in the liberal school of politics, under the auspices of a great champion of Parliamentary rights, my political instincts would revolt against any undue exercise of the Crown's prerogative. Yet it is of this I find myself accused. I trust, however that reflection will dissipate such impressions and that the people of Canada will ultimately feel that it is for their permanent interest that a Governor General should unflinchingly maintain the principle of Ministerial responsibility, and that it is better he should be too tardy in relinquishing this

palladium of colonial liberty, than too rash in resorting to acts of personal interference.

Considering how eager has been the controversy, I cannot hope to escape criticism, but any irritation thus engendered will perhaps be softened by the reflection that, coming to this country full of faith in its people and its destinies, I was naturally slow to believe that wide spread public and personal corruption should exist among its most eminent public men. If it should turn out that I have been deceived in my estimate of the Canadian purity, the error is one which Canada may afford to pardon. If, as I trust will be the case, the integrity of her chief statesmen is vindicated, I shall be well content if the fact of my not having "despaired of the republic" is forgotten in the general satisfaction such a result will produce.

Be that as it may, there is one circumstance which we can regard with unmitigated satisfaction. The alleged revelations which have taken place have profoundly moved the whole of the population, apart from the section of society within politics, whose feeling may be stimulated by other considerations; every citizen in the country, no matter how indifferent to public affairs, has been dismayed and humiliated by the thought that such things, as are alleged to have taken place by Mr. McMullen and Mr. Huntington, should be possible. This is a re-assuring sign, and even should it be found, which God forbid, that the Government has been unworthy of the trust confided to it, the indignation and the searching of the heart that will ensue throughout the land, will go far to cleanse the public life of Canada for many a year to come.

I must apologize for the length of this and my previous despatch; but in recording this transaction I felt that I was contributing to a page of the History of Canada.

I have, et cetera

(Signed)

Dufferin.

The Right Hon. the Earl of Kimberley.

To this despatch are appended the Royal Commission, comments from certain newspapers on the three Commissioners, and memoranda respecting these gentlemen submitted for the information of His Excellency by the Minister of Justice.

LORD DUFFERIN, the Governor General, transmits for the information of the Senate and House of Commons the accompanying copy of a despatch from the Right Honorable the Earl of Kimberley, Her Majesty's Secretary of State for the Colonies, in reply to His Excellency's despatches No. 197, August 15th, and No. 198, August 18th :—

Government House, Ottawa

23rd Oct., 1873

(Copy)

The Earl of Kimberley to the Earl of Dufferin.

"No. 287, Downing Street 9th Oct, 1873.

My Lord,—I have received and laid before the Queen your Lordship's despatches No. 197, of the 15th August, and No. 198, of the 18th of August, giving an account of the circumstances connected with the recent prorogation of the Dominion Parliament, and the issue of a Commission to enquire into the charges brought forward by Mr. Huntington. Her Majesty's Government have read those clear and able statements with much interest. It is not their duty to express any opinion upon the particular measures adopted upon the advice of your responsible Ministers, but they fully approve of your having acted on these matters in accordance with constitutional usage.

I have, et cetera

(Signed)

Kimberley.

Governor General, the Right Hon. the Earl of Dufferin, K.P., K.C.B. et cetera.

LORD DUFFERIN, the Governor General transmits for the information of the Senate and House of Commons the accompanying papers relative to the disallowance of the Act 36 Vic., Cap. 1, intituled "an Act to provide for the examination of witnesses on oath by, Committees of the Senate and House of Commons, in certain cases".

Government House, Ottawa, 23rd October, 1873.

"No. 116, Canada, May 3rd, 1873.

My Lord,—I have the honour to forward to your Lordship a certified copy of a Bill entitled "A Bill to provide for the examination of witnesses on oath by Committees of the Senate and House of Commons in certain cases", which has passed both Houses of the Canadian Parliament, and to which I have this day given my assent.

The introduction of this Bill into the House of Commons arose out of the following circumstances:—

On the 2nd of April the Hon. Lucius Seth Huntington, member for Shefford, in the Province of Quebec, made the following motion. (Then follows the motion of Hon. Mr. Huntington.)

As your Lordship will perceive, this motion charges my present advisers with a very infamous proceeding—with no less a crime than that of having sold Canada's most precious interests to certain American speculators, with a view to debauching the Canadian constituencies with the gold obtained as the price of their treachery.

In making his motion, Mr. Huntington did not accompany it by any statement as to the grounds on which he founded his charge, or by the production of any evidence in support of it; and neither Sir John Macdonald nor any of his colleagues having risen to address the House, a vote was forthwith taken without debate, which resulted in a majority of 31 in favour of the Government, in a House of 183.

The next day Sir John Macdonald himself gave notice that he would move the appointment of a Committee for the purpose of investigating Mr. Huntington's charges, and it being further suggested—as I am informed, by some of the Opposition members—that the evidence should be taken on oath, a Bill for that purpose was introduced by the Hon. John Hillyard Cameron, an eminent lawyer of Ontario, and the Chairman of the proposed Committee.

This Bill was accepted by the Government, and passed with scarcely any discussion in the House of Commons.

It was introduced into the Senate by Mr. Campbell, the Postmaster-General, and gave rise to some difference of opinion as to whether its enactments were within the competence of the Canadian Legislature.

In the 18th clause of the Union Act of Canada, it is provided that "The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively, shall such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof," and the critics of the measure observed that, inasmuch as the British House of Commons did not acquire the general right of examining witnesses on oath till a date subsequent to the passage of the Union Act, the Dominion Parliament was precluded by the terms of the foregoing clause from investing the Canadian House of Commons with the powers in question.

It strikes me, however, that the 18th clause of the Union Act was not framed for the purpose of restricting the legislative action of the Dominion Parliament, but that the terms, immunities, privileges, et cetera, refer to those immunities and privileges which are inherent in the British House of Commons as a separate branch of the Legislature, and this view seems to be confirmed by the use of the word "defined".

The manifest purpose of the Act was to endow the Canadian House of Commons with a status like to that enjoyed by the House of Commons at home, and for obvious reasons it was necessary that the attributes of this status should be distinctly specified in the manner provided for by the 18th clause; but it could scarcely have been intended to preclude either branch of the Canadian Legislature from acquiring by Act of Parliament such other powers as experience might prove to be necessary, providing these powers were constitutional in themselves, and did not infringe the prerogatives of the Crown.

That this view was held by my predecessors, as well as by the Imperial Government, may be deduced from the following circumstances:—

The Canadian Senate also has, by the eighteenth clause of the Act of Union, the same privilege and attributes as the Imperial House of Commons, but these privileges are confined by a formula within the same limits as those which restrict the powers of the Canadian House of Commons, and which are supposed to render the present Oaths Bill *ultra vires*, viz, to such as were possessed by the British House of Commons at the passing of the Act; yet one of the first acts of the Canada Legislature was to invest the Canadian Senate with a general power of examining witnesses, which was not passed by the British House of Commons till long after the passing of the Union Act.

It is possible this Act may have been assented to by the Governor General, and acquiesced in by the Imperial Government, through an inadvertence, in which case it could not be appealed to as a precedent for sanctioning an obvious illegality, but there were no corroborating circumstances to justify me in acting on so unlikely an assumption.

Under these circumstances, I trust your Lordship will consider I have done right in giving the assent of the Crown to the Canadian Oaths Bill.

Had I deferred doing so very prejudicial results would have arisen. The investigation of the charge of the gravest nature, affecting the honour of my constitutional advisers, would have appeared indefinitely postponed, while it was being loudly assented and widely credited throughout the country that delay had been contrived by the instigation of Sir John Macdonald and his confederates, who were seeking by these devices to defer the exposure of their guilt.

But for this circumstance I might have been tempted—as the point raised is a purely legal one—to have referred the Bill for your Lordship's consideration, and the more so because, as you will perceive by the enclosed minute, Sir John Macdonald is inclined to share the misgivings of those who question the competence of the Canadian Parliament in this matter. But as the issue is one, not of Colonial but of Imperial concern, and as Sir John tendered his opinion merely for my information, and not as my adviser—indeed, he intimated he would be glad if I saw my way to assenting to the Bill—I felt at liberty to consult my own judgment, as it may be

presumed that my Government would not have promoted the Oaths Bill in the House of Commons, and fathered it in the Senate, had the Minister of Justice entertained a decided conviction of its illegality.

My conclusions have been fortified, not only by the opinion of many legal authorities whom I have consulted, but more especially by Mr. Alpheus Todd, the author of "Parliamentary government in England," who, as your Lordship is aware is exceptionally qualified to pronounce on questions of this description, and who has been good enough to discuss the case in a short memorandum, of which I enclose a copy.

(Signed)

Dufferin

Right Hon. the Earl of Kimberley.

Enclosure in Lord Dufferin's despatch No. 116, May 3rd, 1873;—

Department of Justice,

Ottawa, April 30th, 1873.

The undersigned, to whom has been referred by your Excellency the Bill passed during the present session by the Senate and House of Commons, entitled "An Act to provide for the examination of witnesses on oath by Committee of the Senate and Commons on uncertain cases," begs leave to report:—

1. That by the 18th clause of "The British North American Act, 1867", it is provided as follows:—"The privilege and powers to be held enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively shall be such as are from time to time defined by Act of Parliament of Canada, but so that the same never exceed these at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

2. That subsequently, on the 22nd May, 1868, the Canadian Parliament, by the Act 31st Vic., Cap. 23, in pursuance of the authority as given by the Union Act, defined the privileges of the Senate and House of Commons respectively. The clause doing so is as follows:—"The Senate and Commons respectively, and the members thereof respectively, shall hold, enjoy, and exercise such and the like privileges, immunities, and powers, by the passing of the British North America Act, 1867, as were held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof, so far as the same are consistent with and not repugnant to the said Act."

At this time neither the British House of Commons nor any Committee there had the power of examining witnesses on oath, except on certain specified cases, such as in private bills. That power was only conferred on the British House of Commons and the Committee in 1871, by the 34 and 35 Vic., Cap. 83.

The Bill now referred to the undersigned seeks to confer this power on any Committee of the Senate or House of Commons when either House shall have resolved that it is advisable witnesses should be examined on oath. The empowering section of the Bill is as follows:—"Whenever any witness or witnesses is or are to be examined by any Committee of the Senate or Commons, and the Senate or Commons shall have resolved that it is desirable that such witness or witnesses shall be examined on oath, such witness or witnesses shall be examined on oath or affirmation, where affirmation is allowed by law."

The question has been raised, if it is competent for the Parliament of Canada to confer this power on a Committee of the Senate or House of Commons here, as it is a power which was not possessed or exercised by the British North America Act, 1867.

The undersigned has come to the conclusion although not without doubt, this Bill is not within the competency or jurisdiction of the Canadian Parliament and that the attention of Her Majesty's Government should be called to its provisions, and to the doubt that exists with respect to its validity.

All which is respectfully submitted.

(Signed)

John A. Macdonald

Copy of enclosure in Lord Dufferin's despatch No. 116 May 3, 1873.

Opinion in reference to the meaning of the 18th clause of the British North America Act of 1867.

This clause is as follows:—

"The privileges and powers to be held, enjoyed, and exercised by the Senate and Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

A Bill having been introduced into the Dominion Commons in the present session, entitled, 'An Act to provide for the examination of witnesses on oath by a Committee of the Senate or Commons in certain cases,' a question has been raised as to whether the Dominion Parliament were competent to pass the Bill, in view of the restrictions imposed by the 18th clause of the British North America Act aforesaid."

In my opinion that clause was intended to restrain the claims of either House of indefinite privileges and immunities, by providing that such privilege shall never exceed those of the Imperial Commons at a given date. The privilege and immunities herein referred to are those that might, reasonably or unreasonably, be claimed as inherent, or necessarily attaching to, the House of the Canadian Parliament, pursuant to the maxim that all things necessary pass as incident. By limiting such privileges and powers to those possessed by the Imperial House of Commons in 1867, it prevents on the one hand an undue encroachment or extension of privilege, and on the other hand secures to the two Houses and the members thereof, respectively, the privileges, immunities, and powers appropriate to them, as component parts of the Canadian Parliament.

It has been urged that the Act to authorize the examination of witnesses on oath by Committees of the Senate and Commons of Canada, is an extension of their privileges beyond those sanctioned by the British North America Act, inasmuch as Select Committees of the Imperial House of Commons, not being Private Bill Committees, did not possess such power in 1867, or till, by the Imperial Parliamentary Witnesses' Oaths Act of 1871, such power was for the first time conferred on them.

It is to be observed, however, that power so conferred upon the Committees by the English House of Commons was not claimed as a privilege inherent in that body. It was merely a power conferred by the statute to facilitate legislative enquiries, similar to that which has been repeatedly conferred on statutory Commissions, and in being so conferred it did not trench upon any prerogative of the Crown, or enlarge the constitutional rights of the House of Commons.

The Dominion Parliament were, therefore, clearly competent, in my judgment, to confer a similar power on Committees of the Senate and Commons, pursuant to the authority conveyed to that Parliament by the 31st clause of the British North America Act, to make laws for the peace, order, and good government of Canada.

In a word, the restrictions contained in the 18th clause of the aforesaid Act are restrictions on Acts that might be buried on behalf of the two Houses of the Canadian Parliament, or the members thereof, respectively, to inherent or excessive privileges, and are not intended to prevent the exercise of legislative powers by the whole Parliament, provided the same are exercised within appropriate constitutional limits.

(Signed)

Alpheus Todd

Library of Parliament

1st May, 1873

Telegram received in Ottawa, May 29th, 1873:—

The Earl of Kimberley to Earl of Dufferin:—

Your despatch, dated 3rd May, with its enclosures has been referred to the law officers of the Crown, who report that the Oaths Act is *ultra vires.*

Telegram received in Quebec, June 27, 1873:—

The Earl of Kimberley to the Earl of Dufferin:—

The Oath Act is disallowed.

The Secretary of State for the Colonies to the Governor General

"Downing Street, 30th June, 1873.

My Lord,—I have the honour to transmit to you an Order in Council disallowing the Act passed by the Parliament of Canada to provide for the examination of witnesses on oath by Committees of the Senate and Commons in certain cases, and also the certificates as required by the 56th section of the British North America Act, 1867, stating when the Act was received in this department. Before tendering any advice to Her Majesty on the Act, I referred to the law officers of the Crown, and I was advised the Act was *ultra vires* of the Colonial Legislature, as being contrary to the express terms of Section 18th of the British North America Act, 1867, and that the Canadian Parliament could not vest in themselves the power to administer oaths, that being a power which the House of Commons did not possess in 1867 when the Imperial Act was passed. The law officers also reported that the Queen should be advised to disallow the Act.

My attention has been called to the fact that by an Act of the Canadian Parliament, Cap. 24, of 1868, provision is made by the first section for examining witnesses on oath at the bar of the Senate, and that that Act had been allowed to remain in operation. It appears to have escaped observation both here and in the Colony, that though such examination of witnesses is in accordance with the practice of the House of Lords, and the powers of the Senate of Canada are limited by the British North America Act of 1867, to such powers as were then enjoyed by the House of Commons, and

that the first section of the Canadian Act of 1868 was therefore in contravention of that Act.

But though the Act of 1868 was not disallowed, I have to point out to you that under the second section of 28 and 29 Vic., Cap. 63, this first section is void and inoperative, as being repugnant to the provisions of the British North America Act, and cannot legally acted upon.

So far as regards the powers given by the Act of 1868 to Select Committees on private bills, they would appear to be unobjectionable, as like powers had, before the passing of the British North America Act been given to the House of Commons by 21 and 22 Vic., Cap.78.

I have, et cetera

(Signed)

Kimberley.