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IN RE BOWATER'S NEWFOUNDLAND PULP AND
 PAPER MILLS, LIMITED: Tax Exemptions
 Claimed Under Pre-Confederation Statutes of
 Newfoundland.

Constitutional Law—Dominion and Provincial jurisdiction—Power of Parliament to (a) repeal, abolish or alter pre-Confederation Newfoundland law; (b) to bring into force Statutes of Canada in the Province of Newfoundland, by Act of Parliament or by proclamation and by such proclamation to provide for the repeal of certain laws of Newfoundland—The British North America Act, 1867 to 1949, ss. 91, 92, 146,—“An Act to approve the Terms of Union of Newfoundland with Canada”, 1949 (Can.) 1st Sess., c. 1, Terms 3, 18 (1), (2), (3), (27)—“An Act to amend The Income Tax Act and the Income War Tax Act,” 1949 (Can.) 2nd Sess. c. 25, s. 49.

Upon the passing of *The British North America Act, 1949*, 12-13 Geo. VI (Imp.), and “An Act to approve the Terms of Union of Newfoundland with Canada”, 1949 (Can.) 1st Sess., c. 1, Newfoundland became a province of the Dominion of Canada. Thereupon the legislative powers theretofore possessed by Newfoundland became vested in the Parliament of Canada and the legislature of the Province of Newfoundland in accordance with sections 91 and 92 of the B.N.A. Act.

Between the years 1915 and 1947 the Government of Newfoundland entered into a series of agreements, subsequently in part confirmed and in part enacted by the Newfoundland Legislature, with Bowater's Pulp & Paper Mills Ltd., and their predecessors in interest, whereby that company was granted exemptions for a term of years (extending beyond the date of union with Canada) from customs duties and taxes on certain imports and exports and from other taxes including income tax. By “An Act to amend The Income Tax Act and the Income War Tax Act”, 1949 (Can.) 2nd Sess., c. 25, s. 49, Parliament provided that notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada (including a law of Newfoundland enacted prior to April 1, 1949) no person is entitled to

- (a) any deduction, exemption or immunity from, or any privilege in respect of
 - (i) any duty or tax imposed by an Act of the Parliament of Canada, or
 - (ii) any obligation under an Act of the Parliament of Canada imposing any duty or tax, or
- (b) any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods, unless provision for such deduction, exemption, immunity or privilege is expressly made by the Parliament of Canada.

Following the passing of the said Act, the Governor in Council under s. 55 of *The Supreme Court Act* referred to this Court the three questions, (which are fully set out in the reasons for judgment that follow), as to the effect of the said amendment on the said exemptions.

*PRESENT: Rinfret C.J., and Kerwin, Taschereau, Rand, Kellock, Estey and Locke JJ.

Held: (Taschereau J. dissenting) that:—

- (1) Bowater's Newfoundland Pulp & Paper Mills Ltd. is not entitled by reason of the certain Statutes of Newfoundland in question, to any deduction, exemption or immunity from or any privilege in respect of any duty or tax imposed by an Act of the Parliament of Canada.
- (2) The company is not entitled by reason of the said Statutes of Newfoundland, to any deduction or exemption or immunity from, or any privilege in respect of any obligation under any Act of the Parliament of Canada imposing any duty or tax.
- (3) The company is not entitled by reason of the said Statutes of Newfoundland, to any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods.

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REFERENCE by His Excellency the Governor General in Council (P.C. 6510, dated December 29, 1949) to the Supreme Court of Canada for hearing and consideration pursuant to the authority of the *Supreme Court Act*, R.S.C., 1927, c. 35, s. 55 of the questions cited in full at the beginning of the reasons for judgment of the Chief Justice of this Court.

F. P. Varcoe, K.C. and *D. W. Mundell, K.C.* for the Attorney General of Canada.

L. R. Curtis, K.C., Attorney General of Newfoundland, in person.

G. H. Steer, K.C., *C. F. H. Carson, K.C.* and *C. G. Heward, K.C.*, for Bowater's Newfoundland Pulp & Paper Mills Ltd.

THE CHIEF JUSTICE:—The following questions of law, touching the interpretation of the British North America Acts, 1867 to 1949, have been referred to the Supreme Court of Canada for hearing and consideration:

1. Is Bowater's Newfoundland Pulp & Paper Mills Ltd. entitled by reason of the Statutes of Newfoundland listed hereunder to any deduction, exemption or immunity from, or any privilege in respect of any duty or tax imposed by an Act of the Parliament of Canada?

2. Is Bowater's Newfoundland Pulp & Paper Mills Ltd. entitled by reason of the Statutes of Newfoundland listed hereunder to any deduction, exemption or immunity from, or any privilege in respect of any obligation under any Act of the Parliament of Canada imposing any duty or tax?

3. Is Bowater's Newfoundland Pulp & Paper Mills Ltd. entitled by reason of the Statutes of Newfoundland listed hereunder to any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods?

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List of Statutes referred to in the above questions:

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1. 6 Geo. V, c. 4 (1915)
 2. 8 Geo. V, c. 3 (1917)
 3. 9-10 Geo. V, c. 12 (1919)
 4. 14 Geo. V, c. 1 (1923)
 5. 15 Geo. V, c. 27 (1925)
 6. 18 Geo. V, c. 4 (1927)
 7. 25-26 Geo. V, c. 42 (1935)
 8. 2 Geo. VI, c. 53 (1938)
 9. 6 Geo. VI, c. 35 (1942)
 10. 6 Geo. VI, c. 45 (1942)
 11. 7 Geo. VI, c. 56 (1943)
 12. 11 Geo. VI, c. 8 (1947)

Upon the reference, this court heard arguments from counsel representing the Attorney-General of Canada, the Attorney-General of Newfoundland and the Bowater's Newfoundland Pulp and Paper Mills, Ltd.

The statutes of Newfoundland referred to in the questions are all statutes enacted by the Governor, Legislative Council and House of Assembly of Newfoundland or the Governor by and with the advice of the Commission of Government before the union of Newfoundland with Canada. No question is raised as to the validity or effect of these statutes before the union.

Substantially all of these statutes are concerned with giving effect to and carrying out so-called agreements between a corporation and the government of Newfoundland. The 1915 to 1919 statutes were enacted in relation to the Newfoundland Products Corporation, Ltd. The name of this company was then changed to the Newfoundland Power and Paper Company Ltd. and the 1923 and 1925 statutes use this name. The 1927 statutes, amongst other things, confirm the substitution under the agreements of a new corporation for the earlier one, the new corporation being the International Paper Company of Newfoundland Ltd. Thereafter, the name of this corporation was changed on November 9, 1927, to "International Power and Paper Company of Newfoundland Ltd." and on August 18, 1938, to "Bowater's Newfoundland Pulp and Paper Mills Ltd., the present name of the company. Since all the statutes and agreements now relate to the last-named company, reference will be made only to the "company", by which is meant the last-named company.

The original operations of the company were the utilization of water powers and mineral resources in Newfoundland for the manufacture of a fertilizer. Subsequently, the operations were extended to the generation of power for the manufacture of pulp and paper products. Later still, the operations of the company covered the cutting and export of timber and related activities. The executive government of Newfoundland and the company, apparently, from time to time conducted negotiations as to the operations of the company. The government was interested in promoting the development of industry in Newfoundland. The company was interested in obtaining water powers, lands, mineral rights, timber rights and concessions for its operations. It also, apparently, needed the financial support of the government by way of guaranteeing loans raised by the company. As a result of these negotiations these so-called agreements were arrived at between the company and the executive government.

The agreements, amongst other things, contained terms making special provision as to the taxation of the company and in respect of activities carried on by it. The agreement of 1927 appears to have supplanted, for practical purposes, earlier provisions for this purpose in the agreements of 1923 and 1915. Clause 2 of the 1927 agreement contains extensive provisions both new and by way of amendment to earlier provisions. Its provisions were also later amended by the 1938 agreement.

The effect of the taxation provisions of these agreements and statutes, still in force before the union of Newfoundland to Canada, may be stated generally speaking as follows:

- (b) The stock and shares and the bonds, debentures, debenture stock, mortgage and other securities of the company, and all issues, transfers, sales and other dispositions of, purchases, holding and receipts of the same, and the dividends on such stock and shares and interest on such securities, and the receipt thereof by the holder other than holders (except the International Paper Company, a corporation of the State of New York, or any successor to substantially all its property and assets or any subsidiary of said International Paper Company or of its said successor) domiciled in Newfoundland, shall be exempt from taxation for a period of fifty years from the date hereof, provided that the company shall not be exempt from any fees payable upon the registration in the Registry of Deeds of a document,

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deed or instrument which apply to all documents, deeds and instruments generally. (1927 Agreement; cl. 2 para. (b) unamended; Case p. 60, l. 12.)

- (c) The company shall pay to the government in respect of its income for each year, beginning with the year 1928, and ending with the year 1973, before deduction of interest, depreciation and depletion, a tax of twenty per cent of such income, provided that if the tax in any year so calculated would exceed the maximum tax below defined the income applicable to the payment of interest and to depreciation and depletion shall be exempt from taxation to such extent as shall be necessary in order that the tax shall not exceed the maximum tax below defined, and provided further that if the tax so calculated after exempting all income applicable to the payment of interest and to depreciation and depletion would still exceed the maximum tax below defined, then the rate per cent for calculation of the tax shall be reduced to such extent as shall be necessary in order that the tax shall not exceed the maximum tax below defined. The maximum tax in respect of the income for each of the years 1928, 1929, 1930 and 1931 shall be \$75,000, and for each of the years 1932 to 1973, inclusive, shall be \$150,000. Dividends and interest received by the company shall be included in its income. Such tax shall be payable on or before March 31 of the succeeding year. And except as aforesaid and subject to Section 3 of the Act of 1915 the company shall be exempt from all taxation of every kind whatsoever other than duties (including Sales Tax) levied under the general laws of the colony on goods imported by the company and not otherwise exempt. Provided, however, that nothing in this clause contained shall be construed to exempt individual officers, shareholders or employees of the company from any taxation otherwise payable by them: Provided further that this clause shall remain in force during the period ending 30th June, 1973, and after that date shall cease to have effect *in toto*. (1923 Act, s. 13; Case p. 27, l. 35 as amended by 1927 Agreement cl. 2, para. (c); Case p. 60, l. 27.)
- (d) All materials, articles and things required from time to time for construction, installation and equipping of the company's water power, hydro-electric, electrical, ground wood pulp, chemical pulp, cellulose, paper and barking mills, buildings, plants and works and all buildings and plants incidental thereto, wharves, docks, quays, piers, lights and buoys, warehouses, woods and logging operations, fire protection, transmission lines, railways, roads and towns (including all houses, buildings and structures, hospitals and laboratories erected by or for the company on any townsite or protective area around it owned or controlled by it, sewerage, water, heating and lighting systems, and any other public amenities or utilities which may be provided by the company), vessels, boats, mechanical transport for goods, aircraft, and telegraph and telephone equipment all for the company's own operations for original installation or for additions or extensions but not in substitution for old shall until the 2nd day of August, 1952, be admitted into Newfoundland, free of duties and taxes, subject however to any prohibition of general application against the importation of any articles and except as provided

below in sub-clause (g) of this Clause 2. (1927 Agreement, cl. 2, para. (d), Case p. 61, l. 51, as amended by 1938 Agreement, cl. 25, Case p. 99, l. 22.)

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- (e) All materials not procurable in Newfoundland of quality and at prices which shall be satisfactory to the company required for the purposes of the manufacture of the products of the companies' and/or its subsidiary companies' electro-chemical, electro-metal-lurgical and other electric industries not concerned with pulp and paper making shall for the period of twenty (20) years calculated from the date of the entry into commercial operation of each of such industries be admitted into the colony free of taxes and duty. (1915 Agreement cl. 12, Case p. 19, l. 19 as amended by 1923 Act, s. 6, Case, p. 26, l. 16, as amended by 1927 Agreement, cl. 2, para. (e) Case p. 61, l. 33.)
- (f) On materials, articles and things required by the company for renewals or replacements of or repairs to or for use in substitution for materials, articles and things imported free of duty or of or to or for materials, articles and things previously imported for renewals or replacements of or repairs to or for use in substitution for materials, articles or things imported free of duty (including materials, articles and things required for or in connection with carrying out or effecting such renewals, replacements, repairs or substitution) the company shall pay such import duties and taxes of general application (if any) as shall be in force from time to time under the general laws of Newfoundland provided that until the 2nd day of August, 1967, such import duties and taxes taken together shall not exceed 25 per centum of the value of the material, article or thing in question. (1927 Agreement, cl. 2, para. (f), Case p. 61, l. 35 as amended by 1938 Agreement, cl. 27, Case p. 100, l. 14.)
- (g) Provided that no exemption in or to which are applicable the provisions of the foregoing sub-clauses (d), (e), and (f) shall apply to, and the company shall pay such import duties and taxes of general application (if any) as shall be in force from time to time under the general laws of the colony on, the following:
 - (1) Food, clothing, dry goods and hand-tools;
 - (2) Moveable articles of household and office furniture and equipment and camp utensils, including stoves other than furnaces;
 - (3) Articles and goods intended by the importer for the personal and private ownership of individuals;
 - (4) Lumber of sizes and qualities manufactured in Newfoundland from timber grown in Newfoundland, if such lumber can be obtained in Newfoundland as and when and of sizes and qualities required by the company from time to time; and
 - (5) Windows and doors, and casings therefor, sashes, mouldings, mantles, stairs, cupboards, ships, boats and barges made or constructed mainly or entirely of wood, of kinds, qualities and sizes manufactured in Newfoundland from timber grown in Newfoundland, if such windows and doors, and casings therefor, sashes, mouldings, mantles, stairs, cupboards, ships, boats and barges can be obtained in Newfoundland as and when and of qualities and dimensions required by the company from time to time;

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- (6) Bricks, nails, and paints for use in town construction, of sizes and kinds manufactured in Newfoundland, if such bricks, nails and paints can be obtained in Newfoundland as and when and of the sizes and kinds required by the company from time to time;
- (7) Ropes and twines and nets of kinds and sizes manufactured in Newfoundland. (1927 Agreement, cl. 2, para. (g), Case p. 62, l. 6 as amended by 1927 Act, s. 8, Case p. 57, l. 15, and 1938 Agreement, cl. 28, Case p. 100, l. 30.)
- (ga) Baling wire, metal core caps, metal seals, metal strips and laminated heads to be used in binding or packing goods, sulphur, adhesives, silicate of soda, hessian, cores made of paper or other material, chlorine for industrial purposes shall be admitted free of taxes and duties.
- (gb) The following materials if imported for use as bleaching materials or in connection with bleaching shall be admitted free of taxes and duties, namely, caustic soda, bleaching powder (calcium hypochlorite), chlorine, sodium thiosulphate, potassium permanganate, sulphuric acid and hydrochloric acid and such other bleaching materials as the company may from time to time show to the satisfaction of the government are to be used in the manufacture of bleached pulp. (1938 Agreement, cl. 29, Case p. 100, l. 34.)
- (h) On all goods, materials and articles, other than those specified in or to which are applicable the provisions of the foregoing sub-clauses (d) to (gb) imported into the colony and for use by the company in its business of manufacturing pulp or paper or operations incidental thereto, or its business of generating or transmitting electrical power or energy.
 - (1) the company shall, for a period of twenty years from the date hereof, pay import duties and taxes of general application (if any) in force from time to time under the general laws of the colony, provided that, in cases where under the general laws of the colony now in force a duty or tax is payable, the company shall not pay duties or taxes in excess of those so payable under the general laws now in force, and in cases where under the general laws of the colony now in force no duty or tax is payable, the company shall not pay duties or taxes, and provided further that on kerosene and gasoline such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of five cents a gallon and on coal such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of fifty cents a ton and on crude petroleum and fuel oil such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of such per cent of the value thereof as fifty cents per ton bears to the delivered price at the mills of the company in Newfoundland of coal of the quality and from the source ordinarily used in such mills; and
 - (2) the company shall, for a further period of twenty (20) years, pay import duties and taxes of general application (if any) in force from time to time under the general laws of the colony, provided that in cases where under the general laws

of the colony now in force a duty or tax is payable the company shall not pay duties and taxes aggregating more than the sum of (i) those so payable under the general laws now in force, and (ii) ten per cent of the value of the goods, materials or articles in question, and in cases where under the general laws of the colony now in force no duty or tax is now payable, the company shall not pay duties and taxes aggregating more than ten per cent of the value of the goods, materials or articles in question, and provided further that on kerosene and gasoline such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of five cents a gallon plus ten per cent of the value thereof and on coal such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of fifty cents a ton plus ten per cent of the value thereof and on crude petroleum and fuel oil such import duties and taxes of general application payable by the company shall not in the aggregate be in excess of such per cent of the value thereof as fifty cents per ton plus ten per cent of the value thereof bears to the delivered price at the mills of the company in Newfoundland of coal of the quality and from the source ordinarily used in such mills. (1927 Agreement, cl. 2(h), Case p. 62, l. 32, as amended by 1938 Agreement, cl. 29(2) and (3), Case p. 101, l. 13.)

- (i) Wherever under any provision of the foregoing subclauses of this Clause 2, and for the period that, any goods, materials or articles are exempt from import duties or taxes and are imported into the colony in containers or wrappings, such containers or wrappings, shall be admitted free of duties and taxes; and wherever under any provision of the foregoing sub-clauses of this Clause 2, and for the period that, any goods, materials or articles are subject to limited duties or taxes and are imported into the colony in containers or wrappings, such containers and wrappings shall be subject to import duties and taxes of general application aggregating not more than such per cent of the value thereof as the aggregate of the duties and taxes on the goods, materials or articles in such containers or wrappings bears to the value of such goods, materials, or articles.
- (j) Wherever the company shall have imported any article or goods free of duties or taxes or subject to limited duties or taxes under the provisions of this Clause 2 and shall sell, give or otherwise transfer the same to any person or corporation not entitled to import such article or goods free of duty or taxes or subject to such limited duties or taxes, it shall be the duty of the vendor, donor or transferor to notify the Customs Department forthwith of such sale, gift or transfer, and to pay such duties and taxes, if any, as shall be necessary, in addition to any duties and taxes already paid thereon, to make up the full amount of the import duties and taxes, if any, which would be payable on such article or goods by such vendee, donee or transferee under the Customs Act and Tariff in force at the time of such sale, gift or transfer, upon the basis of the value for duty of such article or goods at that time.

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- (k) The company shall be deemed to have guaranteed payment of duty to the government in the cases in the foregoing sub-clause (j) provided for, and shall be secondarily liable for such duties and shall pay the same if the Minister of Finance and Customs shall have been unable to collect the same from the person or corporation primarily liable.
- (l) The expression "company" wherever used in the foregoing sub-clauses (b) to (k), inclusive, or in the sections of the Act of 1923 or clauses of the agreement of 1923 to which the foregoing sub-clauses (c) and (e) apply, shall include the company's subsidiary companies engaged in the business of generating or transmitting electrical power or energy or of manufacturing pulp or paper or operations incidental thereto or in any business of the nature to which the provisions of the foregoing sub-clause (e) apply; the expression "import duties and taxes of general application" wherever used in the foregoing sub-clauses (f), (g), (h) and (i) shall mean import duties and taxes (including sales taxes on imports) applicable to all importers into the colony of the goods, materials or articles in question, provided that the existence of special reductions, exemptions or rebates lawfully created in favour of fishermen shall not of itself prevent a duty or tax from being deemed of general application; the expression "now in force" wherever used in the foregoing sub-clause (h) shall mean in force prior to the present session of the Legislature; and the expression "value", wherever used in the foregoing sub-clauses (f), (h) and (i) shall mean the current domestic value of the article or material in question in the principal markets of the country whence and at the time when the same was exported directly to this colony. (1927 Agreement, cl. 2 (i), (j), (k) and (l), Case p. 64, l. 8.).

In addition to amending the provisions of the 1927 Agreement, the 1938 Agreement added the following new provisions:

24. All property of the company within the area of any towns or settlements established by the company shall be exempt from municipal taxation. (Case p. 99, l. 14).

26. If within five years from the completion respectively of the extensions referred to in Clause 2 of this Agreement or the increase referred to in Clause 3 of this Agreement the company wishes to instal any plant of a type contemplated in the original design of such extensions or increase as the case may be which the company was unable to instal at the time of the original construction for reasons beyond its control, such plant shall be treated as part of the original installation and be admitted free under Clause 2(d) of the Agreement of 1927 as amended by Clause 25 of this Agreement. (Case p. 100, l. 3).

30. Notwithstanding the provisions of Clause 2(h) of the Agreement of 1927 the company shall be entitled to import coal for the operation of the extensions to its sulphite plant and the increase in the paper capacity of its mills hereinbefore referred to free of duties and taxes. For the purpose of giving effect to this provision it shall be assumed (a) that the coal consumed by the company in its Corner Brook mills in each year up to but not exceeding 20,000 tons is coal imported otherwise than

for such operation as aforesaid and the same shall accordingly be liable to payment of duty under Clause 2(h) of the Agreement of 1927 and (b) that the coal consumed by the company as aforesaid in each year in excess of 20,000 tons is coal imported for such operations as aforesaid and the same shall accordingly be free of duties and taxes.

31. Save as mentioned in the foregoing clauses of this agreement no unmanufactured timber exported by the company under this agreement shall be subject to the payment of any tax duty or charge.

32. The government agrees that it will not impose on the company nor shall the company be liable to pay at any time hereafter any taxes, duties or charges of a special or discriminatory nature. (Case p. 101, l. 20).

The Act of 1927 relating to the 1927 Agreement provided as follows:

1. The agreement made between His Excellency Sir William Lamond Allardyce, G.C.M.G., Governor of Newfoundland and its Dependencies, in Council, of the one part, and International Paper Company of Newfoundland, Limited, of the other part, dated the 2nd day of August, A.D., 1927, and forming the schedule to this Act, is hereby approved, confirmed and adopted, and all and singular the several clauses and provisions thereof are hereby declared to be valid and binding upon the said parties thereto and each of them respectively, and to have the force and effect of law, and all and singular the several acts, matters and things therein provided to be done or performed by or on the part of the parties respectively are hereby declared to be proper and lawful, and the parties and each of them shall have full power and authority from time to time to do and perform or omit to do and perform all and singular the several acts, matters and things in and by the said agreement provided to be done or not to be done, as the case may be, in the manner and with the effect and under the conditions stipulated and provided in the said agreement. (Case p. 55, l. 17).

The remaining provisions amended various provisions of the agreement or dealt with related matters. (Case pp. 56-7).

The Act of 1938 relating to the 1938 Agreement provides as follows:

1. The agreement made between His Excellency Sir Humphrey Thomas Walwyn, K.C.S.I., C.B., D.S.O., Governor of Newfoundland and its Dependencies in Commission of the one part and Bowater's Newfoundland Pulp and Paper Mills Limited, a company incorporated under the laws of Newfoundland and having its registered office at Corner Brook in the Island of Newfoundland of the other part, dated the 29th day of November, A.D. 1938, and forming the schedule to this Act is hereby approved and confirmed and declared to be valid and binding upon the parties thereto.

2. In Clause 5 of the agreement forming the schedule to this Act there shall be inserted after the words "riots or civil commotions" the words "or by adverse commercial or economic conditions existing in any season or seasons which the company shall show to the satisfaction of the government make it reasonable for the company not to comply with such obligations in whole or in part" and the figures and words "25 cents" shall be struck out and the words "two dollars" substituted therefor.

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3. Subject to the amendments above set forth, all and singular the several clauses and provisions of the said agreement set forth in the schedule hereto are hereby declared to have the force and effect of law for all purposes as if expressly enacted herein.

4. Subject to the amendments above set forth, the parties and each of them shall have full power and authority from time to time to do and perform or omit to do and perform all and singular the several acts, matters, things and agreements in and by the said schedule provided to be done or not to be done, as the case may be, in the manner and with the effect and under the conditions stipulated and provided in the said schedule. (Case p. 84).

Sections 49 and 50 of "An Act to amend The Income Tax Act and the Income War Tax Act", c. 25, S. of C. 1949 (2 Sess.) provide as follows:

49. For greater certainty it is hereby declared and enacted that, notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada (including a law of Newfoundland enacted prior to the first day of April nineteen hundred and forty-nine), no person is entitled to

(a) any deduction, exemption or immunity from, or any privilege in respect of,

(i) any duty or tax imposed by an Act of the Parliament of Canada, or

(ii) any obligation under an Act of the Parliament of Canada imposing any duty or tax, or

(b) any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods, unless provision for such deduction, exemption, immunity or privilege is expressly made by the Parliament of Canada.

50. Notwithstanding anything contained in this or any other Act an exemption from taxation provided for in an international treaty or international agreement binding on Newfoundland before the union of Newfoundland with Canada may be extended by regulation of the Governor in Council to taxation by or under any Act of the Parliament of Canada.

The Attorney General of Canada submits that the answer to each of the three questions referred to the Court should be in the negative because:

(1) The statutes referred to in the questions ceased to operate at the time of the Union of Newfoundland with Canada;

(2) Even if these statutes continued in operation after the Union they do not apply in respect of Acts of the Parliament of Canada extended to Newfoundland pursuant to the Union to confer any deduction, exemption, immunity or privilege in respect of a duty, tax, obligation or requirement imposed thereunder;

(3) Even if these statutes continued in operation and any of the provisions thereof apply in respect of Acts of the Parliament of Canada to confer any deduction, exemption, immunity or privilege in respect of a duty, tax, obligation or requirement under an Act of the Parliament of Canada, they have been overridden by section 49 of the "Act to amend

The Income Tax Act and the Income War Tax Act" (Ch. 25, Statutes of Canada, 1949—Second Session), which is validly enacted by Parliament within its authority under the British North America Acts, 1867-1949.

The Terms of Union of Newfoundland with Canada approved and given force of law by the British North America Act, 1949, are Terms 3 and 18:

3. The British North America Acts, 1867 to 1946, shall apply to the Province of Newfoundland in the same way, and to the like extent as they apply to the provinces heretofore comprised in Canada, as if the Province of Newfoundland had been one of the provinces originally united, except in so far as varied by these terms and except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not all of the provinces originally united.

18. (1) Subject to these terms, all laws in force in Newfoundland at or immediately prior to the date of Union shall continue therein as if the Union had not been made, subject nevertheless to be repealed, abolished, or altered by the Parliament of Canada or by the Legislature of the Province of Newfoundland according to the authority of the Parliament or of the Legislature under the British North America Acts, 1867 to 1946, and all orders, rules, and regulations made under any such laws shall likewise continue, subject to be revoked or amended by the body or person that made such orders, rules or regulations or the body or person that has power to make such orders, rules, or regulations after the date of Union, according to their respective authority under the British North America Acts, 1867 to 1946.

(2) Statutes of the Parliament of Canada in force at the date of Union, or any part thereof, shall come into force in the Province of Newfoundland on a day or days to be fixed by Act of the Parliament of Canada or by proclamation of the Governor General in Council issued from time to time, and any such proclamation may provide for the repeal of any of the laws of Newfoundland that

- (a) are of general application;
- (b) relate to the same subject-matter as the statute or part thereof so proclaimed; and
- (c) could be repealed by the Parliament of Canada under paragraph one of this term.

(3) Notwithstanding anything in these terms the Parliament of Canada may with the consent of the Legislature of the Province of Newfoundland repeal any law in force in Newfoundland at the date of Union.

(4) Except as otherwise provided by these terms all courts of civil and criminal jurisdiction and all legal commissions, powers, authorities, and functions, and all officers and functionaries, judicial, administrative, and ministerial, existing in Newfoundland at or immediately prior to the date of Union, shall continue in the Province of Newfoundland as if the Union had not been made, until altered, abolished, revoked, terminated, or dismissed by the appropriate authority under the British North America Acts, 1867 to 1946.

The effect of Terms 3 and 18 of the Terms of Union of Newfoundland is first that the British North America Acts, 1867 to 1946, will apply to the Province of New-

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foundland in the same way and to the like extent as they apply to the provinces heretofore comprised in Canada, as if the Province of Newfoundland had been one of the provinces originally united. The only exceptions are if they are varied by the Terms, or if they are in the provisions which may be held to be specially applicable to or only to affect one or more and not all of the provinces originally united.

Furthermore, subject to the Terms of Union of Newfoundland with Canada, all laws in force in Newfoundland at or immediately prior to the date of union continued therein "as if the union had not been made".

Those laws, nevertheless, may be repealed, abolished or altered by the Parliament of Canada or by the Legislature of the Province of Newfoundland according to the authority of the Parliament or of the Legislature under the British North America Acts, 1867 to 1946.

In addition, all orders, rules and regulations made under any such laws continued, subject to be revoked or amended by the body or person that made such orders, rules or regulations, or the body or person that has power to make such orders, rules or regulations after the date of union according to their respective authority under the British North America Acts, 1867 to 1946.

In my opinion, the "authority" referred to in Term 18(1) is the authority which is given jurisdiction on the respective subject-matters enumerated in Sections 91 and 92 of the British North America Act, that is to say, that by force of Term 18(1) the Parliament of Canada is thereby given the authority to repeal, abolish or alter any and all laws in force in Newfoundland at or immediately prior to the date of union, which deal with the subject-matters in Section 91, and the Legislature of the Province of Newfoundland is given authority to repeal, abolish or alter all laws in force in Newfoundland at or immediately prior to the date of union which deal with the subject-matters in Section 92 of the Act.

That proposition is further supported by subsection (2) of Term 18, which gives to the Parliament of Canada power to put in force, either by Act of the Parliament or by proclamation of the Governor General in Council, all

Statutes of Canada in force at the date of union which are of general application, or which relate to the same subject-matter as the statute or part thereof so proclaimed, and which could be repealed by the Parliament of Canada under paragraph 1 of Term 18.

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Likewise subsection (2) authorizes the Parliament of Canada to repeal any of the laws of Newfoundland thus mentioned in that subsection. It is to be noted that subsection (1) of Term 18 is slightly different, for example, from the corresponding terms in the Acts of Union with Alberta and Saskatchewan.

It is said here that the laws of Newfoundland shall remain in force "as if the union had not been made" which means, to my mind, that notwithstanding that those laws may be dealing with subject-matters rightly coming under the jurisdiction of the Parliament of Canada under Section 91 of the British North America Act, they might nevertheless not cease to operate immediately upon the date of the union until they are repealed, abolished or altered by the Parliament of Canada. But I do not think that we need consider that possible interpretation for the purpose of answering the three questions submitted to the court and which refer only to Bowater's Newfoundland Pulp and Paper Mills, Limited.

I wish, therefore, to make it well understood that any general proposition laid down in the present opinion is strictly limited to that company and to the questions as they are submitted.

In this case, the Parliament of Canada by section 49 of an Act to amend The Income Tax Act and the Income War Tax Act, assented to 10th December, 1949, has legislated that, "notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada (including a law of Newfoundland enacted prior to the first day of April nineteen hundred and forty-nine), no person is entitled to

- (a) any deduction, exemption or immunity from, or any privilege in respect of,
 - (i) any duty or tax imposed by an Act of the Parliament of Canada, or
 - (ii) any obligation under an Act of the Parliament of Canada imposing any duty or tax, or

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(b) any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods,
 unless provision for such deduction, exemption, immunity or privilege is expressly made by the Parliament of Canada”.

The legislation contained in s. 49 clearly relates, in fact and specific terms, to the statutes of Newfoundland whereby Bowater's Newfoundland Pulp and Paper Mills, Ltd., is entitled to deductions, exemptions, immunities or privileges in respect of any duty or tax and of any obligation; and also to exemptions or immunities requiring a licence, permit or certificate for the export or import of goods.

It follows that by force of subsection 2(b) of Term 18 these matters relate to the same subject-matter as the statute or part thereof so proclaimed by Canada and, therefore, that *pro tanto* section 49 of the *Income Tax Act* and *Income War Tax Act* (S. of C. 1949 (2 Sess. c. 25)) repeals the laws of Newfoundland granting these deductions, exemptions or immunities and privileges to Bowater's Newfoundland Pulp and Paper Mills, Limited. It clearly and undoubtedly has that effect and it must be so held unless it could be successfully contended that the legislation of Parliament is unauthorized by the Terms of Union and, accordingly *ultra vires*.

I am of opinion that section 49 was competently enacted both under subsection (2) and subsection (1) of Term 18.

The argument of counsel for the Bowater's Newfoundland Pulp and Paper Mills, Ltd., was that the laws and agreements invoked by that company were to be looked upon as a single indivisible whole and not severable, and that subsection (3) of Term 18, which reads:

(3) Notwithstanding anything in these terms the Parliament of Canada may with the consent of the Legislature of the Province of Newfoundland repeal any law in force in Newfoundland at the date of Union.

therefore applies. They say it follows that the statutes and agreements whereby the Bowater's Newfoundland Pulp and Paper Mills, Ltd., was granted its exemptions, immunities and privileges could not be done away with or altered except with the consent of the Legislature of the Province of Newfoundland.

I cannot agree. Subsection (3) is limited to "repeal" and I would go as far as saying that that subsection may be used by the Parliament of Canada and the Legislature of the Province to authorize the repeal of a law in force in Newfoundland at the date of union even if it relates to a subject-matter under section 92 of the British North America Act.

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Interpreting it as meaning that no laws of Newfoundland can be repealed, except with the consent of the Legislature of that province, would lead to an absurdity. It is only necessary to mention that the statutes and agreements concerning Newfoundland grant immunities from customs and excise duties to show that any such intention can never have entered into the minds of the drafters of the Terms of Union, for customs and excise duties clearly belong to Parliament under section 91 of the British North America Act, and, if we suppose that Newfoundland would refuse its consent to the repeal of at least that part of the statutes and agreements with Bowater's Newfoundland Pulp and Paper Mills, Ltd., the customs and excise duties owed by the latter would forever remain under the jurisdiction of Newfoundland; the Parliament of Canada would be helpless to remedy that situation and as the whole organization of customs and excise duties administration is with the Parliament of Canada, the whole matter would become unworkable.

Nor do I think that the principle of severability, as it is expounded in several decisions of this Court and of the judicial committee of the Privy Council, applies in the premises. It has come into play when the courts had to examine the validity of legislation emanating from one Parliament or Legislature, but never in a case like the present one, when we are discussing the respective authority of Parliament of the one part and the Legislatures of the other part.

Above all, I am of opinion that subsection (1) of Term 18 was made precisely to cover the severability resulting from the union. By force of that subsection, Parliament was recognized as the true authority henceforth to repeal, abolish or alter the laws, orders, rules or regulations having as subject-matters those which are enumerated in section

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91 of the British North America Act; and the Legislature of Newfoundland, on the other hand, was given the authority to repeal, abolish or alter the laws, orders, rules or regulations which deal with the subject-matters enumerated in section 92 of the British North America Act. It could not be otherwise, and, if it had not been so, the Terms of Union could never have functioned.

So that the argument of indivisibility or severability not only cannot apply in the operation of the Terms of Union but it is specifically provided for in subsection (1) of Term 18.

As a consequence of that subsection, upon the union being consummated, all subject-matters under section 91 came under the jurisdiction of the Parliament of Canada and the subject-matters under section 92 remained under the jurisdiction of the Province of Newfoundland "according to their respective authority under the British North America Acts, 1867 to 1946".

It seems to me, therefore, abundantly clear that, upon the union taking place, customs and excise duties being properly in the domain of the Parliament of Canada, that Parliament became the only competent body to legislate in regard to them throughout Canada, including Newfoundland. As said before, I do not think that the questions call upon the court to say what happens in that respect during the period extending from the date of the union to the date when legislation from the Parliament of Canada is made to come into force either for the purpose of repealing, abolishing or altering.

As for taxes, and amongst them, income taxes or income war taxes, the situation is somewhat different for both the Parliament and the Legislatures have been given the power to tax. I would not doubt that the exemptions in respect of taxes remain in force for the benefit of the Bowater's Newfoundland Pulp and Paper Mills, Ltd., in so far as they apply to provincial taxes; but these exemptions, if sought to be invoked as against federal taxes, can of course have no effect and they become inoperative. Under no rule of interpretation can Bowater's Newfoundland Pulp and Paper Mills, Ltd., be regarded as having been given an exemption or an immunity from the taxes imposed by

the Parliament of Canada. In that sense they are in no different situation from any other company in any other province of Canada. The British North America Act authorizes double taxation within the limits therein stated and innumerable examples could be given of companies enjoying exemption and immunity from provincial taxes and which, of course, does not carry exemption and immunity from federal taxes. In the present case, the imposition of federal taxes is only the imposition of an additional tax upon Bowater's Newfoundland Pulp and Paper Mills, Ltd.—a situation against which, of course, the former colony of Newfoundland can never protect the Bowater's Newfoundland Pulp and Paper Mills, Ltd.

Section 49 does not divest the Bowater's Newfoundland Pulp and Paper Mills, Ltd., of its immunities, exemptions or privileges in respect of taxes within the territory of Newfoundland. It says merely that the exemptions, immunities and privileges granted by Newfoundland do not apply with respect to federal taxes.

Having come to those conclusions, the answers to the questions referred to the court must be in the negative.

To Question No. 1, I answer no;

To Question No. 2, I answer no;

To Question No. 3, I answer no, since export or import of goods are exclusively of the competency of the Parliament of Canada.

KERWIN J.:—Under section 55 of the *Supreme Court Act* the Governor in Council referred to this court for hearing and consideration the following questions: (See p. 609 *supra*).

No question is raised as to the validity or effect of these statutes before the Union of Newfoundland with Canada. Newfoundland became part of Canada as a province thereof on, from, and after the coming into force of the Terms of Union between the two countries, which were agreed to between representatives of both and were approved by the Government of Newfoundland, and, by chapter 1 of the Statutes of 1949 of Canada, by the Canadian Parliament, assented to February 18, 1949. As the British North America Act, 1949 (Imperial), confirmed the Terms of Union and enacted that they should have the force of law

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notwithstanding anything in the British North America Acts, 1867 to 1946, the terms, by virtue of number 50, came into force immediately before the expiration of March 31, 1949.

All of the Newfoundland statutes listed were enacted before the Union of Newfoundland with Canada by the Governor, Legislative Council and House of Assembly of Newfoundland or by the Governor by and with the advice of the Commission of Government. Newfoundland had a Constitution until it was suspended by the Commission of Government referred to, as of February 16, 1934, and by Term 7 of the Terms of Union that Constitution as it existed immediately prior to that date "is revived at the date of union and shall, subject to these terms and the British North America Acts, 1867 to 1946, continue as the Constitution of the Province of Newfoundland from and after the date of union, until altered under the authority of the said Acts."

By Term 3:—(See p. 619 *supra*).

By other Terms of Union provision is made for the executive and legislature and such special matters as education, patents, trade marks and fisheries but the important term is 18, the four paragraphs of which read as follows:—(See p. 619 *supra*).

In pursuance of paragraph (2) of this term the Governor General in Council by a proclamation dated April 1, 1949, brought into force in the province as of that date the *Customs Act* and the *Excise Tax Act* of Canada. By another proclamation, of May 9, 1949, the Dominion Income Tax Act was brought into force in the province as of May 16, 1949, the date of the publication of the proclamation in the *Canada Gazette*. If there were any doubt as to the intention to make applicable the *Customs Act*, the *Excise Tax Act*, and *The Income Tax Act*, of the Dominion, such doubt is removed by the provisions of s. 49 of c. 25 of the 1949 Canadian Statutes (2 Sess.).

The questions submitted may be answered by a consideration of paragraphs (1) and (3) of Term 18 when applied to the listed statutes which I assume are part of the "laws in force in Newfoundland at or immediately prior to the date of union." These statutes deal with Bowater's

Newfoundland Pulp and Paper Mills Ltd. or its predecessors, all of which will be hereafter included in the term "company". They were concerned with giving effect to and carrying out various agreements between the company and the Government of Newfoundland. The latter was interested in promoting the development of industry in the country and the company was interested in obtaining lands, mineral rights, water rights, timber rights and concessions. It may be stated briefly that the agreements provide:—the stock and shares, and the bonds, debentures, debenture stock, mortgage, and other securities of the company are exempt from taxation for a period of fifty years; the company is to pay the Government for five years in respect of its income, a tax of twenty per centum subject to a maximum; import duties on certain articles are foregone; certain property of the company is exempt from municipal taxation; the Government of Newfoundland and the Treasury in England agree to guarantee certain debentures of the company, which guarantees, we are informed, have been given. On the other hand, the company agrees to establish and maintain certain water-power developments and manufacturing establishments, and we are told that its investment in Newfoundland amounts approximately to eighty-six million dollars.

The company admits that the Dominion may require to be taken out a licence, permit, or certificate, as referred to in the questions, but denies that Canada may exact duties or taxes otherwise than as provided by the Newfoundland statutes. Its first argument runs as follows. While it is admitted that paragraphs (1) and (4) of Term 18 correspond generally to s. 129 of the *British North America Act, 1867*, it is pointed out that the B.N.A. Act, 1949 (Imperial), gave the Terms of Union the force of law notwithstanding anything in the B.N.A. Acts, 1867 to 1946. Hence it follows, it is said, that Term 18 must be taken to contain all the provisions relative to the determination of the points involved in this reference and, to give full effect thereto, the laws of Newfoundland in force at the date of union must be divided into three categories:—

- (a) those which fall clearly within the Dominion field under the B.N.A. Act and are subject to be repealed, abolished or altered by the Federal Parliament;

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- (b) those which fall clearly within the provincial field and are subject to be repealed, abolished or altered by a provincial legislature;
- (c) those not falling within either of the categories (a) or (b) but which are of mixed subject matter and inseverable such as the Bowater's law, which is a law in which matters under Dominion and Provincial control are so interwoven as to constitute an indissoluble mixture of consideration flowing to and from Bowaters as to be inseverable.

If any particular law falls within (a) or (b), then either Parliament or the Legislature, as the case may be, is empowered to act but, if, as is contended here, it is within category (c), then paragraph (3) of Term 18 applies and Parliament may repeal it but only with the consent of the Legislature. This paragraph, it will be noticed, does not provide for a mere alteration and the argument cannot prevail since it leaves no room for the application of paragraph (1) of Term 18.

While the questions are general in their terms as to the Acts of the Parliament of Canada, the discussion at Bar centered around *The Income Tax Act*, the *Customs Act*, and the *Excise Tax Act*. As to these, I have no difficulty in answering each of the questions in the negative upon a consideration of paragraph (1) of Term 18, taken in conjunction with paragraph (3) thereof, because those fields are indisputably open to the Dominion under s. 91 of the *British North America Act, 1867*, and those three Acts were brought into force in Newfoundland by proclamations as provided by paragraph (2). The same result follows with respect to any duty or taxes imposed by an Act of the Parliament of Canada, or any obligation under any such Act imposing any duty or tax, or any such Act requiring a licence, permit, or certificate for the export or import of goods so long as such Act relates to any field allotted to the Dominion. Whatever may have been in the mind of the draftsman, the mere power conferred by paragraph (3) to repeal with the consent of the Newfoundland Legislature cannot cut down the previous power to repeal, abolish and alter, that, in the relevant fields, is conferred by paragraph (1) upon the Parliament of Canada. This conclusion is strengthened by paragraph (4) of Term 27, which appears under the heading "Tax Agreement". This term provides for a possible agreement between the Government of Canada and the Government of the Province

of Newfoundland for the rental to the former of the income, corporation income, and corporation tax fields, and the succession duties tax field. Paragraph (4) reads:—

(4) The Government of the Province of Newfoundland shall not by any agreement entered into pursuant to this term be required to impose on any person or corporation taxation repugnant to the provisions of any contract entered into with such person or corporation before the date of the agreement and subsisting at the date of the agreement.

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The very fact that in connection with such a matter provision is made whereby the Newfoundland Government is not obliged to impose taxes repugnant to a mentioned contract indicates that under Term 18 (1) the power of Parliament is untrammelled when acting within its proper field of activity.

The second of the company's arguments starts with the assumption that paragraphs (1) and (4) of Term 18 correspond to s. 129 of the *British North America Act, 1867*, and then proceeds to rely upon the decision of the judicial committee in *Dobie v. Temporalities Board* (1), delivered by Lord Watson, as establishing that since the Canadian Parliament could not have entered into all the terms of the various agreements with the company, and since all the terms thereof are so indissolubly mixed, Parliament has no jurisdiction to enact legislation relating to any of the terms. In that case a statute of the old Province of Canada had created a corporation having a corporate existence and rights in Ontario and Quebec, and it was held by the judicial committee that after Confederation it could not be repealed or modified by the Legislature of either Ontario or Quebec or by the joint operation of both but only by the Parliament of the Dominion. An Act of Quebec, which purported to amend the pre-Confederation statute, did not profess to repeal and amend the earlier Act only in so far as its provisions might apply to or be operative within the Province of Quebec and its enactments were apparently not framed with a view to any such limitation. Lord Watson points this out at page 150 and states that the reason for it was obvious and that it was a reason fatal to the validity of the Act. He continues:—

The corporation and the corporate trust, the matters to which its provisions relate, are in reality not divisible according to the limits of provincial authority. In every case where an Act applicable to the two

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provinces of Quebec and Ontario can now be validly repealed by one of them, the result must be to leave the Act in full vigour within the other province. But in the present case the legislation of Quebec must necessarily affect the rights and status of the corporation as previously existing in the province of Ontario, as well as the rights and interests of individual corporators in that province.

This extract clearly shows the distinction between that case and the problem presented to us.

But the Company points particularly to the following statement by Lord Watson in the same case at page 147 with reference to s. 129 of the *British North America Act, 1867*:

The powers conferred by this section upon the provincial Legislatures of Ontario and Quebec to repeal and alter the statutes of the old Parliament of the province of Canada are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867. In order therefore to ascertain how far the provincial Legislature of Quebec had power to alter and amend the Act of 1858 incorporating the board for the management of the Temporalities Fund, it becomes necessary to revert to s. 91 and 92 of the *British North America Act*, which enumerate and define the various matters which are within the exclusive legislative authority of the Parliament of Canada, as well as those in relation to which the Legislatures of the respective provinces have the exclusive right of making laws. If it could be established that, in the absence of all previous legislation on the subject the Legislature of Quebec would have been authorized by s. 92 to pass an Act in terms identical with the 22 Vict. c. 66, then it would follow that the Act of the 22nd Vict. had been validly amended by the 38 Vict. c. 64. On the other hand, if the Legislature of Quebec has not derived such power of enactment from s. 92, the necessary inference is that the legislative authority required in terms of s. 129 to sustain its right to repeal or alter an old law of the Parliament of the province of Canada is in this case wanting, and that the Act 38 Vict. c. 64, was not *intra vires* of the Legislature by which it was passed.

Furthermore, the company relies upon the statement of Lord Watson, delivering the judgment of the Privy Council in the *Distillers and Brewers Case, Attorney General for Ontario v. Attorney General for Canada* (1), at page 366, where he says:—"It appears to their Lordships that neither the Parliament of Canada nor the provincial legislatures have authority to repeal statutes which they could not directly enact. Their Lordships had occasion, in *Dobie v. Temporalities Board, supra*, to consider the power of repeal competent to the legislature of a province . . . The same principle ought, in the opinion of their Lordships, to be applied to the present case." But on that reference it was

(1) [1896] A.C. 348.

held that in so far as the provincial enactments came into collision with the provisions of the Canada Temperance Act of 1886 they must yield to Dominion legislation. Instead of assisting the company's present argument, the decision is definitely against it.

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Here it is not suggested by the questions that any attempt would be made by Parliament to repeal the Newfoundland statutes but the point involved is whether Parliament may enact legislation relating to subjects assigned to it although such legislation may affect provincial matters. The rule that it may do so is well settled and has been consistently followed and neither the judgment in the *Dobie* case nor Lord Watson's statements at pages 147 and 150, quoted above, are in conflict with it. I therefore answer each of the questions in the negative.

Taschereau J.

TASCHEREAU J., dissenting:—From 1915 to 1947, the Government of Newfoundland enacted several statutes for the purpose of ratifying or modifying various agreements entered into with the Bowater's Newfoundland Pulp and Paper Mills and its predecessors.

It is, I think, unnecessary to analyse in detail all these laws and agreements. It will be sufficient to mention that the Government of Newfoundland, for the purpose of developing enterprises in the colony, and creating new industries, made certain concessions and granted privileges to the company, in consideration of which the latter assumed specific and quite onerous obligations.

The purpose of this reference is to obtain the opinion of this court, as to whether or not the company is entitled, since Newfoundland has become a Province of Canada, to any deduction, exemption or immunity in respect of any duty or tax imposed by any act of the Parliament of Canada.

The company has fulfilled all its obligations, has spent over \$85,000,000 and now claims that it is entitled to the exemptions and deductions of income tax, customs and excise duties granted by the agreements entered into with the Government of Newfoundland, and which in view of the statutes enacted, have the force of law. It is of course not contested that income tax, customs and excise

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duties may be properly imposed by the Dominion Government, but the submission is that by the Terms of Union, the company still enjoys the privileges granted by the Government of Newfoundland, and that it is therefore beyond the powers of the Dominion to deprive the company of the exemptions conferred by the then competent authority.

The Attorney-General's of Canada's submission is that Parliament has legislative authority to amend or override laws of Newfoundland that are continued after the union, to the extent that the subject matters of the laws fall within the legislative authority of Parliament, under s. 91 of the British North America Act. This would be expressly reserved to Parliament by Term 18 of the union which continues the laws, subject to the power of Parliament and the Legislature, to amend or override them within their respective spheres.

Section 18(1) of "An Act to approve the Terms of Union of Newfoundland with Canada" and assented to on the 18th of February, 1949, is as follows:—(See p. 619 *supra*).

It will be observed that section 18(1) is substantially similar to section 129 of the British North America Act, dealing with the continuation and repealing of laws. This s. 129 is as follows:—

129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective province, according to the authority of the Parliament or of that Legislature under this Act.

Pursuant to the powers granted to the Dominion under s. 18(2), the Governor General in Council issued a proclamation on April 1, 1949, bringing into force in Newfoundland the *Customs Act* and the *Excise Act*, and on May 9, 1949, another proclamation brought into force the Dominion Income Tax Act. Furthermore, in 1949, the Parliament of Canada enacted "An Act to Amend The Income Tax Act

and The Income War Tax Act" (S. of C., 1949 (2 Sess.) c. 25) and the relevant sections which are 49 and 50, provide as follows:—

49. For greater certainty it is hereby declared and enacted that, notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada (including a law of Newfoundland enacted prior to the first day of April nineteen hundred and forty-nine), no person is entitled to (a) any deduction, exemption or immunity from, or any privilege in respect of,

(i) any duty or tax imposed by an Act of the Parliament of Canada, or

(ii) any obligation under an Act of the Parliament of Canada imposing any duty or tax, or

(b) any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods, unless provision for such deduction, exemption, immunity or privilege is expressly made by the Parliament of Canada.

50. Notwithstanding anything contained in this or any other Act an exemption from taxation provided for in an international treaty or international agreement binding on Newfoundland before the union of Newfoundland with Canada may be extended by regulation of the Governor in Council to taxation by or under any Act of the Parliament of Canada.

Before joining Confederation, Newfoundland had a unitary Government and by virtue of its undivided powers, had full authority to enact laws concerning the various matters found in the agreements with the company. It could competently deal with income tax, customs and excise duties, land and water grants, mining concessions, municipal taxation, matters which under the scheme of Confederation are not attributed to only one authority. The validity of the agreements entered into are therefore unchallengeable.

However, by entering Confederation, Newfoundland renounced its rights to legislate on all subject matters which are under the British North America Act, of the exclusive jurisdiction of the Parliament of Canada, and its legislative authority was therefore limited to the narrower sphere of s. 92. This limited status created an entirely new situation for Newfoundland, and the question now arises as to which authority has the power to repeal *in toto* or partially, the statutes which have given force of law to the agreements entered into between the parties.

The Terms of Union contemplate the continuation, amendment, or repeal of the laws of Newfoundland, and

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the enforcement and application in the new province of the laws of Canada. It is unquestionable that all the laws enacted by the former Government of Newfoundland, and dealing with matters enumerated in s. 91 of the B.N.A. Act, may be repealed, abolished or altered by the central government, which is, by virtue of the law, vested with the necessary authority to deal with these matters. The case would be an easy one if we had merely to decide that federal income tax, customs and excise duties imposed by the Parliament of Canada, apply to Newfoundland, but the statutes with which we have to deal cover so many different matters, of both provincial and federal competency, and are so linked together that an entirely new situation arises. They cover matters some of which are now within the legislative powers of the Province of Newfoundland.

Under the Terms of Union, Newfoundland has obviously a new status, but I cannot agree with the submission of the Attorney General for Canada, that the statutes referred to in the questions submitted, ceased to operate at the time of the Union of Newfoundland with Canada. By the very terms of s. 18, para. (1) of the Act to approve the union, all the laws in force in Newfoundland, at or prior to the date of union, continue as if the union had not been made, subject to be repealed, abolished or altered by the Parliament of Canada or by the Legislature, according to their respective authority under the B.N.A. Act. It follows that these statutes continue to be in force, until repealed by the competent authority.

It cannot be contested that agreements of this kind are given a legal effect only because of a statutory approval, and that they cease to have such an effect, with the withdrawal of the approval. (*Attorney General for B.C. v. Esquimalt and Nanaimo* (1)). But with respect, I believe that neither the Parliament of Canada, by legislation, nor the Governor General in Council, by proclamation, may withdraw the approval which has been given to the statutes now under consideration. If all the matters covered by the agreements were matters on which the Dominion could competently legislate under s. 91, I would not hesitate to answer the interrogatories in the negative, in view of s. 18(1), because the statutes would then be repealed,

abolished or altered by the competent authority. But these statutes do not deal only with matters of federal concern, but also with matters which are now clearly within the exclusive province of the local Legislature. They are so closely interwoven that they form together a complete unity that makes them inseverable. They must be read together; they form a group that cannot be altered piecemeal, without affecting fundamentally their "*raison d'être*". If so, they would not have any effective operation, as the whole scheme contemplated would be entirely destroyed. They surely would not have been adopted, amputated of all that is now proposed to be repealed. (*Attorney General for Alberta v. Attorney General for Canada* (1)).

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In *Dobie v. Temporalities Board* (2), the judicial committee discussed s. 129 of the B.N.A. Act, a section which is substantially similar to s. 18(1) of the Terms of Union, and at page 147, their Lordships expressed the following views:—

The powers conferred by this section upon the provincial Legislatures of Ontario and Quebec to repeal and alter the statutes of the old Parliament of the Province of Canada are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867 * * *

If it could be established that, in the absence of all previous legislation on the subject the Legislature of Quebec would have been authorized by sect. 92 to pass an Act in terms identical with the 22 Vict. c. 66, then it would follow that the Act of the 22nd Vict. has been validly amended by the 38 Vict. c. 64. On the other hand, if the Legislature of Quebec has not derived such power of enactment from Sect. 92, the necessary inference is that the legislative authority required in terms of sect. 129 to sustain its right to repeal or alter an old law of the Parliament of the Province of Canada is in this case wanting, and that the Act 38 Vict. c. 64, was not *intra vires* of the Legislature by which it was passed.

Later, in *Attorney General for Ontario v. Attorney General for the Dominion* (3), their Lordships said at page 366:—

It appears to their Lordships that neither the Parliament of Canada, nor the Provincial Legislatures have authority to repeal Statutes which they could *not directly enact*.

Applying these principles to the present case, it would appear that the Dominion cannot legislate in any way to modify these inseverable statutes in such a way that their purpose would be defeated, for the reason that it could

(1) [1947] A.C. 503 at 519.

(3) [1896] A.C. 348.

(2) 7 App. Cas. 136.

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not, in view of the divided legislative powers attributed by the B.N.A. Act, *directly enact them*. If it did so, it would invade a field which is reserved exclusively to the jurisdiction of the Legislature, and consequently, act beyond its constitutional powers.

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Unless very extraordinary conditions happen, the respective legislative authority of the Dominion and of the provinces, is found in ss. 91 and 92 of the B.N.A. Act, and the exclusive powers that belong to each authority cannot be delegated to the other. But there are cases, where serious conflicts would occur if the co-operation of the Dominion and the provinces was not willingly offered, to arrive at a satisfactory solution. (*Attorney General for B.C. v. Attorney General for Canada*, (1).

The present case is, I think, one of these, and it seems to be reasonably clear, that it is with the above pronouncement of the judicial committee in mind, that the framers of the Terms of Union incorporated s. 18(3) in the Act to approve the Terms of Union. It reads as follows:

18 (3). Notwithstanding anything in these terms, the Parliament of Canada may *with the consent of the Legislature* of the Province of Newfoundland repeal any law in force in Newfoundland at the date of Union.

Of course, the consent of the Legislature cannot empower the Dominion to legislate on provincial matters. But the Imperial statute which ratified the Terms of Union vested in the Dominion the necessary authority to do so, after the consent has been obtained legally.

At the hearing, the Attorney General for Newfoundland who intervened to support the stand taken by the company, said that this section 18(3) was incorporated in the Act for the very purpose of dealing with cases such as the one which is submitted to this court. The plausibility of this statement cannot be challenged, for it was common knowledge that the former unitary Government of Newfoundland, being then supreme in its legislative powers, had enacted laws which are now of a mixed federal and provincial character, and that they continued in force by the Terms of Union. There being no authority to repeal these inseverable laws, the necessary power was granted by

the Imperial Parliament to the Dominion to repeal them, with however the consent of the Legislature of Newfoundland.

As this consent has not been obtained, I have come to the conclusion that the Parliament of Canada alone has no power to impose taxation upon the company in contravention of the terms of the agreements which have been ratified by statutes. I would therefore answer the interrogatories as follows:

1. Yes; the deductions, exemptions, immunities and privileges provided for in the said Statutes of Newfoundland.

2. No, except in respect of the obligations to pay duties or taxes otherwise than as provided by the said Statutes of Newfoundland.

3. No, except in so far as the acquisition or possession of any such licence, permit or certificate entails the payment of duties or taxes otherwise than as provided by the said Statutes of Newfoundland.

RAND J.:—The Governor in Council has referred to this court the following questions:—(See p. 609 *supra*).

They arise in the context of a series of instruments executed between 1915 and 1942 between His Majesty represented by the Governor in Council of Newfoundland and the respondent company or its predecessors in title and confirmed in several forms by the legislature of that colony. Those up to and including 1923 were “approved and confirmed”: amendments in 1927 and 1935 were, in addition, declared to “have the force of law” and each party to have “full power and authority” to carry out their provisions; and in 1938, “to have the force and effect of law for all purposes as if expressly enacted herein.” The legislation effected original modifications, also, both by way of amendment of clauses contained in the instruments and in the form of new provisions.

The matter of this convention was a large scale industrial development at Corner Brook, Newfoundland, involving the extensive use of hydro-electric power in the production of fertilizers and allied substances and the manufacture

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of pulp and paper. The company was granted lands, waters and water powers. The capital investment was to be not less than \$20,000,000.

The company was to enjoy two concessions which raise the controversy here, one, an exemption, for periods specified, from customs duties or taxes on certain imports and exports; the other, an exemption for 50 years from all other taxes by a statutory clause which at the same time provided for an annual payment based upon a percentage of defined income with a maximum of \$150,000 per annum. The provisions governing the former were in part contained in the instruments and in part in legislative amendments or original enactments.

Throughout the instruments and the legislation there is preserved the conception of a contractual arrangement. Its matter was of a nature that required legislation which, I think, has given statutory fixation to its terms. The grants taken by themselves may or may not have been within the authority of the Crown to make; but the exemptions and certain powers of administrative regulation could be carried out only under legislative authority.

It is, to me, indubitable that the colonial Legislature before the union could, of its own motion, and regardless of the assent of the company, have altered the terms with which we are concerned without affecting the validity or force, though not necessarily the interpretation or effect, of those then remaining.

Newfoundland entered into the federal system of Canada as of the 1st day of April, 1949. The Terms of Union, confirmed by Parliament at Westminster, and the provisions of the British North America Acts, 1867 to 1946, provide the investment and distribution of legislative and executive powers in and between the new province and the Dominion and the answers to the questions depend on the effect of those enactments upon the legislative contract.

As has been so often reiterated, throughout the Commonwealth His Majesty maintains a constitutional identity as the sovereign source of executive and legislative power, and in its contractual aspect the arrangement suffered no disruption by reason of the political alteration. In the aspect of legislation, section 18(1) of the Terms of Union declares that:—(See p. 619 *supra*).

This, for all purposes here, is identical in effect with s. 129 of the British North America Act. S. 18(3) introduces a further and new provision:—

Notwithstanding anything in these terms the Parliament of Canada may with the consent of the Legislature of the Province of Newfoundland repeal any law in force in Newfoundland at the date of Union.

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The legislative result of the union has been to transfer to the field of the Dominion those provisions of law which relate to matters attributed in the constitutional structure to the Dominion; from the moment of union they operate as Dominion laws, subject thereafter to be dealt with under s. 18(1); so, likewise, in the case of the province. Is the exercise of these new jurisdictions restricted by the contractual nature of the arrangement or on the ground that the instruments and the legislation, or the latter alone, constitute a legislative entirety?

At the outset, several propositions must be postulated: the totality of legislative power exercisable under the federal constitution must be taken to be vested in the Dominion and province with each, in its own field, sovereign, whether the effective exercise is exclusive or in co-operation, but always as a several exercise; the effect of s. 18(1) of the Terms of Union and s. 129 of the British North America Act is to maintain a continuity not of statutes but of laws, in the sense of distributive provisions which take their place in the one or other jurisdiction according to their subject matter: *Dobie v. Temporalities Board*, (1); and that modification of the continued laws may be by repeal or amendment or by way of repugnant enactment: *Attorney General of Ontario v. Attorney General for the Dominion*, (2).

There is nothing in the British North America Acts or in the Terms of Union which allocates a legislative contract as a subject matter of jurisdiction. A contract is a convention resting upon and within limits allowed by law. It may deal with matters regulated by laws of either the Dominion or province. Its performance is carried out by acts subject to those laws. But here the provisions dealing with customs duties and taxes are necessarily legislative

(1) 7 App. Cas. 136.

(2) [1896] A.C. 348.

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provisions which only the state could undertake; and as the legislature cannot bind its future action, they remain subject to the contingency of that action.

What in substance is urged by the company is that the Crown, exercising both executive and legislative capacities, has entered into a legislative bargain which, as an entirety, must be brought within a single jurisdiction as a legislative subject matter. Before the union, the Crown as executive and in legislature possessed totality of power. The union effected a division of jurisdiction in laws applicable to the several items of the contract, from which it followed that the source of law now necessary to the contract as a whole is seen to be in both Parliament and Legislature. The action of these bodies, then, not several but joint as by one legislative organ, upon the total subject matter, is the only means by which the terms can be altered. Consistently with this, the Crown as executive would now have two sets of advisers acting jointly and each interested in the whole. So conceived, the act of each body requires as a condition of its legislative efficacy the identical act of the other; the contract has become the subject matter of simultaneous and conditional legislative jurisdiction of Canada plus Newfoundland. This is, of course, to be distinguished from an aggregate of several power, each jurisdiction acting with full efficacy *ab initio*. Such a conception is novel in the history of federal constitutionalism, and I am unable to find anything in the constitutional enactments that gives the slightest countenance to it.

Admittedly the provisions are not severable as terms of a contract, but they are clearly so as legislative subject matters. If it were otherwise, the province could not now by itself authorize the slightest change in the conditions of any licence or local matter involved without the executive and legislative concurrence of the Dominion: nor could the Dominion modify even beneficially to the company the customs or tax concessions and maintain them within the integrity of the legislation. Such results would, I think, be absurd. It attributes to Parliament and Legislature a joint jurisdiction exceeding their several aggregate. It, in fact, remits the arrangement to the

exclusive jurisdiction of the Imperial Parliament. S. 18(3) of the Terms of Union permits only a *repeal* of any law. This contrasts repeal with repugnancy but it is a cumulative power and cannot be taken to derogate from the jurisdiction of Parliament under 18(1). The consequence of an inability to repeal, in its strict sense, would be the persistence of the colonial statute to which future legislation would be related as the underlying law: s. 18(3) enables that state of things to be eliminated.

But the contractual effect or the internal relations of legislation are not determinative of jurisdiction under the Act of 1867: it is the matters with which it deals. So far as the contract needs legislative sustenance, it is dependent on appropriate statutory action. There might, of course, be matter which could be dealt with affirmatively under union only by aggregate action. If, for instance, there had been a railway belonging to the company which connected with that of the provincial government now by the Terms of the Union passed to the Dominion, and between the two lines a statutory tariff of joint rates had been in force, then under the ruling in *Montreal v. Montreal Street Railway* (1), the legislative authority to bring about such a rate would be in both legislatures acting concurrently, although they could not by such action repeal the colonial law; but it could not be doubted that in such a case either legislature, exercising its own jurisdiction, could frustrate the colonial law by repugnant law, each operative independently from the time of its enactment. But that character of legislative action is denied for the situation here. If it were not available, there would be a lacuna in jurisdiction which we have long since excluded from our constitutional endowment.

The case of *Dobie v. Temporalities Board*, *supra*, was strongly urged as governing the issues here. In that case, the Legislature of Quebec had repealed a statute of the Province of Canada, continued in force after the union by s. 129, which had this peculiarity, that its provisions applied both to Quebec and to Ontario, and were incapable of being severed so as to make them applicable to one of these provinces only. It was argued that the matter applicable to two provinces was analogous to matter distributed

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(1) [1912] A.C. 333.

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between two jurisdictions which here, as in that case, was not severable. I think the analogy fails on both grounds. The statutory incorporation was obviously of a nature beyond the competence of either province to enact or to repeal: and the exemptions from customs duties and Dominion taxation are for legislative purposes as severable as if they were contained in another statute. It is only when we consider them in a contractual or an internal dependency aspect that any such question arises. Any effect upon the remaining terms of the arrangement is an incidental consequence of the exercise of a paramount legislative jurisdiction. Results of this nature may frustrate the original object, but that is a question for Parliament; with it, the courts have nothing to do.

Mr. Carson urged the ordinary rule of severability as the test of Dominion jurisdiction, but I cannot see its relevancy. The question is not whether we can conclude that the colonial legislature would have enacted the legislation with the clauses relating to duties and taxes omitted; I assume it would not; the question is the wholly different one of its jurisdiction to repeal those clauses once enacted while maintaining the remainder of the legislation; and if the colonial legislature, as I think, could have done so, as certainly the Imperial Parliament could have done, then the Canadian Parliament, exercising its jurisdiction over the same matters, may do so even if its power is confined to these items and that of the colonial legislature was not.

On April 1, 1949 the *Customs Act* and on May 9, 1949, The *Income Tax Act*, were brought into force in Newfoundland by proclamation under s. 18(2) of the Terms of Union.

By chapter 25 of the Statutes of Canada 1949 (2 Sess.) the following amendment to the Income Tax Act was enacted:—(See p. 618 *supra*).

The effect of this amendment, the general application of which was not disputed, is to override any provision of the legislative arrangement before us with which the statutes mentioned conflict.

I would, therefore, answer the questions as follows:

1. No.
2. No.
3. No.

KELLOCK J.:—It is not necessary to restate the questions referred to this court. The essential question throughout is as to whether or not the respondent company may claim exemption from the provisions of certain federal legislation, namely, the *Income War Tax Act*, the *Customs Act* and the *Excise Act*, by reason of anything contained in certain statutes of Newfoundland enacted prior to union. The last two mentioned statutes were proclaimed to be in force in the new province as of April 1, 1949, pursuant to subsection (2) of Term 18 of the Terms of Union, and the first named was similarly proclaimed as of the 16th of May following.

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By subsection (1) of Term 18 it is provided that, subject to the terms, all “laws” in force in Newfoundland at or immediately prior to union shall continue therein, subject to be “repealed, abolished, or altered” by Parliament or the provincial legislature according to the authority of each under the British North America Act, 1867 to 1946.

By subsection (2), already referred to, it is provided that “statutes” of the Parliament of Canada in force at the date of union, or any part thereof, shall come into force in the new province on a day or days to be fixed by Act of Parliament or by proclamation of the Governor General in Council. Subsequent to the proclamations with respect to the three statutes already referred to, Parliament by 13 George VI, c. 25, s. 49, enacted as follows:

(See p. 618 *supra*).

Respondent contends in the first place that nothing in the Canadian legislation affects its position under the pre-union legislation of Newfoundland. It is said that, since the pre-union legislation includes subject matters which are now apportioned for legislative purposes between Parliament and the provincial legislature by sections 91 and 92 of the British North America Act, and since neither legislature can validly legislate with respect to these entire matters, neither can, of itself, “repeal, abolish or alter” such legislation. In support of this argument, reliance is placed upon the judgments of the Privy Council in *Dobie v. The Temporalities Board* (1), and *Attorney General for Ontario v. Attorney General for the Dominion* (the Local Prohibition case) (2). In the second place, it is said that

(1) 7 App. Cas. 136.

(2) [1896] A.C. 348.

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the only means by which the pre-union legislation can be effectively dealt with is by joint action of the two legislatures under subsection (3) of Term 18.

With respect to this last mentioned argument, I am of opinion that subsection (3) in no way limits the operation of subsections (1) and (2). It is expressly limited to "repeal" and, in any event in my view, merely provides one means by which repeal of any pre-union "law" may be effected.

As to the first argument, it was held in *Dobie's* case that a pre-Confederation statute of Canada which created a corporation having its corporate existence and rights in what subsequently became the provinces of Ontario and Quebec, could not be repealed by the legislature of either province, or by the joint operation of both, but only by the Parliament of the Dominion, it being there laid down that the power of a provincial legislature to alter, or amend, a pre-Confederation *statute* is precisely co-extensive with its power to enact identical legislation.

In the Local Prohibition case, Lord Watson, in delivering the judgment of the Board, said at page 366:

But the Dominion Parliament has no authority conferred upon it by the Act to repeal directly any provincial *statute*, whether it does or does not come within the limits of jurisdiction prescribed by s. 92. The repeal of a provincial *Act* by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion * * * It appears to their Lordships that neither the Parliament of Canada nor the provincial legislatures have authority to repeal *statutes* which they could not directly enact.

The board held in that case that The Canada Temperance Act of 1886, insofar as it purported expressly to repeal the prohibitory clauses of the pre-Confederation statute of 1864, was invalid. That statute was purely local in its nature and as Parliament could not enact legislation of that character, neither could it repeal it. It will be seen that in both these cases what the board was concerned with was the power of repeal of *statutes* or *sections* of statutes in their entirety and that the subject matters of the same were outside the legislative jurisdiction of Parliament under section 91. Even in the *Dobie* case, at page 150 Lord Watson had said:

If, by a single Act of the Dominion Parliament, there had been constituted two separate corporations, for the purpose of working, the one a mine within the province of Upper Canada, and the other a mine

in the province of Lower Canada, the Legislature of Quebec would clearly have had authority to repeal the Act so far as it related to the latter mine and the corporation by which it was worked.

In *Bonanza Creek v. The King* (1), Viscount Haldane, in the course of his judgment, said with reference to another pre-Confederation statute of 1864, at page 583:

It was obviously beyond the powers of the Ontario Legislature to repeal the provisions of the Act of 1864, *excepting insofar as the British North America Act enabled it to do this in matters relating to the province.*

In *Attorney General for Canada v. Attorney General for Quebec* (2), (the Fisheries case), the Judicial Committee had to deal with the respective powers of the Dominion and the provinces to legislate with respect to fisheries. In this case their Lordships referred to their earlier decision in 1898 A.C., page 700, which had dealt with legislation affecting the same subject matter. By a pre-Confederation statute of 1865 the legislature of Canada provided for the amendment of the law relating to fishing and fisheries, and this statute applied to the whole of Upper and Lower Canada. Section 3 authorized the Commissioner of Crown lands to issue fishing leases and licences while other sections of the statute dealt with the management and regulation of fisheries, the obstruction and pollution of streams, and deep sea fishing. After Confederation, in 1868, the Dominion Parliament, by 31 Vic. c. 60, repealed the Act of 1865 (s. 20) and in addition enacted a number of provisions in many respects resembling those of the Act of 1865. The substance of this last mentioned Act was subsequently incorporated into c. 95 of the Revised Statutes of Canada, 1886. S. 4 of this statute was in the terms of the former corresponding sections of 1868 and 1865, save that the Minister of Marine and Fisheries was substituted for the Commissioner of Crown Lands. Their Lordships point out that the board in 1898 had held that the Dominion had no power to enact s. 4, as it dealt with a matter committed exclusively to the legislatures of the provinces and that this decision must be taken to be settled law. There is no suggestion in the decision of 1898, nor in that of 1921, that because of the inclusion of the provision in s. 2 as to leases and licences, with respect to which the Dominion could not validly legislate, the repeal of the legislation of 1865 by

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(1) [1916] 1 A.C. 566.

(2) [1921] 1 A.C. 413.

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s. 20 was invalid also. On the contrary, Viscount Haldane, at page 426, pointed out that by reason of s. 20 of the Act of 1868, the Act of 1865 had been in force for only three years and that

Section 91 of the British North America Act, 1867, had conferred on the Dominion Parliament exclusive authority to legislate in regard to sea coast and inland fisheries, and it was under this authority that the repeal was effected.

At page 430 the following occurs:

As to s. 3 of the Act of 1865 * * * this was obviously within the competence of the Legislature which was then unrestricted in the scope of its power to alter the provincial law. No distinction was, or needed to be, contemplated between power of regulation and power over proprietary title. Bearing this in mind, their Lordships think that s. 3 was in its character as much a regulative provision as it was one directed to property. These two aspects of its subject matter were really then inseparable. In so far as its powers were powers of regulation, they have passed to the Dominion Parliament.

There was no discussion as to whether, because of the fact that the subject matter of s. 3 of the Act of 1865 had become vested for legislative purposes in two different legislatures, the repeal in 1868 was ineffective as to that section. Perhaps, consistently with the earlier decisions that should have been the result, but the point was not in issue.

I therefore think that what was said by Lord Watson in 1896 A.C., at page 366, in the passage already cited is limited to that which was before the board in that case, namely, the repeal as a whole of a statute or certain specific parts. If Parliament cannot enact, it cannot repeal, no matter whether the attempted mode is by express repeal or by the enactment of repugnant legislation.

For neither the Parliament of Canada nor the provincial legislatures have authority under the Act to nullify, by implication any more than expressly, *statutes* which they could not enact;

Per Viscount Haldane in the *Great West Saddlery* case, (1).

However, where, as in the case at bar, pre-Confederation, or pre-union legislation covers matters as to which there has since obtained a division of legislative jurisdiction by reason of sections 91 and 92 the respective legislatures may deal with the matters competent to each and thereby affect the position formerly existing under the legislation enacted prior to such division. In the present case there is no

(1) [1921] 2 A.C. 91 at 117.

"express" repeal but in my opinion the three Dominion statutes under consideration do now effectively "alter" and "abolish" the privileged position to which the respondent was entitled under the legislation of Newfoundland prior to 1949.

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The word "laws" in Term 18 is not synonymous with "statutes", as it is clear from subsection (2) that when the one or the other was intended, the proper term was employed. Accordingly, any law, statutory or non-statutory, may, by the express terms of subsection (1), be dealt with by the legislature competent to deal with the subject matter. There is no question but that Parliament has exclusive jurisdiction to deal with the subject matters of legislation embodied in the three statutes in question. If the pre-union Newfoundland statutes are to be considered as continuing in force after the proclamation of the Dominion statutes, on the theory that the Newfoundland acts are special legislation and, therefore, constitute an exemption from the terms of the general Acts, s. 49 of the 1949 Act, already quoted, is effective to abolish the position obtaining under the special legislation.

The decision in this court *In re New Brunswick Penitentiary* (1), is in harmony with the view just expressed. In that case certain questions were referred to the court by the Governor General in Council with regard to the power of Parliament to legislate as to persons to be confined in the New Brunswick Penitentiary. That penitentiary had been constituted, and provision made, for the class of persons to be confined therein, by pre-Confederation legislation. Subsequent to 1867 Parliament passed legislation providing for a joint penitentiary for the provinces of Nova Scotia, New Brunswick and Prince Edward Island, and delineating the class of persons to be confined therein. On a question raised by the Government of New Brunswick as to the power of Parliament to so legislate, it was held that under s. 91 Parliament had power to so enact, and that that power was in no way limited, restricted, or affected by any legislation of the province either prior or subsequent to Confederation.

While the exemptions here in question originated by way of contract, they required for their efficacy the inter-

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vention of the legislature and, as already pointed out, with respect to the matters with which we are here concerned, legislative jurisdiction passed upon union to Parliament. There is no ground, in my opinion, upon which it can be said that Parliament is restrained from legislating as it sees fit with regard to such subject matter.

The questions should, therefore, be answered in the negative.

ESTEY J.:—The Bowater's Newfoundland Pulp and Paper Mills, Ltd., by virtue of a series of agreements concluded with the Government of Newfoundland from 1915 to 1947 assumed obligations and obtained exemptions from certain taxes and customs duties, and in this reference it claims that these exemptions were continued under the Terms of Union between the Dominion of Canada and Newfoundland.

The said agreements were all confirmed by statutes and such as were in force at the date of the Union were continued by virtue of para. 18(1) of the Terms of Union and are hereinafter referred to as "Bowater's law."

We are in this reference in the main concerned with the provisions of the 1927 and 1938 agreements under which it was provided that Bowater's Company "in respect of its income for each year" should pay a tax between the years 1932 and 1973 not to exceed the sum of \$150,000 per year; that apart from an exemption not material hereto, upon payment of that tax "the company shall be exempt from all taxation of every kind whatsoever other than duties (including sales tax) levied under the general laws of the colony on goods imported by the company and not otherwise exempt." These words "not otherwise exempt" refer to provisions under the agreements whereby Bowaters were granted exemptions from customs duties, completely or partially, upon specified commodities for varying periods.

Under the authority of 18(2) of the Terms of Union (hereinafter quoted) the Governor General in Council proclaimed as of April 1, 1949, the *Customs Act*, the *Tariff Act* and other named statutes, and by a further proclamation of May 9, 1949, the *Income War Tax Act* and other named statutes were brought into force as of May 16, 1949, in the province of Newfoundland and certain pre-union

statutes of Newfoundland were specifically repealed by each of these proclamations. Bowater's law was not included as it did not come within the terms of 18(2) (a), (b) and (c) and therefore could not be dealt with by proclamation. These provisions of 18(2) (a), (b) and (c), however, do not apply to statutes enacted by the Parliament of Canada.

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Later in 1949 the Parliament of Canada amended the *Income War Tax Act* and these amendments came into force December 10, 1949, (S. of C., 1949, 2nd Sess., c. 25). The amendments relative to this discussion are secs. 49 and 50: (See p. 618 *supra*).

The amendments in s. 49 are intended to repeal *pro tanto* Bowater's law and as a consequence the three questions under consideration were submitted to this court. The answers thereto are dependent upon the meaning and effect of the Terms of Union.

The procedure contemplated by s. 146 of the B.N.A. Act for the admission of Newfoundland into Confederation was not followed as at all times material to negotiation and conclusion of the Terms of Union Newfoundland was governed by a Commission. The Terms of Union were negotiated and signed by representatives of both Newfoundland and the Dominion of Canada and were made a schedule to legislation approving it in Canada (S. of C. 1949, c. 1), and Great Britain (12 & 13 Geo. VI, c. 22). This approval gives to every clause of the agreement statutory validity: *Manchester Ship Canal Co. v. Manchester Racecourse Co.* (1), 31 Hals., 2nd ed., p. 465, paras 569 and 571; *International Rly. Co. v. Niagara Parks Comm.* (2).

The Terms of Union contain the following paragraph: (Here follows Term 3 for which see p. 619 *supra*).

Then under the general heading "Continuation of Laws" para. 18 reads as follows: (See p. 618 *supra*).

On behalf of the Dominion it is pointed out that sub-para. (1) and (4) of para. 18 are in effect identical with the relevant portions of s. 129 of the B.N.A. Act and are enacted in respect of all laws in force in Newfoundland at the time of the union. Further, that sub-para. 18(1) continues Bowater's law in force and provides for its repeal,

(1) [1901] 2 Ch. 37 at 50.

(2) [1937] 3 All E.R. 181 at 184.

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abolition or alteration; that s. 49 of the *Income War Tax Act* (S. of C. 1949, 2nd Sess., c. 25, s. 49 and 50) is competent Dominion legislation which specifically refers to a law enacted prior to April 1, 1949, in Newfoundland and goes on to provide that no person is entitled to any deductions, exemption, immunity from or any privilege in respect of Dominion duties or taxes as therein specified.

On behalf of Bowaters it is contended that when para. 18 in the Terms of Union is read and construed as a unit that the meaning and purpose of sub-para. 18(3) can only be given effect to if the pre-union laws of Newfoundland are divided into three categories:

- (a) those which fall clearly within the Dominion field under the B.N.A. Act and are subject to be repealed, abolished or altered by the Federal Parliament;
- (b) those which fall clearly within the provincial field and are subject to be repealed, abolished or altered by a provincial Legislature;
- (c) those not falling within either of the categories (a) or (b) but which are of mixed subject matter and inseverable such as the Bowater's law, which is a law in which matters under Dominion and provincial control are so interwoven as to constitute an indissoluble mixture of consideration flowing to and from Bowaters as to be inseverable.

Counsel for Bowaters submits that laws classified within the foregoing paras. (a) and (b) are dealt with under sub-para. 18(1) and those within (c) under sub-para. 18(3); further, that Bowater's law is of "mixed subject-matter," in its nature "indivisible or incapable of severance" and as such is classified under para. (c) and therefore dealt with only under sub-para. 18(3). It is further contended that in any event the enactment of the above quoted s. 49 did not repeal any part of Bowater's law.

It was submitted that inasmuch as the statute in Great Britain confirming the Terms of Union provided "The agreement containing Terms of Union between Canada and Newfoundland * * * shall have the force of law notwithstanding anything in the British North America Acts, 1867 to 1946," that in the construction of the Terms of Union no regard should be had to the provisions of the

B.N.A. Acts, 1867 to 1946. The Canadian statute approving the agreement did not include any such provision. These differences in the respective enactments, the express provisions of para. 3 that the B.N.A. Acts, 1867 to 1946, "shall apply to the Province of Newfoundland * * * except in so far as varied by these terms," the repeated references to the B.N.A. Act in the Terms of Union, together with the fact that Newfoundland could not in the circumstances be admitted as contemplated by s. 146 of the B.N.A. Act, suggest that the words in the above mentioned British statute were inserted to remove any question that might arise out of the procedure followed not being that provided for in s. 146 rather than that in the construction of the Terms of Union no regard should be had to any provisions of the B.N.A. Act, 1867 to 1946.

The B.N.A. Act divides the entire legislative field between the Parliament of Canada and the legislatures of the provinces, or as it is stated by Lord Hobhouse:

* * * an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies
 * * * *Bank of Toronto v. Lambe* (1).

See also *A.-G. for Ontario v. A.-G. for Canada* (2).

The B.N.A. Act therefore defines the legislative power and authority of the Dominion and the Provinces to enact legislation. It has, however, been determined that the power to repeal is co-extensive with that to enact. *Dobie v. Temporalities Board* (3); *A.-G. for Ontario v. A.-G. for Dominion* (4).

The respective jurisdictions of the Dominion and the Province in respect to pre-Confederation legislation was considered by the Privy Council in *A.-G. for Canada v. A.-G. for Quebec* (5). The particular legislation there in question was enacted in 1865, (29 Vict., c. 11), and therefore prior to Confederation, by the Parliament of Upper and Lower Canada. After Confederation the Parliament of Canada by s. 20 of the Fisheries Act (S. of C. 1868, c. 60) repealed the legislation of 1865. It did not, however, follow that all of the powers exercised by Lower Canada became

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(1) 12 App. Cas. 575 at 587;
 1 Cam. 378 at 388.
 (2) [1912] A.C. 571 at 581;
 1 Cam. 723 at 732.

(3) 7 App. Cas. 136.
 (4) [1896] A.C. 348; 1 Cam. 481.
 (5) [1921] 1 A.C. 413; 2 Cam. 198.

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thereby vested in the Dominion. Referring particularly to s. 3 of the pre-Confederation Act of 1865 their Lordships stated:

As to s. 3 of the Act of 1865, which enables the Commissioner of Crown Lands, where the exclusive right of fishing does not exist by law in favour of private persons, to issue fishing leases and licenses for fisheries and fishing wherever carried on, this was obviously within the competence of the Legislature which was then unrestricted in the scope of its power to alter the provincial law. No distinction was, or needed to be, contemplated between power of regulation and power over proprietary title. Bearing this in mind, their Lordships think that s. 3 was in its character as much a regulative provision as it was one directed to property. These two aspects of its subject matter were really then inseparable. In so far as its powers were powers of regulation, they have passed to the Dominion Parliament * * * the disposal of property and the exercise of the power of regulation. The former of these functions has now fallen to the province, but the latter to the Dominion; and accordingly the power which existed under s. 3 of the Act of 1865 no longer exists in its entirety.

This illustrates how completely the field of legislation is divided between the Dominion and the province and the necessity of careful examination of the statute and of the individual sections thereof in order to determine whether a particular provision should be classified as within the Dominion or provincial legislative field within the meaning of the B.N.A. Act.

In re New Brunswick Penitentiaries (1), this court held that legislation enacted relative to penitentiaries by the Parliament of Canada superseded legislation passed by New Brunswick prior to Confederation and continued in force in that province after Confederation by virtue of s. 129 of the B.N.A. Act.

The foregoing decisions were made under the B.N.A. Act of 1867 and indicate how pre-Confederation legislation has been treated.

It is not contended that the legislative division set forth in the foregoing paras. (a), (b) and (c) exists under s. 129 of the B.N.A. Act, s. 16 of the Alberta and Saskatchewan Acts, or under any of the express terms to be found in the admission of any other province. It would seem, therefore, that if in the Terms of Union it was intended to introduce such a classification and to effect so radical a change in the construction of 18(1) by the inclusion of 18(3), appropriate language would have been used to express that intention in

(1) Coutlée's S.C. Cas. 24.

either one or both of sub-paras. (1) and (3); on the contrary, 18(1) is expressed in clear and comprehensive language without any exception or limitation and no such division is suggested in either that sub-para. or sub-para. (3).

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Moreover, the acceptance of this submission on behalf of Bowaters would impose a limitation upon the Parliament of Canada to the extent that competently enacted legislation so far as it would be contrary to the pre-Confederation Bowater's law could have no application to that company until such time as Newfoundland would give its consent to the repeal of Bowater's law. In effect the exemptions from taxation and payment of certain customs duties provided for in Bowater's law would remain until such time as Newfoundland permits the Parliament of Canada to legislate in regard thereto. No similar provision was embodied in the Terms of Union of any other province, and while that is not at all conclusive, it is significant in this sense, that a provision so important, far reaching and contrary to the general scheme of legislative jurisdiction under the B.N.A. Act would have been expressed in language clear and unambiguous. Sub-para. 3 contains no such language. Indeed, its language as ordinarily construed does not suggest that the legislative authority of either the Dominion or the province is interfered with.

The opening words of sub-para. 18(3) "notwithstanding anything in these terms," together with its express provision that it applies to "any law in force at the date of the union" indicates that its provisions are by way of an exception to the general provisions of the Terms of Union rather than as submitted a provision to deal with a third (para. (c) *supra*) classification of legislation. The language of 18(1) is general and all embracing: That of 18(3) provides that notwithstanding all that has been provided "the Parliament of Canada may with the consent of the Legislature of the Province of Newfoundland repeal any law." These sub-paras. 18(1) and (3) when read and construed together do not support a construction that they are dealing with separate and distinct portions of a general classification of legislation such as submitted by Bowaters in paras. (a), (b) and (c).

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Bowater's law is not mentioned in sub-para. 18(3) nor in any other section throughout the Terms of Union. The absence of any specific reference to this law or any group or type of laws in which it might be included rather suggests that the classification of legislation such as here submitted was not intended but rather that all legislation should be subject to the provisions of 18(1).

It may be implicit in the submission for Bowater's that neither the Dominion nor the Province of Newfoundland can legislate with respect to Bowater's law until such time as the province shall consent to its repeal by the Parliament of Canada under sub-para. 18(3). The difficulty is to find language to support such a view. Whatever opinion one may entertain of the submission with respect to the suggested construction of sub-para. 18(3) in its application to the Dominion it does not contain language that suggests any such limitation upon provincial enactments. It would therefore appear that the province might repeal, abolish or alter any part of Bowater's law classified within provincial jurisdiction. Para. 24 of the 1938 Bowater's law that "all property of the company within the area of any towns or settlements established by the company shall be exempt from municipal taxation" is such a provision. If it was intended that the province in respect of Bowater's should not possess the power to legislate within its jurisdiction, again appropriate language to that effect would have been included. Its omission rather supports the view that it was intended both the representatives in Parliament and the Legislature would legislate in their respective fields without any limitation such as that involved in the submission on behalf of Bowater's.

Counsel for Bowater's further contends that if Bowater's law comes within the provisions of sub-para. 18(1) the Parliament of Canada cannot repeal that law as it has purported to do by the enactment of s. 49 of the *Income War Tax Act*, *supra*. It is here contended that Bowater's law is indivisible or incapable of severance and therefore its provisions cannot be divided between the Dominion and the province as contemplated by the B.N.A. Act and cannot be repealed, abolished or altered by the Parliament of Canada.

This impossibility, as I understand it, is not because the provisions of Bowater's law cannot be allocated to the respective Dominion and provincial legislative jurisdictions but rather that the subject-matters of that legislation are so "inextricably interwoven into what constitutes a single Newfoundland law" that it "must be regarded as comprising the terms of a single contract which has been confirmed and given the force of law by legislation," that to do so in effect destroys it or makes it something entirely different. It is not contended that Newfoundland prior to union had not the jurisdiction to repeal the whole or any part of Bowater's law, but though the legislative jurisdiction of Newfoundland was under the Terms of Union completely divided between the Parliament of Canada and the legislature of the province, neither acting independently can now repeal Bowater's law.

Bowater's law, as already stated, is pre-union legislation enacted by a political entity that no longer exists and is carried forward as legislation in force in the Province of Newfoundland by virtue of sub-para. 18(1) of the Terms of Union. Under the B.N.A. Act the entire legislative field is divided between the Dominion and the province. *Bank of Toronto v. Lambe, supra*, or as stated by Earl Loreburn, L.C.:

* * * the powers distributed between the Dominion on the one hand and the provinces on the other hand cover the whole area of self-government within the whole area of Canada. *A.-G. for Ontario v. A.-G. for Canada, supra*, at p. 581.

The Terms of Union under sub-para. 18(1) provide that all pre-union legislation continued in force in the Province of Newfoundland shall be divided as provided in the B.N.A. Act. Under this provision Bowater's law is subject "to be repealed, abolished or altered by the Parliament of Canada or the Legislature of the Province of Newfoundland" legislating within their respective jurisdictions as defined under the B.N.A. Act, 1867 to 1946. In fact, the provisions in respect to customs, excise and income legislation here in question are clearly within the legislative jurisdiction of the Parliament of Canada.

The principle applied in the *Dobie* case, *supra*, that the power to repeal is co-extensive with the power to enact is applicable to Bowater's law. It, however, applies once the

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respective jurisdictions of the Dominion and the province are determined but does not assist in the determination thereof. It does not suggest that because the statute cannot be entirely repealed by either the Dominion or a province that either cannot repeal or amend that portion of the statute which is within its legislative jurisdiction. The fact that such legislative action on the part of one or the other may create difficulties to be subsequently dealt with does not affect the question of jurisdiction. Whatever such difficulties may be will no doubt in due course be dealt with by the appropriate authorities, but those are not matters to be dealt with by the courts, particularly when as here, this court is called upon to determine only the question of jurisdiction. Under the scheme of Confederation and under the Terms of Union even if the "rights and obligations are inextricably interwoven into a single Newfoundland law" as here contended, that would not alter or affect the legislative classification of the various portions of Bowater's law nor the jurisdiction of either the Dominion or the province to deal therewith.

The contention that the provisions of Bowater's agreement are not severable as that term has been used in regard to contracts found to contain provisions in restraint of trade or statutes in part *ultra vires* of the enacting body are not relevant to this discussion. In those cases when a portion of the contract or statute has been declared invalid the question arises as to the disposition of the remaining portion. Hals. 2nd ed., vol. 32, p. 439; *A.-G. for Alberta v. A.-G. for Canada* (1). Here Bowater's law as confirmed by statute is entirely valid and the issue quite different. We are here first concerned with the law as a whole and then with the jurisdiction of the Parliament of Canada to repeal a portion thereof.

The jurisdiction of Parliament to enact legislation must be determined from the nature and character of the legislation. Any statement or declaration contained therein on the part of Parliament as to its jurisdiction is not conclusive. Once, however, the jurisdiction to enact the legislation is found to exist, the language thereof must be examined to determine the meaning and intent of Parliament in enacting the same. The language of s. 49,

(1) [1947] A.C. 503 at 518.

supra, while it makes no specific reference to Bowater's law, is designed to and does cover just such provisions as contained in that law. It expressly covers any such legislation in all of the provinces and specifically covers such pre-union legislation in Newfoundland. The contention that sub-para. 18(1) should be construed to apply only to repeal, abolition or alteration when the statute specifically so states would impose an unwarranted limitation upon the comprehensive language there used.

The foregoing finds support in the principle that one parliament cannot bind its successors.

That parliaments have more than once intended and endeavoured to pass Acts which should tie the hands of their successors is certain, but the endeavour has always ended in failure. Dicey, *Law of the Constitution*, 9th ed., p. 65.

If it were not for this principle a parliament finding itself bound by the legislation of its predecessors would be unable to discharge that imperative duty which rests upon every parliament to legislate as in its wisdom it may determine to be necessary or desirable.

The enactment of the foregoing s. 49 of the *Income War Tax Act* was legislation competently enacted by the Parliament of Canada and enforceable as regards the Bowater's Company, notwithstanding the provisions of the Bowater's law.

The questions here submitted should be answered:

- (1) No.
- (2) No.
- (3) No.

LOCKE J.:—At the date of the entry of Newfoundland into Confederation Bowater's Newfoundland Pulp and Paper Mills Ltd. was subject to the obligations imposed and entitled to the benefit of certain rights and exemptions granted by a series of agreements entered into by it and its predecessors in title with the Dominion of Newfoundland, and by a series of statutes by which they were confirmed. The company carries on very extensive operations in the manufacture of newsprint and sulphite pulp and other allied activities at Cornerbrook and elsewhere in Newfoundland and has extensive timber limits in the province. The agreements were made and the statutes which approved and confirmed them and gave to their terms the force of

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law were enacted at various times between the years 1915 and 1946 and dealt with a variety of matters, all of which were then within the legislative jurisdiction of the Dominion. Pursuant to and relying upon these agreements, the company and its predecessors have invested in Newfoundland some \$86,000,000 in the construction and equipping of manufacturing plants, the establishment of towns and settlements, the development of water power, the acquisition of timber limits, and in other works and plant necessary for the carrying on of its activities. In consideration of the undertaking of these extensive developments which, it is evident, were regarded as being of importance and benefit to the state, and the assumption of various obligations of a continuing character including an agreement to pay to the Dominion in respect of its income for each year beginning with the year 1928 and ending with the year 1973 a tax of twenty per cent of its income, limited to a maximum of \$75,000 for the years 1928 to 1931 inclusive and \$150,000 for each of the years 1932 to 1973 inclusive, the Dominion of Newfoundland by the said agreements and by the various statutes undertook, *inter alia*, that the stocks, shares, bonds, debentures and other securities of the company and the dividends or interest payable in respect of them and the receipt of the same by holders domiciled in Newfoundland (with certain named exceptions) should be exempt from taxation until the year 1977, that certain described goods and commodities imported by the company should be free of customs duties and others subjected to duties limited in amount, and that all its property within the area of towns and settlements established by it should be exempt from municipal taxation.

By s. 146 of the *British North America Act, 1867*, provision was made for the admission of Newfoundland, Prince Edward Island and British Columbia into the union on addresses from the Houses of Parliament of Canada and of the respective legislatures of what were referred to as the Colonies or Provinces "on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order-in-Council in

that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." In the case of the Provinces of Canada, Nova Scotia and New Brunswick, the union of which was effected by the Act, s. 129 provided that all laws in force in these provinces at the time of union:—

shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished or altered by the Parliament of Canada or by the Legislature of the respective Province according to the authority of the Parliament or of that Legislature under this Act.

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When Newfoundland sought to enter the union it had no legislature, the power to enact laws having since the coming into operation of letters patent granted by His Majesty on January 30, 1934, been vested in the Governor and the Commission of Government which it authorized. In these circumstances, the union was brought about by amendment to the British North America Act passed in 1949 which, by section 1, provided that:—

The agreement containing terms of Union between Canada and Newfoundland set out in the schedule to this Act is hereby confirmed and shall have the force of law notwithstanding anything in the British North America Acts 1867 to 1946.

Section 3 of the Terms of Union provides that the British North America Acts 1867 to 1946 shall apply to the new province in the same way and to the like extent as they apply to the provinces heretofore comprised in Canada "except in so far as varied by these terms and except such provisions as are in terms made or, by reasonable intentment, may be held to be specially applicable to or only to affect one or more and not all of the provinces originally united."

Subsections 1 and 4 of s. 18 of the Terms of Union repeat in substance s. 129 of the Act of 1867, with the substitution of Newfoundland for the names of the former provinces which then entered the union. Section 18 contained, however, the following further provisions governing the alterations of the laws of the new province which are not to be found in the British North America Act, or in any of its amendments made prior to March 31, 1949, or in the Terms

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of Union under which British Columbia and Prince Edward Island entered Confederation, or the statutes which established the Provinces of Manitoba, Alberta or Saskatchewan. These provisions read:— (See Term 18(2) at p.—? *supra*).

By an amendment to *The Income Tax Act* and *Income War Tax Act* (s. 49, c. 25, 13 Geo. VI), it was provided that notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada, including a law of Newfoundland enacted prior to April 1, 1949, no person shall be entitled to any exemption or immunity from or any privilege in respect of any duty or tax imposed by an Act of the Parliament of Canada. By a proclamation made on April 1, 1949, the *Customs Act* and the *Customs Tariff Act* were declared to be in force in the new province as of that date, and by a further proclamation of May 9, 1949, *The Income Tax Act* was declared to be in force on the date of the publication of the proclamation. These proclamations are in terms stated to be made under the provisions of paragraph 2 of Term 18. The amendment to *The Income Tax Act* was not one made with the consent of the Legislature of the Province of Newfoundland under the provisions of subsection 3 of section 18. If the legislation is effective, a substantial part of the consideration which the agreements and the confirming statute provided should move from Newfoundland to the company and upon the faith of which the latter and its predecessors entered into the agreements, expended these large sums of money and undertook these continuing obligations, would be taken away.

Newfoundland was prior to its entry into Confederation a unitary state: the property and revenues of the Dominion were vested in the Sovereign, subject to the disposal and appropriation of the Governor and the Commission of Government. It cannot be successfully contended that by amending or repealing the statutes which confirmed and gave the force of law to the various agreements made between the company and the Dominion these might not have been either amended or terminated. Upon such entry, however, the powers, executive and legislative, and the right to dispose of the said revenues were distributed between the new province and Canada in the manner

defined by s. 91 and 92 of the British North America Act, subject, however, to the terms of the amendment of 1949. Since the statutes in question confer rights such as the exemption from municipal taxation and all other provincial taxation, which are matters lying entirely within the jurisdiction of the province, and at the same time grant exemptions from custom duties and taxation of a nature lying entirely within the jurisdiction of the Dominion, the question to be determined is whether by unilateral action the Dominion may "repeal" or alter the statutes or the law as declared by them relating to matters clearly falling within section 91.

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The amendment to the Income Tax Act of 1949 and the terms of the *Customs Act* and the *Customs Tariff Act* of Canada are repugnant to the terms of the statutes of Newfoundland dealing with these matters which have been referred to. Parliament has not assumed to repeal the statutes in toto but merely to amend the law as declared by them in respect to matters within the jurisdiction of Parliament. In determining the question no assistance is obtained from what transpired in the years immediately following the Act of Union of 1867. Parliament at that time by a series of enactments assumed to repeal in whole or in part a large number of statutes of the former Provinces of Canada, Nova Scotia and New Brunswick, but its power to do so was not questioned. In 1880 there was a reference to this court *In Re New Brunswick Penitentiary* (1), to determine whether the legislative jurisdiction of the Parliament of Canada in respect of the establishment, maintenance and management of penitentiaries could in any way be limited, restricted or affected by legislation of the Province of New Brunswick, either previous or subsequent to Confederation. It was there held that since Canada had the exclusive power of legislation in reference to criminal law, except the constitution of courts of criminal jurisdiction but including procedure in criminal matters and also as to the establishment, maintenance and management of penitentiaries, Parliament alone was vested with power to decide what classes of prisoners should be imprisoned and maintained in the penitentiary. I refer to the case since it was contended that it gave some support

(1) Coutlée's S.C. Cas. 24.

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to the position of Canada in the present matter. However, I find nothing in the decision which is of assistance in determining the present questions and, so far as I can discover, there is no decision binding upon us affecting them until the decision of the judicial committee in *Dobie v. The Temporalities Board* (1). The decision of the main point in that matter turned upon the proper interpretation to be placed on s. 129 of the *British North America Act, 1867*, and that section is not to be distinguished from subsections 1 and 4 of s. 18. Much reliance has been placed by the company upon the provisions of subsection 3 of s. 18 but, other than as an indication that the parties responsible for the drafting of the terms were of the opinion that there were laws in force in Newfoundland relating to matters within federal jurisdiction, the repeal or amendment of which would require the consent of the new province, I think the subsection does not affect the matter. The facts in *Dobie's* case are fully stated elsewhere and need not be here repeated. Lord Watson's judgment, at page 147, says that, in order to ascertain how far the Provincial Legislature of Quebec had power to alter or amend the Act of the Province of Canada passed in 1858, it was necessary to consider whether it could be established that in the absence of all previous legislation on the subject the Quebec Legislature would have been authorized by s. 92 to pass an Act identical in its terms and that, if it could not do so, it could not repeal or alter the statute of 1858. The statement, is, however, amplified and explained by what follows. In a later passage of the judgment, after pointing out that the Quebec Act of 1875 dealt with the civil rights of a corporation and of individuals, present or future, for whose benefit it was created, Lord Watson said that if those rights and interests were capable of division according to their local position in Ontario and Quebec respectively, the legislature of each province would have power to deal with them so far as situate within the limits of its authority, and then said:—
(p. 150)

The Quebec Act 38 Vict. c. 64 does not profess to repeal and amend the Act of 1858, only in so far as its provisions may apply to or be operative within the province of Quebec, and its enactments are apparently not framed with a view to any such limitation. The reason is obvious, and

it is a reason which appears to their Lordships to be fatal to the validity of the Act. The corporation and the corporate trust, the matters to which its provisions relate, are in reality not divisible according to the limits of provincial authority. In every case where an Act applicable to the two provinces of Quebec and Ontario can now be validly repealed by one of them, the result must be to leave the Act in full vigour within the other province. But in the present case the legislation of Quebec must necessarily affect the rights and status of the corporation as previously existing in the province of Ontario, as well as the rights and interests of individual corporators in that province.

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Thus in the case of an Act of the Province of Canada applicable to the two provinces of Quebec and Ontario, either province, though it could not have enacted it, could validly repeal it in so far as it applied to matters within its own legislative jurisdiction, so long as it was left in full vigour in the other province. The decision in *Dobie's* case turned upon the point as to whether the Quebec Act in question dealt with matters which lay outside the powers given to the province by s. 92 and, as it dealt with the constitution and privileges of a company having its corporate existence and rights in Ontario as well as in Quebec, it was held *ultra vires*. The imposition of a federal income tax and of customs duties are within the powers vested in Parliament by section 91. It is apparently unfortunately the fact that in the present matter to deprive the company of these exemptions will be to cause virtually a frustration of the contracts. The question, however, is as to the right to exercise these powers and not the consequences of such exercise. I do not consider that the decision in *Dobie's* case affects that right, or that it is otherwise impaired or taken away.

By the terms of subsection 1 of s. 18 of the Terms of Union all laws in force in Newfoundland at the date of union are to continue, subject to be repealed, abolished or altered by the Parliament of Canada or by the Legislature of the Province of Newfoundland, according to the authority of Parliament or of the Legislature under the British North America Acts 1867 to 1946. In enacting the amendment to *The Income Tax Act* and proclaiming the *Customs* and the *Customs Tariff Act* and other statutes dealing with matters admittedly within federal jurisdiction and which are repugnant to the terms of the statutes in question, Canada has, in my opinion, altered the law as

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BOWATER'S
PULP AND
PAPER MILLS
LTD.

Locke J.

declared by them by a valid exercise of its powers under the British North America Act and the Terms of Union.

I would, therefore, answer the questions as follows:

1. No.
2. No.
3. No.

Solicitors for the Attorney General of Canada: *F. P. Varcoe* and *D. W. Mundell*.

Solicitor for the Attorney General of Newfoundland, *L. R. Curtis*.

Solicitors for Bowater's Newfoundland Pulp & Paper Mills Ltd.; *Heward, Holden, Hutchinson, Cliff, Meredith and Ballantyne*.
