Nfld

Admission

of Tr Agreet - 175

Confirmed
by BNA Act
1949

of history
Confd the
West

# NEWFOUNDLAND

1. Colony by settlement

Kielly v. Carson, cited J. Read in 26 C.B.R. 622

Law re Introduction in such cases in Chalmers v. Phillips 539 v g 11 Hals. 238 ff

2. Responsible government as of 1876 or earlier

Legislature consisting of governor, Legs Council and House of assembly

3. Suspended constitution in letters patent 1876 and 1905

4. Constitution suspended on address by Nfld. Legislature

Newfoundland Act 1933 (24 Geo. 5 Ch. 2) enabling Crown (Imp.) by L.P to suspend those of 1876 and 1905

This done by L P of January 30, 1934 (S.R. and O (1934) vol. 11, app. 774) which also set up Commission Government. with ~~See~~ powers of legislation ~~conferred~~. Came into effect as per governor's Proc on Feb 16/34

Generally - Re Commission Government see British Survey Commonwealth Affairs, Vol. 1, p. 401

5. Status under S/West

Wheare (235-8) who thinks Dominion in name under S/W but constitutionally only a Colony. Newfoundland never adopted S/W as therein enabled.

NB. Necessity of consent of Can to applicat new law under S/W. but if not of Union pursuant to S14 6 913 A

6. As Colony can amend constitution under C.L.V. Act, S. 5

7. Present Lack Legislature, etc. and Responsible Government

Under S. 146 admission Newfoundland must be on address from Legislature followed by Imperial O in Council.

B.C. Precedent
When addresses made by Senate and House of Commons, B.C. had no House of Assembly and the B.C. adress was made by the Governor and Legislative Council of B.C. See 14 of the addresses referred to the understanding that Responsible Government was to be introduced and the Legislature made elective.

By the time the Order in Council of admission was made (May, 1871) the above had been done by B.C. statute (1871, No. 147) which proceeded to set up a Legislative Council of wholly elected members by virtue of the power of constitutional amendment conferred by C.L.V. Act. This expressed

Cf. re B.C. Olivier Acts, pp. 159, 164 insert
J. Read in C.B. Rev. 1634
O'Connor, App. 1, p. 9

Application of Precedent

(a) Imp. Act or Order in Council revoking suspension and restoring responsible government under new letters patent in terms of former ones and re-constituting the Executive and Legislative and Judicial organs. This can be done as matter of royal prerogative.

Application of Precedent (continued)

(b) The first Legislature to be installed per instructions re electoral districts and holding of elections and then to pass necessary address under s. 146.

In view of recent referendum it may be considered enough to amend S. 146 to allow address by Governor in Council and thus avoid difficulty and delay of constituting a House of Assembly (and Legislative Council) to vote the Address re Union; and if necessary the Legislature might effect such changes in constitutional set-up as would make it jibe with its future role as a Province.

All of the foregoing really a matter for British Government to take or authorize all steps necessary to enable Newfoundland's entry. Possible something has already been worked out as to method in case Newfoundland agrees to Union.

8. If old constitution is restored, or new one given, then Newfoundland being a colony by settlement then Secs. 64 and 88 should be embodied in the Addresses so as to provide for the continuation of the Executive and Legislative authorities therein; and ditto S. 129 re continuation of laws, courts, commissions, etc. - as of date of Nfld's entry

9. The typical provision re the application of the B.N.A. Acts should be set out in the addresses, e.g. as in case of B.C. (Olivier, p. 163, No. 10)

10. Provincial Lands
There should be an express reference to or restatement of S. 109 to make Provincial title clear. agree S 109 held to apply only to original terms of original Province

11. Transfer of Public Works
Ditto as per S. 108

12. Ditto re Debts and Debt Allowances and undisposed of Crown Property.
Cf. secs. 114-117.

13. Subsidies - Precedents are Variation
Ditto as per Sec. 118 as amended in 1907 with changes agreed as part of terms of Union. This to be done regardless of intention to adopt the agreement for confirmation

14. Re preliminary questions) special provisos to appropriate sections preserving specified agreements (validated by present Newfoundland legislation) relating to fixed income tax (Int. Paper Co.) etc. as per terms of agreement (Cf. C.P.R. case in Alberta) or for specified term of years.

see infra

Also if agreed (and possible) re free entry of materials re Labrador Railway and Bowaters Pulp Co.

Also Covenant by Dominion Government re employment Newfoundland Labour at Goose Bay Airport and on Labrador Railway.

N.B. Some of the above may be protected by S. 129 re continuation of laws but this would only continue a sufferance of Dominion legislation as to taxation, customs, etc. and would be made good only by provisos to that or other sections, and referring to date of union

Above applies also to Trade marks and Patents for presumably these would come under present Dominion laws. But perhaps some arrangement could be worked out (and specified) to give some continued operation

also Fisheries leg/n

to rights vested under Newfoundland laws. See Precedents quoted ~~above~~ infra re special provisions re lumber dues in N.B., pre-Conf. contracts re tax exemption, re customs and excise duties in B.C. (Olivier p. 162) and Manitoba (Olivier, p. 185) etc

15. Education
Ample precedent (~~supra~~ infra) for special provisions varying S. 93 if necessary.

16. Property assets
Ditto

17. Status of Corporations – Lost + preserve
- analogous + situation re Trade Marks etc
Re corps authorized to business outside Nfld to be deemed to have been incs under Dom. laws which shall apply to them until ~~to~~ otherwise Cos dealt with
Re domestic – preserved status + powers
Cf make necessary variation in S 129

18. Laws re Fisheries + Fisheries Bd
These cover export marketing + pass to Dom juris + necy to provide specifically for continuation of laws + the powers of the Fisheries Bd now BNA Act

Pre-Conf. Constitutions (of BC)

Clement ch. 16 v. G. (cf. p. 319 re B.C.)

J.E. Read, 26 C.B.R. 621

O'Connor, p. 4 - Le Roy 47-9

Re B.C. - no legislature or resp. government when addresses passed but later provided before admission.

Cf. Flenley's Essays, 178 ff. by virtue of B.C. Govt. Act (1870 - Imp.) and Order made thereunder. J. Read, p. 635

## Miscellaneous Notes

Pre Confed Constitutions and Constitutional history of Provinces, see Dom. Sess Papers 1883. No. 70

129
S 146

Entry generally — Variation in Terms

S. 146 contemplates entry Newfoundland (as of P.E.I. and B.C. and Western Provinces) "on terms as are in the addresses expressed, and as the Queen sees fit to approve, subject to the provisions of this Act." i.e. subject to provisions distributing legislative and other functions. See supra. Re Transfer Nat Resources Sask Digest 460

VARIATION IN TERMS

That is subject to maintaining general structure etc. Admission may be on terms different from that relating to original Provinces. Note ~~as above cited~~ variations, re Education, Contracts, customs, excise, lumber dues and different provisions re property assets; subsidies and debt allowances in Manitoba and Prairie Provs. Crown lands were ~~reclaimed~~ retained by Dominion; exemption C.P.R. from taxation in Alberta and Saskatchewan.

Note addresses e.g. P.E.I. make general enactments of B.N.A. applic. "except as the same may be varied by these Resolutions" and as if Prov had been one originally admitted

re Trust Concessions

Exemption of C.P.R. from all taxation of Railway property and lands sold by it - S. 24 Alberta and Saskatchewan Acts.

"C.P.R. and all its railway property shall forever be free from taxation by the Dom., or by any Province hereafter to be established or by any municipal corporation therein; and the lands of the Co, (granted by the Dominion to facilitate development) in the N-W Territories, until they are either sold or occupied shall also be free from such taxation fro 20 years after the grant thereof from the Crown."

This contained in a contract between Co. and Dominion dated 1881. (validated by Dom. Act Cf. 44 Vict. Ch. 1 (Dom.))

As to latter part, i.e. tax exemption re lands the S.C. Canada held that the period of exemption began from the date of the actual issue of the letters patent from the Crown.

Rural Mun. N. Cypress v. C.P.R. (1905) 35 S.C.R. 550

See Lingard Territorial Government, pp. 226 ff re effect of this and debates re

Cf. Laurier quoted at p. 228 that this exemption by virtue of the contract of 1881 was lamentable but must be executed according to British principles and the new provinces must abide by the contract.

reverse this r. subs concl

Note effect (p. 229) was that C.P.R. evaded tax by refusing to select and patent its lands until ready to put on market so that at the date of Union the unsold portion of C.P.R. land had almost the full 20 years to run - thus constituting in effect a burden on the new Provinces.

(over)

Moral in reverse - Dominion should recognize binding effect of Provincial exemptions from tax and agree so to provide. nws S12.9.

Restriction of Prov Power to legislate contrary to Dom leases held OK of Nat'l Concessions

Nat Resources to Man. Sask

Dom. Transfer of Westland ~~and~~ Alberta, etc.

(Confirmed B.N.A. Act 1930; Acts, p. 87)

(now BNA Act 1867)

Dom. made leases of land in Turner Valley before agreement transferring. One term of this agreement was that Prov would carry out terms of previous leases, etc and would not legislate so as to affect any term thereof

See Acts p 101

Held Prov. Act of 1932 did so effect these terms and was therefore invalid.

Spooner v. Turner (1933) S.C.R. 629

Customs tariff and Excise duties (Preconf.)
of B.C. to continue until C.N.R. finished
Address re B.C. Pt. 7; Acts 162 unless B C legs should sooner decide to accept the Tariff, Excise laws of Canada. NB This varies S 122 because postpones its operation

Manitoba - Act Secs. 27-29

Special provision for continuance without increase for 3 years of existing customs duties leviable in Ruperts Land.

Provision of Customs Laws and excise laws of Canada to come into force in Manitoba when so declared by G. General. Secs 28-29 - Acts p 185

also variation of S 122

Terms of Union Post-Conf. Provinces

Effect of B.N.A.Act, 1871, re establishing new Provinces (from Can. Territory) did not bind Dom. to give same terms to new Provinces (as Alberta) as given in B.N.A.Act to originals.

Re s. 17 Alberta Act 1927 S.C.R. 364 (where alteration B.N.A. re Education involved) see above

~~Semble a fortiori + Provs admitted under~~

If Nfld comes in directly under S146 which implies right to vary terms of admission if (broadly) consistent with BNA re structure etc

Application B.N.A. to New Provinces - Cf. s. 129
146

When Manitoba admitted in 1871 a Dominion Act (34 Vict., c. 13) provided that all general enactments of Dominion in past 3 sessions ie previous & admission of Man relating generally to all Provs should be in force in Manitoba and all inconsistent laws then in force should be repealed (these were laws of territories, i. e. Dom.)

Olivier p 180

Cf. Similar Act (Dom) making similar declns. re criminal laws - Olivier Acts 180

QUERY - Was there any similar Dom legislation directly applying Dominion Acts to other post-Conf. Provinces?

Isn't above a precedent in favor of requiring such an enactment after the admission of a Prov & not leaving it to qtn of repugnancy under S129

Admission of Colonies - S. 146

"Subject to the Provisions of this Act" in s. 146 refers to the general provisions governing the structure of Union into which new Provinces were to be admitted. e.g. sections distributing legis. and other functions as between Dominion and Provinces. Re Trans Nat Resources Sask (1932) AC 28,

~~Ibid~~ Digest 460

Laws re Education LeF. 143-8

Note variations from S. 93 made re Manitoba, Sask. and Alberta

Lingard 185 ff.

cf. Re Section 17 Alberta Act (1927) S.C.R. 365 holding that under B.N.A.Act 1871, Dominion need not give same legis. power re education as given original provinces.

Put in expressly in enacting that as involved amdt S 93

This was no

Pre Conf. Taxes _ S 124

Right of N.B. to levy lumber dues after Union
provided no increase in amount
expressly preserved by B.N.A. Act S. 124

This a variation of S 122

Wheeler says see Treaty of Washington
1872 arts 30, 31, 33 ; Dom Act
36 Vict 41

Reason? of Treaty series con. US

This has been spoken of (A G Quebec v Reed (1882) 26 L C J at 355) as an exception the general rule that a Prov cannot levy indirect taxes

See Prov Subsidies Act R S C c 192 S 1 where NB gov special subsidy on repeal of duties on export of lumber

Analogy . If a Prov cd be given right to continue a particular type of duty then it could also be exempted from Dom duties of particular kind
cf C P R Exemption from taxation

cf Continuance BC Customs duties
infra

Preservation rights of Hudson Bay Co.

Alberta and Saskatchewan Acts, s. 24 - Lingard 230

Manitoba Obs p 186 s34

Variation of Subsidies and Debt allowances

e.g. s. 118

Repeatedly done - and by Dom. legislation alone - but see B.N.A. Act 1907. Olivier p. 56 and 79

Maxwell "A Flexible Portion of the B.N.A. Act," 11 C.B.R. 149

Variation re Lands

Recognition of importance of revenue from Crown lands manifested in Terms with P E I which because Crown held no land & therefore no rev from this source a special Dom grant of $45000 per annum

Acts p 170

Variation re Debt Allowances

PEI (Acts p 170)

In view of large eff by Can from rep + canalas + as well as "the isolated and exceptional condition of PEI" that colony was given a debt allowance of $50 per head of population i.e more than currently given NS & NB

Subsidy Provisions S 118

Perm. provisions to be provided for Newfoundland leaving temporary variation to Tax agreement.

S. 146 and Right of Saskatchewan to Natural Resources

Effect of Order in Council (1870) whereby Ruperts Land and North West Territory were admitted into and became part of Canada, and of S. 5 of Rupert Lands Act of 1868, was that lands therein which were then vested in the Crown (after surrender of H.B. Charter in 1869) and are now within the Prov. of Sask., became so vested in the right of the Dominion, and the Dominion was given full control of their administration for the benefit of Canada as a whole and is not bound to account to the Province for any dispostions made before its admission in 1905.

So held in Re Transfer Natural Resources of Sask. (1932) A.C. 28 (Plaxton, p. 28)

See at p. 33-37 (Plaxton 73-76) for history of government in this area until return of Resources - v.g.

Re Section 146 - + 109 re lands

Digest 460

Sask Nat Resource case supra

P.C. held, that the provision of S. 146 for admission of Ruperts Land, etc. "on such terms, etc. as the Queen approves, subject to the provisions of this (B.N.A.) Act." refer only to general provisions re structure & legislation

To the argument that the reference to the B.N.A. Act incorporated S. 109 and that no powers could be given to the Dominion inconsistent with this, P.C. said "the answer is that S. 109 dealt only with the provinces thus admitted (i.e. the original Provinces) and the provisions of the Act referred to in Section 146 are plainly only the general provisions covering the structure of the Union into which new Provinces were to be admitted, as for instance the section distributing legislative and other functions between the Dominion and the constituent Provinces."

109

(p 39 or Plaxton p 79)

Semle does this do justice to the customary formula (Cf. Olivier at 205) used in making B.N.A. applicable to new provinces "to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province had been one of the Provinces originally united except as varied by this Act (or this Minute of Council) and except etc.?

Does the "as if" clause only refer to the status as being the same in the case of new Provinces as of the old; for obviously not only are variations of the BNA Act re provinces contemplated but have been made.

Moreover there are provisions which cannot be interpreted as of 1867 but only as of the date of the actual entry of a Prov into the Union, eg S108-9 re Terms of Bc or P.E.I. Similarly

S129 & continuing 7 laws

Newfoundland Legislation - Repeal by Repugnancy
Variation s. 129

Newfoundland admissible under S. 146 as per terms and conditions set forth in address, etc. Typical term is that the provisions of B.N.A. Act shall apply same way and extent as to other Provs. and as if Newfoundland had been one of the original Provs. May need to reconsider such a provision in view of the 80 years of existing Newfoundland legislation. This would continue under s. 129 but subject to repeal, etc. by Newfoundland or repeal by repugnancy by Dominion. In view of bulk of Newfoundland legislation (and special types thereof re Fisheries Board re Exp't tax concessions, etc.) might be well , say in S. 129, to make special mention of 1949 as the date of Union for the purposes thereof and that existing Dominion legislation shall effect such a repeal after such subs. date as the particular Dominion statute has been made applicable to Newfoundland by statute or O.in C.

N.B. - S. 146 contemplates variation in terms of admission provided general framework re organs and legis. power is maintained.

S. 129 - Continuation laws courts

Laws
Repugnancy

(Cf. 1940 S.C.R. at 109)

Power of a Province to repeal pre-Conf. laws is precisely co-extensive with power to enact such a law since Confederation (Dobie v. Temporalities (1881) 7 App. Cas. 136)
Conversely Dominion can't directly repeal a Pre-Conf. provincial statute but can effect such result only by repugnancy between its terms and by the enactments of the Dominion (e.g. by conflict)

Ont. Liquor License Case (1896) A.C. 348 at 366-7

QUERY: S. 129 says all laws, etc. of N.S., etc. continue as if the Union had not been made, subject to be repealed etc. by Dominion or Prov. having jurisdiction under this Act.
Doesn't this imply that where the jurisdiction is now in the Dominion, the Dominion Acts must be enacted (as re a new Province) or made applicable subsequent to the entry of that Province?
But see general provision making B.N.A.Act applic to later Provinces "in the same way as they apply to the uniting provinces and as if (P.E.I. e.g.) had been one of the Provs. originally united by said Act. This would seem in law to make post-1867 statutes apply to overrule

(over)

pre-Union Newfoundland statutes when repugnant.

At any rate, should take worst view, viz. that much Nfld. legislation will come immediately into conflict with Dominion legislation and be immediately nullified and hold out for specific exceptions as per preliminary qtns.

Martin JA in Mont Trust v Abitibi 1942 3 DLR 17 at 30-1 dealing with appeals to PC refers to the agreement of counsel that down to the passing of the BNA Act the right of appeal to PC was governed by Imperial authority acting thru as delegates in Can, ie thru Gov in Council or thru Gov & Prov legislature. & goes on

"When The BNA Act was passed the power to deal with the appeal by delegated Imp authority was superseded by the powers of direct leg^n conferred by S 91 & 92; but unless & until the powers so conferred were exercised S 129 preserved the existing situation."

Previously p 30 he had said the qtn was whether a direct right of appeal as of right existed imm. prior to the BNA Act & whether the right was preserved by S 129 & he held it was

He concludes p 31 that unless Ont legs in 1942 can be so regarded as leg interfering with the right in civil cases & that that right as it existed continued to exist till the date of the case

S129 - Laws + 101

S101 confers a legis power on the Dom ~~ist~~ which by its terms overrides any power conferred by S92 or preserved by S129 --

"Notwithstanding anything in this Act" in S101 cannot be ignored

Re Appeals + PC 1947. 1 DLR 801 P.C

Pre Conf obligns of Prov

S. 108 - Transfer of Public Property

(Generally LeF. p. 266) subj + obligns binding Prov in contract

Effected transfer of all rys. belonging to N.S. i.e. of the interest of N.S. therein, therefore Dominion took Windsor Ry. subject to the obligation by which N.S. was effected: viz. to enter into a traffic arrangement with Co. as per terms of a Pre Conf agreement validated by Pre Conf. N.S. Act (Semble Dom. Parliament couldn't extinguish the rights of the Co.) Western Counties Ry. (1882) 7 App.Cas. 178; 51 L.J.P.C. 43; Digest 387

PUBLIC PROPERTY S108

S. 108 only transfers the interest which the Provinces had at Confederation. LeF. p. 266 (semble) subject to overriding any outstanding interest later under legis. power; but query.

Provincial Public Works Transferred

S. 108

LeF. Fed. Sys. Ch. 29

Public Lands Withheld from Alberta, Saskatchewan

By sec. 21 of Alberta and Saskatchewan Acts
with compensation in lieu.
Cf. ditto S. 30 Manitoba Act

Land Reserved before Conf.

Land reserved by colonial governor before Union and maintained thereafter for military purposes didn't pass under S. 108(or 117) but remained Imp. property until transferred to Dom. by Imp. dispatch.

A.G. for B.C. v. A.G. for Can. (1906) A.C. 552

Digest, 458

cf Dev p 163 re BC
Dom t use influence t secure
continued maintenance 7
naval station (by Imp govt).

Public Harbours - s. 108 Recent cases

R. v. Agout (1934) S.C.R. 133: whether a particular part included - a question of fact

Foreshore is part of harbour if was actually used as place of public access for loading, etc.

Albert v. A.G. for Que. (1938) 1 D.L.R. 721

Cf. A. G. Can. v. Higbie (1945) S.C.R. 385

re Admissions by Govts re foreshores in B.C. Harbours

Provincial lands, etc. S 109

S. 109 deals only with original Provinces: highly desirable it be re-enacted re Nfld. to make its title to crown lands, minerals, etc. abundantly clear. Sask NR Act case

S 109 only applies to original Provs

Cf. Report, Pt II, p.9 re above and re Prov legis power re Public Lands

LANDS S109

Provincial lands, etc. S. 109

Newcombe, p. 226 for cases

S 109

Provincial lands

When Ruperts Land and N.W.T. admitted the lands therein became vested in Crown Dominion which didn't become bound to account for its dispositions thereof to a Province later carved therefrom.

S. 109 only deals with the original uniting Provinces.

Re Trans. N. Resources Sask. (1932) A.C. 28; Digest 459

S. 109 - "Royalties"

Not restricted to those arising from lands, minerals ek - includes escheats and bona vacantia

Digest 455

Camerons S.C. Cases v 14, p. 48

Freedom of Crown Prop from Tax n.

Section 125 - ~~Customs & Excise~~

Must be read along with other sections - thus a Dominion Act may under S. 91 tax Provincial property or a Province tax a Dominion railway.

S. 125

Does not prevent a Province from taxing its own lands or authorizing a municipality to tax Prov. lands (i.e. the beneficial interest of persons therein) per Trueman Re Taxation of Univ. Man. Lands (1940) 1. D.L.R. 579

Misc Group

Copyright - LeF. 113

Intent to place colonial copyright under Dom. but subject to Imp. legislation re whole empire and existing imperial legislation.
Semble Read Prov'l for "colonial" and "Dominion" for "Imp." and get present situation.

Trade marks and Trade names

Come Under S 91/2

Trade and Commerce Corp. (1937) 4 D.L.R. 145

Ditto Ref. re Dom. Trade and Industry Comm. (1937) A.C. 405

Indian Lands - S. 109: interest or Trust

Latest Case:

R v. Commanda (1939) 3 D.L.R. 635

Under some treaties land ceded to the Prov. before Confederation, and under others to the Dominion after Confederation.

In former no trust or interest left in Indians

Indian Lands

Camerons S.C. Cases, vol. 13, p. 45

Term Indians in S91/24 includes Eskimo inhabitants of Quebec. and of other territories and Nfld + Labrador whose admission and union was contemplated by S146

Re Indians (1939) S.C.R. 104

Preliminary Qtns (letter Sept 20)

Prelim Qs TM Copyr

1. Trade Marks

Under Nfld law a mark once registered endures indefinitely

Some marked are

(a) Reg in Nfld not regd in Can
(b) " " Can " " " Nfld
(c) " " Nfld and " " " by same person
(d) " " " " " " by diff. persons

(Eg "Lucky Strike" regd in Newf by one Co
" " Can " another Co

Qtn Will exclusive rights to use mark acquired under Nfld law continue after Union?

Canadian Law:

Trade marks governed by Unfair Competition Act 1932 which gives full jurisdn re matters of trade mark, passing off & unfair competn

T M is a distinctive mark applied by a maker or merchant to goods made or sold by him so as to distinguish them from similar goods of others
It identifies the product

U.C. Act deals not only with Regs^n but also with unfair compet^n or passing off - for the enforcement of rights thereby conferred (At common law a t. m was a species of property

(Maybee p 90 argues that Registration of TM is within Dom juris - but rights & their enforcement are pptly rights and within Prov juris^n)

Act also deals with regs^n of standardization marks, i.e marks used by corp^n or ass^n denoting goods are of defined standard of quality eg "Mazda" lamps which is applied to lamps made by various cos

TM must be distinctive

Marks which are identical with or similar to previously used or registered marks cannot be adopted or registered

T. M cannot be licensed & can be assigned only along with the good will of the business as part of transfer of physical assets & good will

Can Act provides that the person who first uses or makes a mark known in Can shall be entitled to its exclusive use if he registers it within a defined time

Some Eng Ct decisions are to effect that a first user has no cause of action to expunge a similar mark for similar goods if it has been registered by another

This opposed to first file of t. m law which has ~~always made~~ always made the right of the first user paramount & ignores the fact that the Act gives exclus right to the person who first uses provided he registers in time

Answer

Under S 129 or its equivalent all laws in force in Nfld will continue but subject to be repealed or altered by the Dom^n as having exclus juris^n under the BNA Act

(Note before S/W 1931 GB ed legislate re copyright for whole empire NWS 91 No 23 & such imperial leg^n ~~was~~ existing at Conf was binding on Can. As Prov to 7 113 & 159-60 but this is no longer the case VCM)

Accordingly as matter of law the present Nfld ~~trade mark~~ ~~copyright~~ regsn will continue but at sufferance of Dom Parliament

Two possibilities:

(a) Special provision preserving ~~Nfld~~ rights acquired under Nfld regsn forever or for a defined period in respect of marks not yet registered in Canada

(b) Some undertaking by Dom government to amend Dom statute to give continued validity to marks registered in ~~Can~~ Nfld (where no such regsn in Can) as if it were registered in Canada ~~at the~~ as of the date of its actual regsn. ~~Ditto where~~

But where there has been regsn in both countries by different persons it would seem difficult to work out any basis of making both good unless in terms of actual priority of registration in point of time in the case of marks

registered in both countries by the same person there would be little difficulty in providing that the one first registered (whether in Nfld or Canada) shd be taken as the Canadian registered mark under the Dom Act (though this might affect the claims of others)

Conclusion:

Stress injustice to holders of Nfld marks if Dom legislation operates to repeal them (by repugnancy) and ask for period of moratorium or undertaking of Dom to stay its legislative hand — not final validity.

If plea accepted in terms of policy the mechanism is one for experts to work out

2 Patent Act

Patent grants to the patentee the exclusive right to use & sell the invention disclosed & claimed in the application. It is granted for new and useful improvements in an article, process or composition of matter. It must be new, useful & involve invention, i.e more than mechanical skill

In Canada governed by Patent Act 1935 & within exclus juris^n of Parl

It may be refused, or a patent granted may be invalidated

a) if invention by someone else;

(b) if described in any patent or public^n printed anywhere by anyone more than 2 yrs before the appl^n was filed in Can;

(c) If applic^n not filed

(1) before issue of a patent to the inventor in any country other than Canada or

(2) within 1 yr of the filing of the first applic^n by the inventor in any other country

Can a member of International Convention giving protection t residents of a Conv country protection in all other such countries Thus if applic^n filed in one Conv country a similar appl may be filed in any other within a yr & the case will be treated as if filed therein on the same date as the first applic^n.

? Does Nfld (of itself or as a colony ~~a member~~ of the U.K come under this reciprocal arrangement?

sensible apps no Empire company

Always involved in Patent protection is the qtn not only of patentibility but also the qtn of infringement of some one else's patent

Searches made in Can are inadequate & so many invalid patents issued in Can (~~usf~~ practice is t search U.S repository)

Qtn - Same as re Trade marks different assignees may hold rights under Nfld & Dom grants.

Answer.

Same general answer; contend for express ~~preservation~~ rights under Nfld patents where no patent now in Canada. and some undertaking to consider feasibility of giving continued validity to Nfld patents.

Note in both countries the term is 17 yrs. Semble where two by different persons give priority to one first in time

~~Consider Law~~

Matter for admin's & patent lawyers.

not asked)

Copyright

No qtn but
consider Dom Act (RSC 1927
as amended in 1935 & 1938)
copyright arises from mere
creation of literary work
whether publish or not and
endures for life of author + 50
yrs thereafter
It subsists in case of author
was a British subject, a
citizen of a foreign country
which has adhered to the
Berne Conv or of a country
eg US to which Act
has been extended by the
Minister + in case of published
work if first published in B. Empire or such other
country
Copyright in Can (+ other
Berne Countries) is automatic
+ not ~~depended~~ dependent
on regstn (tho there
are regstn sections in
the act which may
facilitate proof in any
action)
See Fox article
Maytee "

3. Goose Bay Airport  Employ Nfld Labour

Leased by Nfld for 99 yrs.
Covenant t "employ Nfld labour as far as practicable" - confirmed by legislation
both re agreement for use of airport for intl flights - not confirmed by statute

Q. Will Canada be so bound by this covenant

A. Assume this airport will pass t Canada as a public work (cf 3108) being (semble) covered by Proposals 8 (5) - "military and naval property, stores and equipment
Canada will take such property as a matter of law subject t any obligations by which Nfld was affected under pre-Conf agreement & statute (Western Counties Case) but qtn is whether Canada will be bound by its own undertaking. as no third party rights vested.
Ans.: is that such covenant will not bind Canada in the absence of express preservation or general term ~~pro~~ in Terms of Union.

Contracts

~~Some applies in ffle t sender covenants~~

other covenants from companies t Nfld re use of nfld labor
eg Labrador Railway Agreement (confirmed by statute)
Labrador Mining & Exploration Co Agreet & statute
Bowater Agreet (& Act)

A If these not taken over then agreet will continue t operate as between Nfld & such Co's ds Dominion will have no jurisdiction re contract
If taken over as matter of property then doubtful (as above whether binding on Canada without prescription

4 Exemption from Taxation and/or maximum limit on Taxes to be paid

Import duties

Labrador Ry Agreet & Act provides s 21 for admission of specified materials free of ~~import~~ export duty for 20 yrs from 1948 & that with regard t other materials so imported the duty shall not exceed 20% of their value

Brit. Labrador Mining & Exploration Co Agreet & Act for 20 yrs from 1944

Brit. Newfoundland Products Corp^n (now Int Power & Paper Co – construction materials & phosphate rockets req'd for manufacture etc, & coal from Barbados & the admitted duty free – without any time limit

By amding Act in 1923 the Co is made exempt in perpetuity from all taxation, eg municipal, Income Taxes, Business Profits taxes other than on goods imported and not otherwise exempt

Complete exemption

Agreet & Acts re Bowater PrPCo (1927 & 1938) which acquired in 1938 the rights of the Int Paper Co in 1938 under those of 1927.)

(1938) Cons. material & coal free from import duties until 1952 & rate on other imported materials fixed at 25% of value

Exemption from municipal taxes of Prty without any loan or settlement

of U R case

By 1927 Act + Agreement this Co (ie 2nd Paper now Bowaters) was given fixed rate of tax 20% on its income with a stated varying maximum for each of the years to 1973. – the rate from 1932-1973 being $150,000 a sum less than present hfld rates. ~~Reqd to know.~~

Income Tax

as to all these cases of exemption from import tax (or grant of a fixed rate) ~~and~~ for unspecified periods or for periods running beyond union, and of a fixed rate and fixed maxima re income taxes

Q. Will Canada be bound by these agreements and statutes which relate to ~~legislative~~ matters clearly within Dom juris^n

Answer. Regarding these concessions as of statutory origin they will continue under S 129 or its equivalent

(+ cf S 122)

only subject to the sufferance of Parliament which will have a clear right to legislate to the contrary as part of its jurisdn to make general laws re Customs + Excise

Regarded as contracts they will be contracts relating to matters within Dom juris and not binding on Canada

Conclusion

Necessary to stress contractual nature and to provide in terms as was done re CPR ~~contracts that~~ exemption from taxes (inc Provincial) re lands in Alta + Sask Acts NB necessary so to provide in terms of union as otherwise Dom as legislative jurisdn can override

alternative regarding as of statutory origin

then in Terms of bmon
exempt from Dom^n power
of repugnant legis^n
under S129 (+ of S122)

or could fall under general
formula fe

Local application of Dom Laws

OK when legislating under a Dom enumerated power

Le Roy p 88

VCM - Docs - Auth

4 copies
short paper

# Post Union Admissions
(Machinery and Authority)

Post Union Admission

## A. Prairie Provinces

NW Territory v Rupert's Land ceded to Dominion by Imperial Orders in Council (p 139) passed on ~~addresses~~ purportedly under S. 146 and after addresses from Canadian Parliament (alone); such ~~admission~~ order in Council provided:

(1) that the said Territory shall be admitted into and form part of the Dominion of Canada, and

(b) that Parliament shall have "authority to legislate for the future welfare and good government of the said Territory

(c) such admission the on the terms and conditions stated

Manitoba 1870

In anticipation of the passing of the foregoing Orders in Council the Canadian Parliament had passed the Manitoba Act 1870 (p 179) to take effect upon the admission

of the NWT into Canada and which provided for the formation of a defined part thereof into the new Province of Manitoba. & 2 made the BNA Act 1867 applicable (except as varied by the Dom Act of 1870 and provided executive & legislative organs & for representation in Parliament etc. 2 made two notable changes from the original Act of 1867 i.e. re Education (p183) and retaining crown lands in the hands of the Dominion.

This Canadian (Manitoba) Act was confirmed by Imperial BNA Act 1871 (~~47~~ (p70)

This Act went on to enact that the Parliament of Canada may from time to time establish New Provinces in any territories forming for the time being part of the Dominion, but not included in any Province thereof) and may at such time

provide for the constitution and administration of any such Province, and for the passing of laws for the peace, order and good government of such Province, and for its representation in the Parliament of Canada (Section 2)

Alberta + Sask 1905

By the ~~Aber~~ Alberta Act (p 188) and the Sask Act (p 204) passed (pursuant to the ~~B N A Act~~ of 1871 supra) by the Parliament of Canada ~~the~~ two defined areas of the N W T (as brought out Canad by the Imp O in C of 1870 (p 139)) were established as ~~the~~ Provinces of Canada

These Acts provided constitutions in detail for the new

Provinces. They continued pre-existing powers etc vested in the Lieut Gov of the N.W. Territories (S10) and made applicable mutatis mutandis the former laws relating to the constitution of the Legislative assembly of the NWT to the Legs. assembly of the Province and the election of members thereof

By a paraphrase of S129 all laws, courts & commissions were continued

The Acts varied S 93 of the B.N.A. Act re Education, and continued the Crown lands in the Dominion

All powers granted to the Province were made subject to the pre-existing contract between Canada and the ~~CB~~ CPR

see over

Note special compensation to Provo (p 193) because would not have the public lands as a source of revenue based on an assumed population plus an additional allowance in lieu of lands for construction of public bldgs

British Columbia 1871

Admitted by Imp O in C 1871 (p 159) under authority of S 146 on addresses by Dom Parliament and by the Legislative Council of British Columbia

Note At the time of these addresses the Legislative Council was not elective nor was responsible govt in operation

Hence section 14 of the BC Address which referred to the intention to introduce respons govt and the intent of the BC govt to amend the Constitution of the Legislature to make a majority thereof elective

Section 14 also provided for the continuance of the Executive authority and Legislature as at the date of union

Before the date of the ~~Order~~ O in C admitting BC the

foregoing intentions had been carried out partly by Imp O in C in 1870 establishing a legislative council, the majority being elective and empowering the Governor to make laws by and with its consent and partly by an Act of the colonial legislature which acting purportedly under the CK V Act of 1865 amended the constitution of the colony by abolishing the legislative council and setting up a wholly elective legislative assembly

Accordingly when the O in C of admission came into effect there was no need to give the Prov a statutory constitution because under S14 the pre-union one would continue (See insert p 165)

Note terms re continuance of existing BC customs tariff (S7); agreement by BC to convey lands in Ry belt to Dominion (S11); electoral

districts for 1st election t
H of C ~~p(165)~~ (p 165)

P. E I
1873

Admitted by Imperial
Orders C (p 168) under
S 146 after addresses
by Dom Parl and by
Legislature council and
Assembly of P. E I,
it being provided
that the constitution
of the Exec ~~authority~~
authority & of the Legislature
should continue
BNA made applic
on usual terms except
as varied & as if colony
had been one of originals

Note – as no lands held by
Crown there was a
special grant in lieu
(p 170) for the repurchase
of same; in view of
contemplated large ry
expenses & of isolated
& exceptional conditions
of P. E I there was
a large increase in
the amount of the

Post Union Provinces

References + election laws, electoral districts etc

P.E.I Acts p 172 (middle) + 173 (foot)

Const^n of Legs + continue;
"Electoral districts and laws under which the first election of members + H Commons shall be such as specified by address of Prov
This address provided that all laws of P.E.I at date of union re the qualif^n of voters etc and all matters connected with a mediatial + election of member for the Assembly shall apply + election for H C
It also specified the electoral districts
This also set out in admitting Ont C

~~P.E.I~~

Manitoba Acts 183
S18 Proceedings for 1st election + assembly to be as prescribed by Lieut Gov etc who shall also make

such other provision in respect of 1st election as he may think fit

S16. Lieut Gov within 6 mos to establish Electoral Districts;

S17 qualifications of voters for Assembly set out - Acts p 1823

Certain Provisions of BNA Act re Speaker & apply to Legislative Assembly ~~del~~ (1883)

Quebec & Ontario (Acts p 47

Ineligibility of office holders (S 83)

S84. Continuation of existing electoral laws relating to specified in force at date of Union (i.e those of old Prov of Can) shall apply to Assemblies

S87 Provisions of BNA re Speaker to apply to Assemblies

Sask + Alberta

S 14. Law re constitution of H assembly of NW Territories & the election of members thereof shall apply mutatis mutandis to the Legislatures of the Prov & the election of members thereof

S 7. Until Parl otherwise provides the qualifications of voters & the proceedings at and in connection with election of members of H Commons shall mutatis mutandis be those prescribed by law with respect to elections in the NW Territories

debt allowance (p170)

? can
include children
wife, in one count

Comm Terms & arrangement et
Transmit ~~draft~~ agreement negt & settle Terms of union
adopted by Delegation &
reps of Canada
to UK govt & recommend
its confirmation

1) Despatch from UK

disc & settle terms etc
tet with reps of Nfld & Can

Ordered to be published

2) State by PM Can July 30/1948
consulting govts of UK & Nfld
recent auth reps of Nfld i.e. Delegation
to negot the Terms of union

govt Before final action
govt will recom
resulting agreement
to Can Parl for approval

3 U.K. Statement July 30/48
recites ref & vote
consequently UK has consulted
+ especially t union
UK as the govt presently
resp for adm of Nfld
under Act of 1933
agrees
The next step

will be for appt Nfld reps
to go to Ottawa in order to arrange,
in negot.s with reps of the Can. Govt
the final terms of union
These will later be submitted
to Can. Parl., with whom
the final decision
will rest, for their approval

Pending the conclus
of these negots
the Comm will continue
to administer the govt of
the Island

4. Nfld Statement

As exec the govt of
Nfld will communicate with
Can. Govt with a view to
authorizing reps of Nfld
proceeding to Ott for
negotiation of the final
terms of union
in accord with previous

In these negots Nfld
will be repr by 7 delegates

leave for U K Union to decide how Union is to be affected

Govt of the gov appt by Union or dele

the effect remains present to R

In Terms of Union expressly revoke the constn of Nfld as it existed prior to the

less legislative comm

+ New Gov to have all powers prerog prev less by pd. comm Gov

+ legislation relating to House of Assembly and the election of members thereto existing prior to the shall be revoked, provided that women of the franchise shall extended to include women between 21 and 25 yrs of

of cites

in proed section

what the residents of the Crown of Labrador

Labrador the same qualifications as to vote at elections as herein defined shall be entitled to elect 1 rep to the first House of Assembly

1. How Terms are approved

2. Terms of const. matters

Term Constitution

Preamble — Constitution as totality
S17 sidenote Cons of Part of Can
S 22 Senate = Composition
sidenote 51A = Comporty of H C
Part V Provincial Constitution - cf Part VI
64 Const of Ex authy in N S + N B
Sidenote 72. Legislative Council of Quebec
sidenote 80 Legis Assembly Que
88 Const^n of the Legis of
N S + N B + continue
92(1) Amdt of the Const^n of the Prov
(cf case in Abridge)
92(14) Constit^n etc of Prov Courts
101 Constitution etc of General
Court of appeal
144 Const^n of townships = verb

Ont C admitting BC
S14 Const^n of Exec Authy +
Legislature
cf C L V Act as authy
for fr union change
in Legislature
Letts v P E I
Const^n of Exec + Legislature
+ continue

cf B N A 1871
of R v S Parl to make provision
Wilmer for the Const^n of
1923 I D L R now 1 S W D
304 - Const 62.3

CLV Act 1865 - Act p 34

c/J Elliot

rep Legislature
~~Thrown~~ full powers &
make laws respecting
the constitution,
powers and procedure
of such Legislature

Semble - "powers" used because
no fed system & such
an Act wd be subject
to British Control
& nullification of excessive
powers taken

Const^n of BC Legislature before
union changed by BC
Act under this
clause
so as to abolish & set up
Legs Council & set up
a wholly representative
Legislature