

PRINCE EDWARD ISLAND 1864-1964

By Hon. Thane A. Campbell, Chief Justice

In this Centennial year the question naturally arises: What significant changes have taken place in the laws of Prince Edward Island since the meeting of the Fathers of Confederation in 1864?

The answer to this question necessitates a very brief review of the constitutional history of the Island prior to 1864. Formerly inhabited by the Mic-Mac Indians and known by them as "Abegweit", it was claimed for the French crown by Jacques Cartier when he landed here in 1534. Under its new name of Saint Jean, it remained a French colony with the exception of a short period

from 1745 to 1764 until 1768. In 1768 by the Peace of Paris it was formally ceded to England. From that date until 1789 the Island was a part of the colony of Nova Scotia. In 1789 it was granted a separate legislature, but the first statutes were passed in 1772. The name of the colony was changed from Saint John to Prince Edward Island in 1788.

It is therefore accepted generally that the laws of Prince Edward Island up to 1864 were compounded of the following elements: (1) The unwritten laws of England as they stood at 1763, subject to modification by subsequent valid legislation of the colony. These unwritten laws comprised in turn (a) the criminal law, (b) the common law in civil matters; (c) equity, or a beneficial gloss on the strictness of the common law administered by the Courts of Chancery.

(2) English statutes passed up to 1763 which had a general or specific bearing on the conditions prevailing here. (3) (In theory) laws relating to the Island passed by the Legislature of Nova Scotia between 1768 and 1789. (No such statutes have been brought to my attention.) (4) Statutes, on civil or criminal law, passed by the Legislature of Prince Edward Island since 1769 (or, in practice, since the meeting of the Legislature in 1773).

Such statutes could reverse or modify the existing state of the law, but until the granting of responsible government in 1851 they were liable to be disallowed by the Governor or by the Home Government.

B.N.A. ACT
Such was the content of our laws in 1864. The most important change in the laws of Prince Edward Island in the past hundred years occurred on 1st July 1873, when the Island became a province of Canada under the constitution of all terms settled by the British North America Act of 1867.

The resulting changes in our laws may be outlined as follows: (1) The basic features of our constitution passed into written law, as enacted by the B. N. A. Act. (2) The Act, combined with Her Majesty's Order of 26th June 1873 admitting this Island as a province of Canada, provided that the constitution of each of the Maritime Provinces should remain as at the

time of Union, but conferred on laws on such subjects as agriculture, education and welfare. Our laws on such subjects are therefore a combination of Dominion and Provincial statutes, in any field of legislation where

there is no Dominion statute. (4) The Island retained, subject to the last mentioned principle, the right to legislate on matters of a local or private nature in the province. On such topics very numerous acts

have been passed by the Provincial Legislature and our laws on such subjects as real and personal property, sale of goods, education, highway traffic, liquor control, solemnization of marriage, care of children, administration of justice, and provincial and municipal constitu-

tions have been in large measure reduced to written statutory form. To summarize, — our laws of 1864, as I have outlined them above, have been substantially modified in the past hundred years in the following ways: (1) By the provisions of the B.N.A. Act, which have converted our simple colonial constitution into a complex provincial and federal system.

(2) By the Criminal Code of Canada and other valid legislation of the Parliament of Canada in its appropriate fields; (3) By the statutes of the Provincial Legislature in matters reserved for provincial jurisdiction.

Yet, in spite of the voluminous statutes passed by both Dominion and Provincial Legislatures, we remain a "common law" province. In spite of extensive codification of details, the basic principles of our law and jurisprudence (both civil and criminal) are still largely founded in the common, or unwritten, law of England, as interpreted by many centuries of judicial decisions.



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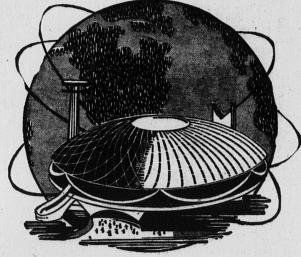
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WITH ELECTRICITY

The Bright New Tomorrow IS TODAY...



Serving P. E. Island Since 1886

First power plant pictured at right was a steam driven turbine plant with a 500 Kilowatt capacity, 175 lbs. steam pressure. Pictured is plant of 1926.

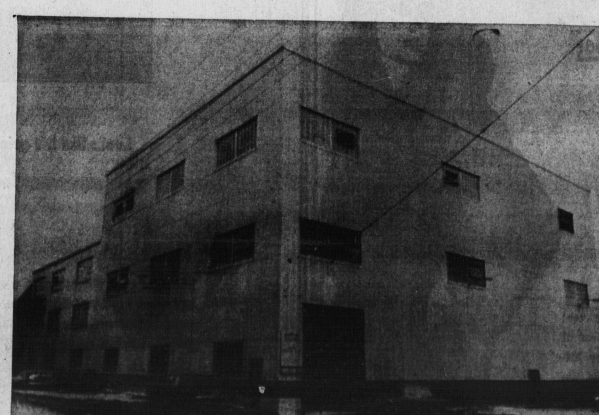


Colonial building was to cost \$35000

The building is to be placed in the centre of Queen Square, is of handsome design which was drafted by Mr. Isaac Smith, president of the Mechanics Institute — is to be composed of freestone imported from Nova Scotia, will be 120 feet in length by 45 feet in breadth, three stories in height. It will cost nearly eleven thousand pounds (about \$35,000 Island currency), and will not only be an enduring monument by CHARLOTTETOWN, but will also be a credit to this flourishing and rising Colony." The above is taken from The Royal Gazette of May 23, 1945.

With A Modern Efficient Plant

Shown at left is present plant generating total capacity of 55,000 kilowatts. New centralized control system recently installed enables one operator to control and adjust normal output of plant.



which also noted that in laying the cornerstone the then Governor placed in a niche in it a vase containing various cuts of the realm and a scroll which read as follows: "The first stone of this Building was laid by His Excellency, Sir Henry Vere Harcourt, Knight, Lieutenant Governor of Prince Edward Island, on the Sixteenth day of May, in the year of Our Lord, One Thousand Eight Hundred and Forty-three (1843) and in the sixth year of the Reign of Her Most Gracious Majesty, Queen Victoria, assisted by St. John's Lodge, No. 333, of Free and Accepted Masons."

(3) By the B.N.A. Act, and subsequent amendments, the Province and the Dominion have acquired concurrent powers of legislation on a number

