

Mar. 22.

Provincial Control Of Insurance Laws Asserted by Price

**Attorney-General Scores
Ottawa for Its Continu-
ance of Attempt to
Exercise Jurisdiction,
Which, He Claims, Has
Been Taken From It by
Privy Council Decision**

**MAKES SUGGESTION
FOR SETTLEMENT**

Charging that for some unexplainable reason the advisers of the Federal Government, with respect to administration and control of insurance, "seem to have shut their eyes deliberately to the true and conclusive significance of the recent Privy Council judgment," Attorney-General William H. Price of Ontario yesterday served fair warning that this Province will fight for its rights as it has fought in the past, despite the evident determination of the Dominion, despite the Privy Council decision, to continue its domination of the insurance business "at all costs."

Colonel Price's blunt, belligerent declaration was embodied in a press statement of explanation to a new insurance bill which he brought down to the Legislature yesterday afternoon. This measure—admittedly a stop-gap, made necessary by existent extraordinary circumstances—would empower the Lieutenant-Governor-in-Council to make such orders and regulations concerning insurance as may become necessary between present date and the prorogation of the 1933 Legislature, by which time, it is hoped, the constitutional issue between the Province and the Dominion will have been definitely settled, and a revision of the Ontario statutes can be ready for the Legislature's consideration.

The bill, which is entitled "The Insurance (Temporary Provisions) Act, 1932," will come into force only on proclamation, and will then have effect until the 1933 session concludes. A similar bill, Colonel Price explained yesterday, has already been passed in Saskatchewan, is now before the Legislature of Alberta, and will probably be presented to the majority of the Provincial Legislatures in Canada at their current sessions.

His statement follows:

"May I take the opportunity afforded by the introduction and first reading of this bill to explain to the House the policy of this Government with respect to the regulation of insurance and insurance legislation.

"The business of insurance—life, fire and casualty insurance—is generally recognized not only as one of our most important businesses, but also as one peculiarly impressed with a public interest. Some of its branches, such as workmen's compensation insurance, have been considered a proper field for a Government monopoly. All other classes of insurance have been subject to close Government supervision and regulation, particularly on this continent, for upward of half a century.

Supervision in the United States.

"In the United States this Government supervision has been exercised by the several States, each of which has a Superintendent or Commissioner of Insurance. Reciprocal agreements between States have avoided most of the overlapping and duplication, so that most States use the same forms of annual and other returns, co-operate in joint examinations of companies, and generally afford the insurance business something in the nature of a 'trial by

jury.' This system has some obvious advantages for all concerned. There is not, and never has been, a Federal Department of Insurance in the United States.

"In Canada the situation has been different. We have had dual, Federal and Provincial, supervision almost since Confederation. The early records show that, when the British North America Act, 1867, was being drafted at the Quebec Conference in 1864, it was proposed to give the power 'to regulate the business of life and fire insurance' to the central Government, but that the proposal was defeated, presumably on the ground that the contract of insurance was obviously a matter of 'property and civil rights' within the exclusive jurisdiction of the Provinces. In any event, 'insurance' was not expressly named anywhere in the act. As a result, the Dominion and some of the Provinces appointed an Inspector or Superintendent of Insurance shortly after Confederation. The first Ontario Inspector was appointed in 1879. Since that time the Dominion department has shared with the Insurance Departments established by all the Provinces (other than the Maritime Provinces) the responsibility for the regulation of the business of insurance in Canada.

Clashes Inevitable.

"Conflicts of jurisdiction were inevitable. Every company was required to serve two masters. Every company was obliged to procure a Federal license, and also a license from the Provincial department in each Province where it sought to carry on business. Every company was required to make annual and other returns to both the Dominion and the Provincial departments. The Dominion undertook to prescribe the terms and conditions which must be included in contracts of life, accident and sickness and automobile insurance—conditions differing from those prescribed by the Provincial statutes. It undertook to say what companies should and what companies should not transact the business of insurance in the Province of Ontario. When companies undertook to carry on business in Ontario upon the authority of a license under the Ontario Insurance Act, but without a Dominion license, the Dominion undertook to impose a prohibitive tax upon their Ontario policyholders.

Litigation Long, Costly.

"These conflicts have led to long and expensive litigation. The Provinces have stood up for their rights. Ontario has appreciated that there is room for a difference of opinion as to the merits of Federal, as compared with Provincial, regulation of insurance. In a young country like Canada, and particularly in hard times, centralization is the panacea often suggested to reduce the cost of government. Possibly if we were back in 1864 we might urge that 'insurance' be declared to be an exclusive field of jurisdiction for the central Government. But we're not back in 1864. It is now 1932. We can't turn the clock back nearly seventy years. The respective legislative powers of the Dominion and the Provinces are set out in the British North America Act, 1867. No informed person has the temerity to suggest seriously that this distribution of powers could be changed. And the Privy Council has now said, in so many words, that 'the (1916) decision on this question conclusively and finally settled that regulations as to the carrying on of insurance business were a Provincial, and not a Dominion, matter.' It would be subversive of our Federal system of government in Canada if the Provinces were to shirk the responsibilities imposed upon them by the law of the Constitution.

The Dominion's View.

"The Dominion does not accept this view. Ever since 1916 successive Ministers of Finance, belonging to both political parties, have sponsored repeated attempts to maintain the Dominion Insurance Department. Three times the question has been before the Privy Council (not to mention a fourth occasion earlier in 1881). Each time the validity of Dominion insurance legislation has been at stake. Each time it has been declared invalid. Provincial insurance legislation has never been challenged since 1881, and then it was challenged unsuccessfully. In the recent case Quebec made the reference to the courts and British Columbia and Ontario intervened. Their Lordships referred to the 'domination' and 'intermeddling' of the Dominion in insurance matters and concluded that 'a Dominion license, so far as authorizing transactions of insurance business in a Province is concerned, is an idle piece of paper conferring no rights which the party transacting in accordance with Provincial legislation has not already got, if he has complied with Provincial requirements.' This observation was made in relation to British and foreign companies.

Mentions The Globe Editorial.

"And so we thought the matter was settled. The Globe carried an editorial on Oct. 24, 1931, expressing satisfaction that the controversy was indeed 'finally settled.' We prepared to assume the added responsibility which the abolition of the Dominion Insurance Department involved. But then we found the Dominion department was still carrying on, issuing licenses, and administering the Dominion statute as though nothing had happened. Moreover, press despatches from Ottawa reported that another revision of the Dominion Insurance Act, 'to get over the decision,' was being planned. So I wrote Premier Bennett on Dec. 8 outlining the situation and appealing to him to make an early announcement of a decision to abide by the Privy Council judgment and withdraw from the field. Nothing happened. Still the Dominion department carried on. Then about Dec. 24 we served the Minister of Finance and the Superintendent of Insurance with an order of the Supreme Court of Ontario restraining them from acting under or enforcing the ultra vires licensing sections of the Dominion Insurance Act. The result was an Order-in-Council dated Dec. 31, 1931, passed under the extraordinary powers conferred by the 'Unemployment and Farm Relief Act, 1931,' requiring every insurance company carrying on business in Canada to have a 'certificate of solvency' issued through the Dominion Superintendent of Insurance. The determination of the Dominion to continue its 'domination' of the insurance business in Canada at all costs was thus made apparent.

Senator Meighen's Bills.

"Shortly after Parliament met the Right Hon. Arthur Meighen introduced two Government bills (B.1 and C.1) in the Senate. They were substantially the same as the old statute, but different as to form. They provoked a storm of protest and, although already referred to the Banking and Commerce Committee, were subsequently formally withdrawn some ten days ago. Now new bills are in course of preparation. A draft of one was submitted to me last Friday. Unfortunately it appears to be the old bill (B.1) with the sections rearranged and in some cases redrafted. For some reason the advisers of the Federal Government seem to have shut their eyes deliberately to the true and conclusive significance of the recent Privy Council judgment. I so advised Mr. Meighen. The next step is necessarily uncertain.

Points a Way Out.

"The Province has not been content with destructive criticism. It has pointed a way out. So long as its rights are recognized and preserved it will co-operate in every possible way. Concrete proposals have actually been submitted. But they do not recognize what the Dominion apparently desires to retain, that is, the power to regulate the insurance business, to license