TAB 4

All ER Reprints/[1895-9] All ER Rep /Attorney-General for Canada v Attorneys-General for Ontario, Quebec and Nova Scotia and Cross Appeals - [1895-99] All ER Rep 1251

Attorney-General for Canada v Attorneys-General for Ontario, Quebec and Nova Scotia and Cross Appeals

[1895-99] All ER Rep 1251

Also reported [1898] AC 700; 67 LJPC 90; 78 LT 697

PRIVY COUNCIL

THE EARL OF HALSBURY, LC, LORD WATSON, LORD HERSCHELL, LORD MACNAGHTEN, LORD MORRIS, LORD SHAND, LORD DAVEY AND SIR HENRY DE VILLIERS

28, 29 , 30, JULY 1897, 26 MAY 1898

26 MAY 1898

Canada - Dominion and provincial legislation - Legislative jurisdiction and proprietary rights over waters - Rivers and lake improvements - Public harbours - Fisheries and fishing - British North America Act, 1867 (30 & 31 Vict, c 3) ss 91, 92, 108, Sched 3.

There is no presumption that because legislative jurisdiction in respect of particular subject-matters was vested in the Dominion Parliament by the British North America Act, 1867, proprietary rights were thereby transferred to it.

On its true construction the transfer by s 108 and Sched 3 of the Act of 1867 to the Dominion of "rivers and lake improvements" relates only to improvements of rivers and lakes and not to entire rivers: Such construction does no violence to the language used and is probably in accordance with the intention of the legislature.

Public harbours are vested in the Dominion, but it does not follow that, because a foreshore on the margin of a harbour is Crown property it necessarily forms part of the harbour.

Section 91 of the British North America Act, 1867, does not convey to the Dominion of Canada any proprietary rights in relation to fisheries, although the legislative jurisdiction conferred on it by s 91 of the Act of 1867 might enable it to affect proprietary rights to an unlimited extent, short of transferring them to others. A tax by way of licence as a condition of the right to fish is within the power conferred on the Dominion legislature by s 91(4) and (12) and a similar power conferred on the provincial legislature by s 92 cannot derogate from that power. In so far as s 4 of the Revised Statutes of Canada, c 95 (1886) empower the grant of exclusive fishing rights over provincial property, it is ultra vires the Dominion. Section 47 of the Revised Statutes of Ontario, s 24 (1860) is, with a specific exception, intra vires the province. Regulations restricting the public right of fishing are by s 91(12) of the Act of 1867, within the exclusive competence of the Dominion Parliament, and therefore such regulations in the Ontario Act, 1892, are ultra vires; but it does not follow that the legislation of a provincial legislature is incompetent merely because it may have relation to fisheries.

The Dominion Parliament has jurisdiction to pass Revised Statutes of Canada, s 92 (1886) dealing with "works constructed in or over navigable waters."

The Judicial Committee will not deal with questions affecting the rights of persons not parties to the litigation.

Notes

Applied: *McGillis v Sullivan*, [1947] 4 DLR 113; Ref. *Re Minimum Wage Act*, [1948] SCR 248. Considered: *McKie v KVP Co, Ltd*., [1948] 3 DLR 201; *R ex rel Battrick v Laver et al*., [1953] OWN 501. Referred to: *Ontario Mining Co v Seybold*, [1903] AC 73; A-G for *Ontario v A-G for, Canada (1912)* 106 LT 916; *A-G for British Columbia v A-G for Canada*, [1914] AC 153; *A-G for Canada v A-G for Quebec*,[1921] 1 AC 413; *Brooks-Bidlake and Whittall v A-G for British Columbia*, [1923] AC 450; *Montreal Corpn v Montreal Harbour Comrs*., *Tetrealt v Montreal Harbour Comrs*., *A-G for Quebec v A-G for Canada* (1925) 42 TLR 98; *A-G for Quebec v Nipissing Central Rail Co and A-G for Canada*, [1926] AC 715; *Re Aeronautics in Canada*

[1895-99] All ER Rep 1251 at 1252

] (Regulation and Control of) [1932] AC 54; *R v Jalbert, A-G of Quebec v R* (1938) 82 Sol Jo 252; *A-G of Alberta v A-G of Canada* [1943] 1 All ER 240; *A-G for New Brunswick v Newcastle Flett* (1947) 19 MPR 365.

As to the interpretation of the distribution of legislative powers, see 5 HALSBURY'S LAWS (3rd Edn) 497-498; and for cases see 8 DIGEST (Repl) 709-710 and 780-781. For the British North America Act, 1867, ss 91, 92, 108 and Sched 3, see 6 HALSBURY'S STATUTES (2nd Edn) 321-323, 326, 336.

Cases referred to:

(1) *Holman v Green* (1881) 6 SCR 707; 2 Cart 147.

(2) *A-G of Ontario v A-G for Dominion of Canada*, [1894] AC 189; 63 LJPC 59; 70 LT 538; 10 TLR 305; 6 R 409, PC; 8 Digest (Repl) 722, 199.

Three Appeals by the Dominion of Canada, by the province of Ontario, and by the provinces of. Quebec and Nova Scotia from a decision of the Supreme Court of Canada given on 13 October 1896, on certain questions referred to it by the Governor-General of Canada pursuant to the Revised Statutes of Canada, c 35, as, amended by the Canadian statute 54 & 55 Vict, c 25.

The questions referred were as follows:

(1.) Did the beds of all lakes, rivers, public harbours, and other waters; or any and which of them, situate within the territorial limits of the several provinces, and not granted before confederation, become under the British North America Act the property of the Dominion or the property of the province in which the same respectively are situate, and is there in that respect any and what distinction between the various classes of waters, whether salt waters or fresh waters, tidal or non-tidal, navigable or non-navigable, or between the so-called great lakes,' lakes Superior, Huron, Erie, etc, and the other lakes, or the so-called great rivers, such as the St. Lawrence River, the Richelieu, the Ottawa, etc., and other rivers, or between waters directly and immediately connected with the sea coast and waters not so connected, or between other waters and waters separating (and so far as they do separate) two or more provinces of the Dominion, from one another, or between other waters and waters separating (and so far as they do separate) the Dominion from the territory of a foreign nation? (2.) Is the Act of the Dominion Parliament, Revised Statutes of Canada, c 32, intitled, "An Act respecting certain works constructed in, or over navigable waters; an Act which the Dominion Parliament

had jurisdiction to pass either in whole or in part? (3.) If not, in case the bed and banks of a lake or navigable river belong to a province, and the province makes a grant of land extending into the lake or river for the purpose of there being built thereon a wharf, warehouse, or the like, has the grantee a right to build thereon accordingly, subject to the work not interfering with the navigation of the lake or river (4.) In case the bed of a public harbour or any portion of the bed of a public harbour at the time, of confederation had been granted by the Crown, has the province a like jurisdiction in regard to the making a grant as and for the purpose in preceding paragraph stated, subject to not thereby interfering with navigation, or other full use of the barbour as a harbour, and subject to any Dominion legislation within the competence of the Dominion Parliament?

(5.) Had riparian proprietors before confederation an exclusive right of fishing in non-navigable lakes, rivers, streams, and waters, the beds of which had been granted to them by the Crown? (6.) Has the Dominion Parliament jurisdiction to authorise the giving by lease, licence, or otherwise to lessees, licensees, or other grantees, the right of fishing in such waters as mentioned in the last question, or any, and which of them? (7.) Has the Dominion Parliament exclusive jurisdiction to authorise the giving by lease, licence, or otherwise to lessees, licensees, or other grantees, the right, of fishing in such waters as mentioned in the last question, or any, and which of them? (8.) Has the Dominion Parliament such jurisdiction as regards navigable or non-navigable waters, the beds and banks of which are assigned to the provinces

[1895-99] All ER Rep 1251 at 1253

respectively under the British North America let, if any such are so assigned? (9.) If the Dominion Parliament has such jurisdiction as mentioned in the preceding three questions, has a provincial legislature jurisdiction for the purpose of provincial revenue or otherwise to require the dominion lessee, licensee, or other grantee to take out a provincial licence also?

(10.) Had the Dominion Parliament jurisdiction to pass s 4 of the Revised Statutes of Canada, c, 96, intituled "An Act respecting fisheries and fishing," or any other of the provisions of the said Act, or any, and which of such severed sections, or any, and what parts thereof respectively? (11.) Had the Dominion Parliament jurisdiction to pass s 4 of the Revised Statutes of Canada, c 96, intituled "An Act respecting fisheries and fishing," or any other of the provisions of. the said Act, so far as these respectively relate to fishing in waters, the beds of which do not belong to the dominion, and are not Indian lands? (12.) If not, has the Dominion Parliament any jurisdiction in respect of fisheries, except to pass general laws not derogating from the property in the lands constituting the beds of such waters as aforesaid, or from the rights incident to the ownership by the provinces and others, but (subject to such property and rights) providing in the interests of the owners and the public, for the regulation, protection, improvement, and preservation of fisheries, as for example, but forbidding fish to be taken at improper seasons, preventing the undue destruction of fish by taking them in an improper manner, or with improper engines, prohibiting obstructions in ascending rivers; and the like? (13.) Had, the legislature of Ontario jurisdiction to enact s 47 of the Revised Statutes of Ontario, c 24, intituled "An Act respecting the sale and management of public lands"; and ss 5 to 13, both inclusive, and ss 19 to 21, both inclusive, of the Ontario Act, 1892, intituled: "An Act for the protection of the provincial fisheries," or any and which of such several sections, or any and what parts thereof respectively? (14.) Had the legislature of Quebec jurisdiction to enact ss 1375 to 1378 inclusive of the Revised Statutes of Quebec, or any and which of the said sections, or any and what parts thereof? (15.) Had a province jurisdiction to legislate in regard to providing fishways in dams, slides, and other constructions, and otherwise to regulate and protect fisheries within the province, subject to and so far as may consist with any laws passed by the Dominion Parliament within its constitutional competence? (16) Has the Dominion Parliament power to declare what shall be deemed an interference with navigation and require its sanction to any work, or erection in or filling up of navigable waters? (17) Had riparian proprietors, before confederation, an explosive right of fishing in navigable non-tidal lakes; rivers, streams, and waters, the beds of which had been granted to them by the Crown?

At the hearing of the case before the Supreme Court of Canada (STRONG, CJ and TASCHEREAU, GWYNNE, KING, and GIROUARD, JJ) the judges were unable to agree and delivered separate written opinions. The opinions of the majority of the judges were to the effect that the beds of all ungranted waters

situate within the territorial limits of a province were the property of such province and not of the Dominion, with the exception only of public harbours, as to which the decision in *Holman v Green* (1) was binding; that the provincial governments alone had power to grant leases and licences as to fishing in such waters; that the jurisdiction of the Dominion as to fisheries was limited to passing general laws which, without derogating from the property in the bed of such waters or from the rights incident to the ownership thereof might provide in the interest of the owners and the public for the regulation, protection, improvement, and preservation of fisheries, and that the provincial legislatures had jurisdiction to make regulations as to fisheries within their respective provinces so far as such regulations were not inconsistent with and were not superseded by Dominion legislation. With reference to the statutes refereed to in questions 9, 10, 11, 13, and 14, the majority of the judges were of opinion that the Revised Statutes of Canada, c 92, "An Act respecting certain works constructed in or over navigable waters" was intra vires, and that the Dominion Parliament shew power to declare what should be deemed an interference with navigation and

require its sanction to any work or erection in, or filling up of navigable waters, but that as regards the Revised Statutes of Canada, c 92, "An Act respecting fisheries and fishing," s 4, when enforced outside Dominion waters, and ss 14(1) 21(1)(2)(3) and 23 were ultra vires; that s 47 of the Revised Statutes of Ontario, c 24; "An Act respecting the sale and management of public lands, ss 5 to 18 and 19 to 21 of 55 & 56 Vict, c 10, "An Act for the protection of the provincial fisheries," and ss 1375 to 1378 of the Revised Statutes of Quebec (51 & 52 Vict, c 17) were, intra vires, provided that an so long as they did not conflict with Dominion legislation. The Attorney-General for the Domini0on, the Attorney-General for Ontario, and the Attorneys-General for Nova Scotia and Quebec obtained special leave to appeal against so much of the judgment as answered the questions adversely to their submissions and contentions.

Robinson, QC (of the Colonial Bar) Haldane, QC, McTavish, QC (of the Colonial Bar) and Loehnis for the Attorney-General for the Dominion.

Blake, QC, Irving, QC, and JM Clark (all of the Colonial Bar) for the Attorney-General for Ontario.

The Attorney-General for Nova Scotia (Longley, QC) the Acting Attorney-General for Quebec (Cannon, QC) and Lewis Coward for the Attorneys-General for Quebec and Nova Scotia.

26 May 1898

LORD HERSCHELL:

The Governor-General of Canada by Order in Council referred to the Supreme Court of Canada for hearing and consideration various questions relating to the property, rights and legislative jurisdiction of the Dominion of Canada and the provinces respectively in relation to rivers, lakes, harbours, fisheries, and other cognate subjects. The Supreme Court having answered some of the questions submitted adversely to the Dominion and some adversely to the provinces, both parties have appealed.

Before approaching the particular questions submitted, their Lordships think it well to advert to certain general considerations which must be steadily kept in view and appear to have been lost sight of in some of the arguments presented to their Lordships. It is unnecessary to determine to what extent the rivers and lakes of Canada are vested in the Crown or what public rights exist in respect of them. Whether a lake or river be vested in the Crown as represented by the Dominion or as represented by the province in which it is situate, it is equally Crown property, and the rights of the public in respect of it except in so far as they may be modified by legislation, are precisely the same. The answer, therefore, to such questions as those adverted to would not assist in determining whether in any particular case the property is vested in the Dominion or in the province. It must also be home in mind that there is a broad distinction between

proprietary rights and legislative jurisdiction. The fact that such jurisdiction in respect of a particular subject matter is conferred on the Dominion legislature for example affords no evidence that any proprietary rights with respect to it were transferred to the Dominion. There is no presumption that, because legislative jurisdiction was vested in the Dominion Parliament, proprietary rights were transferred to it. The Dominion of Canada was called into existence by the British North America Act, 1887. Whatever proprietary rights were at the time of the passing of that Act possessed by the provinces remain vested in them, except such as are by any of its express enactments transferred to the Dominion of Canada.

With these preliminary observations their Lordships proceed to consider the questions submitted to them. The first of these is, whether the beds of all lakes, rivers, public harbours, and other waters; or any and which of them situate within the territorial limits of the several provinces and not granted before confederation, became under the British North American Act the property of the Dominion. It is necessary to deal with the several subject-matters referred to separately, though the answer as to each of them depends mainly on the construction of the Third Schedule to the British North America Act. By s 108 of that Act it is provided

that the public works and property of each province enumerated in the schedule shall be the property of Canada. That schedule is headed, "Provincial public works and property to be the property of Canada," and contains an enumeration of various subjects numbered 1 to 10. The fifth of these is "rivers and lake improvements." The word "rivers" obviously applies to nothing which was not vested in the province. It is contended on behalf of the Dominion that, under the words quoted, the whole of the rivers so vested were transferred from the province to the Dominion. It is contended on the other hand that nothing more was transferred than the improvements of the provincial rivers, that is to say, only public works which had been effected and not the entire beds of the rivers. If the words used had been "river and lake improvements," or if the word "lake" had been in the plural "lakes," there could have been no doubt that the improvements only were transferred. Cogent arguments were adduced in support of each of the rival constructions.

Upon the whole their Lordships, after careful consideration, have arrived at the conclusion that the court below was right, and that the improvements only were transferred to the Dominion. There can be no doubt that the subjects comprised in the schedule are for the most part works or constructions which have resulted from the expenditure of public money, though there are exceptions. It is to be observed that rivers and lake improvements are coupled together as one item. If the intention had been to transfer the entire bed of the rivers and only artificial works on lakes, one would not have expected to find them thus coupled together. Lake improvements might in that case more naturally have been found as a separate item or been coupled with canals. Moreover, it is impossible not to be impressed by the inconvenience which would arise if the entire rivers were transferred, and only the improvements of lakes. How would it be possible in that case to define the limits of the Dominion and provincial rights respectively? Rivers flow into and out of lakes; it would often be difficult to determine where the river ended and the lake began. Reasons were adduced why the rivers should have been vested in the Dominion, but every one of these reasons seems equally applicable to lakes. The construction of the words as applicable to the improvements of rivers only is not an impossible one. It does no violence to the language employed. Their Lordships feel justified, therefore, in putting upon the language used the construction which seems to them to be more probably in accordance with the intention of the legislature.

With regard to public harbours, their Lordships entertain no doubt that, whatever is properly comprised in this term, became vested in the Dominion of Canada. The words of the enactment in the third schedule are precise. It was contended on behalf of the provinces that only those parts of what might ordinarily fall within the term "harbour," on which public works had been executed became vested in the Dominion, and that no part of the bed of the sea did so. Their Lordships are unable to adopt this view. The Supreme Court in arriving at the same conclusion founded their opinion on a previous decision in the same court in *Holman v Green* (1) where it was held that the foreshore between high and low watermark on the margin of the harbour became the property of the Dominion as part of the harbour. Their Lordships think it extremely inconvenient that a determination should be sought of the abstract question, what falls within the description "public

barbour." They must decline to attempt an exhaustive definition of the term applicable to all cases. To do so would in their judgment be likely to prove misleading and dangerous. It must depend, to some extent at all events, upon the circumstances of each particular harbour, what forms a part of that harbour. It is only possible to deal with definite issues which have been raised. It appears to have been thought by he *Supreme Court in Holman v Green* (1) that if more than the public works connected with the harbour passed under that word, and if it included any part of the bed of the sea, it followed that the foreshore between the high and low watermark being also Crown property, likewise passed to the Dominion. Their Lordships are of opinion that it does not follow that because the foreshore on the margin of a

harbour is Crown property it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If for example it had actually been used for harbour purposes such as anchoring ships or landing goods; it would no doubt form part of the harbour, but there are other cases in which, in their Lordships' opinion, it would be equally clear that it did not form part of it.

Their Lordships pass now to the questions relating to fisheries and fishing rights. Their Lordships are of opinion that s 91 of the British North America Act did not convey to the Dominion of Canada any proprietary rights in relation to fisheries. Their Lordships have already noticed the distinction which must be borne in mind between rights of property and legislative jurisdiction. It was the latter only which was conferred under the heading "Seacoast and inland fisheries" in s 91. Whatever proprietary rights in relation to fisheries were previously vested in"private individuals or in the provinces respectively remained untouched by that enactment. Whatever grants might previously have been lawfully made by the provinces in virtue of their proprietary rights could lawfully be made after that enactment came into force. At the same time it must be remembered that the power to legislate in relation to fisheries does necessarily to a certain extent enable the legislature so empowered to affect proprietary rights. An enactment, for example, prescribing the times of the year during which fishing is to be allowed, or the instruments which may be employed for the purpose (which it was admitted the Dominion legislature was empowered to pass) might very seriously touch the exercise of proprietary rights, and the extent, character, and scope of such legislation is left entirely to the Dominion legislature. The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the legislature is elected. If, however, the legislature purports to confer upon others proprietary rights, where it possesses none itself, that, in their Lordships' opinion is not an exercise of the legislative jurisdiction conferred by s 91. If the contrary were held, it would follow that the dominion might practically transfer to itself property which has by the British North America Act been left to the provinces and not vested in it.

In addition, however, to the legislative power conferred by the twelfth Item of s 91, the fourth item of that section confers upon the Parliament of Canada, the power of raising money by any mode or system of taxation. Their Lordships think it is impossible to exclude as not within this power the provision imposing a tax by way of licence as a condition of the right to fish. It is true that by virtue of s 92 the provincial legislature may impose the obligation to obtain a licence, in order to raise a revenue for provincial purposes, but this cannot, in their Lordships' opinion, derogate from the taxing power of the Dominion Parliament to which they have already called attention. Their Lordships are quite sensible of the possible inconveniences, to which attention was called in the course of the arguments, which might arise from the exercise of the right of imposing taxation in respect of the same subject-matter and within the same area by different authorities. They have no doubt, however, that these would be obviated in practice by the good sense of the legislatures concerned. It follows from what has been said that in so far as s 4 of the Revised Statutes of Canada, c 95, empowers the grant of fishery leases conferring an exclusive right to fish in property belonging not to the Dominion but to the provinces it was not within the jurisdiction of the Dominion Parliament to pass it. This was the only section of the Act which was impeached in the course of the argument, but the subsidiary provisions, in so far as they are, intended to enforce a right which it was not competent for the Dominion to confer; would of course fall with the principal enactment.

Their Lordships think that the legislature of Ontario had jurisdiction to enact s 47 of the Revised Statutes of Ontario, c 24, except in so far as it relates to land

in the harbours and canals, if any of the latter be included in the words "other navigable waters of Ontario." The reasons for this opinion have been already stated when dealing with the questions in whom the beds of harbours, rivers, and lakes were vested.

The sections of the Ontario Act of 1892, entitled "An Act for the protection of the provincial fisheries," which are in question consist almost exclusively of provisions, relating to the manner of fishing in provincial waters. Regulations controlling the manner of fishing ire undoubtedly within the competence of the Dominion Parliament. The question is whether they can be the subject of provincial legislation in so far as it is not inconsistent with the Dominion legislation. By s 91 of the British North America Act, the Parliament of the Dominion of Canada is empowered to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by that Act assigned exclusively to the legislatures of the provinces "and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section" it is declared that (notwithstanding anything in the Act) "the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next thereinafter enumerated." The twelfth of them is "Sea-coast and inland fisheries." 'The earlier part of this section read In connection with the words beginning "and for greater certainty" appears to amount to a legislative declaration that any legislation falling strictly within any of the classes specially enumerated in s 91 is not within the legislative competence of the provincial legislatures under s 92. In any view the enactment is express that laws in relation to matters falling within any of the classes enumerated In s 91 are within the "exclusive" legislative authority of the Dominion Parliament: Whenever, therefore, a matter is within one of these specified classes, legislation in relation to it by a provincial legislature is, in their Lordships' opinion, incompetent.

It had been suggested, and this view has been adopted by some of the judges of the Supreme Court, that although the Dominion legislation dealing with the subject would override provincial legislation, the latter is nevertheless valid unless and until the Dominion Parliament so legislates. Their Lordships think that such a view does not give their due effect to the terms of s 91 and in particular to the word "exclusively." It would authorise for example the enactment of a bankruptcy law or a copyright law in any of the provinces unless and until the Dominion Parliament passed enactments dealing with those subjects. Their Lordships do not think that this is consistent with the language and manifest intention of the British North America Act. It is true that this Board held, in *A-G of Ontario v A-G for Dominion or Canada* (2) that a law passed by a provincial legislature which affected the assignments and property of insolvent persons was valid as falling within the heading "Property and civil rights" although it was of such a nature that it would be a suitable ancillary provision to a bankruptcy law. But the ground of this decision was that the law in question did not fall within the class "Bankruptcy and insolvency" in the sense in which those words were used in s 91 For these reasons their Lordships feel constrained to hold that the enactment of fishery regulations and restrictions is within the exclusive competence of the Dominion legislature, and is not within the legislative powers of provincial legislatures.

But while, in their Lordships' opinion all restrictions or limitations by which public rights of fishing are sought to be limited or controlled can be the subject of dominion legislation only, it does not follow that the legislation of provincial legislatures is incompetent merely because it may have relations to fisheries. For example, provisions prescribing the mode in which a private fishery is to be conveyed or otherwise disposed of, and the right of succession in respect of it would be properly treated as falling under the heading "Property and civil rights" within s 92, and not as in the class "Fisheries" within the meaning of s 91. So, too, the terms and conditions upon which the fisheries which are the property of the province may be granted, leased, or otherwise disposed of and the rights which consistently with any

general regulations respecting fisheries enacted by the Dominion Parliament may be conferred therein appear proper subjects for provincial legislation, either under class 5 of s 92, "The management and sale of public lands," or under the class "Property and civil rights." Such legislation deals directly with property, its disposal and the rights to be enjoyed in respect of it, and was not in their Lordships' opinion intended to be within the scope of the class "Fisheries" as that word is used in s 91. The Various provisions of the Ontario Act of 1892 were not minutely discussed before their Lordships, nor have they the information before them which would enable them to give a definite and certain answer as to every one of the sections in question. The views, however, which they have expressed, and the dividing line they have indicated, will, they apprehend, afford the means of determining upon the validity of any particular provision or the limits within which its operation may be upheld, for it is to be observed that s 1 of the Act limits its operation to "fishing in waters and to waters over or in respect of which the legislature of this province has authority to legislate for the purposes of this Act." Sections 1375, 1876, and s, 1377(1) of the Revised Statutes of Quebec (51 & 52 Vict, c 17) afford good illustrations of legislation such as their Lordships regard as within the functions of a provincial legislature. Their Lordships entertain no doubt that the Dominion Parliament had jurisdiction to pass the Act intituled "An Act respecting certain works constructed in or over navigable waters" (Revised Statutes of Canada, c 92 (1886)). It is, in their opinion, clearly legislation relating to "navigation."

Their Lordships must decline to answer the last question submitted as to the rights of riparian proprietors. These proprietors are not parties to this litigation or represented before their lordships, and accordingly their Lordships do not think it proper when determining the respective rights and jurisdictions of the Dominion and provincial legislatures to express an opinion upon the extent of the rights possessed by riparian proprietors. The parties will, of course, bear their own costs of these proceedings.

Day, Russell & Co; SV Blake; Hill, Son & Rickards

Reported by CE MALDEN, ESQ, Barrister-at-Law.