

126, 127. The other aspects of his decision have been superseded by the repeal of the clauses of the R. S. C. 1886, ch. 181, secs. 36 and 37, by the sec. 981 (1892) of the Criminal Code.

The result is that the plaintiff's action fails in all respects, and must be dismissed with costs.

HON. SIR JOHN BOYD, C.

JUNE 25TH, 1912.

KERLEY v. LONDON AND LAKE ERIE TRANSPORTATION COMPANY.

3 O. W. N. 1498; O. L. R.

*Constitutional Law — Sunday Observance on Electric Railways — Ontario Railway Act, s. 193 (1)—Intra Vires.*

Action under Ontario Railway Act, 1906, to recover from defendant \$1,200, penalties for the operation of their cars on Sunday. Defendants operate a line of electric railway wholly within the province, but as at the date of incorporation it was contemplated that a line of lake steamers should be operated in connection therewith, connecting with Cleveland, Ohio, the work was declared one for the general advantage of Canada, and incorporation obtained by Dominion Statutes 9 & 10 Edw. VII., c. 120, wherein the company was empowered to hold, maintain, and operate the railway, subject to the provisions of the Railway Act of Canada.

BOYD, C., *held*, that 4 Edw. VIII., c. 32, providing that railways, wholly within one province of Canada, but declared, in whole or in part, to be for the general advantage of Canada, shall be subject, notwithstanding such declaration, to any provincial act prohibiting or regulating work on the first day of the week and providing, further, that the Governor-General-in-Council may by proclamation confirm such provincial Act, thereby making it as valid and effectual as if enacted by the Parliament of Canada, was valid and effectual legislation, and that the particular provincial legislation involved was not thereby rendered a delegate of the legislative powers of the Parliament of Canada, but merely its legislative agent.

That Ontario Railway Act (1906), s. 193 (1), providing that no person shall operate an electric railway nor employ anyone thereon (subject to certain defined exceptions), on the first day of the week, was *intra vires* the provincial legislature.

Review of legislation and authorities.

Judgment for plaintiff for \$1,200 and costs.

An action to recover \$1,200 as penalties from defendant company for running their cars on Sunday, contrary to the provisions of the Ontario Railway Act, 1906.

J. A. Paterson, K.C., for the plaintiff.

M. Cowan, K.C., and J. B. Holden, for the defendant Co.

HON. SIR JOHN BOYD, C.:—The simple question here is whether the defendants are liable to pay penalties for running their cars on Sunday. The answer is far from simple,