braced in the survey was shown by the evidence. It is this: when the survey was being made the agent of the Hudson's Bay Company being there and taking or feeling some interest in the Indians suggested that they might as well have this piece of land as it was in parts better adapted to cultivation such as they do than most of the land in the neighborhood, saying that they might as well have it as not and that the Government would not object to it. The Indians, and it appears the surveyor, fell in with the idea and the survey was made so as to comprehend this piece of ground. From the manner in which other surveys were made long before this time and soon after the treaty, so far as appears by the report of the same and the evidence and the spirit of liberality that seems to have pervaded the dealings of the Government with the Indians, it can scarcely be doubted that if this piece of land had at an early day, and perhaps, at any time before the occurence of the facts giving rise to this contention, been asked by the Indians as part of their reserve it would have been given them. Nevertheless, my finding and decision is that it is not part of or belonging to the reserve. There is also another point at which there is some difference between Mr. Abrey's boundary line and the line reasonably drawn through or by the objects or places before alluded to; this difference is however but trifling. Mr. Abrey's line falling at the place inside of the other line, but the Indians are manifestly satisfied to adopt at this place Mr. Abrey's line and as there is not any material or valuable or substantial, or I may say appreciable difference I think that Mr. Abrey's boundary line may reasonably be adopted at this place.

I am of the opinion, then, that Mr. Abrey's survey varied by making the line of the water that I have before mentioned in this connection the northerly boundary, and, casting out the part of the survey lying northerly of this water line, will show the location and boundaries of this reserve. This, to my mind, has been shown and placed beyond reasonable cavil. This survey has been manifested upon a chart or upon charts, and there is a written description of the lands included in it, and unless it is considered necessary for the purposes of the Public Records, I do not see any grave necessity for directing another survey varying this one, as before stated. Counsel in this case will be good enough to offer me such suggestions as may occur to them or their clients on this subject before the formal judgment is drawn up.

The next question is to whether or not any timber was cut by the defendants, licensees, or rather claiming under licensees of the Government of the Dominion outside of the boundaries of what I have determined was and is this Indian Reserve. The answer to this question is, that it has not been shown by the evidence that these defendants or any of them did by themselves or their agents cut or remove any timber upon any land lying outside of the boundaries of this reserve as I have found and decide such boundaries to be. All the timber cut or removed by these defendants that appears at all by the evidence has been shown to have been upon and from the lands of the reserve as I find it to be. None was shown to have been cut upon the lands lying north of the water line before mentioned and within the boundary laid down by Mr. Abrey in his survey.

Some reference is here made to dry timber or wood cut for firewood, which his Lordship did not consider material.

The findings and conclusions of fact upon the evidence are against what was contended for on behalf of the plaintiff during the course of the trial, so far as the locations and boundaries of this reserve and the cutting of timber by the defendants, who claim under the authority of licenses issued by the Dominion Government are concerned, for which the plaintiff sought to show in regard to the latter was that these defendants had cut timber upon lands not being lands embraced in this reserve, and hence public lands, belonging to the Province of Ontario, although the fee thereof was in the Crown, and in regard to the former what the plaintiff sought to show was that this reserve is not located at all where I decide that it is located, and even if so, that the boundaries were different from what I decide that they are.

It was not at the trial disputed that there was an Indian reserve in this neighborhood somewhere, and until the argument (near the close of the argument I think) it was, as I thought, fully understood that unless the plaintiff succeeded in showing that these defendants had been cutting timber upon lands outside of the boundaries of this reserve, this case against them must fail. The pleadings of some of the defendants, who claim by virtue of licenses issued by the Government of Ontario, seem to place the matter of contention in this way, and until very near the close of the trial I thought that the only question would be whether or not these defendants had cut timber outside of the boundaries of the reserve.

The plaintiff, however, and as an after-thought I think, contended, as did also counsel for the defendants, claiming by virtue of licenses from the Ontario Government that whether the cutting of timber that was proved or admitted was within or without the boundaries of the reserve the plaintiff was entitled to succeed, placing the contention on the ground that the property was vested in the Province of Ontario, under the provisions of B. N. A. Act, and that the Government of the province were trustees for the Indians of the amount of money that that Government had received for the timber. I was then of the opinion that this contention could not prevail These lands are undoubtedly lands reserved for the Indians. The right and power to legislate in regard to the Indians, and lands reserved for the Indians, is clearly given in and by the distribution of legislative powers made by the B. N. A. Act to the Parliament of the Dominion, which Parliament had and has this power and authority.

That Parliament did during its first session by 31 Vic., c 42, legislate in regard to lands reserved for the Indians by providing, amongst many other things, for the manner in which any surrender of lands by the Indians should be made.

From time to time the same Parliament passed various Acts dealing with the subject of the Indians and lands reserved to them. By 39 V., c. 18, enacted by the same Parliament, it was provided amongst many other things (sec. 25), that no Indian reserve or portion of a reserve should be sold, alienated or leased until it had been released or surrendered to the Crown for the purposes of the the Act and by 43 V., c. 28 if not earlier provision was made for granting lisenses to cut trees, etc., on the Indian reserves.

I am not aware of any objection ever having been made or any unfavorable comment having been spoken or written in respect of such legislation or anything that was done in pursuance of it, and there seems to me to be reason for thinking that it was a view entertained by both Governments that the Government of the Dominion had the right and power to legislate respecting and to administer the affairs of and appertaining to the Indians and the lands reserved for the Indians; there being however, a difference of opinion as to what lands were "lands reserved for the Indians."

As I have said there can be no doubt that in any view of this latter question these lands are and must be considered lands reserved for the Indians. This cannot be otherwise if there exist any such lands at all; and what the Dominion Government did by obtaining a release or surrender of this timber (the timber upon this reserve) and issuing licenses for the cutting of it, the money arising to be for the benefit of the Indians, appeared to me to be a simple act of administration of the affairs of this little band of Indians and the lands reserved to them, done in pursuance of or in accordance with the legislation on the subject which the Dominion Parliament seemed to me to have the undoubted power to enact; and in accordance with the idea expressed in the Treaty of 1850. See the remarks of Mr. Justice Patterson in The Queen v. St. Catherines Co., 13 A. R. 173

For these and the like reasons I was at the close of the argument of the opinion that the Dominion Government had the power and authority to do as they did, and that the defendants claiming under such licenses from the Dominion Government were justified in cutting the timber that they did cut upon this reserve, and that it was a matter with which the Province of Ontario had or has at the present time no concern, no matter what might be considered to be the right that would arise, if any, to the province upon the lands of this reserve being ceded by the Indians to the Crown, or the reserve becoming wholly unnecessary by reason of the bands of Indians becoming extinct, etc.

I then thought that the relief that the plaintiff should have was the declaration as to the reserve and its boundaries to which I have before referred, and that, in other respects, the action should be dismissed, for I did not see that the defendants claiming under licenses from the Ontario Government could in this section have any relief against the plaintiff and I thought that they were entitled to none against their co-defendants.

It was then said, however, that in the case The Queen v. St. Catharines Co. (supra), which was pending before the Privy Council upon an appeal it was likely or probable, from the nature of some of the arguments before that court, and some remarks that were reported to have been made by some of the learned judges that there would be an expression of opinion regarding the "quality" as it was called of the Indian title, although that action was upon a subject and in regard to right or supposed rights quite different from the matter involved in this action. For this reason this judgment had been delayed to the present time.

I have now had an opportunity of perusing the judgment of the Privy Council in that action upon the appeal to them. They have not seen fit to discuss or decide anything as to the quality of the Indian title, considering that unnecessary for the determination of the appeal before the Council; and after a careful perusal of the whole of the judgment, I am of the same opinion as at the close of the argument. I think the decision does not and cannot effect in any degree in favor of the plaintiff the rights and matters in contention in this action; but, as some of the statements or expressions in the judgment might be thought at first view to have some bearing upon the matters of this action, I will refer to these and say very shortly why they have in my opinion no such bearing.

One of these is: "The enactments of section 109 are, in the opinion of their Lordships, sufficient to give to each province, subject to the administration and control of its own Legislature, the entire beneficial interest of the Crown in all lands within its boundaries which at the time of the union were vested in the Crown, with the exception of such lands as the Dominion acquired right to under section 108, or might assume for the purposes specified in section 117. Its legal effect is to exclude from the "duties and revenues" appropriated to the Dominion all the ordinary territorial revenues of the Crown arising within the provinces." The court then refers to Attorney-General v. Mercer.

The comprehensive language must, in my opinion, be applied to the subject matter of the case then under consideration. The lands in that case had been ceded to the Crown by the Indians by the Treaty of 1873, and had thus been disencumbered of the Indian title. If there were doubt as to this way of looking at our construing the passage, it is made, I think, plain by the concluding part of that portion of the judgment in which their Lordships decide against the contention on behalf of the Dominion Government in respect to the ceded territory, rested on the provisions of section 91 (24). The passage is: "Their Lordships are, however unable to assent to the argument for the Dominion founded on section 91 (24). There can be no *a priori* probability that the British Legislature in a branch of the statute which professes to deal only with the distribution of legislative power, intended to deprive the provinces of rights which are expressly given them in that branch of it which relates to the distribution of reserves and assets. The fact that the power of legislating for Indians and for lands which are reserved for their use has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the provinces to a beneficial interest in these lands available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title."

In that case the lands in question has been disencumbered of the Indian title, as before stated by the Treaty of 1873. In the present case the lands have not been ceded and have not so been disencumbered, besides the latter part of the passage discloses the view of the court as to the period at which the beneficial interest spoken of becomes available to the province as a source of revenue, namely, when the estate of the Crown is freed from the Indian title, and seems to me not to consist with the arguments before me respecting a trust existing in the Province for the benefit of the Indians. Then afterwards the court said: "The treaty leaves the Indians no right whatever in the timber growing upon the lands which they gave up, which is now fully vested in the Crown, all revenues derivable from the sale of such portions of it as are situate within the boundaries of Ontario being the property of that province, indicating in addition to what I have before said that the Indians had before the treaty or surrender rights in respect of the timber, a consequence of which would seem to be that it may be used by them or for their benefit until such time as their title becomes extinguished by cession, surrender or otherwise.

A careful perusal of the judgment of the Privy Council shows, I think, that it does not militate in any degree against the contention of the Dominion Government here, and portions of it indicate that the Dominion Government is right in legislating for these Indians and their lands (a reserve which has not been ceded or surrendered in any way, and in administering their affairs correspondence with parties in England on the manner in which their doing. The rights of the Indians in respect of this land, and the rights that they had in respect to the timber thereon, were rights and interests other than that of the province in the same to say the very least, and I do not desire to be understood as indicating any opinion as to what, if any, right the province has in respect to such lands.

The plaintiff is entitled to the declaration that I have before mentioned, but I am still of the opinion that the action must in all other respects be dismissed, with costs to the defendants claiming under the licenses of the Dominion Government and to the defendant the Attorney-General for the Dominion Government. I do not see that I can give the other defendants any relief, but I am willing to hear their counsel on the question of their costs.

It is years since the lumber trade has suffered so severly for want of snow for skidding. The present open winter is working havoc with lumber operations in almost every section of the country. Unless snow, and a considerable quantity of it, makes its appearance soon there will be a big break up in the shantying, the crews will be dispersed, and operations cease entirely. In many localities there is hardly a stick drawn to the ice. About the only exception is found in Muskoka where fifteen inches of snow fell the first week in January. There is now excellent sleighing in that locality and lumber operations are being pushed forward rapidly.