

appropriating the funds to provincial uses was legislation "respecting civil rights (not) in the province and therefore invalid," though it also dealt with "property in the province" over which the legislature has jurisdiction. Mr. Labatt dissents from this view.

It must be borne in mind that this is not a case of an Act that may be *ultra vires* in part and *intra vires* as to the remainder. It is a single provision relating to specified property and must either be entirely within or beyond the competence of the legislature. That being so the simple proposition is this: The Act cannot be both *intra vires* and *ultra vires*. It is *intra vires* as dealing with property; *ultra vires* as relating to civil rights out of the province. Which is to govern? My opinion is that in such case it would be *ultra vires*.

I admit that I am unable to cite authority for this proposition and the question is, of course, purely academic. But test it in this way. Assume that in *Rex v. The Royal Bank* the bondholders had been resident in the province and the property in Montreal. In that case the legislation would have dealt with civil rights in the province and with property *out* of it, the converse of the position on which this discussion is based. Can we say that the Privy Council would have upheld the legislation in these circumstances?

The two cases relied on by Mr. Labatt do not touch the question. In both the legislation was admittedly within the competence of the legislature and was held to be none the less so that its operation affected, in the one case, civil rights out of the province and, in the other, Dominion legislation as to licensing breweries. To be invalid the legislation must directly, not incidentally, violate the Constitutional Act. The Alberta Act was directly a violation of sec. 92(13).

The next objection made by Mr. Labatt does not call for discussion. He agrees with my conclusion and objects only to the mode by which I reached it. I confess that I hardly understand his position, but the difference between us is not of importance.