

of Appeal. The facts were, that two mortgages were in existence on certain property and Whiteley purchased the equity without notice of the second mortgage. He then borrowed money from one Farrar, to pay off the first mortgage, the intention being that Farrar should stand in the place of the first mortgagee, but the solicitor, in order to carry out the transaction, took a reconveyance to Whiteley from the first mortgagee and Whiteley then gave a mortgage to Farrar to secure the advance. The Court of Appeal held that this mode of carrying out the transaction had the effect of clearing off the first mortgage for the benefit of the second mortgagee, who thereby became entitled to priority over Farrar, but their Lordships held that the second mortgagee was not entitled to priority claimed, because, owing to a common mistake induced by the mortgagor in concealing the existence of the second mortgage, the deeds between Whiteley and Farrar did not carry out the true intention, which was that Farrar should have a first mortgage on the property and that the documents could have been rectified in this action to carry out the true intent of the parties if that relief had been claimed; but that in such circumstances a court of equity could not, in favour of a mere volunteer, enforce a right based upon deeds framed under a common mistake and, secondly, because Farrar, having in equity acquired the priority of the first mortgagee by paying off his debt and obtaining the deeds, the second mortgagee could not take advantage of the wrong of the mortgagor, through whom he claimed to deprive Farrar of that priority.

CANADA—LEGISLATIVE AUTHORITY OF PROVINCIAL LEGISLATURE—  
FISHING RIGHTS IN TIDAL, OR NAVIGABLE NON-TIDAL RIVERS—  
RAILWAY BELT— TERRITORIAL WATERS.

*Attorney-General, B.C. v. Attorney-General, Can.* (1914) A.C. 153. The judicial committee of the Privy Council (Lords Haldane, L.C., Atkinson and Moulton) determine that fishing rights in the tidal, or navigable non-tidal rivers, within the railway belt of the Province of British Columbia are not within the legislative control of the Provincial Legislature, but, under the B.N.A. Act, ss. 91, 92, 109, are within the exclusive control of the Dominion Parliament. The committee also determine that the Provincial Legislature has no authority over rights of fishing in the sea or arms of the sea and estuaries of rivers flowing into the sea, and that the right to fish in the sea does not depend on any right of the Crown in the subjacent land. Their lordships also intimate that the question as to the rights of the Crown in the territory lying