

III

1. ORDER IN COUNCIL REFERRING TO THE SUPREME COURT OF CANADA CERTAIN QUESTIONS AS TO WATER POWER RIGHTS OF THE DOMINION AND THE PROVINCES.

P.C. 115

CERTIFIED copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the 18th January, 1928.

The Committee of the Privy Council have had before them a report, dated 17th January, 1928, from the Minister of Justice, submitting that at the Dominion-Provincial Conference, held at Ottawa in the month of November, 1927, the Premiers of certain of the provinces questioned the right of the Dominion to dispose of water powers brought into being by the erection of Dominion works for the improvement of navigation, and asserted a right on the part of the provinces to dispose of any such water powers within the limits of the province; and

That in the discussion which followed regarding this claim, and also with regard to the whole question of the division of legislative control over and proprietary interest in water powers, it was found impossible to reach any general agreement as between the Dominion and the provinces, and in the result a request was made by the Premiers of Ontario and Quebec that the Dominion undertake to refer the whole matter to the Supreme Court of Canada for hearing and consideration.

The Committee, therefore, on the recommendation of the Minister of Justice, advise that, pursuant to the powers in that behalf conferred by section 60 of the Supreme Court Act, Your Excellency may be pleased to refer to the Supreme Court of Canada for hearing and consideration the following questions:

1. Has the province any proprietary interest in flowing waters within the province, and, if so, what is the nature of such interest?
2. Does the ownership by the province of the bed of any stream, whether such bed be level or sloping, give to the province the ownership of water powers:
 - (a) created thereupon by Dominion works for the improvement of navigation; or
 - (b) existing thereupon by nature?
3. Has the province any proprietary interest in or legislative control over:
 - (a) the canals, with lands and water power connected therewith, and the lake and river improvements which were conveyed to the Dominion by section 108, Schedule 3, of the British North America Act, 1867, or in or over the disposal of any water powers created thereby or existing thereupon from time to time; or
 - (b) water powers created by works for the improvement of navigation constructed by or under the authority of the Dominion since Confederation; or
 - (c) works constructed wholly for power purposes by the Dominion out of moneys appropriated by Parliament for such purpose?If so, what is the nature of such interest or control?
4. Has the Dominion exclusive legislative power to regulate waters for the purposes of navigation:
 - (a) in navigable waters; and
 - (b) in non-navigable waters?