

children. One of the four children predeceased her intestate, leaving a husband and two infant children.'

*Held*, that by virtue of s. 36 of the Wills Act, R.S.O. 1897, c. 128, the husband took one-third of one-fourth share in the estate of the testatrix, the two infant children taking the rest.

*Mearns*, for husband and executors. *Harcourt*, for infants.

Trial—Street, J.]

PERRY v. CLERGUE.

[Jan. 29.

*Constitutional law—Right to create and license ferries—Jura regalia—B.N.A. Act, s. 109—Dominion and Province—Ultra vires—Public harbour—River improvements.*

The right to create and license a ferry having been one of the jura regalia, or royalties, which belonged to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, continued to belong to the several provinces after confederation, as declared by s. 109 of the B.N.A. Act; and therefore the lease of a ferry between the town of Sault Ste. Marie in the Province of Ontario and the town of Sault Ste. Marie in the State of Michigan, granted by the Dominion Government in 1897, declared to be invalid.

The fact that sub-s. 13 of s. 91 of the B.N.A. Act gives exclusive legislative authority to the Parliament of the Dominion over ferries between a province and any British or foreign country or between two provinces does not carry with it any right to grant ferries.

*Held*, also, that even if the St. Mary's River at the point in question were a public harbour which passed under sec. 108 of the B.N.A. Act to the Dominion, as far as the centre of the river where the international boundary was, nevertheless this would not give the Dominion Government any right to grant any exclusive right over it such as the ferry in question.

*Held*, however, that the St. Mary's River at the point in question is not a public harbour. It is difficult to say what it is that constitutes a harbour, but something more is necessary to constitute an open river front into a public harbour, within the meaning of the B.N.A. Act, than the erection along it of four or five wharves projecting beyond the shallows of the shore for the convenience of vessels receiving and discharging passengers and goods.

*Held*, likewise, that the existence of improvements in the river bed in front of the town of Sault Ste. Marie by the bridging operations carried on by the Dominion Government, which river improvement belonged to the Dominion Government, afforded no reason for the entire control of the ferry across the river being held to be in the Dominion Government.

The Dominion Parliament or Government have undoubtedly a right to make laws or rules with regard to the ferry in question or other ferries for the purpose of regulating them and of preventing them from interfering with public harbours and river improvements of the Dominion.