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REPORTS AND NOTES OF CASES.

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Dominion of Canada.

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SUPREME COURT.

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B.C.] IN RE BRITISH COLUMBIA FISHERIES. [Feb. 18.

*Railway belt, British Columbia—Tidal Waters—Rights of Province and Dominion—Jurisdiction—Fish as feræ naturæ.*

*Held*, 1. In respect of waters within the "Railway Belt" of British Columbia, which are tidal, it is not competent to the Legislature of British Columbia to authorize the Government of the province to grant, by way of lease, license or otherwise, the exclusive right of taking fish which, as feræ naturæ, are the property of nobody until caught. The public right to take such fish being subject to the exclusive control of the Dominion Parliament, it is immaterial whether the beds of tidal waters passed or did not pass to the Dominion in virtue of the transfer of the "Railway Belt."

2. As to waters within the "Railway Belt" which, although non-tidal, are in fact navigable the Legislature of British Columbia is likewise incompetent to make such grants.

3. It is not competent to the Legislature of British Columbia to authorize the Government of the province to grant, in the open sea within a marine league of the coast of that province, by way of lease, license or otherwise, the exclusive right of taking such fish (feræ naturæ).

4. In so far as concerns the authority of the Legislature of British Columbia to authorize the government of the province to grant, by way of lease, license or otherwise, the exclusive right to take such fish (feræ naturæ), in tidal waters, there is no difference between the open sea within a marine league of the coast of the province and the gulfs, bays, channels, arms of the sea and estuaries of the rivers within the province or lying between the province and the United States of America.

5. Per FITZPATRICK, C.J. and DAVIES, IDINGTON, DUFF and BRODEUR, JJ. (ANGLIN, J., expressing no opinion on the point): —The beneficial ownership of the beds of navigable non-tidal waters within the "Railway Belt" in British Columbia, which