

to execute to the Queen in right, of Canada, a surrender or conveyance of the same land, the defendant, in answer to the information, set up the provincial grant relied on in the first action, and contended further that the Parliament of Canada had no power to give to the Exchequer Court original jurisdiction.

*Held*, affirming the judgment of the court below, that there was *res judicata* as to the title sought to be relied on by defendant. *Attorney-General of British Columbia v. Attorney-General of Canada* (14 App. Cas. 295) distinguished.

*Held*, also, that the Parliament of Canada had power to give jurisdiction to the Exchequer Court of Canada in all actions and suits of a civil nature at common law or equity in which the Crown, in right of the Dominion, is plaintiff or defendant. B.N.A. Act, s. 101. TASCHEREAU, J., *dubitante*.

Appeal dismissed with costs.

D. McCarthy, Q.C., for appellant.

Hogg, Q.C., for respondent.

Exchequer Ct.]

[Feb. 20.

THE QUEEN v. DEMERS.

*Title to lands in railway belt in British Columbia—Unsurveyed lands held under pre-emption record prior to statutory conveyance to Dominion Government—Federal and provincial rights—British Columbia Land Acts of 1873 and 1879—47 Vict., c. 6 (D.).*

On 10th September, 1883, D., *et al.*, obtained a certificate of pre-emption under the British Columbia Land Act, 1875, and Land Amendment Act, 1879, of 640 acres of unsurveyed lands within the twenty-mile belt south of the C.P.R., reserved on the 29th November, 1883, under an agreement between the Governments of the Dominion and of the Province of British Columbia, and which was ratified by 47 Vict., c. 14 (B.C.). On 29th August, 1885, this certificate was cancelled, and on same day a like certificate was issued to respondents, and on the 31st July, 1889, letters patent under the Great Seal of British Columbia were issued to respondent. By the agreement ratified by 47 Vict., c. 6 (D.), it was also agreed that three and a half millions additional acres in Peace River District should be conveyed to the Dominion Government, in satisfaction of the right of the Dominion under the terms of Union to have made good to it, from public lands contiguous to the railway belt, the quantity of land that might, at the date of the conveyance, be held under pre-emption right, or by Crown grant.

On an information by the Attorney-General for Canada to recover possession of the 640 acres,

*Held*, affirming the judgment of the Exchequer Court, that the land in question was exempt from the statutory conveyance to the Dominion Government, and that upon the pre-emption right granted to D., *et al.*, being subsequently abandoned or cancelled, the land became the property of the Crown in right of the province, and not in the right of the Dominion.

Appeal dismissed with costs.

Hogg, Q.C., for appellant.

McCarthy, Q.C., for respondents.