

The Dominion authorities were not represented, though notified.

STREET, J., held, that plaintiffs had failed to shew that the defendants other than the railway company had done anything to interfere with the rights claimed by plaintiffs. The railway company were alone liable, if any one was, for what had been done. Various defences were set up by the railway company, but it was necessary to consider only that which denied that the Dominion Government ever became possessed of the right to grant a lease to plaintiff Perry of the ferry in question, and asserted that right as existing only in the Provincial authorities. By sec. 109 of the British North America Act, it is provided that "all lands, mines, minerals, and royalties belonging to the several Provinces . . . at the Union . . . shall belong to the several Provinces . . . in which the same are situate or arise, subject to any trusts existing in respect thereof and to any interest other than that of the Province in the same." The meaning to be attached to the word "royalties" in this section includes not only those *jura regalia* connected with lands, mines, and minerals, but also those which are not so connected, and it includes the right to grant ferries. Reasons suggested by Lord Selborne in *Attorney-General v. Mercer*, 8 App. Cas. 767, 778, specially referred to.

It was argued that under s.-s. 13 of s. 91, by which the legislative authority of the Dominion Parliament over "ferries between a Province and any British or foreign country or between two Provinces" is declared to be exclusive, the right of the Dominion Government to grant this ferry could be supported. The difference between the right of property in and the power of legislation over any particular matter dealt with by the British North America Act is conclusively settled, and a right of property in the Province is quite consistent with the right of the Dominion to legislate: *The Fisheries cases*, [1898] A. C. 700; *St. Catharines Milling Co. v. The Queen*, 14 App. Cas. 46; *Ontario Mining Co. v. Seybold*, 87 L. T. 449.

Even if the St. Mary's river at the point in question was a public harbour, the Dominion Government would not therefore have the power to grant the right of ferry over it. Something more is necessary to convert an open river port into a public harbour, within the meaning of the British North America 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. Nor does the existence of the improvements