

Canada Law Journal.

VOL. XLVIII.

TORONTO, DECEMBER 2.

No. 22.

SUNDAY LAW RESPECTING PROVINCIAL RAILWAYS.

In the recent case of *Kerley v. London & Lake Erie Transportation Co.*, 26 O.L.R. 588, Boyd, C., had to deal with the difficult question, as to the effect of Dominion and Provincial Legislation regarding the operation on Sunday of railways situate wholly within one province. Starting with the decision of the judicial committee of the Privy Council in *Attorney-General v. Hamilton Street Ry.* (1903), A.C. 524, that Provincial Legislatures have no power to prohibit work on Sundays, and that such legislation is a matter of criminal law and therefore within the exclusive jurisdiction of the Dominion Parliament; we find it has been attempted by a somewhat circuitous process to give provincial legislatures a power which the judicial committee determined they did not possess under the Constitutional Act.

And the way this has been done is by a provision in the Dominion Railway Act (R.S.C. c. 37, s. 9). This section provides (1) that every railway or tramway wholly within one province, even though declared to be a work for the general advantage of Canada and its employees, "shall be subject to any Act of the legislature of the province in which such railway or tramway is situate, which "was in force" on the 10th August, 1904, "in so far as such Act prohibits or regulates work, business or labour upon the first day of the week commonly called Sunday." It may here be noted that no such provincial Act could have been "in force," because any such Act according to the decision of the judicial committee of the Privy Council would be ultra vires, and therefore, a nullity.

The section goes on to provide, "(2) every such Act in so far as it purports to prohibit within the legislative authority of the province, work, business or labour upon the first day of the