

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Full Court.] GAUTHIER V. THE KING. [40 D.L.R. 353.

Arbitration—Provincial statute—Reference to the Crown—Construction—Constitutional law.

A reference to the Crown in a provincial statute is to the Crown in right of the Province only, unless the statute makes it clear that the reference is to the Crown in some other sense. Sec. 5 of the Ontario Arbitration Act does not apply to a submission by the Crown in right of the Dominion.

McGregor Young, K.C., for plaintiff, appellant.

ANNOTATION FROM D.L.R.

Privileges of the "Crown."

In the principal case all the judges apparently concur in the proposition thus expressed by Anglin, J., at 40 D.L.R. 353 at 365, 56 Can. S.C.R. 176 at 194:—

"Provincial legislation cannot *proprio vigore* take away or abridge any privilege of the Crown in right of the Dominion."

The proposition, indeed, seems obviously true, and it is a good many years since the same view was expressed by the Minister of Justice, when, with reference to a British Columbia Act, he said that he apprehended that:—

"It is incompetent to a provincial legislature to so legislate as to impose a liability upon the Crown in right of Canada and that in so far as this Act is intended to have that effect, it is *ultra vires*": Prov. Legisl. 1901-3, pp. 83-4.

If the principal case were carried to the Privy Council we might expect a very interesting judgment upon "the Crown" and its relation to colonial legislatures—a matter which does not seem to have been discussed in detail by any of the standard writers on the constitutional law of the British Empire.

So far back as *Calvin's case*, decided in 1608, 7 Rep. 27 b., we have it decided that the Crown is one and indivisible, and cannot be severed into as many distinct kingships as there are kingdoms. And so it was held in that case that notwithstanding the existence of two separate kingdoms (England and Scotland) at the date of the decision, yet every subject of James I., born after his accession to the throne of England in 1603, no matter in which country he was born, was a subject of both. This was because allegiance is due to the King as a person; and the Lord Chancellor of that day, with the unanimous concurrence of twelve other judges, held that a Scottish born