

Where beds of such rivers have not been granted, the right of fishing is public and not restricted to waters within the ebb and flow of the tide.

A Provincial Government may grant the bed of lakes and navigable non-tidal rivers as to which the restrictions in *Magna Charta* do not apply. Such grant will carry with it the right of fishing unless the same is reserved or such right may be granted without the bed.

The provisions of *Magna Charta* are in force in the Provinces of Canada (except Quebec), and restrict the right of either the Dominion or province to grant the beds of, or fishing rights in, tidal waters.

Sec. 4, and other portions of R. S. C. c. 95, so far as they attempt to confer exclusive rights of fishing in Provincial waters, are *ultra vires*. Gwynne, J. *contra*.

Notwithstanding the provisions of *Magna Charta* the Dominion Parliament can grant the exclusive right to fish in public harbours, and in waters in unsundered Indian lands; B. N. A. Act, s. 91, item 4.

*Per* Gwynne, J.—Provincial legislatures have no jurisdiction to deal with fisheries. Whatever comes within that term is given to the Dominion by B. N. A. Act, s. 91, item 12, including the grant of leases or licenses for exclusive fishing.

*Per* Strong, C.J., Taschereau. King and Girouard, JJ., R. S. O. c. 24, s. 47, and ss. 5 to 13 inclusive, 19 and 21 of the Ontario Act of 1892 are *intra vires*.

*Per* Strong and King, JJ. They are *intra vires* but may be superseded by Dominion legislation on the same subject.

R. S. Q. arts. 1375 to 1378 inclusive are *intra vires*.

*Per* Gwynne, J.—R. S. O. c. 24, s. 47 is *ultra vires* so far as it assumes to authorize the sale of land covered with water within public harbours. The margins of navigable rivers and lakes may be sold if there is an understanding with the Dominion Government for protection against interference with navigation. The act of 1892 and R. S. Q. Arts. 1375 to 1378 are valid if passed in aid of a Dominion Act for protection of fisheries. If not, they are *ultra vires*.

*Robinson, Q.C., and Lefroy for Dominion of Canada.*

*Emilius Irving, Q.C., S. H. Blake, Q.C., and Clark, for Ontario.*

*Casgrain, Q.C., Atty.-Gen., for Quebec.*

*Longley, Atty.-Gen., for Nova Scotia.*

*Irving, Q.C., and Clark, for British Columbia.*