

SUPREME COURT OF CANADA.

From Exchequer Court.]

THE QUEEN, on the information of the Attorney-General for Canada, Appellant; and A. S. FARWELL, Respondent.

47 Vic. ch. 14, sec. 2, B.C.—*Effect of—Provincial Crown grant void.*

By provision II. of the Order-in-Council admitting the Province of British Columbia into Confederation, British Columbia agreed to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable, in furtherance of the construction of the Canadian Pacific Railway, an extent of public lands along the line of railway. After certain negotiations between the Governments of Canada and British Columbia, and in order to settle all disputes, an agreement was entered into, and on the 19th Dec., 1883, the Legislature of British Columbia passed the Statute 47 Vic., ch. 14, by which it was enacted *inter alia* as follows: "From and after the passing of this Act there shall be, and there is hereby granted to the Dominion Government for the purpose of constructing and to aid in the construction of the portion of the Canadian Pacific Railway on the mainland of British Columbia, in trust, to be appropriated as the Dominion Government may deem advisable, the public lands along the line of railway before mentioned, wherever it may be finally located, to a width of twenty miles on each side of said line, as provided in the Order-in-Council, section II., admitting the Province of British Columbia into Confederation." On the 20th November, 1883, by public notice, the Government of British Columbia reserved a belt of land of twenty miles in width along a line by way of Bow River Pass. In November, 1884, Farwell, to comply with the provisions of the Provincial Statutes, filed a survey of a certain parcel of land situate within the said belt of twenty miles, and the survey having been finally accepted on the 13th January, 1885, Letters Patent under the Great Seal of the Province were issued to Farwell for the land in question. The Attorney-General of Canada, by information of intrusion, sought to recover possession

of said land, and the Exchequer Court having dismissed the information with costs, on appeal to the Supreme Court of Canada, it was:

HELD, reversing the judgment of the Exchequer Court, Henry, J., dissenting, that at the date of the grant, the Province of British Columbia had ceased to have any interest in the land covered by said grant, and that the title to the same was in the Crown for the use and benefit of Canada.

Per Strong, J. :—That the appellant should be ordered, if insisted upon by respondent, to file the affidavit of the Chief Engineer of the Canadian Pacific Railway to prove that at the date of the grant, the line of the Canadian Pacific had been located within twenty miles of the land in question.

Appeal allowed with costs.

Hon. J. S. D. Thompson, *Burbridge, Q.C.*, and Hogg, for Appellant.

T. Davie for Respondent.

From Exchequer Court.]

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA, Appellant, v. THE ATTORNEY-GENERAL OF CANADA, Respondent.

B. N. A. Act, sec. 92, ss. 5, 109 & 146—47 Vic. ch. 14, sec. 2, (B. C.)—*Provincial Public Lands, Transfer of, to Dominion of Canada—Effect of—Precious metals vested in the Crown in right of the Dominion Government.*

By Section II. of the Order-in-Council passed in virtue of Sec. 146 of the B. N. A. Act, under which British Columbia was admitted into the Union, it was provided as follows:—

"And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable, in furtherance of the construction of the said railway, a similar extent of public lands along the line of railway throughout its entire length in British Columbia (not to exceed, however, twenty miles on each side of the said line) as may be appropriated for the same purpose by the Dominion Government from the public lands of the North-West Territories and the Province of Manitoba."