

Exch. Ct.]

NOTES OF CASES.

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under the exclusive legislative control of the Dominion Parliament. So construing the term "fisheries" the control of the Dominion Parliament may be, and is, exclusive and supreme without its having any jurisdiction to legislate so as to alter in any respect the title to or ownership of, the beds of the rivers in which the fisheries may exist. That title may be, and is in the grantees of the crown where the title has passed, or may pass hereafter by grants to be made under the seal of the several provinces, in which the lands may be, but the exclusive right to control the "fisheries," as a property or right of fishing distinct from ownership of the soil, is vested in the Dominion Parliament.

So construing the term it must be held to comprehend the right to control in such manner as to Parliament in its discretion shall seem expedient, all deep sea fishing and the right to take all fish ordinarily caught either on the sea coast or in the great lakes, or in the rivers of the Dominion.

Now the Act under consideration, viz : 31 Vict. c. 60 maintains the like scrupulous respect for *private* rights as the old Acts which it repealed had done ; for by the 2nd section the power given to the Minister of Marine and Fisheries to issue leases or licenses is confined expressly to those places "where the exclusive right of fishing does not already exist by law," following the provision of the Canada Statute 29 Vict. c. 11, sec 18. In all matters placed under the control of Parliament, all private interests whether provincial or personal must yield to the public interests and to the public will in relation to the subject matter as expressed in an Act of Parliament, constituted as the Dominion Parliament is, after the pattern of the Imperial Parliament and consisting as it does of Her Majesty, a Senate, a House of Commons as separate branches, the latter elected by the people as their representatives, the rights and interests of private persons, it must be presumed, will always be duly considered, and the principle of the British Constitution which forbids that any man should be wantonly deprived of his property under pretence of the public benefit or without

due compensation be always respected. It is however, in Parliament, upon the passing of any Act which may affect injuriously private rights, that those rights are to be asserted, for once an Act is passed by Parliament in respect of any matter over which it has jurisdiction to legislate, it is not competent for this, or any court to pronounce the Act to be invalid because it may affect injuriously private rights, any more than it would be competent for the Courts in England, for the like reason, to refuse to give effect to a like Act of the Parliament of the United Kingdom. If the subject be within the legislative jurisdiction of the Parliament, and the terms of the Act be explicit, so long as it remains in force, effect must be given to it in all Courts of the Dominion, however private rights may be affected.

The Imperial Parliament having supreme control over the title to, or ownership of, the beds and soil of all inland waters of the Dominion, and also over the franchise or right of fishing therein as a distinct property, has, at the request of the old Provinces of Canada, Nova Scotia and New Brunswick, as the same were constituted before the passing of the B. N. A. Act, so dealt with those subjects as, while leaving the title to the beds and soil of all rivers and streams passing through or by the side of lands already granted in the grantees of such respective lands, to place the franchise or right to fish, as a separate property distinct from the ownership of the soil, under the sole, exclusive and supreme control of the Dominion Parliament. Construing then the term "Fisheries" as used in the B. N. A. Act, as this franchise or incorporeal hereditament apart from and irrespective of the title to the land covered with water in which the fisheries exist, it seems to me to be free from all doubt that the jurisdiction of Parliament over all fisheries, whether sea coast or inland, and whether in lakes or rivers, is exclusive and supreme, notwithstanding that in the rivers and other waters wherein such fisheries exist, until Parliament should legislate upon the subject, private persons may be seized and possessed of the right of fishing in such waters either as a right inci-