

J. C.
1914

ATTORNEY-
GENERAL
FOR
ALBERTA
v.
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FOR
CANADA.

[1915] A. C.
p. 370.

In the present instance, however, the case chosen by counsel for the appellants as the subject of their arguments has no doubt strong claims for separate consideration, inasmuch as it is doubtless the case which was mainly present to the mind of the provincial Legislature when considering sub-s. 3. It has reference to the circumstances under which the exclusive power of Parliament to legislate as to Dominion railways appears to operate most harshly on the freedom of action of the Province. It was urged with great force that if the provinces have no power to authorize their railways to cross the tracks of Dominion railways they might theoretically be placed in a position of great difficulty. Regarded in the abstract it might be possible for a tract of country situated in a province to be surrounded by Dominion railways in such a way that unless crossing were permitted a provincial railway situated within that tract would be completely isolated and cut off from access to other portions of the province. But the difficulty is essentially administrative, and not one that could be cured by any decision as to constitutional rights. It is scarcely too much to say that it would not be practicable to frame the actual claim of the Province in the present case in such a way that it could be a constitutional right possessed by a province. Even their own counsel admitted that the Province could not give to one of their railways the right to cross a Dominion railway at any place or in any specific way chosen by them. They admitted that the place and manner must be subject to the approval of the Railway Board, a body created by a Dominion statute in the year 1903, whose powers depend on a Dominion Railway Act. How could a constitutional right be measured or defined by the views or decisions of such a body—one which did not exist when the constitution was created?

It is therefore not in abstract constitutional rights but in administrative provisions that the remedy must be sought for the inconveniences which in the abstract might flow from the fact that the exclusive power of legislating as to Dominion railways is vested in Parliament. And in this respect the present form of the Dominion railway legislation indicates and in their Lordships' opinion provides an effective remedy. By s. 8 of the Dominion Railway Act Parliament treats in a special manner the crossing of Dominion railways by provincial railways. These portions of the provincial railways are made subject to the clauses of the Dominion railway legislation, which deal also with the crossings of two Dominion railways, so that the provincial railways are in such matters treated administratively in precisely the same way as Dominion railways themselves. The Parliament of the Dominion is entitled to legislate as to these crossings because they are upon the right of way and track of the Dominion