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CLARK V. UNION FIRE INS. CO.

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The term "incorporation of companies with Provincial objects" in the B. N. A. Act, (s. 92, subs. 11) defines the classes of corporations within the legislative authority of the Provinces; and its meaning must be gathered from analogous clauses empowering them to make laws in relation to "local works and undertakings," (subs. 10), and "matters of a merely local or private nature in the Province," (subs. 16), and under which it is obvious the legislatures may incorporate companies for like purposes. The term must be read to mean "local objects," in contradistinction to objects common to the Provinces in their collective or dominion quality, which are within Dominion jurisdiction.

The power to incorporate companies is incidental to a sovereignty, though such power may be delegated: "The king, it is said, may grant to a subject the power of erecting corporations, but it is really the king that erects, and the subject is but the instrument:" 1 Bl. Com. 473. Corporations may be erected by charter or by "Act of Parliament, of which the Royal assent is a necessary ingredient:" *Ibid.*

This assent of the Crown in connection with the Acts of the Provincial Legislatures has been questioned; and some warrant for this appears in the *obiter dicta* of some learned judges who say that Her Majesty forms no constituent part of the Provincial Legislatures as she does of the Dominion Parliament. This denial of the legislative prerogative of the Crown in Provincial legislation, touches the validity of all Provincial Acts since confederation, since the usual form of the Provincial statutes is "Her Majesty, by and with the advice, etc., enacts." "The legislative power," says Lord Hale, "is lodged in the king, with the assent of the Houses of Parliament:" 1 Hale's Juris. Ho. Lds. 406. "The making of statutes is by the king, with the assent of parliament:" 1 Whitelock's King's Writ, 406. "The king has the prerogative of giving his assent to such bills as his subjects legally convened present to him—that is, of giving them the force and sanction of a law:" Bacon's Abr. Tit. Prerog. 489. See also 4 Co. Inst. 24.

This is but the common law on the legislative prerogatives of the Crown. A reference to the Imperial Acts, which gave legislative institutions to this Province prior to the B. N. A. Act, will show that the Provincial laws of Upper Canada were to be made by "His Majesty, his heirs and

successors," (31 Geo. III. c. 31), and of Canada by "Her Majesty, her heirs or successors," (3 & 4 Vict. c. 35), by and with the advice and consent of the other legislative bodies; and the clauses of these Imperial Acts relating to the legislative prerogative of the Crown in this Province have not been repealed, but, on the contrary, are continued by s. 129 of the B. N. A. Act.

The question, however, appears to have been determined in 1876 by the Judicial Committee of the Privy Council, in *Theberge v. Landry*, L. R. 2 App. Cas. 102,—which is binding on all our courts,—where Lord Cairns, L.C., referring to an Act of one of the Provincial legislatures then under review, held that it was an Act which had been assented to by the Crown, and to which the Crown therefore was a party: p. 108.

The B. N. A. Act created two separate and independent governments, with enumerated and therefore limited parliamentary powers. These dual governments take the place of and exercise the legislative and executive powers previously vested in one government; and although both exist within the same territorial limits, their powers are separate and distinct, and they act separately and independently of each other within their respective spheres. This view has been affirmed in our Provincial Courts. The case of *Re Goodhue*, 19 Gr. 366, decides that there is no limitation imposed on the Provincial legislatures as regards the extent to which they may affect private rights and matters of a merely local and private nature in the Province; and that as to such objects they can pass laws to the same unlimited extent that the Imperial Parliament may in the United Kingdom: p. 452. In *Reg. v. Hodge*, 7 App. R. 246, it was shown that the Dominion and Provincial legislatures derive their powers from the same source; and that "the power to make laws in relation to the several classes of subjects committed exclusively to the Provincial legislatures, is as large and complete as it is in the classes of subjects committed to the Dominion Parliament. The limits of the subjects of jurisdiction are prescribed, but within those limits, the authority to legislate is not limited:" p. 251.

These cases show that both the Dominion and the Provincial legislatures have plenary powers of legislation to the extent necessary for the efficient exercise of the exclusive legislative authority of each; and that they are therefore