

Exch. Ct.]

NOTES OF CASES.

[Exch. Ct.]

*Held*, 1. That all subjects of legislation of every description whatever are within the jurisdiction and control of the Dominion Parliament to legislate upon, except such as are placed by the B. N. A. Act under the exclusive control of the local legislatures, and nothing is placed under the exclusive control of the local legislatures unless it comes within some, or one, of the subjects specially enumerated in the 92nd section, and is at the same time outside of the several items enumerated in the 91st section, that is to say, does not involve any interference with any of those items.

2. That the effect of the closing paragraph of the 91st section, namely, "and any matter coming within any of the classes of subjects enumerated in the 91st section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces," is to exclude from the jurisdiction of the local legislatures the several subjects enumerated in the 92nd section in so far as they relate to, or affect any of, the matters enumerated in the 91st section.

3. That by sub-sec. 12 of sec. 91, B. N. A. Act, the fisheries, or right of fishing in all rivers running through ungranted lands in the several Provinces as well as in all rivers running through lands then already granted, *as distinct and severed from the property in, or title to, the soil or beds of those rivers*, were placed under the exclusive legislative control of the Dominion Parliament, and that the statute 31 Vict. c. 60 is *intra vires* of the Dominion Parliament.

4. That by the following words in sec. 2 of c. 60, 31 Vict., viz:—"where the exclusive right of fishing does not already exist," the rights of all persons seized and possessed of the right of fishing in rivers above tidal waters, either as a right incident to ownership of the bed and soil covered by such waters, or otherwise, were preserved.

5. That the true construction of the letters patent from the crown to the Nova Scotia and New Brunswick Land Company bearing date the 3rd of November, 1825,

was to convey to them the bed or soil of the south-west branch of the Miramichi River, where it passes through the lands so granted and with the exclusive right of fishing therein, *ad filum aque*, and therefore that the Minister of Marine and Fisheries was not authorized under 31 Vict. c. 60 to grant a salmon fishery license for that portion of the South-west Miramichi river.

*Haliburton*, Q. C., for suppliant.

*Lash*, Q. C., for respondent.

The following are extracts from the judgment of

MR. JUSTICE GWYNNE.—The right of fishing in rivers above the ebb and flow of the tide may exist as a right incident upon the ownership of the soil or bed of the river or as a right wholly distinct from such ownership, and so the ownership of the bed of a river may be in one person and the right of fishing in the waters covering that bed may be wholly in another or others. Now that the B. N. A. Act did not contemplate placing the title or ownership of the beds of fresh water rivers in the Dominion Parliament under the control of the Dominion Parliament, so as to enable that Parliament to affect the title of the beds of such rivers sufficiently appears, I think from the 109th section, by which "all lands, mines, minerals and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the union," are declared to belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate, and this term "lands" in this section is sufficient to comprehend the beds of all rivers in those ungranted lands. We must, however, in order to give a consistent construction to the whole Act, read this 109th section in connection with and subject to the provisions of the 91st section, which places "all fisheries," both sea coast and inland, under the exclusive control of the Dominion Parliament. Full effect can be given to the whole Act by construing it, (and this appears to me to be its true construction) as placing the fisheries or right of fishing in all rivers running through lands then already granted as distinct and severed from the property in, or title to, the soil or beds of the rivers,