

Let me say further that when this matter was being discussed—

Hon. Mr. LANDRY—We have the report of the committee.

Hon. Mr. KERR—In arriving at that report, the question was as to the jurisdiction of the province and of its right, and of the Dominion having its right, one under section 92 and the other under section 93. But it was understood by the committee that the line was a distinct one, and that either it was within the jurisdiction of the province and a provincial right, or it was within the jurisdiction of the Dominion and was a Dominion right. It was understood by the committee that there might be no clear line of demarcation of that kind. It was understood by the committee that by the interpretation put upon the British North America Act by the courts, there was an overlapping of powers in any case, and that where there is a distinct definition of the character of the work, or the alleged Act of the company in question, is not distinctly within one of the four walls of one or the other class, that there is still an overlapping power which in one case places the matter within the provinces, and in the other case places it within the Dominion; that there may be a joint jurisdiction, in other words, and so on, and that where that does occur, and where the Dominion legislates, the Dominion Act prevails. When I was about to argue in that way, the hon. gentleman answered it by saying that the course of judicial decision was rather tending the other way, and I said to him by way of remonstrance that he was mistaken about that; but he did not accept my statement. I would refer him to the latest decision on the point, which was a decision of the Privy Council, to be found in appeal cases for 1907 and to the judgment of Lord Dunedin, who delivered the judgment of the court in the case of the Grand Trunk Railway vs. the Attorney General of Canada. The decision states that the Dominion Parliament is competent to enact section 1, Ed. VII., and so on. That does not convey much. It prohibits the contracting out on the part of railway companies. The question arose whether the law in respect of parties who had contracted out in respect of damages for personal injuries to their

servants, was a valid law, because it interfered with a civil right of action of the party who had sustained damage, and the question came up in that way. Lord Dunedin said :

The question in this appeal is as to the competency of the Dominion Parliament to enact the provision contained in section 1 of IV. Edward VII., c. 31 of the statutes of Canada. These provisions may be generally described as a prohibition against 'contracting out' on the part of railway companies within the jurisdiction of the Dominion parliament from the liability to pay damages for personal injury to their servants.

It is not disputed that, in the partition of duties effected by the British North America Act, 1867, between the provincial and the Dominion legislatures, the making of laws for two railways is entrusted to the Dominion.

The point, therefore, comes to be within a very narrow compass. The respondent maintains, and the Supreme Court has upheld his contention, that this is truly railway legislation. The appellant maintained that under the guise of railway legislation, it is truly legislation as to civil rights, and, as such under section 92, subsection 13 of the British North America Act appropriate to the province.

The construction of the provisions of the British North America Act has been frequently before their lordships. It does not seem necessary to recapitulate the decisions, but a comparison of two cases decided in the year 1894, namely, Attorney General of Ontario vs. Attorney General of Canada (1), and Tenant vs. Union Bank of Canada (2), seems to establish these two propositions: first, that there can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires, if the field is clear; and secondly, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail.

I have the cases which are referred to, there, but I will not cite them, because what I have read is an epitome of the proposition. There was a misapprehension as to the kind of legislative authority on the part of many members of the committee, and I think this is putting the matter right, together with the position the Dominion is actually asserting before the courts of the country as to waters which are within the railway belt, and is sufficient justification to send this Bill back for further consideration by the committee.

Hon. Mr. BEIQUE—I desire to offer only one word against this Bill. I entirely agree with the remarks made both by the hon. gentleman for St. John and the hon. gentleman for Hastings. The committee arrived at a decision on this Bill after a