

3. This company, to do the work contemplated, must have power to deal with "public property" of the Dominion: sec. 91, sub-sec. 1.

By sec. 108 of the B. N. A. Act, the public works in the Provinces in the 3rd schedule shall be the property of Canada, and in this 3rd schedule are canals and lands and waters connected therewith, and rivers. . . .

But the Welland river is not only under the control of the Dominion as a "river," and as a "navigable river," but by C. S. C. ch. 28, sec. 10, sched. A., this river is made . . . public property.

If the Dominion Parliament has authority to grant the powers claimed, it is a case of "over-lapping powers," and Mr. Lefroy's proposition 37, in his work on "Legislative Power," is applicable. See also pp. 350, 351, 425-468, of that work, and the cases cited.

If the Dominion, and Dominion only, has power over the source of supply of water, the thing of use to the company to be chartered, then the Dominion has of necessity power to deal in detail with what is necessary to utilize the water supply for purposes beneficial to Canada: see *Tennant v. Union Bank*, [1894] A. C. 31; *Attorney-General for Ontario v. Attorney-General for Canada*, [1894] A. C. 189; *Regina v. County of Wellington*, 17 A. R. 444; *Bradburn v. Edinburgh Life Assurance Co.*, 2 O. W. R. 253, and cases there cited.

[*City of Toronto v. Bell Telephone Co.*, 3 O. L. R. 465, distinguished.]

But, assuming that it is necessary that there should be a declaration by the Parliament of Canada that these works are for the general advantage of Canada, is there not substantially such a declaration in the preamble of the Act of incorporation? . . . Taking the preamble as a declaration is not construing the statute. . . . The preamble shews the intention of Parliament to give the power and the reason why, and that reason is a parliamentary declaration.

Again, may there not be a declaration by implication, or what, so far as all parties interested are concerned, would amount to a declaration? The Act . . . in giving to the company all the powers of a railway company under the Dominion Railway Act, expressly gives the right to appropriate. . . .

Motion for injunction dismissed and action dismissed. Order to go for leave to pay money into Court and for possession. Costs of this application and motion to be paid by Henson to the company.