

inion government, and the question as to the effect of that is before the courts today. The contention of the Dominion government is best expressed in a factum prepared by the Solicitor General of Canada and the Attorney General himself in a case now before the Exchequer Court—the King on the information of the Attorney General of Canada vs. the Burrard Power Company, Limited—the first paragraphs of which are as follows:

1. That pursuant to the agreement of the government of British Columbia contained in article 11 of the terms of the union upon which the colony of British Columbia was admitted into the Dominion of Canada, the legislature of British Columbia by an Act to grant public lands on the main land to the Dominion in aid of the Canadian Pacific Railway, 1880, 43 Victoria, chap. 11, as amended by 47 Victoria, chap. 14, granted to the Dominion Government for the purpose of constructing, and to aid in the construction of the portion of the Canadian Pacific Railway on the mainland of British Columbia in trust to be appropriated as the Dominion Government might deem advisable, the public land along the line of the railway before mentioned as therein particularly mentioned, and which lands are hereinafter called the Railway Belt.

2. That both the Lillooet river, which is a tributary of the Pitt river and the Lillooet lakes from which it rises, are wholly situate within the limits of the said Railway Belt. The Lillooet river is about twelve miles long, and is a public and navigable stream.

3. That the defendant is an incorporated company, having its head office in the city of Vancouver, B. C.

4. That on the 7th day of April, 1906, upon the applicant of the defendant company, the water commissioners for the district of New Westminster, assuming to act under the Water Clauses Consolidation Act, 1897, chap. 190 of the Revised Statutes of British Columbia, 1897, purported to grant to the said company, at the annual rent and for the consideration therein mentioned, a record for 25,000 inches of water (subject to certain reservation) out of the said Lillooet lakes and Lillooet river and its tributaries, such water to be used for generating electricity for light, heat and power, and for milling, manufacturing, industrial and mechanical purposes, at or near lot 404, New Westminster district, and to be diverted from its source at a point at or near the outlet of the lower Lillooet lake and be returned at a point at or near lot 404, group 1, New Westminster district, and to be stored or diverted by means of dams, pipes, flumes and ditches.

5. That on the public lands forming part of the railway belt and adjoining the said Lillooet lake and Lillooet river, is a large quantity of valuable timber, which is entitled of right to be floated down the said river, and the said alleged grant and the diversion thereby authorized will materially interfere with the said right.

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6. That the said alleged grant and rights under the Water Clauses Consolidation Act thereto attached will materially interfere with the rights of the Dominion Government in the railway belt.

7. That the capacity of the Lillooet river is about 25,000 inches and the alleged grant and the proposed diversion thereby authorized will greatly diminish the quantity of water in the said river and materially interfere with the rights of the Dominion Government.

8. That the alleged grant and the proposed diversion thereby authorized will materially interfere with the public right of navigation in the said river.

9. That section 91 of the British North America Act, 1867, provides that the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the following (amongst other) classes of subjects:

The contrary was argued before the committee, if one is permitted to refer to what was said there, and I do not know how we can answer the hon. gentleman's objections unless we refer to it. It will be seen that a decision of this character with reference to this Bill, which relates to waters which are in precisely the same position as the Lillooet waters, and which relate to timber which is within the railway belt, and to the invasion of waters which are affected by it, and are in the railway belt, would be a decision in advance of the decision of the courts, which I think would be an unfortunate thing.

Hon. Mr. LANDRY—It would be a decision in advance if we decided the other way.

Hon. Mr. KERR—No. Hon. gentleman are not aware that the Bill which was before the committee was not the Bill that was asked for by these petitions, but a Bill was asked for and presented to the House of Commons which contained a clause declaring that the work was for the general advantage of Canada. It was conceded that if that were in the Bill, the jurisdiction of parliament would have been absolute and complete, and therefore both of these things placed the parties at a disadvantage in the determination of the question before the courts. Under these circumstances, I do not think it is necessary for me to argue this matter any further, because the case is a complete one, that there are matters in consideration which were not presented, and which might have had a very serious effect upon the very committee that sat there.