

2. ORDER IN COUNCIL RESCINDING AND REPLACING P.C. 115.

P.C. 592

CERTIFIED copy of a Report of the Committee of the Privy Council approved by the Deputy of His Excellency the Governor General on the 14th April, 1928.

The Committee of the Privy Council have had before them a report, dated 13th April, 1928, from the Minister of Justice, submitting that at the conference of representatives of the Dominion and Provincial Governments held at Ottawa in the month of November, 1927, the Premiers of certain of the Provinces questioned the right of the Dominion to water-powers created or made available by the erection of Dominion works for the improvement of navigation and asserted a right on the part of the Provinces to such water-powers within the limits of the Province.

The Minister observes that in the discussion which followed with regard to this claim and also with regard to the whole question of the division of legislative control over and proprietary interest in water powers it was found impossible to reach any general agreement as between the Dominion and the Provinces, and in the result a request was made by the Premiers of Ontario and Quebec that the Dominion undertake to submit a case to the Supreme Court of Canada for hearing and consideration.

In pursuance of this request Your Excellency was pleased by Order in Council of the 18th January, 1928 (P.C. 115), passed on the recommendation of the Minister of Justice, to refer certain questions to the Supreme Court of Canada for hearing and consideration pursuant to section 60 of the Supreme Court Act.

The Minister states that the statistics show that the inland water-borne commerce of the Dominion has attained to great dimensions and with the growth and settlement of the country will involve large future expenditures for improvements of the extensive waterways comprising the inland navigation of the Dominion.

The Minister submits that owing to the great importance of the questions in controversy, it was considered advisable to consult with representatives of the Provinces with respect to the questions to be submitted, and such conference having been held it was deemed advisable to revise the said questions and to submit additional questions, viz., Nos. 8 and 9 hereinafter set out at the request of representatives of the Province of Ontario.

The Minister accordingly recommends that Order in Council of the 18th January, 1928 (P.C. 115), be rescinded, and that, pursuant to the powers in that behalf conferred by section 60 of the Supreme Court Act, Your Excellency may be pleased to refer to the Supreme Court of Canada for hearing and consideration of the following questions:—

1. (a) Where the bed of a navigable river is vested in the Crown in the right of the Province, is the title subordinate to the public right of navigation?
(b) If not, has the Dominion the legislative power to declare that such title is subordinate to such right?
2. Where the bed of a navigable river is vested in the Crown in the right of the province, has the Dominion power, for navigation purposes, to use or occupy part of such bed or to divert, diminish, or change the flow over such bed (a) without the consent of the province; (b) without compensation?