J. C. 1914

ATTORNEY-GENERAL FOR ALBERTA v. ATTORNEY-GENERAL FOR CANADA.

By s. 92 of the British North America Act, 1867, it is enacted as follows:—"92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:— . . . .

"(10.) Local works and undertakings other than such as are of the following classes:—

"(*a*) Lines of steam or other ships railways canals telegraphs and other works and undertakings connecting the Province with any other or others of the Province or extending beyond the limits of the Province. . . . .

"(*c*) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces."

By s. 91 of the British North America Act, 1867, it is enacted as follows:—"91. . . . . It is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:— . . . .

"(29.) Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

It has never been doubted that these words refer to and include railways such as are mentioned in 92 (10.) (*a*) and (*c*) above quoted. Indeed the language seems to point to 92 (10.) so expressly that the contention is frequently heard that it is intended to refer to it solely. It is not necessary to decide that point in the present case. It suffices to say that railways such as are described in 92 (10.) (*a*) and (*c*) come under the exclusive legislative authority of the Parliament of Canada. The provincial Legislature therefore has no power to affect by legislation the line or works of such a railway. If authority were required for so plain and evident a conclusion from these statutory provisions, it is to be found in the judgments of their Lordships in the cases of *Canadian Pacific Ry. Co.* v. *Corporation of the Parish of Notre Dame de Bonsecours* (1) and *Maiden* v. *Nelson and Fort Sheppard Ry. Co.* (2).

[1915] *A. C.* p. 368.

The provisions of s. 82 of the Alberta Railway Act, 1907, do not in the opinion of their Lordships necessarily clash with these rights of legislation which thus exclusively belong to the Dominion Parliament, for it is possible to give to the words "railway company" the limited meaning of a company owning and operating a railway

(1) [1899] A. C. 367. (2) [1899] A. C. 626.