

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Ex. Ct.]

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SUPREME COURT OF CANADA.

British Columbia.]

CANADIAN PACIFIC RAILWAY CO. v. MAJOR.

Canadian Pacific Railway Act, 44 Vict. ch. 1—
Consolidated Railway Act, 1879, s. 19.

By the Act incorporating the Canadian Pacific Railway Co., 44 Vict. ch. 1, the provisions of the Consolidated Railway Act, 1879 are made applicable to the building of the Canadian Pacific Railway, in so far as they are not inconsistent with or contrary to the said act of incorporation.

Held, (HENRY, J., dissenting), that the provision contained in section 19 of the Consolidated Railway Act, 1879, that no railway company shall have any right to extend its line of railway beyond the termini mentioned in the special act, is inconsistent with the power given to the company under sec. 14 of the contract contained in said Act to build branch lines from any point within the Dominion, and with the declaration in section 15 of the charter that the main line, branch lines, and any extension of the main line thereafter constructed or acquired shall constitute the Canadian Pacific Railway.

The Canadian Pacific Railway has, therefore, a right to build their road beyond Port Moody in British Columbia, the terminus mentioned in said Act of incorporation.

Appeal allowed with costs.

Robinson, Q.C., and Tait, Q.C., for appellants.

Ebert, for respondent.

EXCHEQUER COURT OF CANADA.

BERLINQUET v. THE QUEEN.

Petition of right—Intercolonial Railway contract
—31 Vict. ch. 13, s. 18—*Certificate of engineer*
—*Condition precedent to recover money for extra work—Forfeiture and penalty clauses*

The suppliants engaged by contracts under seal dated 25th May, 1870, with the Intercolonial Railway Commissioners (authorized by 31 Vict. ch. 13) to build, construct and complete sections 3 and 6 of the said railway for a lump sum for section 3 of \$462,444, and for section 6 for a lump sum of \$456,946.23.

The contract provided, *inter alia*, 1. That it should be distinctly understood, intended and agreed, that the said lump sums should be the price of, and be held to be full compensation for, all works embraced in or contemplated by the said contracts, or which might be required in virtue of any of its provisions, or by law, and the contractors should not, upon any pretext whatever, be entitled, by reason of any change, alteration or addition made in or to such works, or in the said plans or specifications, or by reason of the exercise of any of the powers vested in the Governor in Council by the said Act intituled, "An act respecting the construction of the Intercolonial Railway," or in the commissioners or engineer by the said contract or by law, to claim or demand any further sum for extra work, or as damages or otherwise, the contractors thereby expressly waiving and abandoning all and every such claim or pretension, to all intents and purposes whatsoever, except as provided in the fourth section of the said contract, relating to alteration in the grade or line of location; and that the said contract and the said specifications should be in all respects subject to the provisions of 31 Vict. ch. 13. That the works embraced in the contracts should be fully and entirely completed in every particular and given up under final certificates and to the satisfaction of the commissioners and engineer on the 1st of July, 1871 (time being declared to be material and of the essence of the contract), and in default of such completion contractors should forfeit all right, claim, etc., to