

of Attorney-General for Canada v. Attorney-General for Ontario, [1898] A. C. at p. 715, and Canadian Pacific R. W. Co. v. Corporation of Notre Dame de Bonsecours, [1899] A. C. p. 367; and Madden v. Nelson and Fort Sheppard R. W. Co., ib. 626.

The Mechanics' Lien Act of Ontario is extended to railway companies as owners and to railways and other lands with the safeguard in sec. 52:—"The provisions of the Act, so far as they affect railways under the control of the Dominion of Canada, are only intended to apply so far as the legislature of the province has authority or jurisdiction in regard thereto." This was passed in 1896, after the decision in King v. Alford (1885).

The effect of this legislation is to operate at once upon the property of the railway—affecting it in rem, and creating a statutory lien on the undertaking for the benefit of the wage-earner: secs. 4, 7, 13. The initial proceedings under the Ontario Act is to place a burden on the lands of the railway in addition to what may be imposed upon them under the Dominion Railway Act, secs. 111, 112, &c., Act of 1903. That appears to me to be a piece of legislation beyond the competence of the provincial legislature.

I foresee, besides, great difficulties in working out the provisions of the Mechanics' Lien Act, as applied even to Ontario railways, under the existing law, which forbids the disposal of a railway piecemeal. To make the local law effective it would appear to be requisite to provide for a sale of the particular part of the land benefited by the work in respect of which a lien is given. The Act as it stands at present, can only be worked out by attributing the lien to all the line of railway lands, and selling the whole as an entire thing, while yet the lien is registered only in the county where the work has been done: sec. 17, sub-sec. 3, and sec. 7.

Upon the main point, however, as to the constitutional aspect of the Mechanics' Lien Act, I think the appeal should succeed. It is not a case for costs.

It was suggested, but not strongly argued, that there might be a difference where the federal railway was not a completed and running concern, but only in course of construction. That, however, is not, to my mind, an essential difference—it is still a federal work entered upon and being prosecuted for the advantage of the whole Dominion, and it