

As this indulgence was granted to the plaintiff, the defendants should have leave to amend their statement of defence by alleging that their dam and works were constructed under the authority of the Dominion and Provincial statutes and under the agreement with the Crown, and pleading them as a defence to the action, and we deal with the appeal upon the assumption that such amendment has been made.

The Rainy river is a navigable stream, and the boundary between Canada and the United States of America is the middle line of the river.

By the British North America Act, sec. 91, navigation is one of the subjects the authority to make laws as to which is assigned exclusively to the Parliament of Canada.

The Navigable Waters Protection Act, R.S.C. 1906 ch. 115, is a general law passed under the authority of sec. 91, and one of its purposes is to confer upon the Governor in council jurisdiction and authority to authorise the construction in navigable waters of works which otherwise would constitute unlawful obstructions to the navigation of such waters.

As the construction, operation, and maintenance of the defendants' dam and works would interfere with the navigation of the river, it was necessary that they should obtain the authority of the Parliament of Canada under the general Act to which I have referred, or under a special Act, to construct, operate, and maintain them; and they chose the latter mode of authorisation.

It is plain, we think, that the operation and effect of the special Act must be confined to making what otherwise would have been an unlawful obstruction to navigation not unlawful, and to conferring upon the defendants the right to interfere with the navigation of the river, so far as the works with which the special Act deals would interfere with it.

The ownership of the bed of the Rainy river, as well as of the land lying along the stream on the Canadian side, being vested either in the Province or in its grantees, the special Act does not assume to confer, as indeed it could not, any authority to interfere with their property rights.

Had it been intended that the special Act should have that wider effect, it would have been competent for the Parliament of Canada, under the authority of sec. 92, par. 10 (c), of the British North America Act, to have declared the dam and works to be for the general advantage of Canada; but the special Act contains no such declaration, and the absence of it, as well as of any provisions for making compensation to the owners of land injuriously affected by the erection, operation, or main-