Privy Council Appeal No. 61 of 1915.

The Bonanza Creek Gold Mining Company, Limited - - - - - - *Appellants,*

v.

The King - - - - - - - - *Respondent,*

AND

The Attorneys-General for the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick and British Columbia - - - - *Interveners,*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH FEBRUARY, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD PARKER OF WADDINGTON.
LORD SUMNER.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Canada in a petition of right which gave rise to questions of constitutional importance as to the position of joint-stock companies, incorporated within the provinces, but seeking to carry on their business beyond the provincial boundaries.

The appellants were incorporated in Ontario by letters patent, dated the 23rd December, 1904, and issued under the authority of the Ontario Companies Act and by virtue of any other authority or power then existing, in the name of the Sovereign and under the Great Seal of the province, by its Lieutenant-Governor. The letters patent recite that this Act authorises the Lieutenant-Governor in Council by letters patent under the Great Seal to create and constitute bodies corporate and politic for any of the purposes or objects to which the legislative authority of the province extends. They go on to incorporate the company to carry on the businesses of mining and exploration in all their branches, and to acquire real and personal property, including mining claims, with incidental

powers. There are no words which limit the area of operation or prohibit the company from carrying out its objects beyond the provincial boundaries.

In the years 1899 and 1900 the Crown, through the Minister of the Interior of the Dominion, had granted to predecessors in title of the appellants leases of certain tracts of land, in what is now the Yukon district, for the purposes of hydraulic mining. Two of these leases contained exclusions of so much of the tracts as had been taken up and entered for placer mining claims. In the year 1900 the Crown entered into agreements with these predecessors in title to the effect that, if any of the placer mining claims within the tracts should be forfeited or surrendered, the Crown would include them in the tracts by supplementary leases. The original leases having subsequently been assigned to the appellants, and certain of the placer mining claims having reverted, the Crown purported in 1907 to demise to the appellants these claims, and to agree to demise to them such other of the claims as might thereafter revert, for the same terms of years as those for which the original leases were granted.

In 1906 the Minister of the Interior of the Dominion had purported to issue to the appellants a free miner's certificate. This certificate was issued in conformity with certain regulations under an Order in Council made under the provisions of the Dominion Lands Act, which gives the right to a free miner's certificate to persons of over 18 and to joint-stock companies, the latter being defined to include any company incorporated "for mining purposes under a Canadian charter or licensed by the Government of Canada."

When the Yukon district was, by the Statute passed by the Dominion Parliament in 1899, made a separate territory, power to make ordinances was conferred on the Commissioner of the territory. Under this power the Foreign Companies Ordinance was passed, under which any company, incorporated otherwise than by or under the authority of an ordinance of the territory or an Act of the Parliament of Canada, was required to obtain a licence under the ordinance to carry on its business in the Yukon territory. Such a licence when issued was made sufficient evidence in the Courts of the territory of the due licensing of the company. In September 1905 the appellants obtained such a licence.

In 1908 the appellants presented a petition of right in the Exchequer Court of Canada, alleging that, in breach of the agreement entered into by the Crown, placer mining claims which had reverted to the Crown and should have been leased to the appellants had been wrongfully withheld from the appellants, and that by reason of this and of other breaches of the agreement the appellants had suffered heavy damage, for which they as suppliants prayed compensation. The respondent delivered an answer to the petition of right, the first two paragraphs of such answer being as follows:—

"1. The respondent denies that the suppliant has now or ever has had "the power, either under letters patent, licence, free miner's certificate, or "otherwise, to carry on the business of mining in the district of the Yukon, "or to acquire any mines, mining claims, or mining locations therein, or "any estate or interest by way of lease or otherwise in any such mines, "mining claims, or locations.

"2. Should a free miner's certificate have been issued to the suppliant, "the respondent claims that the same is and always has been invalid and "of no force or effect, that there was no power to issue a free miner's "certificate to the suppliant, a company incorporated under provincial "letters patent, and that there was no power vested in the suppliant to "accept such a certificate."

Cassels, J., the Judge of the Exchequer Court, ordered the questions of law raised by these paragraphs of the answer to be disposed of, and pending this stayed all other proceedings. He subsequently heard arguments upon the questions thus raised. As the result he decided that he ought to follow what he conceived to be the opinions given by the majority of the Judges of the Supreme Court of Canada in a general reference which had been made to them in regard to companies, opinions which are now before this Board for consideration in the appeal which was argued immediately after the present one. He thought that the majority in the Supreme Court had decided that a provincial company was confined in the exercise of its functions to the province where it was incorporated. He therefore dismissed the petition of right, but without costs, on the ground taken in the first of the above-quoted paragraphs of the answer. On the narrower ground taken in the second paragraph he did not enter.

There was an appeal to the Supreme Court, and the learned Judges were divided in their views. The Chief Justice, Davies, J., and Duff, J., were of opinion that it was *ultra vires* of the appellants to exercise powers or to acquire rights outside the boundaries of the province of Ontario. Idington, J., and Anglin, J., were of a different opinion. They held that, while a provincial company could exercise its powers as of right only within the province where it was incorporated, it was elsewhere in Canada like a foreign company, and had capacity to accept rights and powers conferred on it by comity by another Government.

The majority in the Supreme Court were therefore adverse to the appellants on the first question raised, that as to general capacity. On the question raised by the second paragraph of the answer, Duff, J., expressed an opinion in favour of the appellants. On the question, which was one of construction, and arose only if he was wrong in his answer to the wider question, he thought that the condition of acquiring, under the Dominion Regulations approved by the Order in Council already referred to, the right to a mining location to be worked by hydraulic process, was the obtaining a free miner's certificate under the Dominion Regulations governing placer mining. Under these regulations a joint-stock company might receive such a

certificate, if it came within the definition of being "incorporated for mining purposes under a Canadian Charter, or licensed by the Government of Canada." Differing from the Chief Justice, who had been adverse to the appellants on this point also, Duff, J., was of opinion that the expression, "Canadian Charter," meant, not a charter granted under Dominion authority, but one emanating from any lawful authority in Canada. Otherwise, as he pointed out, a company incorporated by Yukon authority, or by the Council of the North-West Territories before Yukon became a separate territory, would be excluded, along with companies incorporated by the Province of Canada before Confederation.

Their Lordships have come to the same conclusion on this point as Duff, J. They think that the appellants, if they possessed legal capacity to receive such a Dominion certificate, had it validly bestowed on them, and that, if so, they subsequently obtained a good title to the mining locations, and also to the Yukon licence to carry on business which was granted to them. This subordinate question ought therefore to be answered in favour of the appellants.

Their Lordships accordingly turn to the larger question raised by the first of the two paragraphs, a question which is of far-reaching importance. It is whether a company incorporated by provincial letters patent, issued in conformity with legislation under sect. 92 of the British North America Act, can have capacity to acquire and exercise powers and rights outside the territorial boundaries of the province. In the absence of such capacity the certificates, licences, and leases already referred to were wholly inoperative, for if the company had no legal existence or capacity for purposes outside the boundaries of the province conferred on it by the Government of Ontario, by whose grant exclusively it came into being, it is not apparent how any other Government could bestow on it rights and powers which enlarged that existence and capacity. The answer to this question must depend on the construction to be placed on sect. 92 of the British North America Act and on the Ontario Companies Act.

Sect. 92 confers exclusive power upon the provincial legislature to make laws in relation to the incorporation of companies with provincial objects. The interpretation of this provision which has been adopted by the majority of the Judges in the Supreme Court is that the introduction of the words "with provincial objects" imposes a territorial limit on legislation conferring the power of incorporation so completely that by or under provincial legislation no company can be incorporated with an existence in law that extends beyond the boundaries of the province. Neither directly by the language of a special Act, nor indirectly by bestowal through executive power, do they think that capacity can be given to operate outside the province, or to accept from an outside authority the power of so operating. For the company, it is said, is a

pure creature of statute, existing only for objects prescribed by the legislature within the area of its authority, and is therefore restricted, so far as legal capacity is concerned, on the principle laid down in *Ashbury Carriage Company* v. *Riche* (L.R. 7, H.L. 653).

Their Lordships, however, take the view that this principle amounts to no more than that the words employed to which a corporation owes its legal existence must have their natural meaning, whatever that may be. The words of the British Companies Act were construed as importing that a company incorporated by the statutory Memorandum of Association which the Act prescribes could have no legal existence beyond such as was required for the particular objects of incorporation to which that memorandum limited it. A similar rule has been laid down as regards companies created by special Act. The doctrine means simply that it is wrong, in answering the question what powers the corporation possesses when incorporated exclusively by statute, to start by assuming that the legislature meant to create a company with a capacity resembling that of a natural person, such as a corporation created by charter would have at common law, and then to ask whether there are words in the statute which take away the incidents of such a corporation. This was held by the House of Lords to be the error into which Blackburn, J., and the Judges who agreed with him had fallen when they decided in *Riche* v. *Ashbury Carriage Company* (L.R. 9, Ex. 230) in the Court below that the analogy of the status and powers of a corporation created by charter, as expounded in the *Sutton's Hospital Case* (10 Coke, 1), should in the first instance be looked to. For to look to that analogy is to assume that the legislature has had a common law corporation in view, whereas the wording may not warrant the inference that it has done more than concern itself with its own creature. Such a creature, where its entire existence is derived from the statute, will have the incidents which the common law would attach if, but only if, the statute has by its language gone on to attach them. In the absence of such language they are excluded, and, if the corporation attempts to act as though they were not, it is doing what is *ultra vires* and so prohibited as lying outside its existence in contemplation of law. The question is simply one of interpretation of the words used. For the statute may be so framed that executive power to incorporate by charter, independently of the statute itself, which some authority, such as a Lieutenant-Governor, possessed before it came into operation, has been left intact. Or the statute may be in such a form that a new power to incorporate by charter has been created, directed to be exercised with a view to the attainment of, for example, merely territorial objects, but not directed in terms which confine the legal personality which the charter creates to existence for the purpose of these objects and within territorial limits. The language may be such as to shew an intention to confer on the

corporation the general capacity which the common law ordinarily attaches to corporations created by charter. In such a case a construction like that adopted by Blackburn, J., will be the true one.

Applying the principle so understood to the interpretation of sect. 92 and of the Ontario Companies Act passed by virtue of it, the conclusion which results is different from that reached by the Court below. For the words of sect. 92 are, in their Lordships' opinion, wide enough to enable the legislature of the province to keep the power alive, if there existed in the executive at the time of confederation a power to incorporate companies with provincial objects, but with an ambit of vitality wider than that of the geographical limits of the province. Such provincial objects would be of course the only objects in respect of which the province could confer actual rights. Rights outside the province would have to be derived from authorities outside the province. It is therefore important to ascertain what were the powers in this regard of a Lieutenant-Governor before the British North America Act passed, and in the second place what the Ontario Companies Act has really done.

The Act which was passed by the Imperial Parliament in 1840, in consequence of the Report on the State of Affairs in Canada made by Lord Durham, united the provinces of Upper and Lower Canada under a Governor-General, who had power to appoint deputies to whom he could delegate his authority. This Act established a single legislature for the new United Province of Canada, and shortly after it had passed responsible government was there set up. In 1867 the British North America Act modified the constitution so established. This Act contained a preamble stating that the provinces of Canada, Nova Scotia, and New Brunswick, had expressed their desire to be federally united into one dominion under the Crown, with a constitution similar in principle to that of the United Kingdom. In the case of the *Attorney-General for the Commonwealth of Australia* v. *Colonial Sugar Refining Company Limited* (1914, A.C., 247), this Board had occasion to comment on the contrast between the principles which underlie the distribution of powers in the constitutions of Canada and Australia respectively. They drew attention to the fact that the expression "federal" in the preamble of the British North America Act had been used in a somewhat loose fashion, and that the principle actually adopted was not that of federation in the strict sense, but one under which the constitutions of the provinces had been surrendered to the Imperial Parliament for the purpose of being refashioned. The result had been to establish wholly new dominion and provincial Governments with defined powers and duties, both derived from the statute which was their legal source, the residual powers and duties being taken away from the old provinces and given to the Dominion. It is to be observed

that the British North America Act has made a distribution between the Dominion and the provinces which extends not only to legislative but to executive authority. The Executive Government and authority over Canada are primarily vested in the Sovereign. But the statute proceeds to enact, by sect. 12, that all powers, authorities, and functions, which by any Imperial statute or by any statute of the provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of these provinces shall, "as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada," be vested in and exercisable by the Governor-General. Sect. 65, on the other hand, provides that all such powers, authorities, and functions shall, "as far as the same are capable of being exercised after the Union in relation to the government of Ontario and Quebec respec ively, be vested in and exercisable by the Lieutenant-Governor of Ontario and Quebec respectively." By sect. 64 the constitution of the executive authority in Nova Scotia and New Brunswick was to continue as it existed at the Union until altered under the authority of the Act.

The effect of these sections of the British North America Act is that, subject to certain express provisions in that Act and to the supreme authority of the Sovereign, who delegates to the Governor-General and through his instrumentality to the Lieutenant-Governors the exercise of the prerogative on terms defined in their Commissions, the distribution under the new grant of executive authority in substance follows the distribution under the new grant of legislative powers. In relation, for example, to the incorporation of companies in Ontario with provincial objects the powers of incorporation which the Governor-General or Lieutenant-Governor possessed before the Union must be taken to have passed to the Lieutenant-Governor of Ontario, so far as concerns companies with this class of objects. Under both sect. 12 and sect. 65 the continuance of the powers thus delegated is made by implication to depend on the appropriate legislature not interfering.

There can be no doubt that prior to 1867 the Governor-General was for many purposes entrusted with the exercise of the prerogative power of the Sovereign to incorporate companies throughout Canada, and such prerogative power to that extent became after confederation, and so far as provincial objects required its exercise, vested in the Lieutenant-Governors, to whom provincial Great Seals were assigned as evidences of their authority. Whatever obscurity may at one time have prevailed as to the position of a Lieutenant-Governor appointed on behalf of the Crown by the Governor-General has been dispelled by the decision of this Board in *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* (1892 A.C., 437). It was there laid down that—

"the Act of the Governor-General and his Council in making the appointment is, within the meaning of the statute, the Act of the Crown; and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial Government, as the Governor-General himself is for all purposes of Dominion Government."

The form of the Commission by which the Governor-General appoints a Lieutenant-Governor to be Lieutenant-Governor of Ontario bears this out. For it runs in the name of the Sovereign, and is—

"to do and execute all things that shall belong to your said command and the trust we have reposed in you, according to the several provisions and directions granted or appointed you by virtue of the Act of the United Kingdom of Great Britain and Ireland passed in the thirtieth year of the reign of Her late Majesty Queen Victoria, called and known as 'The British North America Act, 1867,' and of all other statutes in that behalf and of this our present Commission, according to such instructions as are herewith given to you or which may from time to time be given to you in respect of the said province of Ontario under the sign manual of our Governor-General of our said Dominion of Canada, or by order of our Privy Council of Canada, and according to such laws as are or shall be in force in the said province of Ontario."

Their Lordships have now to consider the question whether legislation before or after Confederation has been of such a character that any power of incorporation by charter from the Crown which formerly existed has been abrogated or interfered with to such an extent that companies so created no longer possess that capacity which the charter would otherwise have attached to them.

Prior to Confederation, the granting of letters patent under the Great Seal of the province of Canada for the incorporation of companies for manufacturing, mining, and certain other purposes was sanctioned and regulated by the Canadian Statute of 1864. This statute authorised the Governor-in-Council to grant a charter of incorporation to persons who should petition for incorporation for the purposes of the enumerated kinds of business. Applicants for such a charter were to give notice in the "Canada Gazette" of, among other things, the object or purpose for which incorporation was sought. By sect. 4 every company so incorporated under that Great Seal for any of the purposes mentioned in this Act was to be a body corporate capable of exercising all the functions of an incorporated company as if incorporated by a special Act of Parliament. Their Lordships construe this provision as an enabling one, and not as intended to restrict the existence of the company to what can be found in the words of the Act as distinguished from the letters patent granted in accordance with its provisions. It appears to them that the doctrine of *Ashbury Carriage Company* v. *Riche* does not apply, where, as here, the company purports to derive its existence from the act of the Sovereign and not merely from the words of the regulating statute. No doubt the grant of a charter could not

have been validly made in contravention of the provisions of the Act. But, if validly granted, it appears to their Lordships that the charter conferred on the company a status resembling that of a corporation at common law, subject to the restrictions which are imposed on its proceedings. There is nothing in the language used which, for instance, would preclude such a company from having an office or branch in England or elsewhere outside Canada.

The Dominion Companies Act (c. 79 of the Revised Statutes of 1906) is, so far as Part I is concerned, framed on the same principle, although the machinery set up is somewhat different. Part II stands on another footing. This part deals only with companies directly incorporated by special Act of the Parliament of Canada, and to these it is obvious that other considerations may apply. But the companies to which Part I applies are, like those under the old statute, to be incorporated by letters patent, the only material difference being that the Act enables these to be granted by the Secretary of State under his own seal of office. When granted, by sect. 5 they constitute the shareholders a body corporate and politic for any of the purposes or objects, with certain exceptions, to which the legislative authority of the Parliament of Canada extends. The Sovereign, through the medium of the Governor-General, in this way delegates the power of incorporation, subject to restrictions on its exercise, to the Secretary of State, and it is by the exercise of the executive power of the Sovereign that the company is brought into existence.

The Ontario Companies Act, which governs the present case, is c. 191 of the Revised Statutes of the province, 1897. The principle is similar, save that the letters patent are to be granted directly by the Lieutenant-Governor of the province under the Great Seal of Ontario. Excepting in this respect, the provisions of sect. 9, which corresponds to sect. 5 of the Dominion Act, are substantially the same as those of the latter section, so that, subject to the express restrictions in the statute, it is by the grant under the Great Seal and not by the words of the statute, which merely restrict the cases in which such a grant can be made, that the vitality of the corporation is to be measured. It will be observed that sect. 107 enables an extra provincial company desiring to carry on business within the province of Ontario to do so if authorised by licence from the Lieutenant-Governor, a provision which bears out the view indicated.

It is obviously beyond the powers of the Ontario legislature to repeal the provisions of the Act of 1864, excepting in so far as the British North America Act has enabled it to do this in matters relating to the province. If the legislature of Ontario has not interfered the general character of an Ontario Company constituted by grant remains similar to that of a Canadian Company before Confederation.

The whole matter may be put thus: The limitations of the legislative powers of a province expressed in sect. 92, and in particular the limitation of the power of legislation to such as relates to the incorporation of companies with provincial objects, confine the character of the actual powers and rights which the provincial Government can bestow, either by legislation or through the executive, to powers and rights exercisable within the province. But actual powers and rights are one thing and capacity to accept extra provincial powers and rights is quite another. In the case of a company created by charter the doctrine of *ultra vires* has no real application in the absence of statutory restriction added to what is written in the charter. Such a company has the capacity of a natural person to acquire powers and rights. If by the terms of the charter it is prohibited from doing so, a violation of this prohibition is an act not beyond its capacity, and is therefore not *ultra vires*, although such a violation may well give ground for proceedings by way of *scire facias* for the forfeiture of the charter. In the case of a company the legal existence of which is wholly derived from the words of a statute, the company does not possess the general capacity of a natural person and the doctrine of *ultra vires* applies. Where, under legislation resembling that of the British Companies Act by a province of Canada in the exercise of powers which sect. 92 confers, a provincial company has been incorporated by means of a memorandum of association analogous to that prescribed by the British Companies Act, the principle laid down by the House of Lords in *Ashbury Carriage Company* v. *Riche*, of course, applies. The capacity of such a company may be limited to capacity within the province, either because the memorandum of association has not allowed the company to exist for the purpose of carrying on any business outside the provincial boundaries, or because the statute under which incorporation took place did not authorise, and therefore excluded, incorporation for such a purpose. Assuming, however, that provincial legislation has purported to authorise a memorandum of association permitting operations outside the province if power for the purpose is obtained *ab extra*, and that such a memorandum has been registered, the only question is whether the legislation was competent to the province under sect. 92. If the words of this section are to receive the interpretation placed on them by the majority in the Supreme Court the question will be answered in the negative. But their Lordships are of opinion that this interpretation was too narrow. The words "legislation in relation to the incorporation of companies with provincial objects" do not preclude the province from keeping alive the power of the executive to incorporate by charter in a fashion which confers a general capacity analogous to that of a natural person. Nor do they appear to preclude the province from legislating so as to create, by or by virtue of statute, a corporation with this general capacity. What the words really do is to preclude the grant to such a corporation,

whether by legislation or by executive act according with the distribution of legislative authority, of powers and rights in respect of objects outside the province, while leaving untouched the ability of the corporation, if otherwise adequately called into existence, to accept such powers and rights if granted *ab extra*. It is, in their Lordships' opinion, in this narrower sense alone that the restriction to provincial objects is to be interpreted. It follows, as the Ontario Legislature has not thought fit to restrict the exercise by the Lieutenant-Governor of the prerogative power to incorporate by letters patent with the result of conferring a capacity analogous to that of a natural person, that the appellant company could accept powers and rights conferred on it by outside authorities.

The conclusions at which their Lordships have thus arrived are sufficient to enable them to dispose of this appeal; for according to these conclusions the appellant company had a status which enabled it to accept from the Dominion authorities the right of free mining, and to hold the leases in question and take the benefit of the agreements relating to the locations in the Yukon district, as well as of the licence from the Yukon authorities.

A yet larger view of the devolution and distribution of executive power in Canada was suggested in some of the arguments addressed to their Lordships from the Bar, and they are aware that this view has been contended for on former occasions in the Dominion. It has been urged in several cases which have occurred that the Governor-General and the Lieutenant-Governors of the provinces, excepting so far as the Royal prerogatives have been reserved expressly or by necessary implication, have the right to exercise them, as though by implication completely handed over and distributed in such a fashion as to cover the whole of the fields to which the self-government of Canada extends. The Governor and the Lieutenant-Governors would thus be more nearly Viceroys than representatives of the Sovereign under the restrictions explained in *Musgrave* v. *Pulido* (5 A.C., 102), where it was laid down that, in the case of a Crown Colony, the commission of the Governor must in each case be the measure of his executive authority, a principle which, in such a case as that of a self-governing Dominion like Canada, might find its analogy in the terms not only of the commission but of the statute creating the constitution.

The argument for the larger view concedes that it is the general rule in the construction of statutes that the Crown is not affected unless there be words to that effect, inasmuch as the law made by the Crown with the assent of the Lords and Commons is enacted *primâ facie* for the subject and not for the Sovereign. But this principle of construction it is said cannot apply to an Act the expressed object of which is to grant a constitution with full legislative and executive powers. In the case of such an Act there is therefore no presumption that the

general provisions it contains were not intended to include any matter of prerogative which, in the absence of the rule of construction above stated, would fall within the general words employed. For a constitution, granted to a dominion for regulating its own affairs in legislation and government generally, cannot be created without dealing with the prerogative, and the British North America Act from beginning to end deals with matters of prerogative, for the most part without expressly naming the Sovereign.

If this argument were well-founded it would afford a short cut to the solution of the question which has arisen in this appeal. For under the distribution of the prerogative which it assumes it would be difficult to see how a Lieutenant-Governor, placed in the position of a Viceroy as regards matters pertaining to the government of his province, could be excluded from the prerogative power of incorporating by charter, unless that power had been expressly taken away by legislation.

But their Lordships abstain from discussing at length the question so raised. They will only say that when, if ever, it comes to be argued, points of difficulty will have to be considered. There is no provision in the British North America Act corresponding even to sect. 61 of the Australian Commonwealth Act, which, subject to the declaration of the discretionary right of delegation by the Sovereign in chapter 1, sect. 2, provides that the executive power, though declared to be in the Sovereign, is yet to be exercisable by the Governor-General. Moreover, in the Canadian Act there are various significant sections, such as sect. 9, which declares the Executive Government and authority over Canada to continue and be vested in the Sovereign; sect. 14, which declares the power of the Sovereign to authorise the Governor-General to appoint deputies; sect. 15, which, differing from sect. 68 of the Commonwealth Act, says that the command-in-chief of the naval and military forces in Canada is to be deemed to continue and be vested in the Sovereign; and sect. 16, which says that until the Sovereign otherwise directs, the seat of the Government in Canada shall be Ottawa. These and other provisions of the British North America Act appear to preserve prerogative rights of the Crown which would pass if the scheme were that contended for, and to negative the theory that the Governor-General is made a Viceroy in the full sense, and they point to the different conclusion that for the measure of his powers the words of his commission and of the statute itself must be looked to. In the case of *The Liquidators of the Maritime Bank of Canada* v. *The Receiver-General of New Brunswick*, already referred to, it was said by this Board that the provisions of the Act "nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the provinces." Properly understood, and subject to such express

provisions of the Act as transfer what would otherwise remain prerogative powers, their Lordships are disposed to agree with this interpretation. It is quite consistent with it to hold that executive power is in many situations which arise under the statutory constitution of Canada conferred by implication in the grant of legislative power, so that where such situations arise the two kinds of authority are correlative. It follows that to this extent the Crown is bound and the prerogative affected. But such a conclusion is a very different one from the far-reaching principle contended for in the argument in question.

For the reasons which they have assigned earlier in this judgment their Lordships will humbly advise His Majesty that this appeal should be allowed, and that the trial of the petition of right should be proceeded with. As these are proceedings arising out of a petition of right with reference to which, under the Petition of Right Act of Canada, there is discretion to award costs as against the Crown, the respondent will pay the appellants' costs here and in the Courts below. There will be no order as to the costs of the interveners.

In the Privy Council.

(No. 61 of 1915).

THE BONANZA CREEK GOLD MINING COMPANY, LIMITED,

v.

THE KING AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1916.