

In the Privy Council.

No. 37 of 1931.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF A REFERENCE ARISING OUT OF THE TRANSFER
OF THE NATURAL RESOURCES TO THE PROVINCE OF SASKATCHEWAN.

BETWEEN

THE ATTORNEY GENERAL OF SASKATCHEWAN and
THE ATTORNEY GENERAL OF ALBERTA - - *Appellants*

AND

THE ATTORNEY GENERAL OF CANADA - - - *Respondent.*

CASE OF THE RESPONDENT
THE ATTORNEY GENERAL OF CANADA.

1. This is an appeal, by special leave, from a unanimous judgment of the Supreme Court of Canada, delivered by Newcombe, J. (concurring in by Anglin, C.J. Duff, Rinfret, Lamont, Smith and Cannon, JJ.) on a Reference to that Court by Order of His Excellency the Governor General in Council, dated 3rd May, 1930 (P.C. 947), for hearing and consideration pursuant to sec. 55 of the Supreme Court Act, of certain questions as to the constitutional powers and rights of the Dominion of Canada (prior to the establishment of the Province of Saskatchewan on September 1st, 1905), in relation to the beneficial administration of the natural resources lying within the provincial boundaries as then defined.

RECORD.
p. 59.

pp. 3-5.

2. The questions so referred, together with certain admissions of fact, set out in the "submission" attached to the said Order in Council, were, as appears from the narrative of the Order in Council, prepared on behalf of, and in terms considered appropriate by, the Government of the said Province, to obtain a judicial determination of the question raised by its contention, that the Dominion of Canada is under a liability to render to the Province an account of its dealings prior to September 1st, 1905 with lands lying within the provincial boundaries as then defined.

p. 3, l. 7 to
p. 4, l. 9.

RECORD.

3. The agreed admissions of fact, set out in the said submission, are that :—

p. 4,
ll. 25-35.

(a) The area now lying within the boundaries of the Province of Saskatchewan formed a part of Rupert's land and the North-Western Territory which were admitted into and became a part of the Dominion of Canada under Order in Council of June 23rd, 1870.

(b) From the coming into force of the said Order in Council until September 1st, 1905, portions of the said area were from time to time alienated by the Dominion of Canada.

10

(c) Throughout the following questions the term "lands" means and includes "lands, mines, minerals and royalties incident thereto."

4. The questions referred are :—

p. 4, l. 38 to
p. 5, l. 12.

(1) Upon Rupert's Land and the North-Western Territory being admitted into and becoming a part of the Dominion of Canada under Order in Council of June 23rd, 1870, were all lands then vested in the Crown and now lying within the boundaries of the Province of Saskatchewan vested in the Crown :—

(a) in the right of the Dominion of Canada, or

20

(b) in the right of any province or provinces to be established within such area, or

(c) to be administered for any province or provinces to be established within such area, or

(d) to be administered for the benefit of the inhabitants from time to time of such area ?

(2) Is the Dominion of Canada under obligation to account to the Province of Saskatchewan for any lands within its boundaries alienated by the Dominion of Canada prior to September 1st, 1905 ?

App., p. 35.

5. When the Dominion of Canada was formed in 1867, Rupert's Land and the North-Western Territory were not brought within it. Their inclusion was envisaged by section 146 of the British North America Act, 1867, and was, at all events partially, rendered practicable by subsequent legislation.

30

App., p. 35.

6. By Section 146 of the British North America Act, 1867, it was enacted that it should be lawful for the Sovereign in Council :

" On addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act."

40

That Section further enacted that :

“ The provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.”

RECORD.

7. By an Address from the Houses of Parliament of Canada, adopted by the said Houses of Parliament on the 16th and 17th December, 1867, Her Majesty was prayed to be pleased, by and with the advice of Her Privy Council, “ to unite Rupert’s Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government,” on the following terms and condition ;

App., p. 59,
l. 29 to
p. 60, l. 39.
App., pp.
204-205.

(1) “ That we are willing to assume the duties and obligations of government and legislation as regards these territories.

(2) “ That in the event of Your Majesty’s Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same, shall be respected and placed under the protection of Courts of competent jurisdiction.

20

(3) “ And furthermore, that upon the transference of the territories in question to the Canadian Government, the claims of the Indian Tribes to compensation for lands required for purposes of settlement, will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.”

8. The Colonial Secretary signified the willingness of Her Majesty’s Government to comply with the prayer of the said Address but stated that they were advised “ that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson’s Bay Company, be transferred to Canada without an Act of Parliament.”

App., p. 215,
ll. 12-19.

9. An enabling statute, the Rupert’s Land Act, 1868, was accordingly passed. It received the Royal Assent on July 1st, 1868. It enacted by section 2 that, “ For the purposes of this Act the term ‘ Rupert’s Land,’ shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company ”; *i.e.* the Hudson’s Bay Company. It enacted, by section 3, that it should be competent for the Governor and Company of Adventurers of England trading into Hudson’s Bay, to surrender to Her Majesty, and for Her Majesty, by any Instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by certain Letters Patent therein recited to the said Company within Rupert’s Land, upon such terms and conditions as should be agreed upon by and between Her Majesty and the said Company ; subject, however, to the proviso that such surrender should not be accepted by Her Majesty

40

RECORD. until the terms and conditions upon which Rupert's Land should be admitted into the Dominion of Canada should have been approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of section 146 of the British North America Act, 1867.

It further enacted, by section 5, that it should be competent to Her Majesty by Order or Orders in Council, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land from a date therein to be mentioned be admitted into and become part of the Dominion of Canada; "and thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain, and establish within the land and territory so admitted as aforesaid all such laws, institutions, and ordinances, and to constitute such courts and officers, as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein." 10

App., p. 217, 10. So soon as the Rupert's Land Act, 1868 was passed, the Colonial Secretary informed the Governor-General of the Dominion that, in pursuance of the powers conferred by the Act for the surrender of the Company's territories and rights to Her Majesty, he proposed to enter into negotiations

App., p. 217, 11. 17-25; with the Company as to the terms of such surrender. The Dominion thereupon appointed delegates to proceed to England to arrange the terms for the acquisition by Canada of Rupert's Land. 20
p. 217, l. 27 to p. 219, l. 20.

App., pp. 219-274. 11. The negotiations which ensued (conducted by the Colonial Secretary on behalf of the Crown, by the delegates on behalf of the Dominion of Canada, and by Sir Stafford Northcote, Governor of the Company, on behalf of the Company), resulted in an agreement for the surrender by the Hudson's Bay Company of its territorial and other rights, on certain terms and conditions, of which the more important were :

App., p. 62, 11. 6-39; (a) That the Canadian Government should pay to the Company £300,000, "when Rupert's Land is transferred to the Dominion of Canada." 30
pp. 63-64; p. 258, l. 19 to p. 261, l. 20;

p. 266, l. 28 to p. 267, l. 25; (b) That the Company should be entitled to select certain blocks of land adjoining each of their posts or stations within any part of British North America not comprised in Canada or British Columbia, and to claim grants of certain other parcels of land within the "fertile belt" as defined.

(c) That all titles to land up to 8th March, 1869, conferred by the Company, should be confirmed.

(d) That the Company should be at liberty to carry on its trade without hindrance. 40

App., p. 65, 11. 24-39; 12. By a second Address from the Houses of Parliament of Canada, adopted by the said Houses on the 29th and 31st May, 1869, Her Majesty was prayed to be pleased, by and with the advice of Her Privy Council, under sec. 146 of the British North America Act, 1867 and the provisions of the Rupert's Land Act, 1868, to unite Rupert's Land on the terms and
pp. 66-67; p. 277-278.

conditions expressed in the resolutions incorporated in the said Address (of which the more important were those mentioned in para. 11 above), and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the first Address referred to in para. 7 above. RECORD.

13. Accordingly, the Hudson's Bay Company, by Deed of Surrender, App., dated 10th November, 1869, surrendered to Her Majesty, on the agreed terms,— pp. 68-75.

10 “all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent.” App., p. 71,
ll. 30-39.

20 14. By order of Her Majesty in Council, dated 23rd June, 1870, passed in pursuance of the powers vested in Her Majesty by sec. 146 of the British North America Act, 1867, and the Rupert's Land Act, 1868, it was ordered: App.,
pp. 55-59.

(1) “that the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address (*i.e.* the Address of December, 1867, referred to in paragraph 7 above), and that the Parliament of Canada, shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said Territory.” App., p. 57,
ll. 28-32.

30 (2) “that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall, from and after the said date, be admitted into and become part of the Dominion of Canada upon the following terms and conditions being the terms and conditions still remaining to be performed of those embodied in the said second Address of the Parliament of Canada” (*i.e.* the Address of May, 1869, referred to in para. 12 above) “and approved by Her Majesty as aforesaid.” App., p. 57,
ll. 32-38.

40 15. Temporary provision for the government of “the North-West Territories,” by which name Rupert's Land and the North-Western Territory were designated, was made by Act of the Dominion Parliament, 32-33 Vict., (Canada) chap. 3, and the Province of Manitoba was constituted by the Manitoba Act, 1870, 33 Vict., (Canada) chap. 3. These Acts were confirmed by secs. 5 and 6 of The British North America Act, 1871, 34-35 Vict., (Imp.) chap. 28. App.,
pp. 46-47.
App.,
pp. 48-54.
App.,
pp. 76-77.

RECORD.
App.,
pp. 76-77.

16. By the British North America Act, 1871, upon the recital that doubts had been entertained respecting the powers of the Parliament of Canada to establish provinces in territories admitted, or which might thereafter be admitted, into the Dominion, and that it was expedient to remove such doubts, and to vest such powers in the said Parliament, it was enacted, by sec. 2, that the Parliament of Canada might from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada but not included in any province and might "at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament."

App.,
pp. 76,
ll. 17-20.

10

It was also enacted, by sec. 4, that "the Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province."

App.,
pp. 78-79.

17. The Parliament of Canada by the North-West Territories Act, 34 Vict. (Canada), chap. 16, made fuller provision for the organization of a Government for so much of Rupert's Land and of the North-Western Territory as had not been included in the Province of Manitoba. The Government so set up, subject to various changes in its form, continued in existence until the Province of Saskatchewan was constituted. It was nothing more than the agent or organ of the Dominion Parliament and had defined and limited powers which did not extend to the administration of the lands within the Territories. The administration of the ungranted or waste lands in Manitoba had likewise been excluded from the jurisdiction of the Legislature of Manitoba.

20

App.,
pp. 81-117.

18. For the administration of all Crown lands in the Province of Manitoba and the North-West Territories, the Dominion Parliament enacted, in 1872, the Dominion Lands Act, 35 Vict., (Canada) chap. 23, by which authority was given for disposition by the Crown of interests in Dominion lands throughout these areas on specified terms involving either the payment of a given consideration or the performance of certain residential and like conditions.

30

In pursuance of this statute, interests in considerable portions of the lands subsequently included in the Province of Saskatchewan were from time to time made the subject of Crown grants and leases, etc., any pecuniary consideration received being in general dealt with as part of the Consolidated Revenue Fund of Canada, although the proceeds of sales of certain defined lots in each township, together constituting about one-eighteenth of the total area, were pursuant to the Dominion Lands Act placed in a special trust fund, the income of which was applied to the support of schools for local residents.

40

App. 148.

19. By the British North America Act, 1886, 49-50 Vict., (Imp.) chap. 35, entitled "An Act respecting the representation in the Parliament

of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province," it is recited that it is expedient to empower the Parliament of Canada to provide for representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any province, and it is provided, by sec. 1, that the Parliament of Canada may from time to time make provision for such representation. It is also provided, by sec. 2, that any Act theretofore passed by the Parliament for the purpose mentioned shall, if not disallowed, be deemed to have been valid and effectual from the date at which it received the assent, and subjoined to this provision is the following declaration :

RECORD.

"It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act or in the British North America Act, 1871, has effect, notwithstanding anything in the British North America Act, 1867, and the number of Senators or the number of Members of the House of Commons specified in the last-mentioned Act is increased by the number of Senators or of Members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada."

The final provision is declaratory of the unity of the several British North America Acts. It provides that :

"This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together and may be cited together as the British North America Acts, 1867 to 1886."

20. In 1905, by the Saskatchewan Act, 4-5 Edw. VII, (Canada) chap. 42, the Parliament of Canada, acting in pursuance of the powers conferred upon it by the British North America Act, 1871, established the Province of Saskatchewan. By a similar Act, entitled the Alberta Act, 4-5 Edw. VII, chap. 3, provision was also made for the establishment of the Province of Alberta. These Acts came into force on the 1st September, 1905 (*see e.g.*, sec. 25 of the Saskatchewan Act). The Dominion continued, however, to retain control over and to administer the Crown lands within these Provinces, for the purposes of Canada (*see* sec. 21 of the Saskatchewan Act): in the same manner as it had retained control over Crown lands in Manitoba.

App.
pp. 149-163.

21. By the British North America Act, 1930, provision was made for the administration by all three prairie provinces of the respective natural resources as from the first day of August, 1930. By the same statute any claim by the Province of Saskatchewan in respect of interests in Crown Lands disposed of during the interval between September 1st, 1905, and August 1st, 1930, was settled by agreement, and provision was made thereunder for the determination by this reference of the question whether

App. p. 154,
ll. 22-29.RECORD.
pp. 8-16.

RECORD. the Province had any claim against the Dominion in respect of like dispositions during the interval between July 15th, 1870, and August 31st, 1905.

p. 48,
ll. 18-24. 22. The Reference came on for hearing before the Supreme Court of Canada (Anglin C.J., Duff, Newcombe, Rinfret, Lamont, Smith and Cannon J.J.), on the 14th October, 1930; the Attorneys General of Canada and of the Provinces of Saskatchewan, Alberta and Manitoba appeared by counsel, but the Attorneys General of the other Provinces, although duly notified, were not represented. Argument was heard by counsel on behalf of the Attorneys General of Saskatchewan and Alberta, and the Court reserved judgment without calling on counsel for the Attorney General of Canada. 10

pp. 47-48. 23. On the 3rd February, 1931, the Court pronounced judgment, answering the questions referred as follows :

p. 48,
ll. 34-42. To Question No. 1 (a) the Court unanimously answers "yes."

To Question No. 1 (b) the Court unanimously answers "no."

To Question No. 1 (c) the Court unanimously answers "no."

To Question No. 1 (d) the answer of the majority of the Court (Duff, Newcombe, Rinfret, Lamont, Smith and Cannon, J.J.) is : "not otherwise than as sharing in any benefit which might accrue to them under the dispositions of the Parliament of Canada"; and the answer of the Chief Justice of Canada is "no." 20

To Question No. 2, the Court unanimously answers "no."

pp. 49-58. 24. The reasons for judgment of the Supreme Court of Canada, delivered by Newcombe, J. (concurrent in by Anglin, C.J. Duff, Rinfret, Lamont, Smith and Cannon, J.J.), are reported in (1931) S.C.R. pp. 263-276.

p. 50,
ll. 22-27. 25. On the argument of the Reference, counsel for the Attorney General of Saskatchewan (whose argument was adopted and relied upon by counsel for the Attorney General of Alberta) submitted that Question 1 (a) should be answered in the negative; that each of the alternatives of Question 1 should be answered in the affirmative, and that Question 2 should also be answered in the affirmative. Newcombe, J., in his reasons for judgment briefly summarizes the argument made in support of these answers as follows : 30

p. 52, l. 8 "First, it is said that, when Rupert's Land and the North-Western Territories were admitted into the Union, they became, by express provision of sec. 146 of the *British North America Act, 1867*, 'subject to the provisions of this Act'; and it is urged that, since, by sec. 109, the four original provinces retained their Crown Lands at the Union, and had, by the fifth enumeration of sec. 92, exclusive legislative power for 'The management and sale of the public lands belonging to the province and of the timber and wood thereon,' these provisions, upon the introduction of the Territories into the Dominion, had unavoidably the effect to appropriate to the Territories, or to exclusively territorial purposes, the Crown Lands 40

comprised therein; and, consequently, that the Parliament of Canada never had the authority to administer these lands, and certainly not to administer them for Dominion purposes, as subsequently provided by the *Dominion Lands Act*, cap. 23 of 1872, and the succeeding Acts regulating the administration of Dominion lands which, as amended and revised, remain in operation to the present time. RECORD.

10 “Secondly, it is said that the provisions of the *British North America Act*, 1871, cap. 28 of the United Kingdom, were necessary in order to validate the *Manitoba Act*, cap. 3 of the Dominion, 1870, and equally so for enabling the Parliament of Canada to enact the Saskatchewan and Alberta Acts of 1905; that the authority of the Dominion to constitute the province of Saskatchewan thus depends upon the Act of 1871, and, to quote the submission, that ‘There is nothing in the Act authorizing the Dominion to hold the public domain for the purposes of Canada.’ It is recalled that there is a broad distinction between legislative jurisdiction and proprietary rights and that the conferring of the one affords no presumption of the transfer of the other; and it is suggested that the Crown, as represented by the Dominion, has no capacity to enjoy the beneficial interest in any of the public lands of the country, except, under sec. 117, for fortification or defence, and the property appropriated to Canada under the third schedule of the Act of 1867. p. 52, l. 23.

20

30 “Thirdly, even if the Dominion, after the admission of the Territories into the Union, and after the enactment of the *British North America Act*, 1871, had power to legislate for the disposition of the Crown Lands in the Territories, it is argued that upon the passing of *Northwest Territories Acts*, whereby the Parliament of Canada set up an elective assembly and provided for the Government of the Territories, the Parliament, by so doing, became divested of any powers which it previously may have had for the administration of the territorial lands; and that by the operation of these Acts the public lands ‘were vested in the Crown in the right of the inhabitants of the area, until the province was created in 1905.’ ” p. 52, l. 38.

26. The reasons given by Newcombe, J. for holding that the province had failed to justify these submissions, or the answers which it suggested, may be briefly summarized as follows:—

40 (a) These submissions are plainly in conflict with the terms of the Saskatchewan Act (cap. 42 of 1905, as enacted), which by s. 20, provided for the payment by Canada to the Province of an annual subsidy in lieu of public lands as a source of revenue, and by s. 21, provided that all Crown Lands, mines, and minerals and royalties incident thereto should be continued to be vested in the Crown and administered by the Government of Canada for the purposes of Canada. The legislative intent as to the destination of the lands seems thus to be plainly enough expressed; and compensation has pp. 53–54.

- RECORD. been provided and presumably paid, in lieu of the lands which it is declared by the constituting authority, that the Province is not to have.
- p. 54, l. 32. (b) It is admitted, and at the foundation of the whole case, that Rupert's Land and the North-Western Territory were, by the Queen's Order of 23rd June, 1870, admitted into and became part of the Dominion on the 15th July of that year.
- pp. 55-56. (c) Giving due effect to the Dominion powers of legislation, in relation to the lands so admitted, under the terms of the said Order in Council, of the Rupert's Land Act, 1868, and of s. 91 of the British North America Act, 1867, as expounded by or resulting from the pronouncements of the Judicial Committee in *The Queen vs. Burah*, 3 A.C. 889, 904-905; *Hodge vs. The Queen*, 9 A.C. at p. 132; *Liquidators of the Maritime Bank of Canada vs. Receiver-General of New Brunswick* (1892), A.C. 441, 443; and *Riel vs. Regina*, 10 A.C. 675, 678-9, it is very difficult to discover any maintainable ground in the pretention that the Province of Saskatchewan, whether on behalf of itself or for the inhabitants of those parts of the North-West Territories which are embraced in the province, has constitutional rights which the Queen did not, either in Council or in Parliament, bestow upon the territories or upon the province, and which the Parliament of Canada, by the Saskatchewan Act, which operates irrevocably under the British North America Act, 1871, declared that the province should not possess.
- pp. 56-57. (d) While, by sec. 146 of the British North America Act, 1867, Rupert's Land and the North-Western Territories, or either of them may be admitted into the Union on such terms and conditions in each case as are in the Addresses "expressed" and as the Queen thinks fit to approve, "subject to the provisions of this Act," it is declared by sec. 4 of the British North America Act, 1871, without any qualification, that the Parliament of Canada may, from time to time, make provision for the administration, peace, order and good government of any territory not for the time being included in any province; and, whether you consider one or the other, or both of these provisions as applicable, there are no terms or conditions expressed in the Addresses, or sanctioned by the terms of Union, with which the legislation of the Dominion conflicts, or is alleged to conflict.
- p. 57. (e) With regard to the effect of ss. 3 and 21 of the Saskatchewan Act, the learned Judge quotes passages from the judgment delivered by Lord Buckmaster in *Attorney-General for Alberta vs. Attorney-General for Canada* (1928), A.C. 475, 484-486, where he dealt with the effect of the corresponding provisions of the Alberta Act; and the learned Judge considers that these passages were destructive of the argument which seeks to maintain the contention that there is an occult principle of law, not depending upon, and indeed proof against, legislation, whereby a province or territory of Canada, or its

inhabitants must have and enjoy, for its or their exclusive benefit, the waste lands of the Crown which lie within its borders. From these passages of Lord Buckmaster's judgment, it also appeared to the learned Judge to follow that the legislation of the Dominion in relation to the Northwest Territories, after the passing of the British North America Act, 1871, was paramount and unaffected by any powers granted to the legislature or the local government of the Territories, or any territorial exercise of those powers which might prove to be repugnant. RECORD.

10 (f) No doubt there is a distinction recognized between legislative powers and proprietary rights, and the Crown may, for one purpose, be represented by the Dominion, and, for the other purpose by a province, as in the case of the Inland Fisheries or Indian Lands; but it is in perfect conformity with the Canadian system that Dominion rights of property should be subject to the legislative control of the Parliament; and it is expressly so, with regard to what is described generally in the first enumeration of sec. 91 of the Act of 1867, as "the public debt and property." pp. 57-58.

20 (g) It is objected that, although the Territories were made part of the Dominion and became subject to its legislative control, there was no grant or conveyance of the lands by the Imperial Crown to the Dominion; but that was not requisite, nor was it the proper method of effecting the transaction. It is not by grant *inter partes* that Crown Lands are passed from one branch to another of the King's government; the transfer takes effect, in the absence of special provision, sometimes by Order in Council, sometimes by despatch. There is only one Crown, and the lands belonging to the Crown are and remain vested in it, notwithstanding that the administration of them and the exercise of their beneficial use may, from time to time, as competently authorised, be regulated upon the advice of different Ministers charged with the appropriate service. p. 58, l. 6.

30

27. It is submitted on behalf of the Attorney General of Canada that the Judgment of the Supreme Court of Canada is right, and should be affirmed for the reasons stated in the reasons for judgment, delivered by Newcombe, J. on behalf of the Court, and for the following among other

REASONS.

40 1. The intent and effect of the relevant constitutional statutes, and other instruments, on their true construction, was to vest in the Parliament of Canada, with relation to Rupert's Land and the North-Western Territory, on their being admitted into and made part of the Dominion of Canada, plenary legislative jurisdiction to provide for the government

and administration of those territories, and consequently, the unfettered right to direct the administration and disposal of the interests of the Crown in lands within those territories and to appropriate the revenues arising therefrom, as it might deem proper.

2. The Crown Lands within the territory so made part of the Dominion of Canada, were not by Her Majesty's Order in Council of 23rd June, 1870, or any other of the relevant instruments, impressed with, or affected by, any trust or other obligation on the part of the Dominion to administer the said lands, and appropriate the revenues arising therefrom for the exclusive benefit of any existing or prospective group of citizens residing within the territory, or of any government, territorial or provincial, which the Dominion, in the exercise of its constitutional powers, might set up or establish for the better administration and government of those territories, or any defined areas thereof. 10
3. Plenary legislative jurisdiction was vested in the Parliament of Canada to frame, determine and make provision for the constitution and administration of the Province of Saskatchewan, when it was established in 1905. 20
4. The Province of Saskatchewan has no other rights than those secured to it by the Saskatchewan Act, as modified by the agreement respecting the natural resources lately confirmed and given the force of law by the British North America Act, 1930, and neither of these acts confers upon the province any rights which entitle it to call upon the Dominion to account to the Province for any lands within its boundaries alienated by the Dominion prior to September 1, 1905.

H. GUTHRIE.
C. P. PLAXTON.

In the Privy Council.

No. 37 of 1931.

ON APPEAL
FROM THE SUPREME COURT OF
CANADA.

IN THE MATTER of a Reference arising out
of the transfer of the Natural Resources to the
Province of Saskatchewan.

BETWEEN

THE ATTORNEY GENERAL OF SASKATCH-
EWAN AND THE ATTORNEY GENERAL
OF ALBERTA

(Appellants)

AND

THE ATTORNEY GENERAL OF CANADA
(Respondent).

CASE OF THE RESPONDENT
THE ATTORNEY GENERAL OF CANADA.

CHARLES RUSSELL & CO.,

37, Norfolk Street,

Strand, W.C.2,

Solicitors for the Attorney General of Canada.

EYRE AND SPOTTISWOODE, LTD., EAST HARDING STREET, E.C.4.