

UNION COLLIERY COMPANY OF } APPELLANTS;  
 BRITISH COLUMBIA ..... }

1897  
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 \*Oct. 19.  
 \*Oct. 22.  
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AND

THE ATTORNEY GENERAL OF }  
 BRITISH COLUMBIA AND } RESPONDENTS.  
 OTHERS..... }

*Re COAL MINES REGULATION ACT, 1890.*

ON APPEAL FROM THE SUPREME COURT OF BRITISH  
 COLUMBIA.

*Appeal--Jurisdiction--Judgment--Reference to court for opinion--54 V. c.  
 5 (B.C.)--R. S. C. c. 135, ss. 24 & 28. \**

The Supreme Court of Canada has no jurisdiction to entertain an appeal from the opinion of a provincial court upon a reference made by the Lieutenant-Governor-in-Council under a provincial statute, authorizing him to refer to the court for hearing and consideration any matter which he may think fit, although the statute provides that such opinion shall be deemed a judgment of the court.

**MOTION** to quash an appeal from an opinion or judgment of the Supreme Court of British Columbia *en banc* pronouncing the Statute of the Province of British Columbia cited as the "Coal Mines Regulation Amendment Act," 1890, to be within the scope of the legislative authority of the legislature of the Province of British Columbia.

The Lieutenant-Governor of British Columbia in Council made a reference to the Supreme Court of British Columbia pursuant to the provisions of 54 Vict. ch. 5, (B.C.) intituled "An Act for expediting the decision of constitutional and other provincial questions," for hearing and consideration of a case submitted to ascertain whether in the opinion of that

\*PRESENT:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

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court the legislature of the province had jurisdiction to pass the Act 53 Vict. ch. 33, (B.C.) intituled "An Act to amend the Coal Mines Regulation Act." The full court heard and considered arguments by parties interested in the decision of the question and certified to the Provincial Secretary that the conclusion arrived at was that the statute in question was within the scope of the legislative authority of the Province of British Columbia.

The present appeal is from the opinion so expressed by the court upon such reference which by the provincial statute (1) is declared to be a judgment of the court.

The respondents moved to quash the appeal for want of jurisdiction.

*Robinson* Q.C. for the motion, *McCarthy* Q.C. and *McInnes* with him. The certificate given by the court is not in any way a final judgment binding upon any person, but is merely intended to advise the Provincial Secretary that in the opinion of the judges a certain statute was within the legislative competence of the Provincial Assembly. It is not in any sense *res judicata*; it decides no controversy. *The Queen v. Robertson* per Strong J. (2). See also remarks by Taschereau J. in *The Attorney General of Canada v. The Attorney General of Ontario* (3); and *In re Provincial Fisheries* (4). It is not a final judgment within the meaning of "The Supreme and Exchequer Courts Act," sections 24, 26 & 28.

*Hogg* Q.C. contra.

The judgment of the court was delivered by:

TASCHEREAU J.—54 Vict., ch. 5, of the statutes of British Columbia, authorizes the Lieutenant-Governor-

(1) 54 Vict. ch. 5.

(2) 6 Can. S. C. R. 127.

(3) 23 Can. S. C. R. 472.

(4) 26 Can. S. C. R. 539.

in-Council to refer to the Supreme Court of the province, or to a Divisional Court thereof, or to the full court, for hearing and consideration, any matter which he thinks fit so to refer, and the opinion of the court, upon such a reference, is to be deemed a judgment of the court, and an appeal shall lie thereon, says the Act, as in the case of a judgment in an action.

This appeal is taken from the opinion of the court of British Columbia upon a reference under the aforesaid Act. We clearly have no jurisdiction to entertain the appeal. There is no judgment to be appealed from. The British Columbia statute itself says "shall be deemed a judgment." That is saying that it is not a judgment. There is no action, no parties, no controversy perhaps, and the British Columbia legislature, did it intend to do so, cannot extend our jurisdiction, and create a right to appeal to this court.

The motion to quash is allowed, and the appeal quashed without costs.

*Appeal quashed without costs.*

Solicitors for the appellants: *Davie, Pooley & Luxton.*

Solicitor for the respondent, The Attorney General:  
*The Attorney General in person.*

Solicitors for the respondents, The New Vancouver Coal Mining & Land Co.: *Drake, Jackson & Helmcken.*

Solicitors for the respondents, The Miners & Mine Labourers Protective Association of British Columbia:  
*W. W. B. McInnes.*

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