

[E.C.] 1886

QUEEN (THE) v. FARWELL.

Dec. 27. *Provincial grant of lands to Dominion of Canada—Rights of subsequent grantee under Provincial Letters-Patent against the Crown as represented by the Dominion of Canada—Insufficiency of description of lands in statutory grant.*

[s.c.] 1887
Dec. 14.

By section 11 of the order-in-council admitting the province of British Columbia into confederation, British Columbia agreed to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government might deem advisable in furtherance of the construction of the Canadian Pacific Railway, an extent of public lands along the line of railway. After certain negotiations between the governments of Canada and British Columbia, and in order to settle all disputes, an agreement was entered into, and on the 19th December, 1883, the legislature of British Columbia passed the statute 47 Vic. c. 14. by which it was enacted, *inter alia*, as follows : " From and after the passing of this act there shall be and there is hereby granted to the Dominion Government for the purpose of constructing and to aid in the construction of the portion of the Canadian Pacific Railway on the main land of British Columbia, in trust, to be appropriated as the Dominion Government may deem advisable, the public lands along the line of railway before mentioned, wherever it may be finally located, to a width of twenty miles on each side of said line, as provided in the order-in-council, section 11, admitting the Province of British Columbia into Confederation." On the 20th November, 1883, by public notice the government of British Columbia reserved a belt of land of 20 miles in width along a line by way of Bow River Pass. In November, 1884, the defendant in order to comply with the provisions of the provincial statutes, filed a survey of a certain parcel of land situate within the said belt of 20 miles, and the survey hav-

ing been finally accepted on the 13th January, 1885, letters-patent 1887
under the great seal of the province were issued to F. for the land ^{THE QUEEN}
in question. ^{v.}

The Attorney-General of Canada by information of intrusion sought FARWELL.
to recover possession of said land.

Held, (1.) (per Henry, J. in the Exchequer Court)—That the legislature of British Columbia has the power of passing a title to public lands by an Act, and by doing so might repeal, to that extent, any previous statutory provisions to the contrary.

(2.) That the grant by the legislature of British Columbia to the "Dominion Government," *ex nomine*, made no title in the Crown in respect of the Dominion of Canada.

(3.) That the title to the lands referred to in the statutory grant remained in Her Majesty on behalf of the province of British Columbia.

(4.) That the grant was, moreover, void for insufficiency of description of the lands intended to be conveyed therein.

On appeal to the Supreme Court of Canada,—

Held, (reversing the judgment of the Exchequer Court) that at the date of the grant the province of British Columbia had ceased to have any interest in the land covered by said grant, and that the title to the same was in the Crown for the use and benefit of Canada. See Can. S.C.R., vol. XIV., p. 392.