

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council on  
the Appeal of The Crown Grain Company,  
Limited (Appellant), and the Attorney-General  
for the Province of Manitoba (Intervenant)  
v. H. L. Day (Respondent) and the Attorney-  
General for the Dominion of Canada  
(Intervenant), from the Supreme Court of  
Canada; delivered the 31st July 1908.*

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Present at the Hearing :

THE LORD CHANCELLOR.

LORD ROBERTSON.

LORD ATKINSON.

SIR ARTHUR WILSON.

SIR HENRI ELZÉAR TASCHEREAU.

[*Delivered by Lord Robertson.*]

By the 101st section of the British North America Act, 1867, the Parliament of Canada was authorized to provide for "the constitution, maintenance, and organisation of a general Court of Appeal for Canada"; and by Act of the Dominion Parliament the Supreme Court of Canada was accordingly established, the existing statute being Rev. Stat. Canada, 1906, c. 139. It is inconceivable that a Court of Appeal could be established without its jurisdiction being at the same time defined; and this statute contains these provisions:—

"The Supreme Court shall have, hold, and exercise an appellate civil and criminal jurisdiction within and throughout Canada." (Section 35).

"Except as hereinafter otherwise provided an appeal shall lie to the Supreme Court from any final judgment of the highest court of final resort now or hereafter established in any Province of Canada." (Section 36.)

If this Dominion statute be the governing enactment *in hac re*, it unquestionably allows the Appeal to the Supreme Court of Canada, the competency of which was challenged in this case.

The question now in dispute is whether that enactment has been affected, and so far defeated, by an Act of the Legislature of Manitoba which admittedly purports to apply to the suit in which the Appeal was brought, and which makes the judgment of the Provincial Court final and conclusive. The Manitoba statute relates to liens; and it is in regard to suits about liens that appeal is excluded. Liens are admittedly in the region of legislation appropriated to Provincial legislatures by the British North America Act. It is incidentally to the subject of liens that the Manitoban legislation provides that the judgment of the Court of King's Bench on suits relating to liens shall be final and binding, and that no appeal shall lie therefrom. This enactment is in direct conflict with the general provisions of appeal in the Dominion Act; and the question is, which enactment prevails?

The Appellants maintain that the implied condition of the power of the Dominion Parliament to set up a Court of Appeal was that the Court so set up should be liable to have its jurisdiction circumscribed by Provincial legislation dealing with those subject-matters of litigation which, like that of contracts, are committed to the Provincial legislatures. The argument necessarily goes so far as to justify the wholesale exclusion of appeals in suits relating to matters within the region of Provincial legislation. As this region covers the larger part of the common subjects of litigation, the result would be the virtual defeat of the main purposes of the Court of Appeal.

It is to be observed that the subject in conflict belongs primarily to the subject-matter

committed to the Dominion Parliament, viz., the establishment of the Court of Appeal for Canada. But, further, let it be assumed that the subject-matter is open to both legislative bodies; if the powers thus overlap, the enactment of the Dominion Parliament must prevail. This has already been laid down in *Dobie v. Temporalities Board*, 7 A.C. 136, and *Grand Trunk Railway Company of Canada v. Attorney-General of Canada*, 1907, A.C. 65.

For these reasons their Lordships on the 9th July last agreed humbly to advise His Majesty that the Appeal ought to be dismissed, and directed the Appellants to pay the Respondent's costs of the Appeal, and the Attorney-General for the Dominion of Canada and the Attorney-General of Manitoba to bear their own costs respectively.

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