INTERPROVINCIAL RIVERS*

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I. *Introduction.*

The law of interprovincial rivers has largely been unexplored judicially, though there is now considerable literature on the subject.[1] In view of the few decided cases touching the matter, definitive answers to the many complex legal problems that may arise in connection with their development cannot be expected. The major purpose of this article is to attempt to identify the problems.

To some extent, of course, the problems resemble those arising in connection with international rivers, but there are important differences. In the first place, unlike states in international law, the provinces constitute separate legislative areas for limited purposes only; for other purposes interprovincial boundaries are irrelevant because all the provinces are comprised in the larger legisla-

* This article in slightly modified form is part of a comprehensive study on water law in the Atlantic provinces commissioned by the Atlantic Development Board in 1967, which is currently in preparation for publication.

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[1] See John J. Connolly, Q.C., The Problem of the South Saskatchewan River Development Project, and H. Carl Goldenberg, Q.C., Legal Aspects of the South Saskatchewan River Development Project, Memoranda in the Report of the Royal Commission on the South Saskatchewan River Project (1952), pp. 159 and 168, respectively; Per Gisvold, A Survey of the Law of Water in Alberta, Saskatchewan and Manitoba (1959), ch. 18; K. C. Mackenzie, Interprovincial Rivers in Canada: A Constitutional Challenge (1961), 1 U.B.C. L. Rev. 499; Bora Laskin, Jurisdictional Framework for Water Management, in Resources for Tomorrow, Conference Background Papers (1962), vol. I, p. 211, at pp. 221-223; Leo McGrady, Jurisdiction for Water Resources Development (1967), 2 Man. L.J. 219, at pp. 241-243; Kenneth Hanssen, Constitutional Problems of Interprovincial Rivers (1968), Research Report No. 2, Agassiz Center for Water Studies, Univ. of Man.; Dale Gibson, The Constitutional Context of Canadian Water Planning (1969), 7 Alta. L. Rev. 71, at pp. 76-81; Martin Zimmerman, Interprovincial Water Use Law in Canada: Suggestions and Comparisons (1969), Research Report No. 3, vol. 2, Agassiz Center for Water Studies; for interprovincial boundary waters, see A. F. N. Poole, The Boundaries of Canada (1964), 42 Can. Bar Rev. 100, esp. at pp.102-103; Henry Landis, Legal Controls of Pollution in the Great Lakes Basin (1970), 48 Can. Bar Rev. 66, at pp. 130, 136-137, 144, 147.

tive area within federal jurisdiction. Thus laws relating to navigation and fishing need not, and usually do not, take into consideration whether the affected waters are situate wholly within the confines of a province or form part of an interprovincial or international river.

In the second place, there is a difference in the applicable law. The patterns of reciprocal accommodations of power that constitute international law may or may not be suitable to, or be adopted by courts in dealing with interprovincial rivers.

As in the case of international rivers, however, it may be useful to classify interprovincial rivers into (1) boundary rivers, that is, rivers forming a part of an interprovincial boundary, and (2) transboundary rivers, which, for our purposes, will include not only rivers flowing across an interprovincial boundary, but rivers flowing into interprovincial boundary waters as well.

II. *Boundary Rivers.*

Boundary rivers can give rise to similar types of problems as transboundary rivers, for example, the diversion of waters on one side of the boundary to the detriment of land on the other side. These problems will be examined in dealing with transboundary waters. Here discussion will be confined to the major problem peculiar to boundary waters — the location of the boundary.

One writer, A. F. N. Poole, has suggested that the thalweg, that is, the middle channel of the river has been adopted for all Canada's interprovincial boundary rivers.[2] This approach could, of course, be followed by analogy to the rule regarding international rivers. But the rule regarding international rivers was devised to assure the countries on both sides access to the navigable channel of the river.[3] This consideration is irrelevant to interprovincial rivers because the regulation of navigation is vested in the federal Parliament. Consequently the more equitable division of resources effected by the common law rule that the owner of land adjoining a stream owns *ad medium filum aquae* (that is, to the centre line between the two banks) may be more appropriate. From the point of view of certainty of boundaries the thalweg does not appear to have any advantages over the common law rule. It gives rise to similar problems where there is more than one channel or where the river shifts its course. In fact it has the additional disavantage that there may be no clearly definable channel.[4] For these reasons, and because the boundaries were drawn by persons operating within the general context of the common law rule, it is suggested

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[2] Poole, *op. cit., ibid.*, at p. 102.
[3] See *New Jersey* v. *Delaware* (1934), 291 U.S. 361.
[4] See Poole, *op. cit.*, footnote 1, at p. 103.

that the actual words used should be looked upon in the light of the common law presumption that lands adjoining a stream extend *ad medium filum aquae.*

A variety of expressions have been used in defining interprovincial river boundaries. Thus by virtue of nineteenth century British statutes, part of the Quebec-New Brunswick boundary runs down the centre of the Patapedia River from the point where that river meets the forty-eighth degree of latitude to the Restigouche River, thence down the centre of the latter river to its mouth in the Baie des Chaleurs.[5] The words, "centre of the river", probably refer to the *ad medium filum aquae* rule, as they would in purely domestic law,[6] for so far as the British Parliament was concerned, this was a domestic matter. The same is true of the part of the Nova Scotia-New Brunswick boundary, which is described as following "the several courses" of the Missiquash River.[7] That expression, too, has frequently been construed by the courts as giving rise to the presumption that the land conveyed extended *ad medium filum aquae.*[8] The words "the middle line of the course of the river" used in describing a portion of the Ontario-Northwest Territories boundary pose more difficulty,[9] but in view of the strong common law presumption[10] this may well be interpreted as referring to the centre of the stream. However, "the middle of the main channel" of the Ottawa River, which marks the boundary between Ontario and Quebec, clearly refers to the thalweg.[11] Similarly, in the light of a pre-Confederation statute defining the County of Glengarry, it is probable that the thalweg forms the line of demarcation in the St. Lawrence River between Ontario and Quebec, at least adjacent to that county.[12] Finally even though the description "along the bank" has generally been interpreted as extending to the centre of the stream,[13] when used in relation to the Tidnish River, which

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[5] (1851), 14 Vict., c. 63, as am. by (1857), 20 & 21 Vict., c. 34 (Imp.). Both these statutes were repealed by British Statute Law Revision Acts (1955), 7 & 8 Eliz. II, c. 68; (1956), 8 & 9 Eliz. II, c. 56 (Imp.), but this does not affect the boundary.

[6] See, *inter alia, Maclaren* v. *Attorney General for Quebec,* [1914] A.C. 258.

[7] This boundary was established by a British Order in Council of 1784, and was later accepted by New Brunswick (1858), 21 Vict., c. 14 (N.B.) and Nova Scotia (1859), 22 Vict., c. 9 (N.S.); the boundary is recited in C.S.N.B., 1903, p. lxii; see A. F. N. Poole, *op. cit.,* footnote 1, at pp. 124-125.

[8] See *Maclaren* v. *Attorney General for Quebec, supra,* footnote 6.

[9] Imperial Order in Council, Aug. 11th, 1884, Argument, p. 416; see Poole, *op. cit.,* footnote 1, at p. 132.

[10] See *Maclaren* v. *Attorney General for Quebec, supra,* footnote 6.

[11] (1889), 52 & 53 Vict., c. 28 (Imp.).

[12] (1851), 16 Vict., c. 152 (Can.); see G. V. La Forest, Les droits de propriété du Québec sur ses eaux, in Brossard, Immarigeon, La Forest et Patenaude, Le Territoire Québécois (1970), p. 105, at p. 118.

[13] See *Maclaren* v. *Attorney General for Quebec, supra,* footnote 6.

forms part of the New Brunswick-Nova Scotia boundary,[14] and the Romaine River, which forms part of the Quebec-Labrador boundary,[15] reference is made to a specific bank, and this may well be sufficient to rebut the presumption.

Finally islands may cause difficulty whether the thalweg or the common law rule is adopted. In some cases express provision is made. For example, the islands in the Patapedia and Restigouche Rivers belong to New Brunswick;[16] presumably the boundary in such places would run in the channel between the islands and the Quebec shore; otherwise New Brunswick islands would be bounded by Quebec waters. In the Ontario Boundaries Act of 1889[17] nothing is said of the islands in the Ottawa River so it would appear that islands situated on the Quebec side of the main channel belong to Quebec and those situated on the Ontario side belong to Ontario, but there is an 1851 statute[18] making specific disposition of certain islands in the river, and if the 1889 statute is not clear they may possibly be considered in defining the boundary. Similarly, it may assist in determining the exact location of the boundary line in the St. Lawrence River where it forms the Quebec-Ontario boundary to examine an Act of 1853[19] describing the County of Huntingdon in Lower Canada as comprising all the islands close to the shore and adjacent to the county.

III. *Transboundary Rivers.*

A. *Development in Absence of Legislative Intervention.*

Introduction

Perhaps the easiest way of discussing the legal problems relating to transboundary rivers is to pose a series of hypothetical situations in increasing order of complexity. The simplest case appears to be that of a person without statutory authority building a dam or other works on his land or polluting water in one province to the detriment of a landowner in another province down the stream, or the converse case of a landowner in a downstream province without statutory authority building a dam causing water to be penned back to the damage of a landowner in a province up-stream. These problems raise two principal issues: (a) What is the applicable law? and (b) in what court may the injured party sue?

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[14] See *supra,* footnote 7.

[15] [1927] 2 D.L.R. 401; adopted by Term 2 of the Terms of Union of Newfoundland with Canada, confirmed by the British North America Act, 1949, 12 & 13 Geo. VI, c. 22 (Imp.).

[16] See *supra,* footnote 5.

[17] See *supra,* footnote 11.

[18] See *supra,* footnote 12.

[19] (1853), 16 Vict., c. 152 (Can.).

Applicable Law

Turning to the first question, there are no judicial decisions but it seems to be generally agreed that apart from statute the rights respecting the use of waters in interprovincial rivers are covered by the common law,[20] and in my view, this is the most likely possibility. Canadian courts have shown a marked tendency to apply to interprovincial situations traditional common law doctrines developed in other contexts.[21] The fact that the civil law governs in Quebec should make no difference in this connection because on these questions there is no, or at least no substantial, difference between the two systems of law.[22] Senator Goldenberg reaches a similar conclusion by another route.[23] He appears to believe Canadian courts might well adopt a doctrine of equitable apportionment like that developed by the Supreme Court of the United States in dealing with non-navigable rivers flowing across more than one state, and if they did so that they would be led to adopt the common law principles of riparian rights in dealing with interprovincial situations. The doctrine of equitable apportionment of the waters of such rivers developed in the American cases[24] may be summarized. The up-stream state may not dispose of water in such rivers as it may choose regardless of injury or prejudice to the downstream state. Each state has an interest in the water that must be respected and reconciled; each is entitled to an equitable apportionment of the waters. This does not necessarily imply an equal division or any other formula, but must be determined by the circumstances of the case. In applying the doctrine it is not unreasonable to enforce against a state its own local law, although such law must be looked upon as a guide and not as controlling in suits between states. Senator Goldenberg concludes that if a doctrine such as that laid down in the United States is adopted in Canada, the legal rights of the provinces in the waters of interprovincial rivers are the common law riparian rights. Mr. K. C.

[20] Connolly, *op. cit.*, footnote 1, p. 166; Laskin, *op. cit.*, footnote 1, p. 221; Hanssen, *op. cit.*, footnote 1; Gibson, *op. cit.*, footnote 1, at pp. 78-81.

[21] For example, their treatment of the situs of property for constitutional purposes was developed from their treatment of the subject for purposes of determining the jurisdiction of ecclesiastical courts over property; see Gerard V. La Forest, The Allocation of Taxing Power Under the Canadian Constitution (1967), ch. V.

[22] See *inter alia, Miner* v. *Gilmour* (1858), 12 Moo. P.C. 131, 14 E.R. 861.

[23] Goldenberg, *op. cit.*, footnote 1, p. 169 *et seq.*

[24] See, especially, *Kansas* v. *Colorado* (1907), 206 U.S. 46; *New York* v. *New Jersey* (1921), 256 U.S. 296; *Wyoming* v. *Colorado* (1922), 259 U.S. 419; *Connecticut* v. *Massachusetts* (1931), 282 U.S. 660; *New Jersey* v. *New York* (1930), 283 U.S. 336; *Hinderlider* v. *La Plata and Cherry Creek Ditch Co.* (1938), 304 U.S. 92. The summary here given follows closely that of Senator Goldenberg, *op. cit., ibid.*

Mackenzie also thinks it reasonable to assume that Canadian courts would apply the principles of equitable apportionment.[25] Finally Per Gisvold has suggested that in interprovincial disputes the provinces might be subjected by the courts to statutory rules enacted by them to govern individuals.[26]

Appropriate Court

The question of the appropriate court in which an injured party may bring action arose in *Albert* v. *Fraser Companies, Ltd.*,[27] in the Appellate Division of the Supreme Court of New Brunswick. There the defendant, a New Brunswick company resident in Edmundston, New Brunswick, in conducting log driving operations accumulated an excessive quantity of logs in the New Brunswick reaches of the Madawaska River causing the water to be penned back and to overflow the land of the plaintiff along the river in Quebec causing damage to his land and premises. The plaintiff brought action in New Brunswick, but the trial judge dismissed the case for want of jurisdiction. An appeal to the Appellate Division was dismissed by a majority, Baxter C. J. and Grimmer J., Harrison J. dissenting.

The view of the majority was that a court has no jurisdiction to entertain an action for damages for injury to land in a foreign country, and that for this purpose another province is a foreign country. The few cases on the point in Canada generally support this view.[28] There is, it is true, an early New Brunswick case to the contrary, but it is of little weight since the point was not raised.[29] Nonetheless there is much in reason to support the view of the dissenting judge, Harrison J. Previous judicial authority was not compelling, and the rule followed by the majority has in my view rightly been criticized as unnecessary and unjust.[30] Ordinarily, a person can sue another in one province for a tort committed in a foreign country or another province if the act complained of is a tort where the action is brought and is not justifiable

[25] Mackenzie, *op. cit.*, footnote 1, at p. 505.

[26] Gisvold, *op. cit.*, *ibid.*, p. 102.

[27] (1936), 11 M.P.R. 209.

[28] *See Brereton* v. *Canadian Pacific Ry.* (1898), 29 O.R. 57; *Re Doolittle* v. *Electric Maintenance and Construction Co.* (1901), 3 O.L.R. 460; *Boslund* v. *Abbotsford Lumber, Mining and Development Co.* (1925), 34 B.C.R. 485.

[29] *Campbell* v. *McGregor* (1889), 29 N.B.R. 644; see also *Ahern* v. *Booth* (1903), 2 O.W.R. 696.

[30] John Willis, Jurisdiction of Courts — Action to Recover Damages for Injury to Foreign Land (1937), 15 Can. Bar Rev. 112; H. S. Read, Recognition and Enforcement of Foreign Judgments in the Common Law Units of the British Commonwealth (1938), pp. 189-192; Walter S. Johnson, Conflict of Laws (1962), pp. 927-938; Laskin, *op. cit.*, footnote 1, p. 220; Gibson, *op. cit.*, footnote 1, at p. 78, note 40; Landis, *op. cit.*, footnote 1, at p. 130.

under the law where the act was committed. To this principle the courts have for long made exceptions where land in a foreign country is involved. It is understandable that a court will not want to adjudicate on the title or the right to possession of foreign land, and possibly to other actions that substantially raises the issue of title. But there seems no necessity for going as far as the majority in *Albert* v. *Fraser Companies, Ltd.* The inconvenience of the ruling is obvious from the facts of the case. Assuming an action for damages could be brought in Quebec, an injunction could not be obtained to restrain the defendant's activities in New Brunswick.

Further problems would arise if a development on an interprovincial river were undertaken, either directly or through a Crown agency, by a provincial government on its land which enured to the detriment of a landowner in another province. In the absence of statute, a provincial government, being technically the Crown, cannot be sued. If the appropriate court were in the province where the development took place, that province might be liable for suit if its Crown Proceedings Act or other statutes permitting suit against the province were sufficiently wide to permit such suit. But if the appropriate court is in the province where the damage took place, it seems doubtful that that province would permit suit against another province. In any event it could not do anything to enforce a judgment in the other province.

Senator Connolly has suggested a further difficulty where both parties to an interprovincial dispute are the provinces themselves.[31] He doubts that one province could sue another because the Crown cannot sue itself. But, as Mr. Justice Laskin has noted, the reality of the situation is that there are two claimants: the provinces constitute separate administrative entities.[32] The courts, in other contexts have certainly not been deterred from grappling with the real issues notwithstanding the technicality of the indivisibility of the Crown.[33]

B. *Development Under Statutory Authorization.*

Applicable Law

Thus far the law has been discussed in terms of the situation between individuals at common law without statutory intervention.

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[31] Connolly, *op. cit.*, footnote 1, p. 166.

[32] Laskin, *op. cit.*, footnote 1, p. 223; the following agree: Gisvold, *op. cit.*, footnote 1, pp. 99-101; Hanssen, *op. cit.*, footnote 1, p. 77; see also Mundell, Legal Nature of Federal and Provincial Executive Governments (1960), 2 Osgoode Hall L.J. 56, at p. 70 *et seq.*

[33] *Re Silver Brothers,* [1932] A.C. 514, at p. 524; see also *Dominion of Canada* v. *Province of Ontario,* [1910] A.C. 637, at p. 645.

We must now turn to the question whether one province by statute may authorize the doing of anything within its territory that affects the flow or quality of water in another province. There have been some cases where provincial legislation has been held void as attempting to curtail rights outside the province,[34] and from these some writers argue that this applies to legislation of one province that would have the effect of depriving a person in another province of his riparian rights.[35] This, in their view, goes beyond the limits of provincial jurisdiction over property and civil rights and matters of a local or private nature in the province. If the view were accepted, it would mean that the provinces are subject to, and cannot legislate in violation of, the riparian rights doctrine on interprovincial rivers. Others, however, have expressed doubts that this view would be adopted by the courts.[36] There is much to be said for the view that the courts would make a distinction between situations affecting riparian rights in other provinces to a minor degree and those having substantial effects on such rights.[37] A number of writers argue that equitable apportionment principles like those developed in the United States might be accepted.[38] In either case, the result would be to pressure the provinces to make interprovincial agreements for the development of interprovincial rivers.[39]

Appropriate Court

If a private individual or organization were authorized by a provincial statute to undertake in the province a development on an interprovincial river, a person whose riparian rights in another province were detrimentally affected would be in a similar position as he would be if there had been no statute authorizing the development. The major difference would seem to be that the constitutional validity of the statute would be raised in determining whether the development was justifiable in the province where it took place. The same problems of applicable law and appropriate court would be raised. Similar considerations as already discussed would also appear to apply where a provincial government itself undertakes a development on an interprovincial river. And here it is well to note

[34] *Royal Bank of Canada* v. *The King*, [1913] A.C. 283; *Ottawa Valley Power Co.* v. *The Hydro Electric Power Commission*, [1937] O.R. 265.

[35] See Connolly, *op. cit.*, footnote 1, p. 167; Leo McGrady, *op. cit.*, footnote 1, at pp. 241-242; Gibson, *op. cit.*, footnote 1, at p. 80.

[36] Laskin, *op. cit.*, footnote 1, p. 221; Landis, *op. cit.*, footnote 1, at pp. 136-137.

[37] See *In Re Oleska Ogal Estate*, [1940] 1 W.W.R. 665; Hanssen, *op. cit.*, footnote 1; Gibson, *op. cit.*, footnote 1, at p. 80.

[38] Goldenberg, *op. cit.*, footnote 1, p. 174; Laskin, *op. cit.*, footnote 1, pp. 221-222; Mackenzie, *op. cit.*, footnote 1, at p. 505.

[39] For a discussion of agreements involving Canada and the Prairie provinces under the Prairie Farm Rehabilitation Act, R.S.C., 1970, c. P-17, see Gisvold, *op. cit.*, footnote 20, at p. 103.

that the Supreme Court of Canada has held against a statute to prevent the raising of the constitutional validity of a statute in the courts.[40]

But quite apart from its proprietary interests, a province has an interest in seeing that development of an interprovincial river in another province does not detrimentally affect water or its use within its territory. The writers who have dealt with the matter are all agreed that such questions cannot be judically determined, in the absence of agreement between the provinces, because there is no constitutional provision for the judicial settlement of interprovincial disputes as there is in the United States.[41] Of course, if it were considered desirable, the ordinary courts in the provinces could conceivably take jurisdiction on the ground that this affected the constitutionality of a statute.[42] But assuming this was possible, it seems extremely doubtful that the courts would take jurisdiction over a matter that seems more susceptible of convenient settlement by interprovincial agreement.

While, as mentioned, there is no constitutional provision for the judicial settlement of interprovincial disputes, section 19 of the Federal Court Act makes provision for the settlement of such disputes and federal-provincial disputes on agreement by the affected parties.[43] The section reads:

> 19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to in that Act by its new name or by its former name, has jurisdiction in cases of controversies,
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> (a) between Canada and such province, or
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> (b) between such province and any other province or provinces that have passed a like Act,
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> the Court has jurisdiction to determine such controversies and the Trial Division shall deal with any such matter in the first instance.

This decision is appealable to the Federal Court of Appeal, which in turn is appealable to the Supreme Court of Canada.[44]

All the provinces, except Quebec, have agreed to this jurisdiction,[45] and it seems probable that the federal Parliament could enact similar legislation that was compulsory.[46] But while the sec-

[40] *British Columbia Power Corporation* v. *British Columbia Electric Co. Ltd.*, [1958] S.C.R. 285.

[41] Connolly, *op. cit.*, footnote 1, p. 166; Goldenberg, *op. cit.*, footnote 1, p. 176; Laskin, *op. cit.*, footnote 1, pp. 222-223; McGrady, *op. cit.*, footnote 1, at p. 243.

[42] The attitude of the court in *British Columbia Power Corporation* v. *British Columbia Electric Co. Ltd., supra,* footnote 40, could be looked on as giving some support to this view.

[43] (1970-71), 19 & 20 Eliz. II, c. 1.

[44] *Ibid.*, ss 27, 31.

[45] (1954), No. 13 (Nfld.); R S.N.S., 1909, c. 154; R.S.P.E.I., 1951, c. 79, s. 40; R S.N.B., 1952, c. 83; R.S.O., 1970, c. 134; R.S M., 1970, c. C-270; R.S.S., 1965, c. 78; R.S.A., 1970, c. 139; R.S.B.C., 1960, c. 141.

[46] Hanssen, *op. cit.*, footnote 1; Gibson, *op. cit.*, footnote 1, at pp. 88-89.

tion provides a forum for the disposition of such controversies, it does not deal with the problem of the applicable rule.[47]

C. *Federal Jurisdiction.*

The extent of federal jurisdiction must now briefly be examined. The federal Parliament, of course, has in any case jurisdiction over the specific activities in water covered by navigation and shipping and fisheries. Again, too, the federal authorities could certainly undertake any water development on federal property even though this might have effects in several provinces. Moreover, it could obtain jurisdiction by declaring various works to be for the general advantage, though it is doubtful, to say the least, that the rivers themselves could be considered to be works. There is also the jurisdiction over works and undertakings extending beyond a province, but here again this would hardly include the rivers themselves. Some activities on interprovincial rivers may fall within the trade and commerce power, for example, the exportation of power, which probably falls under the combined operation of sections 91 (29) and 98(10) (a) of the British North America Act in any case.

Finally, some writers have argued that interprovincial rivers fall under the "Peace, Order and Good Government" clause.[48] There is much to be said for this view, at least insofar as a development on an interprovincial river affects the rights of persons in other provinces, for by their very nature such problems are beyond the concern of any one province. The courts have held that a number of matters, for example, radio,[49] aeronautics,[50] a national capital commission,[51] and offshore resources[52] fall within federal jurisdiction under this clause because they affect the body politic of the country or are beyond the concern of any one province.

Assuming federal jurisdiction under the "Peace, Order and Good Government" clause, is there any scope left for provincial legislation? May not, for example, two provinces validly agree to the development of an interprovincial river, subject to overriding legislation by the federal Parliament, even though the development has extraprovincial effect? One province, for example, might legislate to erect dams for hydro-power development, and the province downstream could alter the rights of riparian owners within its

[47] See *Province of Ontario* v. *Dominion of Canada* (1909), 42 S.C.R. 1, per Duff J. at pp. 118-119.

[48] Mackenzie, *op. cit.*, footnote 1, at p. 512; Hanssen, *op. cit.*, footnote 1, p. 88.

[49] *In re Regulation and Control of Radio Communication,* [1932] A.C. 54.

[50] *Johanesson* v. *West St. Paul,* [1952] 1 S.C.R. 292.

[51] *Munroe* v. *National Capital Commission,* [1966] S.C.R. 663.

[52] *Re Offshore Mineral Rights of British Columbia,* [1967] S.C.R. 792.

jurisdiction to permit the erection of the dam up-stream. Such an approach would give the provinces maximum legislative capacity for developing their resources while preserving the general power of Parliament to make legislation, overriding provincial legislation if desired, whenever a development had effect in more than one province.