THE CANADIAN PACIFIC RAILWAY COMPANY (DEFENDANTS).... } APPELLANTS;

AND

CHARLES G. MAJOR (PLAINTIFF).....RESPONDENT.

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*Nov. 26.

*Dec. 7.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

Railways and railway companies—Cons. Railway Act 1879 (42 *Vic. ch.* 9)—*Application of, to special act—Canadian Pacific Railway incorporation act* (44 *Vic. ch.* 1)—*Powers of company under —Right to build line beyond terminus.*

Held, Henry J. dissenting, that the Canadian Pacific Railway Company have power, under their charter, to extend their line from Port Moody in British Columbia to English Bay.

APPEAL from a decision of the Supreme Court of British Columbia restraining the Canadian Pacific Railway Company from constructing their line from Port Moody to Coal Harbor and English Bay through the

*PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry, Taschereau and Gwynne JJ.

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land of the plaintiff.

This was an application by the plaintiff Major to the Supreme Court of British Columbia to restrain the Canadian Pacific Railway Company from proceeding with the construction of their road beyond Port Moody, the terminus of the road in British Columbia under the charter of the company, through the lands of the plaintiff. A similar application had previously been made by one Edmonds, another land owner whose property was to be affected by the proposed extension, and the court had granted an injunction, holding that the Consolidated Railway Act of 1879 applied to this company and that, under section 7 sub-section 19 of that act, the company could not build their line beyond the terminus named in their charter. Under the practice in British Columbia a motion for an injunction is an interlocutory proceeding, and, therefore, not appealable to the Supreme Court of Canada. In Edmonds case, therefore, the proceedings ended with the order for an injunction, but in Major's case, in order to enable the company to appeal, the motion for an injunction was, by consent, turned into a motion for a decree, and the court having adhered to their former decision, and decided in favor of the plaintiff, Mr. Justice Gray dissenting, on the ground that the Railway Act of 1879 does not apply to this company except where it is beneficial to the charter, but is over-ruled by the Act of Incorporation, the company brought this appeal to the Supreme Court of Canada.

Robinson Q.C., and *Tait* Q.C. for the appellants.

The question to be decided is: Does the restriction in section 7, sub-section 19 of the Railway Act, 1879, apply to this company? It is claimed that the Railway Act, by its terms, is made applicable to the charter of the company unless expressly excepted. But the charter itself says, by section 22 of the contract with the company, which is made a part of the act, and by

section 17 of the act itself, under the title "powers," that the Railway Act shall only apply in so far as it is not inconsistent with, or contrary to, the provisions of the act or of the contract. This is the later act, and must override the Railway Act, and it is to the charter alone that we must look to see if the company have the powers that are claimed in this case.

Section 14 of the contract gives the company the largest possible powers. The learned Chief Justice of the court below thought it could not have been the intention to allow the company to go to any portion of the Dominion, but this section says that they can.

Section 15 of the act is clear, and undoubtedly gives us the power to do this work. That section, after setting out the termini of the road in its different directions, and certain branches already constructed or contracted for, declares that the main line and the said branches, and any other branches to be constructed, and any extensions of the said main line thereafter to be constructed or acquired, shall constitute the Canadian Pacific Railway.

It seems unreasonable that any restrictions as to termini should be placed upon such a company as this in a country like British Columbia, especially when it is remembered that the declared intention was to carry the line to the Pacific coast and thus carry out the terms of union of the Province with the Dominion. The counsel cited *The Atlantic and Pacific Railway Company* v. *St. Louis* (1).

Eberts for the respondent.

Port Moody is made the terminus by the charter, and the line cannot go beyond it without express authority. The Railway Act cannot be varied or excepted in the special act by implication.

Richards Q. C., counsel in a similar case pending against the company, asked leave to be heard as *amicus*

(1) 66 Miss. 228.

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curiæ. By consent of counsel for the appellants such leave was granted.

Richards Q. C. The company are seeking to exercise the right of eminent domain, and must have express authority to do so.

Section 25 of the charter shows what extension means. And see Pierce on Railways (1); Morawitz on Private Corporations (2).

The company can build the road to Port Moody, and build branches, but there is no authority to extend the road beyond Port Moody. Large sums of money have been expended by property owners at Port Moody on the strength of its being the terminus of the road.

The learned counsel referred to the case of *Plattville* v. *The Galena, &c., Railway Company* (3), cited in Morawitz, p. 360.

Sir W. J. RITCHIE C.J.—The real and only point in controversy in this case is, as to the right of the Canadian Pacific railway Co. to extend, or to make branches extending, their line in British Columbia beyond Port Moody. The Canadian Pacific Railway claim the right to do so under their special Act of 1881. Section 22 of that Act, first schedule, is as follows:

22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with or contrary to the provisions of the act of incorporation to be granted to the company, shall apply to the Canadian Pacific Railway.

And under the title "powers" in the schedule annexed it is provided by section 17:

17. "The Consolidated Railway Act 1879," in so far as the provisions of the same are applicable to the undertaking authorized by this charter, and in so far as they are not inconsistent with or contrary to the provisions hereof, and save and except as hereinafter provided, is hereby incorporated herewith.

Therefore, the provisions of the consolidated Railway Act of 1879, so far as applicable, must be read as in aid

(1) Pp. 145 and 494. (2) 2 ed. Sec. 373.
(3) 43 Wis. 493.

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of the undertaking authorized by the act of 1881, and as subordinate thereto, and be held to operate only in so far as they are not inconsistent with, or contrary to, the provisions of the act of 1881; and when they are inconsistent or contrary the provisions of the act of 1881 must prevail. It is, therefore, to the act of 1881 that we must look to ascertain what the Canadian Pacific Railway can do with reference to branches or extensions.

The grave mistake into which, with all respect, I think the learned Chief Justice has fallen is, in my opinion, in not reading the consolidated Railway Act as entirely subordinate to the Canadian Pacific Railway Act of 1881. This is strongly indicated in the view which the learned Chief Justice expresses with reference to the right of the Canadian Pacific Railway to construct branches. He thinks the railway is confined to six miles by virtue of the act of 1879. But by section 14 of the contract included in, and made part of, the act of 1881 it is provided:

> That the company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway to any point or points within the territory of the Dominion.

From which it is abundantly clear that the right conferred on the railway company from time to time to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway to any point or points within the territory of the Dominion is entirely inconsistent with any such limitation; and, therefore, I think the company had a right to construct a branch from any point or points on the railway to English Bay as well as to any other point or points within the territory of the Dominion. It would, indeed, to my mind, be a most curious and extraordinary anomaly if the company could run a branch starting at any point along the railway, say one, two or half a dozen miles from Port

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Moody to Coal Harbor or English Bay, and could not construct a branch from Port Moody to the same place, both being, practically, extensions of the railway to the same point. In other words, that they could start from any and every point along the railway and could not start from any and every point on the railway, a distinction, I humbly think, without a difference.

So, in like manner, I cannot accede to the learned Chief Justice's construction of section 15 in schedule A in the act of 1881. By section 4 of the act of incorporation it is provided that:

All the franchises and powers necessary or useful to the company to enable them to carry out, perform, enforce, use and avail themselves of every condition, stipulation, obligation, duty, right, remedy, privilege and advantage agreed upon, contained or described in the said contract are hereby conferred upon the company. And the enactment of the special provisions hereinafter contained shall not be held to impair or derogate from the generality of the franchises and powers so hereby conferred upon them.

And section 14 provides that:

The company shall have the right from time to time to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway to any point or points within the territory of the Dominion, provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, work shops, yards and other appurtenances requisite for the efficient construction and working of such branches. in so far as such lands are vested in the Government.

And by the 15th section of schedule A it is provided:

That the company may lay out, construct, acquire. equip, maintain and work a continuous line of railway of the guage of four feet eight and one-half inches, which railway shall extend from the terminus of the Canada Central Railway near Lake Nipissing, known as Callander station, to Port Moody, in the Province of British Columbia (and also other branch lines not material to the present inquiry); and also other branches to be located by the company from time to time as provided by the said contract, the said branches to be of the guage aforesaid; and the said main line of railway and the said branch lines of railway shall be commenced and completed as provided by the said contract; and together with such other branch

lines as shall be hereafter constructed by the said company; and any extension of the said main line of railway that shall hereafter be constructed or acquired by the company shall constitute the line of railway hereinafter called the Canadian Pacific Railway.

No doubt, under the contract provided for by the Act of 1881, the Canadian Pacific Railway Company obligated themselves to build only to Port Moody, but I can discover nothing in the act to indicate that Port Moody was to be the actual and final termination of the Canadian Pacific Railway; in other words, was to be a fixed terminus, with no powers of extension under the legislation of 1881. On the contrary, the 15th section indicates, in my opinion, directly the contrary, and shows, I think, conclusively that the terminus of the Canadian Pacific Railway was not to be fixed at Port Moody, but was to be extended by branches and extensions to be constructed or acquired, if required by the exigency of the road or deemed by the company necessary for the purpose of effectually connecting the waters of British Columbia with the railway system of Canada; and when so constructed by the Canadian Pacific Railway the road, not to Port Moody, but the road, with such branches and extensions when constructed or acquired, was to constitute the Canadian Pacific Railway, and the construction of which branches and extensions was contemplated by, and provided for in, the act of 1881 and the schedules thereto annexed.

The learned Chief Justice repudiates this view, and thinks this section gives the company no power to construct any extension whatever, and no power even to acquire any extension west of Port Moody. But to arrive at this conclusion he has to get over the words, "and any extension of the main line of railway that "shall hereafter be constructed or acquired by the com- "pany shall constitute the line of railway hereinafter "called the Canadian Pacific Railway." This he accomplishes, and can only accomplish, by practically reading them out of the statute, which he does after

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this fashion. He says the word "constructed" in the 15th section must be taken to mean "lawfully constructed;" that is to say, under some subsequent act if the company choose to apply for and obtain it. This certainly, as a mode of construction, has the merit of novelty, and suggests the pertinent question: If no authority was conferred, or intended to be conferred, by these words, and authority to construct was only to be obtained by subsequent legislation, and if, therefore, they are to have no effect in the statute by which they were enacted, why, or for what possible purpose, or to accomplish what, were they inserted? I confess myself unable to answer this, to my mind, most reasonable inquiry. No court has a right to reject, or refuse to give effect to, the words of the legislature, if a reasonable construction can be placed on the language used, and, therefore, I am constrained so to construe this statute as to give effect, if possible, to this, to my mind, very plain language of the legislature, and I can give no effect to it if it was not the intention of the legislature to authorize such branches and such extensions of the main line as might be found expedient to complete and make available this great national undertaking, the construction of a railway connecting the sea-board of British Columbia with the railway system of Canada, a construction not only reasonable but one which, in my opinion, harmonises with the subject of the enactment and the object which the legislature had in view.

The learned Chief Justice has rightly said, as applicable to this case, that there is no magic in words, or I should say in names, so that whether this is called or treated as a branch or as an extension (for I can see no reason why a branch may not be an extension or an extension a branch if consistent with the general scope of the act) the railway company have, under the act of 1881, authority for its construction, subject, of course, to a compliance with all the provisions applicable to

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the expropriation of lands and other matters connected with the construction and extension of the road and its branches.

The Chief Justice says, with reference to the conclusion he has arrived at, "I do so, necessarily, with regret, because I think the decision contrary to the interests of everybody in the Province including the plaintiffs." It will therefore, no doubt, give much pleasure to the Chief Justice, as it is most satisfactory to me to feel, that this court has been enabled to arrive at a conclusion which must be gratifying to everybody within the Province, and which ought to be equally so to the plaintiffs. It is not often, in controversial litigation, that it is made apparent that the interests of all parties, the public included, are identical, and are secured by the judicial determination of the controversy.

STRONG J.—Concurred.

FOURNIER J.—I think the point is very clear. The Canadian Pacific Railway Act says that the Consolidated Railway Act of 1879 shall be applicable to the company in so far as it is possible, and as far as its provisions are not repugnant. The question is whether we find authority in the Canadian Pacific Act to extend their line of railway, and this seems to me to be given in such plain words that I cannot see how the contrary can be suggested. By the 14th section of the C. P. R. Act the company is. (His Lordship here read the section) (1).

I think there is very little room for interpretation. The reasoning of Mr. Justice Gray is so convincing that I cannot but adopt his conclusions.

TASCHEREAU J.—I am of opinion that this appeal should be allowed for the reasons given by the Chief Justice.

(1) See p. 336.

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HENRY J.—I intended to read the 15th section of the charter of the Canadian Pacific Railway Company, but as it has been so generally referred to I need not do so. I must say that I fail to see the power which the company ascribe to it. It does no more than give them corporate power to extend their line to the eastward as I shall endeavor to show hereafter, and this was necessary because of the power given by the act to acquire lines of railway east of the eastern terminus and consequently, under the head of corporate powers, the necessary authority was given. Now under the head of "powers" by section 17 it is declared that:

The Consolidated Act, 1879, in so far as the provisions of the same are applicable to the undertaking authorized by this charter, and in so far as they are not inconsistent with or contrary to the provisions hereof, and save and except as hereinafter provided, is hereby incorporated herewith.

And by section 15 the company may lay out, &c.,

And any extension of said main line of railway that shall hereafter be constructed or acquired shall constitute the line of railway hereinafter called the Canadian Pacific Railway.

By the 1st section of the schedule to the special act the line is divided into 4 sections, the western section from Kamloops to Port Moody. The latter after much consideration had been finally adopted as the western terminus. Section 15 then was not intended for any extension westward; but "the Canadian Pacific Railway" was constituted to be the line east from Port Moody to Callendar station, including named branches and any extension eastward under the provisions of section 25, and the provisions of the latter section account for the provisions in section 15, that the extension afterwards constructed or acquired by the company should be included as part of the main line. I cannot come to the conclusion that anything else was meant. The western terminus was a subject long debated and finally decided by the legislature in the same act to be Port Moody. That certainly helps us to the conclusion that the provision in section 15 before mentioned was made

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solely to provide corporate powers for any extensions eastward of Callendar, that by construction or purchase the company should acquire.

The power given by the 14th section is to build "branch lines of railway from points along their main line." No person will assume that building branch lines along the main line means an extension from the terminus virtually making another terminus.

Then sub-section 19 of section 7 of the Consolidated Railway Act, 1879, provides that:

No railway company shall have any right to extend its line of railway beyond the termini mentioned in the special act.

Unless these words are to have no effect, or unless special power is given by the act, I cannot understand how it can be said that the company have power to build their proposed extension and change of terminus. The question therefore is, as to the termini of the road, and the right of extension from there. To the eastward the extensions are provided for, but I can see nothing but the bare provision necessary in section 15 to include corporate powers over extensions west.

By the sub-section 2, of section 2 of the Consolidated Railway Act of 1879, it is provided that:

The said sections shall also apply to every railway constructed or to be constructed under the authority of any act passed by the parliament of Canada, and shall, so far as they are applicable to the undertaking, and unless they are expressly varied or excepted by the special act, be incorporated with the special act, form part thereof, and be construed therewith as forming one act.

And by section 3 it is enacted that:

For the purpose of excepting from incorporation with the special act any of the sections forming part first of this act, it shall be sufficient in the special act to enact that the sections of this act proposed to be excepted, referring to them by the words forming the headings of such sections respectively, shall not be incorporated with such act, and the special act shall thereupon be construed accordingly.

The provision of section 3 was adopted by Parliament in the special act by section 18, which provided that the 11th sub-section of section 8 of the act of 1879

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should not apply. Section 21 of the charter provides that sub-sections 1 and 2 of section 22 shall not apply, and by section 23 several other sections and sub-sections are provided not to apply. With the provisions in sub-section 2 of sections 2 and 3 just mentioned, which, it must be presumed were under the eyes of whoever prepared the special act for the government and of the company and the legislature, can it be imagined that any variation from the provision of section 19 before mentioned would not have been expressly made if such were intended ?

Section 22 of the special act also provides that the provisions of the Railway Act of 1879 shall apply to the Canadian Pacific Railway, in so far as applicable to the undertaking, and in so far as they are not inconsistent with or contrary to the provisions of their act of incorporation.

Now, I cannot perceive that there is any inconsistency if we look at the true meaning of the whole special act and read it with the provisions of the act of 1879. The latter enacts, section 2, that its provisions shall apply to all companies "unless they are expressly varied or excepted by the special act," and "shall be incorporated with the special act, form part thereof and be construed therewith as forming one act."

I feel bound, then, to read the two acts as one and to give effect as far as possible to every part of them. I seek in vain for any express inconsistency so far as relates to any extension of the main line west from Port Moody. If we had not before us in bold relief the fact that the legislature had fixed the terminus at Port Moody, and that section 25 had not been enacted, we might speculate as to what was meant by the words, "and any extension of the said main line of railway that shall hereafter be constructed or acquired by the company" in section 15, but with the knowledge of the legislature that the western terminus

had been declared, and that the act had made provisions for extensions eastward, and that the line from Kamloops west to Port Moody was not to be built or completed by the company, but by the government and handed over when so completed to the company, it would be, in my opinion, straining the force and meaning of the provision in section 15 of the charter, intended, in my opinion, to confer corporate powers only, to construe them as giving authority to extend the line ten miles from Port Moody, the settled terminus, to Vancouver city. I have shown that the provisions of section 25 required the provision in section 15 to give corporate powers to include extensions eastward as a part or parts of the Canadian Pacific Railway.

Section 4 of the charter is, in my opinion, but the usual provisions of a company's charter. Every company acquires similar franchises and powers, but the provisions in that section cannot, in any way, extend the operation, in other respects, of the charter.

Under the act of 1879, the company might build branches from any station including the terminal ones, but under the special act the company could not build a branch from either terminal station, as the right to do so is limited to start from points along the line. The company in this case occupies this position, that if it invokes the power under the former the right, I take it, must be limited to six miles; for they cannot invoke one part of the provision made part of their own charter by express legislative enactments and reject the limitations. Some one has said that the act must be construed as giving all that is beneficial to the company and discarding what is not so. I cannot see my way clear to adopt that mode of construction. In my humble opinion the bitter must go with the sweet. Rights and privileges are given to companies, but they are to be enjoyed only by yielding statutory rights and

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privileges to others. The companies are given facilities for carrying out their chartered rights, but duties and responsibilities are annexed which must be performed and acknowledged. Companies must keep within the powers conferred by their charters, and if they exceed them they must be answerable for wrongs committed.

I am of the opinion that the company in this case had no legal right to extend the terminus from Port Moody to Vancouver City. I would have preferred to have been able to arrive at a different conclusion, as it is, no doubt, largely in the public interest that the road in question should be speedily finished, and a loss to the company to be delayed in finishing it. In differing from my colleagues, I have at least the satisfaction of feeling that, if I am wrong in my views, they will not affect the result.

I regret to have been obliged to explain my views without sufficient time to do so as as I could have wished. It was desirable an early decision should be given where such large public as well as private interests are involved.

I will only then add that I have read very carefully the judgment of the learned Chief Justice of the court below and fully concur with him in the reasons he has given for deciding as he did, in favor of the respondent. Entertaining the views I have expressed, I think the appeal should be dismissed.

GWYNNE J.—It is, I think, of no importance whether the work proposed to be constructed by the C. P. Ry. Co. be called a "branch" or an "extension." I can see no difficulty in a "branch" line of railway being constructed from the extremity of a "main" line. But whatever may be its most appropriate designation, I concur in the opinion that the company have power under their Act of Incorporation to construct it, subject to the provisions of the Consolidated Railway Act as

to acquiring right of way.

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Appeal allowed with costs, and plaintiff's action in the court below dismissed.

Solicitors for appellants: *Drake, Jackson & Helmcken.*
Solicitors for respondent: *Eberts & Taylor.*