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*Dec. 17.
*Dec. 30.

THE GOVERNMENT OF THE PROVINCE OF MANITOBA AND ANOTHER ..... } APPELLANTS;

AND

THE CANADIAN NORTHERN RAILWAY COMPANY AND OTHERS.. } RESPONDENTS.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Statute—Construction—Railway Board—Jurisdiction—Agreement of railway company with province—1 Edw. VII, c. 53 (D).

By an agreement made in 1901 between the Canadian Northern Ry. Co. and the Government of Manitoba the Lieutenant Governor in Council was authorized to fix the rates to be demanded by the company for the carriage of freight on its lines in the province. This agreement was confirmed by Acts of Parliament and the legislature respectively, the Dominion Act containing the following provisions: Sec. 3. "Nothing in this Act or in the indenture contained in the schedule shall * * * (*a*) divert or limit, temporarily or otherwise, the rights or powers * * * of any commission * * * respecting any matter or thing, obligation or duty; (*c*) authorize the Canadian Northern Ry. Co. * * * to charge or demand any discriminating rate for the carriage of freight or passengers, or to allow or make any secret or special tolls, etc., or any higher rates for the carriage of freight or passengers, than those heretofore or hereafter fixed * * * by any commission or other authority."

Held, that sec. 3 (*a*) clearly reserves the rights and powers of the Board of Railway Commissioners which is a commission or authority within its terms; and that 3 (*c*) which deals with special matter of tolls does not except that subject from the generality of 3 (*a*) on the principle *generalia specialibus non derogant,* inasmuch as the two subsections are concerned with different matters and do not overlap nor conflict.

APPEAL from an order of the Board of Railway Commissioners for Canada on a question of the jurisdiction of the board.

The question for decision is thus stated in the order granting leave to appeal.

"Whether the judgment of the board, as set out in the reasons for judgment, was right in determining that the Manitoba Agreement and the Acts, statutes of Manitoba, 1901, chap. 39, and statutes of Canada, 1901, chap. 53, do not limit the power of the board to increase or authorize the increase of the tolls and rates to an amount exceeding the tolls established for the carriage of goods and passen-

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

gers upon the lines of the Canadian Northern Railway Company, referred to in the said agreement and statutes."

Chrysler K.C. and *Craig K.C.* for the appellants.

Phippen K.C. and *Fraser K.C.* for the respondent the Canadian Northern Ry. Co.

Lafleur K.C. and *Flintoff* for the respondent the Canadian Pacific Ry. Co.

The judgment of the court was delivered by:—

NEWCOMBE J.—By order of the Board of Railway Commissioners for Canada of 26th December, 1917, upon application of the respondent companies and of the Toronto, Hamilton and Buffalo, Pere Marquette, New York Central, Michigan Central, Kettle Valley and Great Northern Railway Companies, it was ordered that, subject to the provisions of the Crow's Nest Pass agreement and of the judgment pronounced by the learned Chief Commissioner, and concurred in by the other members of the board, copy of which was attached to the order, the standard tariffs of maximum mileage tolls approved by the board to be charged between stations on the individual steam railway systems subject to its jurisdiction might, by new tariffs to be submitted for the board's approval and published in the *Canada Gazette* as required by sections 327 and 331 of the Railway Act, and, following such approval and publication, made effective not earlier than 1st February, 1918, be increased to the extent limited by the order.

Upon the hearing of the application counsel were heard not only on behalf of the parties and the railway companies above mentioned, but also on behalf of a number of the Boards of Trade of the more important cities from Montreal to Vancouver, the Canadian Manufacturers Association, various manufacturing concerns and others interested in railway tariffs. The appellant Government opposed the application upon the ground, among others, that the increase of rates, which was in the result granted, would conflict with an agreement of 11th February, 1901, between the appellant Government and the Canadian Northern Railway Company, one of the respondents, whereby, in consideration of a guaranty of the company's bonds, the company agreed that the Lieutenant-Governor in Council

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should fix the freight rates of the company as provided in clause (8) of the agreement which will presently be quoted; and inasmuch as this agreement had been confirmed by statute of Manitoba, ch. 39 of 1901, and also had been in a qualified or limited manner recognized by statute of the Dominion, ch. 53 of 1901, the province contended that the board had no authority to increase the tolls in excess of those established under the agreement.

The case was very carefully considered in the decision of the board.

Afterwards, by order of 22nd January, 1918, upon application to the board by the appellants for leave to appeal from the order, the board granted leave to appeal upon the following question:—

> Whether the judgment of the board, as set out in the reasons for judgment, was right in determining that the Manitoba Agreement and the Acts, statutes of Manitoba, 1901, chapter 30, and statutes of Canada, 1901, chapter 53, do not limit the power of the board to increase or authorize the increase of the tolls and rates to an amount exceeding the tolls established for the carriage of goods and passengers upon the lines of the Canadian Northern Railway Company, referred to in the said agreement and statutes.

Although the appeal has been pending since the date of the last mentioned order it was brought to hearing only during the present sittings of the court. The appellants' case was very fully presented, but the court considered it unnecessary to hear counsel for the railway companies who had appeared to maintain the order of the board.

I am now to state reasons why, in the judgment of the court, the appeal should be dismissed.

By the agreement of 11th February, 1901, which was executed under seal by the respective parties, and for considerations which are not in question, the Canadian Northern Railway Company agreed by clause (8) that:

> Up to the 30th day of June, A.D. 1930, the Lieutenant-Governor in Council shall from time to time fix the rates to be charged or demanded by the company for the carriage of all freight from all points on the company's lines in Manitoba to Port Arthur, and from Port Arthur to all points on the company's lines in Manitoba, and from all points on the company's lines in Manitoba to all other points on said lines in Manitoba. Provided always that, before any rates are so fixed, the company shall be heard and their interests taken into consideration. The company agrees that it will not at any time after the said rates have been so fixed charge or demand for the carriage of freight between the points aforesaid greater rates than those so fixed by the Lieutenant-Governor in Council.

The Canadian Northern Railway Co. was, at the time of the making of this agreement and still is, a Dominion company under the exclusive legislative authority of the Parliament of Canada, and the agreement itself, as the 4th clause recognizes, acknowledges the necessity of legislation by the Parliament of Canada in order to make its provisions effective in their application to the railway. The parties covenant that they will use their best endeavours to procure from the Provincial Legislature and from the Parliament of Canada such legislation as may be necessary to confirm the agreement, and to enable and require the parties to carry it out in order that its true intent and meaning may be properly and fully accomplished.

The agreement having been executed was accordingly submitted to the Legislature and to Parliament. Chapter 39 of Manitoba, confirming the agreement, was enacted on 20th March, 1901, and the Dominion Act, chapter 53 of 1901, was enacted on 23rd May of that year.

It follows from what has been said, and it is common ground in the case, that the tariff rates, or powers for fixing tariff rates, stipulated for by the agreement are binding upon the railway and can be justified as rates to be charged by it only by Dominion legislation. The Act, chapter 53 of 1901, by s. 2 declares that the Canadian Northern Railway Company has and shall be deemed to have had at the time of the execution of the agreement full power, among other things, to make the covenants and agreements therein contained relating

to the rates to be charged or demanded by the said company for the carriage of freight and passengers.

Then follows s. 3, upon the effect or meaning of which the case depends; its material provisions are as follows:—

3. Nothing in this Act or in the indenture contained in the schedule hereto, or done in pursuance of this Act or of the said indenture, shall,—

(*a*) divest or limit, temporarily or otherwise, the rights or powers (under existing or future legislation of the Parliament of Canada) of the Governor in Council, or of the Railway Committee of the Privy Council, or of any commission or other authority, respecting any matter or thing, obligation or duty;

(*c*) authorize the Canadian Northern Railway Company, contrary to the meaning of The Railway Act, to charge or demand any discriminating rate for the carriage of freight or passengers, or to allow or make any secret or special tolls, rebate, drawbacks or concession, or any higher rates for the carriage of freight or passengers than those heretofore or hereafter fixed, under the authority of existing or future legislation of the

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Parliament of Canada, by the Governor in Council, or by the Railway Committee of the Privy Council, or by any commission or other authority.

It is admitted that the Board of Railway Commissioners for Canada is a commission or authority within the meaning of clause (*a*), and therefore it is difficult to perceive how this Act, which is the only competent legislative sanction for the rates stipulated by the agreement, can, in view of the plain reservation of the powers of the board by clause (*a*) admit of an interpretation which would divest those powers.

Although it was not denied that s. 3 (*a*) is expressed in terms broad enough to reserve to the board jurisdiction to make the order in question, it was suggested that this is a general clause, limited by s. 3 (*c*), which is of a special character, relating to tolls, and operates, therefore, upon the principle of the general maxim "*generalia specialibus non derogant*," to withdraw or except that subject from the generality of s. 3 (*a*). But clauses (*a*) and (*c*) are in truth concerned with different subject matters; they do not overlap, and therefore the latter cannot derogate from the former. Clause (*a*) relates to the powers of the Governor in Council, the Railway Committee of the Privy Council, or any commission or other statutory authority, while clause (*c*) is concerned only with powers of the respondent company. Each of these clauses operates within its own plane and they do not conflict. Moreover it will be observed by clause (8) of the agreement that the authority for the fixing of rates by the Lieutenant-Governor in Council, to which the company consented, was limited to a period which will expire on 30th June, 1930, and that it exists therefore only temporarily. Now s. 3 (*a*) of the Act to which the agreement is scheduled provides that neither the Act nor the agreement is to divest or limit *temporarily* or otherwise the powers of the Board of Railway Commissioners; presumably the word "temporarily" was introduced for a purpose, and the right to fix the rates conferred by clause (8) of the agreement is, so far as has been made to appear, the only right or power provided for by the agreement which may be aptly described as "temporary." If this be true, s. 3 (*a*), not only by general provision includes the jurisdiction of the Board of Railway Commissioners relating to rates for

the carriage of freight and passengers, but also particularly embraces their jurisdiction as to rates.

The question subject to appeal should therefore be answered affirmatively, upholding the jurisdiction of the board.

Solicitors for the appellants: *Chrysler & Chrysler.*

Solicitor for the respondent the Canadian Northern Ry. Co.: *F. H. Phippen.*

Solicitor for the respondent the Canadian Pacific Ry. Co.: *E. P. Flintoff.*