*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Minister of Public Works of the Province of Alberta* v. *The Canadian Pacific Railway Company; and on the Appeal of The King* v. *The Canadian Pacific Railway Company, from the Supreme Court of Alberta; delivered the 3rd February* 1911.

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PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD SHAW.
LORD MERSEY.
LORD ROBSON.

[DELIVERED BY LORD MACNAGHTEN.]

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The two actions which have given rise to these Appeals were brought to enforce two separate claims by or on behalf of the Province of Alberta to tax certain lands belonging to the Canadian Pacific Railway Company. The lands in question formed part of the land subsidy earned by the Railway Company in the construction of their railway. In 1881, when the Construction Contract was approved and ratified by an Act of the Dominion Parliament (44 Vict. cap. 1), the district in which the lands are situated was part of the region known as "the North-West Territories." The Province of Alberta, which was carved out of the North-West Territories, was not established until the year 1905.

Though the questions involved in the two actions are quite distinct they both turn on the wording of Clause 16 of the Construction Contract. That clause is in the following terms :—

"16. The Canadian Pacific Railway and all stations " and station grounds workshops buildings yards and other " property rolling stock and appurtenances required and " used for the construction and working thereof and the " capital stock of the Company shall be for ever free from " taxation by the Dominion or by any Province hereafter " to be established or by any Municipal Corporation therein ; " and the lands of the Company in the North-West Terri- " tories until they are either sold or occupied shall also be " free from such taxation for 20 years after the grant thereof " from the Crown."

In the first Appeal which is brought in the name of His Majesty the King in the right of the Province of Alberta the question turns upon the meaning of the word "sold" as used in that clause.

It seems that in September 1902 the Railway Company agreed to sell to one Schaetzel three sections of land which had been conveyed to the Company by letters patent from the Crown, dated the 20th of July 1901. There were three agreements. The price of one of the sections was $1,644, the price of each of the others was $1,920. On signing the agreements, a payment of $320 was made by the purchaser in respect of each section. The remainder of the purchase money was to be paid in five equal annual instalments at fixed dates specified in the agreements. In each case time was made of the essence of the contract and each agreement contained a provision that if the purchaser should fail to make the stipulated payments, or any of them, within the times limited for payment, the Company should have the right to declare the contract null and void by notice in writing to that effect personally served on the purchaser or mailed in a registered letter addressed to him at a post office named in the agreement.

Besides the three sums of $320 paid on the execution of the three agreements nothing was ever paid by the purchaser towards the purchase money. And on the 1st of November 1905 the Company duly declared the three agreements null and void.

It is admitted that the lands have never been occupied within the meaning of Clause 16.

The contention on the part of the Appellant is that although there was no sale in fact, and although each of the three agreements for sale was duly avoided and annulled in pursuance of authority contained in the agreement itself, yet the lands have been sold within the meaning of that expression in the Construction Contract.

So strange a contention does not seem to require a serious answer. But an answer may be given in the language of Ritchie, C.J., who disposed of the point when it was raised in 1891 before the Supreme Court. "There must have been," said that learned judge, " a completed sale, " and the property must have passed out of the " Canadian Pacific Railway Company and vested " in the purchaser before it could become liable " to taxation." (*Rural Municipality of Cornwallis* v. *Canadian Pacific Railway Company*, 19 S.C.R. 702.)

The action which gave rise to the second Appeal was brought by the Minister of Public Works of the Province of Alberta for the purpose of determining the date from which the period of exemption mentioned in the latter part of Clause 16 is to be reckoned. In the case of " the lands " of the Company in the North-West Territories " which have not been sold or occupied the period of exemption is defined as a period of " 20 years " after the grant thereof from the Crown." The proper meaning of the expression " grant " from the Crown " in the case of a land grant is a conveyance by letters patent under the Great

Seal. And although, of course, Crown lands may be transferred to a subject by Act of Parliament, such a transfer would not ordinarily or properly be described as a "grant from the" Crown."

The contention on the part of the Respondent is that in the case of lands proposed to be taxed the period of exemption must be reckoned from the date of the letters patent conveying those lands to the Company. The earliest patent in the present case is dated the 6th of April 1903.

The contention on the part of the Appellant is that the period of exemption runs not from the date of the conveyance of the lands now proposed to be taxed, but from the 18th of June 1884, the date on which the survey of these lands was approved by the Surveyor-General of Canada, and the lands were thus identified as part of the subsidy in land to which the Company was entitled.

It was one of the conditions of the Construction Contract that grants in respect of the land subsidy should be made in alternate sections of 640 acres extending back 24 miles on each side of the railway—the Company receiving the sections bearing uneven numbers. It was, however, provided that if any of such sections "consisted in a material degree of land not "fairly fit for settlement" the Company should not be bound to receive them as part of such grant. This provision led to prolonged discussion and negotiation between the Company and the Government. Some lands which the Company at first rejected were afterwards accepted, and some that were at first accepted were rejected afterwards. The result was that in a considerable number of cases the destination of lands appropriated to the land subsidy was not definitely fixed until long after the date when the survey was approved in the Surveyor-General's office. As the learned Counsel for the Respondent pointed out there would

have been much complication and confusion if the construction contended for by the Appellant had been adopted.

In point of fact, however, whenever the question has been argued in the Canadian Courts the ordinary and proper signification of the expression "grant from the Crown" has been adopted. The leading case is the case of *North Cypress* v. *Canadian Pacific Railway* 35 S. C. R. 550. In deference to the decision of the Supreme Court of Canada in that case, formal judgments only were delivered by the trial Judge, and by the learned Judges in the Supreme Court of Alberta, from which the second Appeal is brought.

It was argued that if the expression "grant from the Crown" was to have its proper and ordinary signification it would be in the power of the Railway Company, by delaying to accept Crown grants or even by simply abstaining from pressing for such grants, to defer their liability to taxation for an indefinite period. It must, however, be remembered that at the time when the Construction Contract was made, lands in the North-West Territories were the property of the Dominion, and that any delay in perfecting Crown grants would be the fault of Dominion officers. The circumstance, that but for the Contract the lands would now be liable to taxation for provincial purposes, cannot alter the rights of the Railway Company, nor does that fact of itself necessarily lead to delay in perfecting the grants.

The whole Contract was subjected to a very close and critical examination, but their Lordships are satisfied that there is no reason for departing from the ordinary and proper signification of the expression "grant from the Crown."

Their Lordships are therefore of opinion that

in the case of lands not sold or occupied, the period of exemption from taxation mentioned in Clause 16 of the Construction Contract runs in each case from the date of the letters patent conveying the lands to the Railway Company.

Their Lordships will therefore humbly advise His Majesty that both Appeals should be dismissed.

In accordance with an agreement between the parties there will be no order as to the costs of the Appeals.

In the Privy Council.

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THE MINISTER OF PUBLIC WORKS OF THE PROVINCE OF ALBERTA

*v.*

THE CANADIAN PACIFIC RAILWAY COMPANY;

AND

THE KING

*v.*

THE CANADIAN PACIFIC RAILWAY COMPANY.

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