

Privy Council Appeal No. 27 of 1919.

The Corporation of the City of Armstrong - - - *Appellants*

v.

The Canadian Northern Pacific Railway Company - - - *Respondents*

AND

Privy Council Appeal No. 28 of 1919.

The Corporation of the City of Vernon - - - *Appellants*

v.

The Canadian Northern Pacific Railway Company - - - *Respondents*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH AUGUST, 1919.

Present at the Hearing:

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD DUNEDIN.

MR. JUSTICE DUFF.

[*Delivered by MR. JUSTICE DUFF.*]

THE CORPORATION OF THE CITY OF ARMSTRONG *v.*
THE CANADIAN NORTHERN PACIFIC RAILWAY
COMPANY.

This appeal raises a question concerning the construction and application of Clause 13 (E) of an agreement dated January, 1910, between the Government of British Columbia and the Canadian Northern Railway Company which was ratified by a Statute passed by the Legislature of the Province (10 Edward 7, C. 4). By this Clause, exemption from taxation is granted to the

respondent company (a provincial company promoted and controlled by the Canadian Northern Railway Company) in these terms :—

“The Pacific Company and its capital, stock, franchise, income, tolls and all properties and assets which form part of or are used in connection with the operation of its railway shall, until the 1st day of July, A.D. 1924, be exempt from all taxation whatsoever or however imposed by, with or under the authority of the Legislature of the Province of British Columbia or by any municipal or school organisation in the Province.”

By an Act passed in 1912 (Chapter 32 of the Statutes of that year) the respondent Company was authorised by the Provincial Legislature to construct a line of railway in a southerly direction from Kamloops ; and by Section 6 of that Statute the exemption stipulated for in the agreement of 1910 was, with a modification having no relevancy in the present connection, made applicable to the railway thereby authorised.

By the same enactment the Company was required to commence construction by the 27th August, 1912, and to complete its line by the 27th February, 1915.

It was the duty of the Railway Company under the provisions of the Railway Act of British Columbia (Sections 17, 18 and 27, Cap. 194, R.S.B.C.), before commencing construction to deposit with the Minister of Railways a plan of the proposed line with a profile and book of reference ; and these documents were deposited on the 9th October, 1912, and the plan was sanctioned in the following March. The period within which construction was to be completed under the provisions of the Act of 1912 was by an Act passed in 1913 extended until the 21st August, 1915.

In April, 1916, the Company commenced the action out of which this appeal arises claiming a declaration that certain lands in the city of Armstrong were exempt from taxation in virtue of the agreement of 1910.

At the last mentioned date no work had been done south of Kamloops in actually constructing the railway authorised by the Statute of 1912. A branch of about $2\frac{1}{4}$ miles in length running from Kamloops Junction, a station on the Company's main line, to the north bank of the South Thompson River opposite Kamloops, was constructed in 1912 or 1913 ; but this although referred to in the evidence as part of the Kamloops Vernon Railway was apparently not built under the authority of the Act of 1912.

At the trial the respondents obtained a judgment declaring the “strip of land forming the plaintiff's right-of-way” as shown upon the plan deposited with the Minister of Railways to be exempt from assessment and taxation by the appellant Corporation, and the appeal of the Corporation to the Court of Appeal of British Columbia from this judgment was dismissed.

Before their Lordships' Board Counsel for the respondent Company contended that the lands described in the judgment of the Trial Judge, that is to say the lands designated in the plan sanctioned by the Minister of Railways as the Company's “right-of-way,” became, by virtue alone of being so designated, part

of the Company's "railway" within the meaning of the exemption clause of the agreement of 1910, and that in respect of them the exemption provided for took effect and continues to have effect until the line of railway so designated is shown to have been abandoned.

In support of this contention Counsel relied upon the judgment of this Board in *Canadian Northern Pacific Railway v. New Westminster Corporation*, 1917, A.C. 602, in which their Lordships had to consider and apply the clause of the agreement of 1910 which is now before them. It appeared in that case that the plan of the line of railway in respect of which the exemption was claimed had not yet been approved by the Minister of Railways; and the Railway Company advanced the contention that all lands held by the Company as a Railway Company and intended ultimately to form part of its railway or ultimately to be used in connection with the operation of it were included in the subjects embraced within the description "railway" as used in that clause: and the actual ground of the judgment was that the decision of the Company that given lands were to be part of the railway or to be used in connection with the operation of the railway was not in itself sufficient to bring such lands within the category of lands "which form part of or are used in connection with" the railway to which by the terms of the clause the exemption extends.

Sir Arthur Channell who delivered the judgment of the Board naturally emphasized the fact that the plans of the Railway Company had not received the sanction of the Minister, and that consequently the precise position of the railway track could not yet be known; but the observations to be found in the judgment do not sustain the proposition to which their Lordships are now asked to give their assent. On the contrary, the observations which express the principle of the judgment when correctly apprehended point to a conclusion which is decisive of the present controversy in a sense adverse to the contention relied upon.

The words of the clause relating to things forming part of the railway or used in working it are, it is observed, in the present tense; and the word "railway," it is said, is used as denoting a physical thing, something of which something else can form part and one which can be "operated." It may be added that as applied to the undertaking authorised by the Act of 1912, it means the railway or railways constructed under the authority given by that Statute.

This is not to say that as regards lands alleged to form part of the railway the stipulated exemption only comes into force in respect of lands upon which the railway is completely constructed and in operation; but on the other hand their Lordships in the judgment referred to observe that the consideration for the remission of taxation is "the benefit to the public from the railway," and that the reason for the subsidy does not arise where "the public are neither getting the actual railway, nor having it already in process of construction for their benefit."

In their Lordships' opinion, effect would not be given to

these considerations by adopting the rule that the approval of the plan given by the Minister under the Railway Act is in itself sufficient to bring within the sweep of the exemption all lands designated as part of the railway upon that plan when there is nothing in the uses to which the lands are devoted or in the circumstances of their occupation to mark them in a physical sense as part of a railway constructed or in process of construction.

For these reasons their Lordships think the appeal should be allowed and the action dismissed with costs here and in the Courts below, and they will humbly advise His Majesty accordingly.

THE CORPORATION OF THE CITY OF VERNON *v.* THE
CANADIAN NORTHERN PACIFIC RAILWAY COMPANY.

The disposition of this appeal is governed by the above judgment.

Their Lordships will accordingly advise His Majesty to allow the appeal and dismiss the action with costs both here and in the Courts below.

In the Privy Council.

THE CORPORATION OF THE CITY OF
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THE CANADIAN NORTHERN PACIFIC RAILWAY
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[DELIVERED BY MR. JUSTICE DUFFE.]