

35, 1936

CANADIAN  
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APPELLANT'S CASE

No. 23 of 1935.

In the Privy Council.

**ON APPEAL**  
FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN—

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GEORGE PARDEW LOVIBOND on behalf of himself and on behalf of himself and all others the registered holders on January 18th, 1923, of First, Second and Third Preference Stocks and of Common Stock of the Grand Trunk Railway Company of Canada, their personal representatives or assigns (Plaintiff) *Appellant*

— AND —

GRAND TRUNK RAILWAY COMPANY OF CANADA, CANADIAN NATIONAL RAILWAY COMPANY and THE ATTORNEY-GENERAL OF CANADA - - (Defendants) *Respondents*.

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**CONSOLIDATED APPEALS.**

**APPELLANT'S CASE.**

RECORD.

1. These are two Appeals by Special Leave.

The First Appeal is from the Judgment of the Court of Appeal of Ontario dated the 28th of June 1933 dismissing the Appellant's Appeal from the Judgment of Mr. Justice Kerwin dated the 24th of February 1933: by the latter Judgment Mr. Justice Kerwin

p. 64.

p. 48.

RECORD. dismissed the Appellant's action with costs on a preliminary point of law.

p. 88. The Second Appeal is from the Judgment of the Court of Appeal of Ontario dated the 1st of November 1934 allowing with costs the Respondents' Appeal from the Order of Mr. Justice Middleton dated the 2nd of June 1934 (which admitted the Appellant's Appeal to His Majesty in Council from the Judgment of the Court of Appeal dated the 28th of June 1933) and vacating and setting aside Mr. Justice Middleton's Order.

p. 79.

### FIRST APPEAL.

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1. The action herein was commenced by Writ in the Supreme Court of Ontario on the 26th of December, 1931, and the Statement of Claim in the action was delivered on the 4th of March, 1932.

p. 7. 2. The Appellant's claim against the Respondents is fully set out in the Statement of Claim and the substance of it is as follows :—

(1) The Grand Trunk Railway Company of Canada (hereinafter referred to as "the Grand Trunk") is a Company incorporated in the year 1852 by Special Act of the Legislature of the Province of Canada. Down to the year 1923 it operated an important system of railway communications in Canada and the United States of America. Under its Act of Incorporation and Amending Acts, its principal office was located in London, meetings of directors and stockholders were held there, a stock register upon which transfers of the stock in question in the action were registered was kept in London, and almost, if not quite all of the Capital Stock of the Grand Trunk was held by persons resident in Great Britain. (See paragraphs 3, 6 and 7).

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pp. 7 &amp; 8.

(2) At all times material to the action the issued capital stock of the Grand Trunk consisted of :—

4% Guaranteed Stock	...	...	...	£12,500,000	30
First Preference 5% Stock	...	...	...	3,420,000	
Second Preference 5% Stock	...	...	...	2,530,000	
Third Preference 4% Stock	...	...	...	7,168,055	
Common Stock	...	...	...	23,955,437	
				<u>£49,573,492</u>	
				<u>£49,573,492</u>	

In addition there was outstanding Debenture Stock of the Grand Trunk amounting to £31,926,125, the holders of which were entitled to voting privileges at general meetings of Stockholders (see paragraph 8). RECORD.  
p. 8.

10 (3) The Appellant was on the 18th of January, 1923, a registered holder of £100 First Preference Stock, £100 Second Preference Stock, £700 Third Preference Stock and £1,100 Common Stock of the Grand Trunk. There had also been assigned to him in November, 1931, £1,200 First Preference Stock, £1,100 Second Preference Stock, £1,700 Third Preference Stock and £900 Common Stock of the Grand Trunk. (See paragraphs 1, 25 and 28). pp. 7, 13, 14.

(4) The Appellant has been illegally dispossessed of his Stock by certain Acts of the Parliament of Canada, Agreements and Orders in Council, all of which the Appellant submits to be *ultra vires* in whole or in material parts.

20 By the Grand Trunk Railway Acquisition Act, 1919, 10 Geo. V. C.17, S.2, the Minister of Railways and Canals of Canada was authorised to enter into an agreement with the Grand Trunk for the acquisition by the Government of the entire Capital Stock of the Grand Trunk (except the 4% Guaranteed Stock), the agreement to provide for the determination by a Board of Arbitrators of the value of such stock, subject to the specified maximum, and to be submitted for the approval of all the Stockholders of the Grand Trunk, including holders of Debenture Stock and Guaranteed Stock. (See paragraph 11). Appendix p. 10.  
p. 9.

30 (5) The draft of an agreement to carry into effect the terms of the last mentioned Act was submitted to what purported to be a general meeting of Stockholders of the Grand Trunk held in London on the 19th of February, 1920. At this meeting the Debenture Holders and Guaranteed Stockholders (who were under the agreement to be assured of the full interest and capital of their holdings) were allowed to vote with the rest of the Stockholders and the agreement was approved by a majority of those present in person or by proxy. (See paragraph 13). p. 10.

40 (6) By a Statute of the Parliament of Canada assented to on the 11th of May, 1920 (10-11 Geo. V. c 13) the Parliament purported to confirm and ratify an Agreement dated 8th March, 1920, made between the Minister of Railways and Canals of Canada on behalf of the Government and the Grand Trunk. Under this Agreement the Government undertook to acquire all the outstanding Preference and Common Stock of the Grand p. 10.

RECORD.

Trunk at a value to be determined by a board of three arbitrators. New Guaranteed Stock was to be distributed among the holders of the Preference and Common Stock upon the vesting in the Government or its nominees of such Stock, and any Stock not so transferred might be declared to be the property of the Minister of Finance in trust for His Majesty and upon the making of such declaration the Stock not so transferred should immediately become the property of His Majesty and entries in the Stock Register be made accordingly. (See paragraphs 14 and 15).

p. 10.

(7) On the 7th of September, 1921, two of the arbitrators 10 (the Honourable Sir Walter Cassels and the Right Honourable Sir Thomas White) delivered a majority award finding that there was no value to the holders in the Preference and Common Stocks of the Grand Trunk. The third arbitrator (the Honourable William Howard Taft) dissented and delivered an opinion that the value of the Preference and Common Stocks was not less than 48,000,000 Dollars. (See paragraph 17).

p. 11.

(8) By an Order in Council approved by His Excellency the Governor-General on the 19th of January, 1923, reciting that the majority of the arbitrators had decided that the Preference and Common Stock of the Grand Trunk had no value and that the Government was now entitled to the whole of such Stock and to the immediate transfer thereof without the issue of any new Guaranteed Stock in exchange and that the holders were not entitled to anything, it was declared that the whole of the Preference and Common Stock of the Grand Trunk was the property of the Minister of Finance in trust for His Majesty and it was directed that entries should be made in the Stock Register and other books of the Grand Trunk accordingly. (See paragraph 19). 20 30

p. 12.

(9) In pursuance of this Order transfers to the Minister of Finance of the Stock then registered in the Appellant's name and of his assignors set out above (supra paragraph 2 (3)) were registered in the books of the Grand Trunk without his or their authority or consent. In the year 1931, duly executed transfers of the Stock so assigned to the Appellant as mentioned in sub-clause (3) above were presented by the Appellant both in London and Canada for registration in his name, but registration was refused. A demand by him that the register should be rectified by restoring therein his name as owner of the Stock registered in his name on the 19th of January, 1923, was also refused. (See paragraphs 20, 26, 27 and 28). 40

p. 12.

p. 12,  
13,  
14.

(10) By an Indenture dated 30th January, 1923, made between Canadian National Railway Company (hereinafter called "the Canadian National") and the Grand Trunk it was purported to be agreed that the Canadian National and the Grand Trunk should be and were amalgamated into one Company under the name of the Canadian National; that the Capital Stock of the amalgamated Company should be one share of the face value of upwards of 180,000,000 Dollars; that this share should be issued to the Minister of Finance in trust for His Majesty and that upon such issue the Minister's holding of the Capital Stock of the Grand Trunk should be surrendered by him to the Canadian National for cancellation. This Agreement was sanctioned by an Order in Council approved by His Excellency the Governor-General on the 30th of January, 1923. (See paragraphs 21 and 22).

pp. 12 &amp; 13.

The amalgamation was purported to be effected under the provisions of Sections 151, 152 and 153 of the Railway Act, R.S.C. cap 170 and Section 21 of the Canadian National Railway Act 9-10 George V. cap 13.

Appendix  
pp. 1, 6 & 7.

3. The Appellant therefore claims in this action on behalf of himself and the Stockholders he represents the following relief (paragraph 32 of the Statement of Claim):—

p. 14.

(a) A declaration that the transfers to the Minister of Finance of the Stock of the Grand Trunk registered on the 18th of January, 1923, in the names of the Appellant and the other Stockholders are invalid, and rectification of the Register accordingly.

(b), (c), (d), (e) and (f) Declarations that the Grand Trunk Railway Acquisition Act, 1919, the resolution of the general meeting of Stockholders held on the 19th of February, 1920, purporting to approve the Transfer Agreement, the Transfer Agreement dated 8th of March, 1920, the Act of 1920, (10-11 Geo. V. c. 13) confirming the Agreement, and the Order in Council dated 19th of January, 1923, are and each of them is *ultra vires* and void.

The Appellant also claimed the further relief on his own behalf:—

p. 15.

(g), (h) and (i) An Order directing the Grand Trunk and Canadian National to rectify the Register of the Grand Trunk by restoring therein his name as holder of the Stocks in respect of which he was registered on the 18th of January, 1923, or to appropriate or acquire and register in his name a similar

amount of such Stocks, or to pay him damages in the amount of 9,733·33 Dollars for failure to do so.

(j) Damages in the amount of 4,379·95 Dollars for the unlawful acts of the Grand Trunk and Canadian National in depriving your Petitioner of his rights and privileges of ownership of such Stocks without lawful authority.

(k) and (l) An Order directing the Grand Trunk and Canadian National to rectify the register of the Grand Trunk by entering therein the name of the Appellant as holder of the Preference and Common Stock assigned to him as mentioned above, or to pay him damages in the amount of 28,713·33 Dollars for failure to do so. <sup>10</sup>

(m) Damages in the amount of 12,920·95 Dollars for the unlawful acts of the Grand Trunk and Canadian National in depriving Your Petitioner of his rights and privileges of ownership of such Stocks without lawful authority.

p. 18. **4.** On the 23rd of March, 1932, the Respondents moved before Rose, C.J., for an Order that the action should be stayed or dismissed on the grounds (*inter alia*) that the claim of the Appellant was of a nature that could only be asserted by a Petition of Right. By Order of Rose, C.J., dated 19th of May, 1932, this application was dismissed on the ground that the question as to the right to maintain the action ought to be left to be decided at the trial. An Application for leave to appeal against this Order was dismissed by Order of Magee, J.A., dated 25th June, 1932. <sup>20</sup>

p. 22.

p. 23. **5.** On the 26th of September, 1932, the Defence of the Respondents was delivered. The Defence raised (among other grounds of defence) several points of law which so far as material to this Appeal were as follows :—

p. 28. “23. The Plaintiff’s claim impugns the title acquired by the Crown to “the Preference and Ordinary Stocks of the Grand Trunk and cannot be “maintained by action but only by petition of right. <sup>30</sup>

“24. The Exchequer Court of Canada has exclusive original jurisdiction “to determine the matters in question in this action.

“25. An Action by the Plaintiff either personally or in his representative capacity for the declarations referred to in paragraph 5 of the Statement of Claim ‘(the declarations which claimed that the Acts and Order in “ ‘Council in question were *ultra vires*)’ will not lie even though the Attorney-General of Canada be a party defendant.”

6. On the 5th of October, 1932, a Reply to the Defence was delivered on behalf of the Appellant in which the Appellant pleaded in paragraphs 11 and 12 :— p. 29.

“11. The Plaintiff denies the allegation in paragraph 23 of the Statement of Defence and says that the stock, ownership whereof is in question in this action is now held by the Canadian National and not by the Crown. p. 33.

“12. The Plaintiff denies that the Exchequer Court has exclusive original jurisdiction to determine the matters in question in this action and asserts the jurisdiction of this Court to hear and determine the same and the Plaintiff says that unless this action is admitted to be tried in His Majesty’s Courts of civil jurisdiction in the Province the Plaintiff and those whom he represents in this action will thereby be deprived of any right to have the validity of legislation of the Parliament of Canada judicially determined and of any remedy at law for a grievous wrong which the Plaintiff and those whom he represents in this action have suffered by reason of the illegal acts of the Defendants the Grand Trunk and the Canadian National.” 10

And on the 14th of January, 1933, by an Order of Rose, C.J., the Respondents were granted leave to set down for hearing before the trial the points of law raised by paragraphs 23, 24 and 25 of the Defence. p. 36. 20

7. On the 2nd of February, 1933, these points of law were argued in the High Court Division of the Supreme Court before Kerwin, J. By his Order dated the 24th of February, 1933, Kerwin, J., having directed that the Motion before him for determination of these points of law should be turned into a motion for judgment, declared :— p. 48.

(2) That the Appellant’s claim impugned the title acquired by the Crown to the Preference and Ordinary Stocks of the Grand Trunk and cannot be maintained by action but only by petition of right as alleged in paragraph 23 of the Defence, and ordered and adjudged the same accordingly; p. 49. 30

(3) That the Exchequer Court of Canada has exclusive original jurisdiction to determine the matters in question in the action as alleged in paragraph 24 of the Defence, and ordered and adjudged the same accordingly;

(4) That the Court did not see fit by reason of the previous declarations to make any declaration with respect to paragraph 25 of the Defence;

(5) That the action should be and was dismissed with costs. 40

p. 50, l. 11.

8. In his Reasons for Judgment the learned Judge said that he was satisfied that the Plaintiff must obtain a declaration that the relevant Acts passed by the Parliament of Canada were *ultra vires* and that the Crown never obtained title to the shares or stock of the Grand Trunk held by the Plaintiff and those whom he represents. That being so he thought that the case was governed by the decision of the Judicial Committee of His Majesty's Privy Council in *Attorney-General for Ontario v. McLean Gold Mines Limited* 1927 A.C. 185, and that a Petition of Right was necessary, the Exchequer Court of Canada being the only Court in which such a 10 Petition could be heard.

p. 64.

9. On the 30th and 31st of May and the 1st of June, 1933, an appeal from the Order of Kerwin, J., was heard by the Court of Appeal of the Supreme Court of Ontario. By the Order of the Court of Appeal (Mulock, C.J.O., Latchford, C.J.A., Riddell, Middleton and Masten, J.J.A.) dated the 28th of June, 1933, the Appellant's appeal was dismissed.

10. The learned members of the Court all took the same view that the real issue in the action was as to the Crown's title to the forfeited Stock and that the principle established in the *McLean Gold Mines* case *supra* therefore made it impossible for the Plaintiff 20 to proceed except by Petition of Right.

As was said by Middleton, J.A., in his Reasons for Judgment :—

p. 72, l. 10.

“It is essential to the plaintiff's status that he should establish his interest “and the interest of those whom he represents in the shares of the Railway “Company. Until that has been done he cannot succeed. The real matter “in issue is the Crown's right and title to the stock in the Railway Company “and what is being alleged is the invalidity of the proceedings upon which “the Crown's title depends. The one essential thing that is in controversy “is the title of the Crown. That being so, on the authority of that decision 30 “(the *McLean Gold Mines* case) this action will not lie.”

## SECOND APPEAL.

11. The Appellant was thereupon desirous of appealing to His Majesty in Council from the Order of the Court of Appeal dated the 28th June 1933, as, he respectfully submits, he is entitled to do as of right by virtue of the provisions of the Privy Council Appeals Act of Ontario, R.S.O. 1927, c.86.

12. The material sections of this Act are as follows :—

“Section 1. Where the matter in controversy in any case exceeds the “sum or value of 4,000 Dollars, as well as in any case where the matter in 40



“question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature, affecting future rights of what value or amount soever the same may be, an appeal shall lie to His Majesty in His Privy Council and except as aforesaid no appeal shall lie to His Majesty in His Privy Council.

“Section 2. No such appeal shall be allowed until the Appellant has given security in \$2,000 to the satisfaction of the Court appealed from, that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed.”

10 “Section 10. A Judge of the Supreme Court shall have authority to approve of and allow the security to be given by a party who intends to appeal to His Majesty in His Privy Council, whether the application for such allowance be made during the sittings of the Court, or at any other time.”

13. The Appellant accordingly applied on the 30th May, 1934, to Middleton, J.A. in Chambers to have his appeal to Your Majesty in Council admitted and his security for the costs of the appeal in the sum of 2,000 Dollars approved.

20 14. By Order of Middleton J.A. dated the 2nd of June, 1934, made at Chambers in the presence of the Respondents it was ordered that the appeal should be and was thereby admitted and that the sum of 2,000 Dollars paid into Court by the Appellant be and the same was approved as good and sufficient security for the Appellant's prosecution of his appeal. p. 79.

30 15. The learned Judge in his Reasons for Judgment stated that the action being conceded to be, *inter alia*, for a money demand far exceeding 4,000 Dollars and the action having been dismissed on the argument of the question of law, an appeal in his opinion lay as of right, because the action had been as effectually disposed of by the judgment which had been pronounced as if it had been tried and all the issues both of law and fact had been disposed of. In effect, there had been a successful demurrer to the Appellant's claim. p. 80, l. 36.

16. By Order of Masten J.A. at Chambers dated the 29th of June 1934, the Respondents were granted leave to appeal to the Court of Appeal for Ontario from the Order of Middleton J.A. dated the 2nd of June, 1934. p. 81.

40 17. In his Reasons for Judgment Masten J.A. said that on the hearing of the preliminary points of law the only question considered and adjudicated related to the jurisdiction of the Supreme Court of Ontario to entertain this action, in other words “the very right of the Plaintiff himself to maintain this action.” The only point is, p. 85, l. 17. l. 40.

RECORD.

p. 86, l. 17. what is the question to be considered by the Privy Council on the proposed appeal. That question would necessarily be the same as that which was considered before Kerwin J. and in the Court of Appeal, viz: the jurisdiction of the Supreme Court. In his view the question of jurisdiction involved no "controversy as to a pecuniary amount or of a pecuniary nature."

p. 87. 18. By a further Order of Masten J.A. at Chambers dated the 19th of July, 1934, all or any proceedings which might be taken for the prosecution of the Appellant's appeal pursuant to the Order of Middleton J.A. dated the 2nd of June, 1934, were stayed pending the final disposition of the Respondents' appeal from that Order. 10

p. 88. 19. The Respondents' appeal was heard by the Court of Appeal on the 24th and 25th days of September 1934. By the Order of the Court of Appeal (Mulock C.J.O. Fisher and Macdonnell J.J.A.—Riddell and Davis J.J.A. dissenting) dated the 1st of November 1934, it was ordered that the appeal should be and the same was thereby allowed and that the Order of Middleton J.A. dated the 2nd of June 1934, should be and the same was thereby vacated and set aside.

p. 91, l. 7. 20. Mulock C.J.O. said that at this stage the matter in controversy was whether the Supreme Court had jurisdiction to entertain the Plaintiff's claim, a question that for the time being superseded any matter in controversy respecting the merits of the action. The question of jurisdiction did not involve any pecuniary amount, and therefore an appeal as of right in respect thereof was not within the provisions of Section 1 of the Privy Council Appeals Act. He agreed with the view of Macdonnell J.A. that the Order of Middleton J.A. was appealable.

p. 92, l. 20. 21. Riddell J.A. was of the opinion that, *quacunque via*, the right of appeal from the Order of Middleton J.A. existed. He himself had no manner of doubt that what the Act meant was an appeal should lie to His Majesty in Council whenever the amount in controversy in the Supreme Court exceeded the sum or value of 4,000 Dollars. It was beyond question that such an amount was here in question, although no reference to it need be made before the Judicial Committee, and he thought that the appeal ought to be dismissed. 30

p. 93, l. 20. 22. Davis J.A. thought that the objection was well taken that no right of appeal lay from the Order of Middleton J.A. to the Court of Appeal. Section 10 of the Privy Council Appeals Act had provided a substitutionary measure for the convenience of litigants in 40

perfecting their appeals and created a co-ordinate jurisdiction. No appeal from the single judge to the Court of Appeal was provided for. In his view resort could not be had to the provisions of the Judicature Act, Section 25 (R.S.O. 1927, c.88) and the Rules of Practice made under that Act or to the Judges' Orders Enforcement Act (R.S.O. 1927 c.111) because here a special statutory jurisdiction had been created that did not come into play until after the case had been finally disposed of in the Courts of Ontario. In his view no right of appeal existed and the appeal ought to be dismissed.

- 10      **23.** Macdonnell J.A. (with whose judgment Fisher J.A. substantially agreed) thought that the proper meaning to be given to the word "case" in Section 1 of the Privy Council Appeals Act was "instance." He thought that the "matter in controversy" must be the one on the appeal and not in the original litigation, and referred to the case of *Macfarlane v. Leclaire*, 15 Moo. P.C. 181 in support of his view. The Plaintiff was, he said, still entitled to bring his action in the proper Court, whereas, if he were to be allowed to appeal, a decision in his favour would not grant him the damages he was claiming or any other amount: it would merely be "an incidental  
20 "point of practice and procedure." In his opinion therefore the case was not one in which the Appellant had an appeal as of right to His Majesty in Council.

Nor was he able to agree with the contention that the Order of Middleton J.A. admitting the appeal was not appealable. In his opinion the learned Judge, acting under Section 10 of the Privy Council Appeals Act, was not acting as a *persona designata*, but in his judicial capacity. That being so, an appeal lay to the Court of Appeal by virtue of Sections 24 and 25 (1) of the Judicature Act (R.S.O., 1927 c.88) which run as follows:—

- 30      "24. There shall be no appeal to a Divisional Court from any interlocutory order whether made in Court or Chambers save by leave as provided "in the Rules.

"25. (1) Subject to Sections 23 and 24 and to the Rules regulating the "terms and conditions on which appeals may be brought, an appeal shall lie "to a Divisional Court from . . . .

"(b) Any judgment, order or decision of a Judge in Chambers in regard "to a matter of practice or procedure which affects the ultimate rights of any "party, and, subject to the Rules, from any other Judgment order or decision "of a Judge in Chambers in regard to a matter of practice or procedure."

- 40      If the Order appealed from was interlocutory, the Defendants had complied with Section 24, since they had obtained leave in

RECORD.

Chambers. If it was not to be treated as interlocutory but as finally disposing of rights, then they came within Section 25.

In his view there was no question of co-ordinate jurisdictions under Sections 2 and 10 of the Privy Council Appeals Act. The jurisdiction under Section 10 was given to a Judge of the Supreme Court, and this was not affected by the circumstance that the Judge who in fact exercised it, Middleton J.A. was a Judge of the Court of Appeal. For these reasons he was of opinion that an appeal should lie from the decision of the Judge who made the Order to a Divisional Court, as in the case of other decisions of a single judge. 10

24. The Appellant respectfully submits that the decision of the Court of Appeal dated the 1st of November 1934, was wrong and that he is entitled as of right to appeal to His Majesty in Council. The effect of the Order of Kerwin J. dated the 24th of February 1933, which was affirmed by the Order of the Court of Appeal dated the 28th of June 1933, was to dismiss the Appellant's action, in which he is claiming (*inter alia*) damages of upwards of 55,000 Dollars, on a point of law, and the Appellant contends that the making of an Order having such an effect is clearly a case in which the matter in controversy exceeds the sum or value of 4,000 Dollars within the 20 meaning of Section 1 of the Privy Council Appeals Act.

25. The Appellant also respectfully submits that his appeal was properly admitted and his security approved by the Order of Middleton J.A. dated the 2nd of June 1934, the learned Judge having co-ordinate jurisdiction with the Court of Appeal for that purpose under Section 10 of the Privy Council Appeals Act, and that the Orders of Masten J.A. dated the 29th of June and the 19th of July 1934, and the Order of the Court of Appeal dated the 1st November 1934, were made without jurisdiction and were void.

p. 64. As to the First Appeal the Appellant submits that the Judgment of the Court of Appeal dated the 28th of June 1933, should be reversed with costs and that the order of Mr. Justice Kerwin dated the 24th of February 1933, dismissing the Appellant's action should be reversed and set aside with costs and that the Appellant should have the costs of the motion upon which Rose C.J. granted to the Respondents leave to set down for hearing the points of law raised by paragraphs 23, 24 and 25 of the defence. 30

p. 48.

p. 37, l. 3.

p. 88. As to the second appeal the Appellant submits that the judgment of the Court of Appeal dated the 1st of November 1934 vacating and setting aside the order of Mr. Justice Middleton dated the 2nd 40

of June 1934 admitting the Appellant's appeal to His Majesty in Council should be reversed and set aside with costs and that Mr. Justice Middleton's Order of the 2nd of June 1934, should be restored and that the Appellant should have the costs of the motion made before Mr. Justice Middleton of the 30th of May 1934, and of the motions made before Mr. Justice Masten on the 13th of June 1934, and of the 19th of July 1934 for the following amongst other

RECORD.

p. 61,

p. 62.

p. 68.

### REASONS.

As to the first appeal :--

- 10 (1) Because the decision of *Attorney General of Ontario v. McLean Gold Mines Limited* 1927 A.C. p.85 does not apply to this case in which the Appellant is seeking rectification of the Register of and also the enforcement of contractual rights of stockholders against the Respondents the Grand Trunk Railway Company of Canada and does not claim to sue either of the Respondent Companies as persons claiming property by virtue of a Crown grant.
- 20 (2) Because the relationship of the Appellant to the Respondent Grand Trunk Railway Company of Canada as stockholder gives the Appellant a right of action for the determination of his legal status and his rights at law as a stockholder.
- (3) Because the Appellant could not obtain the remedies he is seeking against the Respondent Companies by Petition of Right.
- (4) Because no claim is made by the Appellant in the action for relief against the Crown nor is any order sought against the Crown or the Crown's servants.
- 30 (5) Because the Appellant is in any event entitled to maintain his action against the Respondent Attorney General of Canada to obtain declarations as to the validity of the Statutes and Orders in Council mentioned in the Statement of Claim the obtaining of which declarations was the sole purpose of joining the Attorney General of Canada as a party to the action.
- 40 (6) Because the decision that the Appellant's claim can only be maintained by Petition of Right is erroneous in law and the Supreme Court of Ontario has jurisdiction to try the claim by action.

RECORD.

- (7) Because the decisions of Mr. Justice Kerwin and the Court of Appeal are wrong.

As to the Second Appeal :—

- (1) Because the “matter in controversy” in this case exceeds the sum or value of \$4,000 and accordingly an appeal lay under the Privy Council Appeals Act of Ontario R.S.O. 1927 c.86 and the Order admitting the appeal was rightly made by the Order of Mr. Justice Middleton of the 2nd of June 1934. 10
- (2) Because the Orders of Mr. Justice Masten dated the 29th of June and the 19th of July 1934, and the Order of the Court of Appeal dated the 1st of November 1934, were made without jurisdiction and were void.

WILFRID GREENE.

V. EVAN GRAY.

HORACE DOUGLAS.

**In the Privy Council.**

**ON APPEAL  
FROM THE COURT OF APPEAL OF ONTARIO.**

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BETWEEN—

**GEORGE PARDEW LOVIBOND** on behalf of himself and on behalf of himself and all others the registered holders on January 18th, 1923 of First, Second and Third Preference Stocks and of Common Stock of the Grand Trunk Railway Company of Canada, their personal representatives or assigns - **(Plaintiff)** *Appellant*

— AND —

**GRAND TRUNK RAILWAY COMPANY OF CANADA, CANADIAN NATIONAL RAILWAY COMPANY and THE ATTORNEY-GENERAL OF CANADA** - **(Defendants)** *Respondents.*

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**Consolidated Appeals.**

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**APPELLANT'S CASE.**

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