

~~ACT 1952~~

19, 1953

In the Privy Council.

No. 21 of 1952.

ON APPEAL FROM THE SUPREME COURT  
OF CANADA

INSTITUTION OF LONDON  
W.C.1  
10 FEB 1954  
INSTITUTE OF  
LEGAL STUDIES

BETWEEN

THE ATTORNEY GENERAL FOR SASKATCHEWAN APPELLANT

33556

AND

CANADIAN PACIFIC RAILWAY COMPANY ... .. RESPONDENT

AND

THE ATTORNEY GENERAL FOR MANITOBA,  
THE ATTORNEY GENERAL FOR ALBERTA, and  
THE ATTORNEY GENERAL OF CANADA ... .. INTERVENERS.

CASE OF THE ATTORNEY GENERAL  
FOR MANITOBA

RECORD

1.—This is an Appeal by special leave from part of the judgment of the Supreme Court of Canada dated the 20th November, 1950, allowing in part an appeal by the Respondents from the judgment of the Court of Appeal for Saskatchewan dated the 29th January, 1949, answering in favour of the Appellant certain questions referred to the Court of Appeal for Saskatchewan by His Honour the Lieutenant Governor of Saskatchewan pursuant to the Constitutional Questions Act ch. 72 of the Revised Statute for Saskatchewan 1940. pp. 390-392 pp. 345-346 p. 7 pp. 1-6

2.—By Order in Council dated the 18th July, 1952, this Intervener was given leave to Intervene in the Appeal to lodge a printed case to be heard by Counsel and, by two Orders in Council dated the 25th November, 1952, similar leave was granted to the Attorney General of Canada and to the Attorney General for Alberta. The position adopted by this Intervener pp. 390-392 pp. 393 & 394

RECORD — the Attorney General for Manitoba is in substance favourable to the case of the Appellant.

3.—The original Province of Manitoba was created or established on the 15th July, 1870, that is prior to the contract (hereinafter referred to as “the Contract”) between the Dominion and the Defendant Company scheduled to the Statute ch. 1 of 44 Victoria the construction whereof is the subject matter of these proceedings. See the following Imperial and Dominion legislation.

British North America Act 1867 Section 146.

Ruperts Land Act 1868 (31 and 32 Victoria ch. 105).

The Manitoba Act 1870 (Statutes of Canada ch. 3 of 33 10 Victoria).

Order of Her Majesty in Council admitting Ruperts Land and the North Western Territory into the Union dated the 23rd June 1870.

British North America Act 1871 (34 and 35 Victoria ch. 38 Section 5).

4.—There is no question but that the original Province of Manitoba so established was not a “Province hereafter to be established” within the meaning of Clause 16 of the contract. But in 1881 a considerable new tract of territory was added to the Province and this included land over 20 which the Respondent Company enjoyed rights and over which the Canadian Pacific Railway as defined in the contract and in the Statute giving effect to it now extends. This territory is hereinafter referred to as “the additional territory.” See inter alia the following concurrent legislation of the Dominion and the Province of Manitoba.

Statutes of Manitoba 44 Victoria ch. 1.

Statutes of Canada 44 Victoria ch. 14.

Statutes of Manitoba 44 Victoria ch. 6.

Proclamations by Governor General of Canada dated the 13th June 1881 and the Lieutenant Governor of Manitoba 30 in Council dated the 28th June 1881.

5.—The Act by which the additional territory was added to the Province of Manitoba contained a provision in the following terms

“The said increased limit and the territory thereby added  
“to the Province of Manitoba shall be subject to all such  
“provisions as may have been or shall hereafter be enacted  
“respecting the Canadian Pacific Railway and the lands to be  
“granted in aid thereof.”

See ch. 14 of 44 Victoria Statutes of Canada Section 2 (b) replaced by ch. 47 of the Revised Statutes of Canada 1887 which contains a similar provision 40 in Section 2.

6.—Subsequent Revisions of the Revised Statutes of Canada omitted the said Section 2 and the provisions limiting the power of the Province and further extension to the limits of the Province which contained no similar provisions were effected by ch. 32 of the Statutes of Canada 1912 which redefined the limits of the Province by fixing boundaries which include the additional territory and by the Manitoba Extension Act, 1930.

7.—Questions not directly material to these proceedings have arisen between the Respondent Company and the present Intervener (A) as to whether the section purporting to impose a fetter upon the power of the Province to legislate in respect of the additional territory was ever effective or *intra vires* having regard to the admitted fact that the original province of Manitoba had already been established and possessed a legislature whose powers were defined under the British North America Act, 1867, and other the legislation establishing the original province, and (B) as to whether the omission of the provision originally contained in Clause 2 (b) of ch. 14 of 44 Victoria Statutes of Canada removed any fetter there may once have been. But in addition to these questions, questions have also arisen between the Respondent Company and the present Intervener which directly involve points of law to be discussed as between the Appellant and the Respondent Company in the present Appeal.

8.—In the year 1948 an amendment was passed to the Municipal Act of the Province of Manitoba (now contained in ch. 70 of the Revised Statutes of Manitoba) which amended Section 1010 of the Municipal Act so as to enable Municipal Corporations and Local Government Districts to assess railway companies including the Respondent Company for business taxes ; and at various dates from and after the enactment of this amendment various Municipalities and Local Government Districts within the Province and within the additional territory of the Province proceeded under the amended section to assess the Respondent Company in respect of business tax calculated amongst other things on the basis of rental value of the property where the business of the Respondent Company is carried on within the additional territory. Except that the basis of the assessment under Manitoba Law is the rental value of the property whereas under the Law of Saskatchewan it is based on the superficial area of the property the general effect of the business taxes is similar between the two Provinces.

9.—The result of the various assessments to business tax of the Respondent Company calculated on the basis of the rental value of the property at which the business of the Respondent Company is carried on within the additional territory has been to raise as between the Respondent Company and the present Intervener the questions whether (i) business taxes as authorised by the Municipal Act of the Province of Manitoba are or are not on the true construction of Clause 16 of the contract within the exemption granted to the Respondent Company and (ii) as to whether

RECORD — if (contrary to the contention of the present Intervener) the fetter purported to be imposed upon the right of the Province to legislate in respect of the additional territory is otherwise operative it was competent for the legislature of the Dominion to purport to limit the power of the Province to legislate as it purported to do by Section 2 (b) of the Statutes of Canada 44 Victoria ch. 14 hereinbefore referred to. The first of these two questions is in substance the same as the first of the two matters upon which the Appellant Company was given special leave to appeal. The second raises substantially the same issue as that raised by Section 24 of the Saskatchewan Act, 1905.

pp. 390-392

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10.—There is now pending before the Court of Appeal of Manitoba a Reference under ch. 37 of the Revised Statutes of Manitoba 1940 being an Act for expediting the decision of Constitutional and other Provincial Questions of six questions directed by the Lieutenant Governor in Council in the following terms :

1. Does said Clause 16 exempt and free from taxation under the said The Municipal Act of Manitoba the main line of the Canadian Pacific Railway Company in the said territory added as aforesaid to the province of Manitoba in 1881 ?
2. Does said Clause 16 exempt and free from taxation under the said The Municipal Act of Manitoba the branch lines of the Canadian Pacific Railway Company constructed pursuant to the said Clause 14 in the said territory added as aforesaid to the province of Manitoba in 1881 ? 20
3. Does said Clause 16 exempt and free from taxation under the said The Municipal Act of Manitoba the following property situated in the said Territory added as aforesaid to the province of Manitoba in 1881—all stations and station grounds, work shops, building yards and other property and appurtenances required and used for the construction and working of the said main line of the Canadian Pacific Railway Company in the said territory added as aforesaid to the province of Manitoba in 1881 ? 30
4. Does said Clause 16 exempt and free from taxation under the said The Municipal Act of Manitoba the following property situated in the said territory added as aforesaid to the province of Manitoba in 1881—all stations and station grounds, work shops, buildings yards and other property and appurtenances required and used for the construction and working of the said branch lines of the Canadian Pacific Railway Company constructed pursuant to said Clause 14 in the said territory added as aforesaid to the province of Manitoba in 1881 ? 40

5. Does said Clause 16 exempt and free from taxation the Canadian Pacific Railway Company under the said The Municipal Act of Manitoba in respect of the business carried on as a railway on the main line of the Canadian Pacific Railway Company in the said territory added as aforesaid to the province of Manitoba in 1881 ?

RECORD  
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10 6. Does said Clause 16 exempt and free from taxation the Canadian Pacific Railway Company under the said The Municipal Act of Manitoba in respect of the business carried on as a railway on the branch lines of the Canadian Pacific Railway Company constructed pursuant to said Clause 14 in the said territory added as aforesaid to the province of Manitoba in 1881 ?

11.—Whilst it is conceded that in respect of the two matters specifically mentioned in paragraph 7 hereof there are additional arguments to be put forward on behalf of the province of Manitoba in this Reference a determination of the present Appeal in favour of the Appellant on either of the two points on which special leave to appeal was granted, would, in fact, it is submitted be conclusive or at worst extremely cogent in favour  
20 of the present Intervener for the purposes of the Reference. The Intervener, therefore, desires to support the contentions put forward on the part of the Appellant herein and submits, therefore, that the answers to the questions in the present Appeal should be as contended in paragraph 44 of the Case for the Appellants for the reasons stated at length in that Case.

HAILSHAM.

In the Privy Council.

No. 21 of 1952.

ON APPEAL FROM THE SUPREME COURT OF  
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SASKATCHEWAN ... APPELLANT  
AND  
CANADIAN PACIFIC RAILWAY  
COMPANY ... RESPONDENT  
AND  
THE ATTORNEY GENERAL FOR  
MANITOBA,  
THE ATTORNEY GENERAL FOR  
ALBERTA, and  
THE ATTORNEY GENERAL OF  
CANADA ... INTERVENERS.

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CASE OF THE ATTORNEY GENERAL  
FOR MANITOBA

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