

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Grand Trunk Railway Company of Canada v. W. N. Robertson, from the Supreme Court of Canada; delivered the 17th February, 1909.

Present :

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD ATKINSON.
LORD COLLINS.
LORD GORELL.

[Delivered by the Lord Chancellor.]

The question on this Appeal really is, whether or not Section 3 of the Act of the late Province of Canada of 1852 (16 Victoria cap. 37) is impliedly repealed by the Dominion Railway Act of 1906 (6 Edw. VII. cap. 42), which is to prevail when the Provincial Act is inconsistent with it. The argument resolves itself into this,—Is that section of the Provincial Act inconsistent with the general Act of 1906? Their Lordships cannot think that it is. The requirement to run a third-class train may be incompatible with the Canadian practice, but it is an unrepealed part of the section of the Provincial Act. It may be inconsistent with business or other conveniences; but no argument has been urged to show that it is inconsistent with the later Act, and, if it is not inconsistent, why is not the portion which relates

to tolls and third-class passengers also to stand? The Company is to prepare a tariff of tolls with reference to the statutory duties of the Company, one of which is to be found in the 3rd section of the Act of 1852. The result may be unfortunate, and the omission to repeal the 3rd section may perhaps have been an oversight. Their Lordships cannot pronounce an opinion whether a section is continued by oversight or design; still less can they determine a case upon conjectures.

Their Lordships will therefore humbly advise His Majesty to dismiss the Appeal. The Appellants will pay the Respondent's costs as between Solicitor and Client in accordance with the undertaking given when special leave to appeal was granted.

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