Privy Council Appeal No 79 *of* 1917.

Canadian Northern Pacific Railway Company - *Appellants,*

v.

The Corporation of the City of New Westminster

Respondents.

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD AUGUST, 1917.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
SIR ARTHUR CHANNELL.

[*Delivered by* SIR ARTHUR CHANNELL.]

This appeal raises the question whether certain lands belonging to the appellants (the Canadian Northern Pacific Railway Company) and within the City of New Westminster, in the Province of British Columbia, are exempt from taxation by the respondents, the Corporation of that city. The Court of Appeal of British Columbia has held that whatever may be the case after the appellants have deposited plans pursuant to Section 17 of the British Columbia Railway Act, 1911 (cap. 194), and have got such plans approved by the Minister, at all events the lands in question are not exempt until such plans have been so deposited and have been so approved. That has not been done yet. From that decision the present appeal is brought.

The exemption which the appellants claim and which they allege extends to the lands in question, arises in a rather peculiar manner. Another company, the Canadian Northern Railway Company, governed by Dominion Acts of Parliament, was minded to get, in connection with their own line of railway, a line through the Province of British Columbia, but instead of getting direct authority to extend their own line, they procured the incorporation of the appellant company by an Act of the Legislature of British Columbia (10 Ed. VII, 1910, cap. 4). Prior to that incorporation an agreement

(dated 17th January, 1910) had been made between His Majesty the King (acting by the Minister of Mines for British Columbia) and the Canadian Northern Railway Company containing many provisions which could not have been made effective except by Act of Parliament, and that agreement had been ratified by an Act of the Legislature of British Columbia (1910, cap. 3), which said that the provisions of the agreement were to be "taken as if they had been expressly enacted hereby and formed an integral part of this Act." The agreement is set out in a schedule to this Act, and clause 13, sub-section (*e*) of the agreement reads thus: "The Pacific Company and its capital stock, franchises, 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 first day of July 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 of the province." On the argument some question was raised by the respondents' counsel as to the operation of this provision, and as to its binding effect, but the Board are clearly of opinion that it operates as if it were a clause in an Act of the Provincial Legislature, and is binding on the City of Westminster with the force of such an Act.

The sole question in the appeal therefore is as to the true construction of this clause 13 (*e*), but there are both in the agreement and in other Acts of the Legislature, provisions which have to be considered in arriving at the true construction. The lands in question have undoubtedly been purchased by the Pacific Company with the intention that they shall be ultimately part of the railway and be ultimately used in connection with the operation of the railway, and the question for consideration is whether they can be said now to come within the words as being now part of the railway used, as described in the clause. The precise position of the railway track cannot be known until the plans required by the 17th section already referred to have been deposited and approved. The Minister has the power of directing the line to be made in a position in which the lands in question would not form part of the track, but it is contended, and the Board think rightly contended, that the Company might still use the lands in some other way connected with the railway. It is contended also that the word "railway" in the clause in question does not merely refer to the track, but is to be read with the definition of railway in the 2nd section of the British Columbia Railway Act, 1911 (cap. 194), which is a mere re-enactment of a similar definition in Acts which were in force in 1910.

That definition includes in the term railway "all branches, sidings, stations, depôts, wharves, rolling-stock, equipment, works, property, real or personal, and works connected therewith, and also every railway bridge, tunnel, or other structure connected with the railway and undertaking of the Company."

The things so brought by definition into the term "railway" are all physical things, as the railway itself is. The definition does not bring into "railway" the whole "undertaking" of the Company. Manifestly, it cannot be intended by the words of clause (*e*) to exempt all the property of whatever kind of the Pacific Railway Company, because, if so, almost all the words of the clause would be surplusage. Counsel for the appellants, in his very able argument, pointed out that the Pacific Railway Company was not merely a railway company, but had power to construct and operate telegraph lines (section 4), telephone lines (section 5), steamships (section 7), wharves, docks, and elevators (section 8), and coal mines (section 9), and also to deal in a special way with town sites, and he suggested that "railway" in clause (*e*) should be held to include the whole undertaking of the Company so far as it was a mere railway company, and that the clause (*e*) was framed as it is to prevent the exemption extending to lands and things connected with operations of the Company otherwise than as a mere railway company. This, however, is giving to the word railway, a meaning which, in the opinion of the Board, it cannot bear. It is used in the clause as denoting a physical thing, of which something else can form part and which can be "operated." The mere fact, therefore, that these lands are the property of the Company, and that the intention with which they were purchased may earmark them as owned by the Company in their capacity of a railway company proper is not of itself enough, in the opinion of the Board, to bring them within the exemption. Clause (*d*) was called in aid. That says that the portions of lands acquired under that clause for the Government which should be required for the purposes of the Pacific Company "will, as the property of the Company, come within the railway exemption clause herein (referring to clause (*e*))." This merely says that the exemption of these lands will be dealt with under clause (*e*), and certainly throws no light on the question when the exemption of them is to begin.

It is essential to the argument of the appellants that the Board should read the words "which form part of and are used" as including lands "acquired for the purpose of forming part of and being used," but the words of the clause are in the present tense, "form part and *are* used," and the 9th clause of the agreement quoted in the Judgment of McPhillips, J. A. (p. 49 of the record), gives the Government security over the property of the Company "acquired for the purpose of and used in connection with" the lines and ferry, thus showing that the framers of the agreement, and the Legislature which adopted the words of it, had in their minds the distinction between lands acquired for the purpose of being hereafter used and lands actually now used.

To read the clause in the way desired would be to add to it words which are not to be found in it, and it appears to the Board that there is nothing in the context or in the object of

enactment, or in the incorporated enactments, which make it necessary or justifiable to read in the necessary words.

The Company are no doubt justified in buying land which they expect they will want for the railway before getting their compulsory powers, and they are probably in most cases acting providently in doing so, as they may have to pay more for the lands when they come to exercise their powers, but there seems no reason for giving the exemption to such lands as soon as they become the property of the Company. They may remain for some time in use for the purpose for which they have previously been used. In this case the lands are said to include some mills and such like buildings still being used as before. Why should they be exempt from taxation to cheapen the ultimate cost to the Company of the lands required for their undertaking, when the public are neither getting the actual railway, nor having it already in process of construction for their ultimate benefit? The benefit expected to the public from the railway is of course the consideration for the remission of taxation. From the time the lands are definitely appropriated as part of the railway and taken from other uses there appears reason for the exemption, and at any rate it is then clearly given. As to the period when lands have been purchased for the purpose of being ultimately used in some way or other for the railway, including the case when the mode of user has been decided on by the Company, subject only to the Minister's power to direct alteration of the proposed plans, but when nothing further has been done there seem no express words to give the exemption, and no such necessity as would justify the Board in putting on the words which are used the meaning necessary to give it.

This conclusion is supported by considering the difficulty in which the taxing authority would be placed by an exemption depending not upon facts, of which they would necessarily have notice, but upon the intention of the Company, not publicly disclosed, as to the use to be made of lands not yet entered in the Land Register as owned by them. Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

CANADIAN NORTHERN PACIFIC RAILWAY COMPANY

v.

THE CORPORATION OF THE CITY OF NEW WESTMINSTER.

DELIVERED BY

SIR ARTHUR CHANNELL.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1917