

The Trinidad Electric Company, Limited - - - - *Appellants*

*v.*

The Attorney-General of Trinidad and Tobago and others - - *Respondents*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1932.

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*Present at the Hearing :*

LORD TOMLIN.

LORD THANKERTON.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD TOMLIN.]

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The action in the Supreme Court of Trinidad and Tobago out of which this appeal arises was begun by the appellants on the 5th June, 1930, against the respondents, the Attorney-General of Trinidad and Tobago and the Mayor and Corporation of the City of Port-of-Spain, seeking declarations for the purpose in effect of establishing that the appellants' right under certain ordinances of the Governor in Council to maintain and work tramways in the city and to carry on therein an undertaking for the supply of electrical energy was perpetual and did not determine at the expiration of a period of 30 years from the 19th March, 1901.

The action was tried before Belcher C.J., who on the 9th January, 1931, gave judgment against the appellants. In the result, therefore, the appellants failed to obtain the relief which they sought, though a declaration was taken by consent in respect of a minor matter not material to the questions now under consideration.

The history of the appellants' undertaking will be found in the narrative which next follows.

Prior to 1901 there existed in the City of Port-of-Spain two tramway undertakings and one undertaking for the supply of electrical energy.

The two tramway undertakings will be called hereafter the Payne undertaking and the Toppin undertaking.

The undertaking for the supply of electrical energy will be called hereafter the Warner undertaking.

The Payne undertaking was first constituted in 1882 by Ordinance 8 of that year. It consisted of an original tramway system and three branch tramways subsequently authorised, of which the last (1896) was never constructed. The material facts as to this undertaking prior to 1901 are as follows :—

(1) By Ordinance 8 of 1882 (which came into force on 7th July, 1882), after a recital that Joseph Brown Payne was desirous of being allowed to lay down and work tramways in Port-of-Spain, and that the exclusive right of doing so should be granted to him for a limited term, it was enacted :

(Section 2.) " In this Ordinance, unless the context otherwise requires, . . . the name Joseph Brown Payne includes the executors, administrators and assigns of the said Joseph Brown Payne, his and their lessees and licensees and any joint stock company, limited or unlimited, formed for laying down, maintaining and working the tramways, and any joint stock company, limited or unlimited, and any other company and corporation which have become the purchasers thereof. . . ."

(Section 3.) " Subject to the provisions and restrictions contained in this Ordinance, the said Joseph Brown Payne shall have the right to lay down, make, work and maintain the tramways " as therein prescribed.

(Section 5.) " The right hereby given to the said Joseph Brown Payne to lay down and work the tramways is hereby declared to be an exclusive right for the space of 20 years from 1st January, 1883."

(2) By Ordinance 17 of 1882 (which came into force on 5th December, 1882) it was provided by Section 4 that certain powers of sale and otherwise given to Joseph Brown Payne by Ordinance 8 of 1882 should not be exercised without the Governor's previous consent, and by Section 5 there was given to the Governor in certain events power to rescind the rights conferred by the first ordinance.

(3) By Ordinance 18 of 1883 (which came into force on 6th December, 1883) it was enacted (Section 2) that subject to the provisions and restrictions contained in Ordinance 8 of 1882 and Ordinance 17 of 1882, Joseph Brown Payne should have the right to lay down, make, work and maintain the branch tramway therein mentioned as therein prescribed, and it was declared (Section 3) that (*inter alia*) Section 5 of Ordinance 8 of 1882 should be deemed to be incorporated with and to form part of Ordinance 18 of 1883 as if it had been actually repeated therein, the expression " the tramways " including the branch tramway therein authorised.

(4) By deed of transfer dated 7th July, 1885, Joseph Brown Payne transferred to the Tramways Company of Trinidad, Limited, the concession or undertaking granted to him by the foregoing ordinances.

(5) By Ordinance 16 of 1895 (which came into force on 2nd May, 1895 and was entitled " An Ordinance to enable the Tramways Company of

Trinidad, Limited, to construct Branch Tramways to the Port-of-Spain Tramways”), it was enacted that the ordinance might be cited for all purposes as “The Port-of-Spain Branch Tramways Ordinance, 1895,” and should be read and construed with Ordinance 8 of 1882, Ordinance 17 of 1882, and Ordinance 18 of 1883, and provided—

(Section 2.) That subject to the provisions and restrictions contained therein and in the earlier ordinances the Tramways Company of Trinidad, Limited, should have the right to lay down, make and maintain the branch tramways thereafter mentioned as therein prescribed.

(Section 3.) That certain specified sections of the earlier ordinances should be deemed to be incorporated with and to form part of the Ordinance 16 of 1895 as if they had been actually repeated therein, and in those enactments as so incorporated the words “the tramway” should mean the tramways authorised by the Ordinance 16 of 1895.

(Section 4.) That “the right hereby given to the Tramways Company of Trinidad, Limited, is hereby declared to be an exclusive right for the space of 20 years from 1st January, 1895.”

(6) By Ordinance 3 of 1896 (which came into force on 16th April, 1896) it was enacted (Section 1) that the ordinance might be cited for all purposes as “the Port-of-Spain Branch Tramways Ordinance, 1896,” and should be read and construed with Ordinance 8 of 1882, Ordinance 17 of 1882, Ordinance 18 of 1883, and Ordinance 16 of 1895, and

(Section 2.) That subject to the provisions and restrictions contained in the earlier ordinances and in Ordinance 3 of 1896, “the said Tramways Company of Trinidad, Limited, shall have the right to lay down, make and maintain the branch tramways hereafter mentioned” as therein prescribed.

(Section 4.) That certain specified sections of the earlier ordinances should be deemed to be incorporated with and to form part of Ordinance 3 of 1896 as if they had been actually repeated therein, and in those enactments as so incorporated the words “the tramways” should mean the tramways authorised by the Ordinance 3 of 1896.

(Section 6.) That “the right hereby given to the Tramways Company of Trinidad, Limited, is hereby declared to be an exclusive right for the space of 20 years from 1st January, 1896.”

The Toppin undertaking consisted of a single tramway system connecting Port-of-Spain and Belmont and was started in the year 1892. The material facts in relation to it prior to 1901 may be summarised as follows:—

(1) By Ordinance 21 of 1892 (which came into force on 27th October, 1892), after a recital that James Stanley Toppin had presented a petition to the Governor and Legislative Council of Trinidad and Tobago for permission to lay down and work tramways in certain parts of Port-of-Spain and Belmont, with an exclusive right to work and maintain such tramways in such parts of Port-of-Spain and Belmont as were thereafter mentioned, it was enacted

(Section 2.) That . . . “the name James Stanley Toppin shall include his personal representatives and any person or persons, company, limited or unlimited, or corporate body to whom the said James Stanley Toppin may assign his rights herein or who may be entitled to have the direction and charge with the laying down and maintaining or having the concession from the said James Stanley Toppin or his personal representatives either by purchase, lease, licence or otherwise to work the Belmont Tramway.”

(Section 3.) That subject to the provisions and restrictions contained in Ordinance 21 of 1892 and notwithstanding anything to the contrary contained in Ordinance 8 of 1882, Ordinance 17 of 1882, and Ordinance 18 of 1883, "the said James Stanley Toppin shall have the right to lay down, make, work and maintain the Belmont Tramway" as therein prescribed.

(Section 5.) That "the right hereby given to the said James Stanley Toppin to lay down and work the Belmont Tramway is hereby declared to be an exclusive right and it shall continue to be so for the period of 21 years commencing from 1st October in the year 1892."

(2) By deed of transfer dated 20th April, 1893, James Stanley Toppin transferred to the Belmont Tramway Company, Limited, the concession or undertaking granted to him by Ordinance 21 of 1892.

The Warner undertaking consisted of an undertaking for lighting Port-of-Spain by electric light, which was started in the year 1887. Its history prior to 1901 was as follows:—

(1) By Ordinance 4 of 1887, which came into force on 29th April, 1887, and which repealed and re-enacted a similar ordinance of the previous year (Ordinance 19 of 1886), after reciting that Raymond Warner was willing to erect and maintain posts and wires and to lay wires underground, and to locate transformers necessary for lighting Port-of-Spain with electricity on having the exclusive right to do so for a limited term granted to him, it was enacted

(Section 2.) That "Raymond Warner, his executors or administrators shall be the undertakers for the purposes of this ordinance and are in this ordinance referred to as "the undertakers"—provided that if the undertaking or any part thereof is at any time sold to any other body or person in accordance with the provisions of this ordinance such body or person shall from the date of such sale be the undertakers in relation to such undertaking or part thereof for the purpose of this ordinance in lieu of the person or persons above mentioned."

(Section 3.) That "subject to the provisions and restrictions contained in this ordinance, the undertakers shall have the right, within the limits of the Borough of Port-of-Spain as defined by Section 5 of the Ordinance No. 10 of 1853" (being an ordinance in which the limits of the Borough were defined) "and within one mile outside of any part of such boundaries, to supply and distribute for profit or gain electricity for lighting purposes from any central supply stations or works by means of electric lines."

(Section 4.) That "the right in the preceding section given to the undertakers for the purpose therein expressed is hereby declared to be an exclusive right for the space of twenty-one years from the date on which this ordinance shall become law: Provided always that the said exclusive right aforesaid shall cease and determine in the event of any person or persons, company or corporations in whom may be vested for the time being the rights, powers, authorities, obligations and liabilities at present vested in and imposed on the undertakers by this ordinance, becoming bankrupt, insolvent or taking advantage of any law for the time being for the relief of insolvent debtors, or being wound up voluntarily or compulsorily."

(2) By deed of transfer dated 29th August, 1892, Raymond Warner transferred to Edgar Tripp the concession or undertaking granted to him by Ordinance 4 of 1887.

(3) By deed of transfer dated 26th June, 1894, Edgar Tripp and G. W. Grant (who had the benefit of a contract dated 11th April, 1894, with the Municipality of the then Borough of Port-of-Spain for the lighting

of it by electricity) transferred to a syndicate "all rights, liberties, privileges . . . concessions . . . in respect of or in anywise having reference to the lighting of the Town or Borough of Port-of-Spain with the electric light" (which included the concession or undertaking granted by Ordinance 4 of 1887).

None of the ordinances to which reference has been made contained any express provision indicating how the undertaking was to be dealt with after the determination of the period of the exclusive right conferred by such ordinance.

It is also to be observed that (a) in regard to the Payne undertaking the expiry of the period of the exclusive right (i) under Ordinance 8 of 1882 and Ordinance 18 of 1883 was on the 31st December, 1902, (ii) under Ordinance 16 of 1895 was on the 31st December, 1914, and (iii) under Ordinance 3 of 1896 was on the 31st December, 1915, (b) in regard to the Toppin undertaking the expiry of the period of the exclusive right under Ordinance 21 of 1892 was on the 30th September, 1913, and (c) in regard to the Warner undertaking the expiry of the period of the exclusive right under Ordinance 4 of 1887 was on the 28th April, 1908.

The appellants were incorporated on the 16th February, 1900, as a limited company under the laws of Trinidad for the purpose of acquiring the three undertakings.

To enable them to effect their purpose there was passed Ordinance 4 of 1901, subsequently re-enacted as The Electric Light and Tramways Ordinance, chap. 310. This ordinance came into force on the 19th March, 1901.

The preamble of this Ordinance was as follows :—

"Whereas the acquisition and consolidation of the existing electric lighting and tramways systems and the joint maintenance, operation and extension of the same under rules and regulations from time to time made by His Excellency the Governor in Council would secure a more efficient service and tend to promote the development of the Town of Port-of-Spain and its environs and otherwise conduce to the advantage of the public. . . ."

The Ordinance after six preliminary sections was divided into three parts :—

(1) Sections 7-70 (inclusive) referring solely to the "acquisition, construction, maintenance and operation of electric works and lines, other than tramway works and lines, and to the supply of electrical energy through such electric works and lines."

(2) Sections 71-113 (inclusive) referring solely to the "acquisition, construction, maintenance and operation of tramway works and lines."

(3) Sections 114-135 (inclusive) referring to "the whole undertaking authorised by this Ordinance."

The following sections of the Ordinance are the most material to the questions under consideration, viz. :—

(Section 2.) "The undertakers for the purposes of this ordinance are the Trinidad Electric Company, Limited, . . . and the successors, lessees or assigns of said company, or any body or person duly authorised under the provisions of any ordinance to maintain and operate the tramways or to supply energy through the works, mains and lines authorised by this ordinance :

Provided that if the undertaking, or any part thereof, is at any time purchased by the local authority or local authorities in accordance with the provisions of this ordinance, such local authority shall, from the date of such purchase, be the undertakers in relation to such undertaking or part thereof for the purposes of this ordinance in lieu of the said Company."

(Section 9.) "Subject to the provisions of this ordinance, the undertakers shall have for the period of thirty years from the commencement of this ordinance and for any extension thereof under the provisions of the third part of this ordinance the exclusive right to acquire and to erect or lay down electric lines and works and to generate and to supply energy for all public and private purposes and to use the same for the purposes of any undertaking lawfully carried on by the undertakers within the area of supply"; but subject to certain provisos therein mentioned.

(Section 71.) (1) "The undertakers are hereby authorised and empowered and they are hereby required within the area hereinafter defined to acquire or to lay down, make, construct and to complete, maintain and from time to time alter, remove and rebuild and work and operate daily and every day subject to and in accordance with the provisions of the second part of this ordinance and the plans and specifications approved of by the Director of Public Works as hereinafter provided all the tramways hereinafter described with all necessary poles" and other works and equipment as therein mentioned; "and the undertakers are also authorised and empowered to generate, accumulate, distribute and supply electricity as a motive power, and for the lighting of the cars and carriages used on such tramways and of the offices, stations, buildings and works of the undertakers; anything in any ordinance of this Colony to the contrary notwithstanding. And generally the undertakers shall do and execute all and any works necessary for the efficient construction, equipment and operation of the said tramways. . . .

(2) Subject to the provisions of this ordinance the undertakers shall have for the period of thirty years from the commencement of this ordinance, and for any extension thereof under the provisions of the third part of this ordinance, the exclusive right to acquire, construct, maintain and operate tramways under the provisions of this section within the area hereinafter defined."

(Section 120.) "It shall be lawful for the Governor in Council on the application of the undertakers to grant an extension of the exclusive rights mentioned and described in the ninth and seventy-first sections of this ordinance for a further period not exceeding twenty years at any time within one year previous to the expiry of such exclusive right or of any such extension thereof: Provided that in the case of an extension of the exclusive rights so applied for being refused by the Governor in Council, the Governor in Council shall purchase the electric works and lines, tramways, lands, buildings, tracks, machinery, mechanical appliances, plant and materials belonging to the undertakers and used by them for the purposes of their undertaking at their fair value at the time of such purchase, such value to be determined under the provisions of the one hundred and twenty-first section hereof, and until the completion of such purchase the undertakers shall possess and exercise all their rights, powers, privileges and franchises conferred upon them by this ordinance."

(Section 121.) "When the said period of thirty years or of any period in extension thereof is about to expire and the undertakers have made application to the Governor in Council for a further extension of the same it shall be lawful for the Governor in Council of this Colony or for the local authority or local authorities within whose jurisdiction such area or any part thereof lies at any time within three months after such application is made by notice in writing to require the undertakers to sell and thereupon

the undertakers shall sell to them their undertaking upon terms of paying the then value of the same and of the electric works and lines, tramways, lands, buildings, machinery, mechanical appliances, plant and materials of the undertakers suitable to and used by them for the purposes of the said undertaking, such value to be in case of difference determined by arbitration. . . .”

(Section 124.) (1) “The undertakers may secure the payment of any bonds or debentures issued by them by mortgages of their undertaking, property and works; and they may borrow money on the security of such mortgages.”

After the coming into force of Ordinance 4 of 1901 the three undertakings were transferred to the appellants, and it is not disputed that there was thereupon vested in the appellants not only all the powers conferred by Ordinance 4 of 1901, but all the powers, if any, then remaining effective under the earlier Ordinances.

Subsequently, however, namely, on the 16th November, 1904, there came into force the Law Revision Ordinance, 1904, which repealed all the ordinances prior to 1901 relating to the three undertakings, but provided that such repealing ordinance should not affect (*inter alia*) the validity, invalidity, effect or consequence of anything already done or suffered or any existing status or capacity or any right or title acquired or accrued or any remedy or proceeding in respect thereof.

On the 5th June, 1930, the appellants, not having under Section 120 of Ordinance 4 of 1901 applied to the Governor in Council for any extension of their exclusive rights, launched the action out of which this appeal arises, asking for a number of declarations by which in effect they claimed (a) that the 19th March, 1931, was the latest date on which they could apply for an extension of their exclusive powers, (b) that all the rights (except the exclusive rights therein referred to) conferred by the ordinances prior to 1901 relating to any of the three undertakings were vested in them, and (c) that the rights conferred by Ordinance 4 of 1901 and the earlier ordinances, or, at any rate, the rights conferred by the earlier ordinances gave them a right after the expiration of the exclusive powers to work their undertakings with non-exclusive powers.

Chief Justice Belcher by his judgment delivered on the 9th January, 1931, made a careful examination of the language of all the relevant ordinances and came to the conclusion that upon their true construction there was not conferred either by any of the earlier ordinances or by Ordinance 4 of 1901 any rights beyond the exclusive rights. Accordingly he held that the plaintiff was not entitled to any of the declarations sought (except a declaration made by consent to the effect that the last day for making to the Governor in Council an application for the extension of the exclusive powers was the 18th March, 1931), and dismissed the action with costs.

The appellants by leave appealed to His Majesty in Council.

By Ordinance No. 1 of 1931, which came into force on the 13th March, 1931, the period of their exclusive rights and of their right to apply for an extension of them has been prolonged so as to terminate only on the expiration of 30 days after the date on which their Lordships shall give judgment in this appeal.

The strength of the appellants' case rests in the fact that under the earlier ordinances the right in the case of each undertaking is first conferred without express reference to exclusiveness or to any limiting period, and that in a subsequent section the right is declared to be an exclusive right for a prescribed period. This is the characteristic of Sections 3 and 5 of Ordinance 8 of 1882 (the Payne undertaking), of Sections 3 and 5 of Ordinance 21 of 1892 (the Toppin undertaking), and of Sections 3 and 4 of Ordinance 4 of 1887 (the Warner undertaking).

Thus, say the appellants, there are conferred in each case two rights, viz., (1) an exclusive right for a limited period, and (2) a non-exclusive right in perpetuity. They seek to reinforce their point by directing attention to the fact that no provision is contained in these ordinances to take effect on the expiration of the exclusive rights and that the exclusive rights determine at different times, not only in respect of their three undertakings, but also in respect of the different parts of the Payne undertaking. They refer to a number of other sections in the ordinances, from which if there is any ambiguity in the sections of grant, they contend it ought to be inferred that the sections of grant should be construed as conferring the two rights indicated.

Their Lordships have carefully considered all the points placed before them by the appellants, and it is enough to say that they have arrived at the conclusion that in the case of each of the three undertakings the relevant sections can only be read as conferring one right, namely, an exclusive right with a limitation in time.

It is to be observed that in each of the three cases the words of grant in the first of the two relevant sections are expressed to be "subject to the provisions and restrictions contained in this Ordinance," while the second of the two material sections refers back to the first by declaring "exclusive" the right "hereby" or "in the preceding section" given to the undertakers.

In each case, in their Lordships' judgment, the two sections must be read together, and so read, relate to and regulate one right only, and that a right which is limited in time and exclusive in character.

Their Lordships find nothing to justify any departure from this construction either in the form of any other provision in the same or any other ordinance or in the absence of any provision dealing with the undertaking on the determination of the exclusive right.

Upon this view of the matter it becomes unnecessary to consider the effect of the saving clause in the repealing Ordinance.

There remains, however, Ordinance 4 of 1901. Here the appellants are on even weaker ground. The section in which the grant of the right is made also imposes the limit of time and confers the quality of exclusiveness (*see* Section 9 of the Ordinance of 1901).

Further, some provision is made for what is to happen on the termination of the period of the exclusive right (*see* Section 120 of the Ordinance of 1901), and though the provision does not provide for every possible event, it does afford to the appellants an opportunity to protect themselves.

In their Lordships' opinion, it is impossible, upon the true construction of the Ordinance of 1901, to say that there is granted, in addition to an exclusive right for a limited period, a non-exclusive right in perpetuity.

This disposes of the appeal, which in their Lordships' judgment fails and ought to be dismissed.

Their Lordships will humbly advise His Majesty accordingly.

The appellants must pay the costs of the appeal of both respondents.

In the Privy Council.

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DELIVERED BY LORD TOMLIN.

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