58. 1949

CASE OF APPELLANT

In the Privy Council.

No. 13 of 1949.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN—CANADIAN PACIFIC RAILWAY COMPANY
APPELLANT

AND

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA ... ... RESPONDENT

AND

THE ATTORNEY-GENERAL OF CANADA AND THE ATTORNEYS-GENERAL OF ONTARIO, NOVA SCOTIA, ALBERTA AND SASKATCHEWAN ... ... INTERVENANTS.

CASE FOR THE APPELLANT

RECORD

1.—This is an Appeal by special leave from a Judgment of the Supreme Court of Canada dated 27th April, 1948, dismissing an Appeal by the Appellant from a Judgment of the Court of Appeal for British Columbia dated 27th March, 1947, which by a majority answered in the affirmative the following question which the Lieutenant-Governor in Council pursuant to the Constitutional Questions Determination Act had referred to the Court of Appeal for hearing and determination : p. 113 p. 4 pp. 1–3

"Are the provisions of the 'Hours of Work Act' being Chapter 122 of the 'Revised Statutes of British Columbia, 1936,' and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent ?"

2.—The Hours of Work Act, as amended in 1946 (Chapter 34), provides (inter alia) that the working hours of the classes of employees listed in a schedule to the Act shall not exceed forty-four in the week.

Prints of the statute will be available on the argument. Most of the employees of the Appellant at the Empress Hotel at Victoria, British Columbia, fall within the classes listed in the schedule.

3.—The parts of Sections 91 and 92 of The British North America Act relevant to the question raised in this Appeal are as follows :

" 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms in this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated ; that is to say,—

* * * * *

" 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

" And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

" 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated ; that is to say,—

* * * * *

" 10. Local Works and Undertakings other than such as are of the following Classes :—

" (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province :

" (b) Lines of Steam Ships between the Province and any British or Foreign Country :

" (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces."

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4.—It is submitted that the Empress Hotel is part of the Appellant's railway and comes within the meaning of the term "Railways" in Head 10 (a) of Section 92 and further, that it is included in the works of the Appellant declared by the Parliament of Canada under Head 10 (c) to be for the general advantage of Canada. If the Appellant's railway does not come within Head 10, it comes within the exclusive legislative authority of Parliament by virtue of the residual powers conferred upon it by Section 91. The hours of work of the employees at such hotel are, it is submitted, within the exclusive legislative jurisdiction of Parliament, and hence the provincial statute in question is not applicable to or binding upon such employees. Even if hours of work generally are not within the exclusive jurisdiction of Parliament, that subject is nevertheless, in the case of a railway within such jurisdiction, necessarily incidental to effective legislation by the Dominion in relation to such railway, and the Provincial legislation insofar as it purports to apply to or be binding upon the Empress Hotel employees has been superseded by valid Dominion legislation.

5.—The Order of Reference which was made on a report of the Attorney-General of British Columbia to the Lieutenant-Governor in Council and approved by the Executive Council, recited the following facts : p.1

(1) The Appellant owns and operates lines of railway extending continuously from Saint John, New Brunswick, to Vancouver, British Columbia, numerous branch lines extending into and connecting with railway lines in the United States, and steamship lines between Vancouver and Victoria and Seattle. p. 1, l. 20

(2) The Appellant leases and operates the lines of the Esquimalt and Nanaimo Railway Company from Courtney to Victoria on Vancouver Island. p. 1, l. 28

(3) The Appellant's lines and branch lines have been declared to be for the general advantage of Canada. p. 1, l. 31

(4) The Appellant has, for the purpose of its lines of railway and steamships and in connection with its said business, built the Empress Hotel at Victoria which it operates for the comfort and convenience of the travelling public. The Hotel is available for the accommodation of all members of the public, as a public hotel. It caters to public banquets and permits the use of its hotel ballroom for local functions, for reward. p. 1, l. 35

(5) The Empress Hotel is not contiguous to the Appellant's line of railway and is not a terminus for its railway line or steamships. (It is, however, in the immediate vicinity of the Appellant's docks at Victoria, near the Station of the Esquimalt and Nanaimo Railway operated by the Appellant and is thus conveniently located to serve the travelling public.) p. 2, l. 4

(6) The Appellant has owned and operated the Empress Hotel since 1908. With 573 rooms, it provides accommodation for large p. 2, l. 7

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numbers of travellers and tourists from Canada, the United States and elsewhere.

p. 2, l. 11

(7) The operation of the Hotel is a means of increasing both passenger and freight traffic upon the Appellant's lines of railway and steamships. The Appellant owns and operates other hotels elsewhere in Canada for like purposes. (These are the Emerald Lake Chalet near Field, British Columbia, and other mountain lodges, the Chateau Lake Louise at Lake Louise, Alberta, the Banff Springs Hotel at Banff, Alberta, the Palliser Hotel at Calgary, Alberta, the Saskatchewan Hotel at Regina, Saskatchewan, the Royal Alexandra Hotel at Winnipeg, Manitoba, the Devil's Gap Lodge at Kenora, Ontario, the Royal York Hotel at Toronto, Ontario, the Chateau Frontenac at Quebec, Quebec, the Algonquin Hotel at St. Andrews, New Brunswick, the McAdam Hotel at McAdam, New Brunswick, the Digby Pines at Digby, Nova Scotia, the Cornwallis Inn at Kentville, Nova Scotia, and the Lakeside Inn at Yarmouth, Nova Scotia.)

6.—The Parliament of Canada has exclusive jurisdiction over the Appellant's railway. Such jurisdiction includes the exclusive right to prescribe regulations for the management of the railway. All matters relating to such management must be treated as wholly withdrawn from provincial jurisdiction. The control of the working hours of employees is a necessary part of the management of the railway and is thus within the exclusive jurisdiction of the Dominion. It could scarcely be disputed, for example, that the control of the working hours of the train crews of such a railway is a matter of management and therefore, within such jurisdiction. Likewise, if the hotel is part of the railway, the control of the working hours of the hotel employees is a matter of management and is beyond provincial jurisdiction.

7.—It is submitted that the Appellant's hotels, including the Empress Hotel, constitute an integral part of its railway system and, as such, come within the meaning of the term " Railways " in Head 10 (a) of Section 92.

p. 1, l. 35

8.—The Order of Reference states that the Appellant has " for the purpose of its lines of railway and steamships and in connection with its said business, built the Empress Hotel at Victoria, which it operates for the comfort and convenience of the travelling public." The Order thus recognizes that the Hotel was built for the purpose of and in connection with the Appellant's railway and steamship business. The Order further recognizes that the Hotel is operated for the comfort and convenience of the travelling public. One of the primary purposes of the Appellant's railway is to serve the travelling public. While the Order goes on to say that the Hotel is available for the accommodation of all members of the public and caters to banquets and the like, nevertheless the order, on its true interpretation, recognizes that that is an incidental function and that

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the primary purpose of the Hotel is to serve the travelling public. This is given further emphasis by the statements in the order that the Hotel " provides accommodation for large numbers of travellers and tourists " and that its operation is " a means of increasing passenger and freight traffic upon the Company's lines of railway and steamships." p. 2, l. 8

The Appellant's business is the transportation of passengers and freight and a hotel that is operated to stimulate such business must surely be looked upon as an integral part of the transportation undertaking. This is particularly so when it is remembered that the Empress Hotel is but one link in a chain of hotels across Canada operated by the Appellant for the purpose of and in connection with its railway and steamship business.

9.—The use of the word " Railways " in Head 10 (a) of Section 92 after the introductory words " Works and Undertakings " and the use of the words " and other Works and Undertakings " later in the same clause demonstrate that the term " Railways " is used in a comprehensive sense to embrace the whole of the works and undertakings of such " Railways."

10.—That the term " Railways " in Head 10 (a) has long been regarded as having a comprehensive meaning is demonstrated by the scope of the legislation enacted by the Dominion in relation to that subject.

For example, the first Railway Act after Confederation (The Railway Act, 1868—31 Vict., Chapter 68) contained the following provisions : App., p. 1

> " 7. The Company shall have power and authority :
>
> * * * * *
>
> " (8) To erect and maintain all necessary and convenient buildings, stations, depots, wharves and fixtures, and from time to time to alter, repair or enlarge the same, and to purchase and acquire stationary or locomotive engines and carriages, waggons, floats and other machinery necessary for the accommodation and use of the passengers, freight and business of the Railway ;
>
> * * * * *
>
> " (10) To construct, and make all other matters and things necessary and convenient for the making, extending and using of the Railway, in pursuance of this Act, and of the Special Act ; "

In that Act the expression " the Railway " was defined to mean " the Railway and works by the Special Act authorized to be constructed " (Section 5 (16)). The expression was similarly defined in " The Consolidated Railway Act, 1879." App., p. 3, l. 9

11.—The Appellant was incorporated in 1881 by Letters Patent under the great seal of Canada pursuant to a special Act of the Parliament of

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Canada (Statutes of Canada 1881, Chapter 1). The Letters Patent authorized by the special Act form Schedule " A " to a contract entered into with the Dominion for the construction of the Appellant's railway. The contract is in turn a schedule to the Act and is approved and ratified by the Act.

App., p. 6
App., p. 5

The Letters Patent provided that " All the . . . . powers necessary or useful to the Company to enable them to carry out, perform . . . . every . . . . obligation . . . . contained . . . . in the said contract, are hereby conferred upon the Company."

App., p. 7, l. 1

12.—Clause 7 of the contract provides that the Appellant " shall " thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway. The building of the chain of railway hotels was no doubt necessary and certainly " useful " to the Appellant in carrying out the obligation thus imposed.

App., p. 5, l. 40

The Consolidated Railway Act of 1879 was incorporated into the Special Act of this Appellant and accordingly the powers contained in sub-sections (8) and (10) of Section 7 (in the same terms as the corresponding provisions in the 1868 Act quoted in paragraph 10 hereof) were conferred upon the Appellant.

App., p. 8, l. 2
App., p. 3, l. 20
p. 1, l. 22

13.—Thus it would appear that the effect of the Special Act incorporating the Consolidated Railway Act was to define the Appellant's railway in terms broad enough to include its hotels.

14.—While the early railway legislation was very broad in its scope, the subject of hotels was expressly dealt with in " The Canadian Pacific Railway Act, 1902 " (2 Edw. VII. Cap. 52) which contains the following provision :

App., p. 14, l. 17

" 8. The Company may, for the purposes of its railway and steamships and in connection with its business, build, purchase, acquire or lease for hotels and restaurants, such buildings as it deems advisable and at such points or places along any of its lines of railway and lines operated by it or at points or places of call of any of its steamships, and may purchase, lease and hold the land necessary for such purposes, and may carry on business in connection therewith for the comfort and convenience of the travelling public, and may lay out and manage parks and pleasure grounds upon the property of the Company and lease the same from or give a lease thereof to any person, or contract with any person for their use, on such terms as the Company deems expedient."

It is to be observed that this provision required the Appellant's hotels to be located at points or places along its railway or at points of call of any of its steamships. It was thus made clear that hotels built by the Appellant should be so located as to form an integral part of its railway system.

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15.—When Parliament by the Canadian National-Canadian Pacific Act, 1933 (23-24 Geo. V, Chapter 33) directed the Canadian National Railway Company and the Canadian Pacific Railway Company to adopt co-operative measures for the purpose of effecting economies, the Appellant's hotel system was included as part of its undertaking to which this enactment applied (Sections 3 (e) and (g) and 16). App., p. 27 App., p. 28

16.—The word "Railways" in Section 92—10 (a) of the British North America Act read in conjunction with the words "Works and Undertakings" must be given a much broader meaning than the rails and the right of way. It should, it is submitted, be given a comprehensive interpretation and not one that would divide the Appellant's works and undertaking into segments, some under Dominion and some under Provincial jurisdiction. Stations, inland steamships, docks, grain elevators, stockyards and hotels may be local "works" in that they are physically located in one Province but they are in fact integral parts of one single undertaking.

17.—Apart altogether from the question raised with respect to Head 10 (a) of Section 92, the hotels have been included, it is submitted, in the works of the Appellant declared under Head 10 (c) to be for the general advantage of Canada and are thus within the exclusive jurisdiction of Parliament.

18.—It is to be noted that by Section 6 (c) of the present Railway Act (R.S.C. 1927, cap. 170) every railway owned or operated by a Company wholly or partly within the legislative authority of the Parliament of Canada (which would include the Appellant) "shall be deemed and is hereby declared to be a work for the general advantage of Canada." App., p. 24, l. 29

19.—In Section 2 (21) of that Act "Railway" is defined as meaning : App., p. 23, l. 14

"any railway which the Company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway."

The pertinent words in the above definition are "any railway which the Company has authority to construct or operate, and includes all . . . . property real or personal and works connected therewith, and also any . . . . other structure which the Company is authorized to construct . . . . "

20.—It will be remembered that the Appellant was given express authority by the special Act of 1902 (paragraph 14 supra) to construct hotels. App., p. 14, l. 17

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Certainly the hotels are real property. Certainly they are works connected with the railway. Moreover they are "other structures" within the meaning of the section.

21.—If the Appellant is wrong in its submission that management of its railway includes the regulation of the hours of work of employees and that the subject of hours of work is within the exclusive jurisdiction of the Dominion, nevertheless that subject, in the case of a railway within Dominion jurisdiction, is necessarily incidental to effective legislation by the Dominion in relation to such railway.

The hours of work of employees of such a railway should not vary from province to province but should be uniform throughout the Dominion. This is particularly so in the case of a transcontinental railway where some employees work in more than one province.

Even if the Provincial Legislature has jurisdiction in relation to hours of work generally, the legislation in question is not applicable to or binding upon employees at the Empress Hotel, because it has been superseded by valid Dominion legislation.

p. 56 22.—Under Order-in-Council P.C. 1003 dated 17th February, 1944, the Wartime Labour Relations Board was established by the Dominion. App., p. 26 This Order derived its authority originally from the War Measures Act, Revised Statutes of Canada, 1927, Chapter 206, and subsequently from App., p. 30 the National Emergency Transitional Powers Act, Statutes of Canada, 1945, Chapter 25, and the Continuation of the Transitional Measures Act, Statutes of Canada, 1947, Chapter 16.

23.—P.C. 1003 provided (inter alia) that employees might elect p. 60, l. 27 bargaining representatives (Section 5); that the bargaining representatives p. 61, l. 20 might be certified by the Board (Sections 6, 7 and 8); that collective agreements might be negotiated between employers and certified bargaining p. 60, l. 19 representatives (Sections 4 (3), 10 (1) and (2)); and that a collective p. 62, l. 16 agreement so negotiated "shall be binding on every employee in the p. 61, l. 33 specified unit of employees" (Section 8).

p. 80 24.—Pursuant to P.C. 1003, the Board by order dated 16th March, 1945, certified that the Canadian Brotherhood of Railway Employees and other Transport Workers, Empress Division 276, and the bargaining representatives named in the Order were the properly chosen bargaining representatives for all the employees of the Empress Hotel, with certain exceptions mentioned in the Order.

p. 85 25.—An agreement negotiated by such bargaining representatives was entered into with the Appellant to become effective on the 1st September, 1945, and to remain in effect for one year and thereafter subject to thirty days' notice in writing from either party. This agreement remained in force until 31st December, 1948.

RECORD

26.—By virtue of Section 8 of P.C. 1003 the 1945 agreement was binding on the Appellant's employees at the Empress Hotel. It was a term of that agreement that such employees were to work a forty-eight hour week.

The amendment in 1946 to the provincial Hours of Work Act purported to limit the hours of work of these same employees to forty-four hours in the week, thereby creating a conflict between the Dominion and the provincial legislation on the matter.

27.—The Court of Appeal for British Columbia (O'Halloran J.A. dissenting) held that the provisions of the Hours of Work Act were applicable to and binding upon the Appellant in respect of its employees at the Empress Hotel.

(1) Robertson J.A. (with whom Sloan C.J. and Smith and Bird JJ.A. concurred) thought there was no doubt that the " lines of railway " operated by the Appellant are under the exclusive jurisdiction of the Dominion by virtue of Head 10 of Section 92 of the British North America Act. In his opinion railway legislation strictly so called belongs to the Dominion, but any such legislation must " strictly relate to railway-lines " or be such as is necessarily incidental to effective legislation by the Dominion upon a subject of legislation within the legislative competence of the Dominion. He appears to have interpreted Head 10 (a) as meaning " lines of railways " and, in his view, that expression meant " primarily the right-of-way and the rails." He did not suggest this to be its entire meaning. He thought that whatever is absolutely necessary for the physical use of the railway is to be treated as part of the lines of railway. This would not, in his opinion, include the Empress Hotel. The majority of the Court also adopted that part of their own decision in the Metalliferous Mines Reference which dealt with the argument that legislation as to hours of work fell within the field of ancillary and over-lapping jurisdiction and that the Dominion had occupied the field by its Order in Council P.C. 1003. In that case the Court held that P.C. 1003 was procedural only and, therefore, that the Dominion had not occupied the field.

p. 20, l. 4
p. 20, l. 12
p. 21, l. 36
p. 22, l. 1
p. 5
p. 7, l. 24

(2) O'Halloran J.A. in his dissenting Judgment, expressed the opinion that the Empress Hotel is an integral link in the world chain of railway and steamship services of the Appellant and an essential part of its " works and undertakings." In his opinion, the expression " such works " in Clause (c) of Head 10 of Section 92 would include the Empress Hotel. His view was that when the Canadian Pacific Railway was declared in 1883 to be a work for the general advantage of Canada, it was intended to include not only its " lines of rail " as such, but everything that might become essential to the transportation system in order to make it a modern, convenient and efficient trans-

p. 10, l. 25
p. 11, l. 38
p. 14, l. 1

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p. 15, l. 32. portation system, measured in the terms of the competition it would receive from other large transportation systems. He considered that the fixing of the hours of work and working conditions throughout a Dominion-wide railway and steamship service and system such as the Appellant's is in substance a matter of railway and steamship management and not a matter of civil rights within each of the several provinces and, therefore, that it was fully within the exclusive jurisdiction of the Dominion. He was also of the opinion that the fixing of the hours of work of the Dominion-wide undertaking of the Appellant is not a matter of local or provincial concern, but falls within the sole competence of the Dominion.

p. 16, l. 11

28.—The Judgment of the Court of Appeal of British Columbia was delivered on 27th March, 1947. On 12th November, 1947, the Court of Appeal of Saskatchewan delivered a Judgment on a similar question in the case of *Canadian Pacific Railway Company and Canadian Pacific Express Company* v. *Attorney-General for Saskatchewan* ((1947) 2 W.W.R. 909). In that action the Court was asked to declare that certain Saskatchewan Acts including The Hours of Work Act (1947 Saskatchewan Statutes, Chapter 103) were ultra vires of the legislature of the Province in so far as they purported to affect the railway, telegraph, hotel and restaurant works and undertakings of the Appellant. The Court of Appeal of Saskatchewan upheld the decision of Bigelow J., being unanimously of the opinion that the Acts in question were ultra vires as claimed. The Province did not appeal from the Judgment of the Court of Appeal.

29.—Before the Appeal to the Supreme Court of Canada from the Judgment of the Court of Appeal for British Columbia had been heard,

App., p. 32 the Canadian National-Canadian Pacific Act, 1933, was amended (1947 Canadian Statutes, Chapter 28) by the addition thereto of Section 27A. This new section provides in part that the hours of work of the employees of the Appellant " shall be such as are set out in any agreements in writing respecting such employees made from time to time " between the Appellant and the representatives of the employees, whether entered into before or after the commencement of the Act, provided such agreements are filed in the Office of the Minister of Transport. The agreement between the Appellant and the representatives of the employees of the Appellant at the Empress Hotel referred to in paragraph 25 hereof has been filed in the office of the Minister of Transport.

30.—By Section 27A the Dominion has required the Appellant's employees at the Empress Hotel to work a forty-eight hour week in accordance with their agreement. The amendment in 1946 to the provincial Hours of Work Act applied to the same employees precludes them from working more than a forty-four hour week. Thus the provincial legislation is in direct conflict with Section 27A.

31.—The question of whether the Dominion has occupied the field as to the hours of work of the Appellant's employees at the Empress Hotel by P.C. 1003 or whether, as the Court of Appeal held, P.C. 1003 is merely procedural, is no longer of importance since the enactment of Section 27A. By this latter provision, the Dominion has, it is submitted, clearly occupied the field and the provincial legislation is superseded. RECORD

32.—By a Notice dated 13th August, 1947, the solicitor for the Respondent notified the Attorney-General of Canada that the Respondent proposed to bring in question in the Appeal to the Supreme Court of Canada the validity of the said Section 27A of the Canadian National-Canadian Pacific Act, 1933. By an order dated 3rd October, 1947, the Honourable Mr. Justice Taschereau granted leave to the Attorney-General of Canada to intervene. p. 28

33.—The Supreme Court of Canada dismissed the Appellant's Appeal from the Judgment of the Court of Appeal for British Columbia.

(1) Kerwin J. held that an hotel could not be part of the railway undertaking within the meaning of Head 10 of Section 92 of the British North America Act because the operation of an hotel is not necessarily incidental to a railway undertaking. He also held that hotels did not fall within the definition of "railway" in the Railway Act and therefore had not been declared to be a work for the general advantage of Canada. Finally he held that Section 27A of the Canadian National-Canadian Pacific Act was ineffective so far as it concerned any employees of the Empress Hotel. p. 115 p. 117, l. 29

(2) Rand J. was of the view that the Dominion legislation dealing with the hours of work of the Empress Hotel employees was not railway legislation strictly and could not be deemed necessarily incidental to railway legislation. He was also of the view that the provisions of the Railway Act declaring the railway to be for the general advantage of Canada did not include hotels. p. 122

(3) Kellock J. was of the opinion that the Dominion Statutes did not disclose a legislative intention that hotels were to be included in the word "Railways" as used in Head 10 (a) of Section 92 of the British North America Act. He rejected the contentions that hotels were included in the works declared to be for the general advantage of Canada and that legislation as to hours of work of hotel employees was necessarily incidental to effective legislation by the Dominion with respect to railways. He also took the view that Section 27A introduced into the Canadian National-Canadian Pacific Act in 1947 was ultra vires in so far as it purported to apply to hotel employees of the Appellant. p. 129

(4) Estey J. (with whom Taschereau J. concurred) held that the word "Railways" as used in Head 10 (a) of Section 92 did not have p. 135

a meaning sufficiently broad and comprehensive to include hotels. He also held that hotels were not included in the declaration of Parliament made pursuant to Head 10 (c) of Section 92. Further, in his view legislation with respect to hotels was not necessary and incidental to effective railway legislation. He also held that Section 27A of the Canadian National-Canadian Pacific Act was ultra vires so far as it applied to hotels.

34.—The Appellant respectfully submits that this appeal should be allowed for the following amongst other

REASONS

1. BECAUSE Head 10 (a) of Section 92 of the British North America Act includes on its true interpretation the Empress Hotel and legislation in relation to the hours of work of the Appellant's employees at such hotel is a matter within the exclusive jurisdiction of the Parliament of Canada.

2. BECAUSE the works of the Appellant declared by Parliament under Head 10 (c) of Section 92 to be for the general advantage of Canada include the Empress Hotel and legislation in relation to the hours of work of the employees at such hotel is a matter within the exclusive jurisdiction of the Parliament of Canada.

3. BECAUSE the management of the Appellant's undertaking, of which the Empress Hotel is a part, is a matter not coming within the classes of subjects assigned to the Legislatures of the Province and is, therefore, within the exclusive legislative authority of Parliament.

4. BECAUSE the provincial legislature has no jurisdiction in relation to the management of the Appellant's railway including the regulation of the hours of work of its hotel employees.

5. BECAUSE the Parliament of Canada has the exclusive right to prescribe for the management of the Appellant's railway including the hours of work of its hotel employees.

6. BECAUSE Parliament has by Section 27A of The Canadian National-Canadian Pacific Act, 1933, made a law in reference to the Appellant's undertaking which is a matter within the exclusive legislative jurisdiction of Parliament and as Section 27A is in conflict with the British Columbia Hours of Work Act, the former must prevail.

7. BECAUSE legislation regulating the hours of work of the employees engaged in the Appellant's railway works and undertaking, including its hotels, is necessarily incidental to effective legislation within Dominion competence in relation to the Appellant's works and undertaking and the Hours of Work Act insofar as it purports to apply to or be binding upon the Appellant's hotel employees is superseded by valid Dominion legislation.

8. BECAUSE the provincial Act is inoperative in respect of such employees.

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9. BECAUSE the opinion of the Honourable Mr. Justice O'Halloran in the Court of Appeal of British Columbia is right.

10. BECAUSE the opinions of the Judges in Saskatchewan in the litigation referred to in paragraph 28 hereof are right.

C. F. H. CARSON.
FRANK GAHAN.

In the Privy Council.

No. 13 of 1949.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

CANADIAN PACIFIC RAILWAY COMPANY ... ... APPELLANT

AND

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA ... RESPONDENT

AND

THE ATTORNEY-GENERAL OF CANADA and THE ATTORNEYS-GENERAL OF ONTARIO, NOVA SCOTIA, ALBERTA and SASKATCHEWAN... ... ... INTERVENERS.

CASE FOR THE APPELLANT.

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