58, 1949

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 THE PROVINCES OF ONTARIO, NOVA SCOTIA, ALBERTA, and SASKATCHEWAN ... ... INTERVENANTS.

CASE FOR THE INTERVENANT

THE ATTORNEY-GENERAL OF THE PROVINCE OF SASKATCHEWAN.

RECORD

1.—This is an Appeal by special leave from the unanimous Judgment of the Supreme Court of Canada (Kerwin, Taschereau, Rand, Kellock, and Estey, JJ.) given on the 27th April, 1948, dismissing an Appeal from a majority Judgment of the Court of Appeal for British Columbia (Sloan, C.J., B.C., Robertson, Sidney Smith, and Bird, JJ.; O'Halloran, J. dissenting) given on the 27th March, 1947. The Court of Appeal in its Judgment answered in the affirmative a question referred to it by an Order of Reference dated 21st September, 1946, made pursuant to the provisions of the Constitutional Questions Determination Act, being Chapter 80 of the Revised Statutes of British Columbia, 1936, the question being: "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

pp. 147–149
p. 113
pp. 10–23
p. 1
p. 3, ll. 5–10

CASE OF A.-G. SASK.

p. 23, ll. 12, 13

" Hotel, and if so, to what extent ? " In answering this question in the affirmative the Court of Appeal held that the whole Act, being the said Hours of Work Act, applies to and is binding upon the Canadian Pacific Railway Company in respect of its employees employed in its Empress Hotel at Victoria, British Columbia.

2.—Prior to the date of the said Order of Reference an action had been commenced in the Court of King's Bench in the Province of Saskatchewan by Writ of Summons dated 13th August, 1946, between the Canadian Pacific Railway Company and Canadian Pacific Express Company as Plaintiffs and the Attorney-General of Saskatchewan as Defendant, wherein the Plaintiffs claimed a Declaration that certain statutes of Saskatchewan, dealing with labour matters, did not apply to and were not binding upon the Plaintiffs and that the said statutes were *ultra vires* the Legislature of Saskatchewan in so far as they affected or purported to affect the railway, telegraph, hotel and restaurant works and undertakings of the Canadian Pacific Railway Company and the works and undertakings of the Canadian Pacific Express Company.

3.—Among the labour statutes concerned in the Saskatchewan action were The Minimum Wage Act, being Chapter 31 of the Revised Statutes of Saskatchewan, 1940, and The Annual Holidays Act, 1944, being Chapter Chapter 65 of the Statutes of Saskatchewan, 1944, Second Session. By a subsequent amendment to the Statement of Claim before the trial of the action the provisions of The Hours of Work Act, 1947, being Chapter 103 of the Statutes of Saskatchewan, 1947, were likewise brought within the scope of the action. Generally speaking, as indicated by their respective titles, these three Saskatchewan statutes prescribe certain duties of employers to their employees and the rights of employees against their employers. With respect to the provisions of the Saskatchewan and British Columbia Hours of Work Acts, it may be stated that they both deal with the same legislative subject-matter ; both statutes, for example, providing generally that a workman shall not be required to work more than eight hours in one day and more than forty-four hours in a week.

p. 10, ll. 11–15

4.—In the British Columbia Reference, O'Halloran, J., in his dissenting Judgment held that " . . . . the construction, maintenance " and operation of the Empress Hotel forms an integral part of the ' works " ' and undertakings ' of the Canadian Pacific Railway Company within " Clause (c) of head 10 of Section 92 of the ' British North America Act.' " He held that accordingly provincial hours of work legislation, in so far as it affects Company employees in the Empress Hotel is, in its true nature

10, ll. 19–21

and effect, Dominion railway legislation exclusively within the legal competence of the Dominion.

5.—He further held that when the Canadian Pacific Railway Company, by Section 6 of Chapter 24 of the Statutes of Canada, 1883, was declared

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to be a work for the general advantage of Canada within Clause (c) of head 10 of Section 92 of the British North America Act, the declaration was wide enough in its meaning to include hotels as part of the works and undertakings of the Company which, he held, the Company had the power to build and maintain even prior to the enactment of the specific power set out in Section 6 of the Canadian Pacific Railway Company Act, 1902, being Chapter 52 of the Statutes of Canada, 1902.

p. 11, ll. 37–42

p. 15, ll. 4–8, 23–31

6.—O'Halloran, J., therefore concluded that the relations between the employer, the Canadian Pacific Railway Company and its employees fell necessarily within the realm of railway management and thus within the exclusive jurisdiction of the Dominion Parliament. In this he considered the fixing of such relations throughout a Dominion-wide railway and steamship service and system was not a matter of property and civil rights within each of the provinces nor a matter of local or provincial concern.

p. 15, ll. 40–41
p. 16, ll. 1–2
p. 15, ll. 37–40
p. 16, ll. 11–14

7.—Having reached these conclusions, O'Halloran, J., stated that his answer to the question submitted to the Court was in the negative.

p. 16, ll. 29–31

8.—Robertson, J., in his Judgment in British Columbia held that the lines of railway operated by the Company are under the exclusive jurisdiction and control of the Dominion as the effect of head 10 of Section 92 of the British North America Act, 1867, is to transfer the right to legislate with respect to the excepted works mentioned in Clauses (a), (b), and (c), into Section 91. He held also that any such Federal legislation must relate strictly to railway lines, with the exception that matters which would otherwise be within the legislative competence of the Province but which are necessarily incidental to effective legislation by the Dominion upon this subject of legislation, as upon others expressly enumerated in Section 91, are also within the legislative competence of the Dominion, the Dominion and the Province having overlapping jurisdictions in this respect.

p. 20, ll. 4–8

p. 20, ll. 12–30

9.—He further held that it was only the "lines of railway" of the Company and not its undertaking which have been declared to be for the general advantage of Canada and that such a declaration did not transfer to the Dominion the power to legislate with respect to matters not necessary to the railway.

p. 20, ll. 40–43
p. 21, ll. 1–2

10.—Robertson, J., also held that the words "lines of railway" as used in head 10 of Section 92 meant primarily the right of way and the rails, although he considered that they did include whatever is absolutely necessary for the physical use of the railway, such as round houses, stations, rolling stock, equipment, and all other things necessary for the operation of a railway. He stated, however, that he would not include the Empress Hotel in this category, holding that the fact that it had been built for the purposes of a railway did not make it a part of the railway. Thus, he

p. 21, ll. 18–20, 36–40

p. 22, ll. 1–6

p. 22, ll. 12–14

p. 22, ll. 32–34

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held that the hotel was not within the exclusive legislative jurisdiction of the Dominion.

p. 20, ll. 35–39

11.—He inferred that the British Columbia Hours of Work Act was primarily legislation dealing with property and civil rights in the Province and was within the legislative jurisdiction of the Province. For the above

p. 23, ll. 12–13

reasons and as the legislative field was clear of Dominion legislation he stated his answer to the question referred to the Court in the affirmative.

12.—Robertson, J., also referred briefly in his Judgment to the

p. 61, ll. 33–39

argument that by the provisions of Regulation 8 of the Wartime Labour Relations Regulations (P.C. 1003) the Dominion Parliament had legislated upon the hours of work of employees to whom the Regulations applied. Regulation 8 provided in part that a collective agreement, negotiated by bargaining representatives certified by the Wartime Labour Relations Board, should be binding on every employee in the unit of employees on whose behalf the bargaining representatives were authorized to act.

p. 23, ll. 6–11
p. 5

Robertson, J., adopted the reasoning of Sloan, C.J., B.C., on this point as set out in the decision in the Reference *re* Application of Hours of Work Act to Metalliferous Mines (1947, Volume 2, Dominion Law Reports,

p. 8, ll. 12–25

page 737). In this decision Sloan, C.J., B.C., held that as the Regulations under P.C. 1003 did not by their terms write into negotiated contracts substantive and specific covenants covering hours of work and other conditions of employment, such contracts must be made in conformity with and subject to the provisions of relevant provincial laws. In his

p. 8, ll. 37–39

view, P.C. 1003 and the provincial Hours of Work Act could be read together, each applicable in its own legislative sphere.

p. 23, ll. 15–20

13.—Sloan, C.J., B.C., Sidney Smith, and Bird, JJ., concurred with Robertson, J.

14.—The Judgment of the trial Court in the analogous Saskatchewan action was given by Bigelow, J., on the 19th May, 1947 (see 1947, Volume 4, Dominion Law Reports, page 329). In this Judgment he held that the Saskatchewan statutes were *ultra vires* the Legislature in so far as they affected the Plaintiff Companies and in this respect were exclusively within the legislative powers of the Dominion Parliament under Section 92, head 10, subsections (a) and (c) of the British North America Act.

15.—He further held that the hotels of the Canadian Pacific Railway Company were an integral part of the Company's transportation system and were not to be treated differently than the rest of the Plaintiff's claim.

p. 10

In this he expressed agreement with the Judgment of O'Halloran, J., of the British Columbia Court of Appeal referred to in paragraph 4 of this Case.

16.—An Appeal was taken by the Attorney-General of Saskatchewan to the Court of Appeal for Saskatchewan from the said Judgment of

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Bigelow, J., and on the 12th November, 1947, the Court of Appeal (Martin, C.J.S., Gordon, MacDonald and Anderson, JJ.) by a unanimous Judgment given by MacDonald, J., dismissed the Appeal (see 1948, Volume 1, Dominion Law Reports, page 580). In this Judgment as in the trial Judgment of Bigelow, J., the statutes concerned, The Minimum Wage Act and The Annual Holidays Act, 1944, were dealt with and considered upon the same basis and as coming within the same legislative powers as the Hours of Work Act. No distinction was drawn between any of these statutes in either of the said Judgments. p. 148, ll. 22–29

17.—In his Judgment in the Saskatchewan action, MacDonald, J., held that the employees of a Dominion Railway Company are under the exclusive legislative jurisdiction of the Parliament of Canada and that provincial legislation prescribing generally the duties of employers towards their employees and the rights of employees against their employers cannot affect them even in the absence of any conflicting legislation of the Parliament of Canada. The authorities cited by MacDonald, J., in support of this conclusion, however, do not appear to go further than to uphold the legislative power of the Parliament of Canada to pass such legislation with respect to such employees. p. 148, ll. 25–27

18.—In dealing with the effect of provincial legislation of general application upon such employees in the absence of conflicting legislation of the Parliament of Canada, MacDonald, J., did not agree with the conclusions of Duff, J. (as he then was) in Reference *re* Legislative Jurisdiction over Hours of Labour (see 1925 Supreme Court Reports, page 505, at page 511), wherein it was stated that in the absence of conflicting Dominion legislation the primary authority of the Province in relation to hours of duty of employees of Dominion railways remains unimpaired and unrestricted.

19.—MacDonald, J., stated further, however, that even if the said conclusion of Duff, J., was correct, there was federal legislation in effect, on the subject matter of the provincial Acts in question, which superseded such Acts. In this connection he referred to the Wartime Labour Regulations (P.C. 1003) and in particular to Regulation 8 under which a collective bargaining agreement containing terms with respect to rates of pay, hours of work and other working conditions was made binding on every employee. Agreements of this type having been entered into, he held that the Dominion, by making such agreements binding, had occupied the legislative field. p. 56 p. 61, ll. 33–39

20.—In reaching this conclusion he stated that he could not agree with the decision of the Court of Appeal for British Columbia in Reference *re* Application of Hours of Work Act to Metalliferous Mines (1947, Volume 2, Dominion Law Reports, page 737) referred to in p. 5

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p. 8, ll. 20–25
p. 8, ll. 37–39

paragraph 12 of this Case. In the latter decision it had been held that in reaching such an agreement the provisions of the provincial Hours of Work Act must be complied with and that the provisions of that Act and of the Dominion Regulations could be read together, each being applicable in its own legislative sphere. In this view of the matter the provincial statute provides a statutory term of the contract of employment which in turn is made binding upon every employee by the Dominion legislation.

21.—MacDonald, J., also dealt with the contention that the jurisdiction of a provincial legislature in respect of hotels, including the hotels of a Dominion railway company, is an exclusive jurisdiction in which the Parliament of Canada has no power to legislate at all. He did not agree with this contention and held that the hotels of the Canadian Pacific Railway Company form an adjunct of its works and undertakings. He expressed agreement with and adopted the reasoning of the dissenting Judgment of O'Halloran, J., referred to in paragraph 4 of this Case.

p. 10
p. 148, ll. 28, 29

22.—MacDonald, J., further stated that as the works and undertakings of the Canadian Pacific Railway Company are clearly within Section 92, Clause 10 (a) of the British North America Act, the declarations that their works were for the general advantage of Canada were superfluous. Apart from this, however, he held that the declarations made could be interpreted as including hotels built for the purposes of the railway.

p. 148, l. 25

23.—For the reasons mentioned, MacDonald, J., dismissed the Appeal of the Attorney-General of Saskatchewan from the decision of Bigelow, J., referred to in paragraph 14 of this Case.

24.—After the Judgment of MacDonald, J., was given in Saskatchewan, the Attorney-General of Saskatchewan applied for leave to intervene before the Supreme Court of Canada in the Appeal from the Judgment of the British Columbia Court of Appeal, the issues in the Saskatchewan action being fundamentally the same as those in the British Columbia Reference.

p. 110

25.—On the 10th January, 1948, leave was granted to the Attorney-General of Saskatchewan by Order of Kerwin, J., to intervene before the Supreme Court of Canada in the Appeal from the said Judgment of the Court of Appeal for British Columbia, upon the terms that he be represented by Counsel on the argument and file a factum.

p. 120, ll. 37–43
p. 121, ll. 1–14
p. 125, ll. 27–41
p. 126, ll. 1–6

145, ll. 35–42

26.—After the judgment of the British Columbia Court of Appeal but prior to the hearing of the Appeal before the Supreme Court of Canada, Section 27A of the Canadian National-Canadian Pacific Act, 1933, Statutes of Canada, 1932-33, Chapter 33, was enacted by Chapter 28 of the Statutes of Canada, 1947, assented to on the 27th June, 1947. Section 27A provides in part that the rates of pay, hours of work and other terms and conditions of employment of employees of " Pacific Railways "

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engaged in the construction, operation or maintenance of " Pacific Railways" shall be such as are set out in any agreements in writing between " Pacific Railways " and the representatives of interested employees, provided such agreements are filed in the office of the Minister of Transport. " Pacific Railways " as defined in Clause (g) of Section 3 of the Act means the Canadian Pacific Railway Company as owner, operator, manager and otherwise and all other Companies which are elements of its transportation, communication and hotel system and its respective undertakings and those of such other Companies, but such undertakings are deemed not to include manufacturing, mining, dealing in land, operating any ocean marine service or the like or anything ancillary.

27.—Section 27A does not specify what terms shall be written into a contract of employment such as, for example, the hours of work, but merely operates with respect to such contracts in a manner similar to the Wartime Labour Relations Regulations (P.C. 1003) making such a contract binding once it is entered into by the parties and filed with the Minister of Transport. p. 56 p. 61, ll. 33–39

28.—While the said Section 27A was not considered by the British Columbia Court of Appeal its effect on the issues in the Reference was argued and adjudicated upon in the Appeal to the Supreme Court of Canada. p. 120, ll. 37–43 p. 121, ll. 1–14 p. 125, ll. 27–41 p. 126, ll. 1–6 p. 133, ll. 38–43 p. 145, ll. 35–42

29.—In his Judgment in the Supreme Court of Canada, Kerwin, J., held that it was not possible to say that an hotel business is part of a railway undertaking within head 10, Section 92 of the British North America Act. He held that the mere fact that the Company was enabled to venture into other activities did not permit it to claim, because it integrated these activities with its main business, that they became part and parcel of its railways. In his view, the operation of an hotel was not necessarily incidental to a railway undertaking. p. 115 p. 117, ll. 29–36 p. 117, ll. 37–43 p. 118, ll. 1, 2 p. 118, ll. 42, 43

30.—Kerwin, J., also held that there was no declaration under Clause (c) of head 10 of Section 92 of the British North America Act as to hotels and such declarations as had been made with respect to railways under that clause did not extend or apply to the hotels of the Canadian Pacific Railway Company. p. 119, ll. 29–35

31.—He also held that Section 27A of the Canadian National–Canadian Pacific Act, 1933, above-mentioned, was ineffective in so far as it concerned any employees of the Empress Hotel. p. 121, ll. 14–18

32.—In the Supreme Court of Canada, Rand, J., held that to say that legislation in relation to such collateral adjuncts as the Empress Hotel, even in its limited application to employees, is railway legislation strictly, is to confuse the total business of the Company with its transportation business. He held that the hotel was not part of the railway or its works and undertakings within the meaning of Section 92 (10) (a) of the British North America Act. p. 122 p. 125, ll. 7–10 p. 124, ll. 25–3

p. 126, ll. 19–24

33.—With respect to Section 27A of the Canadian National–Canadian Pacific Act, 1933, above-mentioned, Rand J., stated that general legislation on the subject of rates of pay, hours of work, and other terms and conditions of employment is *prima facie* valid only under heads 13 or 16 of Section 92 of the British North America Act.

p. 126, ll. 43, 44
p. 127, ll. 1–8

34.—He further stated that he was unable to accept the view that an ancillary power of legislation as to hours of work, even restricted to the limited relations of these employees in the Empress Hotel, could be said to be necessary to obtain the full effect of legislation or of the substantive law with respect to the Company's transportation works or undertakings.

p. 127, ll. 41–45
p. 128, l. 1

35.—Rand, J., held further that the declaration contained in Section 6 of the Railway Act of 1919 and similar provisions in preceding statutes made under head 10 (c) of Section 92 of the British North America Act did not have the effect of drawing the Empress Hotel within the Dominion legislative jurisdiction.

p. 135
p. 135, ll. 17–22

36.—In the Supreme Court the Judgment of Taschereau and Estey, JJ., was delivered by Estey, J. He stated that it was not disputed that legislation such as the Hours of Work Act is *intra vires* the Province but it was contended that it could not affect employees in the Empress Hotel, owned and operated by the Company as part of its railway and steamship system. He held, however, that while, on the one hand, the term " railway " as used in Section 92 (10) (a) of the British North America Act cannot be restricted to mean merely the road bed and rails, neither can it, on the other hand, be given a meaning sufficiently wide to include an hotel. He further pointed out that the hotel business antedates the railway business and has generally been regarded as a separate and distinct business. While hotels are necessary to the travelling public they are not an essential or integral part of the means of conveyance.

p. 137, ll. 17–22
p. 138 ll 1–3, 20–22
p. 138, ll. 4–6
p. 138, ll. 6–8

p. 140, ll. 20–29

37.—Estey, J., further held that the declarations in the Railway Acts declaring the " railway " to be a work for the general advantage of Canada did not have reference to an hotel operated by the railway company, as the term " railway " was not sufficiently comprehensive in its meaning to include hotels. He further held that the reading of the various special Acts, concerning the Company, along with the general railway Act did not lead to the conclusion that the definition of the word " railway," as used in the declarations made under Section 92 (10) (c) of the British North America Act, was to be taken as including an hotel.

p. 142, ll. 32–36
p. 143, ll. 1–11

p. 144, ll. 21–29

38.—He further held that if Dominion legislation is to be valid as being necessarily incidental or ancillary to effective legislation as to the railway system it must be legislation as to the railway as a vehicle of transportation. If hotel legislation is to come within this category it must be established that without it the transportation system would be ineffective in respect of its passenger service. He held that it had not been established that such hotel legislation is necessary and incidental to effective railway legislation.

45, ll. 25–34

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39.—With respect to the Canadian National—Canadian Pacific Act, 1933, above-mentioned, he pointed out that the definition of " Pacific Railways " which includes hotels, does not have the effect of altering the meaning of the word " railway " as defined in Section 2 (21) of the Railway Act, being Chapter 170 of the Revised Statutes of Canada, 1927, nor does it alter in any way the meaning of the word " railways " as used in the British North America Act. As legislation in respect of hotels is not necessarily incidental or ancillary to railway legislation under Section 92 (10) (a) of the British North America Act, he held that Section 27A can have no application to hotels. In so far as it may purport to do so it is *ultra vires* the Parliament of Canada.

p. 143, ll. 1-30

p. 146, ll. 1-8

40.—Kellock, J., in the Supreme Court of Canada held that there was nothing to support the Company's contention to the effect that its hotels are included in the term " railway " as used in Section 92 (10) (a) of the British North America Act. He further held that the meaning of the word " railways " at the time the British North America Act was passed in 1867 was not regarded as inclusive of hotels. He further held that prior to the Canadian Pacific Railway Act of 1902, being Chapter 52 of the Statutes of Canada, 1902, the Company possessed no authority to construct or operate hotels.

p. 129, ll. 3-15

p. 130, ll. 16-43

p. 131, ll. 11, 12

41.—With respect to the declaration contained in Section 6 (c) of the Railway Act of 1927 above-mentioned, Kellock, J., held that the word " railway " as used in this section cannot be interpreted to include an hotel, this declaration having reference only to the track and its physical appurtenances. He further held that the Company's " railway," not being wholly situate within a province, the declaration is ineffective.

p. 132, ll. 1-14, 21-28

42.—Kellock, J., further held that Section 27A of the Canadian National —Canadian Pacific Act, 1933, was not legislation necessarily incidental to effective legislation by the Parliament of Canada with respect to railways and insofar as Section 27A purports to include in its operation the employees of the Company's hotel system it is *ultra vires*.

p. 133, ll. 22-37

p. 133, ll. 38-41

43.—It is submitted on behalf of the Attorney-General for the Province of Saskatchewan that the Judgments of the Court of Appeal for British Columbia and of the Supreme Court of Canada are right and ought to be affirmed and that this Appeal ought to be dismissed for the reasons stated in the Reasons for Judgment delivered by the majority of the Judges of the Court of Appeal and all of the Judges of the Supreme Court and for the following amongst other

REASONS.

1. BECAUSE legislative jurisdiction as to the limiting of hours of work in industrial undertakings is primarily vested in the province under heads 13 and 16 of Section 92 of the British North America Act.

2. BECAUSE the legislative jurisdiction of the Province as to hours of work extends and applies to the employment of persons engaged on works and undertakings in the Province coming within head 10 of Section 92 above-mentioned, such as Dominion railways, in the absence of conflicting Dominion legislation on the same subject-matter, provided, however, that the provincial legislation is of general application and not specifically passed with respect to such works and undertakings.

3. BECAUSE the British Columbia Hours of Work Act is such legislation of general application, passed under the said legislative jurisdiction of the Province and, by its terms, regulates the employment of persons in all hotels in the Province.

4. BECAUSE the Dominion has not passed legislation to regulate or fix the limits of the hours of work of employees of Dominion railway companies and particularly has not passed any such legislation with respect to employees in such Companies' hotels.

5. BECAUSE, as a consequence, the British Columbia Hours of Work Act applies to such hotel employees whether such hotels are or are not works and undertakings falling within the legislative jurisdiction of the Dominion under head 10 of Section 92 above-mentioned.

6. BECAUSE Dominion labour legislation establishing a system of collective bargaining between Dominion railway companies and their employees or making agreements entered into by such parties binding on all such employees is not legislation upon the same subject-matter as that of the provincial Hours of Work Act and does not supersede that Act or render it inoperative with respect to such employees. Such Dominion and provincial legislation may be read together, each being applicable in its own legislative sphere.

7. BECAUSE the Empress Hotel is not a work falling within the legislative jurisdiction of the Dominion under head 10 (c) of Section 92 above-mentioned, as it has not been declared by the Parliament of Canada to be a work for the general advantage of Canada or for the advantage of two or more of the provinces.

8. BECAUSE the Empress Hotel is not a railway or an integral or essential part thereof or a work and undertaking falling within the legislative jurisdiction of the Dominion under head 10 (a) of Section 92 above-mentioned.

9. BECAUSE the Canadian Pacific Railway Act, 1902, insofar at least as it empowers the Company to build, purchase, acquire or lease buildings for hotels and to carry on a hotel business, is not legislation providing for a matter which is necessarily incidental to effective legislation by the Parliament of Canada upon a subject of legislation expressly enumerated in Section 91 of the British North America Act, such as railways, for example, under head 29 of that section and head 10 (a) of Section 92, nor is it legislation directly with respect to such an enumerated subject.

10. BECAUSE the Canadian Pacific Railway Act, 1902, insofar as it relates to hotels, merely extends the corporate powers of the Company to permit it to engage in a separate and additional undertaking, the hotel business, as distinguished from its railway and transportation undertaking.

11. BECAUSE the Company, with respect to its hotel undertaking in the Province is subject, as a Dominion Company, to the competent laws of the Province, where such laws concern property and civil rights or matters of a local or private nature in the Province, provided such laws are of general application and do not impair or destroy the status, corporate capacity or powers of the Company.

12. BECAUSE the Hours of Work Act, being such competent provincial legislation, therefore applies to the Company with respect to its employees at the Empress Hotel.

13. BECAUSE Dominion legislation purporting to regulate the hours of work or other labour relations and conditions of employment of employees in a hotel operated in a province by a Dominion Company would be *ultra vires* the Parliament of Canada as it would trench upon the legislative authority primarily vested in the Province in such matters.

14. BECAUSE Section 27A of the Canadian National–Canadian Pacific Act, 1933, while it does not purport to regulate or specify maximum hours of work of the Company's employees employed in its hotel undertaking, does purport to regulate labour relations and matters of property and civil rights between the Company and such employees and is therefore *ultra vires* the Parliament of Canada.

A. M. NICOL.

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 THE PROVINCES OF ONTARIO, NOVA SCOTIA, ALBERTA, and SASKATCHEWAN INTERVENANTS

CASE FOR THE INTERVENANT

THE ATTORNEY-GENERAL OF THE PROVINCE OF SASKATCHEWAN.

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