

~~11. B. 16~~

19, 1953

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT
OF CANADA

No. 21 of 1952.

UNIVERSITY OF LONDON
10 FEB 1954
INSTITUTE OF ADVANCED
LEGAL STUDIES

33559

BETWEEN
THE ATTORNEY-GENERAL FOR SASKATCHEWAN APPELLANT
AND
CANADIAN PACIFIC RAILWAY COMPANY RESPONDENT
AND
THE ATTORNEY-GENERAL FOR MANITOBA, THE
ATTORNEY-GENERAL FOR ALBERTA, and THE
ATTORNEY-GENERAL OF CANADA INTERVENERS.

CASE FOR THE APPELLANT
THE ATTORNEY-GENERAL FOR SASKATCHEWAN.

1.—This is an Appeal by special leave from that part of the judgment of the Supreme Court of Canada dated the 20th day of November, 1950, allowing in part an Appeal by the Respondent from a Judgment of the Court of Appeal for Saskatchewan dated the 29th day of January, 1949, whereby the said Court of Appeal unanimously, so far as regards the points at issue in this Appeal, answered in favour of the Appellant certain questions referred to the said Court by His Honour the Lieutenant-Governor of Saskatchewan pursuant to The Constitutional Questions Act being Chapter 72 of the Revised Statutes of Saskatchewan, 1940. RECORD
pp. 390-392
pp. 345-346
p. 7
pp. 6-7

10 2.—The reference raised the question of the validity of certain portions of the legislation of Saskatchewan providing for local taxation having regard to the immunity from taxation claimed by the Respondent Company as to certain portions of the property of the Company under the provisions of Clause 16 of the contract between the Dominion of Canada and the Respondent Company and ratified by the Statute of Canada, 44 Victoria c. 1 (1881) and appearing as a schedule to said Statute and to the limitations p. 181, ll. 9-17
pp. 172-198

RECORD

p. 266, ll. 18-21

purported to be placed upon the legislative power of the Province of Saskatchewan by Section 24 of the Act, creating and establishing the province.

pp. 304-308
pp. 308-312
pp. 312-316
pp. 322-327
pp. 316-321

3.—By certain statutes of the Province of Saskatchewan as amended, namely, The Village Act, 1946 (10 George VI c. 31 as amended), The Rural Municipality Act, 1946 (10 George VI c. 32 as amended), The Local Improvement District Acts, 1946 (10 George VI c. 33 as amended), The City Act, 1947 (11 George VI c. 43 as amended), The Town Act, 1947 (11 George VI c. 44 as amended) it was provided

(a) That with the exception of property specially exempt 10
by law the railway road and other land within the Province owned
by Railway Companies should be assessed and taxed and

(b) That Railway Companies whether their property is liable
to assessment and taxation or not should be liable to assessment
and taxation in respect of the business carried on as a railway
within the Province at a rate per square foot of the floor space
of each building or part thereof used for business purposes.

pp. 1-6

4.—The questions for decision in this reference arose out of a dispute
between the Canadian Pacific Railway Company (hereinafter referred to
as the Respondent Company) and the Appellant and between the 20
Respondent Company and divers municipalities in Saskatchewan with
respect to the proposed application in part of such legislation to the Canadian
Pacific Railway Company despite such exemption. The matters in dispute
mainly centred around the questions whether the exemption applied to
certain branch lines, and whether the exemption covered the form of local
taxation known as “business taxes” or whether the “business taxes”
applied to the Respondent Company notwithstanding the exemption. By
an order of reference dated the 16th day of November, 1948, the Lieutenant-
Governor of the Province of Saskatchewan referred to the Court of Appeal
for Saskatchewan pursuant to the provisions of The Constitutional Questions 30
Act being Chapter 72 of the Revised Statutes of Saskatchewan the following
questions :—

Question 1. Does Clause 16 of the contract set forth in the
Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881)
being an Act respecting the Canadian Pacific Railway, exempt
and free from taxation the stations and station grounds, workshops,
buildings, yards, and other property used for the working of the
branch lines of the Canadian Pacific Railway Company situated
in Saskatchewan ?

Question 2. Does Clause 16 of the contract aforesaid exempt 40
and free the Canadian Pacific Railway Company from taxation
in Saskatchewan in respect of the business carried on as a railway

(a) based on the area of the land or the floor space of buildings
used for the purposes of such business

(b) based on the rental value of the land and buildings used for the purposes of such business

(c) based on the assessed value of the Land and Buildings used for the purposes of such business

but not made a charge upon such land or buildings ?

RECORD

10 Question 3. Are the provisions of The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947, all as amended, relating to the assessment and taxation of the real estate of railway companies operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to Clause 14 of the said contract ?

20 Question 4. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

(a) the main line of its railway in Saskatchewan, and

(b) its branch lines in Saskatchewan ?

5.—The Province of Saskatchewan was established by The Saskatchewan Act, 1905, Statutes of Canada 4-5 Edward VII c. 42 (1881). Section 3 of The Saskatchewan Act, 1905, provides :—

Statutes Vol. 4,
pp. 4579-4594

Record,
p. 266, ll. 10-17

30 “ 3. The provisions of The British North America Acts, “ 1867 to 1886 shall apply to the Province of Saskatchewan in the “ same way and to the like extent as they apply to the provinces “ heretofore comprised in the Dominion as if the said Province “ of Saskatchewan had been one of the provinces originally united, “ except in so far as varied by this Act and except such provisions “ as are in terms made or by reasonable intendment may be held “ to be specially applicable to or only to affect one or more and “ not the whole of the said provinces.”

6.—The British North America Act, 1867, Section 92, provides :—

Statutes Vol. 4
p. 4632

40 “ 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 : “ (2) Direct taxation within the province in order to the raising “ of a revenue for provincial purposes ; “ (8) Municipal institutions in the province.”

RECORD

p. 266, ll. 18-21
Statutes Vol. 4,
p. 4585

7.—Section 24 of The Saskatchewan Act, 1905, provides :—

“ 24. The powers hereby granted to the said province shall
“ be exercised subject to the provisions of Section 16 of the contract
“ set forth in the schedule to Chapter 1 of the Statutes of 1881
“ being an Act respecting the Canadian Pacific Railway Company.”

8.—Clauses 1 and 16 of the contract in the schedule to the said Act of 1881 provide as follows :—

Record,
p. 174, l. 30—
p. 175, l. 3

“ 1. For the better interpretation of this contract, it is hereby
“ declared that the portion of railway hereinafter called the
“ Eastern section, shall comprise that part of the Canadian 10
“ Pacific Railway to be constructed, extending from the Western
“ terminus of the Canada Central Railway, near the East end of
“ Lake Nipissing, known as Callander Station, to a point of
“ junction with that portion of the said Canadian Pacific Railway
“ now in course of construction extending from Lake Superior
“ to Selkirk on the East side of Red River ; which latter portion
“ is hereinafter called the Lake Superior section. That the portion
“ of said railway, now partially in course of construction, extending
“ from Selkirk to Kamloops, is hereinafter called the Central
“ section ; and the portion of said railway now in course of 20
“ construction, extending from Kamloops to Port Moody, is
“ hereinafter called the Western section. And that the words
“ ‘ the Canadian Pacific Railway,’ are intended to mean the
“ entire railway, as described in the Act 37th Victoria, chap. 14.
“ The individual parties hereto, are hereinafter describd as the
“ the Company ; and the Government of Canada is hereinafter
“ called the Government.”

p. 181, ll. 9-17

“ 16. The Canadian Pacific Railway, and all stations and
“ station grounds, workshops, buildings, yards and other property,
“ rolling stock and appurtenances required and used for the 30
“ construction and working thereof, and the capital stock of the
“ Company, shall be forever free from taxation by the Dominion
“ or by any province hereafter to be established or by any Municipal
“ Corporation therein ; and the lands of the Company, in the
“ North-West Territories, until they are either sold or occupied,
“ shall also be free from such taxation for twenty years after the
“ grant thereof from the Crown.”

9.—These questions the Court of Appeal for Saskatchewan composed of the Chief Justice of Saskatchewan and MacDonald, Gordon and Procter, J.J.A. answered as follows :—

p. 7, ll. 30-36

Question No. 1 No (Gordon, J.A. dissenting).
Question No. 2 (a) No.
Question No. 2 (b) Not answered.

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- Question No. 2 (c) Not answered.
 Question No. 3 Yes (Gordon, J.A. dissenting).
 Question No. 4 (a) Yes.
 Question No. 4 (b) Yes.

RECORD

10.—From this decision the Respondent Company appealed to the Supreme Court of Canada and after being heard on the 8th, 9th, 10th, 13th and 14th March, 1950, the Supreme Court (The Chief Justice of Canada and Kerwin, Taschereau, Kellock, Estey, Locke and Cartwright, JJ.) gave a judgment allowing by a majority the Appeal in part, and 10 ordering this Appellant to pay one-half of the costs of the Appeal. pp. 345-346

11.—The answers of the Supreme Court of Canada given in the Formal Judgment of the Court to the questions referred were as follows :— pp. 345-346

- 20 “ Question No. 1— No, except such properties, if any, real or
 “ personal, enumerated in Clause 16, situated
 “ upon the branch lines in Saskatchewan as are
 “ entitled to the benefit of the exemption from
 “ taxation as being required and used for the
 “ construction and working of the railway
 “ described in Sections 1, 2 and 3 of the Act 37
 “ Victoria c. 14.
- 30 “ Question No. 2— Yes as to the business carried on as railway upon
 “ or in connection with the railway as described
 “ in Sections 1, 2 and 3 of the Act 37 Victoria
 “ c. 14, and upon such other properties, if any,
 “ real or personal, of the Company situate upon
 “ its branch lines in Saskatchewan as are
 “ entitled to the benefit of exemption from
 “ taxation under Clause 16 as being required and
 “ used for the construction and working of that
 “ portion of the line referred to in the said
 “ sections of the Statute.
- 40 “ Question No. 3— Yes, except in respect of such real estate, if any,
 “ situate upon branch lines constructed pursuant
 “ to Clause 14 of the contract as is entitled to
 “ the benefit of exemption from taxation under
 “ Clause 16 as being required and used for the
 “ construction and working of the railway as
 “ described in Sections 1, 2 and 3 of the Act 37
 “ Victoria c. 14.
- “ Question No. 4 (a)—No.
 “ (b)—“ Yes, subject to the limitation stated in the
 “ answer to Question 2.”

RECORD

pp. 377-389
pp. 356-368
pp. 346-356

These answers were proposed in the judgment of Lock, J. (concurring in by Kerwin and Cartwright, JJ.), and were adopted by Kellock, J. The Chief Justice and Taschereau, J., in a judgment delivered by the Chief Justice, proposed to answer the questions in the same sense, but in somewhat different terms.

pp. 368-377

Estey, J., dissented from the answers to Questions 2 and 4 proposed by the remainder of the Court, but agreed with the answers proposed to the remaining questions by Locke, J. He proposed that Question 2 should be answered "No" and Question 4 "Yes."

pp. 390-392

12.—Her Majesty's Order in Council granting special leave to Appeal 10 dated the 18th day of July, 1952, limited the Appeal to the following questions

p. 391, ll. 42-45

(a) whether the exemption granted in Clause 16 of the contract between the Dominion of Canada and the Respondent Company covers the form of local taxation known as "business taxes" and

p. 391, l. 45
p. 392, l. 1

(b) as to the validity of the limitation on the powers of the Province contained in Section 24 of The Saskatchewan Act, 1905.

13.—In the humble submission of the Appellant the answers to the 20 questions should have been as follows:—

Question No. 1 No.

Question No. 2 No.

Question No. 3 Yes.

Question No. 4 Yes.

14.—The issues raised by the questions referred so far as these questions drew a distinction between branch lines and the rest of the undertaking of the Respondent Company depended on the definition of the term "the Canadian Pacific Railway" contained in Clause 1 of the contract annexed to the said Act of 1881, which definition by reference incorporated 30 the definition contained in an earlier Statute of Canada namely the Statute 37 Vic. c. 14 (Sections 1-4 inclusive). Since this question was answered by both Courts in favour of the Appellant it is not relevant to the present appeal except in so far as the exceptions qualifying the answers are open to challenge by reason of the questioning by the Appellant of the validity of Section 24 of The Saskatchewan Act and of the exemption referred to therein as hereinafter referred to.

p. 174, l. 30—
p. 175, l. 3

p. 105, l. 39—
p. 106, l. 25

p. 266, ll. 18-21
Statutes
Vol. 4, p. 4585

Record,
p. 6, ll. 29-38
p. 7, ll. 8-16

15.—The issues raised by the second and fourth questions, however, which the Supreme Court by a majority answered in a sense unfavourable to the submissions of the Appellant, raise an important issue as to the nature and application to the Respondent Company of the so called 40

business taxes imposed in the Province of Saskatchewan under authority of The Village Act, 1946, The Rural Municipality Act, 1946, The Local Improvements Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended. These taxes correspond more or less closely with those imposed by similar legislation passed in various provinces of the Dominion and in particular in Manitoba and Alberta to which Clause 16 of the contract annexed to the said Act of 1881 also applies. Owing to the size of the Respondent Company's undertaking the issue as to the validity of this form of taxation as applied to the Respondent Company is of the greatest importance to the Province of Saskatchewan, and the answers to the questions referred will have considerable importance for other provinces of the Dominion in addition to the said Province of Saskatchewan.

RECORD
pp. 304-308
pp. 308-312
pp. 312-316
pp. 322-327
pp. 316-321

16.—A further and more important question for consideration both as affecting the answers to Questions 2 and 4 and as affecting the exceptions imposed by the Supreme Court on their answers to Questions 1 and 3 is as to the validity of the limitation on the powers of the Province imposed by Section 24 of The Saskatchewan Act, 1905 (Statutes of Canada 4-5 Edward VII c. 42). This question was expressly reserved in the Court of Appeal for Saskatchewan and in the Supreme Court of Canada by the Appellant in order that it might be open to the Appellant to raise the same in the event of the case coming for consideration before this Board. It is respectfully submitted that if Section 24 of The Saskatchewan Act, 1905, is held *ultra vires* the limitations on the answers to the questions given by the Supreme Court of Canada should be struck out. This is important to many Saskatchewan municipalities as the meaning of the limitations is uncertain and will lead to extensive litigation to determine their meaning.

pp. 6-7
Statutes,
Vol. 4, p. 4585
Record,
p. 35, ll. 28-38
p. 65, l. 43—
p. 66, l. 4
Factum, p. 25

17.—It is desirable in considering this question to refer to the relevant statutory provisions and Orders in Council leading up to the establishment of the Province of Saskatchewan in chronological order. The first enactment in point of time is The British North America Act, 1867, which provided for the Union of Ontario, Quebec, Nova Scotia and New Brunswick. The said Act by Section 146 provided for the bringing into confederation of other colonies and adding to the Dominion the territories known as Rupert's Land and the North-Western Territory. Section 146 of The British North America Act, 1867, reads as follows:—

“ 146. It shall be lawful for the Queen by and with the advice of Her Majesty's most honourable Privy Council on addresses from the Houses of the Parliament of Canada and from the House of the respective Legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia to admit those colonies or provinces or any of them into the Union and on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory or either of them into the Union on such terms and conditions in each case as are in the addresses expressed and as

p. 81, ll. 26-38
Statutes,
Vol. 4, p. 4642

RECORD

“ the Queen thinks fit to approve subject to the provisions in this Act ; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.”

pp. 83-84
Statutes,
Vol. 4, pp. 4665-4668

18.—The next statute is the Rupert's Land Act, 1868 (an Imperial Statute) which provided for the surrender to Her Majesty by the Hudson's Bay Company of the lands, territories, powers, etc., in Rupert's Land which had been granted to that company by Letters Patent in 1670. Section 5 of the Rupert's Land Act reads in part as follows :

Record,
pp. 84, ll. 24-33
Statutes,
Vol. 4, p. 4666

“ 5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid on address from the Houses of the Parliament of Canada to declare that Rupert's Land shall from a date to be therein mentioned be admitted into and become part of the Dominion of Canada ; and thereupon it shall be lawful for the Parliament of Canada from the date aforesaid, to make, ordain and establish within the land and territory so admitted as aforesaid all such laws, institutions and Ordinances and to constitute such courts and officers as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein:”

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This was followed by the order of Her Majesty in Council dated June 23rd, 1870, admitting Rupert's Land and the North-Western Territory into the Union under Section 146 of The British North American Act, 1867.

Record,
pp. 88-91
Statutes,
Vol. 4, pp. 4667-4668

19.—Another Imperial Statute The British North American Act, 1871, was passed on June 29th, 1871, the preamble of which reads as follows :

Record,
p. 96
Statutes,
Vol. 4, pp. 4651-4652

“ Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish provinces in territories admitted or which may hereafter be admitted into the Dominion of Canada and to provide for the representation of such provinces in the said parliament and it is expedient to remove such doubts and to vest such powers in the said parliament.”

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Sections 2 and 4 of The British North America Act, 1871, read as follows :

Record,
p. 96, ll. 21-27
Statutes,
Vol. 4, p. 4651

“ 2. The Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada but not included in any province thereof and may at the time of such establishment make provisions for the constitution and administration of any such province and for the passing of laws for the peace, order and good government of such province and for its representation in the said parliament.”

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“ 4. The Parliament of Canada may from time to time make provisions for the administration, peace, order and good

Vol. 4, p. 4651

“government of any territory not for the time being included in
“any province.”

RECORD

Section 5 of the said Act confirmed the Act of the Parliament of Canada providing for the temporary Government of Rupert's Land and the Act establishing the Province of Manitoba. Section 6 restricts the right of the Parliament of Canada to change statutes establishing new provinces.

Statutes,
Vol. 4, p. 4652

Vol. 4, p. 4652

20.—The next enactment in point of time is the Imperial Statute, The British North America Act, 1886, passed on June 25th, 1886. The preamble reads as follows :

Vol. 4, p. 4653

10 “Whereas it is expedient to empower the Parliament of
“Canada to provide for the representation in the Senate and
“House of Commons of Canada or either of them of any territory
“which for the time being forms part of the Dominion of Canada
“but is not included in any province.”

Sections 1 and 3 of The British North America Act, 1886, read as follows :

20 “1. The Parliament of Canada may from time to time make
“provisions for the representation in the Senate and House of
“Commons of Canada or in either of them of any territories which
“for the time being form part of the Dominion of Canada but are
“not included in any province thereof.”

Vol. 4, p. 4653

“3. This Act may be cited as ‘The British North America
“Act, 1886.’”

“This Act and The British North America Act, 1867,
“and The British North America Act, 1871, shall be
“construed together and may be cited together as ‘The
“British North America Act, 1867 to 1886.’”

21.—In the *Reference re Section 17 of The Alberta Act, 1927*, S.C.R. 364 the Supreme Court of Canada expressed the opinion that The British North
30 America Act, 1871, by Section 2 thereof authorised the Parliament of
Canada to vary the provisions of The British North America Act, 1867,
in so far as any new province was concerned. Newcombe, J., in giving
the judgment of the court expressed the view that Section 2 of The British
North America Act of 1871 gave the Dominion Parliament the widest
powers with respect to defining the powers of the new province. He stated
as follows at page 373 :

Vol. 4, p. 4651

40 “It was to perpetuate under the Union the rights and
“privileges with respect to separate schools, or with respect to
“religious instruction in the public or separate schools, and to
“avoid discrimination in the appropriation and distribution of the
“legislative grants for education, as provided for in the North-
“West Territories Acts of the Dominion, and in the Territorial
“Ordinances of 1901, that s. 17 of the Alberta Act was enacted,
“and it would be strange indeed if, when the new provinces

“emerged, constitutional guarantees could not be afforded by
 “a law-making body which had the powers of the Imperial
 “Parliament to legislate for their constitution and administration,
 “and to *define their powers* to pass laws for their peace, order and
 “good government. The Ordinances, as I have shown, derived
 “their force immediately from the Parliament of Canada, which
 “had conferred the territorial legislative powers under which
 “they were directly enacted. It is unquestionable that they had
 “the force of law in the Territories from the time of their
 “enactment down to the constitution of the province of Alberta 10
 “in 1905, and it seems to be as plain as words can tell that, at
 “the time of the establishment of the province of Alberta, the
 “Parliament of Canada had the power to define and to regulate
 “the legislative powers which were to be possessed by the new
 “province. It is, I think as impossible as it is inexpedient to
 “cast any doubt upon the generality and comprehensive nature of
 “constitutional powers conferred for peace, order and good
 “government, and I do not find, either in the British North
 “America Act of 1867 or of 1871, anything expressed or implied 20
 “which limited the power of the Parliament of Canada in 1905
 “to define the constitution and powers of the provinces which
 “were at that time established and constituted within the
 “Territories.”

Statutes,
 Vol. 4, p. 4583
 Vol. 4, p. 4633

22.—It is respectfully submitted that the Supreme Court of Canada
 could have upheld the validity of Section 17 of The Alberta Act, 1905
 (same as Section 17 of The Saskatchewan Act, 1905) as merely expressing
 the effect of Section 93 of The British North America Act, 1867, which
 provides as follows :

“93.—In and for each province the Legislature may
 “exclusively make laws in relation to education subject and 30
 “according to the following provisions :

“1. Nothing in any such law shall prejudicially affect
 “any right or privilege with respect to denominational
 “schools which any class of persons have by law in the
 “province at the Union ;

“2. All the powers, privileges and duties at the Union
 “by law conferred and imposed in Upper Canada on the
 “separate schools and school trustees of the Queen’s Roman
 “Catholic subjects shall be and the same are hereby extended 40
 “to the dissentient schools of the Queen’s Protestant and
 “Roman Catholic subjects in Quebec ;

“3. Where in any province a system of separate or
 “dissentient schools exists by law at the Union or is thereafter
 “established by the Legislature of the province an appeal
 “shall lie to the Governor General in Council from any Act

“ or decision of any provincial authority affecting any right
 “ or privilege of the Protestant or Roman Catholic minority
 “ of the Queen’s subjects in relation to education ;

RECORD

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“ 4. In case any such provincial law as from time to time
 “ seems to the Governor General in Council requisite for the
 “ due execution of the provisions of this section is not made
 “ or in case any decision of the Governor General in Council on
 “ any appeal under this section is not duly executed by the
 “ proper provincial authority in that behalf then and in every
 “ such case and as far only as the circumstances of each case
 “ require the Parliament of Canada may make remedial laws
 “ for the due execution of the provisions of this section and
 “ of any decision of the Governor General in Council under
 “ this section.”

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At the same time it is respectfully submitted that the Court failed to appreciate the distinction between Sections 2 and 4 of The British North America Act, 1871. It is submitted that Mr. Justice Newcombe failed to take into consideration when dealing with Section 4 the concluding words of the section, namely, “ not for the time being included in any province.” It is not disputed that so long as the Territories were part of Canada but were not included in any province, the Parliament of Canada could “ from time to time make provisions for the administration, peace, “ order and good government of the territory ” and that it could pass laws to effect that purpose. Different considerations entirely arose when the Province of Saskatchewan was carved out of the Territories. When the language of Section 4 is contrasted with that of Section 2 of the same Act, which gave power to the Parliament of Canada to establish new provinces in the Territories, it is respectfully submitted that a distinction is being drawn between the powers of the Dominion Parliament while the Territories are being administered as Territories and the powers that the Dominion would have when the Parliament established provinces out of the Territories.

Statutes,
Vol. 4, p. 4651

Vol. 4, p. 4651

23.—This distinction between Sections 2 and 4 also, it is respectfully submitted, shows that Section 4 did not authorise the Dominion Parliament to pass Clause 16 as legislation for the peace, order and good government of the Territories. To pass legislation to apply to any province carved out of the Territories was not legislation for the Territories as such. It is respectfully submitted that Clause 16 as confirmed by the Statute of Canada 44 Victoria c. 1 was *ultra vires* the Dominion in so far as it purported to grant an exemption forever in any province thereafter established or by any municipal corporation therein.

Vol. 4, p. 4651

Record,
p. 181, ll. 9-17
p. 172, ll. 36-39

24.—It is respectfully submitted that Section 146 of The British North America Act, 1867, provides for the admission of other provinces and Rupert’s Land subject to the provisions of that Act, and Rupert’s Land Act, 1868, provided for Rupert’s Land being admitted under Section 146. Section 3 of The British North America Act, 1886, expressly provides that :

p. 81, ll. 26-38
Statutes,
Vol. 4, p. 4642
Record,
pp. 83-84
Statutes,
Vol. 4, pp. 4665-
4666
Vol. 4, p. 4653

RECORD

“ This Act and The British North America Act, 1867, and
 “ The British North America Act, 1871, shall be construed together
 “ and may be cited together as ‘ The British North America Act,
 “ 1867 to 1886 ’.”

It is respectfully submitted that when new provinces were established, they could only be established subject to the provisions of The British North America Act, 1867, and that the provisions for the distribution of legislative power as between the Dominion and the Provinces contained in Sections 91, 92, 93 and 95 would apply to any new province that was established and that distribution of legislative power could only be changed 10
 by an express provision in some of The British North America Acts to which reference has been made. Section 24 of The Saskatchewan Act, 1905, is, it is submitted, inconsistent with heads 2 and 8 of Section 92 of The British North America Act, 1867, and is therefore *ultra vires*.

Statutes,
 Vol. 4, pp. 4630-
 4634

25.—It is submitted, with deference, that the reasoning of Mr. Justice Newcombe in the *Reference re Section 17 of The Alberta Act, supra* in holding that the Dominion Parliament could define the powers of new provinces, is subject to a basic fallacy. He seems to have read the word “ constitution ” in Section 2 of The British North America Act, 1871, as including the distribution of legislative powers between the Province and the Dominion. 20
 It is submitted that “ constitution ” as used in Section 2 means only the setting up of the province and the form of government which it will have or rather, the instruments—such as the Lieutenant Governor, the Legislative Assembly and the Executive Council—by which the administration of the new province can be carried on. It is in the latter sense that the word is used in The British North America Act, 1867, and as that Act is to be construed with the Act of 1871 by the express provision in the Act of 1886 it is submitted that “ constitution ” must be given the meaning given it in The British North America Act, 1867. See particularly Head 1 of Section 92 where, it is submitted, it is used with the same meaning as in Section 2 of 30
 The British North America Act, 1871. See also Sections 4, 6, 22 and Part V as contrasted with Part VI of The British North America Act, 1867. It is respectfully submitted that to hold otherwise would be to defeat the whole scheme of confederation.

Record,
 p. 96, ll. 21-27
 Statutes,
 Vol. 4, p. 4651

Vol. 4, p. 4632
 Vol. 4, p. 4651
 Vol. 4, p. 4616
 Vol. 4, p. 4618
 Vol. 4, p. 4625
 Vol. 4, p. 4630

See *Reference re Saskatchewan Natural Resources* 1932 A.C. 28 at page 39.

26.—It is respectfully submitted that Section 4 of The British North America Act, 1871, did not authorise the Dominion to enter into a contract with the Canadian Pacific Railway providing for a tax exemption to be binding on future provinces and municipalities therein. The power under said Section 4 only extended during the time the province was part of The North West Territory and the Dominion could not legislate so as to bind 40
 the province after its constitution in 1905, with respect to matters which under Section 92 of The British North America Act, 1867, would normally belong to a province. The only exception to this is provided as to education in Section 93 of The British North America Act, 1867.

Vol. 4, p. 4651

Vol. 4, p. 4632

Vol. 4, p. 4633

27.—It is respectfully submitted that it is not within the competence of the Dominion to grant perpetual exemption from taxation of any class as such a grant is inconsistent with the continued exercise of the powers granted to the Dominion Parliament by Statute. It amounts to an abdication of the power to legislate as to taxation of the Respondent Company which no legislature is competent to do.

The perpetual exemption provided in Clause 16 of the contract ratified by 44 Victoria C. 1 of the Statutes of Canada (1881) was, it is respectfully submitted, *ultra vires ab initio* and therefore could not be made binding on Saskatchewan by Section 24 of The Saskatchewan Act, 1905.

28.—For the purposes of the issue as to the nature and validity of the business taxes as applied to the Respondent Company the provisions of The City Act, 1947 (S.S. 1947 c. 43), as amended, may be treated as typical. Section 231 of The City Act, 1947, as amended, provides as follows :—

“ 231. (1) For greater certainty but not so as to limit the general powers conferred by Section 230 the Council may make by-laws for all or any of the following purposes :

“ 1. raising its revenues by assessment on (a) lands (b) businesses and (c) special franchises.”

20 By Section 479 of this Act it is provided :—

“ Subject to the other provisions of this Act, the municipal and school taxes of the city shall be levied upon (1) lands ; (2) businesses, and (3) special franchises ; ”

The taxes which are the subject of consideration in these proceedings are the taxes relating to businesses.

29.—These business taxes are established by the following provisions of The City Act, 1947, as amended, and impose a tax upon any person carrying on a business in the City. Section 441 of The City Act, 1947, as amended provides as follows :—

30 “ (1) As soon as may be in each year but not later than the thirty-first day of May the assessor shall assess :

“ 2. Every person who is engaged in mercantile, professional or any other business in the city ; save that of a farmer, stock raiser or person otherwise engaged in agricultural pursuits or engaged in fur farming ; ”

and shall prepare an assessment roll in which he shall enter the name and addresses of the persons mentioned in paragraphs 2

30.—Section 443 of The City Act, 1947, as amended, provides as follows :—

40 “ (1) Business shall be assessed in the following manner :

“ 1. The assessor shall fix a rate per square foot of the floor space, irrespective of partitions, elevators, stairways, or other obstructions, of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof ;

“ 2. He may fix a different rate for each class or portion thereof, and in doing so may place a wholesale business in a class distinct from a retail business of otherwise the same class, and may classify each building, or part thereof according to the kind of business carried on therein and may fix a different rate for different kinds of business carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal building, and may fix a different rate for different flats of buildings ;

“ 3. The rate shall not exceed \$8 per square foot, except in the case of banks, loan companies or other financial institutions, in which case such rate shall not exceed \$15 per square foot.

“ (2) Where it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the space used for such business, and shall as far as he deems practicable classify the various businesses, and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

“ (5a) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except sub-section (2), shall apply.”

p. 324, l. 20

31.—Section 480 provides :

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“ The following property shall be exempt from taxation :
“ 2. property specially exempted by law ; ”

Section 485 provides :

“ The owner of a building who is liable to assessment in respect of business carried on therein shall, in addition to his liability for taxes levied in respect of the land and building, be liable for the business tax levied in respect of such business.”

p. 323, l. 7

32.—The provisions of The City Act, 1947, relating to the assessment of the railway roadbed and superstructure are not, it is submitted, immediately relevant to this appeal as their validity as taxes on the Respondent Company apart from the exemption in Clause 16 has not been questioned.

33.—The contention of the Respondent Company with regard to these provisions was that the business tax imposed by these provisions was

a tax from which the Canadian Pacific Railway was exempted by reason of the operation of Clause 16 of the contract set forth above.

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p. 181, l. 9

34.—The contention of the Appellant is that the tax is, as it claims to be, merely a tax in respect of the carrying on of a business, and as such is not a tax upon the property of the Canadian Pacific Railway and is not within the terms of the exemption and that the mere fact that the amount of the tax bears a relation to the area of floor space occupied by the person carrying on the business does not of itself render the tax a tax on property so as to bring it within the terms of the exemption. With this view the
10 Court of Appeal for Saskatchewan were unanimously in agreement and in the Supreme Court this view was also supported by Estey, J., in his dissenting judgment. In coming to their decision the Court of Appeal for Saskatchewan followed a number of decisions both in the Saskatchewan and Ontario Courts in which it was expressly stated by various judicial authorities that the business assessment is a personal tax and not a tax on real or personal property. The Court of Appeal distinguished the case of *Halifax (City) v. Fairbanks* (1928) A.C. 117 on the grounds that that decision really only amounted to a decision that the business tax there considered was direct and not indirect taxation. p. 375, l. 16—
p. 377, l. 43

20 35.—In the Supreme Court the Chief Justice of Canada devoted only one short paragraph to the issue respecting business tax in the following terms :—

“ As for the business tax, that is only a form of municipal
“ taxation and as, under Clause 16 of the contract and Section 4
“ of the Schedule, the company is ‘ forever free from taxation
“ ‘ by the Dominion or by any province hereafter to be established,
“ ‘ or by any municipal corporation therein,’ I am of the opinion
“ that as to the business carried on as a railway (both main line
“ and branches, as described in Sections 1 to 4 of the Act, 37 Vict.
30 “ cap. 14), Clause 16 of the contract exempts and frees the Canadian
“ Pacific Railway Company from taxation in Saskatchewan in
“ respect of its business.” p. 355, ll. 36-43

In the respectful submission of the Appellant this is not in accordance with the provisions of Clause 16 as it is not the company but the physical property of the company described in the section that is exempt. This follows from the definition of “ the Canadian Pacific Railway ” in Clause 1 of the contract.

36.—Kellock, J., after setting out the nature of the provisions of The City Act, said :—

40 “ It is plain in my view that the ‘ business ’ assessment
“ provided for by these taxing provisions is the assessment (and
“ taxation) of a person in respect of land or building occupied by
“ him for the purpose of a business, and that, apart from any
“ question of a statutory lien or charge such taxation does not p. 365, l. 45—
p. 366, l. 10

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“ differ from that of a person in respect of ownership of land and building. In each case, the liability imposed is with respect to, in the one case, the value of land owned, and in the other with respect to the value fixed by the statute of land occupied. In nature, therefore, there is no essential difference. In the case of the land tax, the tax is not simply imposed upon and payable out of the land, nor in the case of the business tax is it simply imposed upon and payable out of assets apart from the land employed in carrying on the business. In each case the tax is imposed upon a person in respect of land owned or occupied.” 10

In the respectful submission of the Appellant this is an inaccurate summary of the provisions of The City Act as set out above, and further the reason assigned is not conclusive as to the nature of the tax for the purposes of Clause 16 of the contract since in the submission of the Appellant the test is whether the tax provisions are in fact inconsistent with the clause of the contract providing that certain specified properties of the Respondent Company should be exempt from taxation and not whether the basis of assessment for the business tax is or is not calculated in some way by reference to the area (not the value) of the property occupied. Kellock, J., then went to consider certain authorities including *City of Halifax v. Fairbanks* (supra) and concluded :— 20

p. 367, l. 18–22

“ It would be an extraordinary result if the proper interpretation of this exemption were to be said to be that while taxes imposed upon the owner in respect of his ownership of these things fall within the exemption, nevertheless taxes imposed upon the owner in respect of his use of the same items do not.”

It is respectfully submitted that here again this formulation of the question begs the whole issue, the contention of the Appellant being that the tax is not a tax in respect of the use of premises, but a tax upon the carrying on of business for the assessment of which the size of the premises employed is used as a yard stick and nothing more. 30

p. 375, l. 33

37.—The correct principle is, it is submitted, as stated by Estey, J., in his dissenting judgment when he said :—

p. 375, l. 39

“ This is a familiar type of tax, in its nature and character distinct from other taxes. It is not imposed upon particular items of property, real or personal, and is not dependent upon ownership or interest in either the premises or the chattels thereon. It is not a tax upon occupation The essential without which such a tax cannot be imposed is that a business 40 is conducted upon the premises The business of the Company is its activity or undertaking The business tax here provided for is imposed upon that activity or undertaking.”

p. 376, l. 8

p. 376, l. 13

Estey, J., then went on to make a historical survey of the taxes in force in 1880 when the contract was arrived at in the following terms :—

“ In 1880 taxes were generally spoken of as property or
 “ personal taxes. The former included taxation of real and
 “ personal property and the latter income and poll taxes. Our
 “ attention was drawn to the fact, in the course of the hearing,
 “ that at that time both British Columbia and Ontario imposed
 “ income taxes. It may be assumed that the business tax as here
 “ assessed was not in the contemplation of the parties

p. 376, ll. 33-38

“ In these circumstances, if the parties had intended that
 “ more than a tax upon the physical property should be exempted,
 “ they would have adopted language expressive of that intention.
 “ On the contrary, the parties, in the language they have chosen,
 “ have expressed their intention in terms not sufficiently wide and
 “ comprehensive to include a business tax such as provided for
 “ in the municipal legislation here under review.”

p. 376, l. 44—

p. 377, l. 2

10

38.—It is submitted that a business tax does not come within the exemption granted under Clause 16 of the contract. The exemption applies only to the property specifically mentioned in the said clause, but does not apply to a tax on the Respondent Company in respect of the business carried on by it or the income arising therefrom. It is to be noted that in
 20 Clause 16 of the contract the company is not exempted from taxation but its specified property is. Business tax is not a property tax but is a personal tax.

See *City of Moose Jaw vs. British American Oil Company*—
 1937 2 W.W.R. 309 and the cases cited therein.

In re Hydro-Electric Power Commission of Ontario vs. City of Hamilton—47 O.L.R. 155 at pages 160-161.

In Re Northern Saskatchewan Flying School Limited and Rural Municipality of Buckland—1943 3 W.W.R. 609 at 616.

39.—It is respectfully submitted that the case of *City of Halifax vs. Fairbanks Estate* 1928 A.C. 117 does not establish the proposition that
 30 a business tax levied as provided for in the Saskatchewan legislation is a tax on property. The matter for determination in that case was whether the tax imposed under the provisions of Section 394 of the Halifax City Charter upon the owners of property let to the Crown for business was direct or indirect taxation. The tax there in question was a tax on the owners of the property and was not of the same nature as the business tax provided for in the Saskatchewan legislation. The provision for the tax is set out near the middle of page 121 of the report as follows :

40 “ By s. 394 it is enacted that property let to the Crown or
 “ to any person, corporation or association exempt from taxation,
 “ shall be deemed to be in the occupation of the owner thereof for
 “ business or residential purposes, as the case may be, and he
 “ shall be assessed and rated for household tax or business tax
 “ according to the purpose for which it is occupied.”

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It is this tax Viscount Cave referred to as a property tax at the bottom of page 125 of the report as follows :

“ It may be true to say of a particular tax on property, such as that imposed on owners by s. 394 of the Halifax charter, that the tax payer would very probably seek to pass it on to others ; but it may none the less be a tax on property and remain within the category of direct taxes.”

This is no doubt what Estey, J., had in mind when he stated as follows :

p. 377, ll. 29-36

“ The problem in *City of Halifax v. Fairbanks Estate*, 1928 A.C. 117, 2 Cameron 477, was quite different from that at bar. 10
 “ It does, however, illustrate the basis for and the nature and character of the business tax. There the owner was made liable by statute for a business tax, though he was not in possession of the premises and did not conduct the business. In my opinion, the Legislature of Saskatchewan imposed a tax here upon the business which is not included in the terms of the exemption provided for in Clause 16.”

40.—It is submitted that it is quite impossible to call the type of business tax which was imposed by the Saskatchewan municipal legislation a tax on property. It is, it is submitted, a personal tax on a person in respect of the business which he is carrying on. The space in which that business is carried on is the yardstick by which the amount of business tax may be measured but it is submitted that it has no relation to the valuation of the property. For example, a trespasser would be liable for business tax if he were carrying on business in a building or on land which he had no right to occupy at all. Similarly, he would be liable for business taxation if he were a bare licensee, having no property interest in the place where the business was carried on. Persons carrying on the same class of business would be assessed at the same rate regardless of whether they were carrying on business in valuable property in the centre of the city or in a shack on the outskirts. A tax assessed on that basis cannot, it is submitted, fairly be called a tax on property. 20 30

p. 322, ll. 23-30

Nor is a business a property, in the ordinary sense of the use of the word “ property.” By Section 441, sub-section (1) of The City Act, it is provided that “ as soon as may be in each year but not later than the 31st day of May the Assessors shall assess . . . every person who is engaged in mercantile, professional or any other business in the City.”

By Section 2, paragraph 4 of The City Act, 1947, “ business ” is defined as follows :

“ ‘ Business ’ includes any trade, profession, calling, occupation or employment.” 40

The term “ business ” is, it is submitted, a metaphysical term and embraces the carrying on of a trade or occupation or profession or the continuous exercise of an activity.

See cases collected in *Burrows' Words and Phrases Judicially Defined*, Volume 1, pages 358 to 361 and particularly at page 361.

It is therefore submitted that the business tax imposed by the municipal acts in question is a personal tax imposed on persons carrying on a business in respect of such carrying on and that the floor space of the premises occupied or used by them for business purposes is the yardstick by which the amount of their tax is determined.

41.—But even assuming that business tax is a tax on property, it is respectfully submitted that it is not the kind of property which is exempt from taxation by Clause 16 of the contract. It is submitted that the exemption in Clause 16 is limited to property taxes on the right-of-way station grounds, rolling stock and appurtenances, etc., on the main line and to property taxes on the capital stock of the company for the following reasons :

(a) In Clause 16 the words “ the Canadian Pacific Railway ” must refer to the railway right-of-way and rails as they are followed immediately by the words “ used for the construction and working thereof ” which indicate that it is the physical right-of-way and rails that are referred to.

Canadian Northern Pacific Railway v. New Westminster Corporation, 1917, 86 L.J.P.C. 178, particularly at page 180, 1917 A.C. 602 at 605.

(b) The words cannot be said to refer to the Company as when the Company is referred to in the said Clause 16 it is called “ the Company ” in accordance with the definition contained in Clause 1 of the contract.

(c) If it had been intended to exempt the Company from taxation such as income tax and businesses taxes, it would have been a simple matter to have expressly provided for such exemption. For example, the exemption provision which was considered in the case of *Canadian Northern Pacific Railway v. New Westminster Corporation* referred to above was in much wider terms than the exemption provision in Clause 16 of the contract which calls for consideration here. The clause could have provided for the exemption of the Company from taxation with respect to the Canadian Pacific Railway and all stations, etc., and the earnings therefrom. Instead it is certain items of property which are exempted and the exemption of the capital stock of the Company it is suggested has reference to any tax on the capital stock as a personal tax. At the time that the contract was entered into between the Government of Canada and the Canadian Pacific Railway Company, there were personal property taxes in effect in the various provinces of Canada. Some of the relevant sections of typical statutes imposing this type of taxation are included in the Case as

Documents 122 to 126.

pp. 335-343

These Statutes show that at the time the contract was entered into, taxation was imposed in respect of real property, personal property and in British

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p. 101, l. 44—
p. 102, l. 9

p. 103, ll. 5-8

Columbia and Ontario on income. Provision was made in some of the Statutes for taxation on shares of the Company. Such a tax would be a tax on personal property. It is significant that there is no reference in Clause 16 of the contract to income tax in view of the fact that income tax was known at that time. In this connection it is to be noted that by Section 6 of the Act to incorporate the Inter-Oceanic Railway Company of Canada, Chapter 72 of the Statutes of Canada, 35 Victoria (1872), the earnings of the Company were exempted from taxation. A similar exemption was contained in the Act to incorporate the Canada Pacific Railway Company, Chapter 73 of the Statutes of Canada, 35 Victoria (1872). The tax exemptions granted under these two latter statutes, however, were in some respects less favourable than the tax exemption granted to the Appellant here and it is no doubt right to assume that considerable bargaining went on before the exact limits of the tax exemption were definitely settled. 10

42.—It is respectfully submitted that the whole of the exemption granted was meant to embrace property taxes whether real or personal and did not extend to the exemption of the Company from taxation which it may have to pay out of its earnings from exempt property.

It is submitted that the words “and other property” in Clause 16 of the contract are *ejusdem generis* with the words “stations and station grounds, workshops, buildings, yards” and it is further submitted that the said words “and other property” are limited in their meaning by the words “used for the construction and working thereof” and that on no construction of Clause 16 can the words which grant the exemption be extended to include a business tax. 20

p. 181, ll. 9-17

43.—It is the respectful submission of the Appellant on this branch of the case that the provisions of Clause 16 of the contract do not exempt and free the Canadian Pacific Railway Company from the business tax imposed by the various municipal acts referred to in the reference and that the provisions of such acts with respect to business assessment and taxation are operative with respect to the Canadian Pacific Railway with respect to the stations, workshops and other buildings used for the working of the main line of its railway in Saskatchewan and its branch lines in Saskatchewan. 30

44.—The Attorney General of Saskatchewan therefore respectfully submits that the Judgment of the Supreme Court of Canada is wrong in so far as it is unfavourable to the Appellant and that the answers to the questions should be as follows:—

- Question No. 1. No.
- Question No. 2. No.
- Question No. 3. Yes.
- Question No. 4. Yes.

40

for the following amongst other

REASONS

1. BECAUSE Section 24 of the Saskatchewan Act is not authorized by The British North America Act, 1867, The British North America Act, 1871, or The British North America Act, 1886, or otherwise and is therefore *ultra vires*.
- 10 2. BECAUSE Section 3 of The British North America Act 1886, expressly provides that The British North America Acts of 1867, 1871 and 1886 "shall be construed together" and the said Section 24 in purporting to require the province to continue the tax exemption to the Canadian Pacific Railway forever is inconsistent with the division of powers contained in Sections 91 and 92 of The British North America Act, 1867, and is therefore *ultra vires*.
3. BECAUSE Section 24 of The Saskatchewan Act is not authorized by Section 2 of The British North America Act, 1871, and is therefore *ultra vires*.
- 20 4. BECAUSE Section 24 is *ultra vires* as Section 2 of The British North America Act, 1871, in providing that the Dominion may "make provisions for the constitution" of a province such as Saskatchewan used the word "constitution" in the sense in which it is used throughout The British North America Act, 1867, and particularly in head 1 of Section 92 of the latter Act and not as referring to the division of legislative powers.
- 30 5. BECAUSE Section 24 being *ultra vires* the municipal legislation referred to in the questions is valid under heads 2 and 8 of Section 92 of The British North America Act, 1867, and applies to the property and business of the Canadian Pacific Railway wherever situated in Saskatchewan as there is no provision for exemption of the Canadian Pacific Railway apart from said Section 24.
- 40 6. BECAUSE Clause 16 of the contract with the Canadian Pacific Railway Company was, at least in so far as it purported to grant a perpetual exemption, *ultra vires* the Parliament of Canada when the Statute of Canada, 44 Victoria, c. 1, was passed purporting to validate it and the said Statute was to that extent *ultra vires* because
 - (a) Section 4 of The British North America Act, 1871, did not confer on the Parliament of Canada power to limit the powers of provinces thereafter established,
 - (b) it was beyond the power of the Parliament of Canada to grant a perpetual exemption from taxation to any person as being inconsistent with the continued exercise of the powers granted to the Dominion Parliament by Section 4 of The British North America Act, 1867,

- (c) it amounted to an abdication of the powers of taxation as to certain property of the Respondent Company and was therefore *ultra vires*,
- (d) it was necessarily subject to the right of the Parliament of Canada to repeal it at any time and being expressly stated to be "forever" it was inconsistent with such right and therefore *ultra vires*.

7. BECAUSE Clause 16 being *ultra vires* it follows that Section 24 of The Saskatchewan Act has no effect and the legislation referred to in the questions is valid under heads 2 and 8 of Section 92 of The British North America Act, 1867, and applies to the property and business of the Canadian Pacific Railway wherever situated in Saskatchewan as there is no provision for exemption apart from Section 24. 10

45.—The Attorney-General submits that if Clause 16 of the contract and Section 24 of The Saskatchewan Act, 1905, should be held *intra vires*, then the opinions of the majority of the Judges of the Supreme Court of Canada as to the answers to Questions 2 and 4 are wrong and should be reversed and the said Questions 2 and 4 answered "no" and "yes" respectively for the reasons set out on pages 17 to 25 of the Factum file on behalf of the Attorney-General of Saskatchewan in the Supreme Court of Canada and for the following amongst other 20

REASONS

1. BECAUSE the business tax provided for in the legislation referred to in Question 4 is a personal tax levied on a person or corporation in respect of the business carried on by him or it and is not within the exemption granted by Clause 16 of the contract.
2. BECAUSE the business tax provided for in the legislation referred to in Question 4 is not a property tax and therefore does not come within the exemption granted under Clause 16 of the contract which exemption is limited to property taxes on the kinds of property described therein. 30
3. BECAUSE even if the business tax provided for in the legislation referred to in Question 4 is a tax on property business is not the kind of property exempt from taxation under Clause 16 of the contract.
4. BECAUSE the business tax provided for in the legislation referred to in Question 4 is a direct tax and is *intra vires* under heads 2 and 8 of Section 92 of The British North America Act, 1867. 40

5. BECAUSE the business tax is not, as was held by the majority in the Supreme Court of Canada, a tax on the occupancy or use of buildings but is imposed on a taxpayer in respect of the carrying on of a business by him.
6. FOR the reasons given by the learned Judges in the Court of Appeal and by Mr. Justice Estey in the Supreme Court of Canada.
- 10 7. BECAUSE the business taxes referred to in Question 2 are personal taxes levied on a person or corporation in respect of the business carried on by him or it and are not within the exemption granted by Clause 16 of the contract.
8. BECAUSE the business taxes referred to in question 2 are not property taxes and therefore do not come within the exemption granted under Clause 16 of the contract which exemption is limited to property taxes on the kinds of property described therein.
9. BECAUSE even if the business taxes referred to in Question 2 are taxes on property, business is not the kind of property exempt from taxation under Clause 16 of the contract.
- 20 10. BECAUSE the business taxes referred to in Question 2 are direct taxes and are *intra vires* under heads 2 and 8 of Section 92 of The British North America Act, 1867.
11. BECAUSE the exemption is limited to property taxes on the right of way, station grounds, rolling stock and appurtenances, etc., on the main line and to property taxes on the capital stock of the Company.
- 30 12. BECAUSE the exemption granted was an exemption of certain property and this cannot be extended to include an exemption from taxation in respect of the business carried on by the Respondent Company.
13. BECAUSE in Clause 16 of the contract the Company is not exempted from taxation but only certain of its specified property.
14. BECAUSE the whole of the exemption granted was meant to embrace property taxes whether real or personal and did not extend to the exemption of the company from taxation which it may have to pay out of its earnings from exempt property.

40

E. C. LESLIE.
 R. S. MELDRUM.
 P. G. MAKAROFF.

In the Privy Council.

No. 21 of 1952.

ON APPEAL FROM THE SUPREME COURT OF
CANADA.

BETWEEN
THE ATTORNEY-GENERAL FOR
SASKATCHEWAN ... APPELLANT
AND
CANADIAN PACIFIC RAILWAY
COMPANY... '... ... RESPONDENT
AND
THE ATTORNEY-GENERAL FOR
MANITOBA, THE ATTORNEY
GENERAL FOR ALBERTA and
THE ATTORNEY-GENERAL OF
CANADA INTERVENERS.

CASE FOR THE APPELLANT

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