

In the Supreme Court of Canada

EXAMINERS OF LONDON
W.C.1.
10 FEB 1954
C.D.

ON APPEAL FROM

THE COURT OF APPEAL OF SASKATCHEWAN

BETWEEN

33553

CANADIAN PACIFIC RAILWAY COMPANY,

Appellant

—and—

THE ATTORNEY-GENERAL FOR SASKATCHEWAN

Respondent

Factum of the Respondent

HAMILTON & KNOWLES, Solicitors for Canadian Pacific Railway Company.

EWART, SCOTT, KELLY AND HOWARD, Ottawa Agents for Canadian Pacific Railway Company.

J. L. SALTERIO, ESQ., Solicitor for The Attorney-General for Saskatchewan.

McILRAITH & McILRAITH, Ottawa Agents for The Attorney-General for Saskatchewan.



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In the Supreme Court of Canada

ON APPEAL FROM

THE COURT OF APPEAL FOR SASKATCHEWAN

IN THE MATTER OF THE CONSTITUTIONAL QUESTIONS ACT,
BEING CHAPTER 72 OF THE REVISED STATUTES OF
SASKATCHEWAN, 1940

and

10 IN THE MATTER OF A REFERENCE PURSUANT THERETO BY
THE LIEUTENANT-GOVERNOR IN COUNCIL TO THE
COURT OF APPEAL FOR THE HEARING AND CONSIDER-
ATION OF CERTAIN QUESTIONS ARISING WITH RESPECT
TO CLAUSE 16 OF THE CONTRACT SET FORTH IN THE
SCHEDULE TO CHAPTER I OF THE STATUTES OF CANADA,
1881, AND THE VILLAGE ACT, 1946, THE RURAL MUN-
ICIPALITIES ACT, 1946, THE LOCAL IMPROVEMENT DIS-
TRICTS ACT, 1946, THE CITY ACT, 1947, AND THE TOWN
ACT, 1947, ALL AS AMENDED.

FACTUM OF THE RESPONDENT

PART I

20 STATEMENT OF FACTS

By Order-in-Council No. 1914 A/48, dated November 16th, 1948, His Honour the Lieutenant-Governor of Saskatchewan in Council, referred to the Court of Appeal of that Province, pursuant to the provisions of The Constitutional Questions Act, R.S.S. 1940, Chapter 72, for its hearing and consideration the four questions set out therein.

Order of Reference— Case, Pages 1 to 6

Questions referred — Case, Page 5, line 15 to Page 6, line 4

30 Stated very generally, the questions so referred have reference to the extent of exemption from taxation granted to the appellant, the Canadian Pacific Railway Company under Clause 16 of the contract between the Government of Canada and certain parties acting on behalf of the Company. This contract is found as a schedule to Chapter 1 of the Statutes of Canada, 44 Victoria, 1881. The Statute, to which a copy of the contract is annexed as a schedule, is set out in

Case—pages 172 to 198.

This contract will usually be referred to in this Factum as “the contract”.

Under the municipal legislation referred to in the heading hereof, municipalities in Saskatchewan are given the power to impose certain taxation upon the property and business of railway companies and by

the terms of the reference the opinion of the Court of Appeal was requested as to the extent of the exemption granted under Clause 16 of the contract and as to the extent to which, if at all, the said municipal acts encroach upon the exemption granted.

The lines of railway of the Canadian Pacific Railway Company in the Province of Saskatchewan fall into the three following classifications:

- (a) the main line of the railway,
- (b) branches of the railway which were constructed under the authority given in Clause 14 of the contract hereinbefore referred to, which branch lines will be commonly referred to in this Factum as "charter branch lines",
- (c) branch lines constructed pursuant to other statutory authority, which will be commonly referred to in this Factum as "other branch lines".

The different classifications of the railway lines of the appellant in Saskatchewan, hereinbefore referred to, are shown on the map, the main line being coloured green, the chartered branch lines yellow and the other branch lines red.

Document No. 120—Case, page 333.

- 20 Portions of these various municipal acts relevant to the questions which fall for determination in this Appeal are found in the Case.

The Village Act, 1946—Case, pages 304 to 308

The Rural Municipality Act, 1946—Case, pages 308 to 312.

The Local Improvement Districts Act, 1946—Case, pages 312 to 316

The Town Act, 1947—Case, pages 316 to 321

The City Act, 1947—Case, pages 322 to 327

- 30 On the hearing of this reference in the Court of Appeal, counsel for the appellant put before that Court a large number of documents which, in their submission, were relevant to the consideration of the questions referred to the Court. Counsel for the respondent admitted the authenticity of these documents but reserved the right to object to their relevancy to the questions falling to be answered on the reference.

On February 25th, 1949, after the decision of the Court of Appeal, that Court, on the application of the appellant, granted an order giving it liberty to file with the Registrar of the Court of Appeal and to include on its case on appeal to the Supreme Court of Canada, the documents set out therein.

Case—page 68, line 23 to page 69, line 25

- 40 By the terms of such order the documents were to be "subject on such appeal to all proper objections upon the grounds of relevancy".

Pursuant to agreement between the parties, dated October 11th, 1949,

Document No. 11—Case, pages 70 to 71

the appellant has included in its case, copies of the further documents set out therein. By the agreement, the respondent reserved the right to object to the relevancy of such documents to the determination of the questions referred by the Order of Reference.

The argument on the Reference was heard by the Court of Appeal on the 16th, 17th and 18th days of December, 1948. On January 29th, 1949, the learned Judges of that Court certified their answers to the questions submitted. The answers of Martin C. J. S. and MacDonald and Procter JJ. were as follows:

10	Question No. 1	Answer, No.
	Question No. 2(a)	Answer, No.
	Question No. 2(b)	Answer, Not answered.
	Question No. 2(c)	Answer, Not answered.
	Question No. 3	Answer, Yes.
	Question No. 4(a)	Answer, Yes.
	Question No. 4(b)	Answer, Yes.
	Case, page 7, lines 26 to 40.	

Mr. Justice Gordon, dissenting in part, answered the questions as follows:

20 "The stations, station grounds, workshops, yards and other property on the branch lines of the Canadian Pacific Railway Company, built under the power conferred by Clause 14 of the said Contract with the Dominion Government, are exempt from taxation under the provisions of Clause 16 of the said Contract.

"As to the remaining questions, save as above, I certify that I am in agreement with the conclusions reached by the majority of the Court."

Case, page 35 line 39 to page 36, line 6

30 In other words, Mr. Justice Gordon agreed with the majority of the Court of Appeal insofar as the liability of the appellant to business tax was concerned but disagreed with them in respect to the question of liability to taxation of the charter branch lines. All the members of the Court of Appeal held that Questions Nos. 2(b) and 2(c) ought not to be answered since they were academic in the absence of any legislation in Saskatchewan providing for business taxation on the basis set out in such questions.

	Reasons for opinion of Martin C. J. S.—Case, pages 8 to 29
	Reasons for opinion of Gordon J. A.—Case, pages 29 to 36
	Reasons for opinion of MacDonald J. A.—Case, pages 36 to 45
40	Reasons for opinion of Procter J. A.—Case, pages 45 to 67

From this decision of the Court of Appeal the Canadian Pacific Railway Company has appealed to the Supreme Court of Canada.

Notice of Appeal—Case, page 67 to page 68, line 20

PART II
POINTS IN ISSUE

The following points are in issue in this Appeal.

I. The first arises out of Questions 1 and 3 in the Order of Reference and may be stated as follows: "Does Clause 16 of the contract exempt and free from taxation the station 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 and are the provisions of the various municipal acts in Saskatchewan referred
10 to in Question 3 relating to the assessment and taxation of the real estate of railway companies, operative in respect of charter branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan?"

The position taken on this question by the respondent is that Clause 16 of the contract does not exempt the charter branch line property mentioned above, including the right-of-way and rails of the branch lines, from assessment and taxation and the provisions of the aforesaid municipal acts with respect to assessment and taxation of the real estate of railway companies are operative with respect to such branch lines.

II. The next point that is in issue arises out of Question No. 2(a)
20 and Question No. 4 in the Order of Reference and may be stated as follows: "Does Clause 16 of the contract exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a Railway and based on the area of the land or the floor space of the building used for the purposes of such business and are the provisions of the said municipal acts relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to the Canadian Pacific Railway Company in respect of the stations, workshops and other buildings used for the working of (a) the main line of the railway in Saskatchewan and (b) its branch
30 lines in Saskatchewan?"

The position taken by the respondent on this point is that Clause 16 of the contract does not exempt and free the appellant from such business assessment and taxation and that the provisions of the aforesaid municipal acts with respect thereto, are operative with respect to the appellant in respect of the stations, workshops and other buildings used for the working both of the appellant's main line and branch lines in Saskatchewan.

III. The respondent takes the position also that the business tax
40 would be equally applicable to the appellant if it were based on the rental value of the lands and buildings used for the purposes of such business or on the assessed value of the lands and buildings used for the purposes of such business. These two latter methods of assessment are referred to in Questions No. 2(b) and No. 2(c) and as has already been stated, the Court of Appeal did not answer them.

IV. A final question arises as to the right of the Parliament of the Dominion of Canada in enacting the Saskatchewan Act, 4-5 Edward VII, Chapter 42, to impose a limitation upon the powers of the newly created province to impose direct taxation within the province. For reasons stated hereinafter, the respondent does not intend to urge before this honourable Court his contention that such limitation is unconstitutional, being of the opinion that it has already been decided against him by previous decision of this Court, to which reference will later be made, but the respondent desires to leave open such contention for consideration
 10 if this case should go beyond this Court.

PART III
 BRIEF OF ARGUMENT

I

It is first of all respectfully submitted that subject to whatever exemption that may have been granted under Clause 16 of the contract, the Province of Saskatchewan would have power to impose upon the Company and power to authorize its municipalities to impose any tax falling within Section 92, heads 2 and 8 of The British North America Act, 1867 which read as follows:

- 20 “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”

The extent of the exemption granted, which exemption would limit *pro tanto* the power of the Province of Saskatchewan to authorize the imposition of municipal taxation upon the Company, must therefore be found in the contract.

- 30 Clause 16 of the contract reads as follows:

- “16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the 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 20 years after the grant
 40 thereof from the Crown.”

The respondent proposes to deal first with the questions relating to the liability of the appellant's branch lines to taxation in respect of the said lines and the stations and station grounds, workshops, buildings, yards and other property used for the working thereof. The questions in the Reference which raise this problem are Nos. 1 and 3 which read as follows:

10 "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, work shops, buildings, yards, and other property, used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan?"

20 "3. 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 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?"

Case, page 5, lines 15 to 21 and lines 32 to 38

It is the respectful submission of the respondent that the exemption provided for in Clause 16 of the contract is limited (insofar as the question presently being discussed is concerned) to the main line of the Canadian Pacific Railway Company, its stations and station grounds etc., and does not extend to charter or other branch lines situated in the Province of Saskatchewan.

30 Counsel for the appellant admitted in the Court of Appeal that the exemption did not apply to the other branch lines in the Province and the respondent therefore confines his argument to the charter branch lines. Even without such an admission the respondent's argument on the charter branch lines would apply *a fortiori* to the other branch lines. The respondent bases his submission on the following reasons:

40 (a) Since it is "the Canadian Pacific Railway and all stations and station grounds, work shops etc., required and used for the construction and working thereof" that is to be forever free from taxation, one must look first for the meaning that is to be given to the words "the Canadian Pacific Railway". The respondent submits that the definition given in the contract itself clearly confines the railway to the main line and to two branch lines hereinafter referred to, neither one of which is situated in Saskatchewan.

Clause 1 of the contract reads as follows:

"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 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 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 described as the Company; and the Government of Canada is hereinafter called the Government."

Case, page 174, line 30 to page 175, line 3.

20 By Clause 1, therefore, the words "the Canadian Pacific Railway" mean the entire railway as described in the Act 37th Victoria, Chapter 14. The only sections of the Act 37th Victoria, Chapter 14 (1874) which can be said to be descriptive of the railway are Sections 1 to 4, which read as follows:

"1. A railway to be called the "Canadian Pacific Railway" shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

30 "2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections;—the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior, to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba to some point between Fort
40 Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

"3. Branches of the said railway shall also be constructed as follows, that is to say:—

First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

- 10 “4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.”

Case, page 105, line 39 to Page 106, line 25

- 20 The railway therein described consists of the main line and two branch lines neither of which is in Saskatchewan and it is submitted that when Clause 16 of the contract falls to be construed, the words, “the Canadian Pacific Railway” which describe what is to be exempt from taxation, must be given the meaning which has already been assigned to them in Clause 1 of the contract and that the railway described in the Act 37th Victoria, Chapter 14, is the only railway that is to be exempt from taxation. It will be noted, and the appellant laid a good deal of stress on this fact in the Court of Appeal, that the Sections referred to in the Act 37th Victoria, Chapter 14, are not the same as the Sections described in the contract. It is submitted, however, that the reason for this is very clear. The whole line of the railway was still to be a railway from “some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean”.

- 30 At the time of the passing of the Act 37th Victoria, Chapter 14, the terminal points had not been determined but by the time the contract was entered into in 1880, the Eastern terminal point had been determined at Callander and the Western terminal point at Port Moody. Similarly, the Sections are not the same in the Act 37th Victoria, Chapter 14, and in the contract because by 1880 certain construction work in connection with the railway had been done and certain locations fixed. The contract deals with the 1874 railway as completed and fixed to the date of the contract. The first part of Clause 1 indicates the extent to which the line had been fixed in the interval from 1874 to 1880.

- 40 It is true that one of the branch lines referred to in Chapter 14 in 37th Victoria, namely, the branch line to some point on the Georgian Bay was never built. The reason for this, according to Girouard J. in *In Re Branch Lines Canadian Pacific Railway Company*, 36 S. C. R. 42 at 78 was a deviation of the main line. It is true also that from time to time some changes were made in the location of the line of railway de-

scribed in Chapter 14 of the 37th Victoria, but it is respectfully submitted that these did not fundamentally change the contract.

It is the respondent's submission that the exemption from taxation applied only to the Canadian Pacific Railway as defined in Chapter 14 of 37th Victoria as the location of that line was from time to time fixed and determined or amended as it was, for example, by Chapter 53 of 45 Victoria (1882).

Case, pages 236—7

(b) Where the words "the Canadian Pacific Railway" are intended
10 to have a different meaning as in Schedule "A" to the said contract, a new definition thereof is given in Section 15 of the said Schedule which reads as follows:

"And the said main line of railway, and the said branch lines of railway, shall be commenced and completed as provided by the said contract; and together with such other branch lines as shall be hereafter constructed by the said Company, and any extension of the said main line of railway that shall hereafter be constructed or acquired by the Company, shall constitute the line of railway hereinafter called THE CANADIAN PACIFIC RAILWAY."

20 Case, page 187, lines 30 to 37

The Act, Chapter 1 of 44 Victoria, consists of three parts: Firstly, the enacting part; secondly, as a Schedule to the enacting part, the contract; and thirdly, as a Schedule to the contract, the proposed Letters Patent of The Canadian Pacific Railway Company. It follows that the contract and the Schedule thereto must have been drafted at the same time and the draftsman must have had in mind exactly what was to be exempted from taxation. In Clause 1 of the contract the line of railway is defined as set out in 37th Victoria, Chapter 14 and it is submitted that that definition of "the Canadian Pacific Railway" is to govern the meaning
30 of these words when employed in the contract itself. However, in the Schedule to the contract, another definition is given to the words "the Canadian Pacific Railway" whereby the meaning of that term is extended to include any extension of the main line of railway and "such other branch lines as shall be hereafter constructed by the said company". It is submitted that the fact that the narrower definition is used in the contract itself as distinct from the Schedule, indicates that it was the intention of the contracting parties to confine the exemption to the narrower limits comprised in the definition given in the contract or to put it in other words, "the Canadian Pacific Railway" which was the subject
40 matter of the contract was a narrower term than "The Canadian Pacific Railway" which the Company about to be incorporated might eventually own and operate.

If it had been the intention of the contracting parties to have the exemption of the railway from taxation extend to the branches that would

thereafter be constructed, or to any extensions of the main line, it is submitted that the same words would have been used in the contract as are used in Clause 15 of the Schedule to the contract.

(c) The preamble to Chapter 1 of the Statutes of 1881 to which the contract is a Schedule, reads as follows:

10 “Whereas by the terms and conditions of the admission of British Columbia into Union with the Dominion of Canada, the Government of the Dominion has assumed the obligation of causing a Railway to be constructed, connecting the seaboard of British Columbia with the Railway system of Canada;

 “And whereas the Parliament of Canada has repeatedly declared a preference for the construction and operation of such Railway by means of an incorporated Company aided by grants of money and land, rather than by the Government, and certain Statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose;

20 “And whereas certain sections of the said Railway have been constructed by the Government, and others are in course of construction, but the greater portion of the main line thereof has not yet been commenced or placed under contract, and it is necessary for the development of the North West Territory and for the preservation of the good faith of the Government in the performance of its obligations, that immediate steps should be taken to complete and operate the whole of the said Railway;

30 “And whereas, in conformity with the expressed desire of Parliament, a contract has been entered into for the construction of the said portion of the main line of the said Railway, and for the permanent working of the whole line thereof, which contract with the schedule annexed has been laid before Parliament for its approval and a copy thereof is appended hereto, and it is expedient to approve and ratify the said contract, and to make provision for the carrying out of the same:”

Case, page 172

The said preamble sets out the reason for entering into the contract and indicates that the paramount purpose was to have the main line of railway completed. The preamble is a part of the Act, Statutes of Canada, 1867, Chapter 1, Section 7 paragraph 39 which reads as follows:

40 “thirty-ninthly—The Preamble of every such Act as aforesaid shall be deemed a part thereof intended to assist in explaining the purport and object of the Act;”

The preamble, it is submitted, makes clear that the subject of the contract was the main line of a railway connecting the seaboard of British Columbia

with the railway system of Canada. It is for the completion of the railway which was the subject of the contract and the railway which the Company was by the contract obligated to build, that the Government were giving to the Company the consideration moving from it. The extent of the covenant of the Government is to be measured by the extent of the covenant of the Company.

(d) It is to be borne in mind, it is respectfully submitted, that the parties here, the Government of Canada, on the one hand and the Canadian Pacific Railway, on the other, were bargaining for the building of
 10 a railway in order that the Government of Canada might fulfill its obligations to the Province of British Columbia. In return for its undertaking to build, maintain and operate the said main line of railway and the two branch lines referred to in the Act of 1881, certain concessions were granted to the Company by the Government of Canada. These included *inter alia* land grants, the turning over of parts of the railway already constructed and to be constructed by the Government of Canada and certain tax exemptions. It is submitted that it would require very clear language to indicate that the tax exemption had reference to any other
 20 lines of railway than those which the Company was, by the contract obligating itself to build and maintain. As time went on, the Company would be able to find out for itself whether the building of additional branch lines would be profitable or not and the Company could decide for itself whether it was in its interest to construct additional branch lines. The tax exemption granted should, it is submitted, be confined to the railway which the Company bound itself by the contract to build and maintain. On this point please see

Canadian Northern Pacific Railway v New Westminster Corporation, 86 L. J. P. C. 178 at 180, 1917 AC 602 at 606.

30 *Canadian Northern Pacific Railway v. City of Armstrong*, 1919 3 W. W. R. 352 at 355, 1920 AC 216 at 220-1.

(e) Apart from Clause 11 which provides for the locating of part of the land grant along the branch lines and Clause 14 which gives the Company the right to construct branch lines leading off from the main line, there is no mention of branch lines in the contract although mention is made thereof in Schedule "A" of the contract where the words "The Canadian Pacific Railway" are given the extended meaning already referred to.

Case, page 179, line 42

Case, page 180, line 34

40 Clause 10 of the contract provided for the Government granting the Company the lands required for the roadbed of the railway and station grounds where such lands were vested in the Government, but it was nevertheless deemed advisable to make special similar provision for granting lands for the purpose of branch lines in Clause 14 itself. It is submitted,

firstly, that this is a clear indication that without the special provision, the provision of the contract as to furnishing the lands for the main line would not have applied to branch lines and secondly, that it was just as important to deal with the tax exemption of branch lines separately and specially if such an exemption was intended.

(f) The words, "the Canadian Pacific Railway" are used in Clauses 1, 7, 8, 9, 15, 16, 17 and 22 of the contract but a careful reading of the said clauses, other than Clause 16, clearly indicates that the words could not have been interpreted as including branch lines and there is nothing
 10 in Clause 16 to indicate that the said words should be given an extended meaning in that Clause. It is respectfully submitted that if the meaning placed upon the words "the Canadian Pacific Railway" by the respondent is given to them, every clause in the contract where the words are used is capable of bearing that meaning. If, however, the said words are extended in meaning so as to include the charter branch lines, as the appellant contends, there are certain clauses to which such extended meaning is clearly inapplicable. Such a clause, for example, is clause 9 which reads in part as follows:

20 "9. In consideration of the premises, the Government agree to grant to the Company a subsidy in money of \$25,000,000, and in land of 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated,—the said subsidies respectively to be paid and granted as the work of construction shall proceed, in manner and upon the conditions following, that is to say:"

Case, page 177, lines 9 to 15

Here the words "the Canadian Pacific Railway" cannot include the charter branch lines. The Company did not have to construct any such lines
 30 in order to earn the subsidy of \$25,000,000 and 25,000,000 acres of land. It would have earned that subsidy as soon as it completed the construction of the Canadian Pacific Railway, in the sense for which the respondent contends.

II

The respondent wishes to deal briefly with some of the arguments advanced in the Court of Appeal by the appellant in support of its contention that the charter branch lines are included in the tax exemption.

(a) The appellant contended that the definition of the words "the Canadian Pacific Railway" found in Clause 1 of the Contract was
 40 confined in its operation to Clause 1 and did not extend to the other clauses of the contract. It is submitted that the words "and that the words the Canadian Pacific Railway. . . ." refer back to the opening words

of the Clause—"For the better interpretation of this contract, it is hereby declared that. . ." The draftsman of the contract knew that the words "the Canadian Pacific Railway" were included in numerous places in the contract and if it was intended to restrict the definition to the first clause, it would surely have been so stated and another definition given to the said words when used in the other clauses.

(b) It was further contended by the appellant that the exemption of capital stock in Clause 16 was sufficient to exempt all the property of the Company. For this contention the appellant relied on the decision
10 in

Wright vs Georgia Railway and Banking Company, 216 U.S.
420

There the Supreme Court of the United States was construing the charter of a Company and came to the conclusion that the words "capital stock" meant "capital". The Supreme Court of the United States in that case was not dealing with such a situation as prevails here. Please see *State of Tennessee v Whitworth* 117 U.S. 129. If the words in Clause 16 meant all the Company's property, it was quite unnecessary to enumerate any particular classes of property as being also exempt. Furthermore, the
20 capital stock of the Company, by Clause 2 of the Company's charter,

Case, page 184, lines 1 to 2

was shown as \$25,000,000 divided into shares of \$100.00 each.

It is further to be noted that in

Canadian Northern Pacific Railway v. New Westminster Corporation, 86 L. J. P. C. 178, 1917 AC 602,

a similar exemption of capital stock of a railway company was sought to be construed and the same exemption clause was again construed by the Judicial Committee in

30 *Canadian Northern Pacific Railway v. City of Armstrong*,
1919 3 W. W. R. 352, 1920 AC 216,

and no suggestion appears to have been advanced in either argument or to have entered into any of the reasons for judgment that the exemption of capital stock of the company had any such wide effect as the appellant contends. Further, it is submitted that the exemption from taxation of the capital stock of the Company has reference to any tax on the shares of its capital stock as a personal property tax. At the time the contract was entered into between the Government of Canada and the Canadian Pacific Railway, there were personal property taxes in effect in the various provinces of Canada. Some of the relevant sections of typical statutes
40 imposing this type of taxation appear in

Case, pages 335 to 343 Documents Nos. 122 to 126

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 Columbia and Ontario on income. A tax on the capital stock of the company would be a tax on personal property and it is submitted that the capital stock was exempted from taxation to the extent that it was, in order that it would be made more attractive as an investment and consequently would be more easily sold.

By the Statute in force in the Province of Ontario, Chapter 180 of the Statutes of 1877, entitled "The Assessment Act"

10 Case, pages 339 to 341

which provided for the taxation of real and personal property, "personal estate" is defined as including "shares in incorporated companies". By Section 18 of the Act, "the stock held by any person in any railroad company" was exempt. It is submitted that this exemption was for the purpose of encouraging railroad construction and also inducing persons to invest money in companies engaged in such enterprise and that the object of exempting the capital stock from taxation in Clause 16 of the contract was to ensure that such capital stock would not be taxed by the Parliament of Canada or any Legislature which that Parliament could control.

20 (c) As has already been stated, the appellant placed before the Court of Appeal for Saskatchewan and in addition thereto has placed before this Honourable Court a great number of documents upon which it has based an argument that from the expressions of opinion in these documents support is given to its interpretation of the exemption granted it by clause 16 of the contract. These documents are too numerous and of too varied a character to be canvassed in any detail in this factum. The respondent contends that most of the documents introduced into the case for that purpose by the appellant are irrelevant to the matters under consideration here. The question that is before this Honourable Court

30 on this Reference is the construction of Clause 16 of the contract and it is submitted that the contract itself is clear and unambiguous and that in such a case extraneous evidence is not admissible to contradict the expressed terms of the written document. It is respectfully submitted that unless ambiguity in the contract itself can be shown any evidence as to the prior negotiations or subsequent understandings of the parties is not admissible to vary or contradict the contract itself.

On this point it is desired to make reference to the following cases:

40 *Great Western Railway and Midland Railway vs Bristol Corporation* 87 Law Journal Chancery 414, particularly Lord Atkinson at pages 418 to 420, Lord Shaw, pages 424, Lord Wrenbury, pages 428 to 430.

North Eastern Railway vs Hastings, 69 Law Journal Chancery, 516 where Lord Halsbury, Lord Chancellor, says at page 518—

10 “The chief argument used to give an unnatural construction to the words, is that the parties have so acted during a period of forty years and that the only reasonable inference to be derived from their conduct is that they had understood and acted on their bargain in a sense different from that which the words themselves convey. I am of the opinion that if this could be truly asserted it is nothing to the purpose. The words of a written instrument must be construed according to their natural meaning and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous. So far as I am aware, no principle has ever been more universally or rigorously insisted upon than that written instruments, if they are plain and unambiguous must be construed according to the plain and unambiguous language of the instrument itself.”

Please see also, *Commissioners for Special Purposes of Income Tax vs Pemsel*, 1891 A.C. 534 at 545.

Maxwell on Interpretation of Statutes, 9th Ed. pages 1 and 2.

20 It is therefore submitted that before the documents could be looked at at all for the purpose of construing the meaning of the words “the Canadian Pacific Railway” in Clause 16 of the contract, it must be shown that the meaning of the said words is ambiguous and for reasons already given, it is respectfully submitted that it is not.

(d) But even assuming against the respondent that the words are ambiguous, it is submitted that the documents themselves are not of a class that should be called in aid in construing their meaning. To do so would be to establish a most dangerous precedent. They include among other things, statements made in the House of Commons by members of that body, resolutions passed by the Legislative Assembly of Saskatchewan, extracts from the recollections of Sir Charles Tupper, extracts from history books regarding transportation in Canada and various other matters of that sort. It is a well known fact that the construction of the Canadian Pacific Railway was, for a long time, the subject of acute political controversy in Canada. It was, therefore, to the advantage of the supporters of the political party who were responsible for the contract entered into with the Canadian Pacific Railway Company to paint that contract in as glowing terms as possible, insofar as its advantages to Canada were concerned. On the other hand, it was to the advantage of those of the opposite political party to decry the contract. Further, many of the documents are neither contemporaneous with the execution of the contract nor are they the expressions of opinion or the acts of persons or bodies who were parties to the contract at all. For example, to refer to the statement made in the House of Commons of Canada by Walter Scott, subsequently the first Premier of Saskatchewan, which appears in the

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Case, page 265

it is submitted that even if Mr. Scott's statement supported the construction which the appellant seeks to place upon Clause 16 which, it is submitted, it does not do, nevertheless, asking this honourable Court to read the document is only to ask the Court to substitute the opinion of Mr. Scott for its own opinion as to the extent of the exemption granted. On the oral argument it is intended by counsel for the respondent to make further reference to some of these documents which are included in the case and to submit that they are wholly irrelevant on the question of construction which falls for determination in this Appeal.

- 10** It is submitted that even if the documents be looked at, they do not support the appellant's contention that the exemption included the branch lines. Indeed, it is submitted that they support the respondent's contention. For example, in the memorandum addressed by Duncan McIntyre on behalf of himself and associates to Sir John A. MacDonald, undated, which is found in the

Case, pages 152 and 153

it is stated

- 20** "Among the points not referred to in the memorandum, we may mention that of taxation from which we think the proposed line should be free."

Case page 153 lines 19 to 21

It is submitted that Mr. McIntyre is there referring to

Document No. 40, Case, pages 151 to 152

It is submitted that the "proposed line" is clearly the line which under the memorandum the Company would be obligated to construct. Mr. Duncan McIntyre goes on a sentence or two later to say

"The Company should have the ordinary power of making branch railways but without the usual restriction as to length... .."

- 30** It is submitted that Mr. McIntyre is thinking of the taxation of the main line and then addresses his mind to the power of making branch lines but he says nothing about the freeing of such branch lines from taxation.

(e) The appellant relied in the Court of Appeal upon dicta in the following two cases:

In Re Branch Lines, Canadian Pacific Railway Company
36 S.C.R. 42

In Re Canadian Pacific Railway Company and Town of McLeod (1901) 5 Territory Law Reports 192 at 193

In connection with these two cases the respondent respectfully adopts the reasons of the Honourable Mr. Justice MacDonald in the Court of Appeal with respect thereto which will be found in

Case, page 37, line 9 to page 39, line 43

It is, in fact, submitted that the decision in the case of *In Re Branch Lines, Canadian Pacific Railway Company*, 36 S.C.R. 42 is an authority in the respondent's favour. One point that fell to be decided in that case was whether the limitation of time imposed by Clause 4 of the Contract for the completion of the Eastern section and the Central section, 10 namely, the 1st day of May, 1891, was applicable also to the time during which they should lay out branch lines as permitted under Clause 14 and the Supreme Court of Canada held that it was not, that is, the Court drew a distinction between the main line of the railway which the Company was obligated to construct and the branch lines which the Company had the privilege of constructing.

III

It is respectfully submitted that in construing the provisions of Clause 16, the principle should be followed that since the said provisions are, by virtue of the provisions of section 1, 44 Victoria, Chapter 1, a 20 statutory provision for an exemption, they ought to be strictly construed against the person seeking the exemption and that any exemption provided for therein must be clearly expressed.

Said section 1 reads as follows:

"1. The said contract, a copy of which with schedule annexed, is appended hereto, is hereby approved and ratified, and the Government is hereby authorized to perform and carry out the conditions thereof, according to their purport.

Case, page 172, lines 36 to 39

In *Montreal vs The College of St. Marie* 89 L.J.P.C. 243, 1920, Duff 30 J. (as Sir Lyman Duff then was) said at page 246, 1921 1 AC 288 at 290-1

"Their Lordships are not disposed to differ from the view pressed upon them that an agreement in order to receive effect under the Statute must be very clearly made out. Such an agreement, if effective, establishes a privilege in respect of taxation and the principle is not only well settled but rests upon obvious considerations that those who advance a claim to special treatment in such matters must show that the privilege invoked has unquestionably been created."

Please see also:

40 *Episcopal Corporation of Saskatoon v. Saskatoon* 1936 2 W. W.R. 91

Ruthenian Catholic Mission v. Mundare School District 1924,
S.C.R. 620

Toronto General Trust Corporation v. City of Ottawa, 1935,
S.C.R. 531

*In Re Income Tax Act, Beaver Lumber Company Limited v.
Provincial Tax Commission*, 1943 3 W.W.R. 435

Maxwell on Interpretation of Statutes, 9th Ed., page 298

It is further submitted that even if Section 1 of the Act cannot be said to have the effect of making the provision of Clause 16 of the contract
10 a statutory provision for exemption, then that it became such by virtue of Section 24 of the Saskatchewan Act, 4-5 Edward VII, Chapter 42

Case, pages 265-6

and must be strictly construed. That Section reads as follows:

“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.”

Case, page 266, lines 18 to 21

It is therefore respectfully submitted that the exemption granted to
20 the Canadian Pacific Railway under Clause 16 of the contract did not extend to the charter branch lines. If that be so, it follows that the provisions of the various municipal acts imposing taxation upon the railways are effective with respect to the said branch lines.

It should be noted that all the said Statutes contain a provision exempting from taxation property specially exempted by law. This would prevent the municipalities, under the legislation, from imposing taxation upon the main line of the Canadian Pacific Railway, its stations and station grounds etc., because it is admitted, subject to what is said here-
30 after with respect to Section 24 of the Saskatchewan Act, that that property is specially exempted by law, that is by Clause 16 of the contract.

IV

The respondent now deals with the questions raised by the second and fourth questions submitted in the Reference. These questions read as follows:

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

- 40 (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.”

Note: Where these questions are found in

Case, page 5, line 30 and 31,

it will be noted that the words “but not made a charge upon such land or buildings” are made to appear as if they related only to question No. 2(c). This is an error in printing and the correct printing is shown above and appears in the

10 Case, page 6, lines 29 to 40

where it is clear that the words “but not made a charge upon such land or buildings” refer to all of the questions propounded, that is to Questions 2(a), 2(b), and 2(c).

20 “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.”

30 The position taken by the respondent on the second and fourth questions is that clause 16 of the contract does not exempt and free the Canadian Pacific Railway Company from such taxation and that the provisions of the various municipal acts referred to in Question No. 4 are operative with respect to the Canadian Pacific Railway Company in respect of the stations, workshops and other buildings used for the working of both the main line of its railway in Saskatchewan and its branch lines in Saskatchewan.

It may be pointed out that counsel for the appellant admitted on the hearing before the Court of Appeal that the exemption from business tax did not apply to the branch lines other than the charter branch lines.

The various municipal acts referred to provide for the imposition of a business tax. The relevant provision with respect to railways is found in The City Act, for example, as sub-section (5a) of Section 443, which was added by Chapter 33 S.S. 1948. It reads as follows:

40 “(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 subsection (2), shall apply.”

Case, page 323, lines 36 to 39

Similar provisions are contained in the other acts.

The method of computing the tax on businesses is set out in Section 443 of The City Act.

Case, page 323, lines 13 to 39

The other municipal acts contain provisions substantially identical. The method used is to fix a rate per square foot of the floor space used for
 10 business purposes, or, in the case of business carried on outside buildings, a rate per square foot of the yard space used for such business, but in the case of railways, yard space is exempted by the said Acts.

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 Company in respect of the business carried on by it or the income arising therefrom. Business tax is not a property tax but is a personal tax.

20 See *City of Moose Jaw vs British American Oil Company Limited*, 1937 2 W.W.R. 309 affirming 1937 2 W.W.R. 35 and the cases therein referred to

In Re Hydro-Electric Power Commission of Ontario vs City of Hamilton, 47 O.L.R. 155, particularly at pages 160 to 161

In the first case cited, the agreement between The British American Oil Company Limited and the City of Moose Jaw with respect to taxation provided that

30 “the total annual taxes payable for all purposes, except local improvements by the Party of the First Part on or with respect to the property hereinbefore described etc., shall be the sum of \$3,000.00.”

The City assessed the oil company to business tax and it was held both by Mr. Justice MacDonald in the Court of King’s Bench and by the Court of Appeal that such assessment was valid and did not conflict with the exemption provisions in the agreement since the business tax was a personal tax and not a tax on or with respect to the property of the oil company.

40 It is respectfully submitted that the same principle applies in the present reference. 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 appellant. It is to be noted that in Clause 16 of the contract the Company is not exempted from taxation but its specified property is.

In the Court of Appeal reliance was placed by the appellant upon the case of

City of Halifax vs Fairbanks Estate 1928, A.C. 117

and also upon certain remarks of Mr. Justice Kellock in the case of

Regina Industries Limited vs City of Regina, 1947 S.C.R. page 345

It is respectfully submitted that neither of these cases established the proposition that a business tax levied as provided for in Saskatchewan legislation is a tax on property. In

10 *City of Halifax vs Fairbanks Estate*,

the matter for determination was, in effect, whether the tax imposed under the provisions of the Halifax City Charter were direct or indirect taxation. 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 20 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. 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.

Nor is a business a property, in the ordinary sense of the use of the word "property". By Section 441, subsection 2 of The City Act, 30 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."

Case, page 322, lines 23 to 28

By Section 2, subsection 2 of The City Act, 1947, "business" is defined as follows:

"'Business' includes any trade, profession, calling, occupation or employment."

The term "business" is, it is submitted, a metaphysical term and embraces the carrying on of a trade or occupation or profession or the 40 continuous exercise of an activity.

Please 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.

10 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.

20 *Canadian Northern Pacific Railway v. New Westminster Corporation*, 1917, 86 L.J.P.C. 178, particularly at page 180 1917 AC 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 business 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

30 *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 Govern-
40 ment 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 Case, pages 335 to 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 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
 10 of Canada, Chapter 72 of the Statutes of Canada, 35 Victoria (1872), the earnings of the Company were exempted from taxation.

Case, page 101, line 45 to page 102, line 9

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).

Case, page 102, line 20 to page 103, line 9

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
 20 bargaining went on before the exact limits of the tax exemption were definitely settled.

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
 30 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.

It is therefore respectfully submitted 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
 40 line of its railway in Saskatchewan and its branch lines in Saskatchewan.

The respondent desires to mention two further matters:

(a) As has already been stated, Questions Nos. 2(b) and 2(c) were not answered by the Court of Appeal, the learned judges of that Court being of the opinion that in the absence of any legislation which imposed taxation on the basis set out in the said questions, the questions were academic.

It is, in the respondent's submission, quite true that the principles involved in answering 2(a) would be applicable to answers given to 2(b) and 2(c) but it is respectfully suggested that they ought to be answered.

Section 2 of The Constitutional Questions Act, R.S.S. 1940, Chapter 72 which authorizes such a reference, is very wide in its terms. It reads as follows:

"2. The Lieutenant-Governor in Council may refer to the Court of Appeal for hearing and consideration any matter which he thinks fit and the Court shall thereupon hear and consider the same."

It is respectfully submitted that a question may be referred and ought to be answered, notwithstanding that there is at the time of the reference no concrete legislation in effect which embodies the matter so referred. The Lieutenant-Governor in Council may wish to obtain the opinion of the Court of Appeal upon its power to pass legislation of any particular kind and it is submitted that there is no good reason why it should not obtain that opinion in advance of passing the legislation. In the case of

Esquimalt and Nanaimo Railway Company and others v. Attorney-General of British Columbia, 1948, S.C.R. 403, 1949 2 W.W.R. 1233

both the Supreme Court of Canada and the Judicial Committee of the Privy Council answered questions referred by His Honour, the Lieutenant-Governor of British Columbia, to the Court of Appeal of that province although none of the questions were based upon existing legislation. In the event of there being a distinction in principle between the basis of business taxation referred to in the different branches of Question No. 2, it is submitted that it would be a convenient course to have all the questions answered. It is respectfully submitted, however, by the respondent that there is no difference in principle and that the argument already advanced applies to all the branches of Question No. 2.

It is also to be noted that in other provinces of Canada, business tax is imposed on the basis set out in Questions Nos. 2(b) and 2(c) and the respondent would respectfully ask that these questions be answered by this Honourable Court.

(b) As has been stated, Clause 16 of the contract is imposed as a Constitutional limitation upon the legislative powers of the Legislature of Saskatchewan by Section 24 of the Saskatchewan Act, 4-5 Edward VII, Chapter 42, which has already been set out.

The respondent does not admit the power of the Dominion to impose such a Constitutional limitation. However, the respondent is of the opinion that this contention has been concluded against it by the judgment of the Supreme Court of Canada in

10 the matter of a *Reference as to the Constitutional validity of Section 17 of the Alberta Act, 1927*, S.C.R., page 364.

It is true that the reference there was concerned with Section 17 of the Alberta Act and not with Section 24 but it seems clear that the reasoning would apply equally to Section 24. The Alberta Act and the Saskatchewan Act are similar and a decision on one would be applicable to the other.

For this reason the respondent did not argue this matter before the Court of Appeal and does not intend to argue it before the Supreme Court of Canada. However, in the Court of Appeal, the respondent reserved his right to argue this question if the case should go beyond the Supreme Court of Canada and he makes the same reservation here.

20 If it should at any time be held that the Parliament of Canada had no power to impose the limitation expressed in Section 24 of the Saskatchewan Act, it would follow that the whole tax exemption provided for in the contract would be gone insofar as the Province of Saskatchewan is concerned.

VI

For the reasons hereinbefore set out, it is respectfully submitted that the judgment of the majority of the Court of Appeal for Saskatchewan was right and ought to be affirmed by this Honourable Court and that this appeal should be dismissed.

30 All of which is respectfully submitted.

E. C. Leslie

R. S. Meldrum

Of Counsel for the Respondent