Privy Council Appeal No. 54 *of* 1916.

The Hamilton, Grimsby, and Beamsville Railway Company - - - - - *Appellants*

v.

The Attorney-General for the Province of Ontario and Others - - - - *Respondents*

FROM

THE SUPREME COURT OF ONTARIO (APPELLATE DIVISION).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JULY, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD ATKINSON.
LORD SHAW.
LORD PARMOOR.

[*Delivered by* THE LORD CHANCELLOR.]

This is an appeal of the Hamilton, Grimsby, and Beamsville Railway Company against a judgment of the Appellate Division of the Supreme Court of Ontario, affirming an order of the Ontario Railway and Municipal Board, dated the 10th May, 1915. The order of the Railway Board directed that the appellants should construct certain sanitary conveniences on their railway, and the appeal against that order was brought, not because the appellants objected to the construction of the sanitary conveniences, but because they asserted that the Ontario Railway and Municipal Board had no jurisdiction whatever to make the order, inasmuch as their railway was really a Dominion Railway, and not in any way under the control of the Provincial Board.

The facts of the case are these. The appellant company was incorporated by the Province of Ontario in 1892. The extent of the railway they were formed to construct and work

is some 23 miles or thereabouts. It is worked by electric power, and it is wholly situate within the Province of Ontario. In 1895 the appellants proposed to carry their railway across the track of the Grand Trunk Railway, and an order was made on the 28th January, 1895, permitting such crossing. The appellants assert that, by virtue of the British North America Act of 1867 and the Railway Act of Canada of 1888, the effect of that order was to take their railway out of the jurisdiction of the Province of Ontario and place it within the category of a Dominion Railway.

The British North America Act of 1867, by section 92, provides that in each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects that are there enumerated, and among the classes that are enumerated are local works and undertakings, other than "such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces."

In 1888 the Railway Act of Canada was passed, and this contained certain provisions with regard to railways crossing other railways that were within the legislative authority of the Parliament of Canada. There are many sections in that statute to which reference would be needed if it were necessary to consider exactly the terms of section 306 upon which the appellants rely, for it is quite true that if a comparison be made between section 306 and some of the other sections, a contrast will be found between the specific railways which are the subject of section 306 and the general terms in which all railways are referred to in the other sections. This would become a very important matter if their Lordships thought it was essential to construe section 306. But they do not think it is essential, for this reason, that even assuming in favour of the appellants that section 306 did effect a declaration within the meaning of section 92, sub-section 10 (*c*) of the British North America Act, and thus place the railway within the authority of the Dominion and outside the authority of the province, yet none the less that statute has been in terms repealed, and if that repeal is effectual to change the status of the appellant company, then their railway is a Dominion Railway no longer, and the Ontario Railway and Municipal Board had full jurisdiction to make the order which is the subject of the appeal.

The statute which effected this repeal was passed in 1903. The repealing section is section 310, and that repealed *in toto* the previous statute, and by section 7 a special declaration is made with regard to railways crossing other railways that were subject to the legislative authority of the Parliament of Canada. That section runs in these terms :—

"Every railway, steam, or electric street railway or tramway, the construction or operation of which is authorised by a special Act passed

by the Legislature of any province now or hereafter connecting with or crossing a railway, which, at the time of such connection or crossing, is subject to the legislative authority of the Parliament of Canada is hereby declared to be a work for the general advantage of Canada, in respect only to such connection or crossing, or to through traffic thereon, or anything appertaining thereto. . . . . ."

This railway in question answers every one of the necessary conditions prescribed in the earlier part of section 7. If, therefore, there was power left in the legislative authority of the Dominion of Canada to pass this Act, then, it is obvious that, even assuming the railway had been placed within that authority by section 306, it is there no longer, and there is no power within the Dominion to control its affairs. Their Lordships are clearly of opinion that section 92, sub-section 10, never intended that a declaration once made by the Parliament of Canada should be incapable of modification or repeal. To come to such a conclusion would result in the impossibility of the Dominion ever being able to repair an oversight by which, even with the greatest care, mistakes frequently creep into the clauses of Acts of Parliament. The declaration under section 92, sub-section 10 (*c*), is a declaration which can be varied by the same authority as that by which it was made. In the present case their Lordships see no reason to doubt that if the statute of 1888 effected such a declaration as to place the whole railway under Dominion control, that declaration has been properly and effectually varied, and the appellant company have ceased to be, even if they ever once were, under the control of the Dominion Board.

Other questions have been raised in the course of the argument, and notably one of great importance, with regard to the power of the Dominion Parliament to pass such a statute as that of 1888, on the hypothesis that section 306 bore the meaning for which the appellants contend. This question is of great importance, but, for the reasons that have been given, its decision is unnecessary.

Their Lordships think that this appeal should be dismissed on the simple question which has already been stated.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE HAMILTON, GRIMSBY, AND BEAMSVILLE RAILWAY COMPANY

v.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO AND OTHERS.

DELIVERED BY

THE LORD CHANCELLOR.

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