

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Grand Trunk Railway Company of Canada v. The Attorney-General for the Dominion of Canada, from the Supreme Court of Canada; delivered the 5th November 1906.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD DUNEDIN.

LORD ATKINSON.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[*Delivered by Lord Dunedin.*]

The question in this Appeal is as to the competency of the Dominion Parliament to enact the provisions contained in Section 1 of 4 Edw. VII., cap. 31, of the Statutes of Canada. These provisions may be generally described as a prohibition against any "contracting out" on the part of railway companies within the jurisdiction of the Dominion Parliament from the liability to pay damages for personal injury to their servants.

It is not disputed that in the partition of duties effected by the British North America Act, 1867, between the Provincial and the Dominion legislatures, the making of laws for through railways is entrusted to the Dominion.

The point therefore comes to be within a very narrow compass. The Respondent maintains, and the Supreme Court has upheld his contention, that this is truly railway legislation.

The Appellants maintain that, under the guise of railway legislation, it is truly legislation as to civil rights, and, as such, under Section 92 sub-section (13) of the British North America Act, appropriate to the Province.

The construction of the provisions of the British North America Act has been frequently before their Lordships. It does not seem necessary to recapitulate the decisions. But a comparison of two cases decided in the year 1894, viz. *Attorney-General of Ontario v. Attorney-General of Canada*, 1894 A.C. 189, and *Tennant v. Union Bank of Canada*, 1894 A.C. 31, seems to establish these two propositions: *First*, that there can be a domain in which Provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires*, if the field is clear; and *Second*, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail.

Accordingly, the true question in the present case does not seem to turn upon the question whether this law deals with a civil right—which may be conceded—but whether this law is truly ancillary to railway legislation.

It seems to their Lordships that, inasmuch as these railway corporations are the mere creatures of the Dominion Legislature—which is admitted—it cannot be considered out of the way that the Parliament which calls them into existence should prescribe the terms which were to regulate the relations of the employees to the corporation. It is true that, in so doing, it does touch what may be described as the civil rights of those employees. But this is inevitable, and, indeed, seems much less violent in such a case where the rights, such as they are, are, so to speak, all *intra familiam*, than in the numerous cases which may be figured where the

civil rights of outsiders may be affected. As examples may be cited provisions relating to expropriation of land, conditions to be read into contracts of carriage, and alterations upon the common law of carriers.

In the factum of the Appellants it is *inter alia* set forth that the law in question might

“Prove very injurious to the proper maintenance and operation of the railway. It would tend to negligence on the part of employees, and other results of an injurious character to the public service and the safety of the travelling public would necessarily result from such a far-reaching statute.”

This argument is really conclusive against the Appellants. Of the merits of the policy their Lordships cannot be judges. But if the Appellants' factum properly describes its scope, then it is indeed plain that it is properly ancillary to through railway legislation.

Their Lordships will therefore humbly advise His Majesty to dismiss the Appeal. There will be no Order as to costs.

---

