Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Corporation of the City of Toronto v. *The Canadian Pacific Railway Company, from the Court of Appeal for Ontario; delivered the 18th November* 1907.

Present at the Hearing:

LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*Delivered by Lord Collins.*]

The question on this Appeal is as to the liability of the Appellants, the Corporation of the City of Toronto, to pay a share of the cost of certain protective measures ordered by the Railway Committee of the Privy Council of Canada for the purpose of safeguarding the public in traversing the Respondents' railway, and the railway itself, at certain level crossings where it passes across public streets at points within or immediately adjoining the city boundary. At two of the crossings the southern boundary of the railway is the northern boundary of the city. In the third the crossing is wholly within the city.

The order of the Railway Committee, which was dated 8th January 1891, and purported to be made under the 187th and 188th sections of the Dominion Railway Act, 1888 (51 Vict. c. 29), directed that gates and watchmen should be provided and maintained by the Railway Company

I (22)51525. [58.] 100.—11/07. Wt. 1199. E. & S.

at the said crossings, and that the cost thereof should be borne in equal proportions by the Railway Company and the Corporation. Some two years later there was a slight re-adjustment of the proportions, but nothing turns on this. The Corporation continued to pay the adjusted proportion without complaint down to 1901, when they disputed liability, and ceased payment. Hence this action in which the Railway sued the Corporation to recover the apportioned amount. No question arises as to the amount, if liability is established, but the Appellants contend that the sections under which the order was made were *ultra vires* of the Dominion Parliament, and that even if they were *intra vires*, the Corporation did not fall within the words, "any person interested therein" in section 188, and could not, therefore, be made liable to pay any apportioned share of the expenses. Mabee J., the trial Judge, decided against the Corporation on the ground that the point was concluded by cases decided in Canada binding upon him, and his judgment was affirmed by the Court of Appeal for Ontario.

First, with regard to the question of *ultra vires*. There is no doubt that "railways con-" necting the province with any other or others " of the provinces" are expressly excepted from the jurisdiction of the provinces and placed under the exclusive jurisdiction of the Parliament of the Dominion by the Imperial Statute 30 & 31 Vict. c. 3., the British North America Act, 1867, section 91, sub-section 29, and section 92, sub-section 10 (*a*). On the other hand, by section 92 of the same Act, municipal institutions in the province and property and civil rights in the province are placed under the exclusive power of the provincial legislature. Questions of conflict between the two jurisdictions, that of the Dominion and that of the province, have

frequently come before this Board, and the result of the decisions is thus summed up by Lord Dunedin, in delivering the judgment in the most recent case, *Grand Trunk Railway Company* v. *Attorney-General of Canada* (1907, A.C., 65, at p. 68). He treats the following propositions as established: —

> "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, secondly, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail."

In the present case it seems quite clear to their Lordships that if, to use the language above quoted, "the field were clear," the sections impugned do no more than provide reasonable means for safeguarding in the common interest the public and the railway which is committed to the exclusive jurisdiction of the Legislature which enacted them, and were, therefore, *intra vires*. If the precautions ordered are reasonably necessary, it is obvious that they must be paid for, and in the view of their Lordships there is nothing *ultra vires* in the ancillary power conferred by the sections on the Committee to make an equitable adjustment of the expenses among the persons interested. This legislation is clearly passed from a point of view more natural in a young and growing community interested in developing the resources of a vast territory as yet not fully settled than it could possibly be in the narrow and thickly populated area of such a country as England. To such a community it might well seem reasonable that those who derived special advantages from the proximity of a railway might bear a special share of the expenses of safeguarding it. Both the substantive and the ancillary provision are alike reasonable and *intra vires* of the Dominion

Legislature, and on the principles above cited must prevail, even if there is legislation *intra vires* of the Provincial Legislature dealing with the same subject-matter and in some sense inconsistent. But it seems to their Lordships that in truth there is no real inconsistency, and both may stand together. The through railway is a subject-matter excepted out of the jurisdiction of the province, and there is no express provision in the British North America Act defining the jurisdiction of the province inconsistent with the right vested in the Dominion to provide for the safeguarding of the subject-matter thus excluded from the jurisdiction of the province. The jurisdiction conferred over property and civil rights in the province is quite consistent with a jurisdiction specially reserved to the Dominion in respect of a subject-matter not within the jurisdiction of the province. The rights in the highways conferred on the municipality by the sections of the Consolidated Municipal Act, 1903, 3 Edw. VII. c. 19 (Ontario), cited in the Appellants' case, do not, in their Lordships' opinion, help the Appellants at all on the *ultra vires* point, though they bear strongly against them on the point that they are not "persons interested."

With regard to this latter point, it is clear from section 7, sub-section 22, of the Interpretation Act, Rev. Stat. of Canada, 1886, c. 1, cited by Sir R. Finlay, that the word "person" includes a municipality; and their Lordships fully concur in the conclusion and reasoning of Meredith J.A. in the Court below, that in this case the municipality was a person interested. It is not necessary to say anything upon the other points argued.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal be dismissed.

The Appellants will pay the costs of the Appeal.