

Privy Council Appeal No. 39 of 1924.

The Secretary of State for India in Council - - - *Appellant*

v.

The Great Indian Peninsula Railway Company - . - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND DECEMBER, 1924.

Present at the Hearing :

VISCOUNT FINLAY.

LORD ATKINSON.

LORD PHILLIMORE.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

This appeal is from a decree dated the 5th April, 1923, of the High Court at Bombay, which followed on a judgment pronounced in a Special Case under Order XXXVI of the Code of Civil Procedure. The parties to the case are the Secretary of State for India in Council as plaintiff and the Great Indian Peninsula Railway Company as defendant, and the question stated for the opinion of the Court is "Whether stores purchased and imported by the defendant Company into India for the use of the undertaking as mentioned in the case are at the time of the importation, goods belonging to Government." On the decision of this question depends the liability of the defendant Company to pay Customs duties under Section 20 of the Sea Customs Act, VIII of 1878. By this section Customs duties are imposed which would attach to the stores unless they come within the proviso to the section that no such duties shall be levied on goods belonging to the Government. The answer to the question propounded depends largely on the legal effect to be attributed to the provisions

of the agreement attached to the special case ; but that this effect may be rightly understood a brief summary of the facts leading up to it is necessary.

The defendant Company was incorporated in 1849 by an Act of the Imperial Parliament 12 and 13 Vict. Ch. LXXXIII. On the 18th August, 1899, the Secretary of State in Council in exercise of powers vested in him gave notice to the defendant Company of his intention to purchase the railway and works that had been constructed together with the telegraphs and the engines, carriages, stock, plant and machinery belonging to the railway and works. On the 30th July, 1900, an Act of Parliament, 63 and 64 Vict. Ch. CXXXVIII, intituled an Act to provide for the vesting of the railways and other property of the Great Indian Peninsula Railway Company in the Secretary of State in Council of India and for other purposes was passed. After a preamble stating that notice of intention to purchase had been given and that it was expedient that arrangements should be made for the future working of the railways of the Company it was enacted that as from 30th June, 1900, the railways and works should by virtue of the Act be transferred to and vested in the Secretary of State in Council. This then is how matters stood at the date of the agreement attached to the case, and it is to be borne in mind that at its date the Secretary of State in Council had become and was the owner of the railway undertaking and all that pertained to it. The agreement was made on the 21st December, 1900, between the Secretary of State in Council of the one part and the defendant Company of the other part, and in the opening recital it is stated that it had been agreed between the parties that the defendant Company should maintain manage and work the Great Indian Peninsula system on the terms thereafter mentioned. This recital is important ; it is the key to the meaning and effect of the elaborate provisions that follow ; on examination they will be found to be merely ancillary to the recited agreement.

Thus it is for the purpose of the contract that the plaintiff is to hand over to the defendant Company the Great Indian Peninsula Railway system together with the rolling stock plant and machinery belonging thereto (clause 5) ; and for the purpose of the undertaking that he is to deliver to the defendant Company all stores belonging to the Great Indian Peninsula system (clause 6). There is no derogation here from the property vested in the Secretary of State in Council.

Provisions follow for the maintenance and management of the undertaking which impose on the defendant Company the obligation to keep the undertaking and the rolling stock plant and machinery belonging to the undertaking in good repair and good working condition to the satisfaction of the Secretary of State (clauses 10 and 11). Then there are provisions as to the use and working of the undertaking and the conveyance of traffic throughout which the ultimate control is with the Secretary of State (clauses 15-22).

Capital money required for the purposes of the undertaking is at his option to be provided by the Secretary of State or be

raised by debentures or debenture stock on such terms as he should determine (clause 22a) All money received by the defendant Company in respect of the undertaking is to be paid into the Treasury of the Government of Bombay or such other Treasury as the Secretary of State should direct or into the Bank of England to the account of the Secretary of State : all money required by the defendant Company for the purposes of the undertaking is to be supplied by the Secretary of State ; and the Secretary of State's sanction is required for all expenditure. (Clauses 23, 24, 25). The accounts are to be kept in accordance with the Secretary of State's requirements. In all matters relating to the undertaking not specially provided for the defendant Company is subject to the supervision and control of the Secretary of State (clause 45).

By clauses 49-51 a ban is placed (a) on borrowing by the Company, (b) on its engagement in any other business, and (c) on its acquisition of property in India during the continuance of the contract without the sanction of the Secretary of State. And at the determination of the contract on the 30th June, 1925, the Company is to give to the Secretary of State possession of the undertaking together with the rolling stock plant and machinery belonging thereto and all stores and other articles specified in clause 60.

These provisions (in their Lordships' opinion) are for the purpose of carrying into effect the recited agreement for the maintenance management and working of the Great Indian Peninsula Railway system, and under them the defendant Company is the agent and no more than the agent of the Secretary of State. In so saying their Lordships do not overlook the terms of clause 39 (4) under which the surplus arising from excess of receipts over payments is to belong as to nineteen equal twentieth parts thereof to the Secretary of State and as to one equal twentieth part thereof in the defendant Company. In their opinion the contention that this points to the Secretary of State and the defendant Company being co-adventurers or partners is not well founded ; the appropriation of one twentieth to the defendant Company is not to be ascribed to any proprietary interest in it but is a remuneration for services rendered by it as agent for the Secretary of State.

The money for the purchase of the stores to which this case relates was supplied by the Secretary of State and it was as agent for the Secretary of State that the defendant Company purchased and imported the stores into India, for the use of the undertaking. In the circumstances the High Court rightly held that the stores at the time of importation belonged to the Government and their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed.

There will be no order as to costs.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL

2.

THE GREAT INDIAN PENINSULA RAILWAY
COMPANY.

DELIVERED BY SIR LAWRENCE JENKINS.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1925.