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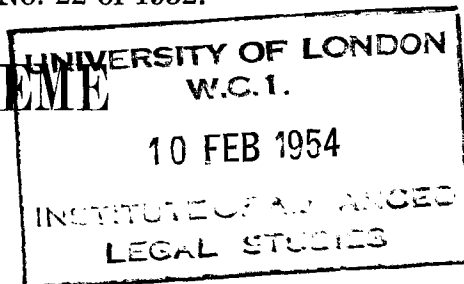
22, 1953

In the Privy Council.

23569

No. 22 of 1952.

ON APPEAL FROM THE SUPREME  
COURT OF CANADA



BETWEEN

THE CITY OF WINNIPEG ... .. APPELLANT

AND

CANADIAN PACIFIC RAILWAY COMPANY ... .. RESPONDENT

RESPONDENT'S CASE

RECORD

1.—This is an appeal by special leave from judgments of the Supreme Court of Canada dated 22nd October, 1951, dismissing the appeal by the present Appellant from a judgment of the Court of Appeal for Manitoba dated 17th April, 1950, and allowing the appeal of the present Respondent from the said judgment and restoring the judgment of the trial judge (Williams C.J.K.B.) dated 7th October, 1949, in favour of the present Respondent.

p. 375

p. 374

2.—This action arose as a result of an assessment by the City of Winnipeg of the Canadian Pacific Railway Company for taxes in respect of certain  
10 property of the Company located in the City. The principal issues that arose in the action, as described in the Order of Her Majesty dated 18th July, 1952, were as follows :

p. 420, l. 14

- (1) Whether the Deed of Covenant dated 10th October, 1881, was ultra vires the Respondent with the result that the exemption from taxation purported to be conferred on the Respondent by By-law 148 never became effective ;
- (2) Whether, if perpetual exemption from taxation is conferred by the said By-law, such exemption does or does not extend to the business tax ;
- 20 (3) Whether, if perpetual exemption from taxation is conferred by the said By-law, such exemption extends only to property situate within the limits of the City of Winnipeg as they existed at the time the By-law was enacted ;
- (4) Whether, if perpetual exemption from taxation is conferred by the said By-law, such exemption does or does not extend to the Royal Alexandra Hotel and Restaurant in Winnipeg the property of the Respondent.

3.—The Supreme Court of Canada decided all four issues in favour of the Respondent and the Appellant by its petition sought leave to appeal from the judgments of the Supreme Court of Canada on all four issues.

p. 420, l. 39 4.—By the said Order of Her Majesty dated 10th July, 1952, leave to appeal was granted but it was directed that the appeal was to be limited to the first two of the four issues set out above.

p. 289, l. 26 5.—The two issues raised for determination on this appeal arise out of an agreement entered into between the Company and the city in 1881. The terms of this agreement are set out in City of Winnipeg By-law 148 dated 5th September, 1881, as amended and re-enacted by By-law 195 dated 30th 10  
p. 301, l. 28 October, 1882.

p. 291, l. 34 as amended by p. 302, l. 1 p. 292, l. 6 as amended by p. 302, l. 1 6.—Under the said agreement the Company agreed that it would on or before 1st February, 1883, commencing within the City of Winnipeg, construct and complete and fully equip one hundred miles of railway running southwesterly towards the westerly limit of the Province of Manitoba; that it would on or before 1st November, 1883, build, construct and complete within the City of Winnipeg a substantial and commodious general passenger railway depot; and that it would, immediately after the ratification of By-law 148 make, execute and deliver to the Mayor and Council of the City of Winnipeg a bond and covenant under its corporate seal that it would 20 with all convenient and reasonable despatch, establish and build within the limits of the City of Winnipeg, its principal workshops for the main line of its railway within the Province of Manitoba and the branches thereof radiating from Winnipeg within the limits of the said Province and forever continue the same within the said City of Winnipeg, and that it would by such bond and covenant bind itself as soon as it conveniently could, to procure and erect within the City of Winnipeg large and commodious stock or cattle yards, suitable and appropriate for the central business of its main line of railway and the several branches thereof.

p. 292, l. 20  
p. 292, l. 30

p. 292, l. 41 7.—The said agreement also provided that, upon the Company making, 30 executing and delivering to the Mayor and Council the bond and covenant referred to in paragraph 6 hereof, the City would make, seal and deliver to the Company a deed of the lands upon which the passenger station referred to in paragraph 6 hereof was to be erected.

p. 290, l. 36 The City was also to issue debentures for the sum of \$200,000 payable to the Company or bearer on 20th September, 1901, bearing interest in the meantime at 6% per annum.

p. 293, l. 17 8.—The agreement further provided for exemption from taxation by clause 4 (8) as follows :

“ 4. (8) Upon the fulfilment by the said Company of the conditions 40  
“ and stipulations herein-mentioned, by the said Canadian Pacific  
“ Railway Company all property now owned, or that hereafter may be  
“ owned by them within the limits of the City of Winnipeg, for Railway  
“ purposes, or in connection therewith shall be forever free and exempt

“ from all municipal taxes, rates, and levies, and assessments of every nature and kind.”

- 9.—In accordance with the agreement, the Company constructed, completed and fully equipped one hundred miles of railway running south-westerly from Winnipeg ; built, constructed and completed a substantial and commodious general passenger depot ; and executed and delivered to the Mayor and Council of the City of Winnipeg a bond and covenant to establish, build and forever continue its principal workshops for Manitoba in the City of Winnipeg and to procure and erect within the said City large and commodious stock and cattle yards suitable and appropriate for the central business of its main line and branches. These facts were admitted. p. 257, l. 19

10. That the Company had duly executed and delivered the bond required by By-law 148, as amended by By-law 195, was also acknowledged by the City in the Deed, dated 18th April, 1882, conveying the land for the passenger depot. That the Company had completed and performed all the conditions mentioned in such by-laws and had in all other respects complied with the same was also acknowledged in City of Winnipeg By-law 219, dated 30th March, 1883, which directed the City's Trustee to deliver to the Company the debentures provided for by the said By-law 148 as amended. p. 298, l. 10  
p. 307, l. 9

- 20 11.—In 1882 the Company established and built in the City of Winnipeg its principal workshops for its main line within the Province of Manitoba and the branches thereof radiating from Winnipeg, and has continued the said workshops in the City ever since. p. 257, l. 39

12.—In 1882 the Company procured and erected in the City of Winnipeg large and commodious stock and cattle yards. The Company has continuously maintained and still maintains stock and cattle yards within the City of Winnipeg large enough to handle all the business offering. p. 258, l. 14  
p. 41, l. 44  
to  
p. 42, l. 39

- 30 13.—By-laws 148 and 195 were voted upon and approved by the rate-payers of the City of Winnipeg. On the petition of the City in 1883, an Act of the Legislature of Manitoba was enacted expressly declaring By-laws 148 and 195 to be legal, binding and valid upon the City (Statutes of Manitoba, 46-47 Vic., 1883, Chap. 64, Section 6). p. 257, l. 13  
p. 257, l. 16  
Appendix  
p. 48, l. 22

14.—From 1881 until 1900, when the Railway Taxation Act of Manitoba came into force (Statutes of Manitoba, 63-64 Vic., Chap. 57), the City, were it not for the exemption provision referred to in paragraph 8 hereof, would have been free to tax the Company's property in the City of Winnipeg owned for railway purposes or in connection therewith. The City did not, during that period, demand any taxes in respect of such property except that it made an unsuccessful attempt in 1894 to collect school taxes. Appendix  
p. 62  
p. 259, l. 32

- 40 In each of the years 1890 to 1894 both inclusive the City purported to assess certain lands of the Company for school taxes. In 1894, the City commenced action in the Court of King's Bench for Manitoba to recover the amount of such taxes. The litigation went to the Supreme Court of Canada p. 308

p. 335 which held that the 1883 Act validating By-law 148 made valid the exemption clause, and that the school taxes in question came within the exemption (1900 30 S.C.R. 558). A petition of the City for leave to appeal to the Judicial Committee was refused (King's Order, 24th July, 1901).

Appendix  
p. 121

Appendix  
p. 62

Appendix  
p. 95, l. 7  
p. 96, l. 1

By the Railway Taxation Act mentioned above, a provincial tax was imposed on the gross earnings of railway companies operating any line within the Province. The railroad companies paying such taxes were to be exempt from all municipal taxation within the Province. This exemption was suspended in 1947.

p. 368 15.—Notwithstanding the agreement set forth in By-laws 148 and 195 10 which had been confirmed and validated by the Legislature, the City on 23rd February, 1948, passed By-law 16306 which purported to repeal the said By-laws. By-law 16306 was not authorized or confirmed by the Legislature.

p. 38, l. 1  
p. 372

16.—By notices dated 29th March, 1948, the City notified the Company that it had assessed all lands and buildings owned by the Company in the City of Winnipeg for railway purposes or in connection therewith for realty tax and had assessed the Company therefor.

p. 39, l. 39  
p. 373

By notices dated 11th June, 1948, the City notified the Company that it had assessed all lands and buildings owned by the Company in the City 20 of Winnipeg for railway purposes or in connection therewith for business tax and had assessed the Company therefor.

17.—The Company then brought this action to restrain the City from assessing and imposing realty and business taxes on property owned by it for railway purposes or in connection therewith, on the ground that by virtue of the agreement set forth in By-law 148 as amended, the Company has been since 1881 and is forever exempt from such taxation.

18.—The first issue which arises for determination on this appeal as described in the Order of Her Majesty dated 18th July, 1952, is as follows :

- (1) Whether the Deed of Covenant dated 10th October, 1881, was ultra 30 vires the Respondent with the result that the exemption from taxation purported to be conferred on the Respondent by By-law 148 never became effective.

19.—A brief outline of the procedure followed in the incorporation of the Company may be helpful in the consideration of this question.

Appendix  
p. 13, l. 18

20.—On 21st October, 1880, George Stephen and his associates entered into a contract with Her Majesty the Queen acting in respect of the Dominion of Canada whereby on their incorporation by the Dominion they, as the Canadian Pacific Railway Company, would construct and complete a railway to the Pacific Coast.

40

The Contract contemplated that the incorporation of the Company

would be carried out by a special Act of Parliament and a schedule setting out the terms of such special Act was appended to the Contract as Schedule A.

Appendix  
p. 22, l. 3  
Appendix  
p. 22, l. 29

21.—On 15th February, 1881, Parliament enacted “An Act Respecting the Canadian Pacific Railway” whereby it approved and ratified the Contract and authorized the Government to perform and carry out its various obligations thereunder. The Contract (which included the draft special Act as Schedule A) was appended to the 1881 Act as a schedule.

Appendix  
p. 11

10 22.—Apparently between the date of the execution of the Contract (21st October, 1880) and the enactment of the Act (15th February, 1881) a change of plans took place as to the method of incorporation of the Company. Instead of incorporating the Company by a special Act (as was contemplated by the Contract), it was decided to incorporate it by Letters Patent. Thus section 2 of the 1881 Act provided as follows :

Appendix  
p. 11, l. 38

20 “2. For the purpose of incorporating the persons mentioned in the said contract, and those who shall be associated with them in the undertaking, and of granting to them the powers necessary to enable them to carry out the said contract according to the terms thereof, the Governor may grant to them in conformity with the said contract, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the schedule to the said contract and to this Act appended, and such charter, being published in the Canada Gazette, with any Order or Orders in Council relating to it, shall have force and effect as if it were an Act of the Parliament of Canada, and shall be held to be an Act of incorporation within the meaning of the said contract.”

30 23.—As a result, Schedule A to the contract which was in the form of a special Act was not enacted. Instead its terms were embodied in Letters Patent which were issued by His Excellency the Governor-General of Canada in the form of a Royal Charter under the Great Seal of Canada on 16th February, 1881, that is on the day following that on which assent was given to the 1881 Act. p. 262

24.—Paragraph 4 of the Letters Patent read as follows :

p. 274, l. 3

40 “4. All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company. And the enactment of the special provisions hereinafter contained shall not be held to impair or derogate from the generality of the franchises and powers so hereby conferred upon them.”

25.—The Company, it is submitted, had power to give the Deed of Covenant, or as it was called the “Bond and Covenant,” by virtue of the powers thus granted to it by the terms of the Letters Patent.

26.—Paragraph 4 conferred on the Company all powers “necessary or useful” to enable it to carry out the obligations and avail itself of the privileges provided for in the Contract. The Company was under an obligation by clause 7 of the Contract to “forever efficiently maintain, work and run the Canadian Pacific Railway” and under clause 8 to “maintain and efficiently operate” the railway.

p. 265, l. 14  
p. 265, l. 20

27.—With such broad powers there could be no doubt that the Company had power to establish workshops and cattle yards. Clearly, the establishment of such facilities would not only be useful but necessary to the efficient operation of the railway.

10

28.—The City has contended, however, that the Bond and Covenant given by the Company, in that it contained an obligation to maintain forever in the City of Winnipeg its principal workshops for its main line of railway in Manitoba, was incompatible with the Company’s powers and with its obligation to “forever efficiently maintain, work and run the Canadian Pacific Railway” and was, therefore, ultra vires. Of the fifteen judges who have considered this contention in the courts below only Mr. Justice Dysart of the Manitoba Court of Appeal has found it acceptable.

p. 218, l. 7  
to  
p. 223, l. 28

29.—The Company had power to give any undertaking that was useful in enabling it to carry out its obligation to maintain, work and run the railway efficiently in perpetuity. The undertaking to maintain forever in Winnipeg its principal workshops for its main line in Manitoba in order to gain a perpetual tax exemption for its properties in Winnipeg was undoubtedly useful to the Company in carrying out its perpetual obligation with respect to the railway. Accordingly it was, it is submitted, within the power of the Company to give that undertaking.

20

30.—No evidence was adduced by the City to demonstrate that the obligation assumed by the Company to “forever continue” in the City its principal workshops for its main line in Manitoba is inconsistent with or incompatible with the due exercise of the powers or duties of the Company. In support of its contention the City relied on pure conjecture as to difficulties that might arise in the future.

30

31.—The Company, it is submitted, also had power to give the Bond and Covenant by virtue of having the status of a common law company.

32.—The Company was incorporated by Letters Patent issued by the Governor-General under the Great Seal of Canada. It has the status, it is submitted, of a common law corporation and as such has all the powers of a natural person. It follows that the doctrine of ultra vires has no application and that the Bond and Covenant would be valid even if the Company did not have the power to enter into it by virtue of the powers granted to it by the terms of the Letters Patent.

40

33.—Even if it were ultra vires the Company to undertake that it would

“ forever continue ” in the City its principal workshops for its main line in Manitoba, the Bond and Covenant is, it is submitted, nevertheless valid.

34.—By its Bond and Covenant the Company undertook to do three things: (1) to establish and build within the City its principal workshops (2) to continue forever the workshops within the City and (3) to procure and erect within the City large and commodious stock and cattle yards. It was clearly within the power of the Company to give the first and third of these undertakings and they were in fact carried out. Moreover, the principal workshops for the main line of the railway in Manitoba have been continued  
10 within the City for over seventy years.

35.—Again, even if the Bond and Covenant were ultra vires, the agreement between the Company and the City, the terms of which are set out in the by-law, is, it is submitted, nevertheless valid.

36.—By the agreement the Company was required to perform three conditions. By clause 4 (1) it was required to construct and complete and fully equip one hundred miles of railway before 1st February, 1883. It performed this condition. By clause 4 (2) it was required to build, construct and complete within the City a substantial and commodious general passenger railway depot before 1st November, 1883. It performed this condition. By  
20 clauses 4 (3) and 4 (4) it was required to make, execute and deliver a Bond and Covenant that it would establish and build its principal workshops within the City and would forever continue them there and that it would procure and erect within the City stock or cattle yards. The Company gave its Bond and Covenant. Pursuant thereto the Company established its principal workshops within the City and continued them there for over seventy years and erected within the City stock or cattle yards. Certainly the City received  
valuable consideration for the tax exemption.

p. 291, l. 34  
p. 257, l. 20  
p. 292, l. 6  
p. 257, l. 27  
p. 292, l. 20, l. 30  
p. 257, l. 34, l. 39  
p. 258, l. 14

37.—If, as the Respondent submits, the agreement between the Company and the City is valid, whatever be the powers of the Company, the exemption from taxation which was a term of that agreement and is set out  
30 as clause 4 (8) of By-law 148 is valid and binding on the City.

38.—Apart altogether from the agreement, By-law 148 was also declared to be “ legal, valid and binding ” upon the City by the Manitoba Legislature.

Appendix  
p. 48, l. 22

39.—All nine judges of the Supreme Court of Canada held that the exemption from taxation conferred on the Company by By-law 148 is binding upon the City.

Mr. Justice Kerwin, with whom the Chief Justice, Mr. Justice Taschereau and Mr. Justice Fauteux concurred, found it unnecessary to determine  
40 whether the Company had all the powers of a natural person since in his view the enumerated powers of the Company were sufficient to authorize the Company to do as it agreed.

p. 417, l. 45

Mr. Justice Rand was of opinion that, even if it were assumed that the Company could not bind itself to continue forever its workshops in the City

p. 387, l. 22

- p. 388, l. 20 so that it might be said that there was a partial failure of consideration, this  
 p. 389, l. 5 did not render the agreement invalid. In his view, the City having absorbed  
 irrevocably the substance of the benefit under the agreement could not now  
 seize upon this item which might never manifest itself in default, to justify  
 repudiation of the agreement.
- p. 405, l. 7 Mr. Justice Kellock was of the opinion that the Company did not have  
 the powers of a common law corporation. He considered it unnecessary to  
 p. 411, l. 23 decide whether the covenant to build and forever maintain the workshops at  
 Winnipeg was a valid covenant, because in his view, assuming that covenant  
 to have been beyond the power of the Company, the City, in the circumstances, 10  
 is not now entitled to take the position that its obligation with respect to  
 the exemption from taxation is no longer binding upon it. He pointed out  
 p. 413, l. 3 that the City had obtained to date everything else for which it had originally  
 stipulated.
- p. 393, l. 11 Mr. Justice Estey, with whom Mr. Justice Cartwright concurred, held  
 that the Company was endowed with the powers and capacities of a natural  
 person, but even if the Company were treated as if it had been incorporated  
 p. 395, l. 16 by statute, the power to execute the agreement was necessarily incidental to  
 the powers expressed in its charter.
- p. 379, l. 39 Mr. Justice Locke found it unnecessary to decide whether the Company 20  
 was vested with the powers of a common law corporation since, even if the  
 powers of the Company were simply those it would possess if incorporated  
 by statute, to enter into the Bond and Covenant was, in his view, within those  
 powers.

40.—The second issue which arises for determination on this appeal is  
 as follows :

- (2) Whether, if perpetual exemption from taxation is conferred by the  
 said By-law, such exemption does or does not extend to the business  
 tax.

- 41.—According to the exemption provision of the agreement, as set out 30  
 in clause 4 (8) of By-law 148, “property” of the Company referred to  
 therein is exempt from “all municipal taxes, rates and levies, and assess-  
 p. 293, l. 17 ments of every nature and kind.”

Appendix  
 p. 85, l. 11

Appendix  
 p. 87, l. 7

42.—The business tax in question is authorized by the City’s charter  
 (Statutes of Manitoba, 4 Geo. VI, 1940. Chap. 81). Section 291 (1) provides  
 for an assessment equal to “the annual rental value of the premises” which  
 a person carrying on any business “occupies in carrying on, or uses for the  
 purpose of, such business” and section 297 (1) provides for the payment of  
 a tax “based on the assessed annual rental value of the premises.”

43.—In *Canadian Pacific Railway Company v. Attorney-General for* 40  
*Saskatchewan* (1951) S.C.R. 190, Question 2 was directed to taxation “in  
 “respect of the business carried on as a railway

- “(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.”

Under the Saskatchewan legislation the assessment is on the basis described in (a), whereas in Winnipeg it is on the basis described in (b). The Supreme Court of Canada held that the so-called business taxation on all three bases came within the exemption in question in that case.

10      44.—The so-called business tax in question in this appeal is a tax on a person in respect of his use of occupation of property for business purposes and is it is submitted, a tax on property within the meaning of the exemption provision contained in clause 4 (8) of the by-law.

45.—There is no question that clause 4 (8) exempts the Company from one common form of municipal tax, namely, a tax on a person in respect of his ownership of real property. If a tax imposed on a person in respect of his ownership of property is to be regarded as being a property tax, a tax imposed on a person in respect of his use or occupation of property is also, it is submitted, properly to be regarded as a property tax. Both types of taxes,  
20 being levied in respect of property, are property taxes and, the Respondent contends, come within the exemption.

46.—The fact that the so-called business tax is not made a charge on the lands or buildings in respect of which it is payable, does not alter its true nature. The effect of making a tax a charge on the land or buildings is merely to give the tax collector an additional means of collecting the tax.

47.—The so-called business tax is in no true sense, it is submitted, a tax on businesses. The tax is not applicable to all businesses, but only to businesses in which lands or buildings are used for the purposes of the business. Moreover, the amount of tax is not based on the volume of business  
30 carried on or on the earnings of the business, but on the value of the real property used for the purposes of the business.

48.—It is apparent that the tax in question, although labelled a “ business tax ” is in its true nature a tax in respect of the use or occupation of property. A tax of that character is just as much a tax on the property owned by the Company “ for railway purposes, or in connection therewith ” within the meaning of clause 4 (8), as would be a tax in respect of the ownership of that property.

49.—A substantially similar tax to the tax in question here was held by the Judicial Committee in *Halifax v. Fairbanks' Estate* (1928) A.C. 117,  
40 to be a property tax and accordingly a valid direct tax.

50.—The benefits which the City conferred by clause 4 (8) on the Company would be illusory if, although free from taxation in respect of its

ownership of property in the City owned "for railway purposes or in connection therewith," the Company was not free from taxation in respect of its use or occupation of such property.

51.—The purpose of clause 4 (8) was to assure to the Company freedom from the burden of taxation on its property in the City owned "for railway purposes or in connection therewith". It is obvious that this purpose would be effectively defeated if the City were permitted to impose taxation in respect of the Company's use or occupation of the property which it now owns "for railway purposes or in connection therewith". The freedom from taxation granted the Company would be as effectively nullified by the imposition of the so-called business tax as it would be by the imposition of a tax in respect of the Company's ownership of that property. 10

Appendix  
p. 58, l. 22  
Appendix  
p. 62  
p. 259, l. 32

52.—It is not without significance that between 1893, when the Manitoba Assessment Act was amended to permit municipalities to impose so-called business taxes, and 1900, when the Railway Taxation Act came into effect (see paragraph 14 hereof), no attempt was made by the City to impose a business tax in respect of the Company's property. Had such tax not been within the exemption provision, the City would have been free to impose it on the property of the Company.

p. 418, l. 23  
p. 414, l. 20  
p. 390, l. 42  
p. 384, l. 34  
p. 403, l. 18

53.—Mr. Justice Kerwin, with whom the Chief Justice, Mr. Justice Taschereau and Mr. Justice Fauteux concurred, held that the question of whether business taxes are included in the exemption was settled by the decision of the Supreme Court of Canada in *Canadian Pacific Railway v. Attorney-General of Saskatchewan* (1951) S.C.R. 190. 20

Mr. Justice Kellock, with whom Mr. Justice Rand concurred in this part of his judgment, and Mr. Justice Locke also held that the question was concluded in favour of the Company by that decision.

Mr. Justice Estey, with whom Mr. Justice Cartwright concurred, held that the exemption here was even broader and more comprehensive than that considered in the *Saskatchewan Case* and accordingly that the principle of that decision resolved this issue in favour of the Company. This decision is now under Appeal to Her Majesty in Council. 30

54.—The Respondent respectfully submits that this appeal should be dismissed for the following, among other,

### REASONS

1. BECAUSE the Respondent was a corporation with power to give the Bond and Covenant.
2. BECAUSE, even if it were ultra vires the Respondent to undertake by the Bond and Covenant to continue forever in Winnipeg its principal workshops for its main line in Manitoba, the Respondent had power to give the other undertakings contained 40

in the Bond and Covenant and the Bond and Covenant is therefore valid.

3. BECAUSE, even if the Bond and Covenant were ultra vires the Respondent, the agreement set out in By-law 148 is valid and the exemption from taxation is binding upon the Appellant.
4. BECAUSE, even if the Bond and Covenant and the Agreement were ultra vires the Respondent, By-law 148, as amended by By-law 195, was declared legal, binding and valid upon the Appellant by an Act of the Legislature of Manitoba and the exemption from taxation is binding upon the Appellant.
5. BECAUSE the validity of the exemption from taxation is *res judicata* by virtue of the decision of the Supreme Court of Canada in *City of Winnipeg v. Canadian Pacific Railway Company* (1930) S.C.R. 558.
6. BECAUSE the so-called business tax is in its true nature a tax on property of the Respondent which is exempt from taxation by clause 4 (8) of By-law 148.
7. BECAUSE such tax is not in its true nature a personal tax.
8. BECAUSE such tax is not in its true nature a tax on the Respondent's business.
9. BECAUSE the exemption from taxation set out in clause 4 (8) of By-law 148 is even broader and more comprehensive than the exemption in question in *Attorney-General of Saskatchewan v. Canadian Pacific Railway Company*.

C. F. H. CARSON.

FRANK GAHAN.

ALLAN FINDLAY

**In the Privy Council.**

ON APPEAL FROM THE SUPREME COURT  
OF CANADA

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BETWEEN  
THE CITY OF WINNIPEG *Appellant*  
AND  
CANADIAN PACIFIC  
RAILWAY COMPANY *Respondent*

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**RESPONDENT'S CASE**

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