

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
Canadian Pacific Railway Company, Appel-
lants, v. the Corporation of the Parish of
Notre Dame De Bonsecour, Respondents,
from the Court of Queen's Bench for Lower
Canada, in the Province of Quebec ; delivered
24th March 1899.*

Present :

LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

LORD SHAND.

LORD DAVEY.

[*Delivered by Lord Watson.*]

Part of the railway of the Appellant Company runs through the parish of Notre Dame De Bonsecour, in the district of Ottawa, and province of Quebec ; and the Respondents are the municipal authority of the parish, under the provisions of the Municipal Code of the Province of Quebec.

Section 91 of the British North America Act, 1867, assigns exclusively to the Legislature of each province the power of making laws in relation to matters coming within the classes of subjects therein enumerated. The class of subjects enumerated in Sub-section 10, is:—

“ Local works and undertakings other than
“ such as are of the following classes :—

“ (a) Lines of steam or other ships, railways,
“ canals, telegraphs, and other works

- “ and undertakings connecting the
 “ Province with any other or others
 “ of the Provinces, or extending
 “ beyond the limits of the Province :
- “ (b) Lines of steamships between the Pro-
 “ vince and any British or Foreign
 “ country :
- “ (c) 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.”

On the other hand, by Section 91, Sub-section (29), the exclusive legislative authority of the Parliament of Canada is extended to “ such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislature of the Provinces.”

It is not matter of dispute that, by virtue of these enactments, the Parliament of Canada had and have the sole right of legislating with reference to the matter of the Appellant's railway. As it passes through the parish of Notre Dame De Bonsecours, the railway runs along a piece of ground belonging to one Julien Gervais, from which it is separated by a hedge, which is the boundary of the railway, and the property of the Appellant Company. Inside the hedge, and between it and the railway track, there is a ditch which has given rise to the present litigation. It is the property of the Appellant Company, and is part of the railway works.

On the 3rd day of June 1896, the rural inspector of the parish served the Appellant Company with a notice, requiring them, within eight days from its date, “ à voir à nettoyer, “ réparer et mettre en bon état le fossé sud de

“votre voie, à l’endroit où elle traverse la terre portant le numéro huit des plan et livre de renvoi officiels de la dite municipalité, et appartenant à Julien Gervais.” The Appellant Company did not comply with the notice, and the Respondents, the Corporation of the parish, brought an action against them in the Superior Court of the Province, setting forth the terms of the notice, the failure of the Appellant Company to comply with it, and concluding that in respect of such failure, they should be ordered to pay a fine of \$200. The only defence set up by the Company, to which they still adhere, was, that the regulation of matters to which the order of their inspector related, which the Corporation were seeking to enforce by penalty, belonged to the Parliament of Canada, and not to the Parliament of the Province of Quebec.

In the Superior Court Mr. Justice Melhiot gave judgment for the Municipal Corporation, on the ground that, notwithstanding the terms of the North British America Act, the ditch in question, and the Company as its owners, were subject to the Municipal Code of the Province. The case was then carried by appeal to the Court of Queen’s Bench, when the judgment of the Court below was affirmed by a majority of four judges to one.

The British North America Act, whilst it gives the legislative control of the Appellant’s railway *quod* railway, to the Parliament of the Dominion, does not declare that the railway shall cease to be part of the Provinces in which it is situated, or that it shall, in other respects, be exempted from the jurisdiction of the Provincial Legislatures. Accordingly, the Parliament of Canada has, in the opinion of their Lordships, exclusive right to prescribe regulations for the construction, repair, and alteration of the railway, and for its management, and to dictate the

constitution and powers of the Company; but it is, *inter alia*, reserved to the Provincial Parliament to impose direct taxation upon those portions of it which are within the Province, in order to the raising of a revenue for provincial purposes. It was obviously in the contemplation of the Act of 1867, that the "railway legislation," strictly so-called, applicable to those lines which were placed under its charge, should belong to the Dominion Parliament. It therefore appears to their Lordships, that any attempt by the Legislature of Quebec, to regulate by enactment, whether described as municipal or not, the structure of a ditch forming part of the Appellant Company's authorised works, would be legislation in excess of its powers. If, on the other hand, the enactment had no reference to the structure of the ditch, but provided that, in the event of its becoming choked with silt or rubbish, so as to cause overflow and injury to other property in the parish, it should be thoroughly cleaned out by the Appellant Company, then the enactment would, in their Lordships' opinion, be a piece of municipal legislation, competent to the Legislature of Quebec.

Whether the Appellant Company ought or ought not to prevail in this Appeal, depends upon what was the character of the railway ditch in question, and the real nature of the operation which the Company were required to perform by the notice of 3rd June 1896, which is the basis of the present suit. Ten or twelve words of plain unvarnished statement would have been very useful, much more so than the elegant and fanciful language by which the parties have endeavoured to explain, with the result of obscuring the facts. As to the structure of the ditch itself there is no information; but it does appear from the terms of the Respondents' declaration, that, from some cause or another

it had become obstructed, so that the water which it contained escaped, and inundated the land of Julien Gervais. The Company were required by the Respondents' Inspector, "nettoyer, réparer et mettre en bon état le fossé." Their Lordships read these words as simply amounting to a requisition that the Company should clean the ditch, by removing the obstruction, and should restore the ditch to the same state in which it was before the obstruction occurred. They do not think that the verb, "réparer," suggests that any structural alteration of the ditch was contemplated. The Appellant Company have persistently maintained, that the work directed to be done by the notice would, if carried out, "have the result of affecting the physical condition of the railway, though it is not alleged that such condition would be thereby injuriously affected." These expressions look formidable, but they really mean no more than this:—That the removal of the obstruction would affect the physical condition of the ditch, and that the ditch is part of the railway.

Their Lordships will therefore humbly advise Her Majesty to affirm the judgment appealed from. The Appellants Company must pay to the Respondents their costs of the Appeal.
