

The King and another - - - - - *Appellants*

v.

The Canadian Northern Railway Company and another - - *Respondents.*

The Canadian Northern Railway Company and another - - *Appellants*

v.

The King and another - - - - - *Respondents.*

(Consolidated Appeals)

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH JULY, 1923.

Present at the Hearing :

VISCOUNT HALDANE.

LORD SUMNER.

LORD PARMOOR.

LORD PHILLIMORE.

[Delivered by LORD PARMOOR.]

The appellant, the Provincial Treasurer of Alberta, is designated, in Section 5 of Chapter 30 of the Statutes of Alberta for 1906, as a person in whose name an action can be brought to recover any such penalty or "double tax," as is therein referred to, in any Court of competent jurisdiction. The respondents, the Canadian Northern Railway Company, own and operate railways throughout Canada, and had at all relevant times, as part of their system within the Province of Alberta, two lines, one extending from Lloydminster to Edmonton, a distance of 169 miles, and another from Edmonton to Strathcona, a distance of 7.23 miles. The

respondents, the Canadian National Railway Company, denote a system of railways to which the name was applied by Order in Council when the control thereof was acquired by the Government of the Dominion of Canada.

In the first year of its existence the Province of Alberta, under an Act of 1906, imposed a tax on every person, company, or corporation owning or operating a line of railway, or part thereof, within the Province, not exempt from taxation. The respondents, the Canadian-Northern Railway Company, own and operate a line, or part of a line of railway within the meaning of this Statute, but a question has arisen whether they are exempt within the proviso of Section 12 of the Act.

“Provided, however, that no tax shall be payable under this Act upon or with respect to any portion of a line of railway aided by a guarantee of bonds, debentures, debenture stock or other securities under the provisions of any statute for a period of fifteen years from the date of the commencement of the operation of the portion of the line so aided, and thereafter during the currency of the guarantee as aforesaid the amount of taxes payable hereunder upon or with respect to such portion of any line of railway so aided shall not exceed an amount equal to \$30 per mile of the mileage of such portion of such line in the Province.”

The first question to be determined on the appeal is whether the line of railway, between Lloydminster and Edmonton comes within this proviso. This railway was aided by a guarantee under the provisions of a Dominion statute, but it is said that the word statute, in the proviso, is limited to a statute of the Province, and that, as no guarantee has been given under the provisions of a Provincial statute, the exemption does not apply. The railway from Edmonton to Strathcona is not aided by any similar guarantee, and it is not argued that the exemption of the proviso extends to this line. The proviso was amended in 1918 by inserting after the word “statute,” the words “of the province,” so that, if the exemption extended to this date, it was then taken away. It was further argued that this Section of the Act of 1918 might be regarded, either as declaratory of the meaning of the then existing statute, or as retrospective in its operation, but this was not the main point on which the appellants relied. In the opinion of their Lordships this amendment does not affect the interpretation of the words “any statute” in the proviso to the said Section 12, although no doubt it is clear that, from the date of the amendment, no exemption can be claimed, on the ground that a line of railway in Alberta, has been aided, by a guarantee, under the provision of a Dominion statute. It should be added that the proviso of the said Section 12 was itself inserted, as an amendment, by Chapter 5 of the Statutes of Alberta, 1909.

There has been considerable difference of judicial opinion as to the meaning of the words “any statute” in the proviso. It has been argued that unless the words are limited to a statute of the Province, they might apply to any statute enacted by any

outside legislative authority, an extension which the legislature of Alberta cannot have contemplated. It is further argued that in an Act of the legislature of Alberta the word "statute" is naturally limited to an Act of that legislature, and that whether the amendment in the Act of 1918 is declaratory or not, it is in accord with the true meaning of the original proviso. The Chief Justice of the Appellate Division of the Supreme Court of Alberta has given a powerful judgment in favour of restricting the words "any statute" to a statute of the Provincial legislature, and says that it scarcely needs argument to satisfy anyone that the reason why a railway is exempt is not because it has received aid, and is therefore better able to pay taxes, but that it would advantage the Province little to collect taxes from a railway company which it would require to pay back in satisfaction for debts. With this judgment Mr. Justice Stewart concurs, but Mr. Justice Beck expresses a contrary opinion. In the Supreme Court of Canada Mr. Justice Idington and Mr. Justice Anglin agree in the judgment of the Appellate Division of the Supreme Court of Alberta, but the majority, Mr. Justice Duff, Mr. Justice Brodeur, and Mr. Justice Mignault, hold that the words "any statute" include a Dominion Statute, and it is against this judgment that the appeal is brought.

In 1909, when the proviso was introduced by the Alberta legislature, both that legislature and the Dominion legislature, within the respective spheres of their jurisdiction, had jurisdiction to guarantee the bonds, debentures, debenture stock or other securities in aid of a portion of a line of railway within the Province of Alberta. A railway company, therefore, might receive this form of aid, either under the provisions of a statute of the Province, or of a statute of the Dominion, and so far as statutory power is concerned, no distinction arises. In either case there is a statute within the ordinary meaning, viz., an Act of a Legislature having legislative authority within the Province. The words "any statute" would be applicable by whichever of the two legislative authorities a statute in a particular case has been enacted. Their Lordships, therefore, are of opinion that in their natural ordinary sense the words "any statute" in the proviso would include a Dominion statute, without raising any implication that it would also include a statute enacted by some outside authority, with no jurisdiction to legislate within the Province. It is hardly necessary to quote authority that the grammatical and ordinary sense of the words in statutes is to be adhered to unless they would lead to absurdity, repugnancy or inconsistency with the rest of the instrument. Their Lordships can find no trace of any such absurdity, repugnancy or inconsistency in the present instance, and consequently in construing the words "any statute" there is no reason for making any conjecture as to the motives which may have actuated the Province in enacting the proviso. On this point their Lordships agree with the judgment of the majority in the Supreme Court

of Canada. The result is that the respondents are entitled to recover taxes for the years 1918 and 1919 on the line from Lloydminster to Edmonton, and for the years preceding 1918 on the line from Edmonton to Strathcona. Some question was raised as to the valuation on which the taxation should be assessed, but ultimately it was not suggested that the valuation should be other than that of the Order in Council of 29th of August, 1908, as adopted in the judgment of the Supreme Court of Canada.

The second question raised on the appeal is whether the English Statutes of Limitation, 18 Eliz. c. 5, 31 Eliz., c. 5. and 3 & 4 William IV, c. 42, S. 3, apply to an action for penalties sought to be recovered by the King and the Provincial Treasurer of Alberta, as joint plaintiffs, under a Canadian Provincial statute, for failure to comply with certain statutory provisions. Having regard to the designation of the Provincial Treasurer, as the person in whose name any penalty or double tax might be recovered with costs in Section 5 of the Act of 1906, there appears to be no reason why the King should be added as a party. Section 4 of the Act of Alberta, 1906, enacts that any Company owning or operating a line or part of a line of railway within the Province, comes under obligation, without any notice or demand to that effect, to deliver in duplicate to the Provincial Treasurer, in each year a written statement showing the number of miles of railway line, whether or not such line or part thereof is or is claimed to be exempt from taxation of the Province, specifying the number of miles so exempt, or claimed to be and the authority under which such exemption is claimed. It is common ground that no such statement was submitted to the appellants in respect of either line. Section 5 enacts that any Company in default shall be liable to a penalty of \$20.00 per day for each day in which default is made, and shall also be liable to pay a tax for double the amount for which such Company would have been liable under the Act, and that any such penalty or double tax may be recovered in any action brought in the name of the Provincial Treasurer. Their Lordships agree in the opinion expressed by all the Judges in the Supreme Court of Canada that the "double tax" sought to be recovered is in the nature of a penalty, imposed for non-compliance with the statutory provisions in Section 4 of the Act of 1906. The question therefore arises whether the limitations imposed in the English statutes are applicable. It would be convenient to consider first 3 & 4 William IV, c. 42. This statute provides that all actions for penalties given to the "party grieved" by any statute, now, or hereafter to be in force, shall be commenced and sued within one year after the end of the then present session, or within two years after the cause of such action or suit. The only question which arises is whether the Provincial Treasurer of Alberta is a "party grieved." The Provincial Treasurer, being the designated person, to whom the statement is required to be sent in duplicate, stands in a position distinct from that of a common informer, or of a member of the public who may desire to obtain

the information as specified in section 4. He requires this information, in his official capacity, in order to know whether an exemption from taxation exists, or is claimed to exist, and the withholding of this information from him places him at a disadvantage in the effective carrying out of his public duties. It is immaterial that, in the particular case, he may have the information from other sources. He is entitled in all cases to an annual written return from the Railway Company. He has a special interest of a distinct character, and in the opinion of their Lordships, comes within the words "party grieved." These words have no special technical meaning, but should be construed in their ordinary sense. Each case will depend on the special circumstances. In *Boyce v. Higgins*, 23 L.J., C.P. 5, it was held that the person suing for the penalty had no more interest than any other member of the public, and that the defendant was entitled to judgment. Jervis, C.J., says that a public grief will not do for the plaintiff, and Maule, J., says that the plaintiff must point out some such grievance as the person does who sues for a grievance created by nuisance to a highway. A patriotic person who comes forward to sue, but who is only aggrieved as the whole public are, is not entitled to sue. In the case of *Robinson v. Curry*, 6 Q.B.D., 21 and 7 Q.B.D. 465, it was held, in the Court of Appeal, reversing the judgment of the Queen's Bench Division, that an officer of the Company of Goldsmiths was not a "party grieved" when suing for penalties under 7 & 8 Victoria, c. 22, Section 3. In the Court of Appeal, Lush, L.J., says, "they must be parties actually grieved, that is, parties who sustain some damage by reason of the act done for which the penalty is fixed." Their Lordships are of opinion that the Provincial Treasurer did receive some damage by reason of the withholding of the statutory statement, and that he was a party actually grieved. The statute of Elizabeth enacts that all actions which shall be had, brought, sued or exhibited for any forfeiture upon any statute penal made or to be made whereby the forfeiture is, or shall be, limited to the Queen, her heirs, or successors only, shall be brought within two years, after the offence, and not after two years. This section imposes the same period of two years' limitation on the claim of the King, as the statute of Section 3 of 3 & 4 William IV imposes against the Provincial Treasurer. Their Lordships concur in the unanimous opinion in this respect expressed by the Supreme Court of Canada. This matter does not appear to have been considered when the case was before the Appellate Division of the Supreme Court of Alberta, and is consequently not referred to in the judgments of that Court. Having regard to the statutory authority which enables the Provincial Treasurer to bring an action in his own name for penalties or double tax, there does not appear to be any reason why the King should have been added as a joint plaintiff, and no argument was addressed to their Lordships that it was necessary to add the King as a joint plaintiff.

Their Lordships will humbly advise His Majesty that the judgment of the Supreme Court of Canada should be confirmed with costs.

On the cross appeal of the respondents three questions are raised :—

- (1) That the railway from Edmonton to Strathcona is entitled to similar exemption from taxation, as the railway from Lloydminster to Edmonton, on the ground that a money subsidy has been received from the Dominion.

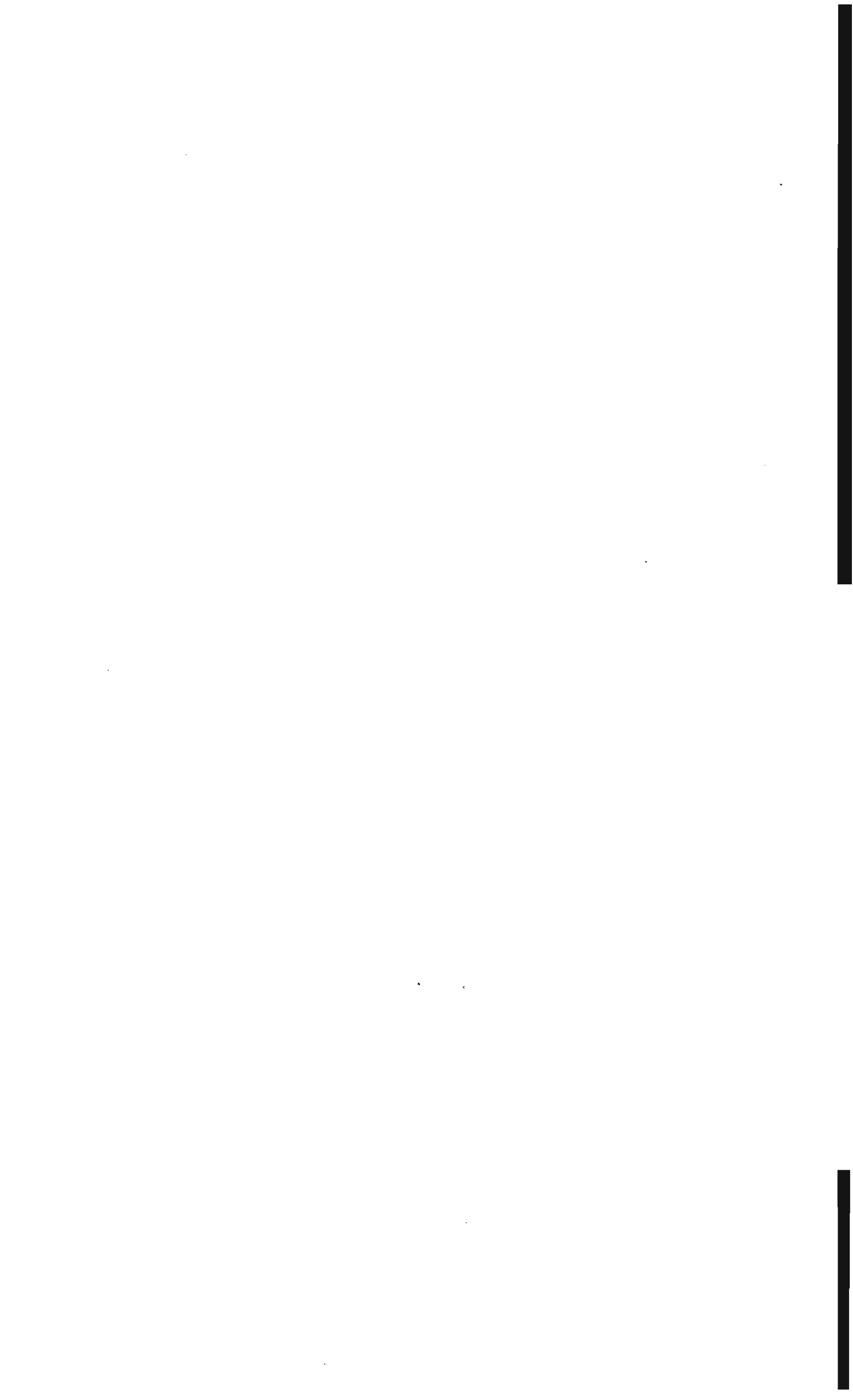
This question was not argued before their Lordships. It is clear, however, that a money subsidy does not come within the terms of the exemption section.

- (2) That certain orders of the Lieutenant General in Council fixing the value and length of the respondents' lines of railway, for the purposes of taxation, are *ultra vires*.

There appears to be no ground for this contention, and had it been successful, the only result would be to increase the amount for which the respondents might be held liable.

- (3) That under sub-section 8 of Section 2 of the Act of 1907, amending the Judicature Ordinance of the North-West Territories, the Court has power to relieve against all penalties and forfeitures, and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as the Court sees fit.

Mr. Justice Hyndman, in the Court of first instance, held, after argument, that this provision authorised him to relieve the respondents against any liability for penalties, and that the case was a proper one in which relief should be granted. In the Appellate Division of the Supreme Court of Alberta, the Judges were unanimous in holding that the power given to the Court to relieve from penalties did not authorise relief against statutory penalties. They followed the decisions of *McHugh v. Union Bank of Canada*, 3 A.L.R. 166. The Chief Justice expresses the opinion that if the power given to the Court to relieve against penalties applied to statutory penalties, this would, in effect be giving an authority to enable the Court to repeal statutes. This decision was unanimously confirmed in the Supreme Court of Canada. Mr. Justice Idington says in his judgment "that the power in the Court to relieve from penalties seemed to him to be applicable only to such contractual penalties, and forfeitures as those to which the Court of Chancery had exercised jurisdiction." Their Lordships are of opinion that on this point the cross appeal fails. They will humbly advise His Majesty that the cross appeal should also be dismissed with costs. There will be a set-off in respect of the costs.



In the Privy Council.

THE KING AND ANOTHER

v.

THE CANADIAN NORTHERN RAILWAY
COMPANY AND ANOTHER.

THE CANADIAN NORTHERN RAILWAY
COMPANY AND ANOTHER

v.

THE KING AND ANOTHER.
(Consolidated Appeals.)

DELIVERED BY LORD PARMOOR.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1923.