

Factum on Behalf of Respondent, Attorney-General of British Columbia.

PART I.

STATEMENT OF FACTS.

This is an appeal by the Canadian Pacific Railway Company from the judgment of the Court of Appeal of British Columbia given upon a reference directed to the Court under the "Constitutional Questions Determination Act," being chapter 50 of the "Revised Statutes of British Columbia, 1936."

The question asked upon the reference was:—

"Are the provisions of the 'Hours of Work Act,' being chapter 10
"122 of the 'Revised Statutes of British Columbia, 1936,' and amend-
"ments thereto, applicable to and binding upon the Canadian Pacific
"Railway Company in respect of its employees employed at the
"Empress Hotel and if so, to what extent?"

Case p. 3.

Case p. 23.

The answer of the Chief Justice and three members of the Court as expressed in the judgment of Robertson, J., was in the affirmative without any qualification.

Case pp. 1, 2.

For the purpose of reference the following facts were set forth in the Order of Reference:—

"THAT Canadian Pacific Railway Company, a Corporation incor- 20
"porated by the Statutes of the Dominion of Canada, has constructed,
"owns and operates lines of railway extending continuously from Saint
"John, New Brunswick, to Vancouver, British Columbia, and also
"numerous branch lines extending into and connecting with railway
"lines in the United States of America. The Company owns and
"operates lines of steamships plying between Vancouver and Victoria
"and Seattle, in the State of Washington. The said Company also
"leases and operates the lines of the Esquimalt and Nanaimo Railway
"Company, running from Courtenay to Victoria.

"The lines of railway and branch lines of the said Company were 30
"by 46 Victoria Chapter 24, Section 6 of the Statutes of the Dominion
"of Canada, declared to be works for the general advantage of Canada.

"The said Company has further, for the purpose of its lines of
"railway and steamships and in connection with its said business built
"the Empress Hotel at Victoria, which it operates for the comfort and
"convenience of the travelling public. The hotel is available for the
"accommodation of all members of the public, as a public hotel. The
"said hotel caters to public banquets and permits the use of its hotel
"ballroom for local functions, for reward.

“ The property upon which the said hotel is built is not contiguous
 “ to property used by the Company for its line of railway, and is not
 “ a terminus for its railway line or steamships.

“ The Company has owned and operated the said hotel for a period
 “ of thirty-eight years, and the same provides accommodation for large
 “ numbers of travellers and tourists from Canada, the United States
 “ of America and elsewhere, having five hundred and seventy-three
 “ rooms. The operation of the hotel is a means of increasing passenger
 “ and freight traffic upon the Company’s lines of railway and
 “ steamships.

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“ The Company owns and operates other hotels elsewhere in
 “ Canada for like purposes.

“ There is a catering department in the hotel wherein the Com-
 “ pany employs persons to prepare and serve meals.

“ The Company also employs hotel clerks, book-keepers and other
 “ persons to do clerical work at the hotel.

“ Pursuant to Section 6 of the Wartime Labour Relations Regu-
 “ lations being P.C. 1003 passed by Governor-General in Council by
 “ Order dated March 16, 1945, the War Labour Relations Board
 “ (National) certified to all parties concerned that the Canadian
 “ Brotherhood of Railway Employees and Other Transport Workers,
 “ Empress Division No. 276 and the bargaining representatives named
 “ in the order are the properly chosen bargaining representatives for
 “ the employees of the Empress Hotel, except employees specifically
 “ named in said order.

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“ Following certification of the bargaining representatives and
 “ pursuant to the said Order-in-Council P.C. 1003 a collective agree-
 “ ment was negotiated by the said representatives and the Company
 “ and was duly executed by the parties thereto. The said agreement
 “ became effective September 1st, 1945, for a period of one year and
 “ thereafter subject to termination on thirty days’ notice in writing
 “ from either party. By the said agreement, rates of pay, hours of
 “ work, and other terms and conditions of employment for the em-
 “ ployees affected by the said agreement, are fixed for the period of the
 “ said agreement. No notice of termination has been given by either
 “ party to said agreement. A copy of said agreement is annexed hereto
 “ as Schedule A.”

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O’Halloran, J.A., dissented from the majority judgment as given by
 Robertson, J.A., and gave his answer to the question in the negative with-
 out qualification.

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PART II.

POINTS OF ARGUMENT.

1. The "Hours of Work Act," in so far as it affects the employees of the Empress Hotel, is valid Provincial legislation passed under section 92 (13) of the "British North America Act" and it can also be justified as legislation with regard to "a local work within the Province."

2. In the case of a work such as a hotel, Provincial jurisdiction to pass regulatory legislation can only be lost in two instances:—

(a) In a case of local works which are necessary adjuncts to lines of railways or steamships connecting two Provinces or connecting with a foreign country: 10

(b) In the case of those local works which have been declared for the general advantage of Canada under section 92 (10) (c); and if the Dominion has legislated to regulate such local work.

3. The Empress Hotel is not a line of railway, nor a necessary adjunct to a line of railway.

4. The Empress Hotel has not been declared to be a work for the general advantage of Canada.

5. There is no conflict between the "Hours of Work Act" and P.C. 1003, passed by the Dominion, the latter being only a procedural order provided for the settlement of labour disputes. 20

PART III.

ARGUMENT.

Section 3 of the "Hours of Work Act," being chapter 122 of the "Revised Statutes of British Columbia, 1936," as amended by chapter 30 of 1937 and by chapter 34 of 1946, provides that the hours of work of persons employed in industrial undertakings as set out in the Schedule of the Statute shall not exceed eight in the day nor forty-four in the week.

The Schedule includes a list of a number of industries and occupations, including, in Item 7, the "catering industry" and, in Item 10, the occupation of hotel clerk, which includes the work of all persons engaged as room clerks, mail clerks, information clerks, cashiers, book-keepers, accountants, telephone operators, and other persons employed in clerical work in hotels. 10

The Statute is based upon the convention adopted by the conference of the International Labour Organization of the League of Nations set up under the Treaty of Versailles, on the 28th of June, 1919.

In the first place it is submitted that this legislation regulating the hours of work of hotel employees within the Province comes exclusively within the subjects assigned by section 92 of the "British North America Act" to the Province, under No. 13 of the section. Further, it is legislation with regard to a "local work or undertaking," under No. 10 of section 92. 20 (See judgment of Duff, J., in *re Labour Reference* (1925) S.C.R. 505 at 511.) The judgment of Duff, J., was approved by the Privy Council in *Attorney-General for Canada vs. Attorney-General for Ontario* (1937) 106 L.J.P.C. 72, per Lord Atkin at page 78; and at 1937 A.C. 326 at 350, Plaxton at 301.

It was contended by the Railway Company in the Court below that the "Hours of Work Act" trenches upon the legislative field assigned to the Dominion under "lines of railway" in section 92 (10) (a) and section 91 (29) of the "British North America Act."

The Court of Appeal held that the regulation of hours of work of employees at the Empress Hotel was not a subject which fell within the exclusive legislative jurisdiction of the Dominion under its jurisdiction relating to "lines of railways" in section 92 (10) (a), because the hotel is obviously not a "line of railway" in itself, nor is it something which is necessary for the physical use of the railway to be treated as part of the line of railway. 30

Following the judgment of the Court of Appeal, the Parliament of Canada has enacted in chapter 28 of the Statutes of 1947, "An Act to amend the Canadian National-Canadian Pacific Act, 1933," by inserting therein section 27A reading as follows:—

"27A. (1) The rates of pay, hours of work and other terms and conditions of employment of employees, of National Railways or Pacific Railways, engaged in the construction, operation or maintenance of National Railways or Pacific Railways shall be such as are set out in any agreements in writing respecting such employees made 40

“from time to time between National Railways or Pacific Railways, as the case may be, or an association or organization representing either or both of them, on the one hand, and the representatives of interested employees, on the other hand, whether entered into before or after the commencement of this Act, if such agreements are filed in the office of the Minister of Transport.

“(2) Nothing in this section shall affect the operation of any other Act of the Parliament of Canada or regulation thereunder.”

In view of the fact that the definition of “Pacific Railways” in the principal Act, being chapter 33 of the Statutes of 1932–33, as given in section 3 (g) includes the “hotel system” of the Canadian Pacific Railway Company, it is now apparent that the Dominion has purported to regulate the hours of work of hotel employees in railway-owned hotels. If the 1947 legislation is implemented by the filing of employer-employee agreements with the Minister of Transport, there would be an apparent conflict between section 27A of the Canadian National-Canadian Pacific Act and the “Hours of Work Act” of the Province. 10

There are only two ways in which the Provincial legislative jurisdiction over local works can be occupied by the Dominion:—

It is submitted that it has been made clear by the judgment of Duff, J., in *The King vs. Eastern Terminal Elevator Company* (1925) S.C.R. 434 at 447, that there are only two ways that the Dominion can adopt to regulate a local work—that is to say:— 20

- (1) By establishing that the local work is one that can be regulated under the Dominion jurisdiction over “lines of steam or other ships, railways, canals, telegraphs and other works connecting the province with any or other or others of the provinces or extending beyond the limits of the province” under section 92 (10) (a).
- or (2) By a declaration, properly framed under section 92 (10) (c), declaring such local work “to be for the general advantage of Canada.” 30

Further, it is submitted that the Province can only lose jurisdiction to deal with a local work under one of the two ways above referred to.

The submission of the Attorney-General of British Columbia will be that the Province has not lost its jurisdiction, nor has the Dominion acquired it under either of the above methods.

The Empress Hotel is not a “line of railway” nor a necessary adjunct to a line of railway so as to bring it within Dominion jurisdiction under section 92 (10) (a):— 40

Dealing now with the Dominion’s jurisdiction over “lines of railway” in section 92 (10) (a) of the “British North America Act,” it is submitted that a hotel is neither a line of railway, nor so associated with the line of railway as to come within the exclusive legislative jurisdiction of the Dominion.

Robertson, J.A., has dealt with the meaning to be given to the expression “line of railway” in his judgment as follows:—

“The words ‘lines of railways’ connecting two Provinces seem to point primarily to the rails and the right-of-way. Again, the words in section 8 of the 1902 Act—‘along any of its lines of railway’ seem to indicate that the railway mentioned in the section is primarily the right-of-way and the rails.

“I do not suggest this is their entire meaning. I think that whatever is absolutely necessary for the physical use of the railway is to be treated as part of the line of railway. This would include such things as roundhouses, stations, rolling-stock, equipment, and all other things necessary for the operation of a railway. I would not include the Empress Hotel in this category.” 10

The meaning assigned by Robertson, *J.A.*, to the expression “railways” is supported, not only by the context, but by dictionaries and English cases extending back to as early as 1854. The definition of “railway” according to Murray’s English Dictionary was referred to by the Saskatchewan Court of Appeal in *Canadian Pacific Railway Company vs. Rural Municipality of Lac Pelletier* (1944) 3 W.W.R. 637 at 643 where the question of what was included within the term came up in an assessment case. The definition is as follows:—

“1. A way or road laid with rails (originally of wood, in later times usually of iron or steel) on which the wheels of wagons containing heavy goods are made to run for ease of transport; also, the way composed of rails thus laid. 20

“2. A line or track consisting of iron or steel rails on which carriages or wagons conveying passengers or goods are moved by a locomotive engine. Hence also, the whole organization necessary for the conveyance of passengers or goods by such a line, and the company of persons owning or managing it.”

The expression “lines of railways” is not defined in the dictionaries, but there is no reason to think that it is of any wider connotation than “railway,” as a matter of fact, the contrary may be true. In a railway rating case, *London & Northwestern Railway Company vs. Llandudno Improvement Commissioners* (1897) 1 Q.B. 287, *Wills, J.*, said at page 297:— 30

“That, I think, seems to be a sensible view, because it is quite clear that the expression ‘land used as railway only’ which is the interpretation which has been put upon the phrase used in s. 68, is a very different expression from ‘line of railway.’ If it has been intended to confine the exemption given by s. 68 to ‘line of railway’ the Legislature would have said so in unmistakable terms.”

The Respondent has never suggested that the meaning of “lines of railways” should be confined to “lines of rail,” though *O’Halloran, J.A.*, in his dissenting judgment seems to be under the impression that this was the effect of the Attorney-General’s argument in the Court below.

The Respondent does submit, however, that even when “railway” is given its extended meaning as including appurtenant equipment and struc-

tures, it does not include property that is not *necessary* to the working of the railway.

English decisions upon the meaning of the word "railway," as found in various Statutes, are all consistent in limiting the word to the things *necessary* for the working of the railway.

The case of *Midland Railway vs. Birmingham* (1865) 30, J.P. 197, is of some significance because it was decided just two years prior to Confederation. It is submitted that English decisions with regard to the meaning of "railway" may be looked at in the same way as English decisions and Statutes were looked at by this Court in the reference concerning the authority of Judges, 1938, S.C.R. 398, at 421. The question in the Birmingham case was whether certain railway property and equipment was "used only as a railway for public convenience," the word "railway" not being defined. Mellor, *J.*, at page 198 said:—

"I can see no other limit to the meaning of railway in this Act other than what is *necessary* for the conduct of the traffic on the railway. If there is any excess in that respect, that being a question of fact, it would be for the Sessions to find the fact one way or the other."

In the case of *London & Northwestern Railway Company vs. Llandudno Improvement Commissioners* (1897) 1 Q.B. 287, the meaning to be given to the expression "used as a railway" came up for consideration. Wills, *J.A.*, said at page 298:—

"Now, 'used as a railway' means, I presume, its physical use as a railway. It does not mean those adjuncts to a railway which are necessary for convenient business purposes, or anything of that kind, but it means those things, whatever they may be, without which a railway could not be used as a highway."

The Birmingham and Llandudno cases were both referred to by the House of Lords in *Lancashire & Yorkshire Railway Company vs. Liverpool* (1915) A.C. 152, where the question of the meaning to be given to "used as a railway" was again considered. Many of the English cases dealing with the meaning of the word "railway" were there considered. Lord Sumner at page 183 approved the formula of Wills, *J.*, in the Llandudno case (which is quoted above) as a "useful guide" but considered the language of Mellor, *J.*, in the Birmingham case to be "too wide."

At page 192, Lord Parmoor said:—

"If a railway is made for the public conveyance of passengers, such platforms or other accommodation and appliances as are reasonably necessary to afford a means of entering or leaving the passenger carriages are part of the actual railway, and not merely ancillary conveniences to be used in connection therewith. The area of land occupied by such platforms is within the rating exemption, and the occupier is entitled to be rated at one fourth the net annual value. If a railway is made for the public conveyance of cattle or merchandise, such sidings, platforms, loading banks, cattle pens, together with cranes or other fixed machinery used in connection therewith, as are

“reasonably necessary in the handling of traffic for public conveyance
 “are part of such railway, and not merely ancillary conveniences to
 “be used in connection therewith.”

In Canada it is particularly desirable that if the extended definition of “railway” is to be applied to the words used in section 92 (10) of the “British North America Act,” it should be confined to *whatever is necessary for the physical use of the railway*. If the word “railway” were to be interpreted as comprehending the entire assets or undertakings of a railway company, or whatever assets are used “for the purposes” of the company, the railway jurisdiction of the Dominion would become unduly extended because in the case of the Canadian Pacific Railway Company, to use an instance, it has the power to carry on the following diverse activities, namely, mining, smelting, manufacturing of iron and steel, lumbering, irrigation, and water-power development, as well as having power to operate hotels, restaurants, parks, and pleasure-grounds. See Statutes of Canada, 2 Edward VII (1902) chap. 52, secs. 8, 9, 10, and 11. 10

It may well be that the Company may engage in any one of these operations for “convenient business purposes” but it would be hard to believe that the assets specially required for any one of these purposes are *necessary for the physical use of the railway* so as to make them part of the “lines of railway,” and so subject to the exclusive legislative jurisdiction of the Dominion over railways. 20

Then it is submitted that the fact that the hotel is operated “for the purposes of the railway” and “in connection with its business” does not by any means make the hotel itself a line of railway or part of it. As early as the year 1854 it was recognized in England that there was a distinction between land used “for the purposes of a railway” and land used “as a railway.” In giving his judgment in the case of *South Wales Railway Company vs. Swansea* (1855) 24 L.J.M.C. (New Series), Lord Campbell said at page 34:— 30

“Now the Statute does not say that land occupied for the purpose
 “of a railway is to be exempt, but land used only as a railway.”
 There is no evidence to support the proposition that this hotel was, or is essential to the physical operation of the railway.

It is submitted that the statutory authority to operate hotels and other businesses contained in the Statute of 1902 is of no more force than a corporate power such as might be found in the charter of a Dominion incorporated hotel company, and the presence of such power in what, in effect, is the charter does not oust Provincial law of general application. *Lymburn vs. Maryland* (1932) A.C. 318, at 324; *Plaxton* 149 at 155; *Great West Saddlery Company vs. The King* (1921) 2 A.C., page 91; 2 *Cameron* 212; *Sincennes vs. Bruneau*, 1924, S.C.R. at 171. 40

There is no evidence to show, for instance, that unless the hotel had been built there would have been no available shelter in the City of Victoria for travellers who came there by the Company’s lines of railway and steamships. It is fair to assume that no such evidence could have been produced. After all, Victoria has been the capital city of British Columbia since 1866

and had a population of 20,816 according to the census of 1901—the last census before the building of the hotel.

In the case of *Milner vs. Great Northern Railway* (1900), 69 L.J.Q.B. 427, the Court of Appeal held that the employment by a railway company of a barmaid at a refreshment-room at their railway-station is not an employment “on or about a railway” within the meaning of the “Workmen’s Compensation Act,” 1897. It was provided in the “Workmen’s Compensation Act” that the expression “railway” should have the same meaning as in the “Regulation of Railways Act,” chapter 48 of the year 1873 (36 and 37 Victoria). In the latter Statute, the expression “railway” is not defined, but it is provided that the term “railway” includes “every station, siding, wharf or dock of or belonging to such railway and used for the purposes of public traffic.” At page 428 of the report, A. L. Smith, L.J., said:—

“I think a book-stall cannot be said to be part of the railway, neither can a hotel at the station. The hotel is only a place where persons rest and remain for a time. It cannot be said to be used for the purposes of public traffic.”

Collins, C.J., said at 428:—

“I am of the same opinion. I think that prima facie no one would suppose that a barmaid came within the pervue of legislation for the protection of employees of a railway company. Nevertheless it is possible that by a process of refined reasoning one may sweep all persons within the ambit of this legislation. When, however, one looks critically into the matter, I do not think that the part of the building where the applicant was employed was part of the railway as defined by the Act of Parliament.”

As pointed out above, there was not a positive definition in the Statute, but only a provision that certain things should be included within the expression “railway.”

It is therefore submitted that the regulation of a hotel in a Province, even though owned by a railway company, does not come within what one may call the direct jurisdiction of the Dominion over “lines of railways.”

Dominion legislation purporting to regulate a hotel is not necessarily ancillary to effective railway legislation:—

There remains to be considered the question as to whether or not this railway-owned hotel comes within the legislative jurisdiction of the Dominion under its power to pass legislation necessarily ancillary to effective legislation by the Dominion over “lines of railways.” If it is once accepted that to run a railway it is not necessary to operate hotels, then it would follow from that that legislation concerning hotels would not be legislation necessarily ancillary to effective legislation concerning lines of railways. In *Attorney-General for Canada vs. Attorney-General for British Columbia* (1930) A.C. 111, Plaxton, Page 1, it was held that legislation concerning fish-canneries was not necessarily incidental to effective fishery legislation. To paraphrase the words of Lord Tomlin at 1930 A.C.,

121, Plaxton, page 11, it is submitted that it is not obvious that legislation relating to hotels is necessarily incidental to effective railway legislation, and that no material has been put before the Supreme Court establishing the necessary connection between the two subject-matters. See Attorney-General for Ontario *vs.* Attorney-General for the Dominion (1896) A.C. 348 at 359, 360, 1 Cameron at 490; *Montreal vs. Montreal Street Railway* (1912) A.C. 333, at 345; 1 Cameron 711 at 721; *B.C. Electric vs. V.V. & E. Railway Company* (1913) 48 S.C.R. 98 per Duff, *J.*, at 120.

The Empress Hotel is not a work which has been declared to be for the general advantage of Canada under section 92 (10) (c):— 10

O'Halloran, *J.A.*, in his dissenting judgment has suggested that the Empress Hotel is a subject falling within the executive jurisdiction of the Dominion under clause (c) of paragraph 10, section 92 of the "British North America Act," as a work "declared by the Parliament of Canada to be for the general advantage of Canada." He points to section 6 of the Canadian Statute of 1883, "An Act to amend the Consolidated Railway Act, 1879," which recites that the "main lines" and "branch lines" of certain railways, including the Canadian Pacific Railway, are for the general advantage of Canada, and which then goes on to declare that "the said lines of railway, namely the Inter-Colonial Railway etc. and the Canadian Pacific Railway, are works for the general advantage of Canada, and each and every branch line of the railway, now or hereafter connecting with or crossing the said lines of railway or any one of them is a work for the general advantage of Canada." 20

As was observed by Robertson, *J.A.*, in his judgment, the declaration contained in the above-mentioned section is only with regard to the "lines of railway" of the Appellant. It is suggested that the declaration made in the Statute of 1879, as far as it affects the Appellant company, was for the purpose of removing any doubt as to whether branch lines of the Appellant railway were within the jurisdiction of Canada. A declaration of this kind would effectively forestall a discussion such as later arose with regard to a branch line in the case of *Luscar Collieries vs. Macdonald*, 1925, S.C.R. 460. 30

In any event, the expression "lines of railway" was not defined in the Statute and if the same meaning is assigned to it as that applied by Robertson, *J.A.*, the declaration could not be construed as applicable to hotels owned by the railway company.

A subsequent declaration made under section 92 (10) (c) of the "British North America Act" later appeared in section 109 of the "Railway Act" as found in the Revised Statutes of 1886. Section 121 declared the Canadian Pacific Railway and every branch line or railway crossing the said lines of railway to be a work for the general advantage of Canada. The declaration was also applicable to the lines of railway of certain other railway companies. 40

The declaration contained in the Statute of 1886 was replaced by a similar declaration contained in the "Railway Act," 51 Victoria, 1888, chapter 29, section 306. In the Statute of 1888 the following definition is contained in section 2:—

"2. (g) The expression 'railway' means any railway which the company has authority to construct or operate, and includes all stations, depots, wharves, property, and works connected therewith, and also any railway bridge or other structure which any company is authorized to construct under a Special Act."

The same Act also contains the following declaration in section 306:— 10

"306. The Intercolonial Railway, the Grand Trunk Railway, The North Shore Railway, the Northern Railway, the Hamilton and North-Western Railway, the Canada Southern Railway, the Great Western Railway, the Credit Valley Railway, the Ontario and Quebec Railway, and the Canadian Pacific Railway, are hereby declared to be works for the general advantage of Canada, and each and every branch line or railway now or hereafter connecting with or crossing the said lines of railway, or any of them, is a work for the general advantage of Canada."

The combined operation of these two provisions does not constitute a declaration that hotels owned by any of the specified railway companies are works for the general advantage of Canada. 20

The definition of "railway" does not extend to section 306. The word "Railway," not "railway," is used only as part of the official title of each of the specified railways.

In the last three lines of section 306 where the word "railway" is used, the expression is qualified by the limiting phrase "connecting with or crossing the said lines of railway." It is only a "railway" in the narrow sense of that word that can connect with or cross other lines of railway. A hotel is excluded by the context. 30

The definition enacts that the expression "railway" means . . . other structure which any company is authorized to construct under a special Act.

The word "structure" may undoubtedly in its natural meaning include a hotel building, but in the definition it is limited by the ejusdem generis rule.

The ejusdem generis rule was enunciated by Lord Campbell in *R. v. Edmundson* (1859) 28 L.J.M.C. 213, as follows:—

"Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." 40

It is admitted that the ejusdem generis rule is to be applied with caution. It is really a presumption in the absence of other indications of the intention of the Legislature.

Farwell, *L.J.*, said in *Tillmans & Co. v. S. S. Knutsford* (1908) 2 K.B., page 385:—

“ Unless you can find a category there is no room for the application of the ejusdem generis doctrine.”

Wherever there is a category the ejusdem generis rule is almost universally applied. In the definition of “ railway ” the specific words constitute a distinct category. The specific words are “ all stations, depots, wharves, “ property, and works connected therewith, and also any railway bridge.” The category constituted by these words is those physical things that are essential to the operation of a railway.

In the case of *W. M. O'Connor v. Minister of National Revenue* (1943) 4 D.L.R., p. 160 at p. 175, it was held that in the expression “ annuities or other annual payments ” the term “ annual payments ” must be read ejusdem generis with the term “ annuities.” 10

It is true that the definition contains two groups, namely: (1) All stations, depots, wharves, property, and works connected therewith, and (2) any railway bridge or other structure which any company is authorized to construct under a special Act. It is submitted, however, that the ejusdem generis rule should be applied to both groups as if they were one group, because taking them together they still constitute one category. If, however, the groups are taken separately, the argument that hotels are excluded is even stronger. 20

So far as the first group is concerned, it is obvious that hotels are not included.

So far as the second group is concerned, namely, “ any railway bridge or other structure which any company is authorized to construct under a special Act,” it might be argued that it includes any structure that a railway company might be authorized to construct under a special Act. But, if that were the true interpretation, the words “ any railway bridge or ” are superfluous. The words “ any structure which any company is authorized to construct under a Special Act ” would have been sufficient. No words are to be deemed to be superfluous in a Statute. The only reason for the introduction of the words “ any railway bridge or ” was to limit the meaning of the words “ other structure.” These words undoubtedly have that effect. 30

To adopt any other interpretation would lead to an absurdity. There is no reason why a railway company should not be given as charter powers authority to undertake any enterprise in the whole field of human activity. For instance, the Canadian Pacific Railway has power to undertake mining, smelting, manufacturing of iron and steel, lumbering, irrigation, and water-power development.

The declaration in the Act of 1888 above referred to does not appear in the present “ Railway Act,” being chapter 170, “ Revised Statutes of Canada, 1927,” and the only declaration there contained is found in section 6 (1) (c). In section 2 (21) of the said Act, “ railway ” is defined as follows:— 40

“ Any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or

“personal and works connected therewith, and also any railway bridge,
 “tunnel or other structure which the company is authorized to
 “construct . . .”

It is to be observed that the definition of “railway” has been somewhat changed since 1888 and instead of the last two lines of the definition contained in the Statute of 1888, namely, “. . . and also any railway bridge
 “or other structure which the company is authorized to construct under
 “Special Act,” the definition now reads “. . . and also any railway
 “bridge, *tunnel*, or other structure which the company is authorized to con- 10
 “struct . . .” It is submitted that the Respondent’s argument with regard to the application of the ejusdem generis rule made on the Statute of 1888 is strengthened by the addition of the word “tunnel” in the definition found in the present Statute. It appears even less likely that the Legislature intended to include hotels within the present words “and also
 “any railway bridge, tunnel, or other structure.” Further it is submitted that grave doubt must arise as to the effectiveness of any declaration under section 6 (1) (c). See *Luscar Collieries vs. Macdonald*, 1925, S.C.R. 460 per Duff, J., at page 476.

It is inconceivable that Parliament intended to declare all undertakings that might be operated by a railway company under its charter powers to be 20
 “a work for the general advantage of Canada.” If it did intend to make such a declaration, it would not attempt to effect its intention by such words as are used in the definition of “railway” contained in the present Act or in the Act of 1888. It is therefore submitted that there is no effective declaration under section 92 (10) (c) of the “British North America Act” that a hotel owned by the Appellant company is a work for the general advantage of Canada.

It is therefore submitted that the Empress Hotel, being neither a necessary adjunct of a line of railway, nor a work declared to be for the general advantage of Canada, is not properly the subject-matter of Dominion 30
 statutory regulation. Further, it is submitted that the “Hours of Work Act” is entitled to its full effect.

There is no conflict between the “Hours of Work Act” and P.C. 1003:—

P.C. 1003 is a regulation passed by the Governor-General in Council under the “War Measures Act” to provide a procedure for what is now known as “collective bargaining” between representatives of labour and their employers, under which a “collective agreement” may be made between a trade-union, representing the employees, and the employer. The ultimate purpose is for the settling of labour disputes. P.C. 1003 has been continued in force under the “National Emergency Transitional Powers 40
 Act, 1945,” a Dominion Statute.

Case p. 81, 1.29.

In this particular case the collective agreement between the employers and the representatives of the employees provides in article 7 (a): “except
 “as otherwise provided, eight consecutive hours exclusive of the meal period
 “shall constitute a day’s work and *forty-eight hours shall constitute a
 “week’s work.”*

At the time this agreement was entered into on the 15th September, 1945, a forty-eight-hour week was the labour week provided by the "Hours of Work Act," section 3, chapter 122, "Revised Statutes of British Columbia, 1936." The 1946 amendment to the "Hours of Work Act," being chapter 34 of the British Columbia Statutes of 1946, re-enacted the said section 3 and provided that "the working-hours of an employee in an industrial undertaking shall not exceed eight in one day and forty-four in the week."

It is claimed by the employer that because he contracted with his employees for a forty-eight-hour week that he is not required to comply with the Provincial Statute requiring a forty-four-hour week. 10

Before discussing the subject-matter of the regulation, it is necessary to examine the extent of its application.

1. Section 3 (1) (a) of P.C. 1003 declares the regulation to apply to persons employed in "a work, undertaking or business that is ordinarily within the legislative authority of Parliament." There then follows the enumeration of the works and undertakings excluded from Provincial legislative jurisdiction by 92 (10) of the B.N.A. Act.

Then the regulation also applies to persons who, by virtue of 3 (1) (b), are employed upon and in connection with the work, undertaking or business that is essential for the efficient prosecution of the war. The works and undertakings covered by this clause are particularized in Schedule A to the Order and include, in Item 13 of the Schedule, "a work, undertaking or business engaged in transportation or communication." 20

Then section 3 (1) (c) provides that the regulation shall apply to employees "whose relations with their employers in matters covered by these regulations are ordinarily within the exclusive legislative jurisdiction of a provincial legislature to regulate and to whom these regulations have been applied by the provincial legislature in respect of their relations with their employers." 30

The Provincial Statute, called the "Wartime Labour Relations Regulations Act," being chapter 18 of the Statutes of British Columbia, 1944, declares in section 4 that "The Dominion Regulations (i.e., P.C. 1003) shall apply in the case of employees whose relations with their employers in matters covered by the Dominion Regulations are ordinarily within the exclusive legislative jurisdiction of the legislature in respect of their relations with their employers and to the employers of all such employees in their relations with such employees and to trade-unions, employees' organizations, and employers' organizations composed of such employees or employers." 40

It is therefore submitted that with respect to the employees of the Empress Hotel, P.C. 1003 has force only in so far as it has been adopted as a Provincial enactment by virtue of the Provincial Statute the "Wartime Labour Relations Regulations Act," chapter 18 of the Statutes of British Columbia, 1944. The Empress Hotel is not either a line of steamships or a railway so as to come within section 3 (1) of the Order, nor does it fall into the classification of "a work, undertaking or business engaged in trans-

“portation or communication” so as to fall within the definition of section 13 of Schedule A, thereby making it a work or undertaking that is essential for the efficient prosecution of the war.

It may well be that the “lines of railway” of the Canadian Pacific Railway Company are a work or undertaking engaged in transportation or communication, but the same cannot be said of the Empress Hotel, even although it happens to be owned by the same corporation.

If this submission is correct then that a hotel is business “ordinarily within the legislative jurisdiction of a provincial legislature” within the meaning of section 3 (1) (c) of P.C. 1003, then it is a business which is governed solely by the provisions of the Provincial Statute, “Wartime Labour Relations Regulations Act” of 1944. 10

It follows then that if there is anything in P.C. 1003 as incorporated in the Provincial Statute in actual conflict with the “Hours of Work Act,” the “Hours of Work Act,” being the later Statute, will prevail over the earlier Statute to the extent to which there is conflict.

2. The alternative submission is that even if P.C. 1003 in its application to the Empress Hotel has force, independent of its adoption by the Provincial Statute, there is nothing to be found in the Order conflicting with the “Hours of Work Act.” 20

It now becomes necessary to examine the purposes and the operative parts of the Order with a view to finding whether there is anything in it that is in conflict with the “Hours of Work Act.”

The preamble of the Order sets out that it is deemed to be in the public interest, especially during the war period and more particularly in industries essential to the prosecution of the war:—

- (1) That employers and employees collaborate for the advancement of enterprises in which they are engaged:
- (2) That employers and employees should freely discuss matters of mutual interest with each other: 30
- (3) That differences between employers and employees should be settled by peaceful means:
- (4) That both employers and their employees should be free to organize for the conduct of negotiations between them and *that a procedure should be established for such negotiations.*

Turning to the definition section, being section 2, it is found that “‘collective agreement’ means an agreement in writing between an employer or an employers’ organization on the one hand and a trade union or an employees’ organization on the other hand containing provisions with reference to rates of pay, hours of work, or other working conditions.” 40

Section 4 declares the right of every employee to be a member of a trade-union or employees’ organization. Subsection (3) of section 4 reads as follows:—

“Where bargaining representatives have been certified under section eight, the bargaining representatives or the employees’ employer may, in accordance with the procedure hereinafter set out, enter into negotiations with a view to the completion of a collective agreement

“ between the employer concerned on the one hand and the trade union
“ or employees’ organization on the other hand.”

Section 5 (2) declares the right of the majority of the employees to elect a trade-union or other representatives to represent them in bargaining with their employer, and subsection (6) of section 5 provides for the certification of such bargaining representatives by the Board after their election.

Section 8 gives the bargaining representatives the right to enter into a collective agreement with their employer so as to bind all other fellow-employees.

Section 10 (5) provides that the parties to the collective agreement shall 10
do the things required under the agreement.

Sections 10 to 14, inclusive, deal with the matter of negotiations between bargaining representatives and employer prior to entering into the agreement, and provide the steps which are to be taken if the parties cannot agree.

Sections 15 to 17, inclusive, contain the only provisions requiring the insertion of certain conditions in the agreement. The only conditions required to be inserted in every agreement are provisions dealing with the termination of the agreement and provision for a grievance procedure. Apart from these mandatory provisions, there is no direction contained in the Order requiring that any particular term be inserted, and there is no 20
suggestion anywhere in the Order that the employer and employees should be required to agree upon any particular conditions of employment affecting hours of work.

Section 23 provides for the setting-up of an administration board.

Sections 29 to 35, inclusive, contain directions to Conciliation Officers and Boards.

Section 38 provides that employers who are required to do or abstain from doing anything by or pursuant to these regulations shall obey such order or do or abstain from doing such thing as required.

It is submitted that the pith of the Order is that it is a procedure for 30
the election of bargaining representatives, negotiation of agreements, giving contractual capacity to representatives elected by the majority of the employees to enter into contracts to bind all their fellow-workers; finally providing for arbitration of disputes arising out of the agreement.

A contention has been put forward by the Railway Company that because the trade-union or representatives of the majority of the employees are authorized by section 8 to enter into an agreement so as to bind all employees that the terms of the agreement must be considered as overriding Provincial legislation dealing with conditions of employment, including the “ Hours of Work Act.” Section 8 (1) reads as follows:— 40

“ 8. (1) Where the Board is satisfied that the bargaining repre-
“ sentatives have been duly elected or appointed, it shall certify them as
“ bargaining representatives and shall specify the unit of employees on
“ whose behalf the representatives so certified are authorized to act,
“ and a collective agreement negotiated by such representatives shall
“ be binding on every employee in the specified unit of employees.”

In this particular case the agreement contains provision for a forty-eight-hour week, which the Company contends overrides the forty-four-hour week provided in the "Hours of Work Act."

If this interpretation of P.C. 1003 were accepted, it would mean that the Order had given employers and employees the right to contract themselves out of Provincial law relating to conditions of employment.

It is submitted that no such drastic intention can be gathered from the terms of P.C. 1003, and further that the fair interpretation of section 8 of the Order is that it only gives to the elected representatives of a majority of the employees a contractual capacity to bind dissenting employees which such representatives would not have had under the ordinary law of contract. 10

The submission of the Attorney-General is that P.C. 1003 is concerned only with the *procedure* for collective bargaining and not with the substance of the agreement. The conditions of employment provided in the agreement must be in accordance with Provincial law.

The Dominion Order contains not even a hint in its recitals or elsewhere that it is intended to occupy the legislative field occupied by the "Hours of Work Act."

It is admitted that if there is conflict between a Provincial Statute and a Dominion Statute, both passed within the exclusive legislative fields of the Province and the Dominion respectively, that the Dominion Statute will override the Provincial. However, before a Court will come to the conclusion that the one Statute should override the other it is submitted that both Statutes should be examined with a view to finding whether they can be read together without contradiction or repugnancy. In *The Queen v. Oastler* (1880) 50 L.J.M.C. 4, Brett, *L.J.*, said at page 6:— 20

"So that the ordinary rule of construction applies—that if two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should be read together."

In *Rex v. Morley* (1931) 46 B.C.R. 28, Martin, *J.A.*, dealt at some length with the authorities relating to cases of apparent conflict between Provincial and Dominion Statutes. At page 36 he said:— 30

"It is clearly established by repeated decisions of the Privy Council that the incidental occupation by the Dominion in the exercise of its exclusive powers of an otherwise Provincial area can only be justified by and must be restricted to the reasonable necessity of the case which becomes a question of degree under the circumstances."

Again, at page 44, he said:—

"The truth is that in order to secure the practical working out of parliamentary powers relating to such special and personal subject matter as Indians, not only the Court but respective legislatures must 'in performing a difficult duty' work in harmony to find a way to make it possible to arrive at a reasonable and practical construction of the language of the sections, so as to recognize the respective powers they contain and give effect to all of them." 40

To use the words of Viscount Dunedin in *Silver Bros. vs. Attorney-General* (1932) 101 L.J.P.C. 107 at 111, an attempt must be made to ascertain if the two Statutes can "live together."

Both the Attorney-General and the Canadian Pacific Railway suggest methods by which these Statutes can be made to "live together."

The Attorney-General's suggestion for reconciliation of the two enactments is as above outlined, that P.C. 1003 must be interpreted as providing merely a procedure for the settlement of labour disputes whereby a majority of employees is given the contractual capacity to make a collective agreement binding upon all the employees, and that the subject-matter of the agreement must be in accordance with all other law, including Provincial law.

As opposed to this, the Company's suggestion is that the employer and employee in making the agreement under P.C. 1003 are free to provide conditions in their agreement in derogation of Provincial law, and that the "Hours of Work Act" applies only to those employers and employees who have not made collective agreements. 10

It is submitted that the Company's reconciliation of the two enactments should be rejected for two reasons:—

- (1) That there is nothing in P.C. 1003 that supports the Company's contention that it was intended to give the contracting parties the right to abrogate Provincial law; and
- (2) That the Company's interpretation would lead to an unreasonable result and can be reduced to an "ad absurdum." 20

For example, take the case of two employers both in the same business. The one has a collective agreement with his employees which permits employees to work in excess of the time provided in the "Hours of Work Act" and which permits children to be employed in contravention of the provisions of the "Control of Employment of Children Act," chapter 2, Statutes of British Columbia, 1944. That employer and his employees, according to the Company's contention, would by virtue of their agreement made under P.C. 1003 be free of all the restrictive provisions of Provincial law relating to "conditions of employment." The other employer and his employees having no agreement under P.C. 1003 could actually be put in prison for doing the very things that the first employer could do with impunity. 30

It is submitted that an interpretation of the two enactments which would lead to such a result should be rejected by the Courts. In *The Queen v. Monck* (1877) 46 L.J.M.C. 251, Bramwell, J.A., said at 257:—

"I think it will be seen as to the first point that he did not bring it within the rule which is applicable to construction when you are relying on the doctrine of injustice which rule, I apprehend, is this: Where a statute is capable of two constructions, one of which will work manifest injustice and the other will work no injustice, you are to assume that the legislature intended that which would work no injustice." 40

A statement much to the same effect was made by Erle, C.M., in *Smurthwaite v. Wilkins* (1862) 31 L.J.C.P. 214 at 216, where he said:—

"The consequences which this would lead to are so monstrous as to make me pause before I adopt such a construction of the statute."

The final submission of the Attorney-General is then that the Company's interpretation of P.C. 1003 should be rejected and that P.C. 1003 should

be interpreted as giving employees' representatives contractual capacity to bind their fellow-employees by agreements made in conformity with the law, including the Provincial law.

The acceptance of this submission would permit of the effective and full operation of both P.C. 1003 and the "Hours of Work Act."

Case p. 7.
1.25, to p. 9.

The Respondent adopts as his argument the judgment of Sloan, *C.J.A.*

"Hours of Work Act" is legislation of general application affecting property and civil rights and is not in conflict with Dominion "railway legislation":—

Further it is submitted that the judgment of the Court of Appeal is 10 correct because on the basis of the law as of that time the "Hours of Work Act" is a Statute of general application, not specifically aimed at railways, and not in conflict with Dominion railway legislation.

C.P.R. vs. Notre Dame de Bon Secour (1899) A.C. 367 at 372; 1 Cameron 558 at 562.

Canada Southern Railway Company vs. Jackson (1890) 17 S.C.R. at 316, per Patterson, *J.*, at 325.

Workmen's Compensation Board vs. Canadian Pacific Railway Company (1920) A.C. 184; 1 Cameron 151 per Viscount Haldane at (1920) A.C. 191 and 192; 2 Cameron at 156 and 157. 20

McCull vs. C.P.R. (1923) A.C. 126 per Duff, *J.*, at 135.

Sincennes-McNaughton Lines Limited vs. Bruneau (1924) S.C.R. per Duff, *J.*, at 173.

Lymburn vs. Maryland (1932) A.C. 318 at 324; *Plaxton* 149 at 155. All of which is respectfully submitted.

J. W. DE B. FARRIS,
H. ALAN MACLEAN,

Of Counsel for the Respondent.