

THE INTERNATIONAL COAL COM- } APPELLANTS;
 PANY (LIMITED) (DEFENDANTS)... }

1893

*May 4.

*June 24.

AND

THE MUNICIPALITY OF THE } RESPONDENTS.
 COUNTY OF CAPE BRETON }
 (PLAINTIFFS)

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Assessment and taxes—Tax on railway—Nova Scotia Railway Act—
 Exemption—Mining Co.—Construction of railway by—R. S. N. S.
 5 Ser. c. 53.*

By R. S. N. S. 5 Ser. c. 53, s. 9, s.s. 30, the road, bed etc., of all railway companies in the province is exempt from local taxation. By s. 1 the first part of the act from secs. 5 to 33 inclusive applies to every railway constructed and in operation or thereafter to be constructed under the authority of any act of the legislature and by s. 4 part 2 applies to all railways constructed or to be constructed under authority of any special act, and to all companies incorporated for their construction and working. By s. 5, s. s. 15, the expression "the company" in the act means the company or party authorized by the special act to construct the railway.

Held, reversing the decision of the Supreme Court of Nova Scotia, Gwynne J. dissenting, that part one of this act applies to all railways constructed under provincial statutes and is not exclusive of those mentioned in part two; that a company incorporated by an act of the legislature as a mining company with power "to construct and make such railroads and branch tracks as might be necessary for the transportation of coals from the mines to the place of shipment and all other business necessary and usually performed on railroads," and with other powers connected with the working of mines "and operation of railways," and empowered by another act (49 V. c. 45 [N. S.]) to hold and work the railway "for general traffic and the conveyance of passengers and freight for hire, as well as for all purposes and operations connected with said mines in accordance with and subject to the

* PRESENT:—Sir Henry Strong C. J. and Fournier, Taschereau, Gwynne and Sedgewick JJ.

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provisions of part second of ch. 53, R. S. N. S. 5 Ser., entitled 'of railways,' is a railway company within the meaning of the act; and that the reference in 49 Y. c. 145, s. 1, to part two does not prevent said railway from coming under the operation of the first part of the act.

APPEAL from a decision of the Supreme Court of Nova Scotia reversing the judgment of the trial judge in favour of the defendant company.

The facts of the case will sufficiently appear from the following judgments.

Mr. Justice Townshend who tried the case held that the defendant company was exempt from taxation in respect to the said railway. His judgment was reversed by the Supreme Court of Nova Scotia and the company appealed to this court.

Harris Q.C. for the appellants referred to *Doughty v. Firbank* (1).

Borden Q.C. for the respondents cited *In re East & West India Dock Co.* (2); *In re Exmouth Docks Co.* (3).

THE CHIEF JUSTICE and FOURNIER J. concurred in the judgment of Mr. Justice Sedgewick.

TASCHEREAU J.—I agree that this appeal should be allowed.

GWYNNE J.—I entirely concur in the judgment of the majority of the Supreme Court of Nova Scotia that the appellants are not a railway company within the meaning of the 30th subsection of section 9 of ch. 53 of the Revised Statutes of Nova Scotia, 5th series, as amended by 53 Vic. ch. 25 of the statutes of Nova Scotia, which section, as so amended, enacts that "the road, rolling stock, bed, track, wharfs, station houses, and buildings of *all railway companies* in the province

(1) 52 L. J. Q. B. 480.

(2) 38 Ch. D. 576.

(3) L. R. 17 Eq. 181.

shall be exempt from local taxation." That section, by the provisions of the said chapter 53, which is entitled "of railways," applied only to such railways as at the time of the passing of the said ch. 53, viz., in 1884, were then constructed and in operation, or which should thereafter be constructed, under the authority of any act passed by the legislature of Nova Scotia; and the term "railway companies in the province" whose property is by the above subsec. 30 of sec. 9 of ch. 53, as amended by ch. 25 of the acts of 1890, exempted from taxation, must, of necessity, as it appears to me, apply only to such companies as had been or should be incorporated by an act passed by the legislature of Nova Scotia as a railway company, for the purpose of constructing and operating the railway authorized by the legislature of Nova Scotia to be constructed. In fact it applies, as it appears to me, only to railway companies with whose special act of incorporation as a railway company the provisions of the first part of the general act "of Railways," viz., ch. 53, were declared to be incorporated, and therefore to those companies only whose corporate powers consisted solely in the working of the railway.

Now the appellants were not incorporated by an act passed by the legislature as a railway company at all or for the construction of any railway; they have come into existence as a company under the name of the International Coal Company, limited, under an act of the Dominion of Canada, viz., the Joint Stock Companies Act of 1877, for the purpose of purchasing and holding certain coal mining properties in Cape Breton. The property, for the purpose of purchasing which the appellants were so incorporated by Dominion letters patent under the provisions of the above Dominion act, was the property of a company which had been incorporated by an act of the legislature of the pro-

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vince of Nova Scotia before Confederation, in 1864, as the International Coal and Railway Company, for the purpose of opening and working coal mines, manufacturing coal oil, and the constructing and making such railroads and branch tracks as might be necessary for the purpose of the transportation of coals from the mines to the place of shipment, and all other business necessary and usually performed on railroads. Now, in 1885, an act of the Dominion of Canada, 48 & 49 Vic. ch. 29, was passed upon the petition of the appellants who were so, as aforesaid, incorporated as the International Coal Co., limited, by Dominion letters patent, by which it was enacted that—

Notwithstanding any thing in the Canada Joint Stock Companies Act 1877, the said the International Coal Company, limited, is hereby declared to have, as having acquired the properties of the said International Coal and Railway Company which included their said railway, the right and authority to hold and work the said railway for the purposes of their own mines and operations and may hold and exercise such powers of working the said railway for the transport of passengers and freight generally for others for hire as may be conferred upon the company by the legislature of the province of Nova Scotia.

Subsequently, and in 1886, the appellants obtained an act of the legislature of Nova Scotia to be passed whereby it was enacted that,

The International Coal Company, limited, is hereby authorized to hold and operate the railway lately purchased and now belonging to the company and leading from the mines of the company at Bridgeport to Sydney, for general traffic and the conveyance of passengers and freight for hire as well as for all purposes and operations connected with said mines in accordance with and subject to the provisions of part second of ch. 52 of the Revised Statutes of Nova Scotia, fifth series entitled “of railways.”

Now it is to be observed that in this act the appellants are dealt with as “The International Coal Company, limited,” and not as a railway company at all. To the International Coal Company who have a railway for the necessary purposes of the company as a coal

company are given certain powers which they may or may not exercise at their pleasure, namely, the power to operate their railway for general traffic and the conveyance of passengers and freight for hire, as well as for the purposes and operations of the company as a coal company in connection with their mines. Now such additional powers conferred upon the coal company does not constitute them a railway company within the meaning of subsec. 30 of sec. 9 of ch. 53, as amended by ch. 25 of the acts of 1890, and I confess to being unable to see any principle upon which we would be justified in holding that the property of the coal company, and which is used by them for the purpose of carrying on the business of a mining coal company, and for carrying on which business they were incorporated, should be exempt from taxation because in addition to the business of a mining coal company they have had conferred on them a privilege which they may or may not exercise at their pleasure of using property essentially necessary to their business as a coal company for other purposes. In my opinion the appeal should be dismissed with costs.

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SEDGEWICK J.—The point to be determined on this appeal is as to the liability of the appellant corporation for local taxation in respect to their railway between Bridgeport and Sydney, in the county of Cape Breton. A case was agreed upon between the parties and upon its being submitted to Mr. Justice Townshend he gave judgment in favour of the company. This judgment was reversed upon appeal to the Supreme Court of Nova Scotia the opinion of the court being delivered by Mr. Justice Graham, Mr. Justice Ritchie dissenting, and it is from that judgment that this appeal is taken.

The railway in question is twelve miles long. It is worked continuously except during four months of the

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winter season. It has a regular train service for passengers and freight with a fixed tariff of tolls. Its principal use to the company is the carrying of coals from Bridgeport (where the mines are) to Sydney Harbour, but it none the less is operated as an ordinary railway for the use of the public generally.

It was built by the International Coal and Railway Company, a company incorporated by the Nova Scotia legislature in 1864 (cap. 42) for the purpose of working coal mines in Cape Breton and for the further purpose of

Constructing and making such railroads and branch tracks as might be necessary for the transportation of coal from the mines to the place of shipment and all other business necessary and usually performed on railroads ; and for constructing and building such wharfs, docks and piers as might be necessary for the working of mines and protection and safety of shipping, the shipment of coals and the transaction of business connected with mines and operation of railways.

After the railway was so constructed in pursuance of the powers stated the company became involved and its property including the road in question was sold at sheriff's sale. Thereupon the purchasers or their assignees formed themselves into a joint stock company under the name of the International Coal Company (the defendant company) incorporating themselves under "The Canada Joint Stock Companies Act 1877."

It happened, however, that under that act (as well as under the present companies act) companies incorporated by letters patent were incapacitated from constructing or working railways (sec. 2). Application was therefore made to Parliament asking in effect for these among other powers, and by section 3 of 48 & 49 Vict. cap. 29 (Canada) it was enacted that notwithstanding anything in the Canada Joint Stock Companies Act the defendant company might hold and work their railway for the purposes of their own mines

and operations, and might hold and exercise such powers of working the railway for the transport of passengers and freight generally for others for hire as might be conferred on the company by the legislature of Nova Scotia. And by chapter 145 of the acts of the Nova Scotia legislature 1886, sec. 1, the company were authorized to hold and operate the railway

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for general traffic and the conveyance of passengers and freight for hire as well as for all purposes and operations connected with said mines, in accordance with and subject to the provisions of part second of chapter 53 of the Revised Statutes of Nova Scotia, 5th series, entitled "of railways."

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J.

The statutes above referred to are the enactments under which the defendant company now operate their road. In my view they justify its claim to be considered a "railway company" in the ordinary acceptance of these words. Whether or not they are a railway company within the meaning of the Nova Scotia act remains to be considered.

Section 9 of subsection 39 of chapter 53 of the Revised Statutes of Nova Scotia "of Railways" (hereafter called for convenience "the Railway Act,") provides that

The road, bed, track, wharfs, station houses and buildings of *all railway companies in the province* shall be exempt from local taxation.

The contention of the municipality is that this provision does not apply to the defendant company; first, because it is not a "railway company;" and second, because even if it be a railway company, part first of the "Railway Act" in which the exempting clause occurs does not apply to it.

Sections 1 and 4 of the "Railway Act" are as follows:—

1. The provisions of this chapter from sec. 5 to sec. 33 (both inclusive), being part one of this chapter shall apply to every railway constructed and in operation, or hereafter to be constructed, under the authority of any act passed by the legislature of Nova Scotia, and shall, so far as they are applicable to the undertaking, be incorporated

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with the special act, form part thereof, and be construed as forming one act, unless they are inconsistent with or are expressly varied or excepted by the special act or other act of the legislature of Nova Scotia.

4. The remaining provisions of this chapter, being part second, shall apply to all railways which have been or which may hereafter be constructed under the authority of any special act passed by the legislature of Nova Scotia and to all companies which have been or may be incorporated for their construction and working.

Dealing with the second contention first, it appears to me that confusion has arisen by supposing that the classes of railways referred to in these two clauses are mutually exclusive of each other. This is not so. The railways referred to in section 4, and in respect to which part second of the act is intended to apply are likewise included in those railways referred to in section 1. In the analogous Dominion act, the Consolidated Railway Act 1879, almost every clause of which is substantially embodied in this act, part first applied to the Intercolonial Railway only, but part second applied to that railway also, as well as to all railways, whether built by Canada or under the authority of its parliament. The Nova Scotia legislature has, however, widened the effect of part one and made it applicable to every railway in the province constructed or operated under its authority, including any railways built under the general railway act of the province if such now there be. But, apart from this consideration, let us examine more minutely whether this railway does not in express terms fall within part 1.

It is a railway constructed; it is a railway in operation; it is a railway constructed under the authority of an act of the legislature (the act of 1864) and it is likewise a railway in operation under the authority of an act of the legislature (the act of 1886). So far as I can see nothing else is necessary to bring it within the purview of part one and to confer upon it the

benefits as well as to subject it to the obligations thereby created. Nor is there anything in the acts under which it was constructed and is now operated from which it can be inferred that this part is inapplicable. It follows that unless there is something to the contrary elsewhere in the act the exempting clause applies to this railway, assuming always that it is the property of "a railway company."

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But I see nothing to the contrary. Part second of the act undoubtedly applies to the company.

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It applies because the act of 1886 under the authority of which the railway is operated expressly so enacts, and because, as well, it is a "railway which has been constructed under the authority of a special act passed by the legislature of Nova Scotia." But that fact cannot by any process of reasoning that I can understand exempt it from, or deprive it of, the burdens and benefits of part one. I am therefore of opinion that if the company is a railway company it is entitled to exemption from local taxation.

I have already intimated that in my opinion it is as that phrase is ordinarily understood a "railway company." But, if what has been stated is correct, the company is subject to the provisions of the Railway Act. The acts under which the road was built and is now operated all refer to it as a railway company. It operates the road as a railway company.

It is in my view, therefore, a bold construction to hold (even although the principal business of the company is the mining of coal) that in spite of legislative declarations several times repeated both by the Parliament of Canada and by the legislature of Nova Scotia to the contrary, the company in question is not a railway company.

In my view the appeal should be allowed with costs and judgment should be rendered for the appellants

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for costs including the costs of the hearing before Mr.
Justice Townshend and appeals to the court below and
to this court.

Appeal allowed with costs.

Solicitors for appellants: *Henry, Harris & Henry.*

Solicitors for respondents: *Borden, Ritchie, Parker
& Chisholm.*
