1950
* Mar. 8, 9, 10, 13, 14.
* Nov. 20.

CANADIAN PACIFIC RAILWAY COMPANY ..... APPELLANT;

AND

THE ATTORNEY GENERAL FOR SASKATCHEWAN ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Constitutional law—Railways—Taxation of C.P.R. in respect of its branch lines in Saskatchewan—"Canadian Pacific Railway"—Effect of clauses 16 and 14 of contract between Dominion and C.P.R. in schedule to chapter 1 of S. of C. 1881—Saskatchewan Act, S. of C. 1905, c. 42, s. 24—Act respecting the Canadian Pacific Railway, S. of C. 1881, c. 1—Constitutional Questions Act, R.S.S. 1940, c. 72.

The *Saskatchewan Act* (S. of C. 1905, c. 42) which constituted the Province of Saskatchewan provides that the powers granted to that province shall be exercised subject to the provisions of clause 16 of the contract set forth in the schedule to Chapter 1 of the Statutes of 1881 (Canada), being an *Act respecting the Canadian Pacific Railway*, by which statute the contract was approved and ratified. Clause 16 provides that: "The Canadian Pacific, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any province hereafter to be established, or by any municipal corporation therein . . ." Clause 14 gave to the Company the right to construct and work branch lines of railway from any point along its main line to any point or points within the territory of the Dominion.

The appellant company contended that the exemption extended to all municipal taxation upon and in respect to properties both upon its main line and upon branch lines constructed under the powers conferred by clause 14.

Held: (Affirming the Court of Appeal) that the exemption from taxation provided by clause 16 of the contract does not apply to the stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances situate on the branch lines built in Saskatchewan under the authority of clause 14 of that contract, except as to such of these properties as are also required and used for the working of the main line, as described in ss. 1, 2 and 3 of 37 Victoria, c. 14.

Held: (Reversing the Court of Appeal) Estey J. dissenting, that the exemption extends to the so-called business taxes referred to in the questions submitted to the Court in respect of the business carried on as a railway upon, or in connection with, the railway as described

* PRESENT: Rinfret C.J. and Kerwin, Taschereau, Kellock, Estey, Locke and Cartwright.

in the said sections 1, 2 and 3 of 37 Victoria, c. 14, and upon such other properties situate upon its branch lines in Saskatchewan as are entitled to the benefit of the exemption from taxation under clause 16 as being required and used for the construction and working of that portion of the line referred to in the said sections.

APPEAL from the decision of the Court of Appeal for Saskatchewan (1) answering certain questions referred to the Court by His Honour the Lieutenant Governor of Saskatchewan respecting the extent of exemption from taxation provided for the Canadian Pacific Railway by clause 16 of the contract between the Government of Canada and certain parties acting on behalf of the Company, dated October 21, 1880, and approved in 1881 by 44 Victoria, c. 1 (Canada).

The legislature of the Province of Saskatchewan having enacted in 1946 and 1947 certain municipal statutes to provide for (*a*) the assessment and taxation of the railway roadway and other lands owned by the railway companies in the province, and (*b*) the assessment and taxation in respect of their business carried on as a railway within the province, and certain disputes having arisen between various municipalities and the C.P.R. with respect to this legislation, the Executive Council of the Province of Saskatchewan, acting under the *Constitutional Questions Act* (R.S.S. 1940, c. 72), referred to the Court of Appeal for Saskatchewan the following questions for hearing and consideration:

Question 1. Does clause 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, work shops, buildings, yards, and other property, used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan?

Question 2. Does clause 16 of the contract aforesaid exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway

(*a*) based on the area of the land or the floor space of buildings used for the purposes of such business,

(*b*) based on the rental value of the land and buildings used for the purposes of such business,

(*c*) based on the assessed value of the land and buildings used for the purposes of such business,

but not made a charge upon such land or buildings?

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Question 3. Are the provisions of the said *The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947*, all as amended, relating to the assessment and taxation of the real estate of railway companies, operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to clause 14 of the said contract?.

Question 4. Are the provisions of the said *The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947*, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

(*a*) the main line of its railway in Saskatchewan, and

(*b*) its branch lines in Saskatchewan?

The Court of Appeal (declining to answer Questions 2(*b*) and 2(*c*)) answered Questions 1 and 2(*a*) in the negative and Questions 3, 4(*a*) and 4(*b*) in the affirmative (Gordon J.A. dissenting as to Questions 1 and 3).

This Court (Estey J. dissenting as to Questions 2 and 4), answered as follows:

Question 1. No, except such properties, if any, real or personal, enumerated in clause 16, situate upon the branch lines in Saskatchewan as are entitled to the benefit of the exemption from taxation as being required and used for the construction and working of the railway described in sections 1, 2 and 3 of the Act 37 Victoria, c. 14.

Question 2. Yes, as to the business carried on as a railway upon or in connection with the railway as described in sections 1, 2 and 3 of the Act 37 Victoria, c. 14, and upon such other properties, if any, real or personal, of the Company situate upon its branch lines in Saskatchewan as are entitled to the benefit of exemption from taxation under clause 16 as being required and used for the construction and working of that portion of the line referred to in the said sections of the statute.

Question 3. Yes, except in respect of such real estate, if any, situate upon branch lines constructed pursuant to clause 14 of the contract as is entitled to the benefit of the exemption from taxation under clause 16 as being required and used for the construction and working of the railway as described in sections 1, 2 and 3 of the Act 37 Victoria, c. 14.

Question 4.

(*a*) No.

(*b*) Yes, subject to the limitation stated in the answer to Question 2.

C. F. H. Carson, K.C., H. A. V. Green, K.C. and *A. Findlay* for the appellant.

E. C. Leslie, K.C. and *R. S. Meldrum, K.C.* for the respondent.

The judgment of the Chief Justice and of Taschereau J. was delivered by

THE CHIEF JUSTICE: The Province of Saskatchewan was established in 1905 by Statutes of Canada, 4-5, Edw. VII, c. 42.

By force of that Statute (Section 3), the provisions of the *British North America Acts*, 1867 to 1886, apply to that Province "in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province of Saskatchewan had been one of the provinces originally united", except insofar as varied by that Statute or except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.

Section 24 of the *Saskatchewan Act* provides that the powers granted to the said Province shall be exercised subject to the provisions of Section 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of 1881, being *An Act Respecting the Canadian Pacific Railway Company.*

Clause 16 of that contract provides:

16. The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion or by any province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.

Clause 1 of the contract provides:

1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "The Canadian Pacific Railway", are intended to mean the entire railway, as

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described in the Act 37th Victoria, chap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

The description referred to in the Act 37th Vict. c. 14, is contained in Sections 1 to 4 of that Statute and reads as follows:

1. A railway to be called the "Canadian Pacific Railway" shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections: the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

3. Branches of the said railway shall also be constructed as follows; that is to say:

First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

Secondly—a branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.

The Canadian Pacific Railway Company was constituted pursuant to Statutes of Canada, 44 Vict., c. 1, assented to on the 15th of February, 1881, by Letters Patent granted by His Excellency the Governor-General under the Great Seal of Canada, under date 16th February, 1881.

The contract which the Court is called upon to construe was executed between the Crown, in the right of the Dominion of Canada, and George Stephen and others relating to the Canadian Pacific Railway and was dated October 21, 1880. It was appended as a Schedule to the Statute 44 Vict. c. 1, and it was ratified by that Statute; the wording

of the contract being incorporated in the Letters Patent.

Section 4 of the Schedule to the said contract provides that

> All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company.

The contract provides for the incorporation of Canadian Pacific Railway Company and the construction by it of a main line of railway from Callendar Station, near Lake Nipissing, in the Province of Ontario, the western terminus of the existing railway system of Canada, to Port Moody located on the seaboard of British Columbia.

The contract provided for the construction of branch lines by Clause 14 as follows:

> 14. The Company shall have the right from time to time, to lay out, construct, equip, maintain, and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

The area through which the Canadian Pacific Railway was to be constructed between the western boundary of Manitoba, as then constituted, and the eastern boundary of British Columbia was then part of the North-West Territories and was administered by the Dominion Government.

The Province of Saskatchewan, having been established as aforesaid in 1905, certain municipal statutes were subsequently passed in the years 1946 and 1947, which provided:

(*a*) That the railway roadway and other land within the province owned by railway companies shall be assessed and taxed, and

(*b*) That railway companies, whether their property is liable to assessment and taxation or not, shall be liable to assessment and taxation in respect of the business carried on as a railway within the Province at a rate per square foot of the floor space of each building or part thereof used for business purposes.

Disputes having arisen between various municipalities and the Canadian Pacific Railway with respect to the latter legislation, the Executive Council of the Province

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of Saskatchewan, on the recommendation of the Attorney-General and pursuant to the provisions of the *Constitutional Questions Act*, being c. 72 of the Revised Statutes of Saskatchewan, 1940, was pleased to refer to the Court of Appeal for Saskatchewan (1) the following questions for hearing and consideration (see *ante*, p. 191).

The Court of Appeal of Saskatchewan by a majority answered "No" to Questions Nos. 1 and 2(*a*); "Yes" to Questions Nos. 3, 4(*a*) and 4(*b*); but declined to answer Questions Nos. 2(*b*) and 2(*c*). Mr. Justice Gordon dissented as to the answer given by the majority of the Court to Questions Nos. 1 and 3.

From that judgment the Canadian Pacific Railway Company appeals to this Court and we heard counsel for the Company and for the Attorney-General for Saskatchewan.

It is apparent that the answers to be given to the several questions submitted to the Court depend upon the construction to be put on the contract between the Crown and George Stephen and others already referred to, and, more particularly, on Sections 1, 14, 16 and 22 thereof.

Sections 1, 14 and 16 form part of the Order of Reference and have been above reproduced.

Section 22 reads as follows:

> 22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with or contrary to the provisions of the Act of incorporation to be granted to the Company, shall apply to the Canadian Pacific Railway.

By Questions 1 and 3 the Court of Appeal was asked, in effect, whether the freedom from taxation in Clause 16 applies to branch lines constructed under the authority of Clause 14 of the contract.

By Questions 2 and 4 the Court of Appeal was asked, in effect, whether the freedom from taxation in Clause 16 applies to business taxes provided for in certain Statutes of the Province of Saskatchewan.

It will be observed that Question No. 1 is so worded as to apply to all branch lines of the Appellant in Saskatchewan. In the Court of Appeal, however, only branch lines constructed under the authority of the contract were in issue and the Appellant stated in this Court that it did not

(1) [1949] 2 D.L.R. 240; 1 W.W.R. 353.

contend that the freedom from taxation in Clause 16 of the contract extends to branch lines other than those constructed under the authority of Clause 14.

The same observation should not be made of Question No. 3, since it is in terms limited to branch lines constructed pursuant to Clause 14.

The Company submitted that the true answer to be given to Question No. 1 should be in the affirmative; but that even if the Court of Appeal was to be upheld in its view, then Question No. 1 should not be answered unreservedly in the negative, but that there should be added to the word "No" the following words:

. . . Provided, however, that Clause 16 does exempt and free from taxation such stations and station grounds, workshops, buildings, yards and other property required and used for the construction and working of the Canadian Pacific Railway (meaning "the entire railway as described in the Act 37 Vict. c. 14", that is to say: the four main line sections, the Georgian Bay branch, the Pembina branch and the Winnipeg Branch).

The Company further submitted that Question No. 3 should be answered in the negative; but that, at all events, if the Court of Appeal should be upheld in its view, Question No. 3 should not be answered unreservedly in the affirmative, but that there should be added to the word "Yes" the following words:

. . . Provided, however, that such provisions are not operative in respect of stations and station grounds, workshops, buildings, yards and other property located on such branch lines and required and used for the construction and working of the Canadian Pacific Railway (meaning "the entire railway as described in the Act 37 Vict. c. 14", that is to say: the four main line sections, the Georgian Bay branch, the Pembina branch and the Winnipeg branch).

As to Question No. 2, the Company submitted that it should be answered in the affirmative and that Question No. 4 should be answered in the negative.

At bar, counsel for the Respondent stated that the Province would be agreeable to a qualified answer being given to Question No. 1, so that it would read as follows:

No. Provided, however, that the fact that such property is used for the working of the branch lines would not, of itself, defeat any exemption to which such property might be entitled by reason of its being required and used for the working of the main line of the Canadian Pacific Railway in Saskatchewan.

Of the Statute of Canada of 1881 (44 Vict., c. 1), which is entitled *"An Act Respecting the Canadian Pacific Railway"*, very little need be said.

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The preamble states that the Parliament of Canada has expressed a preference for the construction and operation of the railway by means of an incorporated company aided by grants of money and land and that certain statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose.

It further states that a contract has been entered into for the construction of the railway; that the contract has been laid before Parliament and that it is expedient to approve and ratify it, as well as to make provision for the carrying out of the same.

A copy of the contract is annexed to the Statute. It is declared approved and ratified and the Government is authorized to perform and carry out the conditions thereof; and that, for the purpose of incorporating the persons mentioned in the contract and those who shall be associated with them in the undertaking, the Governor may grant to them, in conformity with the contract, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the schedule, and that such charter, being published in the Canada Gazette, shall have force and effect as if it were an Act of Parliament, and shall be held to be an Act of incorporation within the meaning of the contract.

The Statute provides that the Government may make to the Company certain grants of money and land upon the terms and conditions agreed upon in the contract; that the Government may permit the admission free of duty of certain materials to be used in the original construction of the railway and convey to the Company the possession of and right to work and run the several portions of the railway, as the same shall be hereafter completed; and the Government shall also take security for the continuous operation of the railway during the ten years next subsequent to the completion thereof in the manner provided by the contract.

It is apparent, therefore, that the Statute, in effect, was passed with the object of approving and ratifying the contract without adding anything to it and that it is to the

contract, and not to the Statute, that we must look for the purpose of answering the questions submitted to the Court.

The difference is important for a term of a contract is quite another thing from an exemption section in a taxing Act. *Canadian Pacific Railway* v. *Burnett* (1).

Here, the Appellant does not claim a special treatment as was the case decided by the Judicial Committee in *Montreal* v. *Collège Sainte-Marie* (2). The exemptions claimed by the Appellant are the result of a *quid pro quo,* the company receiving these exemptions as a consideration for the fact that they undertook the construction and the working of the railway throughout Canada. In that respect, the Statute added nothing to the consideration given by the Government; the provisions relating thereto are entirely contained in the contract.

Now, Clause 1 of the contract is stated to be inserted "for the better interpretation of this contract". It may be said, however, that the definition there given of "the Canadian Pacific Railway" far from helping in that interpretation is rather confusing. It states that the words "the Canadian Pacific Railway" are intended to mean the entire railway, as described in the Act 37 Vict., c. 14, and it adds that the individual parties to the contract "are hereinafter described as the Company". As a matter of fact, the entire railway, as described in that Act of 1874, consisted of seven sections, four of which were described in Section 2, two of which were described in Sections 3 and 4, and the seventh of which was described in an Amending Act of 1879, this Amending Act expressly providing that all the provisions of the 1874 Act, with respect to branches of the railway, were to apply to this added branch. The seventh section of the 1874 railway, known as the Winnipeg Branch, is not expressly mentioned in the contract. It had, however, at that time been constructed, or was in the course of construction, probably as part of the main line, and it was conveyed to the Company pursuant to Clause 7 of the contract.

But, by Clause 1 of the contract of 1880, only four sections are provided for. The section corresponding with the first section of the 1874 railway is called the Eastern

(1) (1889) 5 Man. R. 395. (2) [1921] 1 A.C. 288 at 290-1.

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Section. The section corresponding with the second section of the 1874 railway is called the Lake Superior Section. The section extending from Selkirk to Kamloops is called the Central Section which corresponds with the third section and part of the fourth section of the 1874 railway; and the section extending from Kamloops to Port Moody is called the Western Section and corresponds with part of the fourth section of the 1874 railway.

The fifth section of the 1874 railway, known as the Georgian Bay branch, is not provided for in the contract of 1880 and was never built.

The sixth section of the 1874 railway, known as the Pembina branch, is not expressly mentioned in the contract of 1880. It had then been completed and was later conveyed to the Company pursuant to Clause 7 of the contract.

The seventh section of the 1874 railway, known as the Winnipeg branch, is not provided for by the contract of 1880, and, as such, was not built.

By the contract, the Government was to cause to be completed the Lake Superior section and the Western section. The Company was to construct the Eastern section and the Central section. Upon completion of those two last sections by the Company, the Government was to convey to the Company those parts of the railway which the Government undertook to construct.

Thus, the railway contemplated by the 1880 contract is not accurately described in Clause 1 thereof in the Act 37 Vict., c. 14 (1874); and one may not rely upon that so-called description for the purpose of construing the contract of 1880, for the railway provided for by the 1880 contract was a different railway from the entire railway described in the 1874 Act.

It is common ground that one of the principal concepts underlying the 1880 contract was for the purpose of constructing a railway to open up the North-West Territories. For this purpose, the railway was to consist of a main line and of an indeterminate number of branches, as shown by the authority given to the contractors by Clause 14. By that clause, the Company was given the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railways from any point or points along their main line to any point or points within the

territory of the Dominion. The only proviso was that before commencing any branch the railway had first to deposit a map and plan of such branch in the Department of Railways. Further, the Government undertook to grant to the Company the lands required for the road bed of such branches and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, insofar as such lands were vested in the Government.

Moreover, for twenty years from the date of the contract, no line of railway was to be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway from any point at or near the railway, except such line as shall run South West or to the Westward of South West; nor to within fifteen miles of Latitude 49. And in the establishment of any new province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period of twenty years (Clause 15 of the 1880 contract).

It is quite clear, therefore, that describing the railway contemplated by the contract as being described in the Act 37 Vict. c. 14 (1874) was quite inappropriate. If it had any meaning at all, it must have been for the purpose of identifying the Canadian Pacific Railway for the construction of which the Act of 1874 provided. It must be given a meaning and I cannot find any other.

Now, Question No. 1 is put in respect of stations and station grounds, workshops, buildings, yards and other property used for the working of the branch lines . . . . . situated in Saskatchewan.

If we turn to the railway described in Sections 1 to 4 of the Statute 37 Vict. cap. 14, it is to be noted that the branches are there specifically described as "a branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay" and "a branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof"; and Section 4 states that "the branch railways above mentioned shall be considered as forming part of the Canadian Pacific Railway, and as

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so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway".

It would seem to me, therefore, that the branch lines to which the benefit of the exemption applies, under Clause 16 of the contract, were meant to be only those which are described in Paragraphs 3 and 4 of the Act 37 Vict. cap. 14 and not to apply to the branch lines referred to in Clause 14 of the contract, which were not included in the description contained in Sections 3 and 4 of the Act 37 Vict.

This conclusion, however, should be qualified, as suggested by the Appellant, by saying that Clause 16 does exempt and free from taxation such stations and station grounds, workshops, buildings, yards and other property required and used for the construction and working of the entire railway as described in the Act 37 Vict. cap. 14.

This qualification, moreover, agrees with the statement made by counsel for the Respondent to the effect "that the fact that such property is used for the working of the branch lines would not, of itself, defeat any exemption to which such property might be entitled by reason of its being required and used for the working of the main line of the Canadian Pacific Railway in Saskatchewan".

By force of Section 4 of Schedule "A", annexed to the contract, and referred to in Section 21 thereof (already reproduced at the beginning of these reasons), all the advantages agreed upon, contained or described in the contract of 1880 were "conferred upon the company", but, of course, this cannot be read as having extended the tax exemption. What the company thereby acquired was the exemption described in Section 16 of the contract and nothing more.

This is further emphasized by the wording of the *"Act Respecting the Canadian Pacific Railway"* (44 Vict. c. 1). By that Statute, the contract was approved and ratified and it was therein provided that for the purpose of incorporating the persons mentioned in the contract and those who shall be associated with them in the undertaking, the Governor may grant to them *in conformity with the contract,* under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them *the franchises, privileges and powers embodied in the schedule.*

This made clear the intention of Parliament that the tax exemption contained in Clause 16 was conferred upon the company exactly as described in the said clause. The object was only to specify that the exemption was to apply to the corporate entity or person, but only in respect of the property described in Clause 16 (*Provincial Treasurer of Alberta* v. *Kerr* (1); Lindley J. in *Hartley* v. *Hudson* (2)).

As for the business tax, that is only a form of municipal taxation and as, under Clause 16 of the contract and Section 4 of the Schedule, the company is "forever free from taxation by the Dominion or by any province hereafter to be established, or by any municipal corporation therein", I am of opinion that, as to the business carried on as a railway (both main line and branches, as described in Sections 1 to 4 of the Act 37 Vict. cap. 14), Clause 16 of the contract exempts and frees the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of its business.

In 1905, when the Province of Saskatchewan was constituted, Section 24 of the *Saskatchewan Act* provided that the powers of the province should be exercised subject to Clause 16 of the contract. The Respondent is, therefore, bound by that clause, and, in my humble opinion, the answer to each of the questions submitted should be as follows:

1. Question No. 1—No, provided, however, that the fact that such property is used for the working of the branch lines would not, of itself, defeat any exemption to which such property might be entitled by reason of its being required and used for the working of the main line of the Canadian Pacific Railway in Saskatchewan;

2. Questions Nos. 2(*a*), (*b*) and (*c*)—Yes. As to the business carried on as a railway (both main line and branches, as described in Sections 1 to 4 of the Act 37 Vict. cap. 14), Clause 16 of the contract exempts and frees the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of its business;

3. Question No. 3—Yes, provided, however, that such provisions are not operative in respect of stations and station grounds, workshops, buildings, yards and other property located on such branch lines and required and

(1) [1933] A.C. 710 at 718. (2) (1879) 4 C.P.D. 367.

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used for the construction and working of the Canadian Pacific Railway, as described in the Act 37 Vict. cap. 14;

4. Question No. 4(*a*)—No; Question No. 4(*b*)—Yes, subject to the limitations already stated in the answers to Questions Nos. 1, 2(*a*), (*b*), (*c*) and to Question No. 3.

For the above reasons, the appeal should be allowed, in accordance with the above answers, with one-half of its costs of this appeal to the Appellant.

KERWIN J.: I agree with the reasons for judgment of Mr. Justice Locke.

KELLOCK, J. This is an appeal from the judgment of the Court of Appeal for Saskatchewan (1) answering certain questions referred to that Court by the Lieutenant Governor in Council.

Stated generally, the questions involve the extent of exemption from taxation provided for by paragraph 16 of the contract of October 21, 1880, and approved by 44 Vic. c. 1, Canada (1881).

Appellant first contends that the exemption extends to branch lines which the appellant was authorized by paragraph 14 of the contract from "time to time" to construct and work. These paragraphs are as follows:

> 14. The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencng any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.
>
> 16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.

Appellant says that "the Canadian Pacific Railway" in paragraph 16 includes the branch lines contemplated by

(1) [1949] 2 D.L.R. 240; 1 W.W.R. 353.

paragraph 14, while the contention of the respondent is that, by reason of the definition of "the Canadian Pacific Railway" in paragraph 1 of the contract, the appellant's contention is excluded. Paragraph 1 together with the introductory words with which the contract commences are as follows:

That the parties hereto have contracted and agreed with each other as follows, namely:

1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in the course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway" are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

"The entire railway, as described in the Act 37th Victoria, c. 14" is to be found in the first four sections of that statute. Section 1 reads:

A railway, to be called the "Canadian Pacific Railway", shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

By section 2 it is provided that the whole line of the said railway shall be divided into four sections, and the sections are delimited therein. Sections 3 and 4 are as follows:

3. Branches of the said railway shall also be constructed as follows, that is to say:

First:—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

Secondly:—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

4. The branch railway above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.

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Mr. Carson, for the appellant, contends that the definition of "the Canadian Pacific Railway" in paragraph 1 of the contract applies only for the purposes of that paragraph and not throughout the contract.

Prima facie, that contention is unsound. The opening words, "For the better interpretation of this contract it is hereby declared", apply not only to what follows in the first sentence, but to the third sentence. As far as is relevant to the point with which we are here concerned, the paragraph reads:

> For the better interpretation of this contract, it is hereby declared that . . . And that the words "the Canadian Pacific Railway" are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14.

Unless, therefore, there are compelling reasons in any particular context to the contrary, the definition is to be applied throughout the contract.

Mr. Carson bases his contention upon what he contends to be a fact, namely, that the Georgian Bay branch had, at the date of the contract, been abandoned to the knowledge of both parties, and that the 1874 railway, with or without the amendment of 1879, was not therefore, in contemplation as the subject matter of the contract, but something less than that.

In the first place, however, the alleged abandonment of the *branch* has not been shown as a matter of fact at all. All that appears upon the material to which Mr. Carson refers, namely, the report of the Royal Commission of 8th April, 1882, and the Order in Council of July 25, 1879, is abandonment of a *contract* for the construction of a part of that branch. The report deals with "Contract No. 37" dated 2nd August, 1878, by which certain named contractors undertook to complete certain work in connection with some fifty miles of the Georgian Bay branch. The report states that "before much progress had been made under this contract, the Government adopted a policy of discontinuing the construction of the Georgian Bay branch, and the following Order in Council was passed." On referring to the above Order in Council, however, all it provides for is that it was "not the intention of the Government to proceed further with the work under this contract" and that instructions should be given to stop the work. By a

subsequent Order in Council of 14th August, 1879, the contract was "taken out of their" (the contractors') "hands and annulled." Counsel also refers to certain evidence given by the late Sir Charles Tupper before the Commission, but this evidence is similarly restricted to the "reason for abandoning the Georgian Bay branch which was under contract with Heney, Charlebois and Co." It does not go beyond the Orders in Council.

It is noteworthy that in the report itself, reference is made to an earlier contract with a Mr. Foster, "No. 12", concerning the Georgian Bay branch having been annulled by an Order in Council of February 28, 1876, as the route named in that contract had presented more engineering difficulties than were anticipated, and a new survey had to be made for the route in question in Contract No. 37. What happened in connection with these two contracts illustrates a situation by no means unique at that time, when contractors defaulted on their contracts to build a part or parts of the Canadian Pacific. This did not mean the abandonment of the intention to construct the "railway" or even the particular parts which formed the subject matter of the contracts. The very contract here in question, in paragraph 5, indicates that the Government had had the same experience with contractors for the 100 miles of railway extending west of the City of Winnipeg, and had had to take that work out of the hands of the contractor.

The most striking thing, however, in negation of the appellant's contention is that, after the Orders in Council of 1879, the "Canadian Pacific Railway" was defined both in the contract here in question and in the statute confirming it by express reference to the 1874 statute. This shows clearly in my opinion that the 1874 railway in its entirity, including the Georgian Bay branch, was in the contemplation of the contracting parties, unaffected by the fact that in the preceding year the Government had had to take the contract for the fifty mile stretch out of the hands of the then contractors. As a matter of fact, in 1883 the company itself commenced construction of a branch line from Sudbury to Sault Ste. Marie and completed it in 1886 prior to the completion date fixed by paragraphs 4 and 6 of the contract of 1880 here in question. This

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appears in the case filed in the *Branch Lines* case (1). This "Algoma" branch is referred to in 48-49 Vict. c. 57. At page 45 of 36 S.C.R. it is stated that by 1884 this branch line had been constructed "as far as Algoma on the Georgian Bay." It may be—there is no evidence one way or the other—that the Georgian Bay branch contemplated by Section 3 of the 1874 Act was abandoned after the date of the contract, in favour of this Algoma branch. However that may be, the appellant has failed, in my opinion, to establish the factual basis it seeks to establish for its contention. I think, therefore, that the definition in paragraph 1 should be employed, as that paragraph says, for the better interpretation of this "contract" and not simply for the purposes of paragraph 1.

That the words "the Canadian Pacific Railway" were deliberately intended to *"mean"* the *"entire"* railway as described in the Act 37th Victoria, c. 14, is, I think, further emphasized by the fact that prior to the contract here in question, the statute of 1879, 42 Victoria, c. 14, had been passed. Section 1 reads as follows:

> A branch of the Canadian Pacific Railway shall be constructed from some point west of the Red River, on that part of the main line running south of Lake Manitoba, to the City of Winnipeg, so as to connect with the branch line from Fort Garry to Pembina; and all the provisions of "the Canadian Pacific Railway Act, 1874" with respect to branches of the said railway not inconsistent with this Act shall apply to the branch to be constructed under this Act.

We were informed on the argument that this 1879 branch had, at the time of the contract, become a part of the main line. By this it must be meant that, at the time of the Act of 1879, the main line as projected was to pass north of the City of Winnipeg and that, by the date of the contract, this plan had been changed in favour of one which would, by placing the City of Winnipeg on the main line, do away with the necessity for construction of this branch. Under the provisions of section 1 of the Act of 1874, the main line had not been more definitely located by the statute than from "some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean," both of these points and the course of the line itself to be approved by the Governor in Council. Section 2 did not more closely fix the location of the main line in Manitoba than "the second section to begin at some point on

(1) (1905) 36 S.C.R. 42.

Lake Superior, to be determined by the Governor in Council, and connecting with the first section, and to extend to the Red River in the Province of Manitoba; the third section to extend from Red River in the Province of Manitoba to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council."

Accordingly, it was competent for the Governor in Council, as well after the Act of 1879 as before, to determine the course of the main line so as to pass through the City of Winnipeg, and it had evidently become unnecessary, in settling the contract of 1880, to refer to the amendment of 1879 because of the change in the projected route of the main line. The choice of language in paragraph 1, that "the words 'the Canadian Pacific Railway' are intended to *mean* the *entire* railway as described in the Act 37th Victoria, chap. 14", accordingly meant what they said, namely, the main line as described in that statute as it might be located by the Governor in Council, together with the two branches therein mentioned, and nothing else. The Georgian Bay branch was thus deliberately included and there could have been no intention to abandon it at that time.

Far from finding anything in other parts of the contract which casts doubt on the view just expressed, the contract is consistent throughout when the definition in the first paragraph is employed as that paragraph instructs, namely, for the better interpretation "of this contract."

Under paragraph 3, the company was to construct and equip the Eastern and Central sections, and by paragraph 4 these sections were to be completed, equipped and in running order by the 1st of May, 1891, subject to certain events therein provided for. By paragraph 6, the Government assumed the obligation of completing the Lake Superior and Western sections, the latest date set for completion being also the 1st of May, 1891.

Paragraph 7 is as follows:

The railway constructed under the terms hereof shall be the property of the Company: and pending the completion of the Eastern and Central sections, the Government shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed, and upon the completion of the Eastern and Central sections, the Government

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shall convey to the Company, with a suitable number of station buildings and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed; and upon completion of the remainder of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company; and the Canadian Pacific Railway shall become and be thereafter the absolute property of the Company. And the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway.

The language with which this paragraph begins,

The railway constructed under the terms hereof shall be the property of the Company.

should, I think, be interpreted in the light of the words in the last two sentences of the paragraph and the confirming statute itself. With respect to possession and right to operate, the paragraph provides that, pending completion of the Eastern and Central sections, the Government should transfer to the company the possession and right to operate

the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed.

This language would entitle the company, immediately upon the execution of the contract, to delivery of possession of all portions of "the Canadian Pacific Railway" already constructed at the date of the contract, and to possession of the remainder as it became progressively finished.

In the third paragraph of the preamble of the statute, it is stated that certain sections of the "said" railway had already been constructed by the Government, while others were in course of construction, the greater portion of the "main line thereof", however, not having yet been commenced or placed under contract, and it was necessary in the interests of good faith to "complete and operate *the whole* of the said railway."

The fourth paragraph of the preamble states that a contract had been entered into for the construction of "the said portion of the main line of the said railway" (that is, that portion of the main line of the 1874 railway not then commenced or placed under contract) and for

the permanent working of *the whole line thereof.*

There can be little doubt that the "whole of the said railway" was the 1874 railway as defined by the Act 37th Victoria, c. 14, in view of the clear statements to that effect in sections 4, 5 and 6.

I think "the whole of the said railway" and "the whole line thereof" mean the same thing. No one suggests, least of all the appellant, that the contract did not entitle the appellant to a conveyance of the Pembina branch, which was not, of course, part of the "main line."

In my opinion, these considerations throw light upon the construction of the second sentence of paragraph 7. This provides that, upon completion of the Eastern and Central sections, the Government should convey to the company

> those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed.

The corresponding language in section 5 of the statute is

> those portions of the Canadian Pacific Railway constructed, or *agreed by the said contract* to be constructed by the Government, which shall then be completed.

This language would entitle the company to a conveyance of the portions of railway already in existence at the date of the contract and (reading the language as set out in the section) the Lake Superior and Western sections only. However, the paragraph goes on to provide that

> upon completion of *the remainder* of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company.

It is noteworthy that after the word "Government" there is no such wording as "under the contract" or "as provided by the contract", and in my opinion this fact is significant. I think that "the remainder" includes all of the 1874 railway including its branches, and that construction is borne out by the reference to the preamble already made and to the concluding parts of paragraph 7 of the contract. It is "the Canadian Pacific Railway defined as aforesaid" which is "thereafter" to be the absolute property of the company. It is, therefore, the entire railway of 1874 and "thereafter" must mean upon the completion of that railway.

The reiteration in sections 5 and 6 of the statute of the definition employed in paragraph 1 of the contract, and the use of "the Canadian Pacific Railway" three times in paragraph 7 renders it imperative, in my opinion, to read these words as inclusive of the 1874 railway in its entirety

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and exclusive of anything else including branches which might or might not be built in pursuance of the power conferred by paragraph 14 of the contract.

Under paragraph 17, the Government was entitled to retain certain bonds, if issued by the company, as security "for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the company as herein agreed for ten years after the completion thereof." It was also provided that if there was no default in the maintenance and working of "the said Canadian Pacific Railway", the Government would not ask for interest on these bonds. It would, of course, be absurd to say that "the railway" or "the said Canadian Pacific Railway" in paragraph 17 included paragraph 14 branches, for the reason that the period of "ten years after the completion thereof" would never begin to run. The railway which was to become the property of the company after completion and thereafter to be maintained and worked by it as provided by paragraph 7 was clearly the 1874 railway to the exclusion of the paragraph 14 branches, and the security to be given under paragraph 17 was to be given, if the bonds were issued, for the period ending upon the expiration of ten years after the completion of that railway.

By paragraph 9, provision is made for the granting of subsidies of land and money, for which subsidies "the construction of the Canadian Pacific Railway shall be *completed* and the same shall be equipped, maintained and operated." This paragraph, like paragraph 7, would appear to proceed on the assumption that, if the company carried out its part of the work of construction, i.e. the Eastern and Central sections, this would "complete" the construction of the whole, as the Government was to construct the remainder so that the Company would be enabled to carry out its obligation to equip, maintain and operate the whole.

Paragraph 10 provides for the grant by the Government to the company of the lands required for the road bed of "the railway" and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards and other appurtenances required for the effectual construction and working of "the railway" insofar as such land shall be vested in the Govern-

ment. It is plain, in my opinion, that "the railway" as used twice above does not include the branch lines authorized by paragraph 14, if for no other reason than that in the last mentioned paragraph there is a specific provision that the Government should grant to the company the land required for the road bed of branches constructed thereunder and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches. This, in my opinion, is the plainest indication that "the railway" in paragraph 10 means the railway as defined in paragraph 1, and that the branches comprised within paragraph 14 are not part of that railway, that is, "the Canadian Pacific Railway."

Paragraph 15 is as follows:

> For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run South West or to the Westward of South West; nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

I think this paragraph is to be read consistently with the definition in paragraph 1. It means, in my opinion, that Parliament may not authorize another line except such as shall (*a*) have as its southerly terminus a point nearer to the international border than fifteen miles; (*b*) run in the specified direction; and (*c*) have as its northerly terminus any point "at or near" the main line or either branch line.

By paragraph 22 it is provided that the Railway Act of 1879, insofar as applicable to the undertaking referred to in the contract and insofar as not inconsistent with the contract itself or the Act of incorporation to be granted to the company, shall apply to "the Canadian Pacific Railway." I see no difficulty again in applying the definition in paragraph 1 to this paragraph. "The Canadian Pacific Railway" and "the company" are expressly and separately referred to in the paragraph. In my opinion, it is perfectly clear and the definition clearly applies.

It is significant that when one comes to Schedule "A" to the contract, the first use of the words "the Canadian Pacific Railway" is in paragraph 15 which contains a

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description of what is intended thereby and what is intended when those words are "hereinafter" used in the schedule. In this description and definition the branches authorized by paragraph 14 of the contract are specifically taken in by the use of the words "other branches to be located by the company from time to time as provided by the said contract."

Again in paragraph 18 (*d*) of the schedule there is an express distinction drawn between the "main line" and "any branch of such railway hereafter to be located by the said company in respect of which the approval of the Governor in Council shall not be necessary" (i.e. branches to be located as authorized by paragraph 14 of the contract by simply filing a plan.)

The view to which I have come, negativing the appellant's contention on the first branch of this case, is, I think, confirmed by the provisions of the confirming statute, 44 Victoria, c. 1. I have already referred to certain parts of the preamble.

Section 3 provides for a subsidy in favour of the company in consideration of the "completion and efficient operation" of the "railway" as stipulated in the contract. So far as construction was concerned, the company was limited to the Eastern and Central sections but as to operation it was interested in the whole. As in the case of paragraphs 7 and 9 of the contract, this section appears to proceed on the assumption that "completion" of the entire railway would be effected if the company built the Eastern and Central sections, as the Government would see to the rest.

Section 4 provides for the admission duty free of materials to be used in the original construction of "the Canadian Pacific Railway" and of a telegraph line in connection "therewith" and for all telegraphic apparatus required for the first equipment of "such telegraph line" as provided by paragraph 10 of the contract. In my opinion, the telegraph line envisaged by this section in connection with "the Canadian Pacific Railway" was the same telegraph line as is described in section 5 of the Act of 1874, namely, a line of electric telegraph along the "whole extent respectively" of the "said railway and branches", i.e. the Pembina and Georgian Bay branches. I have already dealt with the remainder of the statute.

There is therefore not only nothing in the statute which could by any possibility be taken to include in the words "the Canadian Pacific Railway" paragraph 14 branches, but on the contrary the clearest exclusion of such branches by the deliberate use of the definition employed in paragraph 1 of the contract in sections 4 and 5 and in section 6 by reference. I would therefore affirm the judgment below on this point.

The further question in this appeal may be shortly stated as to whether the exemption provided for by paragraph 16 of the contract extends to "business" taxes as provided for by the Saskatchewan statutes set out in the case. The argument proceeded on the basis that it was sufficient for the purposes of this question to consider the provisions of the *Cities Act*, c. 43 of the statutes of 1947.

The statute provides by section 441 that the assessor shall each year assess (1) the owner or occupant "in respect to every parcel of land" in the city, with certain exceptions, and (2) every person "who is engaged in . . . business." "Business", which is defined by paragraph 4 of section 2 as including any trade, profession, calling, occupation or employment, is to be assessed as provided by section 443. Under that section the assessor shall fix a rate per square foot of the floor space of each building or part thereof used for business purposes, and a different rate may be fixed for different classes of business. It must not, however, exceed the statutory limits which appear to run from $4.00 to $15.00 per square foot. It is provided by subsection (5*a*) of this section that a railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section "in respect of the business carried on as a railway" and the provisions of the section otherwise are made to apply except that in the case of a railway it is only buildings occupied which may be taken into consideration; (subsection (2)).

It is provided by section 479 that, subject to other provisions of the statute, the municipal and school taxes shall be levied upon lands, businesses and special franchises. The last mentioned is dealt with in subsections (7) and (8) of section 443 by which the owner of a special franchise is

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assessed for 10 per cent of the value of the franchise and is not assessable in respect of business. By section 485 the owner of a building is liable, in addition to taxes levied in respect of the land and buildings, to business tax levied in respect of business carried on therein. By section 495 the council is required to levy annually on the whole rateable property within the municipality. Section 504 deals with the tax roll and by subsection (2) it is provided that this roll shall contain "(*a*) the name of every person assessed," "(*c*) the nature and description of the property *in respect of which he is assessed,*" "(*d*) the total amount for which he is assessed."

It is plain in my view that the "business" assessment provided for by these taxing provisions is the assessment (and taxation) of a person in respect of land or building occupied by him for the purposes of a business, and that, apart from any question of a statutory lien or charge, such taxation does not differ from that of a person in respect of ownership of land and building. In each case, the liability imposed is with respect to, in the one case, the value of land owned, and in the other, with respect to the value fixed by the statute of land occupied. In nature, therefore, there is no essential difference. In the case of the land tax, the tax is not simply imposed upon and payable out of the land, nor in the case of the business tax is it simply imposed upon and payable out of assets apart from the land employed in carrying on the business. In each case the tax is imposed upon a person in respect of land owned or occupied.

With respect to the meaning of "taxation of property" as distinguished from "taxation of persons in respect of property", Rand J. said, in *Municipal District of Sugar City* v. *Bennett and White* (1), that

> to "tax property" is to subject it, as a legal object, to some sort of inhering obligation vaguely to be regarded as the equivalent of a lien is, I think, a misconception . . . Except as it may be evidential of an employed means of collection, the conception of the assessment, *per se,* as of property or of a person in relation to property, carries no practical significance of difference.

(1) [1950] S.C.R. 450 at 461.

In *Provincial Treasurer* vs. *Kerr* (1), Lord Thankerton said at page 718:

> Generally speaking, taxation is imposed on persons, the nature and amount of the liability being determined either by individual units, as in the case of a poll tax, or in respect of the taxpayers' interests in property, or in respect of transactions or actings of the taxpayers. It is at least unusual to find a tax imposed on property and not on persons . . .

In the present instance, the tax here in question is imposed on persons in respect of their interest in property, not as a matter of title but as a matter of use.

In *City of Halifax* vs. *Fairbanks* (2), the respondent owned premises which it let to the Crown for use as a ticket office, the lessee agreeing to pay the "business tax." The city assessed the respondent for business tax under provincial legislation which imposed a "business tax" to be paid by every occupier of real property for the purposes of any trade. The statute also provided that any property let to a person exempt from taxation was to be deemed, for business purposes, to be in the occupation of the owner and to be assessed for business tax according to the purposes for which it was occupied. The city was authorized under the legislation to levy the business tax, a household tax and a real property tax. The business tax was assessed on 50 per cent of the capital value of the property occupied for purposes of the business. The household tax was payable by every occupier of real property for residential purposes, and was assessed on 10 per cent of the capital value of such property. The real property tax was a tax on the owners of all real property and was assessed on the capital value. The actual question for decision in the case was as to whether or not the business tax was or was not a direct tax within the meaning of section 92 of the *British North America Act*. While that was the actual question for decision, their Lordships had to consider the nature of the tax. After pointing out that the framers of the *British North America Act* had drafted that statute on the basis of a well-known distinction at that time between direct and indirect taxes, Viscount Cave, L.C., said at page 124:

> Thus, taxes *on property* or income were everywhere treated as direct taxes; . . . When, therefore, the Act of Union allocated the power of direct taxation for Provincial purposes to the Province, it must surely have intended that the taxation, for those purposes, *of property* and income should belong exclusively to the Provincial legislatures . . .

(1) [1933] A.C. 710. (2) [1928] A.C. 117.

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Their Lordships decided that the tax in question was a tax on property and a direct tax.

Under the provisions of paragraph 16 of the contract here in question, the stations, station grounds, workshops and buildings required for the working of the railway were to be "forever free from taxation." It would be an extraordinary result if the proper interpretation of this exemption were to be said to be that while taxes imposed upon the owner in respect of his ownership of these things fall within the exemption, nevertheless taxes imposed upon the owner in respect of his use of the same items do not. I do not think the intention of the contracting parties to be derived from the language which they have employed involves any such result and I think application of the business tax here in question to the "Canadian Pacific Railway" as I have already interpreted those words is precluded by the terms of paragraph 16, made binding upon the province by section 24 of 4-5 Edward VII, c. 42, Canada.

I do not think it useful to refer to dicta in earlier cases in this court. In none of them was there involved the question here under consideration. We were also referred to decisions with respect to "business tax" in the provincial courts, for instance, *Re Hydro Electric Commission and the City of Hamilton* (1). By virtue of George V, c. 20, sec. 39, which enacted section 45(*a*) of the *Assessment Act*, certain property of the Commission (assuming the statute applied to the particular Commission there in question) was to be exempt from assessment and taxation and it was argued that inasmuch as the business tax imposed by the *Act* must be paid out of the property, the Commission was exempt from business tax. The *Ontario Assessment Act* provided for assessment and taxation of land and also for business assessment and taxation. In the course of his judgment (1), the Chief Justice said at page 160:

> The business assessment is imposed by section 10 and is a personal tax, and not a tax on real or personal property. The assessment on land is used only for the purpose of determining the amount of business assessment, which is a percentage on the assessed value of the land occupied or used for the purpose of the business.

The business tax under the statute did not constitute a lien on the land as was the case with the real property tax,

(1) (1920) 47 O.L.R. 155.

and in that sense it was not a tax "on" land. Both, however, constituted taxes on persons with respect to their ownership or occupation of land and under the contract in question on this appeal both are within the intendment of the language employed in paragraph 16. As stated by Beck J. as he then was in *Hedley Shaw* vs. *Medicine Hat* (1):

> The "business assessment" . . . is in effect an assessment of "the buildings or land or both" in or on which the business is carried on.

In *re Ford* (2) Middleton J.A. at 411 said with reference to business assessment under the Ontario statute:

> . . . in lieu of the assessment of personal property, there was substituted a business assessment *fundamentally based upon the value of the land actually occupied* in connection with the business which forms the subject matter of the assessment.

It is nothing less than the assessment of a person with respect to land occupied by him. The assessment and the tax which follows are in essence the same, whether the assessment is the full capital value of the land as in the case of "land tax" or a percentage of that value as in the case of business and household assessment in the city of Halifax and business assessment under the Ontario statute, or whether the assessment is a value of the land fixed by statute as in the case of the Saskatchewan legislation.

The decision in *Moose Jaw* vs. *B.A. Oil Co.* (3) is largely based on the passage quoted from the judgment in *Hydro Electric* v. *Hamilton ubi cit.*, and for the reasons already given I do not think it can apply here.

I adopt the answers given by my brother Locke, and would allow the appellant one-half of its costs in this Court.

ESTEY J. (dissenting in part): This is an appeal from the answers given by the Court of Appeal for Saskatchewan (4) to four questions submitted to it under the *Constitutional Questions Act* of that Province (R.S.S. 1940, c. 72).

Questions one and three ask: Does clause 16 of the contract dated October 21, 1880, for the construction of the Canadian Pacific Railway, exempt and free from taxation the branch lines constructed pursuant to clause 14 of the said contract, and the stations, the station grounds,

(1) [1918] 1 W.W.R. 754 at 756.
(2) (1929) 63 O.L.R. 410.
(3) [1937] 2 W.W.R. 309.
(4) [1949] 1 W.W.R. 353; 2 D.L.R. 240.

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workshops, buildings, yards and other property used for the working of those branch lines? Questions two and four ask: Does clause 16 of the said contract exempt and free the Canadian Pacific Railway from taxation in respect to the business carried on by the Railway in Saskatchewan?

Clause 16 of the contract reads:

16. The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.

The Statute (1905 S. of C., 4-5, Edw. VII, c. 42) creating the Province of Saskatchewan provided in sec. 24 thereof:

24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to Chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company.

These questions arise by virtue of amendments made by the Legislature of that Province to its municipal acts in 1948. These are: the *City Act* (R.S.S. 1947, c. 43), the *Town Act* (*R.S.S.* 1947, c. 44), the *Village Act* (R.S.S. 1946, c. 31), the *Rural Municipality Act* (R.S.S. 1946, c. 32) and the *Local Improvement Districts Act* (R.S.S. 1946, c. 33). The issues have been presented on the basis that these 1948 amendments are all to the same effect and, therefore, reference will be made only to the provisions of the *City Act*.

The aforementioned contract of October 21, 1880, was made a schedule to and approved and ratified by a Statute of the Dominion of Canada (1881 S. of C., 44 Vict., c. 1). The terms of incorporation were made a schedule to this contract and later the Canadian Pacific Railway was incorporated by letters patent dated February 16, 1881, in terms identical with those made a schedule to the contract.

The preamble to the foregoing Statute (1881 S. of C. 1) approving the construction contract recited, *inter alia*, the obligation of the Dominion to construct a railway connecting the seaboard of British Columbia with the railway system of Canada, the efforts made to obtain the con-

struction of that railway, and that certain portions thereof had already been constructed by the Dominion Government. It also pointed out the necessity for the development of the Northwest Territories.

The contract divided the main line into four sections: Eastern, Lake Superior, Central and Western. It provided that the Company would construct the Eastern and Central sections and that the Government would transfer the completed Lake Superior and Western sections to the Company, which would equip, maintain and efficiently operate the entire railway.

Clause 1 of the contract sets out certain definitions. The answers to questions one and three depend largely upon the construction of the words "and that the words 'the Canadian Pacific Railway' are intended to mean the entire railway as described in the Act 37th Vict., cap. 14" as they appear in that clause.

1. For the better interpretation of this contract, it is hereby declared that the portion of Railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said Railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said Railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway," are intended to mean the entire Railway, as described in the Act 37th Victoria, cap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

The appellant contends that the definition of "Canadian Pacific Railway" in clause 1 is for the purpose of that clause only and that in clause 16 the words "Canadian Pacific Railway" include the main line and the branch lines constructed under clause 14 of the contract, and the property specified in clause 16. The respondent contends, to the contrary, that the definition set forth in clause 1 of "Canadian Pacific Railway" applies generally throughout the contract and in particular to clause 16 and, therefore,

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the exemption is restricted, so far as the Province of Saskatchewan is concerned, to the main line and the property specified in that clause.

The opening words of clause 1, "for the better interpretation of the contract," disclose that the purpose and intent of clause 1 is to provide such definitions as may assist in the interpretation of the contract. The four sections, Eastern, Superior, Central and Western, of the main line are first defined. Then follows the sentence "and that the words 'the Canadian Pacific Railway' are intended to mean the entire railway as described in the Act 37th Vict., cap. 14." This sentence indicates that "the Canadian Pacific Railway" did not mean merely the four sections defined and constituting the main line, but in addition thereto the three branch lines defined in the Act of 1874 and the amendment thereof in 1879 described as the Georgian Bay, Pembina and Winnipeg branch lines. Then follows the definitions of the words "Company" and "Government." Counsel for the appellant emphasized that the word "hereinafter" does not appear in relation to "the Canadian Pacific Railway" while it does appear with regard to every other term defined in that paragraph. Under other circumstances such might be significant, but in this particular case the phrase is used twice prior to this definition in clause 1 and, while this definition is not essential to clarify the meaning of the phrase as used in that clause, it was a circumstance sufficient to justify the draftsman's omission of the word "hereinafter" in this instance. The conclusion seems unavoidable that the parties intended that the definitions in clause 1 should obtain generally throughout the contract and that the phrase "the Canadian Pacific Railway" as in that clause defined includes the main line and the three branches, Georgian Bay, Pembina and Winnipeg (hereinafter referred to as the "specified branches"). Moreover, this conclusion finds support when the contract is read as a whole.

In the Act of 1874 only the main line and the three specified branches were provided for. There was no provision for the construction of branch lines such as that contained in clause 14 of the 1880 contract. Clause 14 reads as follows:

14. The Company shall have the right from time to time to lay out, construct, equip, maintain, and work branch lines of railway from any

point or points along their main line of railway to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

Under the contract of 1880 the railway envisaged may be divided into three parts: the four sections constituting the main line, the three specified branches, the construction of both of these being obligatory under the contract, and as to the third, or the branch lines under clause 14, the contract created no obligation but granted to the Company the privilege of constructing these from time to time as it might decide.

The Winnipeg branch provided for in the 1879 amendment was never completed and the part thereof constructed by the Government was transferred to the Company and included in the main line when its route in the Winnipeg area was changed. The Pembina branch was completed by the Government and turned over to the Company, but the Georgian Bay branch was never constructed. I do not think, however, that any conclusion can be drawn from the fact that these changes were made. The Statutes and Orders-in-Council passed between 1874 and 1880 clearly disclose that the actual location of the main line was changed from time to time. When this contract was executed in 1880 it seems clear that the parties had in mind the Dominion Government's obligation with the Province of British Columbia to construct a railway and the development of the prairies; but the route of the railway had been only tentatively arrived at. In fact, under clause 13 of the contract, the Company had the right, subject to the approval of the Governor-in-Council, to determine the exact location of the line within the two sections it was building and the Government itself made changes in the sections which it constructed. All this but emphasizes the fact that no conclusion can be drawn from the fact that changes were made with regard to the specified branch lines adverse to the respondent's contention in respect to the meaning of "the Canadian Pacific Railway" where it appears in clause 1.

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It is significant that branch lines, apart from those included in the reference to the Act of 1874, are referred to only in clauses 11 and 14. In the former the reference is not of any assistance in determining the answers to the questions here submitted, as it merely indicates the locations in which the Company may select in substitution for those sections of land contained in the twenty-five million acres which "consist, in a material degree, of land not fairly fit for settlement."

While the Government granted to the Company land for the stations, station grounds, etc., on both the main and branch lines, provisions therefor were made in separate clauses: that for the former in clause 10, and the latter in clause 14. Clause 14 imposes no obligation upon the Company to construct these branch lines. It merely gives to the Company the privilege of constructing them as and when it may decide to do so. The consideration of land and money and the transfer of the Lake Superior and the Winnipeg sections when constructed had, under the terms of the contract, no relation to the branch lines referred to in clause 14 and imposed no obligation on the Company to construct them.

In clause 7, when the parties intended to refer to the railway and the specified branches, they spoke of "the Canadian Pacific Railway," but when referring to those parts to be constructed and transferred to the Company the terms "several portions of" or "those portions of" preceded the words "the Canadian Pacific Railway." Then again in clause 8 the parties provided that when the Government transferred "the respective portions of the Canadian Pacific Railway" the Company should equip, maintain and operate same. In these clauses when the parties used the phrase "the Canadian Pacific Railway" they intended it as defined in clause 1.

The parties, in clause 9, are providing for the payment and transfer to the Company of the subsidies as the construction on the part of the Company progressed. It is clear that the consideration of money and land in this contract has no reference to the actual work of constructing the branch lines provided for in clause 14 and these branch lines are not included in this clause under the words "the Canadian Pacific Railway." The context makes it clear

that the parties in the phrase "the Canadian Pacific Railway" are referring to that portion to be constructed by the Company. A general definition in a contract such as that which appears in clause 1 is always subject to the implication that it applies only where the context does not otherwise indicate.

There may be some ambiguity with respect to this phrase "the Canadian Pacific Railway" in clause 15. It may well be that the parties here intended the phrase to mean the main line. If that be the construction it is again on the basis that the context leads to that conclusion, but here again it cannot be suggested that the branch lines under clause 14 are included in the phrase "the Canadian Pacific Railway" as used in this clause.

Clause 17 authorized the issue by the Company of land grant bonds and when issued one-fifth shall be deposited with the Government

as security for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the company, as herein agreed, for ten years after the completion thereof . . . And as to the said one-fifth of the said bonds, so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway . . .

It is as defined in clause 1 that the phrase "the Canadian Pacific Railway" is here used. It includes the "maintenance and continuous working" thereof but not of the branch lines as constructed under clause 14.

Clause 22 makes applicable the Railway Act of 1879 to "the undertaking referred to in this contract," and then goes on to provide that the said Act shall apply to "the Canadian Pacific Railway," except where the provisions of this contract, or the Act of Incorporation, show a contrary intention. The parties, in this clause, have in mind both "the undertaking referred to in this contract" and the provisions of sec. 17 of the letters patent incorporating the Canadian Pacific Railway. The use of the phrase in this last clause no doubt refers to the railway as it may be eventually constructed, but it is abundantly clear that in this clause "the undertaking referred to in this contract" is, in the contemplation of the parties, quite a different entity from "the Canadian Pacific Railway" as it may ultimately be constructed.

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Sec. 15 of the Terms of Incorporation provides:

> and the said main line of railway, and the said branch lines of railway, shall be commenced and completed as provided by the said contract; and together with such other branch lines as shall be hereafter constructed by the said Company, and any extension of said main line of railway that shall hereafter be constructed or required by the Company, shall constitute the line of railway hereinafter called "The Canadian Pacific Railway."

The Terms of Incorporation were made a schedule to the contract and, therefore, these documents must be read together. The language adopted in the foregoing sec. 15 further indicates that the parties contemplated the branch lines constructed under clause 14 a separate and distinct entity from the main line and specified branch lines and where they were intended to be included they were expressly mentioned.

In clause 1 the words "Company" and "Government" are defined and as such used throughout the contract. These words and the terms "Eastern," "Lake Superior," "Central" and "Western" sections are all used throughout the contract as defined in clause 1. The terms of the clause do not suggest any exception with respect to the definition of "the Canadian Pacific Railway" apart from the omission of the word "hereinafter" already discussed and which is not of sufficient significance to offset the purpose and intent of the clause as expressed in the opening words thereof.

Moreover, the paragraphs above mentiond and discussed support the view that the parties intended throughout that the words "the Canadian Pacific Railway" should be construed, unless the context otherwise indicates, as defined in clause 1.

The first words in clause 16 are "The Canadian Pacific Railway." This phrase does not refer to the Company as incorporated by letters patent in the following February. In clause 1 it is provided: "The individual parties hereto are hereinafter described as the Company" and throughout the contract this word is used as so defined, except where, as in clause 17, the context indicates a different meaning. Moreover, in clause 16 the items specified are restricted to those "required and used for the construction and making thereof." The word "thereof" refers back to "the Canadian Pacific Railway" and as such refers to the physical property.

This conclusion is supported by the manner in which these words are used throughout the contract. In clause 17 reference is made to "the maintenance and working of said Canadian Pacific Railway." In clause 7: "The Canadian Pacific Railway shall become and be thereafter the absolute property of the Company." In clause 9: "The construction of the Canadian Pacific Railway." It is the physical property of the lines in respect to which the parties had obligated themselves to construct under the contract that is included in the meaning of this phrase generally throughout the contract. This construction is in accord with the meaning as defined in clause 1 and there is nothing in the context of clause 16 to indicate any other or different meaning. It was contended that the word "all" in the phrase "all stations and station grounds" in clause 16 indicates that stations etc. both of the main and branch lines constructed under clause 14 were to be exempt. This contention overlooks that it is "all stations . . . required and used for the construction and working thereof." This latter word "thereof" refers back to "the Canadian Pacific Railway" in the first line. In these circumstances the submission that in clause 16 the phrase "the Canadian Pacific Railway" should include not only the main line and the specified branches but also the branch lines to be at some future time constructed by the Company under the privilege granted in clause 14 is to attribute an intention to the parties which, having regard to the other provisions, they would have expressed in either language which is clear and definite or such as, by necessary implication, would include these branch lines constructed under clause 14.

Appellant then submits that the similarity of the language in clauses 14 and 16, as well as the fact that clause 16 follows so immediately thereafter, discloses an intention on the part of the contracting parties to exempt the branch lines constructed under clause 14. The respective clauses of the contract should be read together, in this sense, that any conflict should, so far as construction of the language may permit, be avoided. Here, however, the language of clause 16 presents no ambiguity, once the meaning of "the Canadian Pacific Railway" is determined, and so construed it is not in conflict with any provision in clause 14.

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Moreover, in regard to the construction of the branch lines under clause 14, the Government made no contribution, either of money or of lands, corresponding to the twenty-five million dollars and the twenty-five million acres of land as specified in the contract. The branch lines under clause 14 were a matter separate and apart from the main line and the specified branches and when clause 16 is read and construed in the light of this general intention and the specific clauses already mentioned it is clear that branch lines were not intended to be included under the exemption therein provided for. It is true, as the appellant contends, that the Government intended to encourage the construction of branch lines, but only to the extent provided for in clause 14.

I am, therefore, in agreement with the learned judges in the Court of Appeal (1) that the exemption in clause 16 does not apply to the branch lines constructed under clause 14. I would, however, vary the answers to questions one and three as stated by my brother Locke.

Then referring to questions two and four, these ask if the Canadian Pacific Railway, by virtue of the above-quoted clause 16, is exempt from the business tax authorized by the amendments to the aforementioned municipal Acts.

Business is defined "to include any trade, profession, calling, occupation or employment," *City Act*, sec. 2(4). Sec. 443(1) of that *Act* provides that the business tax shall be computed at

> a rate per square foot of the floor space . . . used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof.

Then sec. 443(5*a*) deals specifically with the railway and provides as follows:

> (5*a*) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

This is a familiar type of tax, in its nature and character distinct from other taxes. It is not imposed upon particular items of property, real or personal, and is not dependent upon ownership or interest in either the premises or the chattels thereon. It is not a tax upon occupation. A

(1) [1949] 2 D.L.R. 240; 1 W.W.R. 353.

person may occupy the premises and be in possession of the chattels thereon, but neither would provide a basis for the assessment of this business tax. The essential without which such a tax cannot be imposed is that a business is conducted upon the premises.

Sir George Jessel M.R. defined business:

> Anything which occupies the time and attention and labour of a man for the purpose of profit is business. It is a word of extensive use and indefinite significance.

Smith v. *Anderson* (1).

Rowlatt J., in *Commissioners of Inland Revenue* v. *Marine Steam Turbine Co.* (2), after pointing out that the word "business" may have a very wide meaning and that "in whatever sense it be understood is undoubtedly an elastic word capable of wide extension," stated:

> The word "business," however, is also used . . . as meaning an active occupation or profession continuously carried on, and it is in this sense that the word is used in the Act with which we are here concerned.

The business of the Company is its activity or undertaking. In the main that of the appellant is the provision and selling of services and facilities for transportation of passengers and goods. The time and ability of its officers, agents and servants are directed to the provision and selling of these services and facilities and it is that activity or undertaking that constitutes the business of the Company. The business tax here provided for is imposed upon that activity or undertaking.

This being the nature and character of the tax, the question arises: Is it within the ambit of the exemption in clause 16? The phrase "the Canadian Pacific Railway" in that clause, as already defined, includes the main and specified branch lines. These, together with the other property "used for the construction and working thereof," constitute that which "shall be forever free from taxation." In this clause the word "thereof" refers to the phrase "the Canadian Pacific Railway" in the first line of the clause and, therefore, to the physical property of the main and specified branch lines and the phrase "used for the construction and working thereof" determines the quantum of the property included under the exemption.

(1) (1879) 15 Ch. D. 247. (2) [1920] 1 K.B. 193 at 203.

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It is the taxation of the physical property specified in clause 16 that is exempted by the provisions of that clause. That all or any part of this as well as other property would be used in the course of its business does not extend the scope of the exemption. The business of the Company is distinct from the physical property and its separate significance is in no way destroyed by the use of the specified or any other property in the course thereof.

In 1880 taxes were generally spoken of as property or personal taxes. The former included taxation of real and personal property and the latter income and poll taxes. Our attention was drawn to the fact, in the course of the hearing, that at that time both British Columbia and Ontario imposed income taxes. It may be assumed that the business tax as here assessed was not in the contemplation of the parties. They would be cognizant of all of the foregoing taxes and of the efforts of even that day to find new sources of revenue. It was in 1875 that the Legislature of Quebec enacted what was construed as, in effect, a stamp tax upon policies of insurance. *The Attorney-General for Quebec* v. *The Queen Insurance Company* (1).

In these circumstances, if the parties had intended that more than a tax upon the physical property should be exempted, they would have adopted language expressive of that intention. On the contrary the parties, in the language they have chosen, have expressed their intention in terms not sufficiently wide and comprehensive to include a business tax such as provided for in the municipal legislation here under review. It is unnecessary here to discuss whether a business tax is a property or a personal tax, as in either event the language in clause 16 does not include it in the scope of the exemption therein provided for.

In *Canadian Northern Pacific Railway Company* v. *Corporation of New Westminster* (2), the Privy Council, in construing the word "railway" as it appears in the *British Columbia Railway Act 1911*, c. 44 sec. 2, differentiated between the physical property and the whole undertaking of the Company. In the course of the judgment it was stated:

> The things so brought by definition into the term "railway" are all physical things, as the railway itself is. The definition does not bring

(1) 3 App. Cas. 1090; 1 Cam. 222. (2) [1917] A.C. 602.

into "railway" the whole "undertaking" of the company . . . It is used in the clause as denoting a physical thing, of which something else can form part and which can be "operated."

A similar distinction between the physical property and the business of the Company is apparent in the language of clause 16.

The fact that the tax is computed on the floor space does not necessarily affect the character of the tax. In *Smith* v. *Council of the Rural Municipality of Vermillion Hills* (1), the fact that a tax was imposed of so many cents per acre did not make it a land tax or affect its true nature and character as a tax upon the occupant. Moreover, in *City of Montreal* v. *The Attorney-General for Canada* (2), the fact that the tax was computed upon the basis of 1 per cent on the capitalized value of the property did not destroy the nature and character of the tax as one imposed upon the occupant.

While, therefore, the computation of a tax may well be taken into consideration in determining its true nature and character, it is not conclusive. The problem in *City of Halifax* v. *Fairbanks Estate* (3) was quite different from that at bar. It does, however, illustrate the basis for and the nature and character of the business tax. There the owner was made liable by statute for a business tax, though he was not in possession of the premises and did not conduct the business. In my opinion, the Legislature of Saskatchewan imposed a tax here upon the business which is not included in the terms of the exemption provided for in clause 16.

While question No. 2 suggests three bases for the exemption of the business tax and the Legislature adopts but the first, there is no difference in principle involved and I think the answer should be the same with respect to all the three divisions.

Questions 1 and 3 should be answered as stated by my brother Locke. Question 2 should be answered "No" and question 4 "Yes."

I would dismiss the appeal with costs.

(1) [1916] 2 A.C. 569; 2 Cam. 97.
(2) [1923] A.C. 136; 2 Cam. 312.
(3) [1928] A.C. 117; 2 Cam. 477.

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The judgment of Locke and Cartwright JJ. was delivered by:

LOCKE J.:—The answer to be made to the first question depends upon the meaning to be assigned to the words "Canadian Pacific Railway" in clause 16 of the contract entered into between the Crown and George Stephen and his associates dated October 21, 1880, the terms of which were approved and ratifid by c. 1, Statutes of Canada, 1881. That clause reads:

16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company shall be forever free from taxation by the Dominion, or by any Province hereafter to be established or by any Municipal Corporation therein, and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.

By clause 14 of the contract it was provided that the Company should have the right to build branch lines of railway from any point along the main line to any point within the territory of the Dominion and it is contended on its behalf that branch lines built under this authority in what is now the Province of Saskatchewan are included in the expression "Canadian Pacific Railway" and as such entitled to the exemption provided by clause 16. The contention of the Attorney-General is that the exemption is restricted to the railway described in an *Act to Provide for the Construction of the Canadian Pacific Railway*, c. 14, Statutes of Canada, 1874.

Clause 1 of the contract reads:

1. For the better interpretation of this contract, it is hereby declared that the portion of Railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said Railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said Railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway," are intended to mean the entire Railway, as

described in the Act 37th Victoria, cap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

By the Terms of Union under which the Colony of British Columbia entered Confederation the Government of Canada undertook to secure the commencement within two years from the date of Union of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as might be selected east of those Mountains towards the Pacific to connect the seaboard of British Columbia with the railway system of Canada. The statute of 1874, after reciting this term of the arrangement in the preamble, enacted that a railway to be called the "Canadian Pacific Railway" should be made from a point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both of such points to be determined and the course and line of the railway to be approved of by the Governor in Council. The terms in which the proposed railway were described and the references made to the branch railways are of importance. They read:

2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections;—the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior, to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

3. Branches of the said railway shall also be constructed as follows, that is to say:—

First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject

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to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.

In the interval between the passing of this Act and the date of the contract various efforts were made by the Government of Canada to arrange for the construction of the proposed railway by private interests and all had proved abortive. The Government had meanwhile proceeded with the work of construction on what was referred to in the statute of 1874 as the second section, some work had been done in British Columbia, the branch from Emerson to Fort Garry (referred to in the proceedings as the Pembina Branch) had been built and a start had been made on the line from Winnipeg West. In addition, surveys had been made and various decisions made regarding the route of the line for the Western section. By c. 14 of the Statutes of 1879 the *Canadian Pacific Railway Act of 1874* was amended by providing that a branch of the railway should be constructed from some point west of the Red River on that part of the main line running south of Lake Manitoba to the City of Winnipeg, there to connect with the Pembina Branch, and providing that all the provisions of the Act of 1874 with respect to branches of the railway should apply to the branch to be constructed. It was contemplated at this time that the main line of the road would cross the Red River at East Selkirk, proceeding from there in a general westerly and north-westerly direction to Fort Edmonton and thence down through the Yellow Head Pass to Kamloops and thence to the Pacific Coast. The line from Selkirk westerly, however, was not proceeded with, it being decided that instead of proceeding through Stonewall and the country immediately south of Lake Manitoba and thence west the main line should follow the line of settlement further to the south, crossing the Red River at Winnipeg and proceeding westerly a short distance to the north of the Assiniboine River through Portage la Prairie and thence west. The Act of 1874 required the approval of the Governor in Council to the exact site of the proposed line throughout its course and in advance of the date of the contract it had been decided that the Pacific Terminus of the railway should be a point

on Burrard Inlet. The decision, however, to alter the course of the line by proceeding through the Kicking Horse Pass instead of the Yellow Head Pass had not been made until after the contract was made. The construction which preceded the contract was of part of the railway and branches described generally in the statute and the lines so partially completed were ultimately conveyed to the Company.

For the appellant it is urged that the third sentence of clause 1 above quoted is not intended to define the expression "Canadian Pacific Railway" in any part of the contract other than that clause. I find difficulty in appreciating the force of this argument. Clause 1 is designed to define certain terms and sentences 1 and 2 define the Eastern, Lake Superior, Central and Western sections, all of which are thereafter referred to by these designations in the succeeding paragraphs. The first sentence refers to "that part of the Canadian Pacific Railway to be constructed", and again to a point of junction with "that portion of the said Canadian Pacific Railway now in course of construction", and the meaning of the expression there can only be the railway the construction of which is thereafter provided for in the contract. In the second sentence it refers to "the portion of said railway" referring back to the Canadian Pacific Railway to be constructed mentioned in the preceding sentence. There appears then to have been no necessity for defining the words "the Canadian Pacific Railway" in the construction of the first two sentences and the preliminary words of the third sentence indicate to me that it is intended to be read in conjunction with the opening words of the first sentence. The matter would be more clear if, instead of the second sentence ending after the words "Western section", it had continued to the last words of the third sentence, the period after the word "section" being replaced with a comma. I think, however, the first three sentences are to be interpreted as if they read:

> For the better interpretation of this contract it is hereby declared that (the various sections of the railway should be as defined) and that the words "the Canadian Pacific Railway" are intended to mean the entire railway as described in the Act 37 Vict. cap. 14.

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Unless this is the true construction, I cannot understand why the third sentence was included in the clause. While the argument of the appellant is that the remainder of the contract indicates that this was not intended, I have come to a different conclusion.

Clause 3 contains the first of the obligations assumed by Stephen *et al* (described for the purpose of the contract in the last sentence of clause 1 as the company) as to the construction of the road and by that clause they agreed to construct and equip the Eastern section and the Central section, using the designations applied to these respective parts of the line in clause 1 and by clause 4 the times at which this work should be commenced and completed are stated.

Clause 7 declares that the railway constructed under the terms of the agreement shall be the property of the Company and that pending the completion of the Eastern and Central sections the Government "shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed," and in the succeeding sentence the railway, portions of which had been constructed or were to be constructed by the Government and conveyed to the Company, is referred to as the "Canadian Pacific Railway." Here the expression clearly refers to the portions of the "entire railway" referred to in the third sentence of clause 1 which had been or was to be constructed under the terms of the contract. The last sentence of this clause:

> And the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway.

is said to indicate that the meaning of "Canadian Pacific Railway" cannot be restricted in the manner defined in clause 1, since it cannot have been in contemplation that the obligation to maintain, work and run the road should be restricted to the main line and the branches referred to in the statute of 1874. I do not think that this follows. The advisers of the Government who passed upon the form of the contract may well have considered that when the Company built branch lines under the powers given by clause 14 the obligation to supply facilities for traffic im-

posed by section 25(2) of the *Consolidated Railway Act, 1879,* and the powers vested in the Railway Committee by that statute would suffice to protect the public interest.

By clause 8 the Company was required to equip, maintain and efficiently operate the respective portions of the "Canadian Pacific Railway" which were to be conveyed to it by the Crown. By its very terms it is manifest that the expression here refers only to the portions of the road constructed or which were to be constructed by the Crown, as required by the contract.

Clause 9 contains the obligation of the Crown to grant a subsidy of money and land "for which subsidies the construction of the Canadian Pacific Railway shall be completed." Here the reference is to the road to be constructed in accordance with the contract.

Clause 10 contains the obligation of the Crown to grant to the Company the lands required for the right-of-way, stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards, and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such land shall be vested in the Government. The clause further obligated the Crown to admit free of duty certain rails and other material "to be used in the original construction of the railway and of a telegraph line in connection therewith." The expression "Canadian Pacific Railway" does not appear in this clause. However, the railway referred to is that to be constructed under the obligations imposed by the contract partly by the Crown and partly by the Company and not the branch lines which the Company might thereafter undertake, as to which provision for a grant of the right-of-way and other lands required is made by clause 14.

Clause 15 provides that within twenty years from the date of the contract no line of railway shall be authorized by the Dominion Parliament to be constructed south of the "Canadian Pacific Railway" from any point at or near the Canadian Pacific Railway, except such line as shall run southwest or to the westward of southwest, nor to within fifteen miles of Latitude 49. The expression here cannot mean the line of railway to be constructed under the terms of the contract plus such branch lines as might thereafter

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be constructed under the powers contained in clause 14, in my opinion. It was obviously in the contemplation of both parties to the contract that branch lines would be constructed to open up the country to the south of the main line, some of which would extend to the international boundary and connect with railways operating in the United States and such a branch line was built in the course of time from Moose Jaw to North Portal at the boundary. The Canadian terminus of this road being on the international boundary, if the expression "Canadian Pacific Railway" included the branch lines, any point "south of the Canadian Pacific Railway" would be in the United States. Such a construction would render the clause meaningless.

It is by clause 16 that the exemption is provided. It is of importance to note that it is not merely the stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances situate upon the road to be constructed which are exempted but these "required and used in the construction and working thereof:" thus round houses or machine shops required in the operation of the line to be constructed under the terms of the contract might well be situate on a branch line constructed under the powers granted by clause 14. I can perceive nothing in clause 16 itself to indicate that the definition contained in the third sentence of clause 1 is not to apply to the expression "Canadian Pacific Railway."

Clause 17 provides for the deposit of certain of the land grant bonds with the Government which the Company was authorized to issue as security for the "due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof." By the third sentence it was provided as to the bonds so deposited that "so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway" the Government shall not demand payment of the coupons on the bonds. The words here can have no other meaning than the railway to be constructed under the contract. If, as contended, it meant the line to be constructed under the contract, plus such lines as the

Company might at any time in the future choose to construct under the powers contained in clause 14, the date of the expiration of the ten year period would never be ascertainable.

Great stress is laid by the appellant upon the language of section 22 providing that the *Railway Act of 1879*, in so far as its provisions are applicable to the undertaking referred to in the contract and are not inconsistent with the terms of the agreement or contrary to the provisions of the Act of Incorporation to be granted to the Company, shall apply to the "Canadian Pacific Railway." The expression here, it is said, obviously refers to the entire undertaking including branch lines to be thereafter constructed, since it is inconceivable that the statute would be made applicable to a part of the future railway system. I think, however, that this section is to be interpreted as providing that the Railway Act of 1879, with named exceptions, should apply to the operation of the Railway as defined in clause 1. The matter is similarly expressed in sections 2 and 4 of the *Consolidated Railway Act of 1879* referred to in clause 22 which may well have been in this respect patterned upon it. Section 2 provided that sections 5 to 35 "shall apply to the Intercolonial Railway" and section 4 says that sections 34 to 98 "shall apply to the Intercolonial Railway in so far as they are not varied by or inconsistent with the special Act respecting it, to all railways constructed by the Government of Canada and to all railways which have been in or since the said year (1868) or which may be hereafter constructed under the authority of, or made subject to, any special Act passed by the Parliament of Canada and to all companies incorporated for their construction and working." The reference to the Intercolonial Railway is to the physical property and to the railways constructed under special Act by corporations both to the physical property and the companies operating them, and while this latter reference was omitted in clause 22 I think the meaning to be no less certain. If the Act was made applicable to the Railway those operating it would be bound to conform to its terms.

It is, however, further contended on behalf of the appellant that the definition in clause 1 cannot apply since the railway to be constructed under the terms of the contract

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was not that contemplated in the Act of 1874. That statute which defined the proposed route of the railway in general terms as being from a point to the south of Lake Nipissing to extend to the upper and western end of Lake Superior, thence to the Red River, thence to some point between Fort Edmonton and the foot of the Rocky Mountains, and from there to some point in British Columbia on the Pacific Ocean, also provided for the construction of a branch from the point indicated as the proposed Eastern terminus of the railway to some point on Georgian Bay and a branch from the main line near Fort Garry to some point near Pembina on the Southern boundary. This description of the proposed line was of necessity vague since the most desirable route had not then been determined and was accordingly left to be approved by the Governor in Council. When the contract was entered into in 1880 the definition of the proposed Western line contained in section 1 was more specific, though the final route had not then been decided. The line from Fort Garry to Pembina had been built and while I think it is not entirely clear whether the extension from Fort Garry to Selkirk, authorized by the amendment of 1879, was then completed, the report of Sandford Fleming to Sir Charles Tupper of April 8th, 1881, shows the entire line from Selkirk to Emerson as under contract. The definition in the third sentence of clause 1 would thus include the Pembina Branch from Emerson to Fort Garry if the description in the statute of 1874 is taken, and the extension north to Selkirk if what was intended was the Act of 1874, as amended by the Act of 1879. The so-called Georgian Bay Branch, however, it is said, had been abandoned prior to the date of the contract and it is said that this indicates clearly that the description in clause 1 of the contract did not apply. On the assumption that we are entitled to examine the available evidence, I have read the documents filed in support of the contention that the intention to construct the Georgian Bay line had been abandoned prior to the time of the contract and I am not satisfied that this is so. A contract had been let for the line but, with the exception of a comparatively insignificant amount of

work done under it, it was not proceeded with and the Crown terminated this contract. That the project itself was abandoned was not, in my opinion, proven.

It is further said for the appellant that, if, as contended on its behalf, it is not clear that the phrase "Canadian Pacific Railway" in clause 16 applies not only to the line to be built under the terms of the contract but also to the branch lines constructed under the powers contained in clause 14, then extrinsic evidence is admissible to explain the meaning of the term. A large number of documents were by consent filed, reserving to the Attorney-General his right to object to their admissibility. Assuming, but without deciding, that any of the documents filed are admissible as an aid to construction, I have examined all of them and do not find that doing so assists the contention of the appellant. It must be said on this aspect of the matter that perhaps the strongest argument to be made in favour of the appellant's contention is that to one familiar with Western Canada it seems highly improbable that those undertaking to construct this vast railway work the success of which would undoubtedly depend upon the development of the country from a few miles east of the Red River to the foothills of the Rockies, which would of necessity require the construction of numerous branch lines, would have been satisfied with a tax exemption restricted to the main line only and the Pembina and Georgian Bay branches. It would be apparent to anyone familiar with the country to be traversed that very little freight traffic could be expected to originate in the territory lying between Lake Superior and the eastern limit of the Prairies in Manitoba and between the foothills of the Rockies and the Pacific Coast for many years to come. These are matters of common knowledge and, as one would expect, the question of tax exemption was brought up during the early attempts to obtain the construction of the road which Canada had obligated itself to construct under the Terms of Union with British Columbia. Thus in 1872 two companies, the Inter-Oceanic Railway Company of Canada and Canada Pacific Railway Company were incorporated, the private Acts constituting them each containing a provision that the buildings, right-of-way, permanent way, rolling stock and earnings of the company and all its

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properties, except the lands granted, should be exempt from taxation in any province thereafter to be constituted from the territory of the Dominion for fifty years after the completion of the railway under any law, ordinance, or by-law of any provincial, local or municipal authority. Neither of these companies proceeded with the matter and in a memorandum transmitted by Sir John A. Macdonald to Duncan MacIntyre which, we are told was prepared in the summer of 1880, what was called a confidential project for the construction of the Canadian Pacific Railway was submitted which proposed a subsidy of varying amounts per mile of construction from Nipissing to Thunder Bay and from Red River to Kamloops, $20,000,000. in cash and a land grant. MacIntyre on behalf of himself and his associates who included George Stephen and others who finally became parties to the contract, in an undated reply addressed to Sir John, said in part:

> Among the points not referred to in the memorandum we may mention that of taxation from which we think the proposed line should be free.

Later, in a document dated September 14th, 1880, produced from the possession of the railway company and called "Heads of Arrangement" details of a plan for the construction of the Canadian Pacific Railway are set out. While these provided for a subsidy in money of $25,000,000, a land grant of 25 million acres, the admission free of customs duties of certain materials to be used in the construction of the road, no mention is made of any tax exemption. In my opinion, if any inference is to be drawn from these documents, it is that the matter of exempting the undertaking from taxes to be imposed by the Dominion and by any province to be thereafter constituted out of the Northwest Territories, was considered and deliberately limited to that part of the line the construction of which was provided for by the contract and those portions built or to be built by the Crown and conveyed to the Company. It seems to me to be impossible to draw any other inference than that the limitation of the exemption to the line as defined in clause 1 was the real agreement of the parties. In a matter of this moment, I cannot believe that the legal advisers of Stephen et al who passed upon the contract could have approved it in its present form if the real

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agreement was that now contended for by the appellant.

We are also referred to what is an undoubted fact that in the period between 1880 and 1908 the respective governments of the Northwest Territories and of the Province of Saskatchewan apparently considered that the exemption was of both the main line and the branch lines constructed under clause 14 and made no attempt to impose or authorize the imposition of taxation and that the late Sir Frederick Haultain and the late Mr. Walter Scott were of that opinion. However, neither the Legislative Assembly of the Northwest Territories or the Legislature of Saskatchewan or that Province authorized the contract, nor were they or their respective Governments parties to it and their conduct cannot be relied upon as an aid to construction.

The first question cannot, in my opinion, be answered by a simple affirmative or negative. Clause 16 exempts the stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working of the Canadian Pacific Railway. Question 1 asks if the same properties "used for the working of the branch lines of the Canadian Pacific Railway situated in Saskatchewan" are exempt. There may well be properties of the description mentioned which are "required and used for the working" of the main line which are also used in part for the working of the branch lines constructed under clause 14. This would undoubtedly be so in respect to the rolling stock and may refer to a large number of other properties and works situate upon branch lines of this description. No statement as to this appears in the reference which would enable us to determine what properties are in fact exempt. Having come to the conclusion that the exemption in the Province of Saskatchewan is restricted to the main line and the named branches the answer to be made should be qualified accordingly.

The second question submitted is as to whether clause 16 of the contract exempts the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway, based on either the area of the land or the floor space of buildings used, the rental

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value of the land and buildings used or their assessed value and which is not made a charge upon such land or buildings. By section 24 of the *Saskatchewan Act* (4-5 Edw. VII, c. 42) which constituted the Province it is provided:

> The powers hereby granted to the said Province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to Chap. 1 of the Statutes of 1881, being an Act respecting the Canadian Pacific Railway Company.

The language of section 1 of the Act of 1881 is that the contract:

> is hereby approved and ratified and the Government is hereby authorized to perform and carry out the conditions thereof according to their purport.

The question is thus not the construction of a provision in a statute but in a contract to which the Province was not a party. The exemption granted by clause 16 is as to the named properties "required and used for the construction and working" of the railway. The benefit of that exemption was vested in the Canadian Pacific Railway Company by section 4 of the letters patent of incorporation and remains in it so long as the company continues to be the owner or operator of the property and uses it for the defined purpose. The position adopted on behalf of the Province of Saskatchewan put bluntly is this: that while neither the physical property defined by clause 1 nor the Canadian Pacific Railway Company in respect of its ownership of that property is liable to taxation, so-called business taxes may be levied upon the Company in respect of its business of operating it. While the language of clause 16 is that the property shall be "forever free from taxation" by any province thereafter to be established, it is said that to tax the Company in respect to the *use* of the property (itself a term of the exemption), is not to tax the property and that that alone is prohibited. The question, as submitted, states that the business tax levied by any of the three methods mentioned will not be made a charge upon the land or buildings. I cannot understand what possible difference this can make. Municipal taxes may be and at times are declared to be a lien upon the property in respect to which they are levied, but this is merely a provision to secure their collection: in determining the nature of this tax, the fact that there is no charge upon the land or buildings in respect of it appears to me irrelevant.

By the *City Act 1947* the imposition of a business tax was authorized and by amendments made by c. 33 of the Statutes of 1948 this was made to apply to every railway company owning or operating a railway in Saskatchewan (sec. 20 (*a*)). Section 443 which authorized the imposition of the tax was also amended in that year by the addition of subsection 5(*a*) which reads:

> A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2) shall apply.

The case has been argued on the footing that the provisions of this statute, in so far as they affect the taxation of the business of a railway, do not differ in substance from like provisions in the *Village Act, 1946,* the *Rural Municipalities Act, 1946,* the *Local Improvement District Act, 1946,* and the *Town Act 1947,* all as amended, which are referred to in the fourth question and Questions 2 and 4, may thus be dealt with together.

The *City Act,* by section 2(4), defines the term "business" as including any trade, profession, calling, occupation or employment. Part VII of the statute under the heading "Assessment and Taxation" provides by section 441 that not later than a named date the assessor shall assess: in respect to every parcel of land in the City, *inter alia,* the registered owner or the owner under a *bona fide* agreement for sale. Subsection 2 of section 441 requires the assessor to assess every person engaged in mercantile, professional or any other business in the City, with certain named exceptions. By section 442 the right-of-way of a railway owned by a railway company or occupied by it if owned by others and exempt from taxation is to be assessed at an amount not exceeding $6,000 per mile.

Section 444 provides that no person who is assessed in respect of a business shall be liable to pay a licence fee to the City in respect of the same business. Section 443 which declares the basis of the assessment for business tax commences:

> Business shall be assessed in the following manner:

The assessor is directed to fix a rate per square foot of the floor space of each building used for business purposes

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and if the business is carried on wholly or in part outside of any building a rate per square foot of the yard space used. Subsection 4 directs the entry on the assessment roll of each of the persons who as partners, joint tenants, tenants in common or by any other kind of joint interest are "the owners or occupants of real property liable to taxation hereunder." Section 479 directs that the municipal and school taxes of the City shall be levied upon (1) lands, (2) businesses, and (3) special franchises. Section 485 provides that the owner of a building who is liable to assessment in respect of business carried on therein shall in addition to his liability for taxes levied in respect of the land and building be liable for the business tax in respect of such business. By section 504, the first of a number of sections which appear under the heading "Taxes", the assessor is directed to prepare a tax roll on or before the 1st day of October in each year which shall contain the name of every person assessed and:

(2) (c) the nature and description of the property in respect of which he is assessed.

While section 479 refers to the tax levies as being upon lands and businesses, this must be read together with other sections of the statute which in terms make it clear that as regards the owner of land the tax is assessed against and levied upon him and not upon the land. As to the business tax, while the opening words of section 443 read that "business" is to be assessed, it is the individual carrying on the business upon whom the assessment is made and the tax levied and the true nature of the tax is shown to be a tax in respect of the occupation of property for the purpose of carrying on the business.

Clause 16 of the contract does not grant an absolute exemption of the stations, station grounds, buildings and other property referred to but only such as are used for the construction and working of the railway and, in my opinion, if buildings which fell within the description ceased to be used by the owner or operator of the property for such purposes the exemption would be lost. Since, therefore, it is the buildings, station grounds, yards and other property when used for these purposes which are declared to be forever free from taxation by the Dominion or by

any province thereafter to be established, I think it cannot be said that a tax upon the owner in respect of the use of the property for the purpose of working the railway is not squarely within the exemption. To construe the clause otherwise is to say that the properties mentioned are exempt from all taxation *when* used for the defined purpose, but *if* they are so used that the owner may be taxed in respect of that use. I am unable to so construe the clause.

The third question relates to the liability to assessment and taxation of the Canadian Pacific Railway Company in respect of its real estate situate upon its branch lines constructed under the powers contained in clause 14. While the first question as to the branch lines of the railway speaks of these lines generally, we were informed upon the argument that the Company did not contend that properties exempted by clause 16 situate upon branch lines constructed under powers other than those contained in clause 14 were exempt. I think this admission was not intended to extend to properties of the kind referred to situate upon such lands if they were used either for the construction or operation of the main line. The answer to the first question, as thus restricted, answers the third.

I would answer the questions submitted as folows:—

1. No, except such properties, if any, real or personal, enumerated in clause 16, situate upon the branch lines in Saskatchewan as are entitled to the benefit of the exemption from taxation as being required and used for the construction and working of the railway described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14.

2. Yes, as to the business carried on as a railway upon or in connection with the railway as described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14, and upon such other properties, if any, real or personal, of the Company situate upon its branch lines in Saskatchewan as are entitled to the benefit of exemption from taxation under clause 16 as being required and used for the construction and working of that portion of the line referred to in the said sections of the statute.

3. Yes, except in respect of such real estate, if any, situate upon branch lines constructed pursuant to clause 14 of the contract as is entitled to the benefit of the exemption from taxation under clause 16 as being

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required and used for the construction and working of the railway as described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14.

4. (*a*) No.

(*b*) Yes, subject to the limitation stated in the answer to Question 2.

I would allow the appellant one-half of its costs of this appeal.

Appeal allowed in part; appellant allowed one-half of its costs.

Solicitors for the appellant: *Hamilton & Knowles.*

Solicitor for the respondent: *J. L. Salterio.*