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*Oct. 27, 28, 31, Nov. 2, 3.
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*Feb. 27.

THE RURAL MUNICIPALITY OF NORTH CYPRESS (PLAINTIFF).... } APPELLANT;

AND

THE CANADIAN PACIFIC RAILWAY COMPANY (DEFENDANTS).. } RESPONDENTS.

THE RURAL MUNICIPALITY OF ARGYLE (PLAINTIFF)..... } APPELLANT;

AND

THE CANADIAN PACIFIC RAILWAY COMPANY (DEFENDANTS). } RESPONDENTS.

THE CANADIAN PACIFIC RAILWAY COMPANY (DEFENDANTS). } APPELLANTS;

AND

THE SPRINGDALE SCHOOL DISTRICT, NO. 23, OF THE NORTH-WEST TERRITORIES (PLAINTIFF) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR MANITOBA.

Assessment and taxation—Constitutional law—Exemptions from taxation—Land subsidies of the Canadian Pacific Railway—Extension of boundaries of Manitoba—Construction of statutes—B. N. A. Acts 1867 *and* 1871—33 *V.*, *c.* 3 (*D.*)—43 *V.*, *c.* 25 (*D.*)—44 *V.*, *c.* 14 (*D.*)—44 *V.*, *cc.* 1 *and* 6 (*3rd Sess.*), (*Man.*)—*Construction of Contract—Grant in præsenti.—Cause of action.—Jurisdiction.—Waiver.*

The land subsidy of the Canadian Pacific Railway Company authorized by the Act, 44 Vict. ch. 1 (D.), is not a grant *in præsenti* and, consequently, the period of twenty years of exemption from taxation

*PRESENT:—Sir Elzéar Taschereau C.J., and Sedgewick, Girouard, Davies and Nesbitt JJ.

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of such lands provided by the sixteenth section of the contract for the construction of the Canadian Pacific Railway begins from the date of the actual issue of letters patent of grant from the Crown, from time to time, after they have been earned, selected, surveyed, allotted and accepted by the Canadian Pacific Railway Company.

The exemption was from taxation "by the Dominion, or any province hereafter to be established or any municipal corporation therein".

Held, that when, in 1881, a portion of the North-West Territories in which this exemption attached was added to Manitoba the latter was a province "thereafter established" and such added territory continued to be subject to the said exemption from taxation.

The limitations in respect of legislation affecting the territory so added to Manitoba, by virtue of the Dominion Act, 44 Vict. ch. 14, upon the terms and conditions assented to by the Manitoban Acts, 44 Vict., (3rd Sess.), chs. 1 and 6, are constitutional limitations of the powers of the Legislature of Manitoba in respect of such added territory and embrace the previous legislation of the Parliament of Canada relating to the Canadian Pacific Railway and the land subsidy in aid of its construction.

Taxation of any kind attempted to be laid upon any part of such land subsidy by the North-West Council, the North-West Legislative Assembly or any municipal or school corporation therein is Dominion taxation within the meaning of the sixteenth clause of the Canadian Pacific Railway contract providing for exemption from taxation.

Per Taschereau C. J.—In the case of the Springdale School District, as the whole cause of action arose in the North-West Territories, the Court of King's Bench for Manitoba had no jurisdiction to entertain the action or to render the judgment appealed from in that case and such want of jurisdiction could not be waived.

APPEALS from the judgments rendered by the Court of King's Bench for Manitoba, in three cases consolidated for hearing by way of appeal, (1) affirming the udgments of the trial judge by which the actions of the plaintiffs, the Municipality of North Cypress and the Municipality of Argyle, were respectively dismissed, and reversing the judgment of the said trial judge by which the action of the said plaintiff, the Springdale School District, had also been dismissed

(1) 14 Man. Rep. 382.

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and ordering in the latter case that judgment should be entered therein in favour of the said plaintiff for $125 with costs of suit on the King's Bench scale, but allowing no costs of the appeals taken in any of said consolidated cases.

The actions were instituted for the purpose of determining the time of the commencement of the twenty years' exemption of the company's land grant from taxation under clause 16 of the contract for the construction of the Canadian Pacific Railway, entered into between the Government and the company on 21st October, 1880, and ratified by the Act 44 Vict., ch. 1, (D.) assented to on the 15th February, 1881, and the determination of the powers of taxation affecting the land subsidy in aid of the construction of the Canadian Pacific Railway. Three separate suits, in the Court of King's Bench for Manitoba, were brought for the recovery of taxes upon portions of the land grant of the railway company, in which the two municipal corporations in Manitoba and the school district above mentioned were plaintiffs, the Canadian Pacific Railway Company being defendants in all the cases. The jurisdiction of the court over the case from the North-West Territories was not objected to. The questions of law and fact in dispute were almost identical in each case, and formal judgments were entered for the defendants. The cases were then taken, by way of appeal, to the full court, where, by the consent of all parties, the three suits were consolidated.

The municipality of North Cypress is situated in Manitoba wholly within the main line belt provided for in section 11 of the contract for the construction of the Canadian Pacific Railway, and the municipality of Argyle is also situated in Manitoba entirely outside of this main line belt but within a reservation set apart by the Dominion Government by order in coun-

cil dated 3rd November, 1882, for the purposes of the contract. Both municipalities are in the territory which, at the time of the contract, formed a part of the North-West Territories and which was added to Manitoba in 1881, shortly after the contract, by the joint legislation of the Dominion and Manitoba (1) and became a part of Manitoba, by proclamation, on the first day of July, 1881. The Springdale School District is situated in the North-West Territories and is within the said main line belt.

The principal issues upon the present appeals were whether or not certain of the subsidy lands granted to the company, within twenty years of the institution of the actions, had become liable to assessment and taxation by the corporations within the limits of which they were respectively situated, by reason of the expiration of twenty years from the date of the contract for the construction of the railway, or by reason of the expiration of the period of twenty years from the time of the selection and setting apart of certain unpatented lands as part of such land subsidy earned by the company under the said contract and to which they were then entitled to a grant by letters patent from the Crown.

The railway company contended that all the lands were exempt from assessment and taxation for twenty years from the actual date of the issue of letters patent of grant from the Crown, under the sixteenth clause of the above mentioned contract, which is as follows:—

"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

(1) 44 Vict., ch. 14 (D.) and 44 Vict. (3rd Sess.), chs. 1 and 6 (Man.)

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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."

In respect to the lands situated in Cypress and Argyle, those municipalities being part of the territory added to Manitoba after the ratification of the contract, the company also claimed exemption under the joint legislation in 1881, 44 Vict., 3rd sess., ch. 1, (Man.), which provided that such "increased limits shall be subject to all such provisions as Parliament has enacted or may hereafter enact respecting the Canadian Pacific Railway and the lands to be granted in aid thereof;" and the Act 44 Vict., ch. 14 (D.), assented to 21st March, 1881, extending the boundaries of Manitoba by the addition of territory which had, until then, been part of the North-West Territories, upon the terms and conditions mentioned in 44 Vict., ch. 1, 3rd sess., (Man.), and the Act 44 Vict., ch. 6, 3rd sess., (Man.), assented to on the 25th May, 1881, and brought into force by proclamation 1st July, 1881, enacting that the boundaries of the province should be extended as provided by the Dominion Act and subject to the terms and conditions therein contained, and that the said Act and all the enactments thereof should have the force and effect of law in Manitoba so increased as aforesaid.

The plaintiff municipalities contended that, even if the position taken by the railway company was sound, the exemption did not cover the taxation by Manitoba, a province established before the contract was made.

The material questions raised upon this appeal are stated in the judgments now reported.

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Howell K. C., and *Riddell K. C.*, for the appellants, the Rural Municipalities of North Cypress and Argyle and for the respondent, the Springdale School District.

C. Robinson K. C., *Ewart K. C.*, *Creelman K.C.* and *Phippen* for the Canadian Pacific Railway Company, respondents and appellants.

The CHIEF JUSTICE.—In the Springdale case the appeal should, in my opinion, be allowed without costs. The action should have been dismissed *in limine* by the original court *ex proprio motû* for want of jurisdiction. It is an action by which the Manitoba courts are asked to declare that a lot of land situate in the North-West Territories, outside of the territorial limits of the said courts, is and will be in the future subject to taxation for school purposes under the laws of the North-West Territories. That is the first and fundamental conclusion of the action. It might as well have been brought at Hong Kong. And the jurisdictional objection could not be waived. The action cannot be treated as a mere personal one for debt. The judgment for $125 (the amount claimed was $27) necessarily implies that the land in question is, and will be until sold, liable to taxation. That is why, probably, the costs on the King's Bench scale are granted. The controversy between the parties is not at all as to the amount claimed, but as to the liability or non-liability of this land to taxation.

In the other two cases I agree that the appeals should be dismissed. I would have done so at the hearing without calling on the respondents. The appellants' contentions are untenable. I do not see that I can usefully add anything to the cogent reasoning of the Chief Justice for Manitoba. I would say, no costs to either party as in the court below.

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SEDGEWICK J.—I agree in the reasoning of my brother Davies.

GIROUARD J.—I think the Canadian Pacific Railway Company has a right to judgment in its favour in the three cases. Without referring to all the statutes and orders in council which have been cited at bar and commented upon during five days, I propose to base my opinion upon clause 16 of the contract, sanctioned by the Parliament of Canada, and the statutes which provide for the extension of the boundaries of Manitoba and the constitution of the territories in force at the time of the passing of the contract.

Clause 16 of the contract declares:

> 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 courts below held that the taxes demanded by the plaintiffs, whether school or municipal, were "taxation" by a "municipal corporation" within the meaning of the above clause and since our decision in *The Canadian Pacific Railway Co.* v. *The City of Winnipeg* (1), I submit that the soundness of this conclusion is not open to any doubt.

A great deal of stress has been laid upon the expressions in clause 16 "by any municipal corporation therein." It is contended that they mean that the exemption from taxation applies only to corporations established in any new province organized in the territories. If this contention be well founded, it does seem

(1) 30 Can. S.C.R. 558.

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clear that the Manitoba municipalities at least cannot dispute the right of exemption; for a municipal corporation situated in the extended territory of Manitoba is exactly in the same position as a municipal corporation in a newly organized province in the territories. But is that the true meaning of the first part of clause 16? Did Parliament intend to give less power to a new province than to the provisional government? It cannot be so. It seems to me that the reference to any future province or "any municipal corporation therein" was hardly necessary, as the right of exemption was clearly secured by the words "shall be forever free from *taxation by the Dominion.*" This provision comprises first exemption from any tax imposed upon the property therein described directly by the Parliament of Canada, whether in the Territories or in the old provinces, for by the B. N. A. Act, s. 91, par. 3, the Parliament of Canada may resort to direct taxation upon lands or other property throughout the whole Dominion, although it has not done so yet. It means *a fortiori* that in the Territories owned and controlled by the Dominion, no tax of any kind whatever can be exacted from the Canadian Pacific Railway Co. by the Dominion Parliament or any local government organized or to be organized by that Parliament, whether provisional or provincial, or by any municipal corporation therein, for what the Dominion cannot do directly cannot be done indirectly by any delegated authority. The latter part of clause 16, however, removes in my mind any possible doubt in the matter,

> and the lands of the company in the North-West Territories * * shall also be free from such taxation, etc.

"Such taxation" must mean any kind of taxes imposed by the Dominion or its delegated authority upon the land grants in the North-West Territories.

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The courts below held that by clause 16 the Parliament of Canada did not intend to make a statutory grant *in præsenti*, but only a Crown grant by patent *in futuro*. The decision of this court in *The Rural Municipality of Cornwallis* v. *The Canadian Pacific Railway Co.* (1), and also the recent judgment of the Privy Council in the *Swamp Lands Case* (2) of Manitoba confirming the judgment of this court (3)—a much stronger case than the present one)—fully support this contention.

The Parliament of Canada, having first sanctioned the above contract, subsequently, on the petition of the Legislature of Manitoba, enlarged the Province of Manitoba by the addition of a large territory which until then had been part of the North-West Territories; but in face of the limitation expressly assented to by the Legislature of Manitoba, it cannot seriously be contended that this new territory, like the old one granted when it became a province, was subject to the same regulations and provisions and is free from past restrictions affecting the same. The enlargement is declared to be subject to the following condition by both the Parliament of Canada and the Legislature of Manitoba:

> The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway, and the lands to be granted in aid thereof.

This point has also been decided by this court in favour of the contention of the Canadian Pacific Railway Company in *The Rural Municipality of Cornwallis* v. *The Canadian Pacific Railway Co.* (1).

I therefore agree with all the judges in the courts below that the actions of the Municipality of North

(1) 19 Can. S. C. R. 702. (2) [1904] A. C. 799.
(3) 34 Can. S. C. R. 287.

Cypress and the Municipality of Argyle should be dismissed with costs.

I cannot see that a different conclusion can be arrived at in the other case of the Springdale School District No. 263 of the North-West Territories. I must confess that I fail to appreciate the force of the reasoning of Chief Justice Killam, concurred in by Richards J. I am rather inclined to agree with Mr. Justice Dubuc that the constitution previously granted to the Territories does not affect the case. It is true that before the Canadian Pacific Railway Act was passed, namely by 38 Vict. ch. 49, ss. 7 and 11, 40 Vict. ch. 7, s. 3, 43 Vict. ch. 25, s. 9, the council and the assembly of the Territories, respectively, were authorized to establish a system of local taxation for the support of schools. But each of the above statutes contains a proviso which, it seems to me, is a complete answer to the contention of the Springdale School District:

> Provided also that no ordinance to be so made shall be inconsistent with or alter or repeal any provision of any Act of the Parliament of Canada * * which may now, *or at any time hereafter, expressly* refer to the said Territories.

This reservation was a concession made to the Territories which must be respected, but not beyond its clear terms. I cannot conceive that until provincial autonomy be granted under the Imperial statutes to the Territories, or any part thereof, that the Parliament of Canada cannot amend, alter, or even repeal in whole or in part, any provision passed for its government; but by the above proviso the Parliament undertook to do so only by *express* enactments. Possibly the exemption from taxation in the Territories might be binding even if they had not been expressly mentioned, but it is not necessary to examine this point. The proviso was wisely inserted as a warning that the express orders of Parliament were to be the supreme law as

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long as the Territories remain part of the public domain of Canada, without provincial autonomy, which has not been granted to this day. They have not thus interpreted the proviso, although the exemption clause from taxes in favour of the Canadian Pacific Railway refers expressly to the Territories, and they, or their creatures, must abide the consequences and cannot even invoke surprise, good faith or unfairness.

For these reasons I am of opinion that the appeal of the municipalities of North Cypress and of Argyle should be dismissed with costs, and the appeal of the Canadian Pacific Railway Company against the Springdale School District should be allowed with costs.

DAVIES J.—Two of these appeals raised the question of the right of municipalities in the Province of Manitoba, as at present established, to tax the lands granted by the Dominion to the Canadian Pacific Railway Company under its contract in aid of the construction of its railway across the continent.

The question in these two appeals, of course, only applies to that part of the present territory of Manitoba taken in the year 1881 from the North-West Territories and added to the then existing Province of Manitoba by concurrent legislation of the Dominion and the province enacted by virtue of the Imperial Act, the "British North America Act, 1871."

The legislation taking this territory out of the North-West Territories and adding it on to the Province of Manitoba was passed by the Dominion and the province in the year 1881, a very short time after the passing of the Canadian Pacific Railway Act by the Dominion, 44 Vict. ch. 1, for the construction of the railway.

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The third section of the B. N. A. Act, 1871, provided that the Parliament of Canada might,

with the consent of the legislature of any province of the Dominion, increase, diminish, or otherwise alter the limits of such province upon *such terms and conditions* as may be agreed to by the said legislature.

The terms and conditions agreed to and incorporated in the legislation of the Dominion and the province extended to the new territory added to Manitoba all Dominion legislation which had been since the creation of Manitoba made applicable to it and then further provide that:

The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

Before the legislation passed, the Dominion Government had entered into the contract for the construction of the Canadian Pacific Railway, and by statute, 44 Vict. ch. 1, sec. 1, that contract had been "ratified and approved" and the Government

authorized to perform and carry out the conditions thereof according to their purport.

By sect. 2 a charter was authorized to be granted as therein prescribed and which on the conditions therein mentioned being complied with was to

have the force and effect as if it were an Act of the Parliament of Canada.

The contract so ratified and approved was made a schedule to the Act and in accordance with clause 21 it had annexed to it, as a schedule, the corporate powers, franchises and privileges of the company which were embodied in the charter subsequently granted by the Governor and which was to have "the force and effect of an Act of Parliament."

The 16th clause of the contract, as to the meaning of which there has been so much argument and on the

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construction of which so much depends, reads as follows:

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.

Mr. Riddell and Mr. Howell on behalf of the municipalities contended:—First, that the terms and conditions on which the increased territory had in 1881 been added to Manitoba, were not and could not be limitations upon its constitutional powers as a province of which the power of taxation of all lands within its bounds was one; that the Province of Manitoba was established when it was originally formed in 1870 and was not established within the meaning of the words used in the 16th clause of the contract when the additional territority was added to it. Secondly, that if there were such limitations the legislation of the Dominion Parliament ratifying and approving of the Canadian Pacific Railway contract and authorizing the issue of the charter was not an enactment "respecting the Canadian Pacific Railway and the lands to be granted in aid thereof" within the meaning of these words in the terms and conditions on which the increased territory was added to Manitoba and that if even it was such an enactment, under the proper construction of clause 16 of the contract, the period of exemption from taxation had expired as the meaning of the words "twenty years after the grant thereof from the Crown" meant either twenty years after the contract was passed virtually granting these lands or after the lands had been earned under the contract or after they had

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been earned and allotted and agreed to be accepted by the company "as lands fairly fit for settlement" as provided for by the contract. They enforced their argument by many illustrations shewing that the word "grant" was used in many sections of the contract in a general and popular sense as distinguished from the technical one of the issue of the letters patent.

A careful consideration, however, of all these arguments and of the contract itself, together with the circumstances under which it was granted and the objects sought to be attained as set out in the preamble of the Act, convince me that my first impression was correct and that the twenty years exemption from taxation of the 25,000,000 acres of land to be given in aid of the construction of the railway was to begin from and run after the issuing of the letters patent granting the lands, from time to time, after they had been earned, selected, surveyed, allotted and agreed to be accepted as complying with the general character of the lands the company was entitled to receive. I can discover no such words of present grant in the statute ratifying the contract as are to be found in the American statutes, decisions respecting the effect of the language in which were cited from the American reports as applicable to this contract and statute. I fail to see anything to justify us in putting an arbitrary construction upon the words in this section different from that which, it seems to me, in their ordinary and primary meaning, they bear. Certainly in the parts of this Dominion with which I am most familiar, the words "grant from the Crown" when used or spoken of in statutes or otherwise mean the letters patent from the Crown. In the absence therefore of any words of present grant I am compelled to reject the suggestion of the date or ratification of the contract as the period from which the exemption was to run. Nor

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am I able to see how any of the other alternative suggested periods can be accepted as fairly complying with the language of the statute. If it had been intended that any of these uncertain suggested periods were intended under the words "grant from the Crown" surely it was easy to say so. In my opinion, there was so much uncertainty with respect alike to the earning and selection of these lands to be granted, involving in the case of every surveyed alternate section a determination of the question as to whether the lands were fairly fit for settlement, questions, as I understand, not as yet finally determined as between the Government and the company that I do not think any one or all of these periods ever entered into the minds of the contracting parties or of Parliament as being the date from which the exemption was to run, or that any other date was thought of than that in my judgment expressed, namely, that of the grant or letters patent.

In all the cases before us now for consideration the letters patent had been issued before the controverted tax or assessment was levied.

No question therefore arises on these appeals whether or not the interest of the Canadian Pacific Railway Company could be assessed and taxed *before* the letters patent had issued but *after* the lands had been earned, surveyed and allotted by orders in council for the company, with its assent, as lands fairly fit for settlement, and whether or not by delay in taking out the letters patent the company could extend the period of exemption. Of course, if the clause operates as an exemption *before and up to the time of* the issue of letters patent and for twenty years after, there is an end to any question. But I do not desire to be understood as expressing any opinion upon these points which are not now before us. Under the 125th section of

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the British North America Act, 1867, no lands while they "belonged to Canada" were liable to taxation and there would be no reason for making any special provision in the contract for that period. Whether they could legally be said to belong to Canada after they had been earned and assigned to the Canadian Pacific Railway Company by orders in council so as to remain exempted under that 125th section is a question I give no opinion upon. In the cases before us the lands have ceased to belong to Canada, and their exemption from taxation must depend solely upon the construction to be given to the 16th section of the contract. The reasoning of this court in the *Manitoba Swamp Lands Case* (1), the judgment in which was approved of by the Privy Council on similar reasoning (2), strengthens my conviction of the soundness of my construction of this 16th clause.

As regards the limitations placed upon the legislative powers of Manitoba with respect to the territory added to that province by the legislation of 1881, I have no doubt that the terms and conditions on which it was provided in the 3rd section of the B. N. A. Act of 1871, that the Parliament of Canada might with the consent of the legislature of any province agree for the increase or alteration of the limits of such province were not to be confined to small matters financial or otherwise as between the province and the Dominion but were broad enough to cover any existing legislation already applicable to the territory to be added to the province and were, as used in the legislation adding the territory to Manitoba, intended to embrace and did embrace the Dominion legislation relating to the Canadian Pacific Railway and the lands granted in aid of its construction. I fully agree with the Chief Justice of the court below that it was a constitutional limita-

(1) 34 Can. S. C. R. 287. (2) [1904] A. C. 799.

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tion upon the powers of the provincial legislature *quoad* this added territory. The extent of such limitation is of course to be determined by its language.

Mr. Riddell argued with great force that even granting such a construction to be correct it could not be applied further or beyond the three specified classes of taxation mentioned in the 16th clause of the section, namely, by the Dominion, by a province thereafter to be established, or by any municipal corporation therein, and that the words "such taxation" refer to these three classes only. I am disposed to agree with him that the word "therein" has reference to a municipal corporation in a province thereafter to be established and that the words "such taxation" clearly refer to the three antecedent specified classes. If that is so, then the exemption can only be upheld by holding that so far as the added territory was concerned the Province of Manitoba was established with respect to it when and at the time it was added to the old province. I have no difficulty in accepting that as a reasonable construction and the more so as its rejection would operate to defeat the plain, clear and obvious intention of the Dominion Parliament and the Manitoba Legislature. Beyond doubt, as Mr. Robinson put it in his argument, the Province of Manitoba as it now exists was not established in 1870 nor before 1881. It was established, as it now exists and is bounded, in 1881. The Province of Manitoba was created in 1870 but its area then was comparatively small and circumscribed, a very large part of the present area of the province was added to it in 1881, and so the whole province as it now stands may fairly and reasonably be said to have been established in 1881. Whether or not apter language might have been chosen I am not prepared to say.

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The first part of the section makes the railway, its station grounds, buildings, yards, rolling stock and appurtenances used and required for the construction and working thereof, free from the three specific classes of taxation forever. The result of the adoption of Mr. Riddell's contention would be not only to subject the railway and its appurtenances within the added territory, which under the contract was to be free from taxation forever, to such taxation as Manitoba as enlarged and added to might forever after see fit to levy, but also to withdraw from the twenty years contractual taxation exemption such lands within the added territory as were granted in aid of the construction. It is said and truly said that we have nothing to do with results in construing a statute and that is of course, in a sense, correct. But in putting a construction upon such instruments of government as these Imperial, Dominion and provincial statutes, we are bound not to ignore plain obvious facts and conditions known to all men, and if two constructions are open one of which leads to a plain repudiation of a contractual exemption from taxation created by Government and the other does not, we are more than justified in accepting the latter

Manitoba, therefore, in my opinion, having asked for an addition of lands to its territories. a block of which lands were at the time subject to be exempt from all taxation by any authority having power to tax it for a specified period, and having agreed to accept the added territory subject to the then existing Dominion enactments regarding these lands, is bound by the terms of this 16th clause as being one of those enactments. Being so bound constitutionally, an interpretation must be given to the clause which, while consistent with its language, carries out the object and intent with which it was entered into. This being so, all subsequent legis-

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lation by the Legislature of Manitoba, even if broad enough in the language used to cover the exempted block, must be read and construed subject to the exemption and not as an attempt to repudiate or escape from a constitutional limitation the province had openly accepted.

There remains only the question respecting the power of the Springdale School District within the North-West Territories to tax the lands of the Canadian Pacific Railway Company within its bounds. That again depends upon the meaning to be given to the words "taxation by the Dominion" in the exempting clause. I fully agree with the conclusion that so far as those Canadian Pacific Railway lands in the territories are concerned the Dominion was, at the time the contract was entered into, the only existing taxing power and that all taxation attempted to be laid upon them by the north-west council, or assembly, or municipality, or school district, is Dominion taxation within the meaning of these words in the exempting clause. The vast territory west of Manitoba through which the railway was to run was practically at the time uninhabited by white men. The provisions made for its future government were temporary, tentative, and entirely subject to the control, guidance and supervision of the Dominion Parliament and authorities. The Act of 1881 was, at the time the Canadian Pacific Railway contract was entered into and when it was ratified and approved by Parliament, in force in the territories, and an important question arising out of its contruction is whether the powers it gave to the governing authorities it constituted or created were delegated or plenary powers. The Lieutenant Governor held his office during pleasure. His Council, composed of six persons, were from time to time to be apppointed by the Gover-

nor General in Council to aid him in the administration of the territories. The Lieutenant Governor in Council or by and with the advice of the Legislative Assembly had such powers to make ordinances for the government of the territories as the Governor in Council might from time to time confer upon him, not in excess of those, however, conferred on the legislatures of the provinces by the 92nd and 93rd sections of the B.N.A. Act, 1867. All such powers were subject to the express proviso that no ordinance should be inconsistent with or alter or repeal any Act of the Parliament of Canada which might then or any time thereafter expressly refer to the territories or which or any part of which might be made applicable thereto by the Governor in Council. Full powers were given to the Governor in Council by proclamation, from time to time, to apply any Act or parts of any Act of the Parliament of Canada to the territories.

The powers of legislation were therefore in respect to the territories vested in (1) The Parliament of Canada, (2) The Governor General in Council, and (3) The Lieutenant Governor in Council or by and with the advice and consent of the Legislative Assembly, the latter being limited in the exercise of their powers to the extent expressly given by the Governor General in Council from time to time. Section 10 gave express power to the Lieutenant Governor in Council under certain conditions to pass all necessary ordinances in respect to education and provision was made, as population increased, for the erection in the future of electoral districts and the election of members to the council until it reached 21.

The majority of the court below were of the opinion that the words "taxation by the Dominion" in the exemption clause of the contract "did not include taxation by the Government of the territories or any body

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to be established by it within its then powers." As to what were the powers of that territorial Government the learned judge who delivered the majority opinion admitted that he had grave doubt. He says:—

> The legislation affecting the legislative powers of the territories was in a very confused state when this contract was made, and it is difficult to judge just what powers the parties to the contract considered the territorial Government to possess,

and he concluded that it was not a

> delegate or branch of the Dominion Government or taxation by its authority within its then powers as taxation by the Dominion.

He seemed to think the principles laid down in the judgment of Lord Selborne with reference to India in *The Queen* v. *Burah* (1) applicable to the territories and governed him with respect to this case.

I am unable for myself to reach the conclusion that the principles with regard to legislation generally and specially with regard to India laid down in the *Burah Case* (1) have or can have any application to the special tentative and uncertain powers of legislation which were vested in the Lieutenant Governor in Council or the Lieutenant Governor by and with the advice of the Assembly for the North-West Territories in 1881.

There was no doubt at all that the legislation referred to in the *Burah Case* (1) was strictly within the express powers of the enacting body. Lord Selborne says, page 906:—

> The proper legislature has exercised its judgment as to place, laws, powers, and the result of that judgment has been to legislate conditionally as to all these things The conditions having been fulfilled, the legislation is now absolute.

How any such language could properly be used with respect to the legislation in question in the territories in this case I cannot understand. In the *Burah Case* (1) plenary powers of legislation existed. I agree with

(1) 3 App. Cas. 889.

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Chief Justice Killam that it is very difficult indeed to determine just what powers of legislation and taxation the territorial Government of the municipalities or school districts to be formed within its jurisdiction had, but whatever the extent of such powers I am satisfied they were not plenary powers in the sense in which these words are used by the Judicial Committee of the Privy Council in the *Burah Case*. (1) Most of its powers were to be given in the discretion of the Governor General in Council, from time to time, and withdrawn when and as he thought fit. The latter could also concurrently legislate by applying any part or parts of Dominion legislation to the territories.

Reliance was placed in the judgment below and in the argument before us upon the education clause of the Territories Act of 1880, sec. 10. As the section was originally enacted in 1875 and re-enacted in the consolidating Act of 1880, its operation was expressly made contingent "upon a system of taxation" having been first adopted in the district. That limitation upon the operation of the section was, it is true, abolished in 1885 by Parliament (48 & 49 Vict., ch. 51), but when the latter statute was passed the North-West Territories Council had already, in 1883 and 1884, passed ordinances introducing "systems of taxation" for municipalities and school districts throughout the territories, and the words of limitation were no longer necessary. This statute of 1885 enacted that the amendment removing the limitation from section 10 of the Act of 1880 should take effect from the date of the passing of the latter Act, presumably in order to remove any doubts as to the validity of any school taxation which might have been imposed in the meantime.

The learned judge from whose judgment this appeal is taken considered the clause as it stood in the Act of

(1) 3 App. Cas. 889.

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1880 without the retroactive amendment sufficient to confer all necessary powers of taxation to support the action, and that if the effect of the repeal of the Acts of 1875 and 1877 was to leave no express provision for the adoption of a "system of taxation" he would imply from section 10 standing by itself the power to establish such a system for the purposes of the section. I have not myself been able to reach that conclusion but on the contrary think that, under the Act of 1880, in order to bring into effective force the provisions of the education clause 10, it would be necessary to have some general system of taxation introduced under authority to be granted by the Governor General in Council under the 9th section of the Act. This seems to have been the view adopted by the Lieutenant Governor in Council in introducing a system of taxation by municipalities and school districts to which I have referred.

The object and intent of Parliament in passing clause 10 in the Act of 1880 was not to provide for a system of taxation for the maintenance and support of schools, but to ensure to the Protestant or Roman Catholic minorities the right to have separate schools when, after population flowed in, school districts came to be established. And thus no system of taxation was expressly authorized in it nor was any language used from which it must necessarily be implied that a system of taxation for educational purposes was being authorized by the section. The substantive power conferred was to pass ordinances in respect of education. The provisos in which were inserted the incidental references to assessments and collections of rates were inserted in furtherance of the object the section had in view, namely, the protection of religious minorities. But whether I am right or not in this construction of the 9th and 10th sections of the Act

cannot affect my conclusion as to the validity of the tax because I desire to base that conclusion upon the broad proposition that the exemption from "taxation by the Dominion" provided for in the 16th clause of the Canadian Pacific Railway contract was under the circumstances broad enough to embrace and should be held to embrace taxation either by the Lieutenant Governor in Council or with the advice of the Assembly or by any municipalities or school districts created by the Dominion in the territories.

Look at the condition of matters as it was in the territories in 1881, when the contract was ratified and approved by Parliament. It is conceded that at that time there was no municipal corporation or school district in any part of them; that there was no Dominion statute imposing any taxation and no ordinance of the territories imposing any.

In his judgment in the *Balgonie Case* (1) Mr. Justice Wetmore says:

> I may just mention the fact that at the time of the passing of the Act of 1881 the North-West Council had not, so far as I can discover, passed any ordinance taxing real or personal property.

It was in these conditions and circumstances that the contract was passed with the exemption from taxation clause I am considering, and the question is: What meaning is to be attributed to its language?

I think there can be no reasonable doubt that the ratifying and confirming of the contract was legislation "expressly referring to the territories" within the meaning of the proviso to the 9th section of the Dominion statute of 1880, consolidating the laws constituting a government in the territories and defining and limiting its powers. That statute was in force in 1881 when the contract was ratified. I am of opinion that the powers of legislation of the North-West Terri-

(1) 5 Ter. L. R. 123 at p. 130.

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tories Council were delegated powers from the Dominion and that the exemption from Dominion taxation in the 16th clause of the contract embraced and included taxation by the territorial council or by any municipal district as well as by any school district afterwards established therein. The power to tax lands generally by any school district thereafter to be brought into existence might well exist consistently with the exemption of these specially exempted lands. Any other construction leaves us in this dilemma that, if the taxation by the territorial council or its municipalities or school districts is not covered by the words "Dominion taxation", then the railway bed and plant is equally liable with the lands granted in aid and the whole provision for exemption might be practically defeated. That clause being, in my opinion, part of the Dominion legislation, such a result could not be brought about by the exercise of any power acting as a delegate or agent of the Dominion. Taxation by the Dominion must embrace and include taxation by all or any authority created by it and acting under it, and such I conceive to be the relative position the North-West Territorial Government stood in with reference to the Dominion. If the exemption from taxation by the Dominion does not include taxation by the authorities it had called or was calling into existence to assist in the government of that vast territory, then we are face to face with the singular anomaly that while the Dominion could not without violating its contract ratified by Parliament directly tax the road-bed and its appurtenances, it could do so through the instrumentality of those agents, officials and governmental bodies it called into existence in the territories. And while, by the contract, the road-bed was to be forever free and the lands granted in aid free for a specified period, both were to be subject to the school taxes of the districts in which

they were situated, and I should judge by analogy to the municipal and territorial taxes also. If the school districts authorised to be created by the Act of 1880 are not, when levying taxation, acting as the authorized agents of the Dominion then I would imagine that neither would the municipalities and the territorial assembly be. Municipalities and school districts alike assess and collect taxes by virtue of the ordinance of the territories. The exemption therefore which was supposed to be certain and immediate so far as the road-bed and appurtenances were concerned, and certain both as to commencement and continuance as far as the lands in aid were concerned, would be simply a contingent exemption only springing into existence upon the establishment of provinces afterwards to be created. The period of infancy and dependence when the exemption was most required would be the period when taxation on the road-bed and the lands would be levied, and the exemption from taxation would begin to operate, if it ever did so, only when it was least needed. Such may be the proper construction of the legislation I have had under consideration, and if it was we should not hesitate so to declare however incongruous or unreasonable the results would be. But, for my part, I am satisfied, for the reasons I have given, it is not so and never was so intended.

To sum up my conclusions on the appeal from the judgment in the Springdale Case, I am of the opinion that the powers of legislation possessed by the territorial council were delegated and not plenary powers; that the special powers relating to education granted to school districts to be subsequently brought into existence, could only be exercised for the taxation of lands after a proper ordinance had been passed by the council, the main object of that section being the protection of religious minorities; that all ordinances

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which the council had power to pass were to be subject to and not inconsistent with Dominion legislation especially relating to the territories. That the ratification and approval by the Dominion Parliament of the Canadian Pacific Railway contract was such legislation expressly referring to the territories and having special relation thereto, and that the meaning of the 16th clause of the contract exempting the lands granted to the Canadian Pacific Railway Company in aid of the construction of its railway from Dominion taxation operated to prevent any taxation of such lands by the North-West Council or Assembly during the exemption period of twenty years following the issue of the letters patent for those lands, and that practically and substantially exemption from Dominion taxation included exemption from any school taxation which may be held to have been impliedly authorized by the 10th section of the North-West constitutional Act of 1880, to be imposed at a future time and in certain eventualities by school districts to be afterwards organized and when the necessary ordinances in that behalf had been passed by the North-West Council.

I think the appeal in the Springdale School District Case should be allowed and the two appeals in the cases of the municipalities of North Cypress and Argyle should be dismissed with costs in all cases.

NESBITT J.—I have had the advantage of reading the judgments of my brothers Girouard and Davies, and they have so clearly and fully stated the questions involved and their reasons for judgment, in which I fully concur, that I shall only add a few words of my own.

I propose dealing with these three cases together although they were not so argued. I have arrived at the same result in each; viz., that the defendant company is not liable to taxation.

It appears to me that the question of liability may be solved without going at length into all the arguments which were advanced. In my opinion the political and business situation of the time should be considered in arriving at a conclusion as to what Parliament and the incorporators of the company agreed to. The preamble to the statute, 44 Vict., ch. 1 (D.), makes it clear that the Government was pledged to the construction of the railway, and that the vast unoccupied tract of lands could only be developed along national lines by such construction. It is common knowledge that the enterprise was viewed as a most hazardous and speculative one, and that the people of Canada must give largely to enable the incorporators of the proposed company to finance the undertaking and to bear the early burdens of operation when no adequate return could be expected. It is also common knowledge that Manitoba expected territory to be added to her then existing boundaries, and that the remaining lands would for a long time remain as a part of the territories, and, indeed, provincial autonomy has not yet been granted to any part notwithstanding the large settlement which has taken place and the flourishing condition of the territories.

I adopt the language of Lord Blackburn in *Caledonian Railway Co.* v. *North British Railway Co.* (1), at page 126:

> The matter turns upon the construction of an Act of Parliament which is an instrument in writing. I believe there is no dispute at all that in construing an instrument in writing we are to consider what the facts were in respect to which it was framed and the object as appearing from the instrument, and taking all those together we are to see what is the intention appearing from the language when used with reference to such facts and with such an object. The facts here and the object are all apparent without stepping out of the Act itself and those other Acts of which, being public Acts, we must take judicial notice ;

(1) 6 App. Cas. 114.

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and also that of Sir Robert P. Collier in *Robertson* v. *Day* (1), at page 69:

> From these considerations it appears more probable that the legislature intended that which the plaintiffs maintain to be the true construction of the statute; at the same time this construction ought not to be adopted if the words of the Act are clear and unambiguous and exclude such a construction. * * * It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them,

as giving the true canon of construction to be followed in construing section 16 of the contract which, in my view, gives the exemption the railway company claims to be entitled to. That section is as follows:

> 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.

When I read this with the description of lands to which the company expected to earn title, the conclusion is irresistible that Parliament intended to grant by way of bonus to the company to the fullest extent of its powers freedom from taxation, so far as lands to be granted were concerned, for twenty years from the patent, with the exception that if before patent obtained the lands were sold or occupied the exemption should cease. This would give the municipalities the benefit of taxation whenever the company sold or leased, as it was no doubt expected that the well known methods in vogue in the western United States would be followed; viz., either a leasing of large tracts for grazing purposes or selling to settlers in small parcels, the purchase money being

(1) 5 App. Cas. 63.

payable by instalments in many cases before the company would obtain patent, but after gaining selection. This construction makes a reasonable inducement to capitalists and leaves the company free from the burden of taxation in its early days when freedom from financial burden would be a great consideration. To hold that the lands admittedly exempted became taxable when those lands were added to Manitoba in face of the provision

> the said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof

would be to make the provision wholly nugatory, and I think Manitoba was granted and received this territory with this special exemption attached and has not attempted to repeal it, if, as was argued, it could repeal this provision, and, in my view, the later taxing statutes of Manitoba do not purport to repeal this provision.

In the case of the tax levied in the North-West Territories to give effect to the contention of the appellants would in reality be to hold that the contract did not exempt the land while in the North-West Territories but to make it subject to taxation and to be exempt only when the contingency of provincial autonomy occurred, if it ever did occur within twenty years from the issue of the patents. Such a construction is so opposed to good sense and good faith and so foreign to the object of the contract that apparently it never occurred to any one until after the opening of the argument of the case before the court in Manitoba. In my view the company's lands to be earned by building the railway were exempted for twenty years from the issue of the patent, from any Dominion taxation, or from provincial or municipal taxation, by any bodies subsequently obtaining provincial or municipal autho-

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rity in respect of such lands. If any difference is suggested in the case of school districts which the territorial authorities then had the power of creating, I think the Dominion still retained complete control over them, and taxation by such a body was taxation in conflict with the contract of the supreme authority (the Dominion) and by the very statute authorizing the ordinances creating the school district would be unauthorized as being inconsistent with existing Dominion legislation expressly referring to the territories.

I think the American cases of statutory grant of lands to be selected in future are quite distinguishable, the word "hereby" apparently controlling those decisions in holding the grant to be as of the date of the legislation, and I adhere to my previous opinion in the *Manitoba Swamp Lands Case* (1) in that respect. I would dismiss the Manitoba appeals and allow the North-West appeal, all with costs.

Appeals by the municipalities of North Cypress and Argyle dismissed with costs; appeal by the Canadian Pacific Railway Company allowed with costs.

Solicitors for the appellant municipalities and the respondent school district..... } *Howell, Mathers & Howell.*

Solicitors for the Canadian Pacific Railway Co., respondents and appellants..... } *Tupper, Phippen & Tupper.*

(1) 34 Can. S.C.R. 287; [1904] A. C. 799.