

THE CALGARY AND EDMONTON RAILWAY  
COMPANY AND THE CALGARY AND EDMON-  
TON LAND COMPANY v. THE KING.

1903

\*Mar 17,

\*April 29.

*Railway subsidy — Dominion Lands Act — Mines and minerals—  
Reservation in grant—Construction of statute.*

APPEAL from the judgment of the Exchequer Court of Canada (1) dismissing the suppliants' Petition of Right with costs.

The railway company was included among those intitled to the subsidy land grants authorised by 53 Vict. ch. 4 (D) and, when constructed, the second section of the Act provided that the grants should be made in proportion, upon the conditions fixed, by orders-in-council and as free grants subject only to payment by the grantees of the cost of survey and incidental expenses. When the Act took effect, on 16th May, 1890, the Dominion Lands Regulations of 17th September, 1889, were in force providing that all lands in Manitoba and the North-West Territories should be granted by letters patent containing a reservation of all mines and minerals and the rights necessary for carrying on mining operations. As the railway was constructed, orders-in-council were passed from time to time allotting to the railway company certain of the lands reserved as subsidy under the Act, there being no reference made in the orders-in-council to the land regulations.

The Exchequer Court, by the judgment appealed from, held that lands granted as subsidy to railways

\* PRESENT :—Sir Elzéar Taschereau C.J. and Girouard, Davies and Armour JJ.

1903  
 ~~~~~  
 CALGARY  
 AND  
 EDMONTON  
 RWAY. CO.  
 v.  
 THE KING.  
 —

under 53 Vict. ch. 4 (D.), were subject to the existing land regulations respecting the reservation of baser minerals in the grants thereof, notwithstanding that there was no reference thereto in the orders-in-council allotting the lands to the railway company and that the grant was expressed in the statute to be a free grant subject merely to cost of survey and expenses.

After hearing counsel for the parties the Supreme Court of Canada reserved judgment and, on a subsequent day, there being an equal division of opinion among the judges who had heard the appeal, the judgment appealed from stood affirmed and the appeal was accordingly dismissed with costs.

*Appeal dismissed with costs.\**

*Heimuth K.C.* and *Dyce W. Saunders* for the appellants.

*Newcombe K.C.* for the respondent.

---

\* Leave to appeal to the Judicial Committee of the Privy Council was granted, 17th July, 1903. See Canadian Gazette, vol. xli, p. 400.