

THE CANADIAN NORTHERN } APPELLANTS;  
RAILWAY COMPANY..... }

1906  
\*Oct. 8.  
\*Oct. 10.

AND

T. D. ROBINSON & SON.....RESPONDENTS.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

*Board of Railway Commissioners—Jurisdiction—Traffic accommodation—Restoring connections—3 Edw. VII. c. 58, ss. 176, 214, 253.*

On an application to the Board of Railway Commissioners for Canada, under the provisions of the "Railway Act, 1903" for a direction that a railway company should replace a siding, where traffic facilities had been formerly provided for the respondents with connections upon their lands, and for other appropriate relief for such purposes;—

*Held*, that, under the circumstances, the Board had jurisdiction to make an order directing the railway company to restore the spur-track facilities formerly enjoyed by the applicants for the carriage, despatch and receipt of freight in carloads over, to and from the line of railway.

**A**PPEAL, by leave of His Lordship Mr. Justice Maclellan, from an order of the Board of Railway Commissioners for Canada, which directed the appellants to restore certain spur-track facilities for the carriage, despatch and receipt of freight in carloads, over the railway and the connection for those purposes on the lands of the respondents.

On the application of the respondents, who are coal and wood merchants, in the City of Winnipeg, in Man-

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\*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington, Maclellan and Duff JJ.

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itoba, under sections 214 and 253 of the "Railway Act, 1903," for an order to direct the railway company to replace a siding wrongfully taken up by them from the respondents' property immediately adjoining the station, main-line and yards of the railway company in the said City of Winnipeg, or any such other part of the respondents' yard as to the Board might seem proper, or, in the alternative, that general delivery of all freight consigned to the respondents should be made at a siding constructed conveniently near the respondents' yard, and for such other relief as to the Board might seem just, the Board made the order appealed from, as follows:

"It is ordered—That the said railway company be, and it is hereby, directed to restore the spur-track facilities formerly enjoyed by the applicants for the carriage, despatch and receipt of freight in carloads over, to and from the line of the said railway company, and the connection for that purpose between such spur-track and the railway siding on the land of the applicants; the said railway company to have the option of constructing the siding on the applicants' land, at the expense of the applicants, or of allowing this to be done by the applicants, who shall bear the expense of making the necessary connection; and the said company to have the further option of constructing the track from such point on its line and to such point on the applicants' property as it shall think proper, said siding or spur-track to be constructed within four weeks from the date of this order, the plans of the completed work to be filed with the Board.

"This order, and the construction and use of the siding or spur-track herein provided for, are not to affect the rights of the railway company upon or to

any expropriation of the applicants' property authorized by law or by any order to be hereafter made by the Board."

The reasons given by the Board for making the said order were as follows:

"The Board is of opinion that, in taking from the applicants the sidings and rail connection formerly enjoyed by them the railway company deprived the applicants of reasonable facilities which the company should be directed to restore.

"The applicants do not apply under section 176 of the 'Railway Act,' as owners of an industry, for an order to compel the railway company to construct a branch or spur-line. Their land adjoins the railway yards of the company, and it does not appear to the Board that any order is necessary to enable the railway company to construct a line upon its own land up to the boundary line between its property and that of the applicants or to make connection at such boundary with a siding upon the applicants' land and transfer cars to and from such a siding.

"The Board is of opinion that it may properly regard the siding and connection, and the privilege of loading cars and delivering goods for carriage on such a siding, and of receiving and unloading goods by means thereof, as facilities within the Act.

"By its notice of the 16th November, 1904, the company stated its intention 'to discontinue the spur-track facilities.'

"The Board has carefully examined the yards of the railway company in Winnipeg, and the sidings and spur-tracks furnished for the use of those engaged in various kinds of business; and while the Board does not desire to be understood as holding that the railway company should be made to furnish

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similar facilities to every applicant, it considers that, in view of the previous supply of the same to the applicants and of the company's practice in so freely furnishing such accommodation to those engaged in the same and other branches of business, as well as the other facts and circumstances observed and those disclosed by other evidence, these facilities should be regarded as reasonable and proper ones, which the company should afford to the applicants.

"Under all these circumstances, the discontinuance of the former service seems to the Board to have been unreasonable. In the opinion of the Board railway companies should not be allowed to furnish and cut off such facilities capriciously.

"It does not appear to the Board that an order directing the railway company, in the general terms of section 253, to afford to the applicants all reasonable and proper facilities for the receiving, etc., would be sufficient, or that the authorities cited by counsel for the company are conclusive against the jurisdiction of the Board to direct specifically the continuance of previous facilities which seem to the Board to have been unreasonably discontinued."

*Chrysler K.C.* and *G. F. Macdonell* for the appellants. The Board has no power to order particular works to be done nor to interfere with the discretion of the railway company as to providing facilities: *South-Eastern Railway Co. v. The Railway Commissioners* (1); *Darlaston Local Board v. The London & North-Western Railway Co.* (2). The "Railway Act, 1903," prescribes a method, by section 176, to compel the construction of branch lines and thereby excludes

(1) 6 Q.B.D. 586.

(2) (1894) 2 Q.B. 694.

jurisdiction on the part of the Board to order such construction otherwise than as there prescribed. Coal merchants are not owners of such an "industry" as is referred to in that section; no case of discrimination has been shewn; the Board cannot order constructions to be made by the railway company upon lands which do not belong to it, and, as the occupation of the premises in question is deemed dangerous, the railway company is unwilling to place a siding there which may have to be removed should it be deemed necessary to expropriate the land for their own protection.

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*Ewart K.C.* for the respondents.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—This appeal should be dismissed with costs. The court is of opinion that the Board of Railway Commissioners had, in the circumstances, jurisdiction to make the order complained of.

*Appeal dismissed with costs.*

Solicitor for the appellants: *G. F. Macdonell.*

Solicitors for the respondents: *Howell, Hudson, Ormond & Marlatt.*