1943
*Oct. 26, 27
28.

1944
*Mar. 15.

QUEBEC RAILWAY LIGHT & POWER COMPANY (PETITIONER). — APPELLANT;

AND

THE TOWN OF BEAUPORT AND OTHERS (RESPONDENTS) ..... — RESPONDENT;

AND

THE ATTORNEY GENERAL FOR CANADA AND THE ATTORNEY GENERAL FOR QUEBEC ..... — INTERVENANTS.

ON APPEAL FROM THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

THE TOWN OF BEAUPORT (PETITIONER) ..... — APPELLANT;

AND

QUEBEC RAILWAY LIGHT & POWER COMPANY (RESPONDENT) — RESPONDENT;

AND

THE ATTORNEY GENERAL FOR CANADA AND THE ATTORNEY GENERAL FOR QUEBEC ..... — INTERVENANTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

*Constitutional law—Carriers—Railway company—"Undertaking" of company declared "for general advantage of Canada"—Added power to operate auto bus service—"Subject to all provincial * * * enactments"—Tariff of tolls—Jurisdiction—Federal or provincial authority—Whether auto busses are "works"—Section 91 (29) and section 92 (10 c) B.N.A. Act.*

The Quebec Railway, Light & Power Company applied for an order of the Board of Transport Commissioners approving its tariff of tolls for the carriage of passengers on the motor busses operated by it; while the town of Beauport petitioned the Quebec Public Service Board for an order by which the same tolls would be fixed. The Board of Transport Commissioners dismissed the company's application for want of jurisdiction; while the appellate court of Quebec, reversing the decision of the President of the Public Service Board, held that that Board was without jurisdiction to deal with such tolls

*PRESENT:—Rinfret, Davis, Kerwin, Hudson and Rand JJ.

on the ground that the railway company fell under the exclusive jurisdiction of the federal board. The decisions being contradictory, both the railway company and the town of Beauport appealed to this Court.

Held, Davis and Hudson JJ. dissenting, that the fixing of fares, or tolls, to be charged by the railway company in respect of its motor bus service, was within federal jurisdiction; but that federal legislation was lacking, as regulation of tolls over such service is not included in the powers granted to the Board of Transport Commissioners.

Per Davis and Hudson JJ. dissenting.—Jurisdiction over the fares, or tolls, of the railway company's autobus system is vested in the province. Such jurisdiction has not been transferred to the Dominion under Dominion Acts and should be exercised by the Quebec Public Service Board.

Per Rinfret J. and Kerwin J.:—A Dominion Act of 1895 declared the "undertaking of the (railway) company * * * a work for the general advantage of Canada" and thus brought the company under the legislative authority of the Parliament of Canada (*Quebec R. L. & P. Co.* v. *Montcalm Land Co.* [1927] S.C.R. 545). The word "undertaking" as used in the statute comprises the whole of the works of the company, not only the works existing in 1895 but all its future enterprises. The auto busses owned and operated by the company fall within the meaning of the term "works" in head 10 (*c*) of section 92 B.N.A. Act and, therefore, can properly be brought and integrated into the "undertaking".

Per Rand J:—The steam railway and the tramway system of the company are both within the legislative jurisdiction of the Dominion (*Montcalm Land Co.'s* case, *supra*). The works of the company are, in the jurisdictional aspect, to be considered as if they had been specifically set forth in section 91 (29) of the B.N.A. Act. The federal legslation of 1939, adding the power to operate auto busses is within the scope of the legislative field appropriate to the subject matter of the declaration in the Dominion Act of 1895. It cannot be denied to such an undertaking modifications in operational means and methods designed more efficiently to carry out its original and essential purposes. The controlling fact is that the identity of the works is presented: they remain in substance the works of transportation dealt with by the declaration.

Per Rinfret, Kerwin and Rand JJ:—The proviso of the amending federal Act of 1939 whereby the power to operate auto busses "subject to all provincial and municipal enactments" was conferred, does not give to the provincial Board jurisdiction to deal with the fares and tolls to be charged by the company. Such proviso made autobus service amenable to provincial laws for certain purposes, e.g. the right to license and regulate traffic, but the exclusive field of the Dominion as to regulation of rates is unaffected by that Act.

Per Davis J. (dissenting):—The generality of the language of the subsection (2) added by the Dominion Act of 1939, imposing a condition on the grant of the power to operate auto busses, is sufficient to involve the regulation and control by the province of the motor busses on the municipal and provincial highways of the province, and

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

the fixing of fares or tolls, for uniformity or otherwise, by a provincial board comes within the condition, upon a proper construction of the subsection.

Per Hudson J. (dissenting):—The declaration contained in the Dominion Act of 1895 does not, and never was intended by Parliament to, extend to the operation of auto busses on the highways, either in respect of the regulations of rates or otherwise.

APPEAL from an order of the Board of Transport Commissioners for Canada (1), ruling that the Board had no jurisdiction in the matter of the fares, or tolls, to be charged by the Quebec Railway Light & Power Company in respect of the motor bus service operated by it; and

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (2), which, reversing the judgment of the President of the Quebec Public Service Board (3), held that such matter was within the exclusive jurisdiction of the federal Board.

The material facts of the case and the questions at issue are stated in the above head-notes and in the judgments now reported.

In the first appeal:

Paul Taschereau K.C. for the appellant.

Y. Prévost for the respondent: Town of Beauport.

F. Dorion K.C. for the respondent: Town of Courville.

C. Stein for the Attorney General for Canada.

Aimé Geoffrion K.C. and *R. Genest K.C.* for the Attorney General for Quebec.

In the second appeal:

Guy Hudon K.C. for the appellant.

P. H. Bouffard K.C. for the respondent.

C. Stein for the Attorney General for Canada.

Aimé Geoffrion K.C and *L. A. Pouliot K.C.* for the Attorney General for Quebec.

(1) (1941) 54 Can. Ry. and Transp. Cas. 120.

(2) Q.R. [1942] K.B. 110.

(3) (1941) 53 Can. Ry. and Transp. Cas. 174.

RINFRET J.—These are two appeals, heard together by this Court, which raise an identical question: whether the fares, or tolls, to be charged by the Quebec Railway Light & Power Co. in respect of its motor bus service are within the jurisdiction of the Quebec Public Service Board, or whether they are within the jurisdiction of the Board of Transport Commissioners for Canada, or, in other words, whether these fares and tolls come under the provincial or under the federal authority.

I do not propose to go in detail into the history of the Quebec Railway Light & Power Co., except in so far as it seems to me necessary for the purpose of explaining the grounds upon which I base my conclusions.

The company was originally incorporated by an Act of the legislature of the province of Quebec (Statutes of Quebec, 44-45 Victoria, c. 44) under the name of the Quebec, Montmorency and Charlevoix Railway Company. It was then undoubtedly a local provincial company, operating a railway solely within the province of Quebec.

Later, in 1894, the powers of the company were extended to permit it to operate an electric tramway within the limits of the city of Quebec and this was also done by legislation of the province of Quebec.

But in 1895 the parliament of Canada passed an Act (58-59 Victoria, c. 59) constituting the company a federal corporation; and sections (1) and (2) of that Act read as follows:—

(1) The undertaking of the Quebec, Montmorency and Charlevoix Railway Company, a body incorporated as mentioned in the preamble, and hereinafter called "the Company", is hereby declared to be a work for the general advantage of Canada.

(2) The Company as now organized and constituted under the said Acts of the province of Quebec is hereby declared to be a body politic and corporate within the legislative authority of the Parliament of Canada; and this Act and *The Railway Act* of Canada shall apply to the Company and its undertaking, instead of the said Acts of the province of Quebec and *The Railway Act* of Quebec: Provided that nothing in this section shall affect anything done, any rights or privilege acquired, or any liability incurred under the said Acts of the province of Quebec, prior to the time of the passing of this Act,—to all which rights and privileges the Company shall continue to be entitled and to all of which liabilities the Company shall continue to be subject.

The undertaking of the company was, therefore, "declared to be a work for the general advantage of Canada"; and, furthermore, the company was

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Rinfret C.J.

declared to be a body politic and corporate within the legislative authority of the Parliament of Canada;

and

this Act (that is to say, the Dominion Act of 1895) and *The Railway Act* of Canada were declared to apply to the company and its undertaking, instead of the Acts of the province of Quebec and *The Railway Act* of Quebec.

The same Act also contained the following section:—

(8) The Company may use and employ for the locomotion and propulsion of its cars, vehicles and rolling stock, where such power is required, electricity in all its forms, steam, and any approved mechanical power or other means, agency or force for such purposes that science or invention may develop,—and shall have all rights, powers and privileges necessary and essential to the management, operation and maintenance of its line as an electrical system either in whole or in part; and may acquire, use and develop every kind of electrical force, power and energy required or useful in the working of the undertaking, and apply such agencies and motive power for all its uses and purposes aforesaid.

In 1899 the name of the company was changed to the Quebec Railway Light and Power Company, its present name.

In 1939 the following subsection (2) was added by Parliament to the above section (8) by statute of Canada, 3 Geo. VI, c. 56:—

(2) It is enacted and declared that the Company's now existing powers apart from any limitations with respect to the use of steam, include the power to own, maintain, lease, possess and operate auto busses, trolley busses and all kinds of public or private conveyances whether propelled or moved by oil, vapour or other motor or mechanical power in, over and throughout any of the territory in which it is now authorized to operate, subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

In my mind the legislation already reproduced is all that is necessary to be referred to for the purposes of the decision which we have to render.

As will be noticed, by the amendment of 1939 it was declared that the company's powers "include the power to own, maintain, lease, possess and operate auto busses".

Accordingly, the company applied for an order of the Board of Transport Commissioners approving its tariff of tolls for the carriage of passengers on the motor busses operated by it between the village of Boischatel and the city of Quebec. On the other hand, the town of Beauport peti-

tioned the Quebec Public Service Board for an order prescribing certain improvements in the service of the same auto busses, but mainly with the object of having fixed the rates and tolls on the same line.

The Board of Transport Commissioners dismissed the application of the railway company on the ground that it had no jurisdiction to deal with the company's tariffs of tolls or rates in question here; but on the petition of the town of Beauport to the Quebec Public Service Board, while the President of that Board (1) held that it had jurisdiction to entertain the request of the town, the judgment of the President went before the Court of King's Bench (appeal side) (2) which held that the provincial board had no jurisdiction and that the railway company, in the exercise of its statutory rights, fell under the exclusive jurisdiction of the Board of Transport Commissioners for Canada.

The two decisions being contradictory, the result was that both the town of Beauport appealed to this Court from the judgment of the Court of King's Bench (appeal side) and the Quebec Railway Light and Power Company appealed from the decision of the Board of Transport Commissioners.

The question to be decided is whether the control of the tariffs of the autobus rates and tolls of the Quebec Railway Light and Power Company comes under the jurisdiction of the provincial Public Service Board of Quebec, or under the jurisdiction of the Dominion Board of Transport Commissioners; and that is the only question at issue in the two appeals before this Court.

It is common ground that the railway company operates its autobus service between Jacques Cartier Square in the city of Quebec and the village of Boischatel, and that it holds a permit from the Public Service Board of the province; but also that, since the legislation of 1895 declaring the undertaking of the company to be a work for the general advantage of Canada, both the steam railway and the tramway system of the Quebec Railway Company are under the legislative jurisdiction of the Dom-

(1) (1941) 53 Can. Ry. & Transp. Cas. 174.

(2) Q.R. [1942] K.B. 110.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Rinfret C.J.

inion. It was so decided in a judgment of this Court in *Quebec Railway, Light & Power Co.* v. *Montcalm Land Co.* (1).

In my opinion the autobus system also comes within the jurisdiction of the Dominion.

In 1895 the Dominion Act (58-59 Victoria, c. 59), declared the "undertaking of the company * * * a work for the general advantage of Canada". Obviously this was done to bring the company under the legislative authority of the Parliament of Canada by force of subsection (10) (*c*) of section (92) of *The British North America Act.* The effect of such a declaration is to bring the work which is the subject thereof under subsection (29) of section (91) of the Act.

Moreover, the company, by section (2) of the Dominion Act (58-59 Victoria, c. 59), is specifically declared to be "a body politic and corporate within the legislative authority of the Parliament of Canada"; and it is further enacted by the same section that

> this Act and *The Railway Act* of Canada shall apply to the Company and its undertaking, instead of the said Acts of the province of Quebec and *The Railway Act* of Quebec.

It was argued that the declaration that the work was for the general advantage of Canada applied only to the undertaking as it stood in 1895, but, in my view, the declaration extends to the whole of the undertaking of the company, railway, tramway and autobus, for several reasons.

Most of what was said and decided by this Court in the *Montcalm Land* case (1) equally applies in the premises. As was said by Mr. Justice Newcombe, at p. 559 of the report of that case:—

> One must look to what the respondents' claim involves; it is nothing less than provincial statutory compulsion of a Dominion railway corporation, either to exercise powers which Parliament has not conferred, or, in the exercise of its competent Dominion powers, to submit to provincial review and regulations, followed in either case by the consequence that, for failure to comply with the provincial order, the company may forcibly be deprived of its property, powers, rights and management, and ultimately subjected to an action for its dissolution; and this notwithstanding what is undoubtedly true that neither the constitution and powers of the company nor its authorized undertaking is subject to the legislative authority of the province. It is needless to say that these things cannot be done.

(1) [1927] S.C.R. 545.

The declaration that the undertaking is for the general advantage of Canada may not be severed; it must be understood to apply to the whole of the undertaking. As was said Mr. Justice Newcombe, it is impossible to admit of a dual control over the essential functions of a federal work.

It may be true that it was only by the Act of 1939 that the power to own, maintain, lease, possess and operate auto busses was for the first time specifically mentioned in the Acts respecting the company, but the Act of 1939 (3 Geo. VI, c. 56) was only declaratory. It must be noted that it is expressed in the following words:—

> The Company's now existing powers * * * include the power to own, maintain, etc., auto busses.

While it may be said that the word "undertaking" in the Act of 1895 covers all future enterprises of the company and means the railway and works of whatsoever description which the company has authority to construct and to operate (*Railway Act*, section 2-35), it must be noted that the powers of the company, as defined in its original charters, although making no reference to auto busses in particular, are very broad and include the

> propulsion of vehicles and rolling stock by any means, agency, or force that science or invention may develop

(section (6) of the statutes of Canada, 58-59 Victoria, c. 59).

It was further argued that a bus line is neither a physical thing nor a work susceptible of being made the subject of a declaration under subsection (10) (*c*) of section (92) of *The British North America Act;* and that, consequently, the declaration that the undertaking of the company was for the general advantage of Canada was ineffective to bring the autobus service under the federal jurisdiction. It was said that a work must have a *locus,* which obviously, it was alleged, the autobus service was utterly incapable of possessing and that, therefore, the declaration contained in the Dominion Act was inappropriate to bring the autobus system under the legislative authority of the Parliament of Canada.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Rinfret C.J.

However, I would refer to what was said by Lord Dunedin in *In re Regulation and Control of Radio Communication in Canada* (1).

> "Undertaking" is not a physical thing, but is an arrangement under which, of course, physical things are used.

Applying that statement to the situation in the present case, I would be inclined to think that the word "undertaking" as used in the statute comprises the whole of the works of the company, which, upon that interpretation, were all included in the declaration that they were for the general advantage of Canada.

Accordingly, I am of opinion that the auto busses of the company can properly be brought and integrated into the undertaking which was declared to be for the general advantage of Canada. It would appear that it was the intention of Parliament that newly acquired works would fall within the declaration.

Much was made in the argument of the amendment inserted in 1939, whereby the power to operate auto busses was stated to be

> subject to all provincial and municipal enactments in respect to highways and motor vehicles operated thereon and applicable thereto.

Undoubtedly it could not be contended that for certain purposes the autobus service is not amenable to the provincial laws, but, in my view, that must mean: provincial laws of general application. (*Lukey* v. *Ruthenian Farmers' Elevator Co. Ltd.* (2); *John Deere Plow Co. Ltd.* v. *Wharton* (3).

The province has the control of its highways (*Provincial Secretary of Prince Edward Island* v. *Egan* (4). It has to maintain them and to look after the safety and convenience of the public by regulating and controlling the traffic thereon. An instance of the exercise of that control by the province might be the fact that the railway company held a permit from the Quebec Public Service Board; but I do not think that the submission to provincial and municipal enactments can be extended to anything beyond the regulations of the character just mentioned and surely not, in my opinion,

(1) [1932] A.C. 304, at 315.
(2) [1924] S.C.R. 56.
(3) [1915]A.C. 330, at 341.
(4) [1941] S.C.R. 396.

to the tariffs of rates and tolls of the company, which are made the subject of special laws and enactments under federal legislation and, in particular, under *The Railway Act* of Canada. Otherwise there would be that dual control, already adverted to and rendering the proper working and operations of the company practically impossible.

Now, *The Railway Act* of Canada deals with tolls and, having regard to all that I have said so far, my conclusions would have been that, in the premises, the Act should apply *mutatis mutandis* to the fixing of rates for the autobus system of the Quebec Railway Light & Power Co., in respect of which the Board of Transport Commissioners may exercise its jurisdiction.

It is true, nevertheless, that the Dominion *Railway Act* does not specifically refer to the regulation of bus lines and it may be that the specific power to deal with autobus traffic is not given to the Board of Transport Commissioners.

Two of my colleagues who, like me, are of the opinion that there is federal jurisdiction in relation to the auto bus tolls have come to the conclusion that the regulation of tolls over services of auto busses is not included in the powers of the Board of Transport Commissioners. In the circumstances, although personally I would be inclined to share the view expressed in his reasons for judgment by the Deputy Chief Commissioner, I will agree with the conclusions of my brothers Kerwin and Rand.

It follows that each appeal should be dismissed with costs, except that there should be no costs to or against either intervenant.

DAVIS J.—The appeals in these two cases were heard together. They raise the question whether the Quebec Public Service Board (a provincial board) or the Dominion Transport Board has the authority to fix the fares or tolls to be charged by the Quebec Railway, Light & Power Company in respect of its motor bus services. One appeal is from the judgment of the Court of King's Bench (appeal side) of the province of Quebec (1) which, reversing the decision of the President of the Quebec Public

(1) Q.R. [1942] K.B. 110.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Davis J.

Service Board, (1) held that it was not a matter properly for determination by the provincial board on the ground that the Dominion Board of Transport Commissioners had exclusive jurisdiction in the matter. The other appeal is from the order of the Board of Transport Commissioners which decided that it had no jurisdiction in the matter of fares or tolls on motor buses. While it was not suggested on the argument, I should have thought it might well be that neither the provincial board nor the Dominion Board had clear authority to control and fix the fares. It seemed to be taken for granted, however, that one or the other of the boards must have authority.

If the railway company were a provincial company, there would appear to be no lack of jurisdiction in the provincial board, but the railway company having been declared by Dominion legislation some years ago to be a company within the legislative authority of the Parliament of Canada, it was contended that it was beyond the control of a provincial board, and that it was only the Dominion Transport Board that has jurisdiction over the company and the fares and tolls that it is entitled to charge. Shortly stated, that is the problem which is presented to the Court in these appeals.

The railway company, under the name of the Quebec, Montmorency and Charlevoix Railway Company, was originally incorporated, in 1881, by an Act of the legislature of the province of Quebec, 44-45 Vic., c. 44. It was a local provincial company, owning and operating a railway solely within the province of Quebec. In 1894 the province of Quebec, by 57 Vic., c. 71 (passed January 8th, 1894), extended the power of the Company to operate an electric tramway within the city of Quebec. Subsequently, in 1895, by 58-59 Vic., c. 59, the Parliament of Canada constituted the company a body corporate within the jurisdiction of the Parliament of Canada. Sections 1 and 2 of the said Act of Parliament read as follows:—

1. The undertaking of the Quebec, Montmorency and Charlevoix Railway Company, a body incorporated as mentioned in the preamble, and hereinafter called "the company", is hereby declared to be a work for the general advantage of Canada.

(1) (1941) 53 Can. Ry. & Transp. Cas. 174.

2. The Company as now organized and constituted under the said Acts of the province of Quebec is hereby declared to be a body politic and corporate within the legislative authority of the Parliament of Canada; and this Act and *The Railway Act* of Canada shall apply to the Company and its undertaking, instead of the said Acts of the province of Quebec and *The Railway Act* of Quebec: Provided that nothing in this section shall affect anything done, any rights or privilege acquired, or any liability incurred under the said Acts of the province of Quebec prior to the time of the passing of this Act,—to all which rights and privileges the Company shall continue to be entitled and to all of which liabilities the Company shall continue to be subject.

Much of the argument turns upon an amendment to the Dominion statute made by Parliament in 1939 whereby a subsection was added to section 8 of the original Act. It is important, therefore, to set out section 8 as it appeared in the original Act and remained untouched until 1939:

8. The Company may use and employ for the locomotion and propulsion of its cars, vehicles and rolling stock, where such power is required, electricity in all its forms, steam, and any approved mechanical power or other means, agency or force for such purposes that science or invention may develop,—and shall have all rights, powers and privileges necessary and essential to the management, operation and maintenance of its line as an electrical system, either in whole or in part; and may acquire, use and develop every kind of electrical force, power and energy required or useful in the working of the undertaking, and apply such agencies and motive powers for all its uses and purposes aforesaid.

In 1939, then, by Act of Parliament, 3 Geo. VI, c. 56, the following was added as subsection (2) of section 8 of the original Act:

(2) It is enacted and declared that the Company's now existing powers apart from any limitations with respect to the use of steam, include the power to own, maintain, lease, possess and operate auto busses, trolley busses and all kinds of public or private conveyances whether propelled or moved by oil, vapour or other motor or mechanical power in, over and throughout any of the territory in which it is now authorized to operate, subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

It almost strikes one at a glance that the controversy must turn upon the meaning and scope of the concluding words of the added subsection

subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

The railway company appears to have acquired and operated motor busses some little time prior to the amendment

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Davis J.

of 1939 and has continued to own and operate motor busses on municipal and provincial highways solely within the province of Quebec since that time. The town of Beauport desired to have the fares or tolls to be charged by the company in connection with the operation of its motor busses fixed by the provincial board known as the Quebec Public Service Board and the company desired its tariff to be fixed by the Dominion Board of Transport Commissioners.

Those who argued against the authority of the Dominion board and in favour of the authority of the provincial board, very strenuously pressed upon us the contention that the word "undertaking" used in section 1 of the Act of Parliament, 58-59 Vic., c. 59, above quoted, was not an appropriate word to cover, and does not cover, the rolling stock of the company, particularly the motor busses; the specific purpose of this argument being to establish the contention that the motor busses of the company cannot be regarded in law, under the wording of section 1, as "a work for the general advantage of Canada." What is said is that the authority of Parliament under section 92, head 10 (*c*) of the British North America Act is limited to "Works"—and does not mention "undertakings." It may be convenient here to set out section 92 (10):

> 92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—
>
> 10. Local works and undertakings other than such as are of the following classes:—
>
> (*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;
>
> (*b*) Lines of steam ships between the province and any British or foreign country;
>
> (*c*) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.

While the opening words of 10 are "Local works and undertakings" and (*a*) uses "other works and undertakings," (*b*) uses neither word "works" nor "undertakings," and (*c*) uses only the word "works." The argument is that the "undertaking" of the company was not validly declared a work for the general advantage of Canada—that the authority

of Parliament is by 10 (*c*) limited to "works". A sentence is taken from the judgment of Lord Dunedin in the *Radio* case, (1) as a definition of these words "undertaking" and "works" and applied to the construction of the particular Act of Parliament which is before us. The sentence used by Lord Dunedin is,

> "Undertaking" is not a physical thing, but is an arrangement under which of course physical things are used.

It was argued from that that when the Act of Parliament, 58-59 Vic., c. 59, declared the "undertaking" of the company to be a work for the general advantage of Canada, it did not touch or affect the "works" of the company and, particularly for the argument of these appeals, that the word "undertaking" does not touch or affect the motor busses of the company because they are physical things moving about from place to place. I find it difficult to accept such an interpretation of the particular statute. The effect of the statute would be nugatory on such an interpretation. It seems to me that the word "undertaking" there used involves the totality of the works of the company and that the effect of the statute was that they were declared to be for the general advantage of Canada. Such a declaration was within the competence of the Dominion Parliament when the meaning and scope of the statute is fairly construed. The argument was advanced obviously to put the motor busses of the company beyond Dominion control and place them within provincial control, but I do not think that any such strained construction of the statute as contended for is necessary even to accomplish that end.

Section 2 of the Act of Parliament, 58-59 Vic., c. 59, declares the company

> to be a body politic and corporate within the legislative authority of the Parliament of Canada.

In my opinion when Parliament in 1939 amended section 8 of its original Act of 1895 by adding thereto subsection (2) above quoted, it extended, or at least expressly defined, the power of the company to own, maintain and operate auto busses in, over and throughout any of the territory in which the company is authorized to operate. But Parliament made a conditional grant of the power—the condition

(1) [1932] A.C. 304, at 315.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

DAVIS J.

being that the exercise of the power was to be subject to all provincial and municipal enactments in respect of highways and motor vehicles operating thereon and applicable thereto. It might well lead to a state of chaos if a Dominion company had a right to operate motor vehicles on municipal and provincial highways according to its own ideas without reference to the provincial laws, rules and regulations governing the operation of other motor vehicles on the public highways in the province. For instance, you could not in any practical sense have a province requiring all motor vehicles to travel on the right hand side of the road and a Dominion company denying any authority of the province over it because it was a Dominion company, and asserting the right to run its motor vehicles on the left hand side of the road. Counsel for the company, confronted with such situations, admitted frankly that the company was undoubtedly liable to what he called "all ordinary regulations of general application," respecting motor vehicles on provincial and municipal highways, but contended that that does not include the control or fixing of fares or tolls, because according to his argument you cannot read the word "tolls" into the general words of the subsection to which the power to operate motor busses is made subject. His contention is that the fixing of tolls for the motor busses, because the company itself is a railway company, comes under the Dominion *Railway Act* and the Dominion *Transport Act*.

In my opinion the generality of the language of the 1939 amendment imposing a condition on the grant of the power is sufficient to involve the regulation and control by the province of the motor busses on the municipal and provincial highways of the province; and the fixing of fares or tolls, for uniformity or otherwise, by a provincial board comes within the condition of the subsection upon a proper construction thereof. It was contended by the Dominion that that construction involves an unwarranted delegation of legislative authority beyond the power of Parliament. I think the principle is that stated in the *John Deere Plow* case (1):

(1) [1915] A.C. 330, at 341.

It is enough for present purposes to say that the province cannot legislate so as to deprive a Dominion company of its status and powers. This does not mean that these powers can be exercised in contravention of the laws of the province restricting the rights of the public in the province generally. What it does mean is that the status and powers of a Dominion company as such cannot be destroyed by provincial legislation.

And in *Bank of Toronto* v. *Lambe* (1):

They (their Lordships) cannot see how the power of making banks contribute to the public objects of the provinces where they carry on business can interfere at all with the power of making laws on the subject of banking, or with the power of incorporating banks.

The appeals should in my opinion be disposed of in accordance with the above conclusion.

KERWIN J.—The Quebec Railway, Light and Power Company was formerly known as the Quebec, Montmorency and Charlevoix Railway Company. That company was incorporated by a special Act of the legislature of the province of Quebec. This Act was amended from time to time until by the year 1895 the Company had been authorized to own and operate a railway within a certain area of the province of Quebec and to own and operate an electric tramway within the city of Quebec and its environs. In 1895, the Parliament of Canada passed an Act embodying therein such provisions of the provincial Acts as were desired to be retained in force and enacting the following as sections 1 and 2:

1. The undertaking of the Quebec, Montmorency and Charlevoix Railway Company, a body incorporated as mentioned in the preamble, and hereinafter called "the Company", is hereby declared to be a work for the general advantage of Canada.

2. The Company as now organized and constituted under the said Acts of the province of Quebec is hereby declared to be a body politic and corporate within the legislative authority of the Parliament of Canada; and this Act and *The Railway Act* of Canada shall apply to the Company and its undertaking, instead of the said Acts of the province of Quebec and *The Railway Act* of Quebec: Provided that nothing in this section shall affect anything done, any rights or privilege acquired, or any liability incurred under the said Acts of the province of Quebec prior to the time of the passing of this Act,—to all which rights and privileges the Company shall continue to be entitled and to all of which liabilities the Company shall continue to be subject.

Subsequently the Company acquired from the Montmorency Electric Power Company the latter's business and

(1) (1887) 12 App. Cas. 575, at 586.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Kerwin J.

undertaking and also the business and undertaking of the Quebec District Railway Company, and in 1899 its name was changed to its present title. The appellant company and the other companies mentioned were incorporated for provincial objects and it is only by virtue of the declaration in section 1 of the Act of 1895 that the Dominion could acquire any jurisdiction. That section was passed in pursuance of exception (*c*) to head 10 of section 92 of *The British North America Act* and no more extended meaning than the word "works" therein bears on its proper construction may be ascribed to the word "undertaking" in section 1 of the 1895 Act.

In the year 1939, section 8 of the Dominion Act of 1895 was amended by adding thereto subsection 2. As thus amended section 8 now reads:—

> 8 (1) The Company may use and employ for the locomotion and propulsion of its cars, vehicles and rolling stock, where such power is required, electricity in all its forms, steam, and any approved mechanical power or other means, agency or force for such purposes that science or invention may develop,—and shall have all rights, powers and privileges necessary and essential to the management, operation and maintenance of its line as an electrical system, either in whole or in part; and may acquire, use and develop every kind of electrical force, power and energy required or useful in the working of the undertaking and apply such agencies and motive powers for all its uses and purposes aforesaid.
>
> (2) It is enacted and declared that the Company's now existing powers apart from any limitations with respect to the use of steam, include the power to own, maintain, lease, possess and operate auto busses, trolley busses and all kinds of public or private conveyances whether propelled or moved by oil, vapour or other motor or mechanical power in, over and throughout any of the territory in which it is now authorized to operate, subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

It appears that some time prior to the enactment of the amendment of 1939 the Company had commenced to operate auto busses in the city of Quebec and adjoining territory. The meaning to be ascribed to the word "works" in exception (*c*) to head 10 of section 92 of *The British North America Act* has been considered in *City of Montreal* v. *Montreal Street Ry. Co.* (1); *Wilson* v. *Esquimalt and Nanaimo Railway Company* (2); *In Re Regulation and Control of Radio Communication in Canada* (3). Whatever the precise construction may be, I am satisfied that the busses owned and operated by the Company fall within

(1) [1912] A.C. 333, at 342. (2) [1922] A.C. 202, at 208.
(3) [1932] A.C. 304, at 315.

the meaning of that term so that they would be part of the Company's works as much as the rails and tramcars of the Company's electric tramway system. As to these, it has been decided by this Court in *Quebec Railway, Light and Power Company* v. *Montcalm Land Company* (1), that the Quebec Public Service Commission (now the Public Service Board) had no jurisdiction to order the Company to cause its tramcars to run more frequently. Unless, therefore, the concluding words of the amendment of 1939,

> subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto,

have the effect of altering the position, the Public Service Board has no jurisdiction to deal with the fares or tolls to be charged by the Company for travel on its auto busses. The words quoted are not, in my opinion, apt to confer such a power. The proviso might apply to such things as the necessity of the busses to carry license plates and of the drivers thereof to obey the provincial or municipal regulations as to traffic, but it does not cover the fixing of fares. It was submitted by the Attorney General for the Dominion that Parliament would have no power to delegate such authority but, since I deem the proviso inapplicable, it is unnecessary to express any opinion upon the point.

It does not follow that jurisdiction must reside in The Board of Transport Commissioners for Canada. Upon the declaration being made that the works of the Company were for the general advantage of Canada,

> the effect of subsection 10 of s. 92 of *The British North America Act* is * * * to transfer the * * * works mentioned * * * into s. 91 and thus to place them under the exclusive jurisdiction and control of the Dominion Parliament. *City of Montreal* v. *Montreal Street Ry. Co.* (2).

It is the "works", however, and not the Company that is thus brought within the jurisdiction of the Dominion. Section 2 of the 1895 Act cannot by itself effect any such result but the "works" being considered as an enumerated head of section 91, Parliament may enact such further legislation as is necessarily incidental to the exercise of its jurisdiction over them, and, in a proper case, it may be necessary to consider how far particular provisions of *The*

(1) [1927] S.C.R. 545.
(2) [1912] A.C. 333, at 342.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Kerwin J.

Railway Act apply to them. Section 323 of that Act was referred to but in my view it has no application. The "tolls" therein mentioned are defined by clause 32 of section 2 but it seems plain that these provisions refer only to tolls for railways as defined in clause 21 of section 2. The word "rolling stock" used in the last mentioned clause, as defined in clause 24, clearly refers only to railways. It is not all charges made, even by a railway company, that fall within the jurisdiction of the Dominion Board. *In re Powers as to Wharfage Charges* (1).

The appeal in each case should be dismissed with costs, except that there should be no costs to or against either intervenant.

HUDSON J.—The main controversy in these appeals is whether the right to control rates on busses operated by the Quebec Railway, Light and Power Company on the streets and highways in the town of Beauport lies within the authority of the Transport Board of Canada or the Public Service Board of Quebec.

The Quebec Railway, Light and Power Company was incorporated by a statute of the legislature of Quebec but in 1895, by an Act of the Parliament of Canada, the undertaking of the Company was "declared to be a work for the general advantage of Canada", and the Company as then organized was declared to be a body politic and corporate within the legislative authority of the Parliament of Canada and that the *Railway Act* of Canada should apply to the Company and its undertakings, instead of the Acts of the province of Quebec and the *Railway Act* of Quebec. By this and subsequent Acts the Company was given the ordinary powers of railway and tramway companies.

In 1939, by Act of Parliament, the Company's powers were extended by providing:

> 8. (2) It is enacted and declared that the Company's now existing powers apart from any limitations with respect to the use of steam, include the power to own, maintain, lease, possess and operate auto busses, trolley busses and all kinds of public or private conveyances whether propelled or moved by oil, vapour or other motor or mechanical power in, over and throughout any of the territory in which it is now authorized to operate, subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

(1) [1931] S.C.R. 431.

The right to license, regulate and control traffic on streets and highways within a province lies with the legislature of such province. Such right has been actively exercised by the provinces since Confederation and has never been seriously challenged. It has been recognized by provincial courts on numerous occasions, and recently by this Court in the case of *Provincial Secretary of Prince Edward Island* v. *Egan* (1).

The right of the Dominion to interfere with such licence, regulation and control is confined strictly to matters falling within one or other of the enumerated heads of section 91 of *The British North America Act.*

It is contended here that the busses of the Quebec Railway, Light and Power Company and the operation thereof became part of the undertaking of the Company and fell within the exclusive jurisdiction of the Dominion by virtue of the declaration made in 1895.

Unlike other legislative powers allotted to the Dominion on the one hand and the provinces on the other, the jurisdiction transferred by declaration under section 92 (10) (*c*) of *The British North America Act* is conferred by an Act of the Parliament of Canada itself and may be repealed, varied, qualified or limited in its application, whenever that Parliament so decides. This is the effect of a decision of the Judicial Committee of the Privy Council in the case of *Hamilton, Grimsby and Beamsville Railway Company* v. *Attorney-General for Ontario* (2). There the Hamilton, Grimsby and Beamsville Railway had been incorporated by an Act of the legislature of Ontario. One of its lines crossed the railway line of the Grand Trunk Railway Company, a Dominion railway. By reason of the provision then existing in the *Railway Act,* all railways connected with or crossing a Dominion railway were deemed to be works for the general advantage of Canada. Subsequently, the Dominion *Railway Act* was amended and it was provided that such provincial railway should be a work for the general advantage of Canada, in respect only of the connection or crossing, and certain other matters not here relevant. A provincial board made an order with respect to sanitary conveniences on the provincial railway cars. This was contested

(1) [1941] S.C.R. 396.

(2) [1916] 2 A.C. 588.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Hudson J.

on the ground that the railway had become a Dominion railway under the original declaration. However, it was held by the Judicial Committee that this was not so, that the Act could be repealed, or amended and, as stated by Lord Buckmaster,

> the declaration is a declaration which can be varied by the same authority as that by which it was made

and that in this instance it was properly varied.

New and subsequently acquired works may fall within such a declaration but it must appear that Parliament so intended.

In the present case the claim is that a declaration made in 1895 extended to works first authorized by Parliament in 1939.

The operation of autobusses was not necessarily incidental to the operation of the railway. Somewhat similar situations have been the subject of discussion in the House of Lords. In the case of *London County Council* v. *Attorney-General* (1). Reading at p. 169 Lord Macnaghten said:

> The London County Council are carrying on two businesses—the business of a tramway company and the business of omnibus proprietors. For the one they have the express authority of Parliament; for the other, so far as I can see, they have no authority at all. It is quite true that the two businesses can be worked conveniently together; but the one is not incidental to the other. The business of an omnibus proprietor is no more incidental to the business of a tramway company than the business of steamship owners is incidental to the undertaking of a railway company which has its terminus at a seaport.

In the case of *Attorney-General* v. *Mersey Railway Company* (2), a similar decision was arrived at.

Here, as in the two above mentioned cases, it appears that the railway company undertook the autobus business because of competition on the highway. I am satisfied that the railway company had no authority to carry on this autobus business until 1939.

The amendment of 1939 does not in terms transfer jurisdiction to the Dominion. In effect it rejects any assumption of control by the Dominion and expressly recognizes maintenance of provincial control. It is difficult to see how an authority to operate a new kind of service,

(1) [1902] A.C. 165. (2) [1907] A.C. 415.

subject to all provincial and municipal enactments in respect to highways and motor vehicles operated thereon and applicable thereto,

can be construed as evidencing an intention by Parliament to place such services under Dominion control.

Neither in the Dominion *Railway Act* nor in any legislation applicable to this company is there any provision for control of traffic on the highways in respect of rates or otherwise. It has been suggested that the regulation of tolls and rates is essentially different from the control of physical things on the highways. I cannot see this. The highways are owned by the municipality or the province and it is the duty of the municipality to maintain them and to provide for the safety and convenience of the public thereon.

The regulation of rates charged by common carriers using highways is nowadays universally recognized as in the public interest. The fact that Parliament has not seen fit to make any provision for such regulation in the present case strongly supports the view that it was intended that such regulation should be left with the province, where such regulation was already in force.

My conclusion then is that the declaration of 1895 does not and never was intended by Parliament to extend to the operation of autobusses on the highways, either in respect of the regulation of rates or otherwise.

It was strongly argued that Parliament had no power to make a declaration under section 92 (10) (*c*) of the *British North America Act* affecting the right of control here in question. It was pointed out that on several occasions the Judicial Committee held that the word "works" used therein is confined to physical things, and that here the only physical things involved were busses which were not moving on rails the property of the railway company but freely amidst general traffic on a public highway. To my mind, this question is open to some doubt and, in view of the conclusion I have arrived at as to the intention of Parliament, it is unnecessary for me to express my opinion.

I would allow the appeal in the case of Town of Beauport v. Quebec Railway, Light and Power Company, and dismiss the appeal in Quebec Railway, Light and Power Company v. Town of Beauport.

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Rand J.

RAND J.—These two appeals raise the same questions of law and were argued together. The first is by the town of Beauport from a judgment of the Court of King's Bench, appeal side, holding that the regulation of tolls for autobus and tramway services, and of the quantum and quality of those services furnished by the Quebec Railway, Light and Power Company, was not within the legislative powers of the province; the second is from an order of The Board of Transport Commissioners dismissing an application by the Company for the approval of tolls for the same services.

At the time the proceedings were initiated, the Quebec Railway, Light and Power Company was carrying on within the city of Quebec and surrounding district a line of steam railway between the city and Cape Tourment, a point about thirty miles to the east, a tramway system serving the city proper, and as well an autobus service both within and without the city.

By a judgment of this court rendered in 1927 (*Quebec Railway, Light and Power Co. v. Montcalm Land Co.* (1)), it was held that, under the legislation of 1895 declaring the undertaking of the company to be a work for the general advantage of Canada, both the steam railway and the tramway system were within the legislative jurisdiction of the Dominion.

In 1939 (3 Geo. VI, c. 56) the powers of the company were enlarged by the following provision:

> (2) It is enacted and declared that the Company's now existing powers apart from any limitations with respect to the use of steam, include the power to own, maintain, lease, possess and operate auto busses, trolley busses and all kinds of public or private conveyances whether propelled or moved by oil, vapour or other motor or mechanical power in, over and throughout any of the territory in which it is now authorized to operate, subject to all provincial and municipal enactments, in respect to highways and motor vehicles operated thereon and applicable thereto.

The autobus services have been integrated with those of both the railway and the tramway system. The company has provided for joint carriage by railway and autobus and by tram and autobus, both within and beyond the city. Questions may, therefore, arise as to tolls between points on the tramway system proper, between points on the autobus routes, and between points on either the railway

(1) [1927] S.C.R. 545.

or the tramway and on the autobus routes, and *vice versa*. Admittedly, all rates confined to the railway and the tramway are within the federal jurisdiction and the application of *The Railway Act* 1919. The question raised is whether the tolls applicable between points on the routes of the autobus services and between those points and points on the tramways are likewise within that exclusive jurisdiction and, if so, whether they come within the scope also of that Act.

The works of the company are, in the jurisdictional aspect, to be considered as if they had been specifically set forth in section 91 (29) of the B.N.A. Act. Was, then, the legislation of 1939, adding to the powers of the company, within the scope of the legislative field appropriate to the subject-matter of the declaration? I think it was. We cannot deny to such an undertaking modifications in operational means and methods designed more efficiently to carry out its original and essential purposes. The controlling fact is that the identity of the works is preserved: they remain in substance the works of transportation dealt with by the declaration.

Nor do I think there can be attributed to the last clause of that provision an effect which would nullify the operative part of the subsection. What was intended to be and was done was the creation of new powers in the federal works as such, and not merely the addition of a corporate capacity. The contrary view involves the introduction of a dual control over the essential functions of such an undertaking. The concluding language, therefore, must be taken to refer only to provincial regulation arising from ownership and control of highways which might affect features of the autobus operations. It is, at most, a legislative disclaimer of intention to encroach upon an area, in different aspects common to both jurisdictions: but the exclusive field of the Dominion, within which lies the regulation of rates, is unaffected.

The further question arises, however, whether *The Railway Act* 1919 extends to tolls either in respect of the autobus services proper or the joint services of autobus and tramway. By the enactment of 1895, section 2, *The Rail-*

1944

QUEBEC RAILWAY LIGHT & POWER CO. v. TOWN OF BEAUPORT.

Rand J.

way Act of Canada is to apply to the undertaking of the company, and by section 323 of *The Railway Act* 1919 it is provided:

> Nor shall the company charge, levy, or collect any toll or money for any service as a common carrier, except under and in accordance with the provisions of this Act.

Can the regulation of tolls for autobus or joint autobus and tramway services be brought within the language of that legislation?

There can be little question that *The Railway Act* 1919, as its title indicates and as its provisions confirm, is concerned primarily with transportation by railways. Service "as a common carrier," in the absence of a context clearly extending it, means, therefore, as a carrier by railway. All services incidental to that form of transportation are within the clause of section 323 quoted. But autobus services are not incidental to either the railway or the tramway: they are a new form of primary transportation. Now the word "railway" imports locomotion on or over "rails," furnishing a service within fixed and rigid limits: and precise language would be necessary to bring within its scope transportation operations by means of power and vehicles unknown when the legislation was first enacted, with a service of a highly mobile character and involving different considerations of public policy. Closely associated with railway service is carriage by water, but this is the subject of special provisions of *The Railway Act* 1919. That enactment cannot, therefore, be held to embrace the regulation of tolls for autobus transportation, either alone or in conjunction with the tramway.

Then, does the specific application of "The Railway Act of Canada" to the undertaking of the company by the legislation of 1895 add in any way to what otherwise would follow from the declaration? To hold that it does would be to imply a very broad *mutatis mutandis* which is not, in my opinion, warranted. The enactment of 1895 did no more than to apply the Dominion Act to such of the company's activities as were within its ambit.

There is, then, federal jurisdiction in relation to these tolls, but federal legislation is lacking. It is not suggested that there was in force in the province at the time of Con-

federation any law of carriers adequate or appropriate to fill the hiatus in that legislation. However inconvenient it may appear, therefore, it follows that the regulation of tolls for services in whole or in part by autobus is not within the powers of the Board of Transport; and as *The Provincial Transportation and Communication Board Act* is inapplicable within the exclusive dominion field, these tolls lie outside of any existing statutory control.

The same conclusion follows as to the regulation of the autobus services in the manner proposed.

The appeals should be dismissed with costs except as to the Intervenants.

Both appeals dismissed with costs, no costs to or against intervenants.

In the first appeal:

Solicitors for the appellant: *Taschereau, Parent & Cannon.*

Solicitors for the respondent: Town of Beauport: *Gagnon, DeBilly, Prévost & Hone.*

Solicitors for the respondent: Town of Courville: *Dorion, Dorion & Noël.*

Solicitors for the respondent: Village of Boischatel: *Dumoulin & Rémillard.*

Solicitor for the Attorney General for Canada: *F. P. Varcoe.*

Solicitor for the Attorney General for Quebec: *L. A. Pouliot.*

In the second appeal:

Solicitor for the appellant: *Yves Prévost.*

Solicitor for the respondent: *P. H. Bouffard.*

Solicitor for the Attorney General for Canada: *F. P. Varcoe.*

Solicitor for the Attorney General for Quebec: *Achille Pettigrew.*