IN THE MATTER OF ORDERS NOS. 42808 AND 44417 OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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*Oct. 13, 14.
*Dec. 22.

THE BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY LIMITED AND CANADIAN PACIFIC RAILWAY COMPANY ..... APPELLANTS;

AND

CANADIAN NATIONAL RAILWAY COMPANY, THE NORTH FRASER HARBOUR COMMISSIONERS AND THE PROVINCE OF BRITISH COLUMBIA ..... RESPONDENTS.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Railways—Constitutional law—Jurisdiction of Board of Railway Commissioners for Canada—Foreign company, licensed in province, operating railway under Dominion jurisdiction and also operating its own provincial line, part of which connected two railways under Dominion jurisdiction—Railway Act, R.S.C., 1927, c. 170, ss. 6 (a), 314, 316, 317—B.N.A. Act, s. 92 (10), (a).

The B.C. Co. (British Columbia Electric Ry. Co.) was incorporated in England and operates in British Columbia under a provincial licence. Under agreement with the C.P.R. Co. (Canadian Pacific Ry. Co.) it operates by electricity the V. & L.I. Ry. (Vancouver & Lulu Island Ry.) which connects with the C.P.R. and which, in 1901, was leased to the C.P.R. Co. for 999 years, and was declared by Parliament to be a work for the general advantage of Canada. The B.C. Co.'s "Central Park Line" runs from Vancouver to its connection with a branch of the V. & L.I. Ry. and thence over the latter to the latter's terminus at or near New Westminster, from which terminus the B.C. Co.'s "Central Park Line" continues for one mile to a point where it makes physical connection with the Canadian National Ry. The Board of Railway Commissioners for Canada, by its order No. 42808, of June 10, 1929, directed the B.C. Co. and the Canadian National Rys. to publish and file, between stations on the V. & L.I. Ry. and points on the Canadian National Rys., "via direct connection between the companies," joint rates on the same basis as those published between the said V. & L.I. points and stations on the C.P.R. The B.C. Co. appealed against the order on the ground of lack of jurisdiction in the Board to compel it to file joint rates as aforesaid over the said one mile of its line, which, it contended, was subject only to provincial jurisdiction.

*Present at hearing of the appeal: Duff, Newcombe, Lamont, Smith and Cannon JJ. Newcombe J. took no part in the judgment, having died before the delivery thereof.

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Held (Cannon J. dissenting): The Board had not jurisdiction to make the order.

The jurisdiction (as to railway companies incorporated elsewhere than in Canada) conferred by s. 6 (*a*) of the *Railway Act*, R.S.C., 1927, c. 170, is, on its proper construction in the light of ss. 5 and 6 as a whole, limited to the company's operation of lines of railway within the legislative authority of the Parliament of Canada. To construe s. 6 (*a*) otherwise would raise the question of its constitutional validity (*Att.-Gen. for Quebec* v. *Att.-Gen. for Canada; Insurance Reference*, [1931] 3 W.W.R., 689; [1932] 1 D.L.R. 97, referred to in this connection).

The Board did not acquire jurisdiction over the B.C. Co.'s line by virtue merely of that company's operation also of another line which was under Dominion jurisdiction. Nor would the facts that a part of the B.C. Co.'s line formed a connecting link between two lines of railway under the Board's jurisdiction, one of which extended beyond the limits of the province, and that the B.C. Co. handled traffic over its provincial lines to and from lines of railway under Dominion jurisdiction, extending beyond the limits of the province, pursuant to agreements with companies owning and operating those lines under Dominion jurisdiction, be a ground for invoking s. 92 (10) (*a*) of the *B.N.A. Act* in support of the Board's jurisdiction. Nor could the order be upheld on the ground that it dealt with the regulation of trade and commerce. Nor did the Board have jurisdiction by virtue of ss. 314, 316 and 317 of the *Railway Act*, the remedying of any discrimination in the manner provided in the order involving, as it did, the exercise of jurisdiction over said mile of railway which was under provincial jurisdiction.

Montreal v. *Montreal Street Ry.*, [1912] A.C. 333, cited and discussed. *Luscar Collieries* v. *McDonald*, [1927] A.C. 925, distinguished.

Per Cannon J., dissenting: The B.C. Co. fell under the wording and operation of said s. 6 (*a*), and s. 6 (*a*) was *intra vires*.

APPEAL from the order of the Board of Railway Commissioners for Canada, No. 42808, issued June 10, 1929 (1), directing the British Columbia Electric Railway Co. Ltd. and the Canadian National Railways to publish and file, between stations on the Vancouver and Lulu Island Railway and points on the Canadian National Railways via direct connection between the companies, joint rates on the same basis as those published between the said Vancouver and Lulu Island points and stations on the Canadian Pacific Railway; and from an order of the Board, No. 44417, of March 7, 1930, dismissing the applications of the British Columbia Electric Railway Co. Ltd. and the Canadian Pacific Railway Co. to review and rescind said Order No. 42808.

Leave to appeal was granted by a judge of this Court (under s. 52 (2) of the *Railway Act*) upon the following questions:

(1) 35 Can. Ry. Cas. 384.

1. Had the Board of Railway Commissioners for Canada, under the circumstances of this case, jurisdiction under the Railway Act to issue Order No. 42808 in so far as it directs the British Columbia Electric Railway Company Limited to publish and file joint rates between stations on the Vancouver and Lulu Island Railway and points on the Canadian National Railway via direct connection between the British Columbia Electric Railway Company Limited and the Canadian National Railway?

2. If the above question should be answered in the affirmative, had the Parliament of Canada jurisdiction to confer upon the Board of Railway Commissioners for Canada authority to compel the British Columbia Electric Railway Company Limited to publish such joint rates over the route in question?

The material facts of the case are sufficiently stated in the judgment of Smith J., now reported, and are indicated in the above headnote. Question No. 1 was answered in the negative; in view of that answer, it was unnecessary to answer question No. 2. Cannon J. dissented, and would answer both questions in the affirmative.

J. W. de B. Farris K.C. and *W. A. Riddell* for the appellant the British Columbia Electric Ry. Co. Ltd.

L. Coté K.C. for the appellant (intervenant) the City of Vancouver.

G. F. Macdonell K.C. for the respondent the Canadian National Ry. Co.

E. F. Newcombe K.C. for the respondents the North Fraser Harbour Commissioners.

L. J. Ladner K.C. for the respondent the Province of British Columbia.

The judgment of the majority of the court (Duff, Lamont and Smith JJ.) was delivered by

SMITH J.—The appellant, the British Columbia Electric Railway Company, Limited, is a corporation, incorporated under the provisions of the *Companies Act* of England, operating street railways and interurban services in and around the city of Vancouver, having authority so to oper-

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ate in the province of British Columbia by virtue of a provincial licence issued pursuant to statutes of that province.

In pursuance of this licence, this company acquired, as a going concern, all the property, business, undertakings and franchises of the Consolidated Railway Company, which was incorporated by an Act of the Legislative Assembly of British Columbia, and thus became the owner and operator of the British Columbia Electric Railway, running on the streets of Vancouver, thence in a southeasterly direction to the city of New Westminster, and along some of the streets of that city, and referred to in these proceedings as the Central Park Line.

The Vancouver & Lulu Island Railway Company was incorporated by an Act of the Legislature of the Province of British Columbia, and, in pursuance of its powers, constructed, about the year 1900, a railway commencing at a point of connection with the railway of the Canadian Pacific Railway Company in the city of Vancouver, and extending southerly to Eburne Junction, on the north side of the north arm of the Fraser river at or near Marpole on the plan produced, and thence southerly across this north arm to Steveston, on the north side of the south arm of the Fraser river; and, in 1908, constructed a branch line from Eburne Junction along the north shore of the north arm of the Fraser river, to New Westminster.

In 1901 the Canadian Pacific Railway Company, pursuant to the authority of an Act of the Parliament of Canada, leased from the Vancouver & Lulu Island Railway Company the railway of the latter for a term of 999 years, and by an Act of the Parliament of Canada, 1 Edw. VII, ch. 86, the railway and works of the Vancouver & Lulu Island Railway Company were declared to be works for the general advantage of Canada.

The Canadian Pacific Railway Company acquired all the capital stock of the Vancouver & Lulu Island Railway Company, and in pursuance of its lease, financed the construction of its lines, and operated several portions thereof directly, as part of its railway system, until these were taken over for electric operation by the appellant, the British Columbia Electric Railway Company, under agreements made in 1904 and 1905, confirmed by Acts of the Canadian Parliament in 1907 and 1909, under the terms of which the

British Columbia Electric Railway Company operates the Vancouver & Lulu Island Railway by electricity and performs the necessary switching and terminal services in connection therewith, on behalf of the Canadian Pacific Railway Company.

By virtue of these agreements the Electric Railway Company owns, controls and operates trains and rolling stock on and over the Vancouver & Lulu Island Railway.

The British Columbia Electric Railway, running as mentioned above, from Vancouver to New Westminster, and referred to as the Central Park Line, connects with the Vancouver & Lulu Island Railway branch running from Eburne Junction, at or near Marpole, to New Westminster, at the easterly terminus of said branch at or near New Westminster, and continues for the distance of about one mile to a point where it makes physical connection with the Canadian National Railway lines at New Westminster, the one mile of the Central Park line forming a direct connecting link between the Vancouver & Lulu Island lines and the Canadian National lines.

Upon application to the Board of Railway Commissioners by the North Fraser Harbour Commissioners and others, the Board made an order, No. 42808, dated June 10, 1929, directing the British Columbia Electric Railway Company Limited and the Canadian National Railways to publish and file, between the stations on the Vancouver & Lulu Island Railway and points on the Canadian National Railways, " via direct connection between the companies," joint rates on the same basis as those then published between the said Vancouver & Lulu Island points and stations on the Canadian Pacific Railway.

The appellants appeal against this order upon the ground of lack of jurisdiction in the Board to compel the British Columbia Electric Railway Company to file joint rates with the Canadian National Railways over the one mile of their street railway referred to, which railway, they contend, is subject only to provincial jurisdiction.

On behalf of the respondent, it was argued that the order does not necessarily require the publishing of joint rates over the one mile of the Central Park line referred to, because the order might be complied with by routing traffic in some other direction or over some other lines. There is nothing

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to show that this could be done otherwise than by using the lines of the Canadian Pacific Railway, there being no direct physical connection between the lines of the Vancouver & Lulu Island Railway Company and the Canadian National Railway Company, at Vancouver or elsewhere. In any event, in view of what appears on the record, it is clear that the words "via direct connection between the companies," as used in the order, means, by way of the one mile of the Central Park Railway mentioned above.

It is argued that, as the Central Park Railway is operated by the British Columbia Electric Railway Company, incorporated in England, jurisdiction over it in connection with its operation of the Central Park Railway is conferred upon the Board by virtue of section 6 of the *Railway Act*, which reads as follows:

6. The provisions of this Act shall, without limiting the effect of the last preceding section, extend and apply to

(*a*) every railway company incorporated elsewhere than in Canada and owning, controlling, operating or running trains or rolling stock upon or over any line or lines of railway in Canada either owned, controlled, leased or operated by such company or companies, whether in either case such ownership, control, or operation is acquired by purchase, lease, agreement or by any other means whatsoever;

(*b*) every railway company operating or running trains from any point in the United States to any point in Canada;

(*c*) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased, or operated by a company wholly or partly within the legislative authority of the Parliament of Canada, or by a company operating a railway wholly or partly within the legislative authority of the Parliament of Canada, whether such ownership, control, or first mentioned operation is acquired or exercised by purchase, lease, agreement or other means whatsoever, and whether acquired or exercised under authority of the Parliament of Canada, or of the legislature of any province, or otherwise howsoever; and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada.

2. The provisions of the last preceding paragraph of this section shall be deemed not to include or apply to any street railway, electric suburban railway or tramway constructed under the authority of a provincial legislature, and which has not been declared to be a work for the general advantage of Canada otherwise than by the provisions of the said paragraph. 1919, c. 68, s. 6; 1920, c. 65, s. 1.

It is pointed out that the appellant, the British Columbia Electric Railway Company, is a company incorporated elsewhere than in Canada and operates trains on lines of railway in Canada owned, leased or operated by the company within the precise language of this section, 6 (*a*), and

that therefore the Board is expressly given jurisdiction over this appellant in connection with its operation of the Central Park Line, though that line is a provincial undertaking carried on within the province under provincial authority. If this be so, the Board has jurisdiction over the whole tramway of the company, quite independently of its connection with the other railways, and over all purely local railways in Canada that happen to be operated by any company that has not been incorporated in Canada.

Reading the whole of sections 5 and 6, the true construction seems to be that the jurisdiction conferred by section 6 (*a*) over the company is limited to its operation of lines of railway within the legislative authority of the Parliament of Canada.

It does not follow that the Board acquires jurisdiction over the street railway or the Park line by virtue merely of its operation also of another line of railway which is under Dominion jurisdiction. There is nothing abnormal about its being under provincial jurisdiction in connection with its operation of the one, and under Dominion jurisdiction in connection with its operation of the other.

To construe section 6 (*a*) otherwise than indicated above would raise the question of whether or not such legislation is *ultra vires* of the Dominion Parliament. The recent decision in the Privy Council in *Attorney-General for Quebec v. Attorney-General for Canada* in what is known as the *Insurance Reference* (1) and not yet in the official reports, would seem to be an authority against the validity of this section. It is there laid down that

> a Dominion licence, so far as authorizing transactions of insurance business in a province is concerned, is an idle piece of paper conferring no rights which the party transacting in accordance with provincial legislation has not already got, if he has complied with provincial requirements.

This has reference to British and foreign companies doing business in Canada under provincial licences, and indicates that the mere fact that a company is British or foreign does not give the Dominion Parliament jurisdiction over it, in connection with the carrying on, as here, of a purely local work under provincial authority.

It is, however, urged that, by virtue of the *British North America Act,* section 92, head 10 (*a*), jurisdiction is con-

(1) [1931] 3 W.W.R. 689; [1932] 1 D.L.R. 97.

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ferred on the Board over this company in connection with its operation of the provincial or Central Park line, or part of it, because that part forms a connecting link between two lines of railway admittedly under the jurisdiction of the Board, one of which extends beyond the limits of the province, and because it handles traffic over its provincial lines to and from lines of railway under Dominion jurisdiction, extending beyond the limits of the province, pursuant to agreements with companies owning and operating those lines under Dominion jurisdiction.

This one mile of the Central Park line, it is argued, thus becomes a part of a continuous system of railways extending beyond the boundary of British Columbia into other provinces.

Against this contention the case of *City of Montreal* v. *Montreal Street Railway* (1) is cited. There the Montreal Street Railway was constructed and was operated under special Acts of the Province of Quebec, and the Montreal Park and Island Railway was also constructed under provincial authority, but had been declared to be a work for the general advantage of Canada, and had thus come under Dominion jurisdiction. The lines of the two railways were physically connected at different points, both within and without the limits of the city of Montreal, and arrangements existed between them for the traffic of passengers and their continuous passage from points on the line of each to points on the line of the other, and the cars of each railway ran over the tracks of the other. The Board of Railway Commissioners, on application to it, found as a fact that the Montreal Park and Island Railway unjustly discriminated against the residents of Mount Royal, and in favour of the residents of the village of Notre Dame de Grace in respect of rates charged, and ordered it to grant the same facilities at the same rates to both classes of residents. It further ordered that with respect to through traffic over the Montreal Street Railway the company owning that railway should enter into any agreements that might be necessary to enable the Montreal Park and Island Railway Company to carry out the provisions of the order.

As both these companies were incorporated in Quebec, section 6 (*a*) of the *Railway Act* had no application in the

(1) [1912] A.C. 333.

case, and as neither line extended beyond the limits of the province or connected with lines extending beyond the limits of the province, section 92-10 (*a*) of the *British North America Act* had likewise no application.

It was, however, contended that there was jurisdiction under section 8 of the *Railway Act,* which, as it then stood, provided that any railway under provincial jurisdiction that connected with or crossed a railway under Dominion jurisdiction should be subject to the jurisdiction of the Act relating to, amongst other matters,

(*b*) the through traffic upon a railway or tramway and all matters appertaining thereto.

It was held that this subsection (*b*), as regards provincial lines of railway properly so called, was *ultra vires,* and it no longer appears in the Act.

It was also held that power to authorize the Board to make the orders was not necessarily incidental to the exercise by Parliament of its jurisdiction over federal lines, and could not be upheld upon the ground that it dealt with the regulation of trade and commerce.

The case of *Luscar Collieries* v. *McDonald* (1), is cited in support of the jurisdiction of the Board in the present case. There the appellant company owned a short railway line in the province of Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Company under agreements, and traffic could pass from the appellant's line without interruption into such other provinces as were served by that company's railway.

It was held that the Board had jurisdiction over the appellant's lines constructed under provincial authority, because the line was part of a continuous system of railways operated together by the Canadian National Railway Company and connecting one province with another.

The decision is expressly put upon the way in which the railway is operated by the Canadian National Railway Company under the agreements, and it is intimated that if that company should cease to operate the appellant's branch, the question whether, under such altered circumstances, that branch ceases to be within s. 92, head 10 (*a*),

(1) [1927] A.C. 925.

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might have to be determined. The question thus left undetermined is the very question that arises in the present case, because the Park line is not operated by the Canadian National Railway Company, nor by the appellant, the British Columbia Electric Railway Company, as the operator of the Vancouver & Lulu Island Railway, on behalf of the Canadian Pacific Railway.

The mere fact that the Central Park line makes physical connection with two lines of railway under Dominion jurisdiction would not seem to be of itself sufficient to bring the Central Park line, or the portion of it connecting the two federal lines, within Dominion jurisdiction.

The *Montreal Street Railway* case (1) referred to above seems to be authority against that view. It is there stated in the reasons for judgment (2),

> that so far as the "through" traffic is carried on over the federal line, it can be controlled by the Parliament of Canada. And that so far as it is carried over a non-federal provincial line it can be controlled by the provincial Legislature, and the two companies who own these lines can thus be respectively compelled by these two Legislatures to enter into such agreement with each other as will secure that this "through" traffic shall be properly conducted; and further that it cannot be assumed that either body will decline to co-operate with the other in a reasonable way to effect an object so much in the interest of both the Dominion and the province as the regulation of "through" traffic.

The same case is authority against the contention that the power of the Board in this case is necessarily incidental to the exercise by Parliament of its jurisdiction over the federal lines, and that in any case the order can be upheld on the ground that it deals with the regulation of trade and commerce. The facts and circumstances in connection with the present case do not seem to give a stronger basis for these contentions than existed in the previous case.

It has been further contended that the Board has jurisdiction by virtue of sections 314, 316 and 317 of the *Railway Act*, particularly because of the discrimination which it has found as a fact to exist. The argument is that the Board, having jurisdiction over the appellant, the British Columbia Electric Railway Company Limited, by virtue of its operation of the Vancouver & Lulu Island Railway, which is under Dominion jurisdiction, has jurisdiction over the company in order to remedy the discrimination. Elimination of the discrimination in the manner provided in the

(1) [1912] A.C. 333. (2) *ibid*, at 346.

order involves, however, the exercise by the Board of jurisdiction over part of the Central Park Line, which is under provincial jurisdiction. If it be correct, as already stated, that the Board has jurisdiction over the company only in reference to its operation of the railway under Dominion jurisdiction and by virtue of that situation acquires no jurisdiction over the purely provincial railway that it also happens to operate as owner, it follows that the order, in directing this appellant to publish a joint tariff " via direct connection between the companies," that is, over the one mile of the Central Park line, is an attempted exercise of a jurisdiction over that one mile which the Board does not possess.

The remedies pointed out in the *Montreal Street Railway* case (1) of course exist here also. The Legislature of the Province of British Columbia has power to coerce the owners of the provincial line to enter into the necessary agreement, and the Dominion Parliament may end the difficulty by declaring the Park line of the appellants to be for the general advantage of Canada. It is contended, however, on behalf of the Canadian Pacific Railway Company, that action of this kind, like the order appealed from, would be unjust to that company, in view of the fact that it constructed its line into the territory and is entitled to an advantage in securing traffic from that territory, and should not be compelled to hand over, for the long haul, traffic secured there, within a short distance of its origin, to a rival company. What action, therefore, the Legislature or Parliament should take under the circumstances is a matter of policy, and both bodies may view the situation as one not calling for any remedy.

Further, it is admitted that there is an indirect connection between the Vancouver & Lulu Island Railway and the Canadian National Railway lines by way of Canadian Pacific Railway lines, over all of which lines the Board has jurisdiction.

The construction, under Dominion authority, of a connecting link between the Canadian National Railway lines and the Vancouver & Lulu Island Railway lines by Dominion authority would also furnish jurisdiction over the matter in dispute.

(1) [1912] A.C. 333.

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In any event, for the reasons stated, I am of opinion that the Board had not jurisdiction to make the order appealed against, and that question 1 submitted must be answered in the negative, rendering it unnecessary to answer question 2.

Costs will be to the appellants.

CANNON J. (dissenting).—I have had the advantage of perusing the notes of my brother Smith in this case. They contain a full statement of the facts. I will simply give the reasons why, with great deference, I cannot agree with his conclusions. The case presents this peculiar situation: the appellant, the British Columbia Electric Railway Company, contests the jurisdiction of the Dominion Parliament and of the Railway Board over it, claiming that its works and operations are within the legislative ambit of the provincial Legislature, while the Attorney-General of British Columbia, the natural guardian of the rights and prerogatives of this province, takes before us the stand that the Dominion jurisdiction should be affirmed. This attitude of the provincial authorities is explained, to my mind, by the fact that the appellant company is neither a provincial nor a federal company, but an English corporation authorized or licensed to do business in British Columbia. It seems to me that the question involved in this appeal is not a conflict of jurisdiction between the Legislature and the Dominion parliament, but purely and simply the validity of the enactment by the Dominion Parliament of section 6 (*a*) of the *Railway Act*, which reads as follows:

> 6. The provisions of this Act shall, without limiting the effect of the last preceding section, extend and apply to
>
> (*a*) every railway company incorporated elsewhere than in Canada and owning, controlling, operating or running trains or rolling stock upon or over any line or lines of railway in Canada either owned, controlled, leased or operated by such company or companies, whether in either case such ownership, control, or operation is acquired by purchase, lease, agreement or by any other means whatsoever.

Although the British Columbia Electric Railway Company is licensed to carry on its business within the province of British Columbia, with one Johannes Charles Martin Buntzen, as attorney for the company, it is nevertheless a company incorporated elsewhere than in Canada with power to acquire, as a going concern, and it has acquired not only the franchise, rights, powers and privileges of the Consoli-

dated Railway Company, but it is admitted also that, at all material times, it operated street railways and inter-urban services in and around Vancouver and it owned, controlled, operated and ran trains and rolling stock upon and over the lines of the Vancouver & Lulu Island Railway—which is a federal railway.

The appellant, plainly and without any possible ambiguity, falls, therefore, under the wording and operation of section 6 (*a*) of the *Railway Act*.

Is this section *intra vires* of Parliament?

Using the words of Mr. Justice Mabee in the case of *Stewart et al* v. *Napierville Junction Railway Company* (1), where he gives the history of this section, originally 8-9 Edw. VII, ch. 32, I would say,

> In cases where a line of railway has passed into foreign hands; when it has either been sold out and out, and become absorbed, if you will, and forms part of the foreign line, or where it has been leased; or *where it is operated by the foreign road;* or *where the foreign road has obtained control of the stock;* or, *where it has obtained control of that road by any means whatsoever,* parliament, we presume, thought, being *international* matters, that Federal control should apply.

This decision has not been challenged, although it would appear from the report that time was given to apply for leave to appeal to this Court. It has been acted upon and considered as good law for the last twenty years. See MacMurchy & Denison, Railway Law of Canada, 1922, p. 25. In law, a company incorporated and having its head-office in England must be considered as foreign to Canada; if it enters Canada to engage in the railway business it must submit to certain rules for its conduct in Canada. The Insurance cases, especially the last decision of the Privy Council, delivered on the 22nd of October, 1931 (2), cannot apply to railway legislation, which is always of public or semi-public character, while the insurance business is a matter of civil rights and contract which has been declared in *Attorney-General for Canada* v. *Attorney-General for Alberta* (3), to be exclusively subject to provincial law.

(1) (1911) 12 Can. Ry. Cas. 399. The words quoted are at pp. 409-410.
(2) *Attorney-General for Quebec* v. *Attorney-General for Canada; Insurance Reference,* [1931] 3 W.W.R. 689; [1932] 1 D.L.R. 97.
(3) [1916] A.C. 588.

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Reasons of general national interest, to my mind, should give and give to the Dominion parliament, through the Railway Board, control and regulation of foreign companies owning and operating railways anywhere in Canada, even if their operations or works be confined for a time to one province. Railway works, when owned by a foreign company, cannot be considered as merely local, as they may affect our international or inter-imperial relations and, possibly, the defence of the country or the plans of the federal government for the use of the railway for a possible mobilization of troops, either in peace or in war time; provisions to regulate them are necessarily incidental to effective Dominion legislation concerning railways. See remark of Lord Dunedin in *Grand Trunk Ry. Co. of Canada* v. *Attorney-General of Canada* (1). For instance, is it not a matter of general national concern that a majority of the directors of a foreign company owning or controlling a railway in Canada should be British subjects, as provided for in section 113, para. 3, of our *Railway Act?* This is a matter of national, not provincial, policy, and only the Governor in Council can permit otherwise. I would therefore answer the questions as follows:

"1. Had the Board of Railway Commissioners for Canada, under the circumstances of this case, jurisdiction under the Railway Act to issue Order No. 42808 in so far as it directs the British Columbia Electric Railway Company Limited to publish and file joint rates between stations on the Vancouver and Lulu Island Railway and points on the Canadian National Railway via direct connection between the British Columbia Electric Railway Company Limited and the Canadian National Railway?"

Answer: Yes.

"2. If the above question should be answered in the affirmative, had the Parliament of Canada jurisdiction to confer upon the Board of Railway Commissioners for Canada authority to compel the British Columbia Electric Railway Company Limited to publish such joint rates over the route in question?"

Answer: Yes.

(1) [1907] A.C. 65 at 68.

The costs of the appeal should be borne by the British Columbia Electric Railway Company.

Question No. 1 answered in the negative; therefore unnecessary to answer question No. 2. Costs of appeal to appellant.

Solicitor for the appellant the British Columbia Electric Ry. Co. Ltd.: *V. Laursen.*

Solicitor for the respondent the Canadian National Ry. Co.: *Alistair Fraser.*

Solicitor for the respondents the North Fraser Harbour Commissioners: *D. N. Hossie.*

Solicitor for the respondent the Province of British Columbia: *Leon J. Ladner.*