

1924
*Oct. 27, 28.
*Nov. 19.

THE GRAND COUNCIL OF THE
CANADIAN ORDER OF CHOSEN
FRIENDS

}

APPELLANT;

AND

THE LOCAL GOVERNMENT BOARD
AND THE TOWN OF HUMBOLDT.

}

RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN
*Statute—Interpretation—Local Government Board—Order under The
Local Government Board (Special Powers) Act, (Sask.) 1922, c. 13—
—Right of appeal.*

There is no right of appeal from an order of the Local Government Board
made under the Local Government Board (Special Powers) Act. Sask.,
1922, c. 13.
Judgment of the Court of Appeal (18 Sask. L.R. 280) affirmed, Idington
J. *dubitante*.

APPEAL from the decision of the Court of Appeal for
Saskatchewan (1) allowing an appeal by the town of Hum-
boldt from an order of Embury J. giving leave to appeal

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe
and Rinfret JJ.

(1) [1924] 18 Sask. L.R. 280; [1924] 1 W.W.R. 1244.

against an order of the Local Government Board made under the provisions of The Local Government Board (Special Powers) Act.

The material facts of the case are fully stated in the judgments now reported.

Bastedo for the appellant. The Court of Appeal of Saskatchewan has jurisdiction to hear the appeal from the order of the Local Government Board.

The Local Government Board had no jurisdiction to make the order complained of.

Sections 26 and 27 of the Local Government Board (Special Powers) Act are *ultra vires* of the Legislature of Saskatchewan.

Blackwood K.C. for the Attorney General for Saskatchewan. The question of the *vires* of section 26 of The Special Powers Act does not arise at this stage, because even assuming that by wholly removing orders of the Local Government Board from review by the courts the legislature has exceeded its jurisdiction, nevertheless the provisions of section 26 of The Special Powers Act are separable, and it was clearly within the competence of the legislature to enact the opening words thereof, namely: "Every order of the Board or of the Master of Titles shall be final and without appeal." *In re Muir* (1); *Re The Initiative and Referendum Act* (2); Clement's Canadian Constitution, 3rd ed., pp. 490 and 491; CYC vol. 26, p. 571. Therefore, in view of the opening words of section 26 of The Special Powers Act, the statutory right of appeal given by section 50 of The Local Government Board Act cannot be read into the Local Government Board (Special Powers) Act, 1922. It is under section 50 of The Local Government Board Act that the existing proceedings have been taken by the appellant, and by virtue of which section alone and not otherwise, it has based its right of appeal, which clearly it is not entitled to do.

Blair for the respondent, the town of Humboldt.

The judgment of the majority of the court (Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.) was delivered by

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(2) [1919] A.C. 935.

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NEWCOMBE J.—Upon this appeal the Grand Council of the Canadian Order of Chosen Friends, the appellant, submits that an order of the Local Government Board of Saskatchewan of 28th December, 1923, was made by the board in excess of its powers, and seeks to have the order reviewed and declared inoperative or set aside.

The Local Government Board was constituted by c. 41 of 1913 of the province, and subsequently by c. 11 of 1916, "An Act to grant special powers to the Local Government Board," additional powers were conferred upon the board. The Act of 1913 was repealed and reproduced with amendments by c. 8 of 1917, and, when the public statutes of Saskatchewan were consolidated in 1920, the two statutes relating to the constitution and powers of the Local Government Board, namely, c. 8 of 1917 and c. 11 of 1916, the latter conferring the special powers, were brought into c. 23 of the revision in separate parts I and II, under the title of "An Act respecting the Local Government Board." By c. 13 of 1922, Part II of c. 23 of the Revised Statutes was repealed and separately re-enacted with amendments under the title of "The Local Government Board (Special Powers) Act, 1922."

By the Local Government Board Act, as it appears in c. 23 of the Revised Statutes, "local authority" is defined to mean

the council of a city, town, village or rural municipality, the board of trustees of a school district and the directors of a rural telephone company;

provision is made for the appointment of a Local Government Board by the Governor-in-Council, and the Board is empowered to inquire into the merits of any application of a local authority for permission to raise money by way of debenture or upon the security of stock, and to grant or refuse such permission; to manage the sinking fund of any local authority which desires to entrust the same to the board for management; to supervise the expenditure of moneys borrowed by a local authority under the Act; to obtain from any local authority at any time a statement of its affairs; to revise the assessment of certain rural municipalities; to administer the Sale of Shares Act; to hear assessment appeals; to grant permission for extension of time for the repaying of indebtedness incurred by the municipalities

for municipal public works as provided by the Municipal Debentures Repayment Act, and to perform such other duties as may be assigned to the board by statutory authority. The special powers conferred by the Local Government Board (Special Powers) Act, 1922, extend to the retirement of outstanding debentures and accounts in exchange for new debentures; the fixing of terms and conditions upon which the exchange shall be made; the rebating or funding of arrears of interest or the variation of the rate of interest payable on any debt of the municipality; the consolidation of existing debentures; and other comprehensive powers intended to enable the board to control municipal finance and to modify or affect by its orders the rights of the municipal debenture holders.

It was in pursuance or intended execution of the powers conferred by the last mentioned Act that the Local Government Board made the order of 28th December, 1923, with reference to the outstanding debentures of the respondent municipality of Humboldt. This order proceeded upon recital of a petition complaining that debenture coupons of the town of Humboldt had become due and payable which upon presentation had not been paid, and requesting the board to make inquiry into the affairs of the town and to take such steps as it might deem adequate and expedient for the proper and satisfactory adjustment of the town's finances in accordance with the powers conferred by the Special Powers Act. There were directions that the holders of the debentures, debenture coupons or accounts of the town, maturing before 1st January, 1924, should deposit them with the Union Bank of Canada and receive certificates to be issued by the bank in lieu thereof; that the Union Bank, with which the town was to open a debenture trust account, should thereout pay the principal of these debentures, coupons and accounts without interest; that the payments of principal should be considered in satisfaction of both principal and interest, and that all payments made by the town as interest subsequent to 1st January, 1919, should be considered as having been made on account of principal and should be credited as such; moreover, that as to debentures and coupons maturing after 1st January, 1924, the interest should be at the rate of 2

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per cent. The order thus professed to reduce or otherwise to modify or affect the rights of the debenture holders, and the appellant, being a holder of a number of these debentures, and being dissatisfied with the order, sought to appeal therefrom to the Court of Appeal of Saskatchewan. The appellant accordingly applied to Embury J., one of the learned judges of the Court of King's Bench, for leave to appeal, and upon the hearing of the application it was objected by the respondents, the Local Government Board and the town of Humboldt, that no appeal lies from any order of the Local Government Board under the Local Government Board (Special Powers) Act, 1922, and that consequently there was no jurisdiction to grant leave in the case. The learned judge considered, however, that inasmuch as by s. 50 of the Local Government Board Act, R.S.S. 1920, c. 23, an appeal is given from the board to the Court of Appeal upon a question of jurisdiction, and as that provision was in his view incorporated in the Local Government Board (Special Powers) Act, 1922, the objection should be overruled, and he therefore granted leave to appeal.

The appellant asserted its appeal in pursuance of the leave so granted, and the respondents, the Local Government Board and the town of Humboldt, also appealed to the Court of Appeal from the order of Embury J. Before the hearing of these appeals the appellant, the Grand Council of the Canadian Order of Chosen Friends, gave notice to the Attorney General of Saskatchewan that, upon the hearing of the appeal of the Local Government Board and the town of Humboldt, the Grand Council would bring into question the constitutional validity of ss. 26 and 27 of the Local Government Board (Special Powers) Act, 1922, upon which, as will be hereinafter shown, was thought to depend the absence of the right of appeal invoked by the Grand Council of the order; similar notice was given to the Attorney General in the appeal of the Grand Council from the order of the Local Government Board.

The two appeals came on for hearing at the same time and the learned Chief Justice pronounced the judgment of the Court of Appeal allowing the appeal of the town of Humboldt upon the ground that the statute gave no right

of appeal from the order of the Local Government Board of 28th December, 1923, and he held, moreover, that the appeal of the Grand Council from the said order should be dismissed. Thus both appeals were disposed of unfavourably to the Grand Council of the order which now appeals to this court upon the whole case by leave of the Court of Appeal, and upon this appeal not only are the parties represented but the Attorney General of Saskatchewan has appeared and he maintains the validity of the legislation.

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The appellant has stated serious objections to the order of the Local Government Board. It is said that the order is not authorized by the provisions of the statute because preliminary requirements were not satisfied, and, moreover, it is suggested that it was incompetent to the legislature to empower the board to make the order. Reluctantly I have come to the conclusion that these objections cannot be determined upon this appeal, because it appears upon the true interpretation of the Local Government Board (Special Powers) Act, 1922, that no appeal lies from the board's order to the Court of Appeal.

It is provided by s. 50, subs. 1 of the Local Government Board Act, R.S.S. 1920, c. 23, that:

50. (1) An appeal shall lie from the board to the Court of Appeal upon a question of jurisdiction, but such appeal shall not lie unless leave to appeal is obtained from a judge of the Court of King's Bench sitting in chambers within one month after the making of the order or decision sought to be appealed from or within such further time as the judge, under the special circumstances of the case, shall allow, after notice to the opposite party stating the grounds of appeal.

Subsections 2, 3, 4, 5 and 6 follow; they regulate the procedure in appeals upon a question of jurisdiction. Subsection 7 provides as follows:

(7) Save as otherwise specially provided:

- (a) every decision or order of the board shall be final; and
- (b) no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in any court.

It must be remembered that the right of appeal does not exist by the common law; it is statutory. The Local Government Board Act, as enacted in c. 41 of 1913, gave no right of appeal. The Special Powers Act, as enacted in c. 11 of 1916, gave no right of appeal. The right of appeal

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which is now expressed by s. 50, subs. 1, above quoted, and which is limited to questions of jurisdiction, was sanctioned by c. 8 of 1917, and, as already stated, after the two last mentioned statutes had been combined to form Parts I and II of c. 23 of the Revised Statutes of 1920, Part II, which enunciates the Special Powers, was repealed, and c. 13 of 1922 was enacted in the place of it. Sections 23, 26 and 27 of the latter Act are as follows:

23. The board shall have exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this Act.

26. Every order of the Board or of the Master of Titles shall be final and without appeal, and no order, decision or proceeding of the Board or Master of Titles shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, or any other process or proceeding in any court.

27. All orders and directions made by the Board or Master of Titles under the provisions of this Act shall, when published by the Board or by leave of the Board in two successive issues of *The Saskatchewan Gazette* and while the same remain in force, have the like effect as if enacted in an Act of the Legislature, and all courts shall take judicial notice thereof.

It is by s. 26, as so enacted, that the words "and without appeal" are introduced into the legislation respecting the special powers of the board, which is again embodied in a separate chapter.

On behalf of the appellant it was insisted that the Local Government Board Act and the Special Powers Act of 1922 should be read together, and that s. 26 of the latter Act was not intended to take away the right of appeal in matters of jurisdiction which existed under s. 50, subs. 1, of the former Act; and, moreover, it was contended, though not very confidently, that upon any other interpretation ss. 26 and 27 would be in excess of legislative authority, not because the subject matter of these sections would not fall to the province in the distribution of legislative powers as between the Dominion and the provinces, but upon the view that these sections would in effect make the orders of the board absolute, because they withdraw the orders and proceedings of the board from review by prohibition, injunction, *certiorari* or any other process, and give to the orders statutory effect, while denying a right of appeal, and would, therefore, confer upon the board powers which are not subject to judicial determination or control. While doubtless, ss. 26 and 27 are, upon an admissible interpreta-

tion, wholly within the legislative authority of the province, it is not necessary to determine their operation or effect in so far as they are expressed to take away common law remedies, or with relation to those remedies in cases where the board has no jurisdiction upon which to found its order, because it is certain that the right of appeal to the Court of Appeal is within the exclusive gift of the legislature, and if conferred by the legislature, may by the same authority be withdrawn.

Assuming then that ss. 26 and 27 are competent expressions of legislative intention, the question becomes one of interpretation only. Section 28 of the Special Powers Act, 1922, enacts that:

28. The provisions of The Local Government Board Act and of The Municipal Debentures Repayment Act, shall, except in so far as inconsistent herewith, be applicable hereto.

It may be assumed that this clause would, if there were no inconsistency, be effective to incorporate in the Special Powers Act, subs. 1 of s. 50 of the Local Government Board Act, which expressly provides that an appeal shall lie from the board to the Court of Appeal upon a question of jurisdiction; but how can it be said that the latter provision is not inconsistent with s. 26 of the Special Powers Act which provides that every order of the board shall be final and without appeal? The words "without appeal" can have no effect unless it be to take away the appeal which would otherwise exist by the operation of s. 28 of the same Act upon questions of jurisdiction. I regret that I see no escape from this conclusion. The court cannot compatibly with established canons of construction reject words which the legislature has introduced if by reasonable interpretation meaning can be given to them. In my judgment the words "and without appeal" are apt for the purpose of taking away the appeal upon jurisdiction which is given by subs. 1 of s. 50 of the Local Government Board Act, and the construction should be *ut res magis valeat quam pereat*.

The conclusion is therefore in agreement with that reached by the court below; and, seeing that the Court of Appeal had no jurisdiction, this appeal should be dismissed with costs.

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IDINGTON J. (*dubitante*).—The appellant is a corporation organized for the purpose, amongst others, of conducting a fraternal insurance business under the Insurance Act of the province of Ontario, and, as such, became a holder of debentures of said town of Humboldt, to the amount of over \$6,000.

The said town of Humboldt, respondent, is a municipal corporation in Saskatchewan, which would seem to have become so involved in debt as to be practically insolvent, as its counsel seemed in effect to admit on my presenting such a suggestion to him in course of his argument.

The said Local Government Board, its co-respondent herein, is a corporation consisting of three members, created by the Lieutenant-Governor in Council pursuant to the Local Government Board Act, 1916, repealed as to all but section 22, bringing it into force, and now appearing in the Revised Statutes of Saskatchewan, 1920, by which it was given very extensive powers of investigation respecting which no complaint can be reasonably made, and results of which were to be reported to the Lieutenant-Governor and in many instances to those concerned.

In February, 1922, an Act was passed called the Local Government Board (Special Powers) Act, 1922.

Up to the passage of that Act, though there may have been legislation relative to said board and its work of a somewhat doubtful character, there was left open a means of checking the operations thereof in case of its going *ultra vires* of the powers intended to be conferred on it by the legislature, or even that of the legislature itself.

In the course of the board's history the legislature seems to me to have grown continuously bolder by degrees in the way of increasing the powers of the board and rendering it more difficult to test the legality of the legislation or of the board's action thereunder.

At first the legislature seemed content simply to declare such course as laid down binding.

Then a year or two later it provided, in 1917 (by what is now section 50 of the Local Government Board Act, as it appears in the Revised Statutes of Saskatchewan for 1920, c. 23), as a means of keeping it within its jurisdiction, for an appeal to the Court of Appeal, by leave of a judge of the Court of King's Bench, sitting in chambers.

Subsection 7 of said Act as revised is as follows:—

(7) Save as otherwise specially provided:

- (a) every decision or order of the board shall be final; and
- (b) no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court.

The Local Government Board having made an order on the 28th of December, 1923, dealing with the indebtedness of the town of Humboldt (one of respondents herein) and a trust account of the latter, and giving orders that if valid would certainly impair very much the rights of the appellant, it sought leave to appeal under said section 50, and was granted such leave.

Upon the said appeal coming up for hearing before said Court of Appeal, the respondents, by their respective counsel, set up as preliminary reply thereto that the right of appeal relied upon, and conferred upon said court, by said section 50 above referred to, had been taken away by section 26 of the Special Powers Act of 1922, which reads as follows:

26. Every order of the board or of the Master of Titles shall be final and without appeal, and no order, decision or proceeding of the board or Master of Titles shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court.

Upon this section the Court of Appeal held all right of appeal was thereby taken away, and dismissed the appeal.

Thereupon the appellant asked for and was granted by said court leave to appeal to this court. That leave was presumably given by virtue of the new section 41 of the Supreme Court Act, as amended in 1920, which by subsections 1 and (a) reads as follows:—

1. (1) Special leave to appeal may be granted in any case within section thirty-six by the highest court of final resort having jurisdiction in the province, in which the judicial proceeding was originally instituted:—

Provided that in any case whatever where the matter in controversy on the appeal will involve,—

(a) the validity of an Act of the Parliament of Canada or of the legislature of any province of Canada or of an ordinance or Act of the council or legislative body of any territory of Canada; or,

* * * * *

It is under and by virtue of the leave so given that we have heard this appeal.

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I have read the judgment of my brother Newcombe J. speaking on behalf of the majority of the court and, as I understand it, the decision is made to turn upon the interpretation of the said section 26 above quoted and assuming, as matter of course, that it must be held valid.

I most respectfully submit that does not necessarily involve the validity of any Act of Parliament or of the legislature, and passing on that minor aspect of the case presented, is not determining what is in dispute.

The claim made by the appellant's counsel throughout has been that, if said section 26 is to be given the interpretation given it below, then the legislature has conclusively handed over to the respondent board such powers of legislating as to take away the rights of the appellant and others similarly situated in relation to any of the towns or school districts it has been given any power in or over, and thereby has acted *ultra vires*.

He has cited, amongst other authorities, the recent decision of the Manitoba Court of Appeal (1), which was upheld by the judicial Committee of the Privy Council in the case of *Re Initiative and Referendum Act* (2).

And I am, from a perusal of the judgment in the case lastly mentioned, and consideration thereof and the far reaching consequences of maintaining such legislation as that attacked herein to be *intra vires* a local legislature, convinced that this court should, under the said circumstances, have considered and passed upon the questions so involved.

It is doubtful if the legislature itself could have enacted, as its deputy the board has done, in the way of winding up a bankrupt corporation unchecked by any possible application to the courts.

I incline to the opinion that appellant's contention on this point and others involving the question of the validity of such legislation is well founded.

I am quite aware of the necessity that has often arisen for local legislation touching upon and perhaps invading contractual rights, but I cannot recall a case going so far as has been done in this instance, in many ways objected to, and, in my view towards taking possession of the field

(1) 27 Man. R. 1.

(2) [1919] A.C. 935.

of bankruptcy and insolvency assigned by item No. 21 of section 91 of the British North America Act of 1867 to the Dominion Parliament, much less attempting to delegate such powers of legislation to a creation of its own.

Having come to understand, whilst engaged in the investigation and consideration of the manifold aspects of this by no means simple case, that the majority of this court were likely to be in accord with my brother Newcombe J's. opinion, which I have referred to, I concluded I could see no useful purpose to be served by my following the matter further, except to point out, as I have done, the urgent need there is for having the validity of said legislation determined. Hence I most respectfully point out my doubt as to the correctness of the view taken by the majority and failure to determine what is in question, especially when coming to the conclusion that all right of appeal is taken away and thereby the board is free to go ahead regardless of the limitations imposed upon it by earlier legislation than this Special Power Act.

In referring to the field of bankruptcy and insolvency it is fair to say that counsel on both sides admitted that that aspect of the case had never been presented until I started it in the argument herein. But many other points as above suggested were taken challenging the legislation of the legislature, or its deputy, as *ultra vires*.

In making the foregoing suggestions I am not to be taken as expressing any final opinion.

Appeal dismissed with costs.

Solicitors for the appellant: *MacKenzie, Thom, Bastedo & Jackson.*

Solicitors for the respondent, the town of Humboldt: *Blair, McNeel & Stewart.*

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