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*May 23.
*June 7.

ST. JOHN AND QUEBEC RAILWAY COMPANY (PLAINTIFF).... } APPELLANT;

AND

WENDELL P. JONES AND OTHERS (DEFENDANTS)..... } RESPONDENTS.

ON APPEAL FROM THE APPEAL DIVISION OF THE SUPREME COURT OF NEW BRUNSWICK.

Constitutional law—Provincial railway—Operation by provincial government—Removal of directors—"Work for general advantage of Canada" —Express declaration—Lease to Dominion Government.

Where the government of a Province is authorized by the legislature to assume control of a provincial railway its act of removing the directors and appointing others is *intra vires* of its powers.

If, under the provisions of s. 92, s.s. 10 (c) of the B.N.A. Act, a provincial public work can be made a "work for the general advantage of Canada" without an express declaration by Parliament therefor a lease of it to, and its subsequent operation by, the Dominion Government is not equivalent to such a declaration. But;

Held, Idington and Duff JJ. expressing no opinion, that the express declaration is necessary in every case.

APPEAL from a decision of the Appeal Division of the Supreme Court of New Brunswick affirming the order of the Chief Justice who set aside the writ of summons in the cause as having been issued without authority.

Two questions were raised on this appeal. One that the lease of the railway to the Dominion Government made it a "work for the general advantage of

PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Brodeur and Mignault JJ.

Canada," and the government of New Brunswick had, therefore, no power to remove the directors. The other was that the Act of the legislature authorrizing the provincial governments to assume control and take over the stock was *ultra vires* as affecting the civil rights of the bondholders. As to this two of their Lordships held that the facts of the case did not bring it within the principle of the decision of the Judicial Committee of the Privy Council in *Royal Bank of Canada* v. *Rex* (1), relied on by the appellant, and two, that this question could not be raised. The remaining Judge did not deal with it.

J. J. F. Winslow for the appellant.

W. P. Jones K.C. and *P. J. Hughes* for the respondent, were not called upon.

THE CHIEF JUSTICE.—This action was one brought in the name of the St. John & Quebec Railway Company at the instance of Arthur P. Gould and his associates claiming to be the legal directors of the said company to restrain the defendants, the *de facto* directors, from acting as directors and for an account.

The learned Chief Justice of New Brunswick, the Honourable Sir J. Douglas Hazen, on an application made to him in chambers to set aside the writ of summons in this case on the ground that the same had been issued without the authority of the defendants who claimed to be the legal directors of the plaintiff company, granted the application and set aside the writ with costs to be paid by the plaintiffs (appellants') solicitors.

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The Chief Justice.

On appeal to the Appeal Division of the Supreme Court of New Brunswick the judgment or order of the Chief Justice was unanimously upheld in a judgment delivered by Crocket J. with costs to be paid by the plaintiffs' solicitors.

From this latter judgment this appeal was taken to this court.

At the conclusion of the argument of Mr. Winslow for the appellant the court, being unanimously of the opinion that the appeal failed, did not call upon respondents' counsel, but dismissed the appeal with costs to be paid by the appellant plaintiffs' solicitors.

The main points to determine were:

First, whether the Act of the provincial legislature in 1915 dispossessing and dismissing the then directors of the road, and providing for the appointment of other directors in their place, was legislation *intra vires* of the legislature of that Province. This hardly was or could be contested unless it was shewn that the railroad had previously passed from being a provincial road by Dominion legislation declaring it to be one for the general advantage of Canada. The contention was that the Dominion Act of 1911 authorizing the Dominion to take a lease of the road and the subsequent taking of that lease, combined with the statute of 1912, ch. 49, as amended by the Act of 1914, ch. 52, providing that the Dominion might build and own bridges on and over the road, amounted impliedly to a statutory "declaration that the work was one for the general advantage of Canada." We were quite unable to accept or accede to that argument. It has never yet been decided by any court that the declaration required by the B.N.A. Act to change a provincial road into a Dominion one can be implied by or from such legislation as is here relied on, legislation

which is quite consistent with the work in question being and remaining, as in fact it was and is, a purely provincial one. Nor have I ever been able to hold that anything short of the statutory declaration the Confederation Act requires can accomplish such a transfer.

The remaining point Mr. Winslow pressed was that laid down by the Privy Council in the case of the *Royal Bank of Canada* v. *Rex* (1), that provincial legislation affecting civil rights outside of the province was *ultra vires*.

The difficulty counsel here had was to establish facts at all analogous to those in the case which he cited and relied on. In fact no such analogous or other facts existed in this case which brought it within the principle on which the *Royal Bank of Canada* v. *Rex* (1) was decided.

The appeal is, therefore, dismissed with costs to be paid by the appellants' solicitor.

IDINGTON J.—The appellant was incorporated by the legislature of New Brunswick for the purpose of constructing a railway in that province. In course of time five directors were appointed. The management of the adventure produced such results that in 1915 the legislature saw fit for what seemed to it good and sufficient reasons to declare shares of the capital stock of the said appellant company to be vested in His Majesty the King, in behalf of the Province of New Brunswick, and at the same time authorized the Lieutenant Governor in Council to nominate, in place of the then directors, others whom he should be advised to so name. The original directors being

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those then in office were, by virtue of the said legislation, and the action of the Lieutenant Governor in Council, absolutely displaced from their respective offices as directors. From time to time, from thenceforward till this action was brought, the office of director of appellant was filled by the Lieutenant Governor in Council or by legislative enactment of the legislature of the province. Very important steps by way of carrying out the enterprise have been entered upon since, amongst others an agreement to enter into a lease of the whole line of railway, when fully constructed and equipped, to His Majesty the King on behalf of the Dominion of Canada.

The appellant, moved by some parties other than the *de facto* directors appointed in the manner above stated, instituted this action to remove the said *de facto* directors. The writ of summons was set aside by the order of the Chief Justice of the province. His judgment in that regard was upheld on appeal to the court of appeal for New Brunswick, and from that judgment the present appeal is taken. The pretension is set up that what was done by the legislature of the Province of New Brunswick as above recited was *ultra vires* and hence that the old original directors had never been displaced. The colour of pretension for this is alleged to be the leasing, or agreement to lease, to His Majesty the King on behalf of the Dominion of Canada. It is not pretended that there was any declaration such as required by the British North America Act by the Dominion Parliament declaring the work in question to be a work for the general advantage of Canada or for the advantage of two or more of the provinces. It is merely pretended that such is to be implied from the fact of the agreement to lease or leasing above referred

to. It is my opinion that there is no foundation in fact or in law upon which to rest such alleged implication, in any event at the time when the appellant company's directors were displaced by the order of the Lieutenant Governor in Council pursuant to the above enactment.

There can be no doubt but that the said legislature had then full power over appellant and its organization.

The other questions sought to be raised as to the legislation which accompanied the displacement of the directors and the reconstituting the board of directors of appellant on the ground that these other enactments were *ultra vires*, can have nothing to do with what is involved in the bare question of the reconstitution of the board. The attempt made to bring this action, under all the attendant circumstances, as disclosed in the history of the road in the past four or five years, seems rather a bold attempt and one which should not be encouraged.

The appeal should be dismissed and the costs be paid by those who promoted this litigation.

DUFF J.—The Legislature of New Brunswick had full authority to enact legislation touching the ownership of the shares in this company which was a provincial company. There is nothing in the arrangement made between the company and the Dominion of Canada or in the Dominion legislation which affects this jurisdiction. The company's railway is nowhere declared in terms to be a work for the general advantage of Canada; and assuming that, in the absence of a declaration in terms to that effect, an intention to characterize a particular work as a work for the general advantage of Canada manifested by neces-

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sary implication from the language of a Dominion enactment could take effect under section 92 (10) of the B.N.A. Act and give to the Dominion Parliament exclusive jurisdiction under section 91 (29) and the provisions of section 92 (10)—assuming this I am still clearly of the opinion that no such implication arises from the provisions of the Dominion enactments in question. On the contrary the intention of Parliament appears to be to treat the company's railway as a provincial work.

The appeal should be dismissed with costs.

BRODEUR J.—The present action is to restrain the defendants respondents, Jones et al., from acting as directors of the St. John and Quebec Railway Company.

The defendants were appointed under legislation passed in 1915 by the legislature of New Brunswick. It is contended by the appellant company that the railway was originally a local work and was then under the legislative control of the province but that it was later on operated under lease by the Dominion of Canada and was impliedly declared to be a "work for the general advantage of Canada," and that the provincial legislature had lost its jurisdiction concerning the company which was the owner of that railway.

It is contended also by the appellant that the provincial legislature could not legislate as to bonds which had been issued by the company when it was under provincial control because they are situate outside the province, and it relies in support of this ground on the authority of *The Royal Bank* v. *The King* (1).

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On this latter point raised by the appellant I may say that it cannot be validly raised in the present action which is instituted for the purpose of testing the validity of the election on the appointment of the respondents as directors of the appellant company. The Act of the legislature which authorized the election of the respondents might be *ultra vires* in that respect; but we are not concerned as to whether some other dispositions of the Act as to the bonds are legal or not. This is a suit involving the internal management of the company; and if the legislature had still in 1915 legislative control over the undertaking of the company, then its legislation concerning the status of directors is valid.

It is common ground that there never was any formal federal enactment declaring the railway in question to be a "work for the general advantage of Canada" under the provisions of s.s. 10, item (c) of sec. 92 B.N.A. Act. The appellant contends that such an implied declaration is to be found in some federal statutes, which authorized the Dominion Government to lease the railway and granted some railway subsidies. The power of the federal authorities to operate a provincial railway should not be construed as divesting the provincial authorities of any legislative authority as to this railway. There is nothing in The Railway Subsidies Act which should be considered as a declaration that the railway is declared a work for the general advantage of Canada. The different subsidy Acts of the federal Parliament provide not only for the subsidizing of federal railways but of local railways as well.

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I am of the view that the declaration which the British North America Act authorizes the federal Parliament to make concerning a provincial work, should be made in express terms. It should be done in such a way that there should be no doubt as to the will of the federal Parliament to assume legislative control over a provincial work.

The point was discussed in the case of *Hewson* v. *Ontario Power Co.* (1), and there it was stated by Mr. Justice Davies, who is now the Chief Justice of this court, that he was inclined to think that with respect to a work of a purely provincial kind solely within the jurisdiction of the provincial legislature, a declaration by the federal Parliament to assume jurisdiction should not be inferred from its terms or deduced from recitals of the promoters in the preamble, but should be substantially enacted by the Parliament.

I agree with such a proposition of law. I consider that the declaration should be a formal one.

As I am unable to find in the statutes quoted by the appellant company such a formal declaration its appeal should be dismissed with costs.

MIGNAULT J. concurs with the Chief Justice.

Appeal dismissed with costs.

Solicitor for the appellant: *J. J. F. Winslow.*

Solicitor for the respondent: *Peter J. Hughes.*

(1) 36 Can. S.C.R. 596.