

1911 HALIFAX BOARD OF TRADE.....APPELLANT;

*March 22.

*March 24.

AND

GRAND TRUNK RAILWAY COM- }
 PANY OF CANADA..... } RESPONDENT.

(HALIFAX RATES CASE.)

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS
 FOR CANADA.

*Appeal—Leave by judge—Jurisdiction of Railway Board—Doubt
 as to decision of Board.*

A judge of the Supreme Court of Canada will not grant leave to
 appeal from the decision of the Board of Railway Commissioners
 on a question of jurisdiction if he has no doubt that such
 decision was correct.

MOTION for leave to appeal from a decision of the
 Board of Railway Commissioners on a question of
 jurisdiction.

The Halifax Board of Trade applied to the Board
 of Railway Commissioners complaining that the
 Grand Trunk Railway Co. unjustly discriminated
 against the port of Halifax and in favour of other
 Atlantic ports in its differential rate of one cent per
 100 pounds on all traffic between Halifax and Mon-
 treal and points east of Montreal.

The Board held that it was without jurisdiction to
 entertain the application for the following reasons.

The "Railway Act" provides that "where the pro-
 visions of this Act and of any special Act passed by the

*PRESENT:—Mr. Justice Anglin.

Parliament of Canada relate to the same subject-matter" those of the special Act shall prevail, and the Board was of opinion that the Act 62 & 63 Vict. ch. 5, confirming an agreement between the Grand Trunk Railway Board and the Government of Canada in respect to freight rates between Montreal and Halifax overrides the provisions of the "Railway Act" in respect to discrimination in rates. The Board of Trade then applied to Mr. Justice Anglin for leave to appeal from such decision of the Railway Board.

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Code K.C. supported the application.

Biggar K.C. contra.

ANGLIN J.—Application for leave to appeal from a decision of the Board of Railway Commissioners, dismissing a complaint of the Board of Trade of Halifax against the Grand Trunk Railway Co., on the ground that the jurisdiction of the Board of Railway Commissioners over the subject-matter of the complaint is ousted by section 3 of the "Railway Act," which provides that

* * * Where the provisions of this Act and of any special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the special Act shall, in so far as is necessary to give effect to such special Act be taken to override the provisions of this Act.

In granting leave to appeal under sub-section 2 of section 56 of the "Railway Act" a judge of this court should be satisfied not only that a question of the jurisdiction of the Railway Board is involved, but also that there is some reasonable doubt as to the soundness of the decision which it is sought to impugn.

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By an agreement entered into between Her late Majesty, represented by the Minister of Railways and Canals, and the Grand Trunk Railway of Canada, on the 1st of February, 1898, it is amongst other things provided that the rate over the Intercolonial from Montreal to Halifax shall be, on all classes and special classes of freight received by it from the Grand Trunk Railway, one cent per 100 pounds over the rates between Montreal and St. John over the Intercolonial Railway, or between Montreal and Portland over the Grand Trunk Railway. By the agreement the Grand Trunk Railway Company bound itself to route *via* the Intercolonial Railway all traffic received by it west of Montreal and billed for points reached by the Intercolonial Railway. This agreement was confirmed by statute of the Dominion of Canada, 62 & 63 Vict. ch. 5. By section 2 it is provided that

It shall be lawful for Her Majesty and for the company to do whatever is necessary to the carrying out on Her part, and on its part, of all the provisions contained in the main agreement to the true intent and meaning thereof.

In order "to give effect" to this "special" legislation, which is enacted with special reference to the Grand Trunk Railway and its operation(1), it is necessary to treat it as overriding *pro tanto* the provisions of the "Railway Act" against discrimination in rates, assuming that upon the merits, but for the provisions of the agreement and the statute ratifying them, a case of unjust discrimination might be established. "Railway Act," section 315, sub-section 4. I think this case is readily distinguishable from *Grand*

(1) "Railway Act," sec. 2(28).

Trunk Railway Co. v. City of Toronto(1). The subject-matter of the special legislation in this case is the rates of tolls between different localities — precisely the subject-matter dealt with by section 315, sub-section 4 of the “Railway Act.” If, but for the special legislation, the extra charge of one cent per 100 pounds for carriage to Halifax would amount to an unjust discrimination, it is obvious that the special legislation is inconsistent with the general provision of the “Railway Act.” Both may not stand together; both may not operate without either interfering with the other. *Tabernacle Permanent Building Society v. Knight*(2), at page 302. In order to give effect to the complainant’s contention the Railway Board must either compel the Grand Trunk Railway Company to charge for freight destined for Halifax from any point on its line west of Montreal one cent less per 100 pounds for its transport to Montreal than it charges for carrying the same freight from the same point to Montreal if billed to St. John, or it must override the special Act of Parliament and compel the Intercolonial Railway to accept for freight received at Montreal from the Grand Trunk Railway billed to Halifax the same tolls as it charges for freight received from the Grand Trunk Railway billed to St. John. The Board certainly would not have jurisdiction to make the latter order against the Intercolonial Railway, which is excluded from the operation of the “Railway Act”(3). To make the former order against the Grand Trunk Railway Company would not only be unfair to that railway company — a consideration to which I should perhaps not now attach weight — but would

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(1) 42 Can. S.C.R. 613.

(2) [1892] A.C. 298.

(3) “Railway Act,” sec. 5.

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involve a breach of the provisions of section 315 of the "Railway Act" as to equality of tolls.

I entertain no doubt whatever that the decision of the Railway Board, that it was without jurisdiction to entertain the complaint of the Halifax Board of Trade was correct. I am, therefore, of opinion that their application for leave to appeal should be refused with costs.

Leave refused with costs.
