

THE CANADIAN NATIONAL RAIL- }  
WAY COMPANY ..... } PETITIONERS;

1926  
May 18.

AND

THE TORONTO IRON WORKS, ET AL. . . RESPONDENTS.

*Expropriation—Warrants of possession—Joint Undertaking—Expropriation Act—Canadian National Railway Act (9-10 Geo. V, C. 13)—Toronto Terminal Railway Act (1906).*

*Held,*—That inasmuch as the building of the Toronto Viaduct was authorized to be built under a Special Act of Parliament by the Canadian Pacific Railway, the Grand Trunk Railway, and others, such undertaking could not be said to be that of the Canadian National Railway Company and that the expropriation of land for such purpose should be made under the Railway Act.

(2) That the present undertaking being that of at least two companies, and not that of the Canadian National Railway Company alone, the provisions of the Canadian National Railway Company Act of 1919 permitting it to acquire lands for its purpose under the Expropriation Act, did not apply.

PETITION by the Canadian National Railway Company for warrants of possession regarding certain properties taken by expropriation for the Toronto Viaduct.

Toronto, April 22nd, 1926.

Petition now heard before the Honourable the President (in chambers).

*E. Strachan Johnston, K.C., and E. S. Fraser* for petitioner.

*Hon. W. N. Rowell K.C.* for The Toronto Iron Works.

*F. H. Snider* for C. Richardson, et al.

The facts are as stated in the reasons for judgment.

Maclean J. now this 18th day of May, 1926, delivered judgment.

In these several proceedings, application is made by the Canadian National Railway Company for warrants of possession.

By Chapter 170 of the Statutes of Canada, 1906, the Toronto Terminals Railways Company was incorporated for the purpose of constructing a terminal union passenger station at Toronto, with the incidental facilities, and the Company was empowered to acquire lands, easements, etc., for the purposes of its undertaking. In reality, the under-

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taking was that of the Canadian Pacific Railway Company, and the Grand Trunk Railway Company of Canada, jointly, in the name of The Toronto Terminals Railway Company. Section 17 of this Act states that the Railway Act, 1903, shall apply to the Company, and its undertaking.

In 1914, there was enacted by the Parliament of Canada, The Toronto Viaduct Act, which authorized the Canadian Pacific Railway Company, the Grand Trunk Railway Company of Canada, The Toronto Terminals Railway Company, and the Toronto Harbour Commission, or any of them, to expropriate under the Railway Act, or any other Act then in force, any lands within certain defined bounds, necessary for the purposes of the Toronto Viaduct, and any works incidental thereto, and as and when approved of by the Board of Railway Commissioners for Canada. The viaduct was to be within the area, or nearly so, of the area within which The Toronto Terminals Railway Company would operate. This Act states that the Railway Act should apply, with reference to the expropriation of lands. There was not then in force, any statute enabling any of the bodies herein mentioned to expropriate lands, except under the Railway Act.

Though not chronologically in order, the next important statute in this connection is Chapter 70 of the Statutes of Canada 1924, and which is really in amendment of the Toronto Terminals Railway Act, of 1906, and is entitled An Act respecting The Toronto Terminals Railway Company. It is to be observed that in the meantime, the Canadian National Railway Company had been created by Statute (9-10 Geo. V, c. 13), and had acquired the property of the Canadian Northern Railway and Grand Trunk Railway Company of Canada to which I must later refer. Section 2 of the Act of 1924 enacts as follows:—

*In lieu of the viaduct and works provided for by the said orders of the Board and the said agreement, there shall be constructed by the Canadian National Railway and the Canadian Pacific Railway either by themselves or through the Company, a viaduct from a point at or near, etc.*

The orders of the Board and the Agreement herein referred to had their origin in the provisions of The Toronto Viaduct Act. Section 3 of Chapter 70, of the Acts of 1924 further provided as follows:—

The whole of the cost of construction of the different bridges and other works to be constructed under the authority of this Act, including the compensation payable for all lands taken or otherwise acquired, and for all lands injuriously affected, whether the property of any of the parties mentioned in this Act or the property of any other person, shall be borne by the Canadian National Railway, the Canadian Pacific Railway, and the Corporation of the City of Toronto in such proportions as the said parties may agree upon, or in default of agreement, it shall be determined by the Board.

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Section 7 provided that the company, that is The Toronto Terminals Railway Company, may within five years of the date of the coming into force of this Act, complete the construction of the works which the company is authorized to construct by its acts of incorporation, and amending acts thereto, including this Act. Section 8 provided that this statute, should come into force upon proclamation, but only when an agreement providing for the construction and completion of the viaduct works, on terms approved of by the Governor in Council, shall have been entered into.

Reverting now to a later date, by Chapter 13 of the Statutes of Canada of 1919, a corporation was created under the name of the Canadian National Railway Company, under which the railway works and undertaking of the companies comprised in the Canadian Northern System was consolidated with the Canadian Government Railway as a National Railway System, and provision was made for the operation of that railway system, under the name of the Canadian National Railway Company. Later, the Grand Trunk Railway was incorporated into the Canadian National Railway Company System.

By section 13 of this Act, it was provided that the Railway Act should apply to the Canadian National Railway Company, with the express exception that in the matter of the location of the lines of this railway company, the making and filing of plans and profiles, and the taking or using of lands, the Expropriation Act (R.S. 1906, c. 143) should apply to the undertaking of The Canadian National Railway Company.

The Canadian National Railway Company in its name, and under the powers of expropriation contained in section 13 of the Act of 1919, expropriated certain parcels of land in the City of Toronto in connection with the construction of the viaduct, and it has petitioned for a war-

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rant of possession in respect of each of these parcels. The owners of the lands in question contend, that there was no authority for such expropriation, under the Expropriation Act, and that proceedings to acquire title and possession should have been taken under the Railway Act. It is common ground I think that neither the Canadian Pacific Railway nor the Toronto Terminals Railway could have proceeded under the Expropriation Act, nor could the Canadian National Railway and Canadian Pacific Railway jointly have proceeded under the Expropriation Act.

After a careful review of the statutes, I cannot avoid the conclusion that it is the Railway Act which applies in these several cases, and that the expropriation proceedings should have been taken under that Act.

The viaduct is a special undertaking of more than one railway, and special legislation being necessary, the same was enacted. Throughout all the legislation, the Railway Act is prescribed as the means of acquiring property for the purposes of the undertaking. In fact it is hardly possible that anything else could have been in the mind of the legislature, at least until the enactment of Chapter 70 of the Statutes of Canada 1924. Even then, as the Canadian National Railway was merely assuming the obligation of the Grand Trunk Railway, in connection with the viaduct, it is difficult to believe that the legislature intended that the power conferred upon the Canadian National Railway by the Act of 1919, to use the provisions of the Expropriation Act for the taking of lands required for its undertaking in general, should be used for the special purposes of the viaduct which was a joint undertaking with other bodies. It is a reasonable construction of the Act of 1924 to say, that as the Canadian National Railway was only put in the place and stead of the Grand Trunk Railway, in relation to the construction of the viaduct, the Canadian National Railway should proceed to expropriate in the same way as the Grand Trunk Railway would have done. If it was intended by the Act of 1924, that the Canadian National Railway should proceed to expropriate under the provisions of the Expropriation Act, that could have been easily expressed and the bearing of previous enactments so modified. Further I do not think the viaduct is an undertaking of the Canadian National Railway.

It is a joint undertaking of at least two railways, and an undertaking directed and authorized by special legislation. I do not think therefore that section 13 of the Act of 1919 applies. The petitioner has not sufficiently answered the allegation of Mr. Rowell, that the Toronto Terminal Railways are constructing a portion of the viaduct. If this is correct, then the position of the petitioner is weaker still. It seems to me the work must be done jointly by the two railways mentioned, or by the Toronto Terminal Railway, and that the expropriation powers of either railway in respect of what is strictly its own undertakings, cannot be severally exercised for a section of the viaduct works, by any one of them.

Inasmuch as expropriation proceedings have already been taken by the Canadian National Railway, in respect of the lands mentioned in these several applications, and the lands in part entered upon, under the provisions of the Expropriation Act, I should be strongly disposed to affirm and support such proceedings in connection with so important a public work, upon the narrowest possible construction of the statutes, if there was any sanction for doing so. I cannot see, however, that such an inclination receives the slightest support or warrant from the legislation in question.

The petition for a warrant of possession, in the several cases will be dismissed and with costs.

*Judgment accordingly.*

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