

IN THE MATTER OF AN APPLICATION OF THE POINTE AUX TREMBLES TERMINAL RAILWAY..... } PLAINTIFF;

May 11th
1920
No. 3474
No. 3493

No. 3474 AND THE CANADIAN NORTHERN QUEBEC RAILWAY CO., AND THE CANADIAN NATIONAL RAILWAYS..... } DEFENDANTS.

AND

IN THE MATTER OF AN APPLICATION OF THE POINTE AUX TREMBLES TERMINAL RAILWAY..... } PLAINTIFF;

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Railway Act, 9-10 Geo. V, ch. 68, s. 49—Board of Railway Commissioners, Orders of—Exchequer Court—Sequestration—Service of Order—Rule 70 Exchequer Court Rules—Drastic Process.

1. Where an order of the Board of Railway Commissioners has been made an order of this Court under section 49 of the Railway Act, the Judge of the Court has no power to modify, vary, review or supplement the same.
2. Before a writ of Sequestration can issue in proceedings in contempt for disobedience of an order of the Board of Railway Commissioners which has been made an order of this Court, it should appear that the disobedience of the same has been wilful and intentional.

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v.
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3. Where any such order authorizes one railway to operate its trains across the tracks of another, and where the train which is refused a crossing is not a train of the said company (in the present case it consisted of an engine and crew of the Harbour Commissioners of Montreal drawing cars of another company) such refusal cannot be said to be a refusal to comply with the above mentioned order so as to render them liable to contempt.
4. The Order for a Writ of Sequestration against a corporation will only be granted when the requirements of the practice have been strictly observed.

THIS is an application by the Pointe aux Trembles Terminal Railway Company for a writ of Sequestration against the defendants for an alleged contempt of court by them.

On the 3rd day of April, 1914, the plaintiff company obtained an order from the Board of Railway Commissioners for Canada authorizing them to construct its lines and tracks across the lines and tracks of the defendant companies at a certain point on a plan filed, subject to certain conditions as to control by defendant companies and as to costs of maintenance, etc.

On the 1st day of April, 1920, the plaintiff obtained a further order reading as follows: "IT IS ORDERED that the Pointe aux Trembles Terminal Railway Company and the Canadian National Railways be, and they are hereby authorized to operate their trains over the said crossing without their first being brought to a stop."

These orders were filed with the Registrar of the Exchequer Court of Canada under article 49 of the Railway Act and being entered of record thereby became an order of the court.

On the 7th May, application was made by the plaintiff company before this court asking for the issue of a writ of Sequestration against the defendant companies

on the ground that they had refused to allow the plaintiff to cross its tracks and this in contempt of the orders of the Railway Commissioners, above referred to. This was enlarged to 11th May at request of defendants.

The matter then came up for hearing on the 11th May before the Honourable Mr. Justice Audette.

Mr. Arthur Holden, K.C., and E. F. Newcombe for plaintiff.

George F. Macdonnell, for the defendants.

The affidavits filed, in substance state—*inter alia*—that on the 17th day of April, 1920, an engine of the Harbour Commissioners in charge of an engineer and crew of the Harbour Commissioners and drawing three empty cars belonging to the Canadian Pacific Railway Company had proceeded from the Harbour Commissioners' tracks along the tracks of the Company plaintiff, as far as the crossing above referred to, where the man in charge of the diamond refused to set the derail so as to allow the train to proceed along plaintiff's track, and they were forced to return.

Arthur Holden, K.C., after reciting the orders above referred to, asked for the issue of the writ of Sequestration on the ground that the defendants had made themselves liable for contempt of court in refusing to obey said orders. He admitted that the train referred to in the affidavits and which was refused passage, consisted of an engine of the Harbour Commissioners manned by the employees of the Harbour Commissioners and three cars belonging to the Canadian Pacific Railway. That the plaintiff had no engines, and as far as he knew, no rolling stock of its own, but had an agreement with the Harbour Commissioners whereby they leased engines and crew from the Har-

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bour Commissioners to bring cars of the other railways over their tracks, to the Cement Company's works.

The plaintiff company was incorporated practically by the Cement Company for its benefit, to connect their works with the Harbour.

Mr. Macdonnell: The defendants have never wilfully refused to comply with the order of the Board of Railway Commissioners. The order at best only authorizes the plaintiff Railway Company to cross, and the cars and the train in question in this case were not the property of the plaintiff nor operated by it. Moreover, the order is not specific, but merely permissive, and there is nothing therein to show the plaintiff's right to use a leased train.

The facts are stated in the reasons for judgment.

AUDETTE J. this (11th May, 1920,) delivered judgment.

I find, after hearing Counsel and taking cognizance of the affidavits filed of record, it is unnecessary for me to ask for further evidence in order to arrive at a conclusion, as to how the matter should be disposed of. It will serve no purpose to delay my decision.

As appears by the notice filed of record, this is an application by the Pointe aux Trembles Terminal Ry. Co., for the issue of a writ of Sequestration against the Canadian Northern Quebec Railway Company, and (as mentioned in the notice of such application) in so far as may be necessary to that end, against also the Canadian National Railways, in as much as the said two last mentioned railway Companies are alleged to have refused, failed and neglected to obey the orders of the Board of Railway Commissioners for Canada Nos. 21592 and 29513 of the 3rd of April, 1914, and

1st April, 1920, which have been made orders of this Court. The charge made against the said two railways, is that, on the 17th April, 1920, they refused to permit the Pointe aux Trembles Terminal Railway Company and its officers and servants to use its crossing over the Canadian Northern Quebec Railway and prevented them from doing so, in direct contempt and contravention of the said orders of the Railway Board.

The application is for the issue of a writ of Sequestration, a very drastic process that can issue only upon circumstances *strictissimi juris*, and when the disobedience of the judgment or order of the Court has been wilful and intentional.

In the case in question the service of these notices and orders upon the defendants has not been made in the manner required by the Rules of this Court. The first order of the Railway Commissioner (3rd April, 1914) has been made against the Canadian Northern Quebec Railway Company while the second order (1st April, 1920), has been made against the Canadian National Railways, pursuant to 9-10 Geo. 5, ch. 13.

Before any such writ can issue to enforce obedience, the order or judgment in question must be personally served upon the director or such other responsible officer of the company, as required by the rules of this Court Nos. 70 and 245 and as further set forth in *The Annual Practice, 1920, p. 738.* (See *McKeown v. Joint Stock Institute, Ltd.* (1).

There is before me no evidence of a wilful and intentional disobedience of these orders, the conflict, to the contrary, seems to result from some local friction that some common sense and business acumen could easily overcome.

(1) (1899) 1 Ch. 671.

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Sitting here and dispensing justice in this Court my powers are limited by the Statute, The Railway Act in respect of such orders which are made orders of this Court. I am not in the position of a judge sitting in proceeding in contempt where there has been disobedience to his orders made under full knowledge of all the circumstances of the case. I cannot go behind the orders of the Railway Commission, cannot modify, review, vary or supplement these orders. I am not seized of the facts or evidence which determined the making of the orders. It is obviously a question for the Railway Commission to *say how these orders are to be understood*. To say whether the Terminal Company can, under its charter and under the orders made by the Board, enter into contract with all the railways in the land, a contract to which the Canadian National Railways would not be a party—and allow them under the leave given to go over the railway crossing in question.

The best and only remedy the Terminal Railway can now have is from the Railway Board under the provisions of the Railway Act, section 33, subsection 3 of section 34 and subsection 5 of section 49. The Railway Board can make these orders clear and supplement them, if necessary, by enforcing them by a daily penalty or such other money penalty they see fit and if the defendant companies set these orders at defiance, a writ of Sequestration might then issue for the payment of such moneys. I feel sure that when the matter is brought again before the Railway Board that some acceptable remedy, acceptable to all parties concerned, will be arrived at. In the meantime I am unable to issue a writ of Sequestration which would have the effect of stopping service on the Government

Railways, a public utility of great importance, whereby the public at large would be the sufferers. This trouble, resulting from a trifling local friction must be adjusted in another manner.

Moreover, the small train which is alleged to have been stopped appears to be a train belonging to and manned by the crew of a company other than the Pointe aux Trembles Railway Company.

Under these circumstances, my order will be to take nothing by this application, which stands dismissed with costs, which are hereby fixed at the sum of \$50.

Judgment accordingly.

Solicitors for plaintiff: *Meredith, Holden, Hague,
Shaughnessy & Heward.*

Solicitor for defendant: *Geo. F. Macdonnell.*

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