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BETWEEN:—

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| THE CANADIAN NATIONAL RAIL-<br>WAY COMPANY ..... | } | PETITIONER; |
| AND  |   |             |
| ELLEN BOLAND .....                               |   | RESPONDENT. |

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 {  
 April 16.  
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*Expropriation—Canadian National Railway—Warrant of Possession—  
 Jurisdiction—Exchequer Court—9-10 Geo. V, c. 13.*

*Held*, that section 13 of the Canadian National Railway Act (9-10 Geo. V, c. 13) declaring that the provisions of the Expropriation Act, except

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- when inconsistent with the said Act, applied *mutatis mutandis*, to the company, did not confer jurisdiction upon the Exchequer Court to hear and determine an application by the Company for the issue of a warrant of possession of property expropriated.
2. That such an application is a "proceeding" within the meaning of sec. 15 of the said Act which provides that such matters shall be heard by the courts having jurisdiction in similar matters arising between "private parties," such matters not falling within the jurisdiction of the Exchequer Court.
  3. The Canadian National Railway Company under the provisions of the last mentioned section has no *locus standi* before the Exchequer Court of Canada in a proceeding for the determination of any controversy as between itself and "private parties."

PETITION for the issue of a warrant of possession under the provisions of the Expropriation Act.

Ottawa, April 15th, 1925.

Petition now heard before the Honourable Mr. Justice Audette.

*Eugène Lafleur, K.C.* for petitioner.

*W. J. Boland* for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J., now this 16th day of April, 1925, delivered judgment.

This is a proceeding in the nature of an application by the Canadian National Railway Company (as distinguished from the Crown) for the issue of a warrant of possession under the provisions of sec. 21 of the Expropriation Act, as distinguished from the provisions of secs. 238 *et seq.* of the Railway Act. The same remedy is provided by both statutes.

Notice of this application was given the respondent and the hearing of the same, which was made returnable in open court, was duly argued by counsel for both parties respectively.

The Canadian National Railway Company has no *locus standi* before this court for the determination of any controversy as between itself and a subject. This court has no jurisdiction to hear any such matters at the request or instance of the Canadian National Ry. Co.; it has no jurisdiction between subject and subject. The Exchequer Court has no jurisdiction between subject and subject beyond explicit statutory enactment which is not to be presumed, and it has been expressly laid down that statutes are not

presumed to alter any statutory jurisdiction beyond what the enactment explicitly declares, either in express term or by unmistakable implication. In all general matters beyond, the law remains undisturbed. It is not to be assumed that the legislature would alter fundamental jurisdiction without expressing itself with irresistible clearness. Jurisdiction is not lightly assumed and one must not seek to be astute to assume the same. It must exist in clear and distinct term.

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Now, by sec. 13 of 9-10 Geo. V, ch. 13, an Act to incorporate The Canadian National Railway Company and respecting the Canadian National Railways (which for the purpose hereof will hereinafter be called the Canadian National Railway Act), it is provided as follows:

13. (1) All the provisions of the Railway Act (excepting those provisions which are inconsistent with this Act; and excepting also the provisions of the Railway Act relating to the location of lines of railway, the making and filing of plans and profiles—other than highway and railway crossing plans—and the taking or using of lands) shall apply to the company and its undertaking, it being declared that all the provisions of the Expropriation Act, except where inconsistent with this Act, apply *mutatis mutandis* to the company and its undertaking, in lieu of the provisions of the Railway Act so excepted.

Subsection 2 of this section provides for the deposit of plans and declares that by such deposit the lands taken or expropriated become vested in the *company* and the last subsection thereof provides that the ascertaining of the amount of compensation for such vested land shall be made under the Railway Act: “beginning with the notice of expropriation to the opposite party.”

This section 13 primarily declares:—

1st. That all the provisions of the Railway Act shall apply,—subject to the following exceptions:

2nd. Exceptions,—

- (a) Except when the provisions of the Railway Act are inconsistent with the Canadian National Railway Company Act (Ch. 13).
- (b) Excepting also the provisions of the Railway Act relating to the location of lines of railway, the making and filing of plans and profiles—other than highway and railway crossing plans—and *the taking or using of lands.*

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3rd. Then it further declares that all the provisions of the Expropriation Act, except when inconsistent with the Canadian National Railway Act, apply *mutatis mutandis* to the Canadian National Railways and its undertaking—in lieu of the provisions of the Railway Act *so excepted*.

Therefore the Railway Act applies to the Canadian National Railways, subject to the above exceptions.

Dealing with (a), it is inconsistent for the Canadian National Railway Act to institute proceedings before the Exchequer Court, which has no jurisdiction to hear the same, because section 15 of the Canadian National Railway Act, the company's special Act of incorporation, distinctly enacts that "actions, suits or other proceedings by or against the company" are to be heard before the court of *competent jurisdiction*, which is defined by subsection 2 of said section 15, and which is the court to hear such actions, suits or other proceedings when arising between *private parties*, thereby excluding the Exchequer Court.

Dealing with exception (b) it is clear that the provisions of the Expropriation Act which apply to the Canadian National Railway relate to the expropriating or taking of the land and is clearly defined in subsection 2 of section 13, whereby alike under the Expropriation Act, the *taking of the land is effected by the deposit of plans*, thereby vesting the land in the company. A mode of expropriation much less complicated (dispensing with deposit of money, etc.), than under the Railway Act.

Dealing now with the third exception (c), the statute proceeds further to declare that the Expropriation Act, except when inconsistent with the Canadian National Railway Act, applies *mutatis mutandis* to the company in *lieu of the provisions of the Railway Act so excepted*. Then the question arises, what are the provisions of the Railway Act so excepted? The answer is they are defined within the first bracket of section 13, and they are the provisions of the Expropriation Act dealing with the manner of expropriating or taking, which is by way of a deposit of plan, which vests the lands in the company without the company having to make any tender, deposits, etc., as provided by the Railway Act. Were the Crown the party expropriating, it might well be contended that the Exchequer Court

had jurisdiction; but all these proceedings are at the instance of the railway company.

Moreover, the provisions of the Expropriation Act might—in any railway company special Act—be declared applicable to that company,—as is done with the Canadian National Railway—without giving the Exchequer Court the jurisdiction to hear the controversies of the companies with the owners of land expropriated. The Expropriation Act only applies *mutatis mutandis*; that is it provides a certain manner for the Canadian National Railway to expropriate; but it does not give the Exchequer Court jurisdiction to hear any action taken by it. The Expropriation Act would become inconsistent with the Canadian National Railways Act, if action were taken under the Expropriation Act when section 15 of (Ch. 13) of the Company's Act, as already said, provides that these actions are to be taken before the provincial courts,—which are defined by subsection 2 of that section to be the courts of competent jurisdiction.

Moreover, the same relief which is sought by the present proceedings can be obtained under sections 238 *et seq.* of the Railway Act as under section 21 of the Expropriation Act and in the latter case even before a judge of a provincial court,—with however this important qualification that under the Railway Act, the warrant may be obtained when resistance or opposition is made to the *company*, while under the Expropriation Act it is obtained when the resistance or opposition is made to the *Minister*. Then the present proceedings are obviously at the instance of the company and not the Crown. The Exchequer Court has jurisdiction when resistance is made to the Minister, in a case wherein the Crown is the expropriating party, and I may here again repeat that by the fact that the Expropriation Act is made applicable *mutatis mutandis*,—that is so far as applicable,—to the Canadian National Railway Company,—it does not mean it gives the Exchequer Court jurisdiction when the Crown is not a party to such proceedings. It only means that the manner, the method of expropriating is made applicable.

Then subsection (c) of subsection 2 of section 13 of the Canadian National Railway Company Act provides that

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the compensation shall be ascertained under the provisions of the Railway Act, and further that such jurisdiction "begins with the notice of expropriation to the opposite party," a procedure not provided by the Expropriation Act and a procedure which must precede the proceedings on an application for a warrant and which therefore is separate and distinct from the expropriation itself, which is entirely consummated by that time under the Expropriation Act, and which then ceased to apply.

In other words when the expropriation has been consummated under the Expropriation Act by the deposit of plans, the lands have become vested in the company and at that stage, at the very next step, the Railway Act applies by giving notice of expropriation which is not necessary under the Expropriation Act. The proceedings for a warrant of possession must therefore necessarily be after such notice has been given to the owners. Therefore the proceedings at that stage must be taken under the Railway Act.

The present proceedings are at the instance of the company and not of the Crown. The Crown and the company are both a separate and distinct entity, as already held in *re Semple v. Canadian National Railway Co.* (1). The *causa designata* is clearly defined by section 15 of the Canadian National Railway Company Act, whereby the jurisdiction of the Exchequer Court is clearly ousted.

If the Canadian National Railway Company has to go to court, it has to go to court under the provisions of section 15 of its Act of incorporation, its special Act, as therein enacted. See *Michaud v. Canadian National Railway* (2); *Croteau v. Cliche and Canadian National Railway* (3); *Semple v. Canadian National Railway* (4).

Having said so much I have come to the conclusion that the Canadian National Railway has no *locus standi* on its present application and that the Exchequer Court has no jurisdiction to entertain its application for the issue of a warrant of possession under the present circumstances.

It would seem that sections 238 *et seq.* of the Railway Act, subject to the manner of taking or expropriating lands

(1) [1923] 25 Ont. W.N. 461, at p. 463.

(2) [1924] 3 D.L.R. 1.

(3) [1924] Q.R. 62 S.C. 371.

(4) [1923] 25 Ont. W.N. 461 and [1924] 25 Ont. W.N. 556.

which is under the provisions of the Expropriation Act, would provide for proceedings of the present kind and nature.

The application is dismissed with costs for want of jurisdiction.

*Judgment accordingly.*

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