

Railway Lawsuits.

The Roblin railway deal promises to be prolific of law suits or legal proceedings. Besides the action entered in the court of King's bench by certain parties to declare the lease of the Northern Pacific lines illegal and void, another proceeding was taken this week, the purpose of which is to set aside the contract with the Canadian Northern company and to restrain the provincial treasurer from endorsing the bonds, the National Trust Co. from receiving them, and to prohibit the Canadian Northern company from entering into the mortgage.

The application was made by Messrs. Lerdus and Robinson to the attorney-general's department yesterday afternoon for the sanction of the attorney-general to the filing of an information at the suit of the attorney-general, representing His Majesty against the Canadian Northern Railway company, the National Trust Co., Ltd., and the Hon. J. A. Davidson, as defendants. The application was made on behalf of Jeffrey Hall Brock, Life Insurance manager; John Arbutnot, lumber merchant; Alexander Macdonald, wholesale merchant, and William Scott, merchant, all of the city of Winnipeg. The statement of claim is in the nature of an information laid before the attorney-general's department. The Canadian Northern railway is described and its route. The National Trust Co. is stated to have been incorporated by Ontario and authorized to do business in Manitoba. It has no other corporate rights. John A. Davidson is described as the provincial treasurer referred to in chapter 39 of the statutes of the last session of the legislature.

The contract dated 15th of January, 1901, is referred to and the legislation of the last session of parliament. The gist of the matter is found in clause 25 of the information, which reads as follows:

The defendants ought to be restrained from carrying out the said contract for the following amongst other reasons:

(1.) His Majesty the King represented by the executive government of the province of Manitoba had no power or authority to enter into the agreement with the Canadian Northern Railway company of the eleventh day of February, A. D., 1901, and no legislation has in any way given to His Majesty represented as aforesaid power or authority to enter into such agreement and such agreement was and remains ultra vires of His Majesty represented as aforesaid and the legislation hereinbefore referred to is ultra vires both of the provincial legislature and the Dominion parliament.

(2.) The province of Manitoba has no power or authority nor has the said John A. Davidson as provincial treasurer thereof to guarantee any bonds of the Canadian Northern Railway company issued in connection with its line of railway situated in the province of Ontario.

(3.) The province of Manitoba has no power or authority to acquire any of such bonds or to make any payments in respect of such bonds.

(4.) The province of Manitoba has no power or authority to take a mortgage upon properties situated in the province of Ontario, or in the state of Minnesota, nor can it take a mortgage to a trustee of property so situated for the purpose of indemnifying itself against payments to be made in respect of such guarantee or otherwise.

(5.) The lieutenant-governor-in-council of the province of Manitoba cannot acquire the right to fix the rates to be charged or demanded by the Canadian Northern Railway company for the carriage of freight between the province of Manitoba and the town of Port Arthur and any legislation purporting to give to such lieutenant-governor-in-council such power is ultra vires.

(6.) The Canadian Northern Railway company had no power to make the agreement dated the eleventh of February, 1901, and any legislation purporting to sanction such agreement or parts of it is ultra vires.

(7.) The Canadian Northern Railway company in any event had no power to make such parts of the agreement as are not specifically referred to in section 2 of the said statute of the Dominion of Canada passed in its last session and those parts of the said agreement not sanctioned are essential parts of the agreement.

(8.) By the Statute of the Province of Manitoba passed during its last session and chapter 39 (hereinbefore cited) it was provided as in paragraph 19 of this statement of claim is more particularly set forth to the effect that the mortgage to be given by the Canadian Northern Railway company should include such terms to amplify and carry out the provisions of the said indenture and such other terms as the lieutenant-governor-in-council might deem necessary in the public interests though the same might be at variance with any of the provisions of the said indenture and that the mortgage should include certain specific clauses set out in the said statute. The Canadian Northern Railway company, however, has no power and the parliament of the Dominion did not assume to authorize it to comply with the clause of the provincial statute just referred to and the provisions of such clause form an essential part of the alleged agreement between the province and the railway company.

(9.) The Canadian Northern Railway company had not and has not itself the right to fix the rates to be charged for the carriage of freight between Manitoba and Port Arthur. It has no line of railway extending between those points. That part of its undertaking which touches Port Arthur is confined solely to the province of Ontario and the railway has no line connecting its Ontario line with its lines in the province of Manitoba.

(10.) The Canadian Northern Railway company had no power to agree that the lieutenant-governor-in-council of the province of Manitoba should have the right to fix rates between Manitoba and Port Arthur and any legislation purporting to declare otherwise or to confirm such agreement is ultra vires.

(11.) The Canadian Northern Railway company had no power to mortgage or to agree to mortgage any leases and agreements with the Minnesota & Manitoba Railway company and the Minnesota & Ontario Bridge company.

(12.) The Canadian Northern Railway company had no power to mortgage or agree to mortgage its line of railway in the province of Manitoba and the recent legislation does not assume in any way to give such authority.

(13.) The Canadian Northern Railway company had no power and has obtained none by the recent legislation to make the agreement contained in section 11 of the indenture of the eleventh of February, 1901, with reference to the application of the receipts and income of the company and the agreement contained in said section is in violation of the Dominion Railway Act.

(14.) The consideration which it was assumed the province of Manitoba would receive for the guarantee by the province of the bonds already referred to was the right to fix the rates between Manitoba and Port Arthur and upon points in the company's lines in Manitoba. It was provided in the said agreement of the eleventh of February, 1901, that the government of the province of Manitoba and the railway company should use their best endeavors to procure from the parliament of Canada such legislation as might be necessary to confirm the said indenture and to enable and require the parties to carry out the same in order that its true intent and meaning might be properly and fully accomplished and application was accordingly made to the parliament of Canada at its last session for such legislation but the parliament of Canada declined to accede to such request. It merely declared that the railway company should be deemed to have had power to make portions of the said agreement and expressly provided that nothing should interfere with the jurisdiction of parliament and the governor-general-in-council and the railway committee of the privy council or of any commission or any or every authority established by parliament. Parliament also declared that nothing in the indenture should authorize the railway company to charge any discriminating rate for carriage of freight or passengers over its lines of railway. The effect therefore of the agreement and of the legislation is that the agreement of the Canadian Northern Railway company that the lieutenant-governor-in-council of the province of Manitoba should have the right to fix rates as aforesaid is altogether ultra vires; has not in any way been confirmed; and in any case is subject to such qualifications and overruling authority that the lieutenant-governor-in-council has not the right to fix the said rates, and the province of Manitoba has received no consideration for

the obligations it has incurred under the said last mentioned indenture.

(15.) The National Trust Company (Limited) has no power to take the mortgage provided for by the said indenture of the eleventh day of February, 1901, upon the property in question either in Canada or in the State of Minnesota and it is impossible therefore for the Canadian Northern Railway company to give by means of any mortgage the security contemplated by the said indenture and by the provisions of said chapter 39 of the statutes of Manitoba passed in the present year.

(16.) The National Trust Company (Limited) has not power to take a mortgage covering in general terms a railway line situated partly in the province of Ontario and partly in the province of Manitoba. Its powers derived from its Ontario charter of incorporation and its Manitoba statute hereinbefore referred to do not enable it to take a mortgage upon a railway passing through two or more provinces and subject to the exclusive control of the parliament of Canada, and in any event, the National Trust Company (Limited) has no power to take a mortgage upon a continuous line of railway from Winnipeg to Port Arthur which passes partly through the province of Manitoba, partly through the State of Minnesota and partly through the province of Ontario.

(17.) Many of the provisions of the mortgage in view of the circumstances already referred to and others are impracticable and illegal. The laws as well of the said two provinces as of the State of Minnesota do not permit the taking of the said mortgage nor of the exercise of the powers thereby purported to be granted in case of default in payment of the bonds therein to be secured and the said mortgage affords no security either to the province of Manitoba or to the bondholders in case of default by the said railway company.

(18.) It was an essential part of the agreement of the 11th of February, 1901, that in case of default in payment of the bonds the government of the province of Manitoba would be in a position so to deal with the security that it might remain a single line of railway operating between the province of Manitoba and Port Arthur, but such is not the case owing to the facts aforesaid.

(19.) Neither the government of the province of Manitoba nor the National Trust Company (Limited) has power or authority and by the laws of the State of Minnesota neither of them is permitted to take or hold real estate or a railway in the State of Minnesota or to take or hold a mortgage of real estate or of a railway in said State.

(20.) It was an essential part of the said agreement of the 11th of February, 1901, that the government of the province of Manitoba should have the option of purchasing the then entire undertaking of the Canadian Northern Railway company during the year A. D., 1922, as set out in paragraph 20 of said last mentioned agreement, but said government has no power and the said legislation has conferred no power upon the said government to purchase, own or acquire a railway line which passes as the Canadian Northern railway does and will pass through portions of other provinces outside Manitoba and also through a portion of the State of Minnesota.

(21.) The Canadian Northern Railway company when negotiating with the government of the province of Manitoba represented to the government that it held and was possessed of certain leases and agreements with the Minnesota and Manitoba railway company and the Minnesota and Ontario Bridge company and that it had such leases and agreements with these two companies that it was in a position to make the agreement for the fixing of the rates between Manitoba and Port Arthur as hereinbefore referred to. Such representations were untrue, and the Canadian Northern Railway company has not and never had any such leases or agreements. It was an essential part of the agreement of the 11th of February, 1901, that the Canadian Northern Railway company should be able to grant to the lieutenant-governor-in-council of the province of Manitoba the right to fix the rates between Manitoba and Port Arthur as aforesaid, but owing to the absence of any control by the Canadian Northern Railway company over the Minnesota and Manitoba Railway company's line and the said bridge the Canadian Northern Railway company was un-

able to make any arrangement as to a rate of freight between Manitoba and Port Arthur.

(22.) Even if the Canadian Northern Railway company should acquire such leases and agreements with the said Minnesota and Manitoba Railway company and the said Minnesota and Ontario Bridge company as in the last paragraph referred to, the fixing of rates to be charged by the said two last mentioned companies is subject to the laws and regulations of the United States of America and could in no event be transferred to the lieutenant-governor-in-council of the province of Manitoba.

The attorney-general was away and the application was made to the chief clerk of the attorney-general's department, who was requested to lay the matter before the provincial government. He promised to bring it to the attention of the premier in the absence of the attorney-general.

The new Japan tea season has opened. This is a little earlier than it opened last year. Prices are about on a parity with a year ago, although medium grades are quoted 5 per cent higher by some. This increase is not looked upon by prudent traders as being legitimate. First arrivals of the crop in America have not shown good quality, but improvement is promised by shippers.

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