

The International Coal and Ry. Co. was incorporated by 27 Vic. ch. 42 (N. S.) for the purpose of working coal mines in Cape Breton, and for the further purpose "of constructing and making such railroads and branch tracks as might be necessary for the transportation of coals from the mines to the place of shipment, and all other business necessary and usually performed on railroads," and with other powers connected with the working of mines "and operation on railways." Under these powers a railway twelve miles in length was built and used to carry coal from Bridgeport to Sydney Harbour, and the Company having become involved its property, including said railway, was sold at sheriff's sale and the purchasers conveyed the same to the International Coal Co.

By 48 and 49 Vic., ch. 20 (a) it was enacted that the International Coal Co. might hold and work their railway for the purposes of their own mines and operations, and might hold and exercise such powers of working the railway for the transport of passengers and freight generally for others for hire as might be conferred on the company by the legislature of Nova Scotia, and by 49 Vic., ch. 145, sec. 1 (N. S.) the company were authorized to hold and work the railway "for general traffic and the conveyance of passengers and freight for hire, as well as for all purposes and operations connected with said mines in accordance with and subject to the provisions of part second of ch. 53, R. S. N. S., 5 ser., entitled "of railways."

The municipality of Cape Breton having assessed the company for local taxes in respect of said Railway,

*Held*, reversing the decision of the Supreme Court of Nova Scotia, Gwynne, J., dissenting, that the company was exempt from such taxation; that the railway was one constructed under authority of an act of the legislature of Nova Scotia (27 Vic., ch. 42) and in operation under the authority of another act (49 Vic. ch. 145); that the company was a "railway company" within the meaning of sec. 9, subsec. 30 of c. 53; that part one of that chapter applies to railways constructed under any act of the legislature and not only under acts exclusive of those to which part two applies; and that the reference in 49 Vic., ch. 145, sec. 1 to part two does not prevent said railway from coming under the operation of the first part of the act.

Appeal allowed with costs.

*Harris, Q. C.*, for the appellants.

*Borden, Q. C.*, for the respondents.