

the company set up as an answer to the application for an order imposing the penalty was no answer.

The substance of the thing to be done was the putting in service of the additional cars, and an order made for the purpose of compelling that to be done was such an order as it was contemplated might be made when power was given to the Board to impose a penalty (8 Geo. V. ch. 30, sec. 4), although the time limited for putting the cars in service had elapsed. The purpose of the legislation was, in part at least, to make effective the order of the 27th February, 1917, and to enable that to be done by imposing a penalty for non-compliance with it.

It was contended that the order of the Board had no validity because the Board was a "superior court" within the meaning of sec. 96 of the British North America Act, and its members, not having been appointed by the Governor-General, had no jurisdiction to exercise the powers conferred upon the Board by the Act by which it was created.

The status of a *de facto* Judge, having at least a colourable title to the office, cannot be attacked in a collateral proceeding; his acts are valid; and the proper way to question his right to the office is by *quo warranto* information.

Review of the authorities.

Further, the Board "is not a court, but an administrative body, having, in connection with its primary duty, power to construe the agreements which it is called on to enforce, but no general power such as the superior courts possess of adjudicating upon questions of construction in the abstract." *Re Town of Sandwich and Sandwich Windsor and Amherstburg R.W. Co.* (1910), 2 O.W.N. 93, 98 (C.A.), a decision binding on this Court, and with which the Chief Justice agreed—saying that the Board, although it had for some purposes, and those but a small part of its powers and duties, judicial functions to perform, was not a court.

If the Board is a court, it is not a superior court, within the meaning of sec. 96 of the British North America Act.

Applying the rule, as to the constitutional validity of a provincial enactment, laid down by Strong, J., in *Severn v. The Queen* (1878), 2 S.C.R. 70, 103, this Court should hold that in the Ontario Railway and Municipal Board Act, 1906, the Legislature must be taken to have constituted a tribunal, the members of which should be appointed under its authority as provided by sec. 4 (2), rather than that the Legislature created a superior court and usurped an authority which it did not possess, but which was vested in the Governor-General.

The appeal should be dismissed with costs.