Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of The Canada Southern Railway Company v. *The International Bridge Company, and The Canada Southern Railway Company* v. *The International Bridge Company, The Grand Trunk Railway Company, and the Attorney General of Ontario, from the Court of Appeal, Province of Ontario, Dominion of Canada; delivered 4th July* 1883.

Present:

THE LORD CHANCELLOR.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

THEIR Lordships have considered the arguments addressed to them by the learned Counsel for the Appellants, and they do not think it necessary to hear further argument upon the case, being of opinion that the decree of the Court of Appeal appealed from is correct.

Their Lordships think that no error has been committed by the Appellants in their statement of the substantial questions in their printed case. The first two of the questions there stated go to the construction of certain Acts of the Canadian Legislature; the next two go to the reasonableness of the tolls or imposts that may be demanded; and the last, about unfair discrimination, has been given up. In substance, therefore, the questions resolve themselves into two: what is the construction of the Acts as to the right to demand tolls, and whether the tolls are reasonable or are shown to be unreasonable.

Their Lordships might content themselves

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with stating their agreement in the reasons given by the learned Judge in the Court of Appeal upon the assumption (which, for the purposes of that decision, that learned Judge made, without deciding the point) that the criteria of reasonableness which have been suggested in the argument of the Appellants might, under some circumstances, be accepted; but it will, doubtless, be more satisfactory to the parties that the way in which the case presents itself to their Lordships themselves should be succinctly stated.

First, with regard to the Acts: There are two Acts of the Canadian Legislature, and if they stood alone, and upon the assumption, which it is not at all clear we ought to make, that, for the purpose of determining their construction, the New York Acts ought not to be looked at at all, we should come to the conclusion that has been arrived at in the Court below. It is to be observed that those two Acts are to be read together by the express provision of the 7th and concluding section of the amending Act; and therefore we must construe every part of each of them as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act.

Two clauses in the earlier Act, and only two, seem to their Lordships to be really important, the 14th and the 16th. The 14th clause shows distinctly that from the beginning it was intended that the bridge should be for a double purpose, as well for the passage of persons on foot and in carriages and otherwise, as for the passage of railway trains, and those two purposes are distinguished. It was to be adapted for both. For whatever reason, it may be through some inadvertence, it may be because it was thought expedient to put the Company in a position which

would direct its energies in the first instance to the completion of the undertaking for the passage of railway trains, there was in that first Act no express provision as to regulations, byelaws, or rules in relation to the use of the bridge for the passage of persons on foot and in carriages and otherwise, not being by railway train; but there is a clause, the 16th, expressly applicable to the regulation of the use by railway trains:—

"Whenever the said bridge is so completed as to admit of the passage of railway trains, the said Company may erect such gates and fixtures to guard the entrance of such trains upon the bridge as the said Directors may deem proper, and may make such byelaws, rules, and regulations, not inconsistent with the provisions of this Act, in relation to the use of the said bridge, its machinery, appurtenances, and approaches, by railway companies, their trains and carriages, as the Directors may think proper, but no discrimination shall be made by the said Directors in favour of or against any one or more railway companies in relation to the approaches or the passage of the said bridge or the use of its machinery."

It has not been contended at the bar, and their Lordships think it would have been impossible to contend with success, that, standing upon that Act alone, which makes no provision anywhere except in that 16th section, and in that way, for any charges to be made for the use of the bridge, the Canadian Legislature meant that this undertaking was to be executed at the cost of the undertakers; and that the public were to be at liberty to use the bridge when made without paying anything for it, and that the discrimination which was forbidden had reference to facilities for accommodation as distinguished from charges. Nothing could be more unreasonable than such a construction, and the only mode of reconciling it with the purpose of the Canadian

Legislature suggested by the Counsel for the Appellants was this, that they may have thought the question of charges a matter to be postponed. But when we find them legislating for regulations as to the use when the bridge was completed so, as to admit of the passage of railway trains, it cannot be supposed that that would not be the proper time to determine the question of charge, and in reality the natural meaning of the words comprehends it. Are not byelaws, rules, and regulations which say that the bridge shall be used upon certain terms of payment,—assuming for a moment that there is nothing to make the particular terms unlawful, —properly within such words? That would really not be a question seriously arguable, and at their Lordships' bar it has not been argued.

This was a very important point to arrive at, because it follows that when the first Act was passed the Legislature thought fit to entrust the Company with a general and unqualified power of making byelaws and regulations as to the use of the bridge and the terms on which it should be used in point of payment, and did not then, at all events, think it expedient to fix any tariff or to impose any limit other than such if any, as might be implied by law, namely, that the charges should not be unreasonable.

The only remaining question is whether there has been anything done to take away or to cut down that power as to the regulation of the use of the bridge, and the terms on which it might be used, by railway trains, by the later Act. Now it is, their Lordships think, reasonably plain that the 2nd section of the later Act was passed to supply the omission which, as already noticed, is found in the first Act, whether that omission was inadvertent or due to any purpose of any kind. It is clear that the original Act contemplated, not only that the bridge should be so completed as to

admit of the passage of railway trains, but that it should be so completed as to admit of the passage of persons on foot and in carriages and otherwise; and whether there was a desire that the one thing should be done before the other or not,—whether the view of the Legislature was the same when both Acts were passed, or at all varied in that respect,—is really not material. One thing is quite certain, and open to no controversy whatever; and that is, that this 2nd section of the amending Act does supply the omission in the original Act. and does provide for the regulation of the passage of persons on foot and in carriages and otherwise, not being by railway trains, and for the charges to be made in that respect, which the first Act had not done. The question is whether it does anything more. It appears to their Lordships, as it appeared to the Court below, that it certainly had that purpose, and that alone. We are to read the two Acts, as far as we can, together, and doing so, whatever may be the meaning of the word "trains" in this 2nd section of the amending Act, it is impossible not to observe the distinction between the words "Whenever the said bridge "is so completed as to admit of the passage of "railway trains" on the one hand, and the words "Whenever the bridge authorised by the said "Act shall be complete for the passage of ordinary trains and carriages" on the other. Are "ordinary trains" in the amending Act the same thing with "railway trains" expressly provided for in the original Act? *Primâ facie*, not. Ordinary carriages, beyond all question, are not. When we come to the sequel, and consider what is to be done, the first thing we find is that "the "Company may erect toll-gates and collect rates "of toll." Obviously that has reference to the proper mode of dealing with persons on foot and in carriages other than railway carriages. Whatever

ought to be charged for railway trains would not, naturally or ordinarily, be collected at toll-gates or in any such manner. But when we go on, we find that every single word in the clause, with the exception of the words "for each other passenger the sum of 25 cents," and the concluding words as to live stock, is sensible, and is only sensible with regard to ordinary carriages drawn by other means than locomotive engines and not upon railways. The words which might by possibility have a larger sense, being found in association with those which have this limited sense, and in a clause of this nature supplying the defect which is found in the earlier Act, ought to be understood, from the association in which they are found, to have reference to things *ejusdem generis*, and not otherwise. In that way they are perfectly intelligible, because, as foot passengers and passengers riding horses or actually travelling in carriages only have been mentioned before, the words "for each other passenger" would include persons either travelling, if it was then possible, upon velocipedes or bicycles, or by any other means of that kind, or passengers riding upon other animals not properly described as horses. Asses are certainly not horses, and are doubtless in use in Canada as well as other places. It is clear, therefore, that those words are sensible without supposing them to have reference to railway passengers; and as railway passengers had been provided for by the earlier Act, it is not reasonable to suppose that the provision before made for railway passengers, or rather for railway traffic, was intended to be altered by these words in such a context.

The same thing is to be observed upon what follows about live stock. The only expression which could be applicable in any sense to railway traffic are the words "in cars;" but "in droves or in cars," from the association, also show plainly

that railway traffic was not, at all events, exclusively in view. If it had been in view at all it would have been expressly mentioned, and the words "in cars" are not only possibly applicable to the conveyance of horses under some circumstances in some description of vehicle, but here their Lordships think it is quite legitimate to refer to the American statute, not to construe this, but to show the usage of that country to which both statutes relate, one on one side of the border and the other on the other; because the words "in cars" occurring in the American statute plainly show that, as a matter of fact, such a mode of conveying horses and other animals was according to the usage of the country to be provided for. There is, therefore, no ground whatever for supposing that it was meant by this 2nd section to qualify or repeal, or alter or limit in any way whatever, the latitude of the power as to the regulation of railway traffic which had been expressly given by the earlier Act.

That being so, the question of reasonableness only remains. Their Lordships have been struck with one thing, and that is that the two arguments which have been used, the one that the whole tariff is laid down by the 2nd section of the amending Act, and the other that the actual tariff is unreasonable, are not very easy to reconcile with each other; because it is clear that if the words "for each other passenger the sum of 25 cents" did apply to railway passengers, it would authorise taking a sum exceeding very much what is taken under the actual tariff, which is only 10 cents. The truth is, that the whole argument which has been urged as to the test of reasonableness is one which it would be excessively difficult to apply to the ordinary traffic, otherwise than by railway, under the amending Act, where all the fixed charges may be taken, and manifestly without the slightest reference

whatever to the amount of dividend which might be obtained by the shareholders in the Company. If there had been an express regulation of the railway traffic, fixing maximum tolls to be taken, *ejusdem generis* with that which we find as to the other traffic, it would, *ex necessitate*, have excluded this whole argument as to the principle on which the reasonableness of charges of this kind ought to be determined.

It certainly appears to their Lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence that the charge is unreasonable, with reference to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their Lordships asked Counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable, according to any standard of reasonableness which can be suggested. That being so, it seems to their Lordships that it would be a very extraordinary thing indeed, unless the Legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the Company, to dissect their capital account, and to dissect their income account, to allow this item

and disallow that, and, after manipulating the accounts in their own way, to ask a Court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned Judge in the Court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their Lordships can hardly characterise that argument as anything less than preposterous.

Their Lordships will, therefore, humbly advise Her Majesty that the judgment of the Court of Appeal of the Province of Ontario should be affirmed, and both these Appeals dismissed with costs.