

63, 1933

No. 39 of 1933

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN

CANADIAN NORTHERN PACIFIC RAIL-
WAY COMPANY (Defendants) - - - - - *Appellants*

AND

KAPOOR LUMBER COMPANY LIMITED
10 (Plaintiffs) - - - - - *Respondents*

Appellant's Appendix of Statutes

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APPENDIX OF STATUTES.

RAILWAY ACT

REVISED STATUTES OF CANADA, 1927, C. 170

Section 2. In this Act, and in any Special Act as hereinafter defined, in so far as this Act applies, unless the context otherwise requires,

(1) "Board" means the Board of Railway Commissioners for Canada.

(4) "company" includes a person, and where not otherwise stated or implied means "railway company"

Section 34. The Board may make orders or regulations— 10

(a) with respect to any matter, act or thing which by this or the Special Act is sanctioned, required to be done, or prohibited;

(b) generally for carrying this Act into effect;

(c) for exercising any jurisdiction conferred on the Board by any other Act of the Parliament of Canada.

(2) Any such orders or regulations may be made to apply to all cases or to any particular case or class of cases, or to any particular district, or to any railway or other work, or section or portion thereof; and the Board may exempt any railway or other work, or section or portion thereof, from the operation of any such order or regulation for such time or during such period as the Board deems expedient; and such orders or regulations may be for such time as the Board deems fit, and may be rescinded, amended, changed, altered or varied as the Board thinks proper. 20

(3) The Board may by regulation or order provide penalties, when not already provided in this Act, to which every company or person who offends against any regulation or order made by the Board shall be liable.

(4) The imposition of any such penalty shall not lessen or affect any other liability which any company or person may have incurred. 30

Section 280. The company shall at all times maintain and keep its right of way free from dead or dry grass, weeds and other unnecessary combustible matter.

Section 281. The Board may make orders and regulations

- (a) respecting the construction, use and maintenance, in connection with the railway, of fire guards or other works which may be deemed by the Board to be necessary and suitable to prevent, as far as possible, fires from being started or occurring, upon, along or near the right of way of the company;
- 10 (b) requiring the company to establish and maintain an efficient and competent staff of fire-rangers, equipped with such appliances for fighting fires or preventing them from spreading, as the Board may deem proper, and to provide such fire-rangers with proper and suitable equipment to enable them to move from place to place along the line of railway with all due speed;
- (c) requiring the company to maintain an efficient patrol of the line of railway and of the lands in the vicinity thereof to which fires may spread, and generally defining the duties of the company and of the fire-rangers in respect thereof;
- 20 (d) requiring the company to make returns of the names of fire-rangers in its employ in the performance of the above-mentioned duties, and of the places or areas in which they are from time to time engaged;
- (e) requiring the company to make reports and returns of fires occurring upon or near its right of way.

(2) Any such orders or regulations may be made applicable during or after the construction of the railway, or during such time, and in such manner, as the Board deems proper.

30 (3) For the purpose of fighting and extinguishing fires, the fire-rangers of the company may follow the fires which spread from the railway, to, over and upon the lands to which they may spread.

40 (4) Subject to the terms and conditions of any order or regulation of the Board, the company may at all times enter into and upon any lands of His Majesty or of any person lying along the railway, for the purpose of establishing and maintaining thereon the fire guards or other protection directed by the Board, and for the purpose of freeing from dead or dry grass, weeds, and other unnecessary inflammable matter, the land between such fire guards and the line of railway.

Section 387. Whenever damage is caused to any property by a fire started by any railway locomotive, the company operating the railway on which the locomotive is being used, whether guilty of negligence or not, shall be liable for such damage and may be sued for the recovery of the amount of such damage in any court of competent jurisdiction.

(2) If it be shown that the company has used modern and efficient appliances, and has not otherwise been guilty of any negligence, the total amount of compensation recoverable from the company under this section in respect of any one or more claims for damage from a fire or fires started by the same locomotive and upon the same occasion, shall not exceed five thousand dollars. 10

(3) If there is any insurance existing on the property destroyed or damaged, where the company has used modern and efficient appliances and has not otherwise been guilty of negligence, the total amount of damages sustained by any claimant in respect of the destruction or damage of such property shall, for the purposes of this section, be reduced by the amount received or recoverable by or for the benefit of such claimant in respect of such insurance. 20

(4) No action shall lie against the company by reason of anything in any such policy of insurance.

(5) In any action or proceeding under this section the limitation of two years hereinafter prescribed shall begin to run from the date of final judgment in any action brought by the assured to recover such insurance money, or in the case of settlement, from the date of the receipt of such money by the assured, as the case may be.

(6) Where the amount recoverable from the company is limited to such five thousand dollars and such sum is not sufficient to pay all the claims in full, it shall be apportioned among the claimants pro rata according to the claims established. 30

(7) Where it is made to appear that the total amount of the claims may exceed the said sum, a judge of any superior court of competent jurisdiction may make such order as he deems fit for the proper determination and adjustment of all such claims and of the liability of the company, and if he deems proper, may stay or consolidate any action or actions and may direct advertisement for such claims and filing and adjudication thereof in such manner and before such tribunal, officer or person as he deems fit, 40

and may order that after such advertisement or notice as he directs all claims not filed and established as directed shall thereafter be barred; and the costs of any such proceedings shall be paid as such judge directs.

(8) Except under or in pursuance of such an order, the company shall not be entitled to have any action under this section stayed or the amount recoverable therein lessened because of the limitation of its liability to five thousand dollars as aforesaid, nor shall any payment made by the company to any claimant
10 otherwise than under or in pursuance of such an order prejudice the right of any other claimant to receive his due proportion of such five thousand dollars.

(9) Nothing in the last two preceding subsections shall prevent or prejudice any action or claim against the company for failure to use modern and efficient appliances or for other negligence.

(10) The company shall have an insurable interest in all property upon or along its route, for which it may be held liable to compensate the owners for loss or damage by fire caused by a
20 railway locomotive, and may procure insurance thereon in its own behalf.

Section 444. Any company which, or any person who, being a director or officer thereof, or being a receiver, trustee, lessee, agent or otherwise acting for or employed by such company, or being a contractor or other person having to do with the railway or other works of the company, does, causes or permits to be done, any matter, act or thing contrary to the provisions of this or the Special Act, or to the orders, regulations, or directions of the Governor in Council, or of the Minister, or of the Board, made
30 under this Act, or omits to do any matter, act or thing, thereby required to be done on the part of any such company or person, shall, if no other penalty is provided in this or the Special Act for any such act or omission, be liable for each such offence to a penalty of not less than twenty dollars, and not more than five thousand dollars, in the discretion of the court before which the same is recoverable.

FOREST ACT

AN ACT RESPECTING CROWN TIMBER AND THE CONSERVATION AND PRESERVATION OF FORESTS.

REVISED STATUTES OF BRITISH COLUMBIA, 1924,
C. 93 as amended by 1925, C. 12, 1926-27, C. 23, 1929,
C. 26, 1930, C. 21.

Section 2. In this Act, unless the context otherwise requires:—

“Minister” means the Minister of Lands:

Section 4. For the purpose of administering and carrying 10
out the provisions of this Act, there shall be in the Department
of Lands a branch known as the “Forest Branch.”

Section 5. The Forest Branch shall have jurisdiction over
and shall control and administer all matters relating to or in
anywise connected with forestry, and particularly, and without
restricting the generality of the foregoing provision, shall have
jurisdiction over and shall, subject to and in compliance with the
provisions of the Statutes of the Province for the time being in
force, control and regulate, receive and administer, or invoke and
enforce, as the case may be:— 20

(a) All the rights, properties, interests, claims, and demands of the Crown in right of the Province in Crown timber:

(b) All revenues and moneys of the Crown in right of the Province arising from forestry, Crown timber, and grazing:

(c) Conservation of forests:

(d) Reforestation:

(e) Prevention of forest fires:

(f) Sales and dispositions of Crown timber: 30

(g) Cutting, classifying, measuring, manufacturing, branding, and exporting of trees, timber, and products of the forest:

(h) Statutes, rules, and regulations relating to the regulation of forestry, the protection of forests, and the grazing of Crown lands.

Section 6. A Chief Forester, a Supervisor of Scalers, and such District Foresters and other officers, clerks and servants as are required for the proper conduct of the Forest Branch may be appointed pursuant to the provisions of the "Civil Service Act," all of whom shall hold office during pleasure.

Section 9. The Lieutenant-Governor in Council may constitute any portion of the Province a forest district, and declare by what local name it shall be known, and may from time to time extend, reduce, subdivide, or annul any existing forest district or merge it in whole or in part in the consolidation of two or more forest districts.

Section 94. The period from the first day of May to the first day of October in each year shall be known as the close season in respect of the setting of fire; but where circumstances of unusual danger render it necessary in the public interest, the Lieutenant-Governor in Council may, by Proclamation, extend the period of the close season in any year.

Section 95. (1) Except as provided in subsections (2) and (5), no person shall set out, start, or kindle any fire during the close season in or within one-half of a mile from any forest or woodland or any slash or forest debris.

(2) Subject to the observance of all obligations and precautions imposed by this Act or the regulations, a person may set out, start, or kindle a fire for:—

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(d) Burning slash, brush, grass, or other inflammable material:

(4) No person shall during the close season set out, start, or kindle any fire for clearing land, or for burning slash, brush, grass, or other inflammable material, or for any industrial purpose without first obtaining from the Forest Branch a written permit therefor.

Section 96. (1) Subject to section 97, the Forest Branch or any person authorized in writing by the Minister may issue permits authorizing the use of fire for the purpose of clearing

land, or for burning slash, brush, grass, or other inflammable material, or for any industrial purpose, and the Forest Branch or any person authorized in writing by the Minister may issue permits authorizing the setting-out, starting, and kindling of fires for cooking or obtaining warmth, which permits shall be subject to the regulations and to such conditions, restrictions, and provisions as the Forest Branch in the case of any permit may consider necessary or expedient to incorporate therein.

Section 97. The Lieutenant-Governor in Council may:—

- (a) Prohibit the issuing of permits, or the setting of fires 10 thereunder, in any portion of the Province for such period as he thinks fit:
- (b) Exempt any portion of the Province from the provisions of such sections of this Part as he thinks fit, and alter or revoke any such exemption.

Section 98. Every person who, during the close season, uses any explosive, or throws or drops any burning match, ashes of a pipe, lighted cigarette or cigar, or any other burning substance, in or on any forest or woodland or at a distance of less than one-half of a mile therefrom, shall before leaving the spot completely 20 extinguish the fire of the match, ashes of a pipe, lighted cigarette or cigar, or other burning substance, or explosive, and any fire caused thereby; and every such person shall be liable for all expenses incurred by the Forest Branch in controlling or extinguishing any fire so caused, which expenses may be recovered from him at the suit of the Crown.

Section 110. (5) Every person who within three hundred feet of the right-of-way of any railway causes any accumulation of inflammable debris shall immediately pile and, subject to the requirements of this Act concerning permits, burn the same. 30

Section 112. It shall be the duty of every adult person resident in the Province who finds that a fire has started or exists in or within one-half of a mile from any forest or woodland to do his utmost to prevent the spread of the fire, and, if the fire has not been reported to the Forest Branch, to report the same to the Forest Branch by the quickest possible means.

Section 113. (1) Where a fire originates on any land upon which any operation is being carried on for the cutting or removal

of forest material, brush, or debris, or for any industrial purpose or in connection with any engineering or construction operation, the person conducting such operation by himself or his agents or contractors shall diligently attend to the controlling and extinguishing of the fire, and for that purpose shall employ the services of as many of the men employed by them, up to the total number of such men, as may be necessary, and shall himself pay for the services of the men so employed.

10 (2) Where a fire originating on any other land spreads to land on which any operation for the cutting and removal of timber is being conducted, the person conducting the operation shall diligently attend to the controlling and extinguishing of the fire, and shall employ the services of as many men as are employed by him, up to the total number of such men, as may be necessary, and shall pay for the services of the men so employed.

Provided that:

- (a) If the annual tax imposed by section 119 has been paid in respect of the land on which such operation was being conducted; and
 - 20 (b) If the provisions of this Act and the regulations have been complied with; and
 - (c) If proof is submitted showing that immediate notice of the fire was dispatched to the Forest Branch by the best available means of communication; and
 - (d) If such information as the Forest Branch may require is submitted showing how and where the fire started, together with evidence satisfactory to the Forest Branch of the payments made for the services of the men so employed—then the total amount expended by such person in controlling and extinguishing the fire shall be borne by the Forest Protection Fund, except that the amounts allowed for wages paid for the services of the men so employed shall not exceed the rates prescribed by the Forest Branch for such work.
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Section 114. Any person who, in case of a fire, no matter how or by whom the fire may have been set:—

- (a) Burning on the person's own property; or
 - (b) Burning on property on which he is conducting any land-clearing, lumbering, industrial, engineering, or construction operation,—fails to do his utmost to pre-
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vent the spread of the fire, or refuses to place at the disposal of any officer of the Forest Branch for the purpose of preventing such fire from spreading from the property on which it is burning, and at the person's own expense, his services and the services of any men employed by him, or who, without the written consent of an officer of the Forest Branch, continues to carry on, in whole or in part, any land-clearing, lumbering, industrial, engineering, or construction operations while the fire is burning, or who without such consent resumes any such operations before the fire is wholly extinguished, shall be guilty of an offence against this Act, and shall, in addition to all other penalties imposed by this Act, be liable for all expenses incurred by the Forest Branch or by any other person in controlling and extinguishing the fire should it spread beyond the boundaries of such property, or should it threaten so to do. The Attorney-General, on behalf of His Majesty, may bring action to recover such expenses incurred by the Forest Branch, and any other person who has incurred expenses under this section may bring action for the recovery thereof in any court of competent jurisdiction; but no action shall be brought under this section unless it is commenced within twelve months from the incurring of the expenses.

Section 117. Every person employed in any capacity in connection with any patrol or fire-prevention force maintained pursuant to this Act shall have lawful right, while in performance of his duties in connection with the prevention of fire, to enter into and upon any lands and premises other than dwelling or other houses; and any person hindering, obstructing, or impeding the performance of any duty in connection with any patrol or fire-prevention force shall be guilty of an offence against this Act.

Section 118. (1) Such officers and employees of the Forest Branch as the Lieutenant-Governor in Council considers necessary may be appointed constables for the enforcement of the provisions of this Act, and as such may arrest without warrant any person found violating any provisions of this Act, and take him before a Justice and there make complaint. Any officer or constable of the Provincial Police force and any officer or employee of the Forest Branch may employ or summon the assistance of

any male person between the ages of eighteen and sixty, except only trainmen, telegraphers, and dispatchers on duty, doctors, and persons physically unfit, for the purpose of controlling and extinguishing any fire, and the compensation for such voluntary or compulsory assistance shall be such as the Lieutenant-Governor in Council may provide.

10 (2) Every person refusing or failing to render assistance when called upon by any officer or employee of the Forest Branch under this section shall be liable, on summary conviction, to a penalty of not less than twenty-five dollars nor more than one hundred dollars.

Section 123. Nothing in this Part shall be held to limit or interfere with the right of any person to bring and maintain a civil action for damages occasioned by fire.

20 Section 140. (1) The Lieutenant-Governor in Council may make such regulations not inconsistent with the spirit of this Act as he considers necessary or advisable for carrying out the purpose and provisions of this Act, including matters in respect of which no express or only partial or imperfect provision has been made.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the Lieutenant-Governor in Council to make regulations shall extend to the making of regulations:—

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30 (d) Requiring every person carrying on any land-clearing, lumbering, industrial, engineering, or construction operation to maintain at his own expense such fire-fighting equipment and such number of forest fire prevention officers for the purpose of preventing the occurrence or spread of fire from that operation as are prescribed in the regulations.

No. 39 of 1933.

In the Privy Council.

ON APPEAL

*From the Court of Appeal for
British Columbia*

BETWEEN

**CANADIAN NORTHERN PACIFIC
RAILWAY COMPANY** (Defendants)
Appellants

AND

**KAPOOR LUMBER COMPANY
LIMITED** (Plaintiffs)
Respondents.

**Appellant's Appendix of
Statutes**

R. W. HANNINGTON,
Solicitor for the (Defendants)
Appellants.

MAITLAND, MAITLAND,
HUTCHESON & REMNANT,
Solicitors for the (Plaintiffs)
Respondents.
