

35, 1936

No. 23 of 1935.

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN—

GEORGE PARDEW LOVIBOND on behalf of himself and on behalf of himself and all others the registered holders on January 18th, 1923, of First, Second and Third Preference Stocks and of Common Stock of the Grand Trunk Railway Company of Canada, their personal representatives or assigns - (Plaintiff) *Appellant*

— AND —

GRAND TRUNK RAILWAY COMPANY OF CANADA, CANADIAN NATIONAL RAILWAY COMPANY and THE ATTORNEY-GENERAL OF CANADA
(Defendants) *Respondents*.

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AN ACT to incorporate Canadian National Railway Company and
respecting Canadian National Railways.

(Assented to 6th June, 1919).

* * * * *

3. The Governor in Council may declare that the Company shall have a capital stock, with or without shares, to such amount as may from time to time be deemed expedient. All such stock shall, until otherwise ordered by the Governor in Council, be vested in the Minister of Finance on behalf of His Majesty.

Capital
stock.

* * * * *

10 9. Whenever under the provisions of the Railway Act, or any other statute or law, the approval, sanction or confirmation by shareholders is required, such approval, sanction or confirmation may be given by the Governor in Council

Approval by
Governor in
Council instead
of shareholders.

* * * * *

20 21. With the approval of the Governor in Council, on the recommendation of the Minister of Railways and Canals, agreements for any of the purposes specified in sections three hundred and sixty-one and three hundred and sixty-four of the Railway Act may be entered into between the Company and any Company now or hereafter comprised in the Canadian Northern System, or between the Company and His Majesty, or the Company and any other Railway Company approved by the Governor in Council, or between any two or more of any such parties.

Agreements
with other
lines.

BRITISH NORTH AMERICA ACT. 30 VICTORIA, CHAPTER 3.

VI. DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

Legislative
authority of
Parliament
of Canada.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this 10 Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence. 20
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the establishment and maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign country or between two Provinces.
14. Currency and Coinage. 30
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings Banks.

17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.
25. Naturalization and Aliens.
- 10 26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

20 And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES.

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :—

Subjects of
exclusive
Provincial
Legislation.

- 30 1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the Province in order to the raising of a Revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial officers and the appointment and payment of Provincial officers.

5. The management and sale of the Public Lands belonging to the Province and of the timber and wood thereon.
6. The establishment, maintenance, and management of public and reformatory prisons in and for the Province.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the Province, other than marine hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for Provincial, local or municipal 10 purposes.
10. Local works and undertakings other than such as are of the following classes :—
 - a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;
 - b. Lines of steam ships between the Province and any British or Foreign country;
 - c. Such works as, although wholly situate within the 20 Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The incorporation of companies with provincial objects.
12. The solemnization of marriage in the Province.
13. Property and civil rights in the Province.
14. The administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, and 30 including procedure in civil matters in those Courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the Province.

* * * * *

VII. JUDICATURE.

* * * * *

101. The Parliament of Canada, may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a general Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the Laws of Canada.

General Court
of Appeal, etc.

* * * * *

129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under this Act.

Continuance of
existing Laws,
courts, officers,
etc.

STATUTES OF CANADA. 9—10 GEORGE V. CHAPTER 68.

AN ACT to Consolidate and Amend the Railway Act.

(Assented to 7th July, 1919).

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

Short title. 1. This Act may be cited as THE RAILWAY ACT, 1919, R.S., c. 37, s. 1.

AGREEMENTS FOR SALE LEASE AND AMALGAMATION.

Agreement for sale, lease or amalgamation of railway. 151. (1) Where the company is authorized by any Special Act 10 of the Parliament of Canada to enter into an agreement with any other company (whether within the legislative authority of the Parliament of Canada or not) for selling, conveying or leasing to such company the railway and undertaking of the company, in whole or in part, or for purchasing or leasing from such company the railway and undertaking of such company, in whole or in part, or for amalgamation, such agreement shall be first approved by two-thirds of the votes of the shareholders of each company party thereto, at an annual general meeting, or at a special general meeting, of each company, called for the purpose of considering such agree- 20 ment, at each of which meetings shareholders representing at least two-thirds in value of the capital stock of each company are present or represented by proxy.

Approval of shareholders.

Board to recommend sanction.

(2) Upon such agreement being so approved, and duly executed, it shall be submitted to the Board with an application for a recommendation to the Governor in Council for the sanction thereof.

Notice in CANADA GAZETTE.

(3) Notice of the proposed application for such recommendation shall be published in the CANADA GAZETTE, for at least one month prior to the time, to be stated therein, for the making of such application, and also, unless the Board otherwise orders, for a like period in 30 one newspaper in each of the countries or electoral districts through which the railway to be sold, leased or amalgamated, runs, in which a newspaper is published.

Action Board.

(4) Upon such notice being given the Board shall grant or refuse such application, and upon granting the same shall make a recommendation to the Governor in Council for the sanction of such agreement.

- (5) Upon such agreement being sanctioned by the Governor in Council, a duplicate original of such agreement shall be filed in the office of the Secretary of State of Canada; and thereupon such agreement shall come into force and effect, and notice thereof shall be forthwith given in the CANADA GAZETTE. Proceedings upon sanction.
- (6) The production of the CANADA GAZETTE containing the notice mentioned in subsection five of this section shall be *prima facie* evidence that the requirements of this section have been complied with. Notice.
- 10 (7) Whenever the agreement does not involve any sale or amalgamation and may be terminated by either company on giving a notice not exceeding twelve months, the Board may, notwithstanding anything in this section, by order or regulation, exempt the company from complying with any of the foregoing conditions with respect to any such agreement. R.S., c. 37, s. 361, Am. Evidence.
152. Upon any agreement for amalgamation coming into effect, as provided in the last preceding section, the companies, parties to such agreement, shall, subject to the provisions of this Act and the Special Act authorizing such agreement to be entered into, be deemed Exemptions in certain cases.
- 20 to be amalgamated, and shall form one company, under the name and upon the terms and conditions in such agreement provided; and the amalgamated company shall possess and be vested with all the railways, and undertakings, and all other the powers, rights, privileges, franchises, assets, effects, and properties, real, personal and mixed, belonging to, possessed by, or vested in the companies, parties to such agreement, or to which they, or any or either of them, may be or become entitled; and shall be liable for all claims, demands, rights, securities, causes of action, complaints, debts, obligations, works, contracts, agreements, or duties, to as full an extent as any or either Amalgamation.
- 30 of such companies was, at or before the time when the amalgamation agreement came into effect. R.S., c. 37, s. 362. Powers, etc., of amalgamated company.
153. (1) Notwithstanding anything in any agreement made or sanctioned under the provisions of the last two preceding sections, every act, matter or thing done, effected or confirmed under or by virtue of this Act or the Special Act, before the date of the coming into effect of such agreement, shall be as valid as if such agreement had never come into effect; and such agreement shall be subject and without prejudice to every such act, matter or thing, and to all rights, liabilities, claims and demands, present or future, which would be Saving of rights and claims.
- 40 incident to, or consequent upon such act, matter or thing if such agreement had never come into effect.

Amalgamated
company in
place of former
companies.

(2) In the case of an agreement for amalgamation, as to all acts, matters and things so done, effected or confirmed, and as to all such rights, liabilities, claims and demands, the amalgamated company shall for all purposes stand in the place of and represent the companies who are parties thereto and the generality of the provisions of this section shall not be deemed to be restricted by any Special Act, unless this section is expressly referred to in such Special Act, and expressly limited or restricted thereby. R.S., c. 37, s. 363.

STATUTES OF CANADA. 1919. (SECOND SESSION). CHAPTER 17.

AN ACT respecting the acquisition by His Majesty of the Grand Trunk Railway System.

(Assented to 10th November, 1919).

WHEREAS the present capital stock of the Grand Trunk Railway Company of Canada consists of the following :— Preamble.

	Four per cent. (4%) Guaranteed Stock	£12,500,000
	First Preference Five per cent. (5%) Stock	3,420,000
	Second Preference Five per cent. (5%) Stock	2,530,000
10	Third Preference Four per cent. (4%) Stock	7,168,055
	Common Stock	23,955,437
		<u>£49,573,492</u>

AND WHEREAS the present outstanding Debenture Stocks of the Grand Trunk Railway Company of Canada consisting of :—

	Five per cent. (5%) Grand Trunk Debenture Stock ...	£4,270,375
	Five per cent. (5%) Great Western Debenture Stock	2,723,080
	Four per cent. (4%) Grand Trunk Debenture Stock	24,624,455
	Four per cent. (4%) Northern Debenture Stock ...	308,215
		<u>£31,926,125</u>

20 (hereinafter called the “present Debenture Stocks”) are entitled to certain voting powers at meetings of shareholders of the Grand Trunk Railway Company of Canada :

AND WHEREAS it is expedient that His Majesty should acquire the whole of the capital stock of the Grand Trunk Railway Company of Canada except the Four per cent. (4%) Guaranteed Stock above referred to and should have power to acquire the said Four per cent. (4%) Guaranteed Stock :

THEREFORE His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

30 1. This Act may be cited as The Grand Trunk Railway Acquisition Act, 1919. Short title.

Government empowered to enter into agreement with Grand Trunk Railway Company for acquisition of entire capital stock of Company except four p.c. guaranteed stock.

2. Subject to the provisions of this Act, His Majesty the King, represented by the Minister of Railways and Canals of Canada, acting under the authority of the Governor in Council (hereinafter called the "Government") may enter into an agreement (hereinafter called the "said Agreement") with the Grand Trunk Railway Company of Canada (hereinafter called the "Grand Trunk") and with such other companies and interests as the Government may think necessary for the acquisition by the Government of the entire capital stock of the Grand Trunk, except the Four per cent. (4%) Guaranteed Stock of the Grand Trunk, amounting to £12,500,000 the latter being hereinafter called the "present guaranteed stock."

Provisions of agreement.

3. The said Agreement shall contain provisions for the defining of the companies, properties and interests comprised in the Grand Trunk System, and, including the terms and provisions hereinafter set forth, may contain such other terms and conditions not inconsistent with the provisions of this Act, as the parties may agree upon.

Government may guarantee payment of dividends upon present guaranteed stock, interest upon present debenture stocks, and dividends upon an issue of non-voting capital stock of amount determined by Board of Arbitrators.

4. As part of the consideration for such acquisition, the Government may agree to guarantee the payment of:—

(a) Dividends payable half-yearly, at four per cent. per annum, upon the present guaranteed stock; 20

(b) The interest upon the present debenture stocks as and when payable in accordance with the terms thereof.

These guarantees to take effect upon the date of the appointment of the Committee of Management hereinafter mentioned.

(c) Dividends payable half-yearly at four per cent. per annum from the date of the appointment of the Committee of Management hereinafter provided for, upon an issue which is hereby authorized, by the Grand Trunk under the terms of the said Agreement of non-voting capital stock (hereinafter called the "new guaranteed stock") not exceeding the amount determined by the Board of Arbitrators, as hereinafter set forth. 30

Voting powers of shareholders thereupon cease.

Provided that concurrently with such guarantee of dividends and interest upon the present guaranteed stock and the present debenture stocks, respectively, the voting powers at meetings of shareholders of the Grand Trunk now vested or exercisable by the holders of the said stocks respectively shall cease and determine absolutely.

Government may call in or redeem present guaranteed stock and new guaranteed stock.

5. The present guaranteed stock and the new guaranteed stock, or any part thereof, may be called in or redeemed by the Government, at par, at any time after five years from the date of the appointment of the said Committee of Management, on six months' notice, by advertisement to the holders thereof. 40

6. The value, if any, of the first, second and third preference stocks and the common or ordinary stock of the Grand Trunk now issued and outstanding to the face values above mentioned (hereinafter together called the "preference and common stock") shall be determined by a Board of three Arbitrators, one to be appointed by the Government, one by the Grand Trunk, and the third shall be Sir Walter Cassels, Judge of the Exchequer Court of Canada. Should Sir Walter Cassels die or be unable to act, the said parties shall agree upon another third arbitrator who shall be either the then Judge of the Exchequer Court of Canada or one of the Judges of the Supreme Court of Canada. The value, if any, so determined shall not be greater than an amount on which the annual dividend at four per cent. per annum on the aggregate face value of the present guaranteed stock and the new guaranteed stock taken together would exceed \$5,000,000. The fixing of this limit shall not be taken by the arbitrators as any admission or indication that the value to be determined is the amount so fixed, or any other amount. New guaranteed stock, to an amount not exceeding the value, if any, so determined, carrying a dividend as hereinbefore authorized, shall be distributed among the holders of the preference and common stock, upon the transfer to or vesting in the Government of such stock, in proportions which shall be determined by the Arbitrators.
- Board of Arbitrators to be appointed to determine value of preference and common stock.
- New guaranteed stock to be distributed among holders of preference and common stock.
7. As soon as said Agreement has been ratified by a majority in voting power of the holders of the stocks enumerated in the preamble to this Act, present in person or by proxy and voting at a special general meeting of such stockholders duly called for the purpose of considering such Agreement;
- Ratification by shareholders.
- (a) A Committee of Management shall be formed consisting of five persons, two to be appointed by the Grand Trunk, two by the Government, and the fifth by the four so appointed, to insure the operation of the Grand Trunk System (in so far as it is possible so to do) in harmony with the Canadian National Railways, the two systems being treated in the public interest as nearly as possible as one system. The Committee shall continue to act until the preference and common stocks are transferred to or vested in the Government, when it shall be discharged;
- Committee of management to be formed as soon as agreement is ratified to operate Grand Trunk System in harmony with Canadian National Railways.
- (b) The books, minutes, reports, documents, and other records, and all the railways and properties of the companies comprised in the Grand Trunk System, shall at all times be accessible and open to inspection and examination by any person or persons named by the Minister of Railways and Canals of Canada, or by the Board of Arbitrators; and all proper aid and
- Books, reports, and records and railways and properties of companies in Grand Trunk System to be open to inspection and all proper aid to be rendered.

assistance shall, on request, be rendered to such person or persons by the Committee of Management and by the officers and employees of the Grand Trunk and its allied companies, including the making and giving of extracts, copies and statements.

Agreement to provide for:—

Arbitrators, oaths, evidence, and award.

Transfer to Government of preference and common stock.

Resignation of Board of Directors of Grand Trunk.

Entrusting to Committee of Management powers of Minister as Receiver of Grand Trunk Pacific.

Continuance of superannuation pension and insurance schemes.

Authority for Government, Grand Trunk companies, and all parties interested to enter into agreement.

Orders in Council authorized to vest in Government any preference or

8. The said agreement shall provide for:—

(a) The appointment of the arbitrators, the control of the arbitration proceedings, the administration of oaths, the procuring and admission of evidence, and the making of the award;

(b) The transfer to or vesting in the Government or its nominees of the preference and common stock upon the issue of new guaranteed stock in exchange therefor;

(c) The resignation or vacating the offices of the Board of Directors of the Grand Trunk and of each Company comprised in the Grand Trunk System upon the preference and common stock being transferred to or vested in the Government;

(d) The entrusting to the said Committee of Management by the Minister of Railways and Canals as Receiver of the Grand Trunk Pacific Railway System, on terms to be approved by the Governor in Council, of the exercise of such of his powers as Receiver as the Governor in Council may deem requisite in order that the operation and management of the said Grand Trunk Pacific Railway System may be conducted in harmony with the operation of other railways and properties under the control of the said Committee;

(e) The continuation and administration of the Grand Trunk Railway of Canada Superannuation and Provident Fund Association, the Grand Trunk Pension Fund, and the Grand Trunk Railway Insurance and Provident Society, in accordance with the terms to be set forth in said Agreement.

9. The Government and the Grand Trunk, and each company comprised in the Grand Trunk System, and all persons interested therein, are hereby respectively authorized and empowered to enter into the said Agreement upon and subject to the terms herein set forth, and to do and perform all such acts and things as may be deemed necessary to observe, perform and comply fully with the terms and conditions of said Agreement.

10. The Governor in Council may make such orders as are deemed requisite to vest in the Government any of the preference or common stock not transferred to the Government or its nominees

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under the terms of this Act, or to vacate any office of director, or otherwise to carry into effect the terms and provisions of the said Agreement.

common stocks not transferred, or to vacate office of Director.

11. Upon the transfer to or vesting in the Government of the preference and common stock as herein provided for, the Governor in Council may provide for the discharge of the receivership of the Grand Trunk Pacific Railway System and the termination and withdrawal of the proceedings in the Exchequer Court of Canada relating thereto.

Discharge of receivership of Grand Trunk Pacific and termination of proceedings in Exchequer Court.

10 12. For the purpose of the valuation provided in this Act, the obligations of the Grand Trunk as guarantors of any indebtedness of the Grand Trunk Pacific Railway Company or of the Grand Trunk Pacific Branch Lines Company or otherwise and the claims of the Government of the Dominion of Canada against either of the above-mentioned companies or against any company forming part of the Grand Trunk Railway System shall not be treated as extinguished or affected by anything contained in this Act.

For valuation purposes obligations of Grand Trunk and claims of Government not extinguished.

ORDER IN COUNCIL (CANADA), approved by His Excellency the Governor General on 19th January, 1923.

PRIVY COUNCIL.

CANADA.

The Committee of the Privy Council have had before them a report, dated 18th January, 1923, from the Acting Minister of Railways and Canals stating that pursuant to the "Act respecting the acquisition by His Majesty of the Grand Trunk Railway "System" (being Chapter 17 of the Statutes of Canada, for the year 1919) and the Agreement therein authorized, which is set out in full 10 and confirmed, with minor amendments, by Chapter 13 of the Statutes of Canada for 1920, the Arbitration Board constituted for the purpose of determining the value, if any, to the holders thereof of the following capital stocks of the Grand Trunk Railway Company of Canada, viz. :—

First Preference Stock, 5%	...	...	...	...	£3,420,000
Second Preference Stock, 5%	...	...	...	...	£2,530,000
Third Preference Stock, 4%	...	...	...	...	£7,168,055
Ordinary or Common Stock	...	...	...	...	£23,955,437
					£37,073,492 20

(hereinafter together referred to as the "preference and common stock") on the seventh day of September, 1921, made an award wherein the majority of the Arbitrators (Sir Walter Cassels and Sir Thomas White) decided that the stock in question had no value. The Honourable William H. Taft, the arbitrator appointed by the Company, dissented.

That subsequently an appeal was taken by special leave to the Judicial Committee of the Privy Council, based largely upon the question whether the arbitrators in excluding evidence as to the physical assets of the Company were wrong in law. The arbitrators 30 had arrived at the conclusion above mentioned upon the principle that the value of the preferred and common stock was to be ascertained on the basis of the net earning capacity of the Company, both actual and potential, which net earning capacity, had any been found, would then be capitalized. The Judicial Committee after hearing and considering the arguments dismissed the appeal, stating in their reasons for judgment, which were delivered on the 10th day of November, 1922, that any attempt to estimate future profits by reference to selling value or replacement cost was doomed to failure, and

accordingly that the arbitrators to whom the Agreement gave a wide discretion as to the admission of evidence were justified in refusing to embark upon such an enquiry.

That there being no further or other appeal available to the Company the award of the arbitrators stands, and accordingly His Majesty the King, in the right of the Dominion of Canada, is now entitled to the whole of the preference and common stock and to the immediate transfer thereof to the Government or its nominees without the issue to the holders thereof of any of the new guaranteed
10 stock. The Agreement contemplated an issue to the holders of the preference and common stock of what was therein described as the new guaranteed stock, to an amount equal to the value fixed by the award. Since, however, the arbitrators have found the preference and common stocks to be without value, the holders are not entitled to anything.

That Clause 13 of the Arbitration Agreement in part provides :—

“Should any shares or any part of the preference and common
“stock not be transferred to the Government, the Governor in Council
“may declare such shares or any such part of the preference and
20 “common stock to be the property of the Minister of Finance in
“trust for His Majesty, and upon the making of such declaration the
“shares or part thereof not so transferred shall immediately become
“the property of His Majesty, and proper entries thereof in the stock
“registers and other books in that behalf shall be made.”

That no part of the said shares or of the preference and common stock has been transferred to His Majesty nor to the Government, nor to any person acting in such behalf, or in trust for His Majesty or the Government and it is accordingly expedient that a declaration shall be made under the provisions of Clause 13 of the said Agreement as above in part recited, vesting the said shares and stocks
30 in His Majesty.

The Minister therefore recommends that it be declared by Your Excellency in Council that the whole of the preference and common stock of the Grand Trunk Railway Company of Canada as described in the said Arbitration Agreement and as referred to in the said award and in the said Judgment of the Judicial Committee of the Privy Council is the property of the Minister of Finance in trust for His Majesty, and directing that proper entries thereof in the stock registers and other books of the Company in that behalf shall forth-
with be made.

40 The Committee concur in the foregoing recommendation and submit the same for approval.

ORDER IN COUNCIL (CANADA), approved by His Excellency the
Governor General on 30th January, 1923.

PRIVY COUNCIL.

CANADA.

The Committee of the Privy Council have had before them a report, dated 30th January 1923 from the Acting Minister of Railways and Canals, representing that all the voting capital stock of the Grand Trunk Railway Company of Canada amounting to £37,073,492 being now by virtue of the Order in Council of the 19th January 1923 the property of the Minister of Finance in trust for His Majesty in 10 the right of the Dominion of Canada, it is expedient that the said Company should be amalgamated with the Canadian National Railway Company so as to form one Company under the name of the Canadian National Railway Company.

Under Section 21 of Chapter 13 of the Statutes of 1919 which is the Act under which the Canadian National Railway Company is incorporated (hereinafter called the "said Act") agreements for the purpose, among others, of amalgamation may, with the approval of the Governor in Council, on the recommendation of the Minister of Railways and Canals, be entered into between the Canadian National 20 Railway Company and any other Railway Company approved by the Governor in Council.

Under Section 151 of The Railway Act 1919 every such agreement for amalgamation should first be approved by two-thirds of the votes of the shareholders of each Company party thereto.

The Minister states that the Amalgamation Agreement submitted herewith (hereinafter called the "said Agreement") was duly approved by unanimous vote at a meeting of the shareholders of the Grand Trunk Railway Company of Canada, at which all the voting capital stock of the said Company was represented by proxy given 30 by the Minister of Finance.

Under Section 9 of the said Act, whenever under the provisions of The Railway Act, or any other statute or law, the approval, sanction or confirmation by shareholders is required, such approval, sanction or confirmation may, in respect of the Canadian National Railway Company, be given by the Governor in Council.

The Board of Directors of the two Companies, parties to the said Agreement, have also duly approved of the form and terms of the

said Agreement, and authorised its execution by the proper officers of the two Companies under their respective corporate seals.

The Minister, on the advice of the Assistant Deputy Minister of Railways and Canals, accordingly recommends :—

(A) That the Grand Trunk Railway Company of Canada be approved as a Railway Company with which the Canadian National Railway Company may enter into an agreement for amalgamation, pursuant to Section 21 of the said Act.

10 (B) That pursuant also to Section 21 of the said Act, the Amalgamation Agreement herewith submitted be approved as an agreement providing for the amalgamation of the Canadian National Railway Company and the Grand Trunk Railway Company of Canada.

(C) That pursuant to Section 9 of the said Act, the said Agreement be also approved in substitution for the approval of the shareholders of the Canadian National Railway Company, and that the Directors of the Canadian National Railway Company be authorised to take all necessary steps to complete the amalgamation and to carry the same into effect.

20 (D) That pursuant to Section 3 of the said Act it be declared that the Canadian National Railway Company, as constituted by such amalgamation, shall have a capital stock in amount sufficient to accomplish the purposes of the said Agreement, that is, a capital stock of \$180,424,327·70, and that one share may be issued for the whole of such amount, such share, however, to be subsequently divisible into any number of shares of lesser denominations of equal or unequal amounts, as may be requested from time to time by the Minister of Finance, with the approval of the Governor in Council.

30 (E) That the Minister of Finance shall be registered, on the books of the Amalgamated Company as the holder, in trust for His Majesty, of the share of stock in the Amalgamated Company issued to him under the provisions of Clause 6 of the said Agreement and upon such registration being made may surrender to the Amalgamated Company, pursuant to the provisions of the said Clause 6, the shares in the capital stock of the Grand Trunk Railway Company of Canada in such clause referred to.

The Committee concur in the foregoing recommendations and submit the same for Your Excellency's approval.

(Sgd.) RODOLPHE BOUDREAU,

Clerk of the Privy Council.

INDENTURE between Canadian National Railway Company and
Grand Trunk Railway Company of Canada, dated 30th January
1923.

THIS INDENTURE made this 30th day of January A.D. 1923
Between CANADIAN NATIONAL RAILWAY COMPANY herein-
after called the Canadian National of the First Part and GRAND
TRUNK RAILWAY COMPANY OF CANADA hereinafter called
the Grand Trunk of the Second Part.

WHEREAS the Canadian National was incorporated by an Act 10
of the Parliament of Canada, being Chapter 13 of the Statutes of 1919,
and under Section 21 of such Act has authority to amalgamate with
any other Railway Company approved by the Governor in Council;

AND WHEREAS by virtue of an Order in Council passed on the
nineteenth day of January 1923 the whole of the voting capital
stock of the Grand Trunk, being the first, second and third prefer-
ence stock, and the ordinary or common stock of the Grand Trunk,
to the aggregate value of Thirty-seven million, seventy-three
thousand, four hundred and ninety-two pounds (£37,073,492) has
become the property of the Minister of Finance, in trust for His 20
Majesty the King in the right of the Dominion of Canada, and it is
expedient that the Canadian National and the Grand Trunk should
be amalgamated so as to form one Company;

AND WHEREAS the Governor in Council, pursuant to the
provisions of Section 3 of the said Chapter 13 of the Statutes of 1919
proposes to declare that the Canadian National shall have a capital
stock to an amount sufficient to accomplish the purposes of this
Agreement.

AND WHEREAS this Agreement has been duly submitted to
the Shareholders of the Grand Trunk at a meeting duly called and 30
held at which all of the said voting shares were represented by proxy,
and this Agreement has been duly approved of and authorised by
the unanimous vote of all the said Shareholders.

AND WHEREAS under the provisions of Section 9 of the said
Chapter 13 of the Statutes of 1919, whenever under the provisions of
the Railway Act or any other statute or law the approval, sanction
or confirmation by Shareholders of the Canadian National is required,
such approval, sanction or confirmation may be given by the Governor
in Council;

AND WHEREAS the Governor in Council has approved of this Agreement, pursuant to the provisions of the said section;

NOW THIS AGREEMENT WITNESSETH :

1. INTERPRETATION.—In this Agreement the phrase “Amalgamated Company” shall mean the Company formed by the amalgamation of the Canadian National and Grand Trunk.

2. AMALGAMATION.—The Canadian National and the Grand Trunk hereby agree to amalgamate and do hereby amalgamate and form one Company, in accordance with and subject to the provisions of Sections 152 and 153 of The Railway Act 1919 and upon the terms and conditions hereinafter set out.

3. NAME.—The name of the Amalgamated Company shall be the “Canadian National Railway Company.”

4. AMOUNT OF CAPITAL STOCK.—The amount of the capital stock of the Amalgamated Company shall (until otherwise declared by the Governor in Council) be the equivalent in Canadian money at $\$4\cdot86\frac{2}{3}$ to the pound sterling of Thirty-seven million, seventy-three thousand, four hundred and ninety-two pounds sterling (£37,073,492) being the total voting capital of the Grand Trunk. Subject as specified in Clause 6 of this Agreement, the said capital stock shall be issued in one share of the face value of One hundred and eighty million, four hundred and seventy-four thousand, three hundred and twenty-seven dollars and seventy cents (\$180,424,327·70).

5. DIRECTORS.—The Board of Directors of the Amalgamated Company shall be the Board of Directors for the time being of the Canadian National Railway Company, as constituted pursuant to the provisions of the said Chapter 13 of the Statutes of 1919.

6. ISSUE OF SHARES.—There shall be issued to the Minister of Finance, in trust for His Majesty, by the Amalgamated Company, one share in the capital stock of the Amalgamated Company, fully paid up and free from calls and other liability to the amount specified in Clause 4 of this Agreement; and upon such issue the shares held by the Minister of Finance (in trust as aforesaid) in the capital stock of the Grand Trunk shall be surrendered by the Minister of Finance to the Amalgamated Company for cancellation. Such share so issued by the Amalgamated Company shall, upon request of the said Minister, be from time to time divided into any number of shares of lesser denominations, whether of equal or unequal amounts, as may be approved by the Governor in Council.

7. BY-LAWS.—The By-Laws, rules and regulations of the Canadian National shall be the by-laws, rules and regulations of the Amalgamated Company, but all existing by-laws, rules and regulations of the Grand Trunk not inconsistent with the by-laws rules and regulations of the Canadian National shall continue in force and effect and be applicable to the Amalgamated Company until repealed, altered or amended by the Amalgamated Company.

8. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF this Indenture has been duly executed 10 by the parties.

SIGNED, SEALED and DELIVERED in)
the presence of

)	CANADIAN NATIONAL
)	RAILWAY COMPANY,
)	(Sgd.) H. W. THORNTON,
)	President.
)	(Sgd.) R. P. ORMSBY,
)	Secretary.
)	GRAND TRUNK RAILWAY
)	COMPANY OF CANADA, 20
)	(Sgd.) H. W. THORNTON,
)	President.
)	(Sgd.) R. P. ORMSBY,
)	Secretary.
)	(L.S.)

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN :—

GEORGE PARDEW LOVIBOND

Appellant

— AND —

**GRAND TRUNK RAILWAY COMPANY
OF CANADA and Others - Respondents.**

**A P P E N D I X
TO APPELLANT'S CASE.**

LAWRENCE JONES & Co.,
Lloyd's Building,
Leadenhall Street,
London, E.C.3.