

Canada (C. S. C. ch. 66), the provisions of which as to acquiring and holding lands taken were incorporated. There was no definition in that general Act of the term "railway," and at that time no general legislation by the province upon the subject of street railways. In the petition recited in 35 Vict. ch. 64, reference is made to an earlier statute of the province of Canada, 29 Vict. ch. 84, by which certain persons had been incorporated as the Windsor and Sandwich Street Railway Company, which, it is said, had not been acted upon, and the prayer of the petition was that an Act might be passed to authorise the construction and operation of a similar railway under other direction and management. But the railway actually authorised by that statute is nowhere in the statute itself called a street railway. Then in the general Act to which I have referred, C. S. C. ch. 66, sec. 123, it is declared and enacted that all special Railway Acts shall be public Acts, a definition which has been continued in all the general railway legislation of the province ever since, and which, in my opinion, make it necessary to regard the statute 53 Vict. ch. 97 as a public Act, and therefore binding on all persons.

The learned Chairman of the Board in his judgment speaks of the Act of 1887 as if that Act, and not the Act of 1872, was the Act under which the company were incorporated. The legislation is certainly peculiar, but the point to be determined, I think, is, what did the legislature intend? Was the intention to create at that time a new corporate entity, or to give new life and vigour to the old, which, so far as appears, had not ceased to exist, although it had, through the foreclosure proceedings, lost its property? The latter is, in my opinion, the proper conclusion. The railway had then been in operation for many years, and it was, no doubt, considered desirable that its continued operation should be carried on without a break or interruption in the statutory title. The language of the statute itself really leaves no room for doubt as to the intention. And there can, I think, be no doubt about the legislative power to do as was done—that is to say, to amend and continue and even to enlarge the original Act under which the railway was first constructed, and under which it had been operated for so long. In 1872, as I have said, this province had no general Railway Act. The provisions of C. S. C. ch. 66 were evidently assumed to be in force, as, after Confederation, amendments to it were from time to time passed by the legislature. The first provincial general Act was R. S. O. 1877 ch. 165, which is called "The Railway Act of Ontario"—largely a compilation from C. S. C. ch. 66. And it was, doubtless, to that Act that the legislature referred in sec. 11 of the Act of 1893, before quoted, from which,