

tawa, and Western Railway Company with that of another company called the North Shore Railway Company, which had made a similar transfer in favor of the Government of Quebec; it gave to the railway to be completed the new name of "The Quebec, Montreal, Ottawa and Occidental Railway;" it declared that railway to be a public work belonging to the province of Quebec held to and for the public uses of the province, and provided for the mode of its construction; it vested the construction and management of that railway in certain Commissioners with ample and defined powers; by section 11 it made the provisions of the Quebec Railway Act, 1869, so far as they were applicable to the undertaking and not inconsistent with the provisions of that act, applicable to the said railway, and empowered the Commissioners, in cases where proceedings had been commenced by the Montreal, Ottawa, and Western Railway for the expropriation and acquisition of lands for the purposes of that railway and had not been completed, to continue such proceedings under the provisions of the Quebec Railway Act, but with the consent of the proprietor of such lands, or to discontinue such proceedings, and commence proceedings *de novo* under the said Quebec Railway Act; and by section 24 it reunited lands which had been granted to the Montreal, Ottawa, and Western Railway Company, to the public lands of the province. Sections 43, 44, 45, and 46 have even a more direct bearing upon the questions raised by the two appeals now under consideration. Section 43 in order "to avoid all doubts," enacts that the Quebec, Montreal, and Occidental Railway is thereby invested with all the rights, powers, immunities, franchises, privileges, or assets granted by the Legislature of the Province of Quebec to the Montreal Northern Colonization Railway Company, and, so far as that Legislature could do, with all the rights, powers, immunities, franchises, privileges, and assets granted by the Parliament of the Dominion of Canada to the Montreal, Ottawa, and Western Railway Company. Section 44 takes away the power of the last-mentioned company to appoint Directors, and abolishes the directorate contemplated by the former statutes. Section 45 transfers to the Commissioners the rights of the individual shareholders in the Montreal, Ottawa, and Western Railway Company, providing that their

paid-up stock shall be refunded to them; and, section 46 authorizes the Commissioners, with the consent of the Lieutenant Governor in Council, to apply to the Parliament of Canada for any legislation which may be deemed necessary for the purposes of the act.

The combined effect, therefore, of the deed and of this statute, if the transaction was valid, was to transfer a federal railway, with all its appurtenances, and all the property, liabilities, rights, and powers of the existing company, to the Quebec Government, and, through it, to a company with a new title and a different organization; to dissolve the old federal company, and to substitute for it one which was to be governed by, and subject to, provincial legislation.

It is contended on the part of the appellants that this transaction was invalid, and altogether inoperative to affect the obligations of the company. They insist that, by the general law and by reason of the special legislation which governed it, the company was incompetent thus to dissolve itself, to abandon its undertaking, and to transfer that, and its own property, liabilities, powers, and rights to another body, without the sanction of an Act of a competent Legislature; and, further, that the Legislature of Quebec was incompetent to give such sanction. This contention appears to their Lordships to be well founded.

That such a transfer, except under the authority of an Act of Parliament, would in this country be held to be *ultra vires* of a railway company, appears from the judgment of Lord Cairns in *re Gardner v. London, Dover, and Chatham Railway Company*, 2 Chancery Appeals, 201 and 212. That it is equally repugnant to the law of the Province of Quebec, so far as that is to be gathered from the civil code, is shown by the 369th article of that code. But the strongest ground in favour of the appellants' contention is to be found in the special legislation touching this railway company. The history of the company and of its conversion from a provincial into a federal railway company has been stated in the judgment already delivered. By section 1 of the Canadian Statute 36 Vict. c. 82, which effected that conversion, the railway was declared to be a work for the general advantage of Canada. By the 5th section of the same Statute, it was enacted that the con-