

the proceedings will hardly be condemnation proceedings; they are hardly like the proceedings followed when the value is being estimated for the purpose of fixing rates. So that the question arises; what principles will guide the board of arbitrators when they come to fix the value? In some courts of the United States it has been held that in the fixing of railway values for purposes of rate control and in the fixing of railway values for the purposes of condemnation proceedings—or, as we term it in this country, expropriation—different principles should obtain. One reason why I think the Government should have determined, by negotiation or otherwise, absolutely the amount which should be paid, if any, for the acquisition of the equity in the Canadian Northern system is that so many principles will be invoked by the owners and pledgees of shares that no one can say approximately what amount may be awarded by the board. The valuation will be determined by the board according to their own judgment; the judgment of one set of arbitrators might differ vastly from the judgment of another. If they are unanimous in their finding, notwithstanding the fact that the amount fixed may be absurdly high, there is no appeal. I think that the statute should set down some principle for the guidance of the arbitrators. Some hon. gentlemen who are lawyers can easily anticipate claims that will be made to establish the values. For instance, there is the franchise value, the market value, the strategic value, the value of good-will, and the going value. It has always been recognized in this country—at least it has in the United States—that there is such a thing as franchise value. The member for Calgary (Mr. R. B. Bennett) referred to a judgment delivered by Mr. Justice Brewer of the United States. I forget the name of the particular case to which my hon. friend referred, but I wish to give to the committee an extract from a decision made by this distinguished jurist upon the matter of franchise value:

When by the taking of the tangible property the owner is actually deprived of the franchise to take tolls, just compensation requires payment not merely of the value of the tangible property itself, but of the franchise of which he is deprived.

There is little doubt that the franchise value will be urged as a basis for estimating the value of the shares in this particular

case. I submit, however, that it should not enter into the judgment of the arbitrators. This franchise—at least, most of it—was granted by the Parliament of Canada, and as we propose to acquire the equity in this road, it should be clearly set forth that no allowance shall be made for the franchise value. In most of the provinces of Canada to-day municipalities impose taxes upon public utilities and directly and specifically tax the franchise. It may be that the Canadian Northern system franchise has, in some provinces or in some municipalities, been taxed. If we wish to avoid payment upon a claim of this kind, I submit that we should provide in the statute that no allowance be made by the arbitrators for franchise value.

Then, take the strategic value, which is referred to in the Drayton-Acworth report. The Public Utilities Board of the State of Washington some two or three years ago were engaged in the valuation of all the railway systems in that state for the purposes of rate control. That commission, perhaps not properly, decided that there was such a thing as strategic value in a railway. I think the judgment of the board was regarded by text-book writers and by jurists in the United States as not well founded.

I only refer to it for the purpose of calling the attention of the Government and the committee to the fact that, unless there is a statutory protection for the country in that respect, that the same argument will be invoked by the owners of the shares when they appear before the Board of Arbitration. The Washington State Board considered that where a road is so located that it cannot be paralleled and made to suffer from competition it occupies a strategic position which is to be recognized in the determination of value. There may be many instances where the Canadian Northern Railway system might well invoke that argument. For instance, I understand they pre-empted the only remaining route from Edmonton to the Pacific coast. I believe this is true, at least in so far as a great part of the territory of that mountain section is concerned. Are we prepared to entertain the suggestion that, because they pre-empted the only possible remaining route from the prairie country to the Pacific coast, their system has in this respect some strategic value and that therefore the arbitrators must consider that point in fixing the price which is to be paid by the country for these shares?