

all. The first clause in the proposed amendment deals with this special case. In the second clause we do not want to interfere at all with the through transmission lines nor any existing contracts of this Toronto and Niagara Power Company for serving railway companies or companies having power to distribute in municipalities. The last clause is the retroactive one, and the province approves of the recommendation submitted by the city of Toronto and asks that it be passed by this committee.

Mr. NESBITT: May I ask Mr. Johnston to give us his version of the legal contention that our Bill as drawn does not bind this Company for the future.

Mr. JOHNSTON, K.C.: Mr. Kilmer contends that sub-section 2 of section 373 as drawn would not prevent the Toronto and Niagara Power Company from constructing hereafter lines upon any highway without the consent of the municipality. I do not agree with Mr. Kilmer, because it seems to me the language is perfectly plain. The subsection says: (Reads.)

“Notwithstanding anything in any Act of the Parliament of Canada or the Legislature of any Province, or any power or authority heretofore or hereafter conferred thereby or derived therefrom, no telegraph or telephone line, or line for the conveyance of light, heat, power or electricity, within the legislative authority of the Parliament of Canada shall except as hereinafter provided, be constructed, operated or maintained by any Company upon, along or across any highway, square or other public place without the consent, expressed by by-law, of the municipality having jurisdiction over such highway, square or public place, nor without compliance with any terms stated or provided for in such by-law.

Mr. MACDONELL: That only applies to the future.

Mr. JOHNSTON, K.C.: Undoubtedly. Mr. Kilmer says he does not think that clause would protect a municipality because of the decision of the Privy Council in the case of the Toronto and Niagara Power Company, and because of their special Act. But it must be remembered that we have made other amendments in the Railway Act. When the Privy Council gave its decision in the case referred to, it held that the word “Company” in section 247 of the present Railway Act could only apply to Railway Companies. Now, however, by subsection 4 of section 2, we have provided that “Company” includes a person, and where not otherwise stated or implied, means “Railway Company”, unless immediately preceded by “any”, “people”, “all”, in which case it means the kind of Company which the context will permit of. Then referring to subsection 2 of section 373 as drawn, you will see that it expressly means telegraph, telephone and power companies. Moreover, in clause 3, relating to construing with special Acts, it is provided, “except as in this Act otherwise provided (b) where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act shall, insofar as is necessary to give effect to such Special Act, be taken to over-ride the provisions of this Act.” Subsection 2 of Section 3 as drawn, clearly otherwise provides. Moreover, Paragraph (c) of Section 3 provides that “provisions incorporated with any Special Act from any General Railway Act, by reference shall be taken to be superseded by the provisions of this Act relating to the same subject-matter.” If it were necessary to make our intention still more clear, I would propose to add as subsection 10 of section 373, these words: (Reads.)

“The powers conferred on any company by special Act, or other authority of the Parliament of Canada, to construct and operate telegraph or telephone lines, or lines for the transmission or distribution of light, heat, power or electricity, across, under, or over any highway, square or other public place, shall, notwithstanding anything contained in the special Act, be subject to the terms, conditions, and prohibitions in this section contained.”

I think that will completely cover Mr. Kilmer's views on that point. I am not now touching on the question of the retroactive effect of the clause.