

Electric Railway Department

Ontario's Jurisdiction Over Hamilton, Grimsby and Beamsville Electric Railway Confirmed.

The Ontario Railway and Municipal Board, on May 10, 1915, ordered the Hamilton, Grimsby & Beamsville Electric Ry. to file within 30 days complete plans and specifications for sanitary conveniences on its passenger cars and in its passenger station at Grimsby. The company appealed against the order, its principal contention being that the Ontario Board had no jurisdiction over it, but that it was under Dominion jurisdiction. On Nov. 9, 1915, the Appellate Division of the Ontario Supreme Court gave unanimous judgment dismissing the company's appeal with costs and confirming the board's order. The company then appealed to the Judicial Committee of the British Privy Council, and on July 18, 1916, the following judgment was delivered by the Lord Chancellor:—

This is an appeal of the Hamilton, Grimsby and Beamsville Ry. Co. against a judgment of the Appellate Division of the Supreme Court of Ontario, affirming an order of the Ontario Railway and Municipal Board, dated May 10, 1915. The board's order directed that the appellants should construct certain sanitary conveniences on their railway, and the appeal against that order was brought, not because the appellants objected to the construction of the sanitary conveniences, but because they asserted that the Ontario Railway and Municipal Board had no jurisdiction whatever to make the order, inasmuch as their railway was really a Dominion railway, and not in any way under the control of the Provincial Board. The facts of the case are these. The appellant company was incorporated by the Province of Ontario in 1892. The extent of the railway it was formed to construct and work is some 23 miles or thereabouts. It is worked by electric power, and it is wholly situate within the Province of Ontario. In 1895 the appellants proposed to carry their railway across the track of the Grand Trunk Ry. track, and an order was made on Jan. 28, 1895, permitting such crossing. The appellants assert that, by virtue of the British North America Act of 1867 and the Railway Act of Canada of 1888, the effect of that order was to take their railway out of the jurisdiction of the Province of Ontario and place it within the category of a Dominion railway.

The British North America Act of 1867, by sec. 92, provides that in each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects that are there enumerated, and among the classes that are enumerated are local works and undertakings, other than "such works as, although wholly situate within the 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."

In 1888 the Railway Act of Canada was passed, and this contained certain provisions with regard to railways crossing other railways that were within the legislative authority of the Parliament of Canada. There are many sections in that statute to which reference would be

needed if it were necessary to consider exactly the terms of sec. 306 upon which the appellants rely, for it is quite true that if a comparison be made between sec. 306 and some of the other sections, a contrast will be found between the specific railways which are the subject of sec. 306 and the general terms in which all railways are referred to in the other sections. This would become a very important matter if their Lordships thought it was essential to construe sec. 306. But they do not think it is essential, for this reason, that even assuming in favor of the appellants that sec. 306 did effect a declaration within the meaning of sec. 92, sub-sec. 10 (c) of the British North America Act, and thus place the railway within the authority of the Dominion and outside the authority of the province, yet none the less that statute has been in terms repealed, and if that repeal is effectual to change the status of the appellant company, then their railway is a Dominion railway no longer, and the Ontario Railway and Municipal Board had full jurisdiction to make the order which is the subject of the appeal.

The statute which effected this repeal was passed in 1903. The repealing section is sec. 310, and that repealed in toto the previous statute, and by sec. 7 a special declaration is made with regard to railways crossing other railways that were subject to the legislative authority of the Parliament of Canada. That section runs in these terms: "Every railway, steam or electric street railway or tramway, the construction or operation of which is authorized by a special act passed by the legislature of any province now or hereafter connecting with or crossing a railway, which, at the time of such connection or crossing, is subject to the legislative authority of the Parliament of Canada, is hereby declared to be a work for the general advantage of Canada, in respect only to such connection or crossing, or to through traffic thereon, or anything appertaining thereto....."

This railway in question answers every one of the necessary conditions prescribed in the earlier part of sec. 7. If, therefore, there was power left in the legislative authority of the Dominion of Canada to pass this act, then it is obvious that, even assuming the railway had been placed within that authority by sec. 306, it is there no longer, and there is no power within the Dominion to control its affairs. Their Lordships are clearly of opinion that sec. 92, sub-sec. 10, never intended that a declaration once made by the Parliament of Canada should be incapable of modification or repeal. To come to such a conclusion would result in the impossibility of the Dominion ever being able to repair an oversight by which, even with the greatest care, mistakes frequently creep into the clauses of acts of Parliament. The declaration under sec. 92, sub-sec. 10 (c), is a declaration which can be varied by the same authority as that by which it is made. In the present case their Lordships see no reason to doubt that if the statute of 1888 effected such a declaration to place the whole rail-

way under Dominion control, that declaration has been properly and effectually varied, and the appellant company has ceased to be, even if it ever once was, under the control of the Dominion Board.

Other questions have been raised in the course of the argument, and notably one of great importance, with regard to the power of the Dominion Parliament to pass such a statute as that of 1888, on the hypothesis that sec. 306 bore the meaning for which the appellants contend. This question is of great importance, but, for the reasons that have been given, its decision is unnecessary. Their Lordships think that this appeal should be dismissed on the simple question which has already been stated. Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Montreal Tramways Co's Conduits.

The Montreal Tramways Co. is about to construct conduits to connect its power house, sub-stations, etc. Contracts have been let as follows: To Quinlan & Robertson Co., from Cote and LaGauchetiere, along LaGauchetiere to Inspector, along Inspector to St. James, along St. James to St. Remi to Notre Dame, along Notre Dame to Fourth Avenue, along Fourth Avenue to Canadian Light and Power Co. terminal, with branches on Aqueduct St. to the William St. power house, and on Glen Ave., to the St. Henry sub-station;

To G. M. Gest Co., from Cote and LaGauchetiere, along LaGauchetiere to Dorion, along Dorion to Notre Dame, along Notre Dame to Hochelaga power house, with branches on Sanguinet and Henri Julien Sts., to St. Denis sub-station, and on Cote St. to the proposed Cote St. sub-station.

The conduit will be 4 in. round bore, vitrified clay, with brick manholes, concrete floor and roof, cast iron frames and covers. The total trench length of the installation will be approximately nine miles. The methods of construction will be the ordinary ones on work of a similar nature.

The Peterborough Radial Ry. Co.'s corporate existence is ended, the property having been owned since Mar. 1 by the Province of Ontario and having been operated since June 1 by the Hydro Electric Power Commission of Ontario as trustee. The line will continue to be known as the Peterborough Radial Railway.

Hamilton, Ont., jitney owners have discovered that the city bylaw under which they operate does not provide for the fare to be charged for the service given. As a result there is no uniformity of charge, and drivers ask whatever fare suits them. The traffic, particularly at night, is reported to be getting into the hands of foreigners.

Brandon Municipal Ry.—The Brandon, Man., City Council has under consideration a proposal to take up with the Dominion Government the question of the extension of the electric railway.