

with horses or by electricity and tramways, were not intended to be included amongst the railways mentioned in that section, nor was a mere contact of such local street railway with ordinary railways by crossing the same to subject such local enterprise to the distinction of being declared a work for the general advantage of Canada. The rapid growth of such local enterprises, however, and the frequent necessity in the public interest of allowing them to cross Dominion railways called attention to the propriety of some special legislative provision for regulating such crossing and accordingly s. 173 was re-drafted and its language clearly indicates to my mind that the only interference or control sought to be exercised by the Dominion Parliament over street railways was to regulate the place and plan of any proposed crossing. This conclusion is supported by the expression "whether constructed under Dominion, Provincial or Municipal authority or otherwise." If such a street railway or electric road constructed under Dominion authority was a railway within the meaning of the Dominion Railway Act there was no possible necessity for using such language. It is equally clear that if a street railway or electric railway constructed under provincial or municipal authority was a railway within the meaning of the Dominion Railway Act then s. 306 applied and the very fact of the crossing or the proposed crossing would give the Railway Committee jurisdiction to deal with the matter, and it was entirely unnecessary so to recast the language of s. 173 as to expressly include street railways, electric railways and tramways. Again, if we examine some clauses of the Dominion Railway Act we find many provisions entirely unsuitable and inapplicable to surface or street railways. . . . The street railway company in nearly all cases derives its franchise under agreement with the various local municipalities through which its tracks extend. But the municipality may undertake the construction of a street railway without any special authority beyond that conferred by the general clauses contained in the Municipal Act. I cannot, therefore, sustain the objection to the validity of the by-law.

Next as to the merits: What is the proper legal construction to be placed on the language of s. 2 of the by-law. Looking at the language of this section, it forbids the operation by the company of any street car unless the same shall be provided with proper and sufficient vestibules, i.e., such car shall be provided with vestibules not a vestibule. What is the mischief to be guarded against?—"the exposure of the motorman and persons in charge of the car while engaged in operating the car to cold, snow, rain or sleet." If the section read "to protect the motorman in charge of the car" its meaning would have been beyond dispute, but some force must be given to the words "and persons in charge of the car" and the evidence shows that each car carries two persons—two servants of the company—a motorman and a conductor, and I think it is amply established by the testimony that the conductor is in charge of the car within the ordinary and common-sense meaning of the expression. He gives all signals to start or stop the car. He collects the fares and regulates and deals with the