

the committee should not proceed to deliver judgment and give a federal charter to a work which it does not possess. This debate will not prove unprofitable if it results in educating members to the consequences of continuing the practice which has so long prevailed. As has been remarked, where are you to stop, if you are to declare, without inquiry or reflection, that any work that may be in existence in any nook or corner, municipality or parish, of this broad Dominion, is a work for the general advantage of Canada, and thus remove it from the jurisdiction of the local legislature, which may become law, I venture to say that it will be many a year before parliament will be asked to pass legislation of a similar character.

Then Mr. Borden, leader of the opposition said :

No doubt whatever the clause of the British North America Act has been given a scope it was never intended to have. It has been used over and over again, by virtue of a declaration made more as a matter of form than anything else, and I am inclined to think that probably it will be good policy for this parliament in the future to insist that any measure of this kind, by which it is intended to bring within the jurisdiction of this parliament an undertaking which is *prima facie* within the scope of provincial jurisdiction, should be either referred to a select committee of the House, in order that the question of a fact may be absolutely proved, or be submitted to the determination of some judicial authority. There are many cases in which parliament itself would be the best judge. The Railway Committee or the Committee on Private Bills possibly might be the best possible judge. Those promoting the undertaking should be put into the position in which the promoters of private Bills in England are placed. If I understand the practice there it is practically a judicial inquiry and a judicial determination upon important questions of fact involved in the preamble of the Bill. They are very much more strict than we, and so far as this particular question is concerned, it would be very desirable that in the future we should adopt some such principle with regard to measures of this kind.

I have deemed it advisable, and I believe hon. members of this House will agree with me, to quote those remarks on both sides of the House, representing, I may say, almost the unanimous view of the House of Commons, in order that they should be placed prominently before this hon. House and before the country. It shows that the House of Commons, as well as this hon. body, have realized what abuses there have been in the past in connection with this section 306, which was embodied as part of the Railway Act of 1888. All parties seemed to be agreed in the House of Commons,—I could have quoted a great number of other speakers who all took the same position—that a stop should be made to that practice. If a stop is to be

made, now is the time to do it, and not adopt clauses 5, 6 and 7 as they stand, because what would be the effect of those clauses? First, let us take clause 5, which I have already read.

And for greater certainty, but not so as to restrict the generality of the foregoing terms, all provisions relating to railway crossings and junctions, highway crossings, through traffic, offences, penalties and statistics, shall apply to all persons, companies and railways, whether otherwise within the legislative authority of parliament or not.

Therefore this clause assumes to deal with all questions of railway crossings, all questions of junctions, all questions of highway crossings, all question of through traffic, offences, penalties and statistics, as being within its jurisdiction, whether they are under its jurisdiction or not by virtue of the British North America Act. Surely it is an assumption of power made in such a way that it could not be seriously sustained. I admit when this parliament declares a work to be for the general advantage of Canada, that then the declaration is conclusive, but it is necessary that the declaration be made, and until that declaration is made, anything that comes within the exclusive jurisdiction of the local legislature cannot be made to form part of the powers of this parliament. Then we have in clause 6 the following provision :

6. Subject to the provisions of section seven of this Act, every railway, 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.

The draughtsman of this clause evidently saw that the assumption of power, as contained in clause 5 of the Bill, could not stand, and that to give jurisdiction to this parliament it was necessary to go to the extent of declaring that these crossings and junctions were works for the general advantage of Canada, and he did so in drafting clause 6. Then, we have in clause 7 this declaration which I am adopting by the draft which I have submitted to this hon. House, which is this :

7. Street railways and tramways, while hereby expressly declared to be subject to such of the provisions of this Act as are referred to in section five—