

the House. I have already pointed out that the Act has on the whole, given satisfaction both to the railway companies and the business public.

Sir ALBERT J. SMITH. Was it opposed by the railway companies?

Mr. McCARTHY. Both business and railway men agreed that the attempt to administer the Railway Acts, as desired by the Parliament and in the spirit of its legislation, had proved to be utterly abortive.

Sir ALBERT J. SMITH. The railway companies did not say that.

Mr. McCARTHY. They agreed it was necessary, but differed as to the tribunal; but the Committee agreed it should be a tribunal as created by that Court. If it be true that we have laws that be not carried into effect, and that the railway companies are practically beyond all law, by reason of the want of a proper tribunal to carry it out, it does appear to follow, as naturally as night follows day, that Parliament is bound to create such a tribunal as will administer the laws enacted. It is said there can be no such tribunal—that you can get no men in the community of such character and standing as to give confidence to their decisions—that they would be either bought up, be influenced, prejudiced or worked on, in the interest of this or that company. I would be sorry to make such a humiliating statement, or to say that you cannot get men outside the profession to which I belong, because it is admitted that the Judges are above corruption, that among the railway men and men experienced in business cannot be found men honest and honorable enough to administer the law justly, uninfluenced by bribes. Therefore, I think that suggestion should be scouted. It has been proposed to confer jurisdiction on the Supreme Court or one of the higher Provincial Courts. The ready answer is that it has been tried in England, and the learned Judges of the Court of Common Pleas found themselves incapable of administering the railway law. It being not a matter of law, but a matter of administration, shows the correctness of my view. The same difficulty will be found here. It has been suggested that the Privy Council could be made use of. I think that if any hon. gentleman who belongs to that honorable body, and is a Privy Councillor, would consider the workings of the Railway Commission in England, he would be satisfied that dealing in this matter with railway companies is wholly beyond and outside the sphere of a Privy Councillor, in connection with the Government of the day. I think it would be impossible for my hon. friend, who so well administers the department of our Railways and Canals, to devote the time necessary to sit in judgment from day to day and determine questions of this kind, that have to be determined between traders and railway companies and between different railway companies themselves. I think such matters have to be disposed of speedily, or justice is practically denied. The investigations I have made have satisfied me, and would satisfy anyone, that it is practically impossible to substitute for this tribunal any Committee of the Privy Council. Besides, it was tried as an expedient in England in 1846. Their first plan was almost identical with that one. It was a tribunal composed of men partly engaged in public life, and of business men and others, who were found utterly inefficient for the practical administration of the Railway Act. It comes to this: we are here incapable of enforcing our laws, and are we to have said, and said truly, that railway companies will not obey our law? So we have to give to the people some tribunal by which our railway law can be carried out. I heard the member for Bothwell say the Bill was *ultra vires*. I have considered that point also, and think the hon. gentleman will find, though I know he is a very high authority on constitutional points, and all matters of a theoretical character, that this is not beyond

Mr. McCARTHY.

our power. This is a measure dealing with matters of trade and commerce, which belong to this Parliament. I go further, and say that, in my humble judgment, it will be found we have power not only to regulate the traffic on railways incorporated by this Parliament, but to deal with all railway companies, no matter were they obtained their charters; because we should be dealing substantially with matters of trade and commerce which are within the purview of the powers given by the British North America Act.

Mr. MILLS. Suppose a railway was owned by a local Government, or a canal?

Mr. McCARTHY. I do not think that will make any difference. If we have power to deal with trade and commerce, even should a Local Government go into trading, we should have rights over it also. My hon. friend will not contend that a Local Government would not, in that case, be subject to taxation, or such other action by this Parliament. It certainly could not legislate itself out of the jurisdiction of Parliament by going into a business wholly and entirely foreign to the duties prescribed by the British North America Act—

Sir ALBERT J. SMITH. How are the Commissioners in England paid?

Mr. McCARTHY. Out of the Consolidated Fund; £5,000 is the salary paid to the Chief Commissioner in England. I propose to draw the attention of the House to some amendments to the Railway Act. Section twenty-six confers now very considerable powers. Section twenty-eight enacts in the words and terms of the English law, a clause which has been in force there for many years. It is called in England the equality clause, and we have something like it, though not in its entirety, in sub-section six of section seventeen of the Railway Act, which I will read. The latter part of sub-section six, says:

“But the same tolls shall be payable at the same time and under the same circumstances upon all goods and by all persons, so that no undue advantage, privilege or monopoly may be afforded to any person or class of persons by any by-law relating to the tolls.”

The new section I propose to add to the Railway Act, is this:

“And whereas it is expedient that a railway company should be enabled to vary the tolls upon the railways so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties; therefore it shall be lawful for the company, subject to the provisions and limitations herein and in their special Act contained, from time to time to alter or vary the tolls by the special Act authorized to be taken, either upon the whole or upon any particular portions of the railway as they shall think fit: Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile or otherwise, in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favor of or against any particular company or person travelling upon or using the railway.”

This clause is what is what is called in England the equality clause. Hon. gentlemen will find it in the Imperial Act VIII Victoria Cap. 27. They will find that it is commented upon by Judges and explained to be an alteration of the old law with regard to carriers. The old law was that a carrier was bound to carry whatever was offered, that he was to charge no more than a fair and reasonable rate, but there was no law by which he was bound to carry for A.B. at the same rate as for C.D. But the railway law of England and the law practically in existence in this country for many years was, that these carriers should carry on equal terms for everybody; and this clause on the proposed Bill is only an enlargement of the clause which I read, one which, should the Commissioners be appointed, will enable them to refer as a guide to the English