

First as to the alleged application of the Dominion Railway Act. It is contended that because the Toronto Railway Company crosses with its tracks the tracks of two Dominion railways, the Canadian Pacific and the Grand Trunk, then by force of the provisions of the Dominion Railway Act the Toronto Railway Company becomes a Dominion railway or work removed from the legislative control of the legislature of Ontario and is not governed, to use the words of Cameron, C.J., in *Clegg v. G. T.R.*, "by past or prospective legislation in relation thereto by the Provincial Legislature."

I have carefully considered the cases cited by Mr. Bicknell for the defendants in support of this contention commencing with *Clegg v. G. T.R.*, 10 O.R. 708, and the subsequent cases of *Barbeau v. St. Catharines and Niagara Central Railway Co.*, 15 O.R. 586; *Re Toronto, Hamilton & C. R. W. Co. and Kerner*, 28 O.R. 14; *Larsen v. Nelson & Fort Sheppard R. W. Co.*, 4 B.C.R. 151; *Washington v. G. T.R.*, 24 Ont. Ap. 183; *G. T. R. v. Hamilton Radial Railway Company*, 29 O.R. 143; but I venture to think that a careful consideration of the clauses of the Dominion Railway Act and the amendments made thereto since 1888 will lead to the conclusion that this objection is not sustainable. Section 306 of the Dominion Railway Act declares that certain named railways are works for the general advantage of Canada and the section concludes with these words, "and each and every branch line or railway now or hereafter connecting with or crossing the said lines of railway or any of them is a work for the general advantage of Canada." Sec. 307 enacts "that every such railway and branch line shall hereafter be subject to the legislative authority of the Parliament of Canada, etc." Upon reading s. 173 of the same Act as it stood originally we find a provision regulating the procedure to be adopted when one railway company desires to affect a crossing of another railway company, namely, by an application to the Railway Committee of the Privy Council for approval. It enacted that "no company shall cross, intersect, join or unite its railways with any other railway without application to the Railway Committee for approval." In 1892 and again in 1893 this clause 173 was repealed and a new section substituted. From the language of the substituted section I think it is clear that the Dominion Parliament conceived that a street railway, an electric railway or tramway did not come within the meaning attached to the word railway in the Dominion Railway Act of 1888. The new section reads in part as follows: "The railway of any company shall not be crossed, intersected, joined or united by or with any other railway nor shall any railway be intersected or crossed (observe the omission of the words joined and united) by any street railway, electric railway or tramway whether constructed under Dominion or Provincial or Municipal authority or otherwise unless . . . the place and mode of the proposed crossing . . . is first approved of by the Railway Committee. . . ."

It is abundantly clear, I take it, that railways of the same class only are contemplated by s. 306. Small local street railways, whether operated