

It went to this extent: it was an expression of opinion, and a very serious doubt as to whether this provincial Act of Manitoba was within the powers of the province. The questions was referred to the Supreme Court and I find a reference in Cassell's Digest, page 487:

Opinion: Under chap. 5 of the Statutes of Manitoba (passed on the 30th day of April, 1888), the Railway Commissioner of that province is constructing a railway known as the Portage Extension of the Red River Valley Railway, from Winnipeg to Portage la Prairie, both places being within the province of Manitoba, and he has made application to the Railway Committee of the Privy Council of Canada, under section 173 of the Railway Act of 1888 (Canada) for the approval of the place at which and the mode by which it is proposed that the said Portage Extension shall cross the Pembina mountain branch of the Canadian Pacific Railway (the said branch being part of the Canadian Pacific Railway) at a point within the said province, whereupon the following question is submitted:—

Is the said statute of Manitoba, in view of the provision of Cap. 109, R.S.C., particularly S. 121 thereof, and in view of the Railway Act of 1888, particularly ss. 306 and 307, valid and effectual, so as to confer authority on the Railway Commissioner in said statute of Manitoba mentioned, to construct such a railway as the said Portage Extension of the Red River Valley Railway crossing the Canadian Pacific Railway, the Railway Committee first approving of the mode and place of crossing, and first giving their directions as to the matters mentioned in sections 174, 175 and 176 of the said Railway Act?

In answer to the said question, this court having heard counsel for the province of Manitoba and also for the Canadian Pacific Railway Company, is unanimously of opinion that the said statute of Manitoba is valid and effectual so as to confer authority on the railway commissioners in the said statute of Manitoba mentioned, to construct such a railway as the Portage Extension of the Red River Valley Railway crossing the Canadian Pacific Railway, the Railway Committee first approving of the mode and place of crossing, and first giving their directions as to the matters mentioned in sections 174, 175 and 176 of the said Railway Act.

Therefore we have the unanimous opinion of the members of the Supreme Court regarding the effect of this section 306, maintaining that it was within the power of the province to authorize the local legislature to deal with a local railway as a local railway, notwithstanding it crossed or connected with the Canadian Pacific Railway or any other railway under the legislative authority of this parliament of Canada, or a railway mentioned in section 306 of the Railway Act of 1888. What would be the consequence if a principle of that kind was applied and given full effect to? It means this? For instance, the province of Ontario is now building a railway extending

to Lake Timiskaming. It surely has to cross or connect with some of the railways mentioned in section 306, and it would be seriously affected, by removing it from the jurisdiction of the local legislature, if the wording of section 306 was to be strictly applied. This shows, it seems to me, that there was a very considerable abuse of power in this enactment of clause 306. For my part, I am pleased to say that the attention which this hon. House has given, I believe to its credit, to this very important question, has been followed by the House of Commons. The hon. members of this House will recollect that the Railway Committee of this House commenced to inquire about this very important question as early as the 24th of June last, when a subcommittee was appointed by the Railway Committee, with instructions to study the question, and advise and suggest what were the best means of dealing with that important subject. Now, I desire to refer to a few remarks which have been lately made by both the Hon. Postmaster General and the hon. leader of the opposition in the House of Commons, bearing on that very question. It was on the occasion of the Third Reading of the Toronto and Hamilton Railway Bill. It will be found at page 9728 of Hansard.

The POSTMASTER GENERAL. I well remember, as far back as twenty years, when this abuse of the British North America Act began; and year after year since then, measures have been passed through the Dominion parliament which should have been dealt with by a provincial legislature. This was done by declaring such measures to be for the general advantage of Canada when they really were not. On many an occasion, in days gone by, I have protested against this practice. I raised the same protest which has been raised in this case by the hon. member for Hamilton and others. It is well that parliament has been brought face to face with the situation resulting from this lax system of legislation. It is well that this measure has been thoroughly discussed in the Railway Committee, as we have thereby arrived at a clear idea as to how similar applications should be treated in the future. I would not venture to lay down a rule, but it seems to me that if I had to determine the policy and practice of the Railway Committee in a question of this kind, I would think it proper, if we are to give a fair interpretation to the British North America Act, that we should, in the first place, assume that every work which is within the confines of a province is *prima facie* subject to the jurisdiction of that province only, and let the onus rest on those who seek to obtain legislation here to prove that the work is properly the subject of Dominion legislation. Unless they can establish that point clearly,

Hon. Mr. BEIQUÉ.