

corporators, the Mackenzie & Mann group, who already control the Toronto Street Railway, proposed to combine seven suburban electric railways and obtain from Parliament the power to run on the streets and highways of a number of cities and other municipalities without municipal consent or control, nor any term nor compensation. They declared that Parliament could do as it pleased by simply declaring the work one "for the general advantage of Canada." Apart from the questions of consent, compensation and term, they claimed that sufficient control would be exercised by the Dominion Railway Board. The municipalities, headed by Mayor Urquhart, Corporation Counsel Fullerton, and the city authorities of Toronto and Hamilton, showed the impracticability and expensiveness of such a Board attempting to govern the numerous local conditions and constantly occurring incidents arising out of Street railway traffic. They also pointed out the essential difference between a street railway running on a street or highway belonging to the public, and an ordinary railway running on its right of way, whether driven by steam, electricity, compressed air or whatever other power. They also complained of the constant abuse of the phrase "for the general advantage of Canada," which had been introduced into many bills properly provincial, and they appealed for observance of provincial rights, pointing out that the enterprise was situated entirely within the Province, and had been before the Provincial Legislature, where its demand was rejected.

After a very hard fight, with some assistance from provincial authorities, these views prevailed, the bill was altered and then withdrawn, and the Government through the Hon. Mr. Fielding, made a formal statement in the Railway Committee that the abuse of the clause "for the general advantage of Canada" would be henceforth put an end to.

In their circular to Parliament issued upon this occasion, the Union said *inter alia*:—

"On the 14th July last, 1903, the Ontario Provincial Government and leading representatives from all over Canada appeared before the Cabinet and presented a memorandum affirming the following principles:—

"1. That undertakings entirely provincial and essentially for local or municipal purposes should not be removed from provincial and municipal control by the mere declaration that such works are for the general advantage of Canada.

"2. That no such declaration should be made in any case until the Government and Parliament are satisfied by actual proof that the declaration is true.

"3. That all street railways or tramways or electric railways, constructed and operated wholly or in part through the streets or highways of the municipality are essentially of a local character and should be left under the jurisdiction of the local legislatures and the municipalities.

"4. That the local legislatures have hitherto dealt with the incorporation of such railway companies and have provided safe guards for the construction and operation of such railways, and their right so to do should not be interfered with.

"5. That the construction of an electric railway from the City of Toronto to the City of Hamilton as proposed in Bill No. 147 is not a work for the general advantage of Canada."

The circular closed by calling attention to the great principle of *constitutional practice* which was involved:

"We call upon the Dominion Cabinet to exercise its control of legislation to prevent such a manifest abuse of the power of declaring works for the general advantage of Canada. It is obvious that there must be a limit to the fair use of this power, beyond which it would become an exaggeration never originally intended. The municipalities are convinced that under present conditions any attempt by the Dominion to control street railways would be such an abuse. The Parliament of Great Britain recognizes well known rules of limitation to the exercise of its sovereign power, known as the "Conventions of the Constitution." Why then should not the Dominion Parliament follow its wise example and establish a carefully considered practice in the matter."

The contest over these principles was, however, not allowed to rest with the close of the Toronto and Hamilton Bill incident. Demands were made for the introduction of the principles of municipal and provincial rights into the new Railway Act which was then under discussion. The Ministers of Justice and of Railways who had drafted the Act, were proposing to practically abolish all provincial jurisdiction over railways by declaring all those crossing or connecting with Dominion roads to fall under Dominion jurisdiction. The battle was so hot that a deadlock resulted between the Senate which supported the provinces and municipalities, and the Commons, which voted for the Ministers. In the end the former won, and sections 7 (protecting provincial railways) and 195 (subsections 2 and 3, protecting municipalities in street matters) were the result.

A number of cases similar to that of the Toronto and Hamilton Railway have occurred, where street and other railway charters have been sought under the "general advantage of Canada" clause, in order to obtain rights over municipal streets and highways without municipal consent. One of the principal was that of the Montreal Terminal Railway Company, which, having obtained such a charter, coolly defied the city of Montreal and brought it before the Railway Committee to perform an act of submission. The Union assembled the chief city authorities of Canada in support of Montreal, and the Railway Committee in the end referred the Company to the City Council for terms and conditions. The Street Railway of Edmonton was another example, out of many.

Level crossings are also a subject of much unrest in municipal circles. No less than thirteen lives have been lost by them during the past two years in the District of Montreal alone. One of the members of the Council of Waterloo was killed two years ago at one while on his way to the council meeting. During the past session an attempt was made by the Ottawa Electric Company to impose a monopoly in electric lighting and power upon the city of Ottawa by seeking liberation through Parliament, from previous statutory agreements. This form of raid was defeated also.

I trust that the foregoing sketch, giving some representative cases, will afford an idea of the principles on which the movement for municipal protection is based. The serious evils to which it aims to put an end and the progress of which it has checked for the time being, will be seen to have their roots in new and powerful forces which the people of the Dominion have to face. Let us hope that sane and just principles may conquer, and our people and commerce retain their liberty.—The Canadian Law Review.