

be a work for the general advantage of Canada in respect only to such connection or crossing or to through traffic thereon or anything appertaining thereto, and this Act shall apply.

To fully comprehend the object of my suggestion it is necessary that I should call attention first to clause 3 of the Bill, which says:

3. This Act shall apply to all persons, companies and railways (other than government railways) within the legislative authority of the parliament of Canada, and shall be incorporated and construed, as one Act, with the Special Act, subject as herein provided. 51 V., c. 29, s. 3, Am.

This is a sweeping declaration that the Act will apply to all companies within the legislative authority of the parliament of Canada. Then we have clause 4, which says that:

4. Where any railway, the construction or operation of which is authorized by a special Act passed by the legislature of any province, is declared, by any special Act of the parliament of Canada, to be a work for the general advantage of Canada, this Act shall apply to such railway, and to the company constructing or operating the same, to the exclusion of such of the provisions of the special Act of the provincial legislature as are inconsistent with this Act, and in lieu of any general railway Act of the province.

So far I am in accord with the principle embodied in these two clauses, to wit: that the Act should apply first to all railways which are within the legislative authority of this parliament, and therefore which comprise all railways not local railways—all railways extending to more than one province—and, second, to all railways, although confined to one province, which are declared by the parliament of Canada to be worked for the general advantage of Canada. But I am against the principle embodied in section 306 of the Railway Act of 1888, which declared that all railways crossing or connecting with the Canadian Pacific Railway, the Intercolonial Railway, the Grand Trunk Railway and other railways mentioned, were ipso facto declared to be works for the general advantage of Canada. That declaration had this consequence, of bringing practically all railways under the exclusive jurisdiction of this parliament. A question arose in the province of Manitoba on the occasion of the building of the Red River Valley Railway. Sir John Thompson expressed the opinion in 1888, which is to be found in Hodgins, page 912. It was a report of the hon. Minister of Justice ap-

proved of by His Excellency the Governor General in Council, on May 22, 1888:

The undersigned has the honour to report on the following Acts passed by the legislature of the province of Manitoba at its first and second sessions, 7th legislature, held in the 52nd year of Her Majesty's reign (1888-89) a certified copy of which statutes was received by the Secretary of State on the 11th of March, 1889.

Chap. 2. An Act respecting the Northern Pacific and Manitoba Railway Company.

The principal object of this Act is to confirm an agreement, purported to be executed between Her Majesty, acting through and represented by the Railway Commissioner for the province, and the Northern Pacific and Manitoba Railway Company, and to confer certain powers upon such company.

Clause 4 of the Act purports to authorize the company to construct, maintain and operate certain railways in the province of Manitoba, and among other things the railway known as the Red River Valley Railway, located between the international boundary line and the city of Winnipeg.

The agreement which the Act purports to ratify provides that the Railway Commissioner for the province shall construct the Red River Valley Railway from the international boundary line at the northern terminus of the Duluth and Manitoba Railway (a railway within the territory of the United States) to the city of Winnipeg.

Having in view the provisions of section 92 of the British North America Act, article 10, which permits a province to enact laws in respect to local works and undertakings, except lines of railway connecting the province with any other or others of the provinces, or extend beyond the limits of the province, it is questionable whether a provincial legislature may incorporate a company to build a railway such as the Red River Valley Railway appears to be. The Act, however, gives the company power to build other lines of railway, which are clearly provincial or local undertakings, and the undersigned is of the opinion that the Act should be left to its operation.

Chap. 19. An Act to provide for the crossing of one railway by another.

Section one of this Act provides that 'no railway company, whether incorporated by the parliament of Canada or otherwise, shall cross, intersect, join or unite its railway with any railway subject to the legislative authority of the legislature of Manitoba, without first obtaining the approval of the Railway Committee of the Executive Council of the province of Manitoba, as to the place and mode of crossing, intersection, junction or union proposed. Ten days notice in writing of the application to such committee, shall be given by the company to any such company affected by the sending the same by mail or otherwise to the address of the president, superintendent, general manager, managing director, or secretary of such company.

The undersigned entertains doubts as to whether a provincial legislature may, by legislation of this character interfere with the construction of a railway which is authorized to be built by the parliament of Canada. The question, however, is a purely legal one, and it does not appear to the undersigned in view of the fact, that it may be without serious inconvenience settled by the courts proper, that the right of disallowance should be exercised.