

APPENDIX No. 2

5. The provisions of the last preceding subsection shall apply to and restrict the powers of any company heretofore incorporated by special Act or other authority of the Parliament of Canada notwithstanding that such provisions may be inconsistent with the provisions of such special Act or other authority and notwithstanding the provisions of section 3 of this Act; and it is hereby declared that the powers of any such company have been so restricted since the date of the enactment of chapter 37 of the Revised Statutes of Canada (1906) that is to say, the 31st day of January, 1907."

Mr. CARVELL: What do you say to subsection 2 of the Bill as it stands?

Mr. SINCLAIR: Suppose we decide to vote for the section as it stands in the Bill. What then would be the result?

Mr. MACDONELL: It does not go far enough. As far as it goes it is all right.

Mr. SINCLAIR: It protects you for the future.

Mr. MACDONELL: What I was going to say is that the Toronto and Niagara Power Company have already put in their lines and systems without authority. This will continue *ad infinitum*, free of any control whatsoever either on the part of the municipalities or of the Railway Board. Now by this amendment it is proposed to make that subject to the usual conditions and restrictions governing all power companies. That is only right and reasonable, and if that requires a retroactive section, put it in. The reason for that retroactive section is this: the old railway Act that we are now amending dealt with railway and the power companies, as we all know. The Toronto and Niagara Power company made the astounding claim, that it was not bound by the general Railway Act. Although power companies were included, as we all believed, they declared they were not bound by the Railway Act, and the matter went to the courts, and the courts uniformly held, without any hesitation, and without dissenting voice, that the Toronto and Niagara Power Company was bound by the Act, and that the matter of fixing rates was under the control of the Railway Board, but the Power Company took the case to the Privy Council, and there it was held that the company did not come under the Act.

Mr. CARVELL: I want to keep you right. Did they not hold that the power companies were not under the Railway Act, but that, inasmuch as the present section of the Railway Act was a continuation of the former section, it did not repeal the special rights given to this company by their special Act of Incorporation? That is stronger, from your point of view, than the way you are putting it.

Mr. MACDONELL: They held, in point of fact, that this company was not bound by the Railway Act, and in pursuance of that, all our judgments were upset in Canada, and this company has practically definite power to go where they like, without leave and license, and do as they please. Honourable gentlemen will see that what I am saying is reasonable, that uniformly, through all time, where legislation has been intended to cover certain things, and the courts have found that, for some technical reason, it does not cover those matters, they have passed remedial legislation to rectify conditions and make the legislation conform to public opinion. That is all we ask here. The Continental Light, Heat and Power Company came here the other day for an amendment to their charter, and the Bill was read the third time in the House. It was simply asking for remedial legislation, and all that is asked in this case is to put the Toronto and Niagara Power Company on the same basis and footing, and with the same rights and the same remedies as all other companies have, and to make the provision retroactive. This course has been adopted time and again. Legislation has been passed to remedy defects that have been pointed out in the courts. As I read from Hansard last night, this Bill was passed in 1902, before the Railway Board was appointed; and there was no means of making a protest. Now, we are able to have a reference to the Railway Board. The Bill was passed under the old Railway Act, and