

Electric Railway Department

Ontario Railway and Municipal Board Asserts Jurisdiction Over Hamilton, Grimsby and Beamsville Electric Railway.

The Ontario Railway and Municipal Board sat in Grimsby, Dec. 11, 1914, to hear a complaint by four residents of that place that there was a complete lack of conveniences on the company's property, no sanitary arrangements in the cars, and no signs showing sanitary conveniences in Grimsby, all of which was deemed a hardship, inasmuch as the end of the line at Hamilton was 23 miles distant, a ride of upwards of 1½ hour. The Board promised to look into the matter, and arranged with the company to have a conference Dec. 18. On the latter date, G. E. Waller, General Superintendent of Railways, Dominion Power and Transmission Co., which owns and operates the H.G. & B.E.R., represented the company before the Board, and the latter directed that the company, within one week, install signs at Grimsby station showing the location of the conveniences, the signs to be inspected by the Board's engineer. The Board also directed that following this the engineer would be directed to inspect and report on the conveniences in the cars. The company was also asked for suggestions for improvements, but none were at that time offered.

J. C. Royce, the Board's engineer, reported Jan. 26 that he had inspected the cars on the line, and that they had ample space for lavatories. He also reported that proper signs had not been put up in the Grimsby station, but was assured by the General Superintendent of Railways that the company intended improving the accommodations there, as well as the stations at Stoney Creek and Winona.

At a full session of the Board in Grimsby, Feb. 15, there were present, in addition to the original complainants, the clerks of Clinton, North Grimsby, Saltfleet and Barton Tps., and counsel for the company. The judgment given on that occasion directed the installment of conveniences on the cars, the plans and specifications for urinals and closets to be submitted by the company within 30 days, the plans to be prepared by the Board's engineer in the event of the company failing to do this. Station conveniences were also ordered, but judgment was reserved with regard to the open cars, pending the Board's consultation with its engineer.

The company's solicitors, Gibson, Levy and Gibson, Hamilton, telegraphed the Board, Feb. 17, to have the order stayed, following this with a letter, Feb. 20, asking for a rehearing on the ground that the Board had no jurisdiction to make the order. They claimed that for some time they had been considering the bringing together of all the Dominion Power and Transmission Co.'s railway lines under one jurisdiction, and that in planning for this, the status of the Hamilton, Grimsby and Beamsville Electric Ry. had been carefully investigated, and they claimed that it was a railway under the exclusive jurisdiction of the Board of Railway Commissioners for Canada. The Board appointed, Mar. 9, for hearing the points raised.

The company's solicitors based their claim on an order of the Railway Committee of the Privy Council, Jan. 28, 1895, which approved the place and mode of crossing of the G.T.R. by the company's line, and placed certain obligations on the company. Its counsel contended that by reason of the

fact that its railway crossed the G.T.R. under an order of the Privy Council, the company came exclusively under the jurisdiction of the Board of Railway Commissioners for Canada, as the Railway Act, 1888, sec. 306, declared that "each and every branch line or railway now or hereafter connecting with or crossing" certain specified lines of railway, including the G.T.R., "or any of them, is a work for the general advantage of Canada."

On April 7, the Chairman of the Board, D. M. McIntyre, gave the following judgment, which was concurred in:

This is an application under The Ontario Railway Act, sec. 255, for an order directing the company to provide sanitary conveniences on all its passenger cars. The respondent's railway is an electric railway laid in part on a private right of way but mainly on streets of the City of Hamilton and adjoining municipalities under agreements with them. The Board held a sitting at Grimsby on Feb. 15, for the purpose of taking evidence, and at its conclusion indicated that an order would issue as asked by the applicants. On Feb. 20, the company's solicitors wrote raising the question of the Board's jurisdiction to make the proposed order, on the ground that the railway was, for reasons set out in the letter, under the exclusive jurisdiction of the Parliament of Canada. Upon this the Board appointed Mar. 9 in Toronto for argument of the question so raised and notice of the appointment was given to all persons in interest. On the return of the appointment only the company was represented. It then appeared that the company was incorporated by an act of the Ontario Legislature, 1892, chap. 95. In the exercise of its corporate powers the respondent has constructed and is operating some 22 miles of railway from Hamilton to Beamsville through the Village of Grimsby. The railway is a purely local work or undertaking within the meaning of sec. 92, subsec. (10) of The British North America Act. It further appeared that by order of the Railway Committee of the Privy Council of Canada, dated Jan. 28, 1895, the committee approved of the place and mode of crossing by the respondents' railway, The Hamilton, Grimsby and Beamsville Electric Ry., of the G.T.R. on Main Street East, in Hamilton, as shown on plans on file with the committee. The crossing so approved was made shortly afterwards. Upon these facts it is contended by the respondent that after the crossing so approved was made its railway came under the exclusive jurisdiction of the Parliament of Canada by force of the provisions of sec. 306 and 307 of The Railway Act, as enacted in 1888, which are as follows:—

"306. The Intercolonial Ry., the Grand Trunk Ry., the North Shore Ry., the Northern Ry., the Hamilton and Northwestern Ry., the Canada Southern Ry., the Great Western Ry., the Credit Valley Ry., the Ontario and Quebec Ry., and the Canadian Pacific Ry. are hereby declared to be works for the general advantage of Canada, 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."

"307. Every such railway and branch line shall hereafter be subject to the legislative authority of the Parliament of Canada; but the provisions of any Act of the Legislature of any Province of Canada, passed prior to May 25, 1883, relating to any such railway or branch

line, and in force at that date, shall remain in force so far as they are consistent with any act of the Parliament of Canada passed after that date."

These sections were in force at the time the crossing was made pursuant to the Railway Committee's order and continued in force till 1903, when The Railway Act was revised and radical changes were made in the law. The Board cannot adopt the respondent's contention. A consideration of the provisions of the Railway Act, dealing specifically with railway crossings and junctions, as that act was at the time of the transactions in question, leads the Board to the conclusion that the words "Each and every branch line or railway now or hereafter connecting with or crossing the said lines of railway," as used in sec. 306, do not extend to and include street railways or electric railways constructed under provincial authority. To hold the contrary view would have consequences so far reaching, placing as it would, under Dominion jurisdiction, without enquiry or consideration of its special circumstances, every railway constructed under provincial authority which connected with or crossed a federal railway between 1888 and 1903, that the Board cannot adopt it without the most cogent and convincing proof that such was the intention of Parliament.

In the Railway Act of 1888 there is found a group of sections numbered 173 to 177, both inclusive, which deal with "Railway Crossings and Junctions." Sec. 173, as enacted by 56 Vic. Chap. 27, sec. 1, reads as follows:—

"173. 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 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, intersection, or junction or union, are first approved by the Railway Committee, on application therefor, of which application ten clear days' notice in writing shall be given by the party or company desiring the approval, such notice to be sent by mail addressed to the president, general manager, managing director, secretary, or superintendent of the company whose railway is to be so crossed, intersected, joined or united; and in the case of crossing by street railways, electric railways or tramways respectively, the Railway Committee shall have the same powers in all respects as to the protection of such crossing and otherwise as are given the Railway Committee by this Act in regard to one railway crossing another."

It must be concluded from this that it was in the contemplation of Parliament that "the railway of any company" that is, by force of the section defining the application of the act, the railway of a company within the legislative authority of the Parliament of Canada, might be crossed by either of two classes of works; first, by "any other railway," secondly, "by any street railway, electric railway or tramway, whether constructed under Dominion, provincial or municipal authority or otherwise." Clearly the words "the railway of any company" did not, in the view of Parliament, include a crossing of a federal railway by a street railway or an electric railway constructed under provincial authority, otherwise the inclusion of the subsequent words dealing with such a crossing would be insensible. Furthermore, the concluding paragraph of sec. 173, defining the powers of the Railway Committee as to the