

or desirable in order to improve its grades and alignments, or to render its service more efficient, or its connection more convenient with the main line of that company, and upon such change being effected, to remove the rails and materials upon the portion of the present line so diverted, and to discontinue the use of such portions for railway purposes, and declaring the defendants' railway to be a work for the general advantage of Canada. The defendants' railway crosses the Grand Trunk railway at Sherbrooke by an overhead bridge, but whether this is or is not a crossing within the meaning of the Railway Act does not seem to have much bearing on the case, in view of the Act of June last, by which, as already stated, the Federal Parliament declared the defendants' railway to be a work for the general advantage of Canada. Now, this agreement with Mr. Ross has never been ratified by the defendants, but the evidence establishes, and there can be no doubt, that if the proposed sale is carried out the road will not run entirely over the line as now constructed. There will be a railway connection between the village of Waterloo and a point near a place called Foster, about $3\frac{1}{2}$ miles south-east from Waterloo, and from thence the line will run in the same general direction as the present road to Stukely, crossing it between the two points, the distance apart between Foster and such crossing varying from $3\frac{1}{2}$ miles to nothing. After the crossing the projected road runs almost parallel with the present line at a distance of from 500 to 1,000 feet to Stukely. As the new line between Stukely and Magog has not really been located, it is impossible to say how much of the present line will be utilized, but where it is not used the variation will be less than a mile. From Magog to Sherbrooke the new road will take the same general direction, but will follow the north side of Little Lake Memphremagog, which appears to have been the original location selected, when the subsidy was granted, being shorter and having an easier grade, but changed in order to run into a mining locality, from which it was expected business would be obtained, but from which none is now expected, as the mines have been abandoned. The projected road, Mr.

Lumsden says, will be a much better road as far as curves and grades are concerned, and altogether will be a much improved line. It appears to me that, as to its general course and direction, it will be as much the road contemplated by the charter granted to the defendants as the present line, and will fulfil all public requirements in a much more satisfactory manner than the existing road.

If the Dominion Act of June last is constitutional, there cannot be any doubt of defendants' right to do as they propose, but it is claimed that that act is not constitutional, because the Federal Parliament could not declare a road for the general advantage of Canada under section 92 of the B. N. A. Act, 1867, sub. sec. 10 (a), for the mere purpose of putting it out of existence. But this act does not put the road out of existence; it authorizes the acquiring road to change the location where it may be necessary or desirable in order to improve its grades and alignments and render its service more efficient.

Apart, however, from this Dominion Act, the Provincial Railway Act of 1869 (sec. 7, sub-section 17), gives the company power to change the location of the line of railway in any particular for the purpose of lessening a curve, reducing a grade, or otherwise benefiting such line of railway, or for any other purpose of public advantage.

Of course this must be done in the manner pointed out by the Act, but as the defendants have done nothing as yet, except to negotiate for the sale of their road, I am not called upon to decide any question as to their mode of proceeding.

Upon the whole I am of opinion that the petitioner, in his quality of Attorney-General, has not the interest, as representing the Crown, or the public, which he claims to have to enable him to maintain this suit; that neither the Crown nor the public will suffer any injury by what it is proposed to do; that the defendants have not done and do not contemplate doing anything they are not authorized to do by competent authority, and I therefore dismiss the petition with costs.

Mercier & Co., for petitioner.

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