

vision just referred to, the Privy Council would, as a matter of course, hold that the principle laid down as to the Dominion Parliament is equally applicable to a Provincial Legislature.

The further difficulty suggested by Mr. Lefroy that Lord Herschel's doctrine involves the corollary that the expropriation clauses of the Railway Acts are invalid, will cease to appear formidable, if it is remembered that the right of eminent domain is one inherent in every State. Railway companies are permitted to take land and other property for the reason that, although they are in some respects private corporations, they are, in an enlarged view of their functions, acting as agents of the public in the creation and operation of a certain description of highway. It follows, therefore, that the question, in what cases the right of expropriation may be exercised by them, is one which is wholly independent of the extent of the power of the legislature to make ordinary laws affecting the property of individuals. Such exercise must, upon perfectly familiar principles of statutory construction, be valid wherever the legislature, Dominion or Provincial, has acted within the scope of its powers in authorizing the building of that particular railway for which the land is to be taken. In other words it must be assumed that the British North America Act in granting the power of making laws in regard to railways, has by implication granted the power to derogate from the proprietary rights of persons who may hold land along the lines of such railways. Whether the Dominion or a provincial legislature is to be regarded as the grantee of this implied power in any given case depends upon the construction of the Act itself (s. 92, s. 10), which fixes the limits of their respective fields of jurisdiction. It is not unworthy of notice in this connection that sub-division *c* of the section referred to, is apparently quite adequate to obviate the deadlock, which Mr. Lefroy suggests (pp. 389, 390) as a result of the possible determination of a provincial legislature to play "dog in the manger," and interpose obstacles to the building of a line serviceable to the other parts of the Dominion.

Upon the whole, therefore, I am inclined to think that the