

the main line of the "Short Line" does not pass through the village. The defendants are now practically insolvent, the road, which is run by the Central Vermont Railway company under a lease, is in poor condition and the service defective; while there can be no doubt that if it passes into the hands of the Atlantic & Northwest the road will be improved by changing the location where it may be necessary to reduce gradients and lessen curves, a better road will be made and improved service provided, and the public in every respect benefited by the proposed change.

We may now enquire whether defendants really intend departing from their charter, or propose doing anything which they have not been permitted to do by competent authority.

The preamble of the defendants' Act of incorporation shows that they asked to be authorized to construct a railroad from Waterloo in the general direction of Stukeley, Bolton and Magog, to connect with the Massawippi Valley railway, and they were authorized to construct one from Waterloo, or in the direction desired by the company, from any point between Waterloo and the westerly boundary of the township of Magog, thence to the outlet of Memphremagog lake, thence to the town of Sherbrooke, or to such point as should best secure a favorable connection with the Massawippi Valley railway, and defendants were authorized to construct the different sections of the railway in such order as they saw fit, keeping in view the general direction hereinbefore provided. It is not stated that the road should run through any particular townships. The road was constructed running from Waterloo, through the Township of Stukeley, to Magog, the outlet of Lake Memphremagog, and from there to Sherbrooke, following the south side of Little "Lake Memphremagog." Some changes of the line have taken place, but the general course and direction of the railway has not been altered. Mr. Moore, the secretary-treasurer, says that there was never any resolution passed in regard to changing the present location grades, or alignments, or the course or direction, or to destroy or remove the road or appurtenances, nor was the subject ever discussed or entertained at any meeting of directors or shareholders.

Now, the Quebec Legislature in 1881, authorized the defendants to sell their railway, and the Atlantic & Northwest Railway company are authorized by their charters and by the Dominion Act of June last, to buy it. A resolution was passed by the defendants' directors in June, 1886, in which they set out that the surveyed line of the Atlantic & Northwest railway, if built, would be parallel to the defendants' railway and seriously interfere with its traffic and largely reduce its present value; that overtures had been made to purchase or lease it upon fair and reasonable terms, and that such arrangements would be beneficial both to the defendants and to the public. The Hon. Mr. Smith was appointed with full power to sell or lease the road, and to execute the necessary papers, subject to the approval of the shareholders of the company. The shareholders, in July following, approved of the sale, and the directors were authorized to cause an indenture of sale to be executed conformable to one then produced. This did not go through, and it appears that in April last, an agreement was entered into between the Atlantic & Northwest Railway company and Mr. Ross, who is a holder of a very large amount of the bonds so issued by defendants, by which the former company were to buy the road, and, among other conditions, it was stipulated that the Dominion Government should be got to agree to procure from Parliament authority to use the line and to make any changes that might be necessary.

It was said at the argument that it was the opinion of some of those interested that as this road crossed the Grand Trunk railway at Sherbrooke, it was a work for the general advantage of Canada and subject to the legislative authority of the Dominion under section 121 of the Dominion Railway Act, which declares every road crossing the Grand Trunk railway to be such a work and to be subject to Federal authority, and hence the stipulation just referred to, which resulted in the passing of the Dominion Act in June last, giving authority to defendants or to the Atlantic & Northwest Railway company in case it acquired the defendants' railway, to change the present location of the railway at any point or points where it might be necessary