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PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 1—APRIL 24, 1917

OTTAWA
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MINUTES OF PROCEEDINGS.

House of Commons,
Committee Room No. 301,
Tuesday, April 24, 1917

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m. Present:—

Messieurs Ames (Sir Herbert), Armstrong (Lambton), Bennett (Calgary), Blain, Carvell, Cochrane, Cromwell, Donaldson, Graham, Green, Lapointe (Kamouraska), Lemieux, Macdonell, Meighen, Nesbitt, Oliver, Pugsley, Rainville, Sinclair, and Turriff.

The Committee being called to order, on motion of Mr. Macdonell.

Mr. Armstrong (Lambton) was chosen chairman of the Committee.

The Chairman took the chair, and read the Order of Reference.

On motion of Mr. Cochrane, it was

Ordered, That a report be made to the House recommending that the Resolution adopted by the House on the 7th February, 1917, referring Bill No. 13, An Act to consolidate and amend the Railway Act, to a Special Committee (of twenty-six) members be amended by adding thereto:

1. That Rule 11 be suspended in connection therewith;

2. That the quorum of the said Committee do consist of nine members;

3. That the said Committee be empowered to send for persons, papers and records, and to report from time to time, and to have leave to sit while the House is in session, and also be authorized to have their proceedings and such evidence as may be taken, printed from day to day for the use of the Committee, and that Rule 74 be suspended in reference thereto; and

4. That the name "(Kamouraska)" be inserted immediately after the name "Lapointe".

The Chairman read a memorandum in respect to the procedure of the Committee.

The Committee then proceeded to the consideration of the Bill, section by section.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

House of Commons, Room 301, April 24, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to Consolidate and Amend the Railway Act, met here this day at 11.10 o'clock a.m.

Mr. Macdonell: There being a quorum present I would move that Mr. Joseph E. Armstrong be appointed Chairman of this Committee.

Hon. Mr. Pugsley: I beg to second the motion.

Motion agreed to.

Mr. Armstrong: (Having taken the Chair) Gentlemen, I thank you for the honour you have conferred on me.

It was moved by Hon. Mr. Cochrane, seconded by Mr. Macdonell—

That the Resolution adopted by the House on the 7th February, 1917, referring Bill No. 13, An Act to consolidate and amend the Railway Act, to a Special Committee (of twenty-six members), be amended by adding thereto:

1. That Rule 11 be suspended in connection therewith;

2. That the quorum of the said Committee do consist of five members;

3. That the said Committee be empowered to send for persons, papers and records, and to report from time to time, and have leave to sit while the House is in session, and also be authorized to have their proceedings and such evidence as may be taken, printed from day to day for the use of the Committee, and that Rule 74 be suspended in reference thereto; and

4. That the name "(Kamouraska)" be inserted immediately after the name "Lapointe".

After some discussion it was agreed that the quorum should consist of nine, instead of five members, as originally proposed. With this amendment the Resolution was agreed to.

The Order of Reference under which the Committee is proceeding, was next read.

THE CHAIRMAN: I cannot help thinking that it would be prudent to decide upon some rules for the government of the Committee. I have prepared a memorandum with respect to what I think should be done by those who are desirous of presenting their views to the Committee, whether representatives of railway corporations or other outside organizations. In this memorandum I suggest that such statements should be submitted in writing. I will read the memorandum in question, and should the Committee think fit to concur in my views I believe it will have the result of expediting matters very considerably. (Reads):

"In view of the importance of this Bill, which contains 461 clauses, many "of these clauses containing provisions relating to complex questions of rail- "way law, it will be absolutely necessary, in order to secure the passage of the "Bill in any reasonable time, that some rules should be laid down for the con- "duct of the business.

"I would suggest to the Committee, therefore, that any corporation, "municipal railway or otherwise, or any other interest or any other section of "the community which is concerned in the character of this measure and who "wishes to make representations to the Committee in connection with the Bill, "should be asked to put their suggestions and arguments in support of them "in writing. In this way the Committee will have before them in a tangible "form the various suggestions that it will be necessary and proper for them "to consider. If in any special case the committee thinks it would be wise to "hear a deputation, the Committee can, upon proper application, make special "provision for such a hearing, and in such an event might ask such interest to "appoint one or more speakers to support their views.

"It appears to me that if everyone who is interested in this measure is "allowed to come here and address the Committee an enormous expenditure of "time will occur and there will be a great risk that in many cases the exact "points at issue will not be clearly indicated.

"I would suggest that the Committee take up the Bill and pass it clause "by clause. In this way the Committee will be able to narrow down the limits "of discussion and effectively deal with most of the proposed amendments. If "any particular clause should occassion unlooked-for difficulty, or if it would "seem desirable to consult any interests with respect to any proposed amend- "ment, a special arrangement can be made for dealing with such question on "some particular day, when the various interests could, if necessary, be heard.

"As the work of the Committee proceeds it may be advisable to make "further rules for its guidance, but in the meantime I would suggest the above "as a basis for our proceedings.

"It will also be necessary for you to consider what the hours of business "of the Committee should be, as it is most desirable that the convenience of

"the members should be consulted. May I suggest that the hours be from "say, eleven o'clock in the morning until one, and from three to six in the "afternoon.

"We have in attendance on the Committee, Mr. Strachan Johnston, K.C., "of Toronto, who has been retained by the Minister of Railways to assist the "Committee, and who, no doubt, is thoroughly familiar with the amendments "and the reasons therefor. I would, therefore, suggest that Mr. Johnston be "permitted the same freedom of discussion in the Committee as the members.

"I am sure the members of the Committee will see the need of prompt "attendance at all sittings, in order that the work of the Committee be com- "pleted at the earliest possible date."

The Committee proceeded to the consideration of the Bill.

On section 2, Interpretation, Sub-section (2), "by-law" when referring to an act of the company, includes a resolution.

HON. MR. PUGSLEY: Would that mean that every resolution would be a by-law?

MR. STRACHAN JOHNSTON, K.C.: I should think so; it does not mean that a resolution includes a by-law.

Hon. Mr. PUGSLEY: If you have a provision as to what steps will be taken in passing a by-law it might as well apply to a resolution as well.

MR. STRACHAN JOHNSTON, K.C.: There is no change in that respect from the former Act. Perhaps I might say something that would assist the members of the Committee. This Bill is a revision of the Railway Act of 1906, and it is also a consolidation of that Act with the twelve or fourteen amending Acts that have been passed. The Departmental solicitor has prepared for each member of the Committee a copy of the Bill, and you will see straight red lines running horizontally or vertically, which indicate new matter. Wavy red lines indicate recasting without, perhaps, any fundamental change in the meaning of the Section. At a number of places you will see a red tick or check which means that there is some omission of matter in the former Act. If some of you wish to make reference to a section of the old Act, you will find a table at the end which shows how the sections of the old Act are disposed of, and you can by reference to that table easily trace any section of that Act and ascertain what disposition has been made of it.

On subsection 4.

MR. BENNETT: It seems to me that the definition of the word "company" hardly meets the case.

MR. STRACHAN JOHNSTON, K.C.: The reason of the change is this that in the case of the Toronto and Niagara Company which was decided by the Privy Council, it was held that Section 247 of the old Act, which was an Act referring to wires and lines on a highway applied only to Railway Companies, the result of which was that that company was able to go on the streets of the municipality and erect wires without the consent of the municipality—Section 247 only applied to Railway Companies.

HON. MR. LEMIEUX: Is there not a general clause further on which deals with tramways and all such sorts of transportation as are covered by the provision in this subsection.

MR. STRACHAN JOHNSTON, K.C.: There is a clause there, but nevertheless the decision of the Private Council seems to call for this interpretation. Mr. Chrysler, K. C., who was the draftsman of this clause is of the opinion that the interpretation given here is necessary in order to make it clear that the word "company" would apply to other than Railway Companies. I have given considerable consideration to this clause, and I still think Mr. Chrysler's language is excellent and covers the ground, clearing the difficulty which arose under the old Act. Section 373 is one over which there may be some controversy. You will see that the word "company" is used there in a number of cases where it applies to telephone and power companies and this defi-

nition is necessary in order to make it clear that the word "company" means every kind of company which the context would permit of. I do not see how there can be any possible doubt about the interpretation of the word as defined by Mr. Price.

MR. SINCLAIR: Does it apply to Government railways?

MR. JOHNSTON, K.C.: The Government railways are excluded.

HON. MR. COCHRANE: I hope it will be made to apply to Government railways. Personally I think it would be a good thing if it were made applicable, but of course I would discuss that question with my colleagues before taking action.

HON. MR. PUGSLEY: I never understood why the Hon. Mr. Blair was opposed to having it applied.

MR. JOHNSTON, K.C.: That will be dealt with later.

MR. BENNETT: I would suggest that the word "accompanied" be struck out and the words "immediately preceded" inserted after the word "unless".

The subsection was amended and adopted.

On paragraph (a)

"includes every such company and any person having authority to construct or operate a railway."

MR. BENNETT: Should we not say something about the legislative authority of Parliament? Every company cannot be dealt with by this Act.

MR. JOHNSTON, K.C.: No, but it is defined in the Bill.

HON. MR. PUGSLEY: It is not necessary to insert anything in regard to that.

Paragraph (a) was adopted.

On paragraph (b)

"in the sections of this Act which require companies to furnish statistics and returns to the minister or provide penalties for default in so doing, includes further any company constructing or operating a line of railway in Canada, even though such company is not otherwise within the legislative authority of the Parliament of Canada, and includes also any individual not incorporated who is the owner or lessee of a railway in Canada, or party to an agreement for the working of such railway."

MR. BENNETT: No one but a company can really own a railway.

MR. JOHNSTON, K.C.: Yes, a person can operate a railway.

MR. BENNETT: There must be a corporate identity in relation to a road.

HON. MR. GRAHAM: Are there any judgments in cases where the question of the power of the federal authority to deal with a railway operating under a local charter has arisen?

MR. BENNETT: This clause only requires that they shall furnish statistics, and I should say under Trade and Commerce we have jurisdiction over it.

MR. JOHNSTON, K.C.: There is another section of the Act taking power over Provincial Railways, once we declare them to be works for the general advantage of Canada.

HON. MR. LEMIEUX: Do the exclusively Provincial companies make a report to you?

HON. MR. COCHRANE: No, and this is an order to get us that report.

MR. CARVELL: And how are you going to enforce it?

HON. MR. PUGSLEY: This is practically the same as the present Act.

MR. CARVELL: I have no objection.

HON. MR. GRAHAM: Have Companies operating under Provincial Charter made returns to the Federal Railway Department?

HON. MR. COCHRANE: Some have, but not very many.

MR. BENNETT: Street Railway Companies have made returns, under this section, to the Federal authority.

HON. MR. GRAHAM: If such Companies have not made these returns in the past to the Federal Department of Railways, the present sub-section is not a very efficient one.

HON. MR. COCHRANE: This is only a defining sub-section. We will deal later with the clause which compels the returns to be made.

HON. MR. GRAHAM: If the sub-section is not an efficient definition it will not accomplish very much good.

MR. BENNETT: You will find in the report of the Statistician of the Department of Railways and Canals tables which contain returns of Electric Railway Companies. These Companies have recognized the provision in the Act for statistical purposes only. They have refused to give other information, and I think they are quite right in doing so.

MR. CARVELL: It is a pity if there is no power to enforce this provision, because it is really an important one.

MR. JOHNSTON, K.C.: With respect to compelling Railway Companies to furnish statistics of their operations, that matter has not been dealt with by the Courts.

Sub-section agreed to.

On sub-section (6): "county" includes any county, union of counties, riding, district, or division corresponding to a county, and, in the province of Quebec, any separate municipal division of a county.

MR. JOHNSTON, K.C.: The word "District" has been added.

MR. CARVELL: Have there been any decisions as to what is meant by "a union of counties". You may have a union of counties for one purpose and not for another. You may have a union of counties for electoral purposes, and for many other things. Would that apply in this case?

MR. BENNETT: The word "district" has been added to meet difficulties which have arisen in practice, particularly in the West.

MR. JOHNSTON, K.C.: That does not relate to the question raised by Mr. Carvell.

MR. CARVELL: Yes, what I want to know is what you mean by "a union of counties". There are counties in Canada which are united for municipal purposes and separated for other purposes.

MR. JOHNSTON, K.C.: In the Province of Quebec there are separate municipal divisions.

MR. SINCLAIR: We have them in Nova Scotia. The county I represent has two municipal counties.

MR. BENNETT: You will observe the paragraph uses the word "include". That is broad enough.

HON. MR. PUGSLEY: Would there be any harm in leaving out the words "in the Province of Quebec"?

MR. CARVELL: Has there been any judicial decision on the meaning of the words "municipal counties"?

MR. JOHNSTON, K.C.: Not that I am aware of.

MR. CARVELL: Because I can see where there might be difficulties. For instance, where the Railway Company files the plan and book of reference in the Registry Office of the County. Suppose there are two counties united for electoral purposes, it might be a nice question as to whether the filing should be done in the Registry Office of one county or in that of the other.

SIR HERBERT AMES: There is one County Council for the Counties of Stormont, Dundas and Glengarry. The same thing obtains with respect to the counties of Northumberland and Durham.

HON. MR. COCHRANE: Yes, but they have not the three Registry Offices.

SIR HERBERT AMES: That I cannot tell you. Any legislation proposed to be passed by the County Council would have to be passed by the union of Counties.

MR. BENNETT: To me it is perfectly clear that no injury can be done by the Clause as it is.

HON. MR. LEMIEUX: In the Province of Quebec there is the village of Chambly and the Parish of Chambly. The municipality of the village and the municipality of the Parish are two different organizations.

MR. CARVELL: Are they both in the same county?

HON. MR. LEMIEUX: Yes. Then, in the county of Gaspé there are two Registry Offices.

MR. LAPOINTE: There is Division No. 1 and Division No. 2 in the County of Rimouski. There are two Municipal Councils in that County.

MR. SINCLAIR: I move to strike out the words "In the Province of Quebec".

HON. MR. GRAHAM: I second the motion.

Motion agreed to and sub-section as amended adopted.

On Sub-section (7):

"court" means a superior court of the province or district, and, when used with respect to any proceedings for

(*a*) the ascertainment or payment, either to the person entitled, or into court, of compensation for lands taken, or for the exercise of powers conferred by this Act, or

(*b*) the delivery of possession of lands, or the putting down of resistance to the exercise of powers, after compensation paid or tendered,

includes the county court of the county where the lands lie; and "county court" and "superior court" are to be interpreted according to the Interpretation Act and amendments thereto;

MR. CARVELL: I would like to raise the question why much of this authority could not be handed over to the county courts, as we have them practically throughout Canada now. The proceedings are more expensive in going to superior courts. I do not move it as as an amendment but make the suggestion.

MR. BENNETT: Proceedings can be taken before county court judges, but in dealing with questions of dispossession affecting the land it has never been the policy to take that away from the superior court.

MR. JOHNSTON, K.C.: The county court has a great deal of jurisdiction as you will see as we proceed.

THE CHAIRMAN: You will notice that in the wording following paragraph (*b*) the county court is included. I think that covers your objection.

MR. CARVELL: Yes.

MR. JOHNSTON, K.C.: The concluding words of this subsection "and 'county court' and 'superior court' are to "be interpreted according to the Interpretation Act," and "amendments thereto," are underlined, being merely added.

HON. MR. PUGSLEY: It can not be necessary to have those words added, because the Interpretation Act would apply. I think it is objectionable to put in words which are unnecessary.

MR. NESBITT: Let them remain in to make the meaning plain.

Sub-section carried.

On Sub-section 9, Express Toll:

MR. JOHNSTON, K.C.: The only alteration is the substitution of the word "any" before company in the second line for the word "the" in the old Act.

HON. MR. LEMIEUX: For the sake of the English language, would you not use the word "levy" instead of "charge"? Is not a "toll" a "levy" rather than a charge?

MR. JOHNSTON, K.C.: Until it is collected it is levied. The word "charge" is defined in another sub-section.

Sub-section carried.

On Sub-section 10, "Goods":

HON. MR. PUGSLEY: That is the same wording as the old Act?

THE CHAIRMAN: Yes.

On Sub-section 11:

"Highway includes any public road, street, lane, or other public way or communication."

MR. BENNETT: I think it would be well to insert the word "thoroughfare."

HON. MR. PUGSLEY: Would not "public way" include thoroughfare?

MR. CARVELL: A railway, for instance, may have a private way which might be called a thoroughfare.

AN HON. MEMBER: Would a bridge be considered under "highway"?

MR. JOHNSTON, K.C.: Ordinarily, "bridge" would be included in the word "public road".

Sub-section carried.

On Sub-section 12, "Inspecting Engineer":

HON. MR. LEMIEUX: While I do not object to the jurisdiction of the Railway Board, I understand that this Act is to be enforced by the authority of the Board. Will the inspecting engineer be appointed by the Minister or by the Board?

MR. JOHNSTON, K.C.: They both have powers under the Board.

HON. MR. LEMIEUX: I do not object.

HON. MR. COCHRANE: I will put it on the Board as far as I am concerned.

On Sub-section 14, defining "Justice":

"Justice means a justice of the peace acting for the district, county, riding, "division, city or place where the matter requiring the cognizance of a justice "arises; and when any matter is authorized or required to be done by two "justices the expression "two justices" means two "justices assembled and acting "together."

MR. CARVELL: Why not follow the Criminal Law in that respect? In ordinary cases the police magistrate can do anything that ordinarily requires the presence of two justices.

HON. MR. PUGSLEY: That would not apply here.

MR. BENNETT: This means two individuals.

MR. CARVELL: It does also in the Criminal Law.

MR. BENNETT: It implies that two men have dealt with the situation rather than one.

Sub-section carried.

On Sub-section 15:

"Lands means the lands, the acquiring, taking or using of which is auth- "orized by this or the Special Act, and includes real property, messuages. lands, "tenements and hereditaments of any tenure, and any easement, servitude, right, "privilege or interest in, to, upon, over or in respect of the same."

MR. CAVRELL: That is new.

HON. MR. LEMIEUX: Do you provide for a case that arose in Montreal in connection with the construction of the Canadian Northern tunnel?

MR. JOHNSTON, K.C.: That is one of the reasons why this clause was drawn. The word "Servitude" is used in English law, I fancy the word "easement" would be sufficient. It would cover the rights to tunnel under or across.

MR. BENNETT: After the word "upon" in the next to the last line, would it not be well to add "under".

HON. MR. LEMIEUX: I think so. The case of Rainville versus Canadian Northern Railway is a case in point.

THE CHAIRMAN: It is suggested that the word "under" be added after the word "upon".

HON. MR. PUGSLEY: I move that the clause be adopted, as amended by Mr. Bennett, with the word " under " immediately after the word " upon."

MR. JOHNSTON, K.C.: There is a case pending in Toronto where a peculiar state of affairs rules. One of the power companies gave notice for an easement over a man's land; they put their wires about 15 feet from the ground and after they had strung their wires, they proceeded to arbitration, for the purpose of determining the amount of the payment they should make. The owner of the land said "You have virtually taken my land, and should pay for it", but the company said "We are content to pay for the damage we have done to your land, by leaving the wire in the position in which it is", but the owner answered "In taking that easement across my land, you have virtually taken the land", and the case is now in the Court of Appeal.

HON. MR. LEMIEUX: According to law, the word "property" means property "above" or "below". In the case of the Canadian Northern at Montreal it was contended that they had destroyed the property by tunneling underneath whole sections, as a result of which the property above was cracked and disturbed.

MR. NESBITT: The last time we were discussing this sub-section, attention was drawn to the fact that in Ontario the Hydro-electric have not been taking the land, but have simply been erecting their standards and stringing poles upon them, carrying their wires over the land. By this subsection we are now giving private companies the same right.

HON. MR. COCHRANE: Those companies would be responsible for any damages done.

MR. NESBITT: The private companies have not had that right up to the present. There has been a great deal of trouble among the farmers over the exercise of that right by the Hydro-electric. The Provincial Government refused to allow private parties to bring suit against the Hydro-electric, and the consequence was a great deal of dissatisfaction, the farmers claiming that the compensation made them was not sufficient and saying that they would just as soon have the land taken as have the standards erected and the wires strung on them, because the Hydro-electric men are all the time passing over the land to examine the wires, they drive over it with a team, doing damage, so that the farmers say they might just as well sell the land to the Hydro outright.

HON. MR. COCHRANE: If the Hydro-electric damages the property, they have to pay for it.

MR. NESBITT: No, they do not pay for it in this case, because in the first place when taking the easement they reserve the right to go over the land for the purpose of examination.

HON. MR. COCHRANE: But the damage done in making that examination would be included in the amount originally paid. I think we ought to make it clear in this section what power is to be given the company.

MR. F. H. CHRYSLER, K.C.: I am representing the Railway Companies here, but in speaking upon this section, I simply want to assist the Committee, as there seems to be some doubt as to the meaning of this sub-section. As I understand the subsection the first part gives a Company the right to take the land if it wants an easement to go over the land or running water and pay for it, but it cannot acquire

an easement. I do not know what the cases are of which Mr. Johnston has spoken but the ruling given recently was that you cannot under the old section go to a man and say "I do not want your land but only power to burrow ten feet under the ground, and I desire to acquire that easement through your land, which I create by my notice." The Railway Company has never had that power. Or in the same manner when going overhead the Company could not say to a man "We want to put a bridge over your land about ten feet in the air; we are not touching you and are not taking your property, we merely want to acquire an easement to cross over it in the air." I do not know what the policy of the Committee is with regard to easements, but that is the purpose of the sub-section.

MR. BENNETT: There is another clause later on dealing with expropriation, and I think it would be better to let this sub-section stand until that section is taken up.

MR. NESBITT: I do not want to give this power to every company, but I am willing to let the clause stand until the expropriation clauses are taken up.

MR. MACDONELL: If a company takes power to string wires over a man's land they might as well take the land because he cannot utilize it afterwards to the same advantage as he might desire because the wires are there.

MR. NESBITT: The Hydro-electric Company wanted to take their lighting to a certain house: there were three houses standing in a row: and what did they do? They attached their wires to one house, ran their wires low in front of the man's windows and took them over to the house on the other side. No company or government should have the right to do that. That destroyed to a great extent the value of that man's house. They crossed in front of his windows with their wires.

MR. JOHNSTON, K.C.: Running over part of his property?

MR. NESBITT: Yes.

MR. JOHNSTON, K.C.: Then they must have paid him for the damage.

MR. NESBITT: No, not a cent.

HON. MR. COCHRANE: That should be protected against in this section.

MR. CARVELL: I do not see why any corporation should have the right to go into a man's property unless they take all and pay for it. An electric light company in which I was interested had live wires over a man's garden, and he objected, and we simply moved them away. We had the streets to go on. It cost us some money to make the change.

HON. MR. COCHRANE: I do not think any company should have the right to take the streets, without the municipality's permission.

MR. CARVELL: Neither do I, but the street is there.

HON. MR. LEMIEUX: Everything depends on the word "compensation". Take the case of Montreal: perhaps Sir Herbert Ames will agree with me that when the first wires were put under ground in Montreal it was found that the concrete was affected by the presence of the electric wires. Several of our conduits had to be fixed up. There was a certain electrolysis

Mr. JOHNSTON, K.C.: Section 373 deals with that.

Mr. NESBITT: It is suggested that we allow this section to stand until we take up the later clause.

Mr. BENNETT: So far as certain power companies are concerned, if it were necessary for them to acquire the land they could not carry on their operation. Certain companies arranged with the farmers at the rate of $10 per pole per annum, and that ended it, and they had limited rights with regard to inspection. If limited companies were compelled to buy the land outright, the effect would be that some of them would never carry on their operations.

Mr. NESBITT: I think we should give them every reasonable privilege.

Hon. Mr. COCHRANE: I think the clause should be allowed to stand.

The CHAIRMAN: I think we will regret allowing this section to stand.

Mr. SINCLAIR: I think it is just as well to deal with it now, unless there is some better reason given for putting it off.

HON. MR. PUGSLEY: My judgment is not to put that in the general law. I think it might lead to a great hardship and injury to individuals, and when special cases arise, let the company obtain express powers in their charter, but to give them general power in a charter to go over a man's property, acquire easements, and have him depend upon compensation, the basis of which would be very uncertain, I think might be a cause of great hardship.

Hon. Mr. COCHRANE: A great many power companies get provincial charters, and a good many telephone companies.

Hon. Mr. PUGSLEY: Then the legislature in that particular case could deal with it.

Mr. BENNETT: If we inserted the word "appurtenant" before "easement," would it not cover the whole thing?

Mr. MACDONELL: It would not change the meaning in the least.

Mr. JOHNSTON, K.C.: An easement must be appurtenant.

Mr. BENNETT: This conferred the right to expropriate a certain right as distinguished from the soil, but Mr. Chrysler says the clause as it now reads confers no such right, but only confers the right to take such rights and privileges as are appurtenant to the land so taken, and the Canadian Northern Railway which crossed the Canadian Pacific irrigation canal had to pay for the canal as being an easement appurtenant to the land taken. Mr. Chrysler says that is the old law, and that is what this section now means.

Mr. CARVELL: I did not so understand him.

Mr. JOHNSTON, K.C.: No, Mr. Chrysler says this is open to this interpretation, that it only gives companies the right to take an existing easement.

Mr. CARVELL: But the trouble is that later on there will be legislation by which they can carve out a new easement.

Mr. JOHNSTON, K.C.: There is no doubt this clause is calculated to give the company the right to carve out the easement.

Hon. Mr. PUGSLEY: If by this general law we give a railway company a right to go on a man's property, and without acquiring the free-hold, to acquire the right to go over it wherever the company pleases, subject to paying compensation, it might result in a great injustice to many.

Mr. CARVELL: The moment you give them the right to acquire the land, you give them the right to acquire the easement.

Mr. MACDONELL: It might be an easement for anything, to obstruct a man's light, or air, or anything else the human mind could imagine or work out in the future, and it would give the railway company, or any company coming under this Act, power to take such a right and to take any property anywhere adjacent to their undertaking.

Mr. JOHNSTON, K.C.: But the railway company pays them damages. The railway company taking easements of this kind should be under a continuing liability for any damage that is done.

Mr. MACDONELL: That is the very point I mention. Originally a railway company comes in and says "I simply want to string one wire" then they come in to repair it. The man may want to build. He has been paid $5 a pole, but he cannot build above that wire, because it will interfere with it and the whole question comes up again. It seems to me a man in a progressive community cannot always be in

litigation with the company with regard to further compensation in regard to rights he wanted to exercise, or additional rights the company wants to enforce.

Hon. Mr. PUGSLEY: Unless it can be shown that there is some serious inconvenience in regard to the Act in the past, I think we should strike this out.

Mr. MACDONELL: We discussed this very clause before. The only instance given was the tunnel in Montreal, and, other than that, there is no demand apparently for it. I think if this right or any right approximating it is given, it should be under some safeguard, say a reference to the Railway Commission or some authority, who would have the right to prevent fictitious and trivial easements being taken on small payments.

Hon. Mr. COCHRANE: Why not let it stand until we come to the clause?

Hon. Mr. PUGSLEY: As an illustration, if this be passed a company could expropriate the right to enter upon a man's land for a gravel pit, and take away the gravel without affecting the title at all.

Mr. JOHNSTON, K.C.: They can do that now.

Hon. Mr. PUGSLEY: No, they have to take the land now, I do not know whether that would be an easement or not.

Mr. CARVELL: No, because they take the land away in that case.

Hon. Mr. PUGSLEY: Would that not be an easement?

Mr. CARVELL: No.

Hon. Mr. PUGSLEY: The power to take water would be an easement.

Mr. CARVELL: No.

Mr. NESBITT: I think it might be better to let it stand. It would sometimes be a continuing damage and the matter would not be finally settled at the time.

Mr. JOHNSTON, K.C.: I think if a railway or power company takes the right to string a high voltage line across a man's land it ought not to get off by merely paying him damages that are visible at that time. They should pay him the continuing liability.

Mr. NESBITT: That is the idea. I think it is all right with this continuing liability, because nine out of every ten persons cannot tell at the time just what their damage is going to be.

Hon. Mr. COCHRANE: Nobody can tell what may take place subsequently.

Subsection allowed to stand, as amended by the insertion of the word "under".

On Subsection 18, defining the word "owner":

(18) "Owner," when, under the provisions of this Act or the Special Act, any notice is required to be given to the owner of any lands, or when any act is authorized or required to be done with the consent of the owner, includes any person who, under the provisions of this Act, or the Special Act, or any Act incorporated therewith, is enabled to sell and convey the lands to the company, and includes also a mortgagee of the lands;

Mr. BENNETT: If you substitute the word "means" for the word "includes" in the sixth line, it would better express the meaning and prevent confusion.

The CHAIRMAN: Is it the wish of the Committee that the word "includes" be dropped and the word "means" inserted in lieu thereof?

Mr. CARVELL: What is the necessity for creating an additional burden upon a Company that wants to get land, that is, the burden of notifying too many people.

Mr. JOHNSTON, K.C.: The mortgagee surely ought to have the right to come up and be represented before the County Court judge or the arbitrator. I am inclined to think the words are surplusage. It has already been held that the mortgagee was the owner.

Hon. Mr. PUGSLEY: Might not argument be made in a case of this kind, where there is a mortgage on a farm, and the Railway Company is only taking a part of it and the judge would have to adjust matters between the mortgagee and the mortgagor.

Mr. BENNETT: In the East the Courts have held that the word "owner" includes "mortgagee", because the fee passed to the mortgagee, but in the West a mortgage is often only a charge, and the words were added for that reason.

Subsection as amended agreed to.

On Subsection 20, defining "Provincial Legislature:"

Mr. JOHNSTON, K.C.: The paragraph is merely a transposition of the former words.

Subsection agreed to.

On Subsection 21, defining the meaning of "railway":

Hon. Mr. LEMIEUX: What is the difference between a street railway and a tramway?

Mr. BENNETT: One is an English term and the other an American term. "Tramway" is the expression used in English terminology, whereas "street railway" is the American expression for the same thing.

Hon. Mr. PUGSLEY: Is it desirable to bring all street railway companies, whether large or small, under the operation of the Railway Act?

Mr. NESBITT: As long as they are under our jurisdiction.

Mr. BENNETT: Only those who owe their origin to federal statute. Those should be under our jurisdiction.

Subsection agreed to.

On Subsection 27, defining "sheriff."

Hon. Mr. LEMIEUX: I would like to ask with regard to the use of the word "sheriff." I know that under the English Common Law the sheriff is a special officer. In what connection does he come up so prominently here? In our province the sheriff, for instance in connection with a forced sale, is the proper officer in connection with that sale.

Mr. BENNETT: The subsection covers anything that may be required to be done by the officer called a sheriff.

Mr. JOHNSTON, K.C.: The sheriff would be charged with the duty of giving possession of lands to a railway company under an order of the judge of the proper court.

Subsection agreed to.

On paragraph (b) of subsection 28:—

> (b) with respect to the Grand Trunk Pacific Railway Company, The National Transcontinental Railway Act, and the Act in amendment thereof passed in the fourth year of His Majesty's reign, chapter twenty-four, intituled An Act to amend the National Transcontinental Railway Act, and the scheduled agreement therein referred to, and

Hon. Mr. PUGSLEY: Why limit the application of the subsection to one specific amendment?

Mr. BENNETT: Would it not be better to say, "And any amendments thereto"?

Hon. Mr. COCHRANE: There is no objection to that.

The CHAIRMAN: Then we will strike out "and the Act in amendment thereof passed in the fourth year of His late Majesty's reign, Chapter twenty-four, intituled An Act to amend the National Transcontinental Railway Act" and substitute therefor "and any amendments thereto".

Amendment agreed to.

Mr. JOHNSTON, K.C.: Mr. Fairweather of the Railway Department points out that the word "any" should be substituted for the word "the" in the sixth line of the

paragraph. The latter part of the paragraph will then read "and any scheduled agreements therein referred to."

On paragraph (c) of subsection 28:—

(c) any letters patent, constituting a company's authority to construct or operate a railway, granted under any Act, and the Act under which such letters patent were granted;

Mr. BENNETT: I would suggest that the words "or confirmed" be inserted after the word "granted" in the last line.

Amendment concurred in.

Subsection 28 as amended agreed to.

On subsection 30, defining "telegraph poles."

Hon. Mr. LEMIEUX: I would move to add the word "cable."

Hon. Mr. COCHRANE: Would you assume jurisdiction over cables?

Hon. Mr. LEMIEUX: We should.

Hon. Mr. COCHRANE: How far, to the extent of the three-mile limit?

Hon. Mr. LEMIEUX: I think you will find in the office of the Secretary of the Railway Commission a very excellent report, prepared by the late Mr. Justice Mabee on the subject of governmental jurisdiction over cables. I think the late Judge Mabee drew up that report with a view to giving the Railway Commission the necessary jurisdiction. The press and the public are both interested in the matter of cables.

Hon. Mr. COCHRANE: Why not exercise equal jurisdiction over ships?

Hon. Mr. LEMIEUX: Cable companies get a landing in Canada.

Hon. Mr. COCHRANE: And so do ships.

Hon. Mr. LEMIEUX: But cable companies charge the public tolls, and I think there should be some means arrived at whereby they are made amenable to the jurisdiction of the Railway Commission. Mr. Justice Mabee suggested that a similar commission to that which was to regulate freight rates between the United States and Canada should be appointed.

Hon. Mr. COCHRANE: When the change of Government occurred in 1911 we endeavoured to secure the establishment of a board which should exercise control over ocean steamships and the rates charged by them, but the authorities in England did not take to the idea at all.

Hon. Mr. LEMIEUX: If you only exercised jurisdiction within the three-mile limit over the trans-oceanic cables it would make the companies amenable to the Railway Commission, and they would be willing to accept the rates that the Board might fix. This matter was debated in the House of Commons some years ago, and the cable companies, as a result of the efforts which were then made, and of the discussion which then took place, that the cable companies—on this side as well as on the other side, in the United States as well as in Great Britain—understood they had to concede lower rates to the public. As a matter of fact, the cable rates have been reduced in this way: the press to-day enjoys a special rate far below the one which was exacted some years ago, and in addition there are now in operation lower night and week-end cable rates. I think if you insert the word "cable" in this subsection it will enable you to exercise control over the cable companies so far as regards the three-mile limit, at any rate.

Mr. CARVELL: You would also be able to exercise authority on land also. At Canso, in Mr. Sinclair's constituency, where there is a cable station, the Government would be in a position to exercise jurisdiction to some extent.

Mr. BENNETT: The late Judge Mabee based his contention on the assumption that as Parliament had control over landing places of cables and the localities at which messages were filed, or received for transmission, it could practically effect a

prohibition unless the companies were amenable to regulations by which they would carry messages beyond the three-mile limit at fixed rates. That is what the late Judge Mabee based his assertion of jurisdiction upon, and that undoubtedly is correct. Mr. Theodore Vail, who has probably done more for the cable business than any other man in modern times, properly claims credit for the changes which brought into effect cheaper night cables and cheaper week-end cables. He found that when the cables were not busy at given times they could be utilized to advantage by granting reduced rates to the public. The effect has been as Mr. Lemieux has indicated. In any event, you do not have to put the word "cable" in at all. Such jurisdiction as we now have is covered in the definition of the word "telegram." The transmission of messages by electric current under water instead of under land is equally amenable to our jurisdiction.

Hon. Mr. LEMIEUX: With all due regard to Mr. Vail's contention, I believe that the cable companies yielded because Parliament was some years ago very much busied ever this question and besides the Imperial Conference of 1911 took up the question. It was immediately after the year 1910 or 1911 that the cable companies yielded.

Mr. BENNETT: It was at that time that the Western Union Telegraph Company was consolidated with the American Telephone Company, as you remember, and Mr. Vail then took the matter in hand.

Hon. Mr. LEMIEUX: Take, for instance, the Pacific cable. The moment the agitation came up for a government cable, or an Imperial cable, there was a decrease in the rates, and it has worked wonders in the West, and with the other colonies, Australia, New Zealand and the other islands which belong to Great Britain in that part of the world.

Mr. BENNETT: There has been a deficit every year, of which we have paid a part.

The CHAIRMAN: What is the objection to having the word "cable" inserted?

Mr. MACDONELL: I think there is no objection. The time may come when we can co-operate in conjunction with the British Government to jointly regulate cables. If we have the power to do so it would be a good thing.

Mr. SINCLAIR: I was present at the interview when the New York men came up to see the late Government. They did not question our jurisdiction. They said that the Canadian business was only a bagatelle, that their main business was to the United States. Of course, the United States was interested and Great Britain was interested, and we could not regulate these companies as we had only 5 per cent of the business. They did not question our right to regulate.

Mr. JOHNSTON, K.C.: Has Parliament any right to regulate the charge for a cable between Halifax and London, for instance?

Hon. Mr. COCHRANE: They could stop them from landing there.

Hon. Mr. LEMIEUX: They seize a legitimate weapon in their hands to force the cable companies to reduce their rates if they are exorbitant. I do not say that at the present time they are exorbitant; I do not want to hold up the companies as being exorbitant. But this is a legitimate weapon in the hands of Parliament.

Hon. Mr. COCHRANE: Anyway, you move that the word "cable" be inserted?

Hon. Mr. LEMIEUX: I move that the word "cable" be added.

Mr. JOHNSTON, K.C.: It would be necessary to add that word in several places.

Mr. MACDONELL: Wherever necessary.

Mr. BENNETT: The subsection will read: "Telegraph" includes cable and wireless telegraph.

Carried.

On subsection (31):—

"Telephone toll," or toll when used with reference to telephone, means and includes any toll, rate, or charge to be charged by any company to the

public or to any person, for use or lease of a telephone system or line or any part thereof, or for the transmission of a message by telephone, or for installation and use or lease of telephone instruments, lines, or apparatus or for any service incidental to a telephone business.

Mr. JOHNSTON, K.C.: I may say that the Chief Commissioner of the Railway Commission thinks that the words "or lease" should be excluded.

Some hon. MEMBERS: Why?

Mr. JOHNSTON, K.C.: Because he says the Commission does not think it would interfere with the rates as one telephone company may lease its entire system to another.

Mr. CARVELL: All telephones are leased.

The CHAIRMAN: When we come to the clauses relating to telephone companies there will be considerable correspondence to put before the Committee.

Hon. Mr. PUGSLEY: I would like to see added the words "or for interchange between any two or more telephone companies."

Mr. BENNETT: That would come late.

Hon. Mr. PUGSLEY: You are defining tolls here.

Mr. BENNETT: The definitive section is broad enough.

Hon. Mr. PUGSLEY: The words "or to any person" does not include any other company.

Mr. BENNETT: It does.

Sir HERBERT AMES: A telephone company is a "person", is it not?

Mr. JOHNSTON, K.C.: I do not think the word "person" is defined.

Mr. BENNETT: Instead of "person" the word should be "company."

Hon. Mr. PUGSLEY: I should think so.

Mr. NESBITT: Why not put it "to any person or company"?

Hon. Mr. PUGSLEY: That makes it very plain. A court would hold that that would mean a commercial company, some company using a telephone system. What I want to do is to have a clause put in that would make it clear that the word "toll" embraces tolls on which one telephone company would be obliged to grant to any other telephone company the privilege of transmitting messages over the line of that company.

Hon. Mr. COCHRANE: If there was only Dominion jurisdiction there would be no trouble, but if there is provincial jurisdiction the Board would have no control. It is a very burning question; if we could manage it, it would be a great thing. As you know, in Ontario there are a number of companies who want connection with the Bell Telephone Company. Where are we going to bring it in? They have provincial legislation, and they are asking us to take control over it.

Hon. Mr. PUGSLEY: Let us leave it until we come to that clause.

Mr. CARVELL: You would not have much difficulty in saying to the Bell Telephone Company: "You must allow a local company to connect with your line," but the great difficulty would come when you have to deal with a big provincial organization which will not allow any other company to use its line. As far as the Bell Telephone Company is concerned, there is no difficulty.

Hon. Mr. COCHRANE: That is so, we would have jurisdiction over it, but the jurisdiction ought to be vice versa.

Mr. JOHNSTON, K.C.: There is another clause dealing with telegraphs and telephones, section 375, which is going to be a controversial clause.

Subsection 31 concurred in.

On subsection 32, "toll" and "rate."

Mr. CARVELL: I would like to ask if any exception has ever been taken by the Board of Railway Commissioners to the suggestion that dining cars should be included in this section.

Hon. Mr. COCHRANE: If you put them off the trains altogether it would be a great blessing to the railways.

Hon. Mr. LEMIEUX: A suggestion was made some years ago by Mr. Maclean, the honourable member for South York, that when the upper berth of a sleeping car is not occupied it shall not be "made up", but shall be left as in the daytime.

Mr. CARVELL: Might not the charges on the dining cars also be brought under the control of the Board.

Mr. BENNETT: I have heard one member of the Board express the opinion that the position of a commissioner was bad enough as it is, but I think if the Commissioners were called upon to decide the prices to be paid for food on the dining cars, it would make their position much worse.

Subsection concurred in.

On paragraph (i) of subsection 36.

Mr. BENNETT: Is this paragraph drafted in the terms of the similar paragraph in the United States Commerce Commission Regulations?

Mr. JOHNSTON, K.C.: I could not tell you.

Mr. BENNETT: It is, I think, intended that we should have our legislation defining the items of expenditure which should be charged under "Revenue Expenses" as distinguished from "Capital Account", expressed in such terms as will insure the same items being charged in that account, with respect to the Canadian Railways, as are charged under the legislation governing the Interstate Commerce Commission of the United States; that was the idea, was it not, Mr. Cochrane?

Hon. Mr. COCHRANE: Yes.

Mr. BENNETT: The idea being that by having a similarity of charges comparisons can be made.

Mr. JOHNSTON, K.C.: I was not aware of that. This section is exactly the same as it was before, the only change is to include the compensation payable to workmen as part of the ordinary expenditure.

Mr. BENNETT: The Chairman of the Board dealt with that subject rather extensively quite recently, and he thought we should have the items chargeable under "Working Expenditure" on the Canadian roads, exactly the same as it is on the United States railways, under the Interstate Commerce Commission; that we should have in the same form of account.

Mr. BENNETT: It is the result of long years of experience.

Mr. CHRYSLER, K.C.: It is squaring the Railway Act with the Grand Trunk Pacific Railway Act. With reference to the English system of accounting I do not think there is a serious difference between it and the Interstate Commerce definition.

Mr. BENNETT: The Interstate Commerce definition has been changed a little in the last six months. I remember there was recently a little change made for the purpose of charging some items against revenue which formerly were carried to capital.

Mr. CHRYSLER, K.C.: I do not think it made any difference to the practice of Canadian railways, because after the Rates Investigation the Canadian Northern, the C. P. R. and the Grand Trunk were all following a uniform system.

The CHAIRMAN: If this clause is allowed to stand until to-morrow, Mr. Johnston, will explain it to the Committee.

Mr. CARVELL: It becomes important on the question of rates.

The section was allowed to stand.

The Committee adjourned until 11 o'clock.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 2--APRIL 25, 1917

OTTAWA
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MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

Wednesday, April 25, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock, a.m.

Present: Messieurs Armstrong (Lambton) in the Chair, Carvell, Cochrane, Donaldson, Lapointe (Kamouraska), Lemieux, Macdonell, Nesbitt, Pugsley, and Sinclair.

The Committee resumed consideration of the Bill.

At one o'clock the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

House of Commons, Ottawa,

Wednesday, April 25, 1917.

The Committe met at eleven a.m.

On Sub-section 36, of Sec. 2.,—"Working Expenditure."

MR. JOHNSTON, K.C.: Yesterday, Mr. Bennett stated that he understood the intention was to make the definition of "working expenditure" accord with a similar definition in the United States. I have tried to find some such definition and cannot. I do not believe any such definition exists.

MR. NESBITT: Better let the section stand.

MR. CARVELL: Is there any necessity for allowing it to stand? If we cannot find any precedent we had better go on with it

HON. MR. PUGSLEY: It seems to cover everything.

HON. MR. COCHRANE: Yes, and I understand that it is not a law over there. It is instructions to the Interstate Commerce Commission.

Section adopted.

On Sec. 3., "Construing with Special Acts."

MR. JOHNSTON, K.C.: Paragraph (b) reads as follows:

> "Where the provisions of this Act and of any special Act passed by the Parliament of Canada relate to the same subject matter the provisions of the special Act shall, so far as necessary to give effect to such special Act, be taken to override the provisions of this Act."

HON. MR. LEMIEUX: If, for instance, very special provisions have been made for certain railway companies, and they differ from these provisions, how would these railway companies be affected?

MR. MACDONELL: According to this they are exempt from the provisions of the special Act.

HON. MR. LEMIEUX: Yes, but if the general provisions are superseded by any other provisions in this bill, then the railways will have lost what they have obtained by legislation.

HON. MR. COCHRANE: No, vice versa.

MR. JOHNSTON, K.C.: No, that would not be the effect.

HON. MR. LEMIEUX: I am reading it cursorily.

MR. CARVELL: The specific Act prevails.

MR. MACDONNELL: The objection is this. from time to time in the past old companies have been incorporated under special Acts. From time to time public needs and municipal requirements have encroached upon the companies' rights and at their request, and by the demands of the situation, general Acts have been passed protecting municipalities and such like. Those safeguarding clauses have been passed in the General Railway Act. Now when you come to construe the special Act of the railway. those safeguarding clauses would not apply to that particular company. There may be a conflict between the provisions of the special Act and the provisions of the general railway Act. If that occurs. the special safeguarding clauses in the Act apply, as I understand it.

HON. MR. LEMIEUX: I would like to hear Mr. Johnston on that.

MR. JOHNSTON, K.C.: Section 3 is exactly the same as before, except that paragraph (c) is entirely new and has been added. The remainder of the section has been slightly recast: but if you will take Section 3 of the old Railway Act, and compare it with the present Section 3, including paragraphs (a) and (b), you will see there is no fundamental change. You will see it is exactly the same, except that there is an inversion in the language.

HON. MR. PUGSLEY: It really lays down what would be law without that.

MR. JOHNSTON, K.C.: I think there is no doubt about that. You will recollect that in the Robertson case the Grand Trunk was required to run third-class trains not charging more than a penny a mile. The Grand Trunk contended that the obligation which was imposed on it by the special Act was removed by the general Act. That case went to the Privy Council.

HON. MR. PUGSLEY: The Court held otherwise.

MR. MACDONELL: We are passing a general railway Act which is supposed to have a general application to all railways equitably and uniformly. If any individual company in times gone by has had powers which are in conflict with the provisions of the general Act those special powers remain, and the general Act does not interfere with them.

MR. JOHNSTON, K.C.: Except as in this Act otherwise provided.

HON. MR. COCHRANE: You have to pass a special clause if you want to change it, and then you know what you are doing.

MR. CARVELL: There may be cases where we will find the special clauses are repealed.

MR. MACDONELL: The private companies have these special provisions, and the general Act has no application to them.

MR. CARVELL: There are many cases where money has been spent in a company which is operating under these special clauses.

MR. MACDONELL: In the case where a company has special powers, they require to have enacted in their charter all the safeguarding clauses in this Act, in order to make them amenable to the general law. I do not think that is right.

HON. MR. COCHRANE: Is it wise to take away the powers which the Federal authority gave them, and on which they invested their money, without hearing them?

MR. MACDONELL: It is done every day in this Committee.

HON. MR. COCHRANE: We are amending the general Act, it is true, but we are not taking away the powers Parliament gave certain companies.

MR. MACDONELL: It is done every day in the Railway Committee. When a company comes here for any amendment to its original Act of Incorporation, and, in addition, by the Railway Act, these public safeguarding clauses are inserted in that charter.

MR. CARVELL: They come and ask for something, and we say "we will give you that supposing you do so and so."

MR. MACDONELL: The company has been saddled with the safeguarding clauses, but the companies which do not come here remain exempt from the safeguarding clauses. I do not think that is right. The public needs are growing, and the demand is that they should be surrounded with public and municipal safeguards.

MR. JOHNSTON, K.C.: Paragraph (c) is new.

MR. NESBITT: Is that not a contradiction of the other, where it says:

"(c) Provisions incorporated with any Special Act from any general railway

Act by reference shall be taken to be superseded by the provision of this Act relating to the same subject matter."

MR. JOHNSTONE, K.C.; Not at all. It simply means that the provisions that are incorporated from some other Act to the corresponding section of this Act would take their place.

MR. NESBITT: I think there is a misprint in paragraph (a). The word "incorporate" should be "incorporated".

MR. JOHNSTON, K.C.: That is the language of the existing Act, and I think it is quite right as it stands.

Section adopted.

On Section 4—Special Act referring to corresponding provisions.

HON. MR. LEMIEUX: This section has reference to what I said a moment ago and makes it clear to me that nothing is taken away from the existing privileges, rights, etc., conferred by Parliament upon a Railway Company.

MR. JOHNSTON, K.C.: Unless it is done clearly and explicitly.

MR. MACDONELL: I want to make a few observations at this stage. There are pages and pages of this general Act that the public and Parliament of Canada believe are to be of general application to all the Railways of the Dominion. Let us beware of what we are doing as we go on. As a matter of fact, that belief is illusionary, because under these definitions those clauses are not going to apply to any Company that has special powers unless the powers in this Act are repeated verbatim in the charters of such Companies. So that sections that it is believed will be applicable to all Companies are not going to be applicable to all. I think we ought to realize and face that fact.

HON. MR. COCHRANE: Would it not be better to defer discussion until we come to the clauses in question?

MR. MACDONELL: In the meantime I would not like these sections passed.

THE CHAIRMAN: These sections have been applicable before. In a great many cases all the change amounts to is a re-wording of the section.

MR. CARVELL: But Mr. Macdonell does not want the sections passed without certain consideration.

THE CHAIRMAN: What changes do you suggest Mr. Macdonell.

MR. MACDONELL: I think that the language of this Act should be definite, that it should be made clear that all its provisions apply uniformly to all companies. As it is now, a great many sections that have been embodied in the Bill as the result of experiences of the last ten or twenty years, are not going to apply to companies unless they have those special provisions in their charter by reason of the language of Section 3.

HON. MR. PUGSLEY: The Railway Act has incorporated general provisions which, in the great majority of cases will not conflict with special Acts; But there may be some special provision which Parliament has passed with regard to certain Companies. For instance, as regards the by-laws of a Company, the number of Directors and the qualification of Directors, and so on. If we, by a general law, over-ride all these special provisions we might introduce a lot of confusion into the internal management of Railway Companies.

MR. MACDONELL: But there is nothing in this Act which has reference to such matters as the honourable gentleman mentions.

HON. MR. PUGSLEY: Yes, I think you will find reference to the matters I have mentioned later on in the Bill.

MR. MACDONELL: It only applies to cases where there is no provision in the special Act. Fixing the number of directors, and so on, are details in the internal management of Railway Companies.

MR. CARVELL: Is this not your point: That certain Companies have been incorporated by Special Acts, in which they have certain privileges, and your contention is that these privileges should be taken away and the Companies brought entirely under the operation of this Bill. Is that what you are contending?

MR. MACDONELL: I contend that these Companies should be brought under the application of the General Act. Perhaps the section can stand until I have read the sections I have in mind.

THE CHAIRMAN: If you have any suggestions to make would it not be wise to offer them now?

MR. MACDONELL: I am making the suggestions now, I am doing so as plainly as I can. I am saying that there are sections intended to be of general application, but owing to these definitions they will not be of general application; they will only apply to Companies which contain these sections in their charters.

HON. MR. PUGSLEY: The sections will be of general application except where Parliament has made some special provision inconsistent with them.

THE CHAIRMAN: All the other members of the Committee are agreed that the whole section should pass.

MR. MACDONELL: It does not pass except with my very marked dissent. However, I can move on another occasion to take up the reconsideration of the section.

Section agreed to.

On Section 5: To what persons, companies and railways applicable.

MR. SINCLAIR: Why not strike out from the section the words "other than Government railways."

HON. MR. PUGSLEY: Why do you insert the words "Railway Companies". They were not in the old Act.

MR. CARVELL: Why do you except the Bell Telephone Company? The section says that the Act shall apply to all Railway Companies. However, it does not apply to the Bell Telephone Company.

MR. JOHNSTON, K.C.: There are special sections dealing with Telegraph and Telephone Companies.

HON. MR. PUGSLEY: Why not leave out the word "Railway"?

MR. MACDONELL: You cannot make the phraseology "All Companies", for the Act would then apply to Joint Stock Companies.

MR. CARVELL: You could say "all Companies within the legislative authority of the Parliament of Canada". If a Joint Stock Company has authority to build a railway it should come under the provision of this Act.

MR. NESBITT: Suppose you say "all Companies", would not subsection 4 of section 2 specify what companies are referred to?

MR. CARVELL: Yes, subsection 4 would then govern.

MR. JOHNSTON, K.C.: The draftsman, in his notes, does not indicate any reason for using the word "railway", and I think it ought to go out.

MR. CHRYSLER, K.C.: This Act does not apply to anything but Railway Companies, and to Telegraph, Telephone and Express Companies, which have been brought in by distinct sections. This Parliament only has power over Interprovincial Telegraph Companies. The same thing applies to Telephone Companies;

this Parliament has no power over local Telephone Companies. Such Companies would not come under the application of the Act unless they are Interprovincial or are operated by Railway Companies. The sections relating to Telegraphs and Telephones do not create any difficulty. When you come to them you will find that Telephone or Telegraph Companies are within the control of the Board of Railway Commissioners, and as to Express Companies, they are Companies that operate on railway lines. Any others, such as local Companies would not come under the juridiction of this section.

HON. MR. PUGSLEY: What about Telephone Companies? Is this section not intended to apply to Telephone Companies not connected with a through Telephone line or railway?

MR. CHRYSLER, K.C.: When they are given power to connect with, and send messages over through telephone systems like the Bell Telephone Company, which is the only one of that description I know of.

MR. NESBITT: I would suggest the section apply to all persons, companies and railways.

MR. CARVELL: The word "Company" is defined and includes "person."

MR. MACDONELL: If you look at sub-section 4 of Section 2 you will see that it defines companies and railway companies.

MR. CARVELL: I would like to ask Mr. Chrysler about the insertion of the word "railway." There must be some reason for inserting that word.

MR. JOHNSTON, K.C.: It is subject as hereinbefore provided, and there are other sections that deal specifically with the matter.

MR. CHRYSLER, K.C.: You passed some years ago an amendment to the Railway Act putting in telephone clauses. You passed legislation putting in express and telegraph companies, but you never amended this portion of the Act, and probably it is now the proper time to insert a clause that telegraph companies, telephone companies and certain express companies are within the provisions of this Act, but it should not be done by altering this clause, which is a distinct clause dealing with railway companies.

HON. MR. PUGSLEY: This defines what the word "company" shall mean under this Act.

MR. CHRYSLER, K.C.: Yes.

HON. MR. PUGSLEY: We intend this Act to apply to all companies whether they have been incorporated before or may be incorporated hereafter. Why should we put in a limitation to railway companies. We intend the Act to apply to all companies which are embraced in the definition of Sub-section 4 of Section 2, and therefore the word "railway" should be left out.

MR. MACDONELL: By Sub-section 4 of Section 2 on the first page the meaning of the word "company" is defined.

HON. MR. PUGSLEY: Therefore it is to apply to all companies defined by the Section.

MR. CHRYSLER, K.C.: You may be right, but when you come to look at the clause about the telegraph, telephone and express companies, you will find it is too wide.

HON. MR. PUGSLEY: If they are not a company under Sub-section 4 of Section 2, this would not apply. Section 5 is intended to apply to companies brought within this Act, whether they are incorporated before or not.

MR. CARVELL: If it is decided that should go out, I should like to ask the Minister of Railways for something that is real, and that is that he will strike out the words "other than Government railways."

HON. MR. COCHRANE: That point was discussed a little the other day, and I said yesterday I was in favour of it, but I would not do it without consulting my colleagues.

MR. CARVELL: I will give the Minister a little illustration——

HON. MR. COCHRANE: I agree with Mr. Carvell.

MR. CARVELL: A poor man had his buildings burned by an engine on the Government railways. His building was worth more than two hundred dollars. If the value is under two hundred dollars a man can sue the Government in any Court of competent jurisdiction.

HON. MR. COCHRANE: He can sue for five hundred.

MR. CARVELL: Yes, whatever the amount is. This man is driven to the Exchequer Court, and they say there is no cause of action and that is the end of it. Why should this not be brought under the Railway Act?

HON. MR. COCHRANE: There are other matters of much more importance than that.

HON. MR. PUGSLEY: The regulation of rates is much more important. I knew of a case some few years ago where the I. C. R. connected with a private railway company and the shunting charges which the I. C. R. made against this private company were four times the amount the Railway Commissioners will allow the Canadian Pacific to charge, but there was no redress. I do not see why the Government Railways should not be brought under the Railway Commission. It would save the Minister a lot of trouble.

HON. MR. COCHRANE: No Minister dare do it on his own responsibility, but I will take it up in Council the first chance I get.

MR. CARVELL: I am glad to hear the Hon. Minister say so. That is worth something.

HON. MR. PUGSLEY: How would it do to have Section 5 stand, with a view to having the Minister consider whether he will approve of striking out the words "Government Railways"?

MR. HAWKINS: I wish to say——

THE CHAIRMAN: We must have some rules in regard to this discussion. If a gentleman, not a member of the Committee, desires to address the Committee, it would be in order for some member to move that he be heard.

HON. MR. COCHRANE: I move that Mr. Hawkins be heard.

MR. HAWKINS: We would like to lay our views before the Committee on two or three points in reference to this clause. We are of opinion that all railways in Canada should be under this Act and should be subject to the jurisdiction of the Board. Dr. Pugsley has mentioned one point we will raise. The Intercolonial Railway have joint rates with other roads, but the Board of Railway Commissions have no control over those rates beyond the mere filing of the tariff. Another point in connection with that matter is in connection with provisions for protection of the forest from fire where Government roads run through the forest. That is a very serious question and we would like to lay it before the Committee. There was a meeting a couple of weeks ago in Quebec, and I was appointed to wait upon this Committee and present the views of my association. I would like an opportunity of bringing a man from Quebec to impress our views upon the Committee.

THE CHAIRMAN: What is your position?

MR. HAWKINS: I am Secretary of the Canadian Lumbermen's Association, and also connected with the matter of forest protection in Quebec. The Government roads run through a large territory on the north and south shores, and it is really a very serious question with us

MR. NESBITT: We are very much in accord with Mr. Hawkins' views.

THE CHAIRMAN: Would you be good enough to present to the Clerk of the Committee a statement of your objections to this clause, or your views in support of this clause as it stands, in order that it may be distributed among the members of the Committee, and that they may be able to deal definitely with it.

MR. HAWKINS: Will that apply also to other clauses?

THE CHAIRMAN: To any other clauses of the Bill.

MR. HAWKINS: I received a telegram from Mr. Walsh of the Canadian Manufacturers Association, asking when he would be permitted to present his views to the Board.

THE CHAIRMAN: That depends on the clauses with reference to which he wishes to express an opinion. You can advise him that if he will send to the Clerk of the Committee a copy of his recommendations in reference to the sections, or his objections to the clauses, the matter will be taken into consideration.

HON. MR. COCHRANE: They have all been asked to do that.

THE CHAIRMAN: Let him submit his views in writing and the Committee will decide whether it is advisable to hear him or not.

MR. CARVELL: As well as your suggestions.

Mr. HAWKINS: At the annual meeting we passed resolutions and I can submit them to the Committee.

The CHAIRMAN: The Clerk is authorized to have these resolutions printed and submitted to the Committee, in order that they may be before us when the clause is discussed. It may perhaps be deemed advisable to read the correspondence that has come to hand in connection with the different clauses as we proceed with the consideration of the Bill.

Mr. MACDONELL: I would move that Mr. Best be heard.

Motion agreed to.

Mr. W. L. BEST, Canadian Legislative Representative of the Brotherhood of Locomotive Firemen and Engine men.

I might say, Mr. Chairman, that the representatives of the employees have, in accordance with your suggestion, prepared a memorandum for submission to the Committee. Unfortunately, we are not able to present it this morning, owing to the failure of one of our members, whose approval of the memorandum we would like to secure, to reach the city until this morning. I would, therefore, ask on behalf of the employees whom I represent, that Section 5 be allowed to stand until we can place the memorandum referred to before you.

The CHAIRMAN: Will you have the memorandum ready in a day or two?

Mr. BEST: It will be ready for your next sitting.

The CHAIRMAN: Very well, the clerk will have the memorandum printed and distributed to the Members of the Committee.

Section allowed to stand.

On Section 6:

> The provisions of this Act shall, without limiting the effect of the last preceding section, extend and apply to (a) every railway company incorporated elsewhere than in Canada and owning, controlling, operating or running trains or rolling stock upon or over any line or lines of railway in Canada either owned, controlled, leased or operated by such company or companies, whether in either case such ownership, control, or operation is acquired by purchase, lease, agreement or by any other means whatsoever; (b) every railway company operating

or running trains from any point in the United States to any point in Canada; (c) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased or operated by a company wholly or partly within the legislative authority of the Parliament of Canada, or by a company operating a railway wholly or partly within the legislative authority of the Parliament of Canada, whether such ownership, control or first-mentioned operation is acquired or exercised by purchase, lease, agreement or other means whatsoever, and whether acquired or exercised under authority of the Parliament of Canada, or of the legislature of any province, or otherwise howsoever; and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada. 8-9 E. VII., c. 32, s. 11. Am.

Hon. Mr. PUGSLEY: I am opposed to this section. The Legislature of a Province may incorporate a railway company, give it subsidies, guarantee its bonds—perhaps practically be the means of securing the construction of the line. Then a company like the Canadian Pacific, Grand Trunk, or Grand Trunk Pacific, leases that railway. Would it not be a great hardship that without the consent of the Legislature which has created the company, so to speak, and enabled the line to be built, the jurisdiction over that road should be absolutely taken out of the provincial authorities and handed over to this Parliament. It does seem to me that where a railway company has been incorporated by a Provincial Legislature that authority should be a consenting party before it loses absolute control over the line.

The CHAIRMAN: It will never consent.

Hon. Mr. PUGSLEY: If the Provincial Legislature will not consent, why should we take this power. Take British Columbia as an illustration. That province gave enormous aid to the Pacific and Great Eastern line under an agreement by which the rates and tolls to be charged by the company should be subject to the control of the Provincial Government, and that the company should remain under provincial jurisdiction. Why, merely because that road may be leased to the Grand Trunk Pacific or the Canadian Pacific, should the agreement made with the Provincial Legislature be annulled?

Mr. NESBITT: Because the line has been declared to be a work for the general advantage of Canada. When that is the case, the Board of Railway Commissioners should have absolute power, insofar as is possible, over the rates and operations of that line.

Hon. Mr. COCHRANE: I think that when a Provincial Legislature consents to a line passing from under its control to that of the Federal Parliament, no objection can properly be raised. There has been a great deal of objection to a road in the Province of Quebec, which has been acquired by the Canadian Pacific Railway, remaining under local jurisdiction. I have received several letters asking the Government to bring the line under the control of the Board of Railway Commissioners.

Hon. Mr. LEMIEUX: Do you recall the name of the road, Mr. Minister?

Hon. Mr. COCHRANE: It is a Quebec line.

Mr. LAPOINTE: The Quebec Central?

Hon. Mr. COCHRANE: I think that is the name.

Mr. LAPOINTE: Running from Quebec to Sherbrooke.

Hon. Mr. COCHRANE: Yes, we have been asked to bring that line under the Board of Railway Commissioners. I think, Dr. Pugsley, with all due respect to you, control by the Dominion Railway Commission is in the interest of the people as a whole.

Hon. Mr. PUGSLEY: That may be. It may also be in the interests of the people as a whole that a Provincial Legislature should be debarred from subsidizing or guaranteeing the bonds of a railway company in certain cases.

Hon. Mr. COCHRANE: If the Provincial Legislature agrees to a line coming under Dominion jurisdiction, what objection is there?

Mr. CARVELL: I was on the Quebec Central within a fortnight, and I was told by a big exporter that he has to pay a local freight rate from any point on the line to Sherbrooke, and the Railway Commission has no control over the rates charged. The result is higher freight rates have to be paid than would be the case if that line were under the control of the Railway Commission.

Hon. Mr. COCHRANE: If the road were under the Railway Commission the freight rate would be a through rate and not unduly high.

Mr. NESBITT: In the Province of Ontario in former times a number of lines were built with the aid of bonuses from counties, townships and villages. They were immediately taken over by the Grand Trunk, the Canadian Pacific or some other corporation, became part of a through railway system, and later on, when the Railway Commission was created, were brought under the jurisdiction of the Board. Then the Railway Commission was enabled to control the rates charged on those lines.

Mr. CARVELL: We have a case in New Brunswick where a small road operates coal mines. It charges 90 cents a ton for coal brought from the point of production to the city of Fredericton, a distance of about 30 miles, yet it will haul the same coal to the city of St. John, 65 miles farther, for an extra 5 cents. That would not be allowed if the road were under the control of the Railway Commission because the Board would equalize the rates and the city of Fredericton would be paying a fairer freight rate on its coal.

Mr. MACDONELL: I think you will find that in practically all these cases where local lines were taken over (absorbed or acquired), by transcontinental or through lines, the consent of the Provincial authorities was obtained in each case.

Hon. Mr. PUGSLEY: If provision is made that the transfer must be made with the consent of the Legislature of the Province, that would be all right. There are two ways by means of which a Federal Company can secure control of a local line; one by leasing the road and the other by buying or acquiring the stock. Take the C.P.R., they did not lease the St. John Bridge and Railway, but they bought the stock, and it is kept as a separate company, but owned by the C.P.R.

Hon. Mr. COCHRANE: They could put into their grant a clause protecting themselves against this and stipulating that it should not be allowed.

Hon. Mr. PUGSLEY: That is all right for the future, but you are putting in a clause here that will affect companies that have been built under provincial jurisdiction and you are by this taking away all authority, power and control which they might have, and enabling a larger company, simply by getting control of the stock to fix the rates——

Hon. Mr. COCHRANE: What harm will it do the province?

Hon. Mr. PUGSLEY: Take British Columbia: the McBride Government gave very large aid to a road running up to the north from Vancouver to Prince George.

Hon. Mr. COCHRANE: I do not think it was the McBride Government, but its successor.

Hon. Mr. PUGSLEY: But one of the Governments.

Mr. CARVELL: Call it the Government of British Columbia.

Hon. Mr. PUGSLEY: They stipulated that they wanted to get advantageous freight rates for the coast cities, and they stipulated that the rate should be under the absolute control of the Government of British Columbia.

Hon. Mr. COCHRANE: I think that was the Canadian Northern.

Hon. Mr. PUGSLEY: And they invested millions of dollars on that road.

Hon. Mr. COCHRANE: They did the same thing with the Canadian Northern, and it is not in the public interest.

Hon. Mr. PUGSLEY: What right have we to pass a law which will nullify that agreement and enable the company to defy British Government?

Mr. SINCLAIR: It was done in the interest of the province, to keep down rates, and there is no objection if we have jurisdiction. That is the only question in my mind.

Mr. NESBITT: That road is no use simply running into Vancouver, and in order to become a road it has to be connected with some of the transcontinental roads. It will be of no benefit until it is connected with the country it is intended to serve, and the moment it is connected with any of the principal roads we should control the rates.

Hon. Mr. PUGSLEY: The people of British Columbia put their money into it in good faith.

Mr. NESBITT: We do not confiscate their money.

Hon. Mr. PUGSLEY: We break their agreement.

Mr. NESBITT: Supposing you want to ship over that same road, they charge you express rates which amount to more than the value of the stuff you want to ship, so that you cannot ship over that road.

Hon. Mr. PUGSLEY: You are getting back by this section to the Railway Act as it was originally passed, that provided that wherever a company connected with another company which was under the control of the Dominion, the Canadian Northern, Grand Trunk or Intercolonial, it should, ipso facto, be a work for the general advantage of Canada. There was a great deal of objection to that and the law was changed, and it was provided that only as to the point of junction should it be under the control of the Parliament of Canada. You are now proposing that a federal company can simply buy the stock of a provincial company and get the control, and the moment it gets the control it becomes, ipso facto, a work for the general advantage of Canada, and it is taken out of the jurisdiction of the provincial legislature.

Mr. MACDONELL: That is right.

Mr. NESBITT: Then what is wrong with it?

Hon. Mr. PUGSLEY: It is a breach of faith.

Hon. Mr. LEMIEUX: It is a question of provincial autonomy, and when a province has granted a charter to a company and stipulated that the company shall have certain privileges, I do not see how the Federal Government can step in and interfere.

Hon. Mr. COCHRANE: Then you are willing to oblige the people to pay two rates just as Mr. Carvell mentions?

Mr. NESBITT: It might hurt some provinces' dignity, but it is a good thing for the people that the Government should control the rates.

The CHAIRMAN: Mr. Lawrence, the legislative representative of the Brotherhood of Locomotive Engineers would like to be heard on this clause.

Hon. Mr. LEMIEUX: Do you think we should pass this clause without hearing from the representatives of the provincial governments? It seems to be an infringement of provincial authority.

Hon. Mr. COCHRANE: A contention has been made that when the Dominion Government bonus a local charter they have the right to control them.

Hon. Mr. PUGSLEY: I know that in the New Brunswick Legislature some years ago our contention was that if Parliament chose to take over the provincial road and

deprive the Provincial Legislature of all authority over them they should return to the provinces the aid which they had given to build the road.

Mr. LAWRENCE: As representative of the Brotherhood of Locomotive Engineers, with Mr. Best, the representative of Locomotive Firemen, I have drafted a little article with regard to this matter, and I desire to present it to the committee. We say: let this section remain as it is at present for the reason that its requirements will make for uniformity in the equipment, maintenance, and operations of locomotives and cars, as well as in operating rules, thus ensuring greater safety on all lines of railway which may be considered as work for the general advantage of Canada. Uniformity in equipment or in operation is regarded as an essential to safety in railway operation. The Quebec Central Railway was mentioned, and I may say we have had a great deal of trouble in regard to that road. It is operated by the Canadian Pacific. The Board of Railway Commissioners has made regulations regarding the equipment of locomotives, so that they will not be equipped in such a way as to prevent the engineer from seeing. We have complaints and taken them up to the Board, and they never say that they have any jurisdiction. The same in regard to the safety appliances on the locomotives and cars. The same men operate that road as run on other portions of the Canadian Pacific, and if you are familiar with the equipment of a locomotive you will know how essential it is that all locomotives should be equipped practically the same and the same regulations made in regard to safety. These regulations will apply to the cars. It is a very important section, and I think the railway employees are unanimously of the opinion that this section should remain as it is, and these roads be declared to be works for the general advantage of Canada.

Hon. Mr. PUGSLEY: It rather seems to me that, before Parliament pass this section the provincial legislatures should have an opportunity to be heard.

Mr. MACDONELL: I recollect the old Grey and Bruce, and there were two or three other roads running out of Toronto. In all those cases the province was a consenting party when these roads were absorbed and taken over by the large lines, but in that case they passed out of their ken.

Hon Mr. PUGSLEY: British Columbia is protesting today most strongly against the placing of those roads in that Province which have been recently assisted so liberally by the local authorities being placed under the control of the Federal Parliament.

Hon. Mr. COCHRANE: We have put the Canadian Northern under the jurisdiction of the Board by Order-in-Council.

Hon. Mr. PUGSLEY: Against the protest of the British Columbia Government.

Hon. Mr. COCHRANE: I have not received any protest from them.

Hon. Mr. PUGSLEY: I see it in the newspapers.

Hon. Mr. COCHRANE: They did not let me know about it.

Mr. CARVELL: You and I, not many years ago, asked that these provincial roads should be brought under the jurisdiction of the Dominion Government.

Hon. Mr. PUGSLEY: Pardon me, what we did was this: we said British Columbia could do as she pleased in regard to it, but that we ought not to grant Dominion aid unless they were brought under the control of the Dominion.

The CHAIRMAN: I will call the Committee's attention to the fact that the legislatures of the different provinces have representatives located, I understand, in Ottawa, and if they were interested in this clause I think they should be here.

Hon. Mr. PUGSLEY: Has British Columbia any representative? I know that New Brunswick has not.

Hon. Mr. LEMIEUX: I remember well the case of the Montreal Street Railway, which was carried to the Privy Council, and it was decided that our Act was not con-

stitutional, and that we had no right to give jurisdiction to the Board on through traffic, that is in regard to provincial lines.

Hon. Mr. PUGSLEY: As far as the Ontario Government is concerned, they think that this Government can do nothing wrong and they are not watching proceedings here.

Mr. JOHNSTON, K.C.: With reference to that case, it did not decide exactly as suggested: it decided that until a work was decided to be a work for the general advantage of Canada, it did not come under Dominion jurisdiction. This case did not decide that; it decided thah until the work was declared a work for the general advantage of Canada the section was ultra vires.

MR. SINCLAIR: I understand that most of these local lines were brought under federal control at the time they were incorporated in order to enable them to get subsidies.

MR. JOHNSTON, K.C.: That is very likely.

MR. SINCLAIR: It is a very rare thing now to find a provincial railway that is not now under the general jurisdiction of Canada by a special Act. There may be a few but not many.

HON. MR. PUGSLEY: This section is entirely new, is it not?

MR. JOHNSTON, K.C.: It is virtually new. There was a section something like it in 8 and 9, Edward VII, but it did not go as far as this.

HON. MR. PUGSLEY: I object to the section, and will vote against it, but have nothing further to say with respect to it.

MR. NESBITT: I move that the section be concurred in.

THE CHAIRMAN: It is apparent that only two members of the Committee are opposed to the section.

HON. MR. LEMIEUX: As the consideration of this Bill has been fairly conducted since the beginning of these proceedings, I would respectfully suggest that the section be allowed to stand until the provinces are made aware of what is proposed to be done.

MR. CARVELL: How are we ever going to finish the consideration of this Bill if we continue bringing people here from all over the country from time to time?

HON. MR. LEMIEUX: You will agree with me that this is a very important section. I look upon this provision as an invasion of provincial rights.

THE CHAIRMAN: Do you expect the provinces will object to it?

HON. MR. PUGSLEY: Certainly they will, if they have not seen the section.

HON. MR. LEMIEUX: I assure you that if you will allow the clause to stand I will communicate at once with the Attorney General of Quebec and be guided by him in the matter.

HON. MR. PUGSLEY: I would not want any stronger reason for allowing the section to stand than the Chairman's statement that we might assume the provinces would object to it. The provinces would not raise any objection unless they considered the section most unreasonable.

MR. NESBITT: This talk of provincial rights i bsecoming a matter of the provinces standing on their dignity.

HON. MR. PUGSLEY: I have great faith in the provinces just now.

HON MR. COCHRANE: I have great willingness to concede provincial jurisdiction, but when the provinces consent to jurisdiction passing out of their hands, as they have done in every case, what objection can be urged?

MR. CARVELL: I am very well acquainted with the Railway situation in the Maritime Provinces. No province has built so many railways as the province of New Brunswick—perhaps the Minister of Railways thinks too many have been built—and

I do not know why it would not be in the interest of any Provincial Government to have its railway rates controlled by the Board of Railway Commissioners.

Mr. MACDONELL: Otherwise you put back the hands of the clock twenty years.

Mr. CARVELL: To me it is not a question of a province standing on its dignity, but whether the Parliament of Canada shall legislate in the best interests of the Dominion as a whole. As a member of Parliament from the province of New Brunswick, I am prepared to assume sole responsibility for my action and to say that this Clause should be passed.

The CHAIRMAN: Will you make a motion to that effect?

Mr. CARVELL: Yes. I move that Section 6 be concurred in.

Mr. MACDONELL: I second that motion.

Resolution put and carried.

On Section 8—Provincial Railways connecting with or crossing Dominion Railways.

Mr. JOHNSTON, K.C.: Paragraph (b) has been declared to be ultra vires. Judgment was given by the Privy Council on the 12th January, 1912.

Hon. Mr. LEMIEUX: You refer to the judgment in the street railway case?

Mr. JOHNSTON, K.C.: Yes. In that case paragraph (b) was held to be ultra vires of this Parliament. It was held until the road had been declared to be a work for the general advantage of Canada this Parliament had no jurisdiction. Once the railway is declared to be a work for the general advantage of Canada then the Dominion Parliament has jurisdiction.

Hon. Mr. LEMIEUX: There is a proviso which means that in the case of a railway owned by a Provincial Government, for example the Temiskaming Railway, the transfer provision of this Act could not apply without the consent of such Government. That is to say, you could not fix the rate on that railway in Ontario without the consent of the Provincial Government of Ontario, although it taps at both ends the transcontinental systems.

HON. MR. COCHRANE: I understand that, but some eminent person said that by granting that subsidy to the Temiskaming and Ontario Railway we would have a right to name a through rate over it.—Not any local rate but a through rate.

MR. NESBITT: I do not believe you have.

MR. CARVELL: I wish we had jurisdiction to control all the rates, over it

MR. NESBITT: So do I, but I do not believe we can; at any rate, we do not control them.

MR. MACDONELL: We are prohibiting that being done in the future by this Section.

MR. CARVELL: It would be pretty hard for us to pass legislation now in regard to that, I do not think we have jurisdiction to do it.

MR. MACDONELL: What is the necessity of inserting something which we are not doing? We are negativing a negative.

MR. JOHNSTON, K.C.: we have no power to pass paragraph (b). Mr. Lemieux was referring to paragraph (d).

MR. CARVELL: You say we have no power to pass paragraph (b).

MR. JOHNSTON, K.C.: It says here: "although not declared by Parliament to be a work for the general advantage of Canada"—that is the vice of the section; that it attempts to control the rates, while it is declared not to be a work for the general advantage of Canada.

MR. CHRYSLER, K.C.: It is all right as to the crossings and junction and all the movement of traffic at that point. The operation of the road is properly brought under the control of the Dominion Parliament and the Railway Board, but as to the carriage of goods and tolls it is different. That is not a necessary incident of the right of the Parliament of Canada to legislate.

THE CHAIRMAN: Then we had better strike out paragraph (b).

MR. MACDONELL: Paragraph (b) was in the old Act.

MR. JOHNSTON, K.C.: And was held to be ultra vires.

HON. MR. LEMIEUX: So that my objection was all right.

Paragraph (b) struck out and section adopted.

On Section 9, Sub-section 4, Reappointment of Commissioners.

MR. CARVELL: I know this has been the law from the beginning, but why should a Commissioner because he happened to have been a judge of a superior court be exempt from being dismissed for cause, any more than any other commissioner? That is put in, I suppose, in order to get judges to accept these positions, but it is giving one commissioner a wonderful advantage over his fellow commissioners.

HON. MR. LEMIEUX: Is it not because, when he was a judge, he was not subjected to this provision, and wanted to become Chief Commissioner with the same privileges he enjoyed when he was a judge?

MR. CARVELL: Yes, but why should we hold out inducements like that to get men to leave the bench?

HON. MR. LEMIEUX: We have made no mistake so far as the appointment of judges is concerned. We appointed Justices Mabee and Killam.

MR. CARVELL: I do not know of any gentleman on the Board that I think should be removed anyway, but it certainly gives one class advantage over another.

MR. NESBITT: I understood until the other day that they were all subject to the Parliament of Canada. I do not think they should be subject to the Governor-in-Council, because I think they should be an absolutely independent body. I am not saying anything against the present Administration but I do not think they should be subject to the Governor in Council.

MR. CARVELL: I am rather inclined to take that view too.

MR. NESBITT: I think they should be subject to Parliament only.

THE CHAIRMAN: Would it be fair to the present Commissioners to have this changed in any way?

HON. MR. COCHRANE: None of them come under it now at all.

MR. SINCLAIR: That would put them in the same position as judges. You cannot dismiss a superior court judge.

MR. NESBITT: I think they should be absolutely independent of the party in power, whether it be Grit or Tory.

MR. CARVELL: I think so.

MR. NESBITT: They should be subject to the Parliament of Canada, and you should get the best men you could, because you give them great power.

HON. MR. COCHRANE: The salary will not bring the best men, nor will the salaries of the judges be an inducement to the best men.

MR. NESBITT: I do not see why they should be limited to ten years.

HON. MR. COCHRANE: I think that is all right.

MR. CARVELL: Have you considered the point of making them subject to a dismissal only on an address of the House of Commons?

HON. MR. COCHRANE: I would not object to that.

HON. MR. LEMIEUX: If the Minister does not object, I will make a motion to that effect.

MR. CARVELL: We might change the clause and make it read: "but may be removed at any time by or upon an address of the Senate and House of Commons."

MR. SINCLAIR: "Shall not be removed except upon an address of the Senate and House of Commons."

MR. CARVELL: You are making it stronger.

MR. MACDONNELL: "Shall only be removable on an address of the Senate and House of Commons."

THE CHAIRMAN: Is the Committee really unanimous in making this change?

MR. NESBITT: I am in favour of it.

HON. MR. LEMIEUX: In this matter I take the Minister of Railways as my leader.

HON. MR. COCHRANE: I do not at all object to it. I do not think any exception should be made.

MR. JOHNSTON, K.C.: I do not know exactly what the proposed amendment is.

HON. MR. LEMIEUX: It is proposed that no member of the Board of Railway Commissioners should be removed except by address of the Senate and House of Commons. You remove the section in the Act with respect to the Chief Commissioner and have this a general rule.

MR. CARVELL: That is the point.

MR. LAPOINTE: You will also have to strike out the present paragraph (b).

MR. JOHNSTON, K.C.: I would suggest that the wording in Subsection 3 read as follows: "but may be removed at any time upon address of the Senate and House of Commons." Paragraph (b) will have to go out.

THE CHAIRMAN: Then Subsection 3 will read as follows:

> "Each Commissioner shall hold office during good behaviour for a period of ten years from the date of his appointment, but may be removed at any time upon address of the Senate and House of Commons."

Section 9, as amended, concurred in.

Section adopted.

On Section 13, Interest, Kindred or Affinity.

Mr. NESBITT: Does the latter part of the sentence not contradict the first part? It says: "Whenever any commissioner is interested in any matter before the Board, or of kin or affinity to any person interested in any such matter, the Governor in Council may appoint some disinterested person to act as Commissioner pro hac vice," etc.; and then it says: "Provided that no Commissioner shall be disqualified to act by reason of interest or of kindred or of affinity to any person interested in any matter before the Board."

Mr. CARVELL: It seems contradictory.

Mr. FAIRWEATHER: The first portion provides for putting him aside, but the fact that he has acted in such case does not vitiate proceedings.

Mr. JOHNSTON, K.C.: It is the same as before.

Section adopted.

On Section 20, Arrangements of Sittings and Business.

Mr. CARVELL: That is really declaratory of what they have been doing.

Hon. Mr. COCHRANE: This is new.

Mr. JOHNSTON, K.C.: It was put in that form to meet the altered condition on account of the increase of the membership of the Board and the division of the work.

Mr. CARVELL: It is a pity we could not apply these principles to many of our courts in Canada.

Section adopted.

On Section 23, Duties of Secretary of the Board.

Mr. CARVELL: Paragraph (a) of this section provides that the secretary shall attend all sessions of the Board, and Section 18 provides that the Board may hold more than one meeting at a time.

Hon. Mr. LEMIEUX: But it provided by another section that the Board may appoint an acting secretary.

Mr. CARVELL: Supposing there were two sittings held in Ottawa, the secretary might not be absent on account of illness, but might be attending another meeting.

Hon. Mr. COCHRANE: What objection is there to saying: "The secretary or acting secretary?"

Mr. SINCLAIR: It might read in this way: "It shall be the duty of the secretary of his assistants."

Mr. JOHNSTON, K.C.: Add to Section 22, "The Governor in Council may also appoint an assistant secretary."

Mr. NESBITT: Make it " assistant secretaries."

Mr. CARVELL: That would not do, because Section 24 provides that the Board appoint the assistant.

Mr. MACDONELL: I think Section 24 covers it.

Mr. CARVELL: It might, by implication.

Mr. SINCLAIR: I think it would be all right to say "It shall be the duty of the Secretary or Acting Secretary."

Mr. NESBITT: I would suggest to add that to Section 22.

Mr. JOHNSTON, K.C.: Section 24 does not cover the point. In this case you have a permanent Assistant Secretary and there is no provision in the Act for his appointment.

Hon. Mr. COCHRANE: I am informed there are two Assistant Secretaries.

Mr. JOHNSTON, K.C.: If so, they have been appointed without authority under the Act. There is nothing in the Act at present that authorizes their appointment. I think the Section should stand in order to permit of its being re-drafted.

The CHAIRMAN: What is the wish of the Committee?

Hon. Mr. PUGSLEY: I think it would be better to have Section 23 re-cast in order to cover the points raised.

Section allowed to stand.

Committee adjourned until 11 a.m.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 3--APRIL 26, 1917

OTTAWA
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room No. 301,

Thursday, 26th April, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m. Present:

Messieurs Armstrong (Lambton) in the chair, Bennett (Calgary), Blain, Bradbury, Cochrane, Cromwell, Donaldson, Green, Lapointe (Kamouraska), Lemieux, Macdonell, Reid, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

Ottawa, April 26, 1917.

The Committee met at 11 a.m.

MR. BLAIN: I have a communication here which I suppose has reached the Committee in some other way, a plea for just and equitable treatment of the public in the law relating to telephones and long distance service.

THE CHAIRMAN: Be good enough to hand in your communication, and the Clerk will forward a letter. The form of the letter used in such cases is as follows:

"Dear Sir,

In accordance with the mode of procedure adopted by the Committee on Bill No. 13, to consolidate and amend the Railway Act, you are hereby requested to put in writing your objections or proposed amendments, if any, to the bill, and mail them to the Clerk of the Committee for their insertion in the printed proceedings, if need be. In addition, your representative, if any, will be given a hearing before the Committee.

Yours truly,

N. ROBIDOUX,

Clerk Special Committee
on Bill No. 13."

That is the answer sent to practically all correspondents of that nature.

MR. JOHNSTON, K.C.: While we were dealing with Clause 9, it seemed to be assumed by the Committee yesterday that the Judges' Act contained provisions for the removal of Superior Court Judges, but I find it does not. It contains provisions for the removal of County Court Judges, and the Governor-in-Council may remove County Court Judges under that section. The only power to remove the Judges of the Superior Court is by the Governor-General on address of the Senate and House of Commons. If it is the desire of the Committee I think it would be desirable to co-ordinate that section with the Act and use exactly the same language. We did it yesterday. The language was not identical but I suppose probably it had the same effect.

THE CHAIRMAN: Section 9 was passed.

MR. JOHNSTON, K.C.: I think in order to make the section in exact accordance with the B. N. A. Act we might use the same phraseology, and before the words "at any time," insert the words "by the Governor-General, on an address of the Senate and the House of Commons."

MR. BENNETT: You will have to move that we refer back to section 9 for the purpose of amending it as stated by Mr. Johnston.

Motion to refer back agreed to.

THE CHAIRMAN: The clause then will read, "but may be removed at any time by the Governor-General."

MR. BENNETT: If you wish to be exact, the proper expression is "Governor-in Council."

MR. JOHNSTON, K.C.: "By the Governor-in-Council on address of the Senate and House of Commons."

Section as amended adopted.

On Section 23, Duties of Secretary.

MR. JOHNSTON, K.C.: I was asked to re-cast Clause 23 yesterday, because it appeared there was a Secretary and Assistant Secretaries, and the Board might hold two sessions at the one time. Of course it is manifestly impossible for one secretary to attend all meetings of the Board. I propose to re-cast the section by striking out Paragraph "A". Then Paragraph "B" in this Bill will be Paragraph "A", and "C" will be Paragraph "B," "D" will be "C," and "E" will be "D." Paragraph "D" will read as follows:

> "To have every regulation and order of the Board drawn pursuant to the direction of the Board, duly signed and sealed with the official seal of the Board, and filed in the office of the Secretary."

HON. MR. LEMIEUX: I understand you have two Secretaries. You have Mr. Cartwright and Mr. Primeau.

MR. COCHRANE: I think there are three.

MR. LEMIEUX: The reason I am asking is that, as the Commission holds sittings in Quebec, one Secretary should be conversant with the French language.

HON. MR. COCHRANE: And, he is.

On Section 26, Commissioners.

HON. MR. LEMIEUX: Who is the Assistant Chief Commissioner?

HON. MR. COCHRANE: Mr. Scott.

Section adopted.

On Section 28, Employment of Others.

MR. BENNETT: This section says, "Whenever the Board, by virtue of any power vested in it by this Act, appoints or directs any person," etc. There are some Acts other than this one which vests powers in the Board, and a case arose under that. There was a case in which under another Statute it was said that an order might issue from the Board of Railway Commissioners for Canada.

MR. JOHNSTON, K.C.: If the alteration suggested by Mr. Bennett was made, and the words "or otherwise" inserted after the word "Act" in the second line, would it not then be necessary to add similar words after the word "Act" in the fourth line?

MR. BENNETT: I am speaking generally, I do not know that it would follow that it would always be done by the Governor in Council; some of the provinces sometimes, perhaps, may exercise doubtful jurisdiction and, I think, that provision should be made in general terms to meet the point I have raised. It might involve a recasting of the section.

MR. JOHNSTON, K.C.: That is a question of policy; take a question, such as sometimes occur, suppose the province of Ontario asks the Board of Railway Commissioners to undertake certain duties, should not the province of Ontario, in that case, pay?

MR. BENNETT: Certainly; it seems to me that provision should be made to meet the point I have raised.

MR. JOHNSTON, K.C.: "Or by any other statute of the Parliament of Canada", that will cover the point.

MR. CHRYSLER, K.C.: "By virtue of any power vested in it by this Act, or by any other Act of the Parliament of Canada".

THE CHAIRMAN: Clause 28 as amended would read as follows:

> "Whenever the Board, by virtue of any power vested in it by this Act, or by any other Act of the Parliament of Canada, appoints or directs any person, other than a member of the staff of the Board, to perform any service required by this

Act, or by such other Act, such persons shall be paid therefor such sum for services and expenses as the Governor in Council may, upon the recommendation of the Board, determine."

Section as amended adopted.

On Section 31, Annual Report to Governor in Council.

MR. BENNETT: I see that the section takes the 31st of March as the end of the Railway year; I think we should follow the practice adopted by the Railways of Canada and make the Railway fiscal year end with the calendar year.

HON. MR. COCHRANE: I think that is a good suggestion, and it ought to be carried out. I do not know why it could not be done in this Act, instead of by a special Act.

MR. JOHNSTON, K.C.: The Committee will be dealing with a clause relating to annual statistics later on.

MR. BENNETT: I think we might make the change in this section.

MR. CHRYSLER, K.C.: I understand the C.P.R. are about to adopt the practice of making their fiscal year end with the calendar year, and it would be inconvenient to the Company to make reports to the Board for the year ending 31st of March, when their fiscal year ends on the 31st December.

MR. BENNETT: Substitute the word "December" for "March" in the second and fourth lines.

Motion of Mr. Bennett concurred in and section adopted as amended.

MR. BENNETT: Might it not be well to substitute between the words "other" and "authority" in the sixth line of paragraph (a) the word "lawful".

MR. JOHNSTON, K.C.: I think it is surplusage. Authority means lawful authority.

MR. BENNETT: It means lawful authority only.

MR. JOHNSTON, K.C.: It can do no harm to insert it. It would mean "authority" having power in the premises.

Paragraph adopted as amended.

On Sub-Section 2.

> The Board may order and require any company or person to do forthwith, or within, or at any specified time, and in any manner prescribed by the Board, so far as is not inconsistent with this Act, any act, matter or thing which such company or person is or may be required or authorized to do under this Act, or the Special Act, and may forbid the doing or continuing of any act, matter or thing which is contrary to this Act or the Special Act; and shall for the purposes of this Act have full jurisdiction to hear and determine all matters whether of law or of fact.

MR. BENNETT: There is a point in connection with the words "so far as is not inconsistent with this Act" which comes back to the point raised a few moments ago. There are other jurisdiction-conferring Acts than this which require the exercise of power by the Board.

MR. JOHNSTON, K.C.: Will they not expressly state?

MR. BENNETT: Is that section broad enough to cover such cases?

MR. JOHNSTON, K.C.: I think it would be a mistake to enlarge this section. If Parliament chooses in special instances to give the Board power to do anything it ought to expressly state it in the Act.

HON. MR. LEMIEUX: We have a section indicating that the Railway Commissioners may have certain powers vested in them by Parliament besides those mentioned here.

MR. JOHNSTON, K.C.: If Parliament chooses to give the Board additional powers it ought to state so at the time.

HON. MR. LEMIEUX: I think this wording is compact enough.

Sub-section adopted.

On Sub-section 3.

> The Board shall, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due excerise of its jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights and privileges as are vested in a superior court.

MR. MACDONELL: Should there not be a reference to the Special Act? That confines their authority to matters under this Act. Matters may arise under Special Acts, in regard to the various special matters mentioned here. I think there should be a special clause in the Act somewhere covering the whole situation.

MR. BENNETT: Mr. Chrysler may have a suggestion.

MR. CHRYSLER, K.C.: Perhaps you could extend this section to No. 2. I think Mr. Johnston is right about that. If you say "with due exercise to its jurisdiction" that is all you need say.

MR. JOHNSTON, K.C.: Strike out all the words "or otherwise for carrying this Act into effect."

MR. CHRYSLER, K.C.: After the word "jurisdiction" in the fifth line strike out the words "under this Act or otherwise for carrying this Act into effect."

Sub-section adopted as amended.

On Sub-section 4.

> The fact that a receiver, manager, or other official of any railway, or a receiver of the property of a railway company, has been appointed by any court in Canada or any province thereof, or is managing or operating a railway under the authority of any such court, shall not be a bar to the exercise of the Board of any jurisdiction conferred by this Act; but every such receiver, manager, or official shall be bound to manage and operate any such railway in accordance with this Act and with the orders and directions of the Board, whether general or referring particularly to such railway; and every such receiver, manager, or official, and every person acting under him, shall obey all orders of the Board within its jurisdiction in respect of such railway, and be subject to have them enforced against him by the Board, notwithstanding the fact that such receiver, manager, official or person is appointed by or acts under the authority of any court; and whenever by reason of insolvency, sale under mortgage, or any other cause, a railway or section thereof is operated, managed or held otherwise than by the company, the Board may make any order it deems proper for adapting and applying the provisions of this Act to such case.

MR. MACDONELL: I think that the same objection applies to the words "conferred by this Act" in line twenty-eight. I think that they should be dropped, because very often special Acts are passed to wind up and liquidate concerns, and the reference to

the Railway Board would not give it the powers, because they are confined within the limits of the powers of this Act.

MR. JOHNSTON, K.C.: You propose to strike out the words "conferred by this Act"?

MR. MACDONELL: Yes.

MR. JOHNSTON, K.C.: Would it not be well to substitute the word "its" for "any" and the wording will read "to the exercise by the Board of its jurisdiction."

MR. MACDONELL: Exactly.

MR. BENNETT: These changes are necessary all the way through.

THE CHAIRMAN: Is it accepted by the Committee that the word "its" shall be substituted for "any" in line twenty-eight and the words "conferred by this Act" struck out?

Subsection passed as amended.

On Section 34.

> The Board may make orders and regulations,—(a) with respect to any matter, act or thing which by this or the Special Act is sanctioned, required to be done, or prohibited;
>
> (*b*) generally for carrying this Act into effect; and without limiting the general powers by this section conferred.
>
> (*c*) as in this Act specifically provided.

MR. BENNETT: I would suggest that paragraph (b) be amended so as to give power to the Board to exercise jurisdiction conferred by any other Act. I should think, Mr. Johnston, you had better recast the whole section.

MR. JOHNSTON, K.C.: Cannot we make the needed changes now?

MR. BENNETT: Yes, if you want to. It can be done very simply. I would suggest that the paragraph read:

> "Generally for carrying the provisions of this Act, or any other Act of the Parliament of Canada into effect."

But perhaps the amendment is of too broad a nature.

MR. JOHNSTON, K.C.: It is pretty broad. The amendment would give the Board jurisdiction over, for instance, the Companies Act.

MR. CHRYSLER, K.C.: I would put it this way:

> (*b*) Generally for carrying this Act into effect;
>
> (*c*) exercising jurisdiction conferred by other Act of the Parliament of Canada.

MR. BENNETT: You separate rather than join, the provisions.

MR. CHRYSLER, K.C.: Yes.

MR. BENNETT: I would, too.

MR. JOHNSTON, K.C.: I would submit the following as paragraphs (b) and (c):

> (b) Generally for carrying this Act into effect.
>
> (c) Exercising any jurisdiction conferred on the Board by any other Act of the Parliament of Canada.

MR. BENNETT: That covers the point and makes it very clear.

Section adopted as amended.

On section 34, subsection 3, penalties:

Mr. BENNETT: This subsection is not clear. It would seem to me that there should be $100 penalty for a continued violation of that character.

Mr. MACDONELL: Let the Board use its discretion.

Mr. CHRYSLER, K.C.: You might leave that until you take the penalty clauses at the end into consideration.

Mr. BENNETT: Then it is not necessary to have this provision at all?

Mr. CHRYSLER, K.C.: No, it is not.

Mr. JOHNSTON, K.C.: One is a violation of the Act, and the other is a violation of the order of the Board.

Mr. BENNETT: Why not use the same language throughout?

Hon. Mr. LEMIEUX: Do we by this section confer the power which was exercised this winter by some of the railway companies, who were invoking an order given by the Railway Board as regards, for instance, the commandeering of coal? Several railway companies, notably the Grand Trunk, seized the coal of other concerns, and I fail to see in the Act that any authority is vested in the Board for such action.

Hon. Mr. COCHRANE: Don't you think there should be authority? They are common carriers and it would certainly discommode the public more if the railways were shut down for want of coal than if another concern were shut down.

Hon. Mr. LEMIEUX: I am not questioning the necessity for certain railway companies to commandeer the coal in that way, but is there any authority given by the Act permitting railway companies to do such a thing? You will remember it was a distinct order given by the Chairman of the Board.

Mr. BENNETT: They have taken the coal steadily without an order of the Board.

Hon. Mr. LEMIEUX: Did Mr. Reid, the Minister of Customs, not read to the House, at the beginning of this session, a letter from Sir Henry Drayton authorizing the railway companies to do that on account of the coal shortage? Would it not be well to settle that point right here? I would like to hear from Mr. Blair on that point.

Mr. BLAIR: I do not know what the position taken by the Chairman was, but there is no power in the Act so far as we can find authorizing the railway companies to expropriate or appropriate this coal. Nor is there any power given to the Board of Railway Commissioners to make an order permitting it.

Hon. Mr. LEMIEUX: What was the extent of Sir Henry Drayton's letter? Was it only advisory?

Mr. BLAIR: Yes. His main object was, having regard to the necessities of the railways, to see that the persons whose coal was seized or commandeered were supplied, as soon as reasonably could be, by the railway companies with the amount of coal which was taken from them. The good offices of the Board were invoked, and the Chief Commissioner sought to facilitate the movement of the traffic, and at the same time to see the people who were inconvenienced were compensated as soon as possible.

Hon. Mr. LEMIEUX: Would it not be well to frame a clause to meet such a case as that last one?

THE CHAIRMAN: The question you have raised is a very important one and I understand from Mr. Johnston it would not be possible to consider it in dealing with this clause. It would not be wise to include it in this clause.

HON. MR. LEMIEUX: I had a case in point to which I would like to refer. However, if you think we may discuss it later on I offer no objection.

THE CHAIRMAN: There is no objection to it being discussed now.

HON. MR. LEMIEUX: A company which I represent in Montreal has a chemical pulp sulphide mill in the county of Gaspe. They require lots of coal, and had ordered their coal in the United States, but the coal and cars were seized or commandeered by the Grand Trunk. I understand the situation of the Grand Trunk was such that they were in a quandary. They did not know how to move their freight. They took that coal, and, as a result, the industry was stopped during several days, there were heavy losses incurred by that industry, and when they applied to the railway company for compensation, the railway company offered the cost of coal according to the invoice. Of course they were obliged to get coal in smaller quantities, but at a higher price on account of the prevailing great shortage. The railway company refused to compensate the industry for losses incidental to the commandeering. I saw Mr. Chamberlain, the president of the Grand Trunk, and he said, "You will find the order given by Sir Henry Drayton." Of course I had read about it, but I found no authority in the Act to commandeer that coal. Now, should there not be a section in the Act to cover a case of that kind?

MR. BENNETT: I do not think so. Have the companies not a qualified property in anything carried by them, and when they use any article they are transporting for their own purposes, are they not liable for conversion, the measure of damage being the common law liability for conversion?

MR. CHRYSLER, K.C.: They have a qualified property in it.

MR. BENNETT: If any person intrusted with property converts it to his own use, he becomes liable for damages and the damages are such as arise out of the conversion.

HON. MR. LEMIEUX: The immediate or remote damages?

MR. BENNETT: In our province the measure of damage for conversion is the damage directly attributable to the common law theory. There is no change. I should say it would only be the replacement cost of material without any incidental damages, unless the company was advised at the time that it was used for a specific purpose—the general theory of conversion. When I was with the Canadian Pacific Railway I advised them to take the coal and run the locomotive, that they had a qualified property in it and could use it, and the measure of damages would be such as arise out of conversion.

MR. JOHNSTON, K.C.: The railway company is a bailee for hire, is it not?

MR. BENNETT: I am not arguing that point.

MR. MACDONELL: They have a qualified property at common law.

There is no question that in connection with the shipment and carrying of freight the railway companies have a qualified contract with the shipper and if they require it, under the common law doctrine, they convert the coal which they are carrying for the shipper to their own use.

MR. CHRYSLER, K.C.: It is a question of damages.

Mr. BENNETT: Altogether a question of damages; the railway company has to pay for the coal.

HON. MR. COCHRANE: I think it is right they should have it.

MR. JOHNSTON, K.C.: The person who is aggrieved by the act of the railway company should have more damage than the mere cost of the coal, he should be entitled to compensation for the damages which he really sustained.

MR. BENNETT: This practice is not new at all, it is as old as the railways themselves; whenever they have wanted the coal they have taken it. There is no authority expressly authorizing them to do so, and it is recognized at once that their action is an interference with somebody's right; but the paramount necessity of the company compels them to take it, and the measure of damages which the company should pay, in the absence of knowledge on the part of the Railway Company that the coal was

to be used for a specific purpose, would be the cost of replacing the coal at the time it was taken.

HON. MR. LEMIEUX: That is all right from the point of view of the railway company, but it is not right from the point of view of the other party to the transaction.

MR. BENNETT: They take it, not for themselves, but in the public interest, in order to enable them to continue the movement of their trains.

HON. MR. LEMIEUX: But is it just that the person at the other end should be called upon to suffer a loss for the benefit of the railway company?

MR. BENNETT: As I understand it, if the head of the company to whom the coal was consigned told the Grand Trunk Railway Company that they were short of coal and that they required the coal which the railway company desired to take for the purpose of keeping their factory running, and the railway company in knowledge of that fact took the coal then the aggrieved party could recover special damages from the company. Is not that the case?

MR. CHRYSLER, K.C.: Yes.

MR. BENNETT: But if, on the other hand, the railway company took it in the ordinary course of business, whilst the shipment was in transit, and in the absence of any specific information as to the purpose for which it was to be used then, the measure of damages is the cost of replacing the coal.

HON. MR. LEMIEUX: If I were Mr. Johnston, I would frame a clause which would make it clear that the aggrieved party shall be properly compensated.

HON. MR. COCHRANE: They can obtain proper compensation to-day, can they not? As I understand it they can do so under the present provision.

MR. JOHNSTON, K.C.: The trouble is, according to what members of the Committee say, that the aggrieved parties do not get proper compensation.

HON. MR. COCHRANE: I know that is the contention. Parties who are aggrieved have the opportunity of going to the courts now, in order to obtain proper compensation, but they do not take advantage of it.

HON. MR. LEMIEUX: The Railway Companies can always protect themselves, but this Committee ought to endeavour to protect the public against the encroachments of these large corporations especially as to the commandeering of coal.

Hon. Mr. COCHRANE: But they would have to go before the courts, if the railways contested their claim, even if we put in a section as you suggest.

Hon. Mr. LEMIEUX: Yes, but the railway companies will be less aggressive if there is a clause in the Bill which provides for such a contingency, and which sets out clearly that there will be compensation. Remember these companies are under the thumb of the Railway Board.

Mr. MCCREA: I know that the railway companies have been commandeering coal whenever they see fit; they take it and pay for it. In one case that I know of this coal was bought last fall at one-half the price for which it can be bought at the present time, and the railway company simply took the coal and paid for it at the cost of supply, so that the party from whom it was taken has to replace the coal at a higher price.

Mr. BENNETT: That is not what happens. It is obvious that if a man contracts for 1,000 tons of coal at, say, $2 per ton, and 500 tons of that coal are taken from him by the railway, the railway has to replace that coal, or pay the cost of replacing it.

Mr. MCCREA: The law should provide that the railway corporations should use the same foresight as the ordinary individual and buy their coal at the proper time; but, if they fail to do so, they should be compelled to compensate the parties from whom they take the coal, not only for the coal they take, but for the damage which that party may sustain by reason of the shutting down of the factory.

Mr. SINCLAIR: It strikes me that it is not a question so much of what should be paid for the coal as it is a question whether the railway company should be allowed to commandeer coal at all without the authority of the Board. If we want to control it, let us give the Board power of control.

Hon. Mr. COCHRANE: You might give the Board control, but suppose you are on a train which has to stop because of want of coal?

Mr. BRADBURY: I can understand that the company should be allowed to take the coal if they require it, but they should be compelled to pay for it.

Mr. BENNETT: As a matter of fact the contention that a company can take coal and not be required to pay more for it than the coal originally cost, instead of paying what it cost to replace it is altogether contrary to the fact. I should think it is more dangerous to make the change suggested, than it would be to leave it as it is now. The question of compensation stands on another basis altogether. The railway companies are wrongdoers from the start, and as wrongdoers they have to compensate.

Hon. Mr. COCHRANE: Do you think the Act confers that power?

Mr. BENNETT: No, sir, it does not.

Hon. Mr. COCHRANE: Does any law confer it?

Mr. BENNETT: Under the common law they are liable for conversion. Mr. Johnston thinks they are liable as bailees. It is not an apt term. They are only actual carriers. Are you bailees for hire?

Mr. JOHNSTON, K. C.: They may be that, too.

Mr. BENNETT: This would not help the case of Mr. Lemieux or that of Mr. McCrea to say they have to pay compensation. It still leaves it open to the court; you still have to go to law.

Mr. MCCREA: If it is fixed so that they must provide compensation the railways will take care of themselves, and when they run short of coal they will not take some one else's. If they are liable for damages you will find this confiscation will not happen very often.

Mr. BENNETT: If I were your solicitor I would have sued them.

Mr. MACDONELL: They are wrongdoers from the start.

Mr. MCCREA: It is not necessary to give them the right to commandeer coal.

Mr. BENNETT: This is not the place to deal with that matter. There is another section under which we can deal with the question.

Hon. Mr. LEMIEUX: Will you permit me to read what Sir Harry Drayton wrote to the Prime Minister last January. The Prime Minister was answering Mr. McKenzie, the hon. member for Cape Breton, and his remarks are on page 210 in "Hansard". The Prime Minister said:

The telegram to which my hon. friend refers was received by me, and I at once asked the Board of Railway Commissioners for Canada for any information that they might have with respect to that or like matters. I have a memorandum from the Chairman of the Board, Sir Henry Drayton, which has just been handed to me. It is as follows:

> The practice of commandeering coal by railways is the occasion of great annoyance and frequently positive loss to consignees. It is a practice which is not covered by the Railway Act, one way or the other, nor authorized by any regulation of the Board. The practice is very similar to the practice of general average applicable at sea, and the taking of necessary cargoes, belonging, of course, to consignees in case of emergency. It is justified by the railways in that it is better that some freight should move rather than that no freight should move at all.

Railway companies, of course, ought to lay in their own coal; they ought to have supplies; they ought to be able to carry on their business without commandeering coal; but at the same time it has to be recognized that the coal shortage is very acute, and that railways in some instances have been entirely unable to obtain supplies of coal which they in due season contracted for.

The Board has already had up the question of coal confiscation with the railways and everything has been done to minimize it. The complaints on this score now are very much fewer than they were, and the situation is being got in hand.

The Board has not been advised of any confiscation of coal belonging to the Nova Scotia Underwear Company, but the matter will be immediately taken up. There is a letter from Sir Henry Drayton which, possibly, Mr. Blair can get for the Committee. I am inclined to think that we should insert a section to cover a case of that nature. It is not clear in my mind.

Mr. BENNETT: We should not deal with that matter in this section at all, but we should deal with it in the section which fixes the measure of damages with respect to a carrier's liability under his contract. We would leave commandeering where it now stands under the Common Law. In the section dealing with the liability of the carrier we could make a special provision for his liability for damages in respect to property he converts to his own use.

Mr. MACDONELL: You give him the right which he has not at all under the Railway Act to commandeer anything. I do not think it is wise to make any provision to give him that colorable right.

Mr. MCCREA: You prescribe that he shall not commandeer, but if he does violate the law there should be a penalty for it.

Mr. BENNETT: Would not the section I have indicated be the logical place to treat this matter, Mr. Chrysler.

Mr. CHRYSLER, K.C.: There is a section further on which says that the company shall carry goods, and there are various subsections, and if there is any special provision which the Committee desire to make it could be properly inserted there.

The CHAIRMAN: Would it meet with the approval of the Committee if we dealt with this matter under the later section.

Hon. Mr. LEMIEUX: I would ask Mr. Johnston to turn over the matter over in his mind and try to find something to suit.

Mr. JOHNSTON, K.C.: With what object in view?—the idea of fixing the measure of damages? The railways have no power now to commandeer coal. They do it. In so far as they are breaking the law, if the railways are to get off with the mere cost of replacement it is conceivable that the person whose coal is commandeered suffers damage very much in excess of the value of the coal. Is it your intention that the person should be fully compensated for any consequential damage such as the shutting down of his plant?

Hon. Mr. LEMIEUX: Yes.

Mr. BENNETT: You cannot do that.

The CHAIRMAN: Is it the wish of the Committee that a clause of that nature be drawn up by Mr. Johnston?

Mr. MCCREA: I think the railways act very unwisely and indiscreetly. I have a connection with two concerns, one of which had the foresight to secure sufficient coal to run them through the winter; and the other did not have any, they were living from hand to mouth. The railway company commandeered the coal of both companies. If they had commandeered the coal of the concern which had a stock on hand it would have suffered only the loss of the coal. They did not even take the trouble to find

out, they asked no questions, they commandeered the coal of both. One of the concerns, employing three or four hundred men, was shut down for lack of coal. It would have been an easy matter for the railway company to have found out which concern would suffer and which would not.

Mr. BENNETT: Suppose the locomotive ran out of coal on the way and the coal never reached its destination, the railway company obviously would not be liable for the damages. If the railway company had no fuel to run its locomotives and was stalled, the measure of damages could never be the consequential damages to which my hon. friend has referred. The measure of damages can be the direct damages by reason of not receiving the coal.

The CHAIRMAN: Could we not leave it to Mr. Lemieux and Mr. McCrea to frame a clause so that it may be submitted to the Committee later on?

Mr. CHRYSLER, K.C.: Section 313 is the one I had in mind, but it can be taken up when we come to it.

Mr. MACDONELL: Any court would award you damages, Mr. McCrea, on the grounds you speak of.

Mr. JOHNSTON, K.C.: I do not think so.

Hon. Mr. LEMIEUX: Would the case come under section 313?

Mr. CHRYSLER, K.C.: I think under subsection 7 of section 313.

The CHAIRMAN: That subsection reads as follows:—

> "Every person aggrieved by any neglect or refusal of the company to comply with the requirements of this section shall, subject to this Act, have an action therefor against the company, from which action the company shall not be relieved by any notice, condition or declaration if the damage arises from any negligence or omission of the company or of its servants."

Mr. BENNETT: That is the section I had reference to.

Mr. CHRYSLER, K.C.: Subsection 8 gives the Board the power to make regulations in case of delay of traffic.

The CHAIRMAN: Would it not be wise for Mr. Lemieux and Mr. McCrea to frame an amendment to cover the points raised by them.

Hon. Mr. LEMIEUX: I agree to that, with the understanding that if our amendment dovetails into this section it shall be accepted.

Mr. MACDONELL: I do not think we completed the consideration of subsection 3, which provides that no penalty for violation of any regulation or regulation of the Board shall exceed $100.

Mr. CHRYSLER, K.C.: I have looked at the sections of the Act dealing with penalties, and they do not cover penalties for disobedience of the orders of the Board.

Mr. BLAIR: Look at section 445.

Mr. BENNETT: The case I had in mind was where the Board made an order for a fence, the Grand Trunk Pacific being the railway company concerned.

Mr. CHRYSLER, K.C.: Section 445 covers those cases.

Mr. MACDONELL: Then strike out the last few words in subsection 3 of section 34, providing that no such penalty shall exceed $100.

Mr. CHRYSLER, K.C.: Is there any other section providing a penalty for violating an order of the Board?

Mr. BENNETT: Section 392, which is entirely new, covers cases of disobedience of the orders of the Board.

Mr. CHRYSLER, K.C.: That is a special order of the Board in connection with a specific thing, but here we are dealing with a breach of the regulations, and it is provided that when this regulation is broken there should be a penalty.

Mr. MACDONELL: In any case, I do not see the use of retaining in the subsection the words to which I have drawn attention.

Hon. Mr. COCHRANE: What harm is done by their retention?

Mr. MACDONELL: It is provided that no such penalty should exceed $100. I would leave that to the judgment of the Board.

Mr. SINCLAIR: The penalty is too small.

Mr. BENNETT: It is wholly inadequate.

Mr. JOHNSON, K.C.: How is it when you read the subsection along with the one to which Mr. Blair referred?

Mr. MACDONELL: In answer to that I would say the two sections are in direct conflict.

The CHAIRMAN: What do you say as to section 445?

Mr. CHRYSLER, K.C.: That only means that repeated offences increase the penalty.

Mr. BENNETT: Whereas the section we are considering gives the power to the Board to make orders and regulations and provide a penalty.

Mr. MACDONELL: Yes.

Mr. BENNETT: There is a general provision, is there not, that the Board may provide for penalties where not otherwise prescribed. It follows that you limit that power when you adopt a maximum of $100 whereas it might be $500.

Hon. Mr. COCHRANE: You are giving the Board unlimited power.

Mr. BENNETT: Absolutely, except in this case, where you are limiting the power. This is not one of the class of cases which call for exceptional treatment, is it, Mr. Chrysler?

Mr. CHRYSLER, K.C.: No.

Mr. BENNETT: The words had better be stricken out.

Agreed that the words "provided that no such penalty shall exceed $100" be struck out.

Section adopted as amended.

On Section 35, Jurisdiction of Board as to Agreements.

Mr. JOHNSTON, K.C.: I think we should strike out in the 42nd line the words, "Having regard to all the circumstances of the case." It is bad draughtsmanship.

Mr. BENNETT: Yes.

The amendment was made and section adopted, as amended.

On Section 37, Exercise of Authority.

Mr. JOHNSTON, K.C.: We should strike out the words "under this Act," and the words "in this Act."

The amendment made and section adopted as amended.

On Section 38, Governor in Council may refer to Board for Report.

Mr. JOHNSTON, K.C.: We should add after the words "special Act," in the fourth line, the words, "or any other Act of the Parliament of Canada."

The amendment made and section adopted as amended.

On Section 39, Works ordered by Board.

On Section 40, Approval of certain works after construction.

The CHAIRMAN: Strike out, after the word "done" in the fourth line, the words, "before the 31st day of December, one thousand nine hundred and nine."

Amendment adopted.

Mr. CHRYSLER, K.C.: With the permission of the Committee I was going to ask why, if the Board is given power under this section to confirm the action of the company with reference to work done before the passing of the Act, it should not also be given power to give approval, if the Board sees fit, to work done by the company, without the approval of the Board having first been obtained, say, five years after the Act is passed. Why should this section not apply to work done by the company one year after the passing of the Act? This section gives the Board power to condone the act of the company, by way of illustration, where the railway has put in a siding hurriedly, without first obtaining the approval of the Board, because they have not the time to do so.

Mr. BENNETT: I have always thought this was an exceedingly dangerous clause to have in an Act of Parliament.

Hon. Mr. COCHRANE: It encourages the railways to go on and do the work and apply for approval of the Board afterwards.

Mr. BENNETT: "Whenever any such work has been done before the thirty-first day of December, one thousand nine hundred and nine"; is it wise to have that here at all?

Mr. CHRYSLER, K.C.: The Act requires that plans be filed for the apprvoal of the Board before the work is done, but when there is no time to do that and the company goes on and does the work it takes the risk of getting the approval of the Board afterwards.

Mr. JOHNSTON, K.C.: Is it not an invitation to the railways to do the work first, as has been suggested, and is not this section unnecessary? Does not Clause 34 give the Board power to make orders and regulations generally for carrying this Act into effect, and for exercising jurisdiction.

Mr. CHRYSLER, K.C.: The situation is that if the work requires the approval of the Board the railway cannot proceed with it until the approval of the Board is obtained, and if it does so the Board has the power to make the railway take the work up again.

Mr. SINCLAIR: What is the significance of this "Special Act" as used in some of these sections? The language that has been used in the sections already passed by the Committee is "this Act or the Special Act", but here in this section it is proposed to omit the words "Special Act," what is the significance of the change in language?

Mr. JOHNSTON, K.C.: There are other Acts of the Parliament of Canada which give jurisdiction in certain cases.

Mr. SINCLAIR: Would the language it is proposed to use in this section include those special Acts?

Mr. JOHNSTON, K.C.: Undoubtedly.

Mr. BENNETT: It seems to me that the words "this Act or any other Act of the Parliament of Canada" should come out, and that the section should read "whenever any Act of the Parliament of Canada requires or directs, etc." Does not that cover the case effectively?

Mr. CHRYSLER, K.C.: I think "any Act of the Parliament of Canada" covers it.

Mr. BENNETT: The words "by the Company" in the second line of the section should also come out.

The CHAIRMAN: Section 40, as amended, reads:—

> "Whenever any Act of the Parliament of Canada requires or directs that before the doing of any work the approval of the Board must be first obtained, and whenever any such work has been done without such approval the Board shall nevertheless have power to approve of the same and to impose any terms and conditions upon such company that may be thought proper in the premises."

Is it the wish of the Committee that this section be concurred in?

Section adopted as amended.

On Section 41.

When any work, act, matter or thing is, by any regulation, order or decision of the Board, required to be done, performed or completed within a specified time, the Board may, if the circumstances of the case in its opinion so require, upon notice and hearing or, in its discretion, upon *ex parte* application, extend the time so specified.

Mr. BENNETT: Mr. Lawrence, of the Brotherhood of Locomotive Engineers, mentioned to me just now that in cases affecting the safety of employees this *ex parte* application might become very serious; in other words that there should not be any extension of time in which to put in safety appliances affecting human life without a hearing. Cases have arisen with respect to this.

The CHAIRMAN: What suggestion has Mr. Lawrence to make in the way of amendment?

Mr. LAWRENCE: We suggest that all the words after "hearing" be struck out.

Mr. MACDONELL: There must be some provision for *ex parte* application.

Mr. BENNETT: The objection is this: a railway company may make an *ex parte* application to get something done which modifies an existing regulation regarding employees. Mr. Lawrence contends that the employees should be heard before the order is made. That is perfectly sound. But you cannot deprive the Board of the power of dealing *ex parte* with all matters, because something may arise over night, such as a storm.

Mr. LAWRENCE: The Act should be amended so that in cases affecting safety appliances a rehearing could be given.

Mr. BENNETT: It is.

Mr. LAWRENCE: Orders of the Board have been passed, and application has been made by certain parties to have the time extended to carry out these orders. A date was stated in the order as to the time it should go into effect. Extensions have been granted without any rehearing of the parties interested.

Mr. BENNETT: I do not see why there should be a notice of rehearing when it is only an extension of time.

Mr. CHRYSLER, K.C.: I think you are restricting the power of the Board when you take away the *ex parte* application.

Mr. BENNETT: Suppose we add the words "or upon the granting of any order upon an *ex parte* application notice of the hearing shall be given."

Mr. CHRYSLER, K.C.: Surely the Board will carry that out.

Mr. JOHNSTON, K.C.: Can you not trust the Board?

MR. LAWRENCE: I am not here to find any fault with the Board of Railway Commissioners; they have done a valuable service to the railway employees. But there have been cases—I could mention three or four—where the matter affected employees and the Board granted extensions and did not even notify the employees so that they could attend a rehearing.

Hon. Mr. COCHRANE: What objection is there to Mr. Bennett's amendment?

Mr. MACDONELL: This section deals with multitudinous matters that may possibly come before the Railway Commission. If "any work, act, matter or thing" has to be dealt with, it provides that the Board shall have the right to give an *ex parte* extension of time.

Hon. Mr. COCHRANE: If they only give it for the length of time to give notice of hearing, you would not object to that, Mr. Lawrence?

Mr. LAWRENCE: No, sir.

Mr. MACDONELL: I think special provisions should be made in the cases mentioned. But in the case of matters that have nothing to do with employees the Railway Commission should in the public interest, have the discretion to extend orders upon *ex parte* application.

Hon. Mr. COCHRANE: They only give the extension for the time being.

Mr. BENNETT: Provide that no *ex parte* orders shall be made for longer time than will enable a hearing to be made. You have already provided that the Board shall make an order, that it shall give notice to such persons as may be affected. In all hearings there are always two parties.

Mr. JOHNSTON, K.C.: Or more.

Mr. BENNETT: Or more. If the *ex parte* order is made, should it not need the same provision as an *ex parte* injunction order, namely that it shall continue with the summons until the hearing shall be held. Is not that fair, Mr. Chrysler?

Mr. CHRYSLER: Yes.

Mr. JOHNSTON, K.C.: Suppose you draw up the clause, Mr. Bennett.

Mr. LAWRENCE: In order to let you understand the case I will mention one particular instance. The Board made an order to equip all locomotives with dump ash pans and set a date when they were to be so equipped, and they were not to be kept in service after that date unless so equipped. The railway company asked to have an extension of time. The Board granted it, but the employees complained that the railway company were keeping engines in the service not properly equipped and tying up other engines that were equipped which could have been put in service. We objected and were successful in having a rehearing, and after we had furnished information to the Board they passed an order that the railway company must take out all engines not properly equipped. In that case there was no reason why, if the company could not equip its engines within the specified time, they could not have made an application to the Board far enough ahead to have had a rehearing before the time expired. There is no need of extending the time without a rehearing.

Mr. JOHNSTON, K.C.: Of course, as Mr. Macdonell has said, there must be multitudinous cases where the railroad brotherhoods are not concerned at all.

Mr. MACDONELL: I quite agree with Mr. Lawrence that in a case of that kind provision should be made for a rehearing. But if amended as he suggested it would prevent the Railway Commissioners for ever from giving an *ex parte* decision.

Hon. Mr. COCHRANE: Not under the amendment proposed. Only such time is allowed as will permit of notice being given where there is to be a rehearing.

Mr. LAWRENCE: But in the case of equipping a locomotive with safety appliances, why should not time be given in connection without a rehearing when, if the railway company needs an extension, all it has to do is to make application to the Board sufficiently far ahead of the date on which the order calling for the equipment expires.

The CHAIRMAN: There is no clause in the Bill covering that.

Mr. LAWRENCE: No, sir, not that I know of.

Mr. BENNETT: Mr. Blair states that in thousands of cases coming before the Board there are only one or two in which the difficulty in question has arisen. Suppose the words be added: "but only for such period as will enable a further application to be heard for such extension, upon notice." In other words, there are only a few *ex parte* cases in which the matter of the extension of time arises at all, and if a railway company gets an *ex parte* order for three days, you gentlemen who represent the employees can well be here.

The CHAIRMAN: Does that meet the case, Mr. Lawrence?

Mr. LAWRENCE: It will be of assistance.

Mr. W. L. BEST: Might I say a word upon that point? I do not see any good reason why, in case of equipment, an extension should be given. My suggestion would be that you should adopt a proviso that "no such extension shall be granted"—

Mr. MACDONELL: That is getting down to what I want.

Mr. BEST: When an order is made and the railway companies know that they cannot get a locomotive equipped with, say, an ash pan, by a certain time, and they have had ample opportunity to make that fact clear to the authorities, why should they go to the Board and get an extension of time without due notice of the hearing to the representatives of all the employees affected? That is the only reason why the proviso suggested by Mr. Bennett would not quite cover the objections entertained by the men, many of whom have suffered positive injury from the lack of the equipment called for.

Mr. MACDONELL: Here we are dealing with the operations of the Board of Railway Commissioneds in all its extensive field, and there should be a special provision with regard to the equipment.

Mr. BEST: That is the reason I suggested the provision respecting equipment.

Mr. SINCLAIR: What is equipment, is it rolling stock?

Mr. BEST: Equipment is rolling stock.

The CHAIRMAN: Perhaps Mr. Lawrence and Mr. Best might confer with Mr. Johnston and draft a suitable amendment for submission to the Committee to-morrow.

Mr. LAWRENCE: We will be glad to do that.

Mr. SINCLAIR: Is it intended to have sittings of the Committee every day?

The CHAIRMAN: Yes. That is a very necessary procedure, when you consider that the most contentious sections of this Bill yet remain to be considered. We have been able as yet to deal with comparatively few sections.

Mr. JOHNSTON, K.C.: Is it the desire of the Committee that Mr. Best's suggestion be added?

Mr. BENNETT: I doubt if it covers all the cases he has in mind, but he is the best to judge as to that. It strikes me you would still serve the best interests of everybody, including the very class he refers to, if you provided that an *ex parte* order should only have force for the time needed to give notice. That would be three days here, and it might be five or six days in the West. These things arise very suddenly, and these people will violate the provisions and pay the penalty.

The CHAIRMAN: Mr. Johnston will discuss it with the Commissioners, and Mr. Lawrence and Mr. Best.

The Committee adjourned until to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 4--APRIL 27, 1917

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM, No. 301,

Friday, April 27, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Bradbury, Carvell, Cochrane, Donaldson, Hartt, Graham, Green, Lemieux, Macdonell, Oliver, Pugsley, Rainville, Reid, Sinclair, and Weichel.

Committee resumed consideration of the Bill.

At one o'clock, the committee adjourned until tomorrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
ROOM, 301,
April 27, 1917.

The Committee met at 11 a.m.

The CHAIRMAN: Mr. Johnston has had under consideration the reconstruction of section 41.

Mr. JOHNSTON, K.C.: At the meeting of the committee yesterday, Messrs. Lawrence and Best, representing the Locomotive Engineers, thought there should be some addition to section 41, to provide that where the installation of any work for the safety of the public or the employees of a railway was ordered, no extension of time should be granted to the railway company without a hearing. I took the matter up with them yesterday in conjunction with Mr. Blair, counsel for the Railway Board, and Mr. Commissioner McLean, and we settled on a proviso, subject to the committee's approval. I now propose to add the following words to section 41:—

> "But where such regulation, order, or decision requires any work, matter or thing to be done for the safety of the public or the employees of the railway, no extension shall be granted without a hearing on notice."

Hon. Mr. COCHRANE: That provision would not, in case of emergency, allow the Board to make an order until the time of the hearing.

Mr. CARVELL: This means that the railway company is ordered to do something and then when it wants an extension of time it cannot obtain it without notice.

Mr. JOHNSTON, K.C.: A railway company is ordered to do something for the safety of the public or of its employees. Very well, that company cannot get an extension of time without a hearing.

Hon. Mr. COCHRANE: I do not think there is any hardship in that. If a railway company wants an extension it ought to ask for it in time.

Mr. CARVELL: You have got to assume that the Board of Railway Commissioners will make a reasonable order.

Mr. MACDONELL: This is only directed against an *ex parte* extension.

Mr. CHRYSLER, K.C.: I thought yesterday that there should be power to make an *ex parte* order extending the time pending notice being given. Perhaps this will do, but I will have to submit it to the railway companies.

Section adopted as amended.

On section 42,—Employment of counsel in the public interest.

Hon. Mr. GRAHAM: Supposing a private individual is concerned, or it may be a poor widow woman, because many of the latter class are affected where it is a case of a small crossing for cows. Would it not be possible for the Board to direct some person to appear for the party concerned? I suppose that would really be a private and not a public interest?

Mr. JOHNSTON, K.C.: The public interest does require that poor women should be considered.

Hon. Mr. GRAHAM: Will the interpretation of the provision be strained in order to meet such a case?

Mr. JOHNSTON, K.C.: I think the Board could direct Counsel to act and there would be no objection.

Hon. Mr. COCHRANE: The chairman is always a lawyer, and I think he will take the aggrieved person's part.

Section agreed to.

On section 43—Stated case for Supreme Court of Canada.

The CHAIRMAN: Mr. Nesbitt, who is not able to be present this morning, has made the suggestion to strike out the words "question of law or jurisdiction" out of the section and "questions of law arising thereon" out of paragraph 2.

Hon. Mr. GRAHAM: What are the reasons for making the change?

The CHAIRMAN: Mr. Nesbitt did not give me any particular reasons.

Hon. Mr. LEMIEUX: I understood when the Act creating the Railway Board was passed a special appeal was given only where a question of law was involved.

Hon. Mr. COCHRANE: That is to the Supreme Court on a question of law, but the right of appeal to the Governor in Council on other questions is also granted.

Mr. JOHNSTON, K.C.: There is an appeal to the Supreme Court by leave of the Board on a question of law. Section 43 only provides for a stated case by the Board itself on its own motion. We will come to the other cases presently.

Mr. CHRYSLER, K.C.: I think it would facilitate matters if the section were allowed to stand until the committee comes to deal with the question of appeal in other cases. I think you will find that dealt with in section 52.

Hon. Mr. GRAHAM: They are divided into two classes; one class goes to the Governor in Council and the other to the Court.

Hon. Mr. COCHRANE: Yes.

The CHAIRMAN: When the committee had it up for consideration they struck out, in subsection 2, the words "or questions of law arising thereon." It is suggested that we allow this section to stand.

Section was allowed to stand.

On section 49, subsection 2.—Order of the Board and rule of Court.

Mr. CARVELL: What jurisdiction have we to say that we will interfere with the constitution of the High Court of Ontario?

Mr. JOHNSTON, K.C.: We are not interfering with the constitution of the court. Are there not a great many statutes which do that?

Mr. CARVELL: I can quite understand that we have jurisdiction over the Exchequer Court but this section 49 says, "any decision or order made by the Board under this Act may be made a rule, order or decree of the Exchequer Court or of any Superior Court of any province of Canada." What authority have we in Parliament here to interfere with the High Court of any province?

Mr. JOHNSTON, K.C.: You are not interfering; you are providing that this order of the Board may be made a rule of Court.

Mr. CARVELL: Have they not that power without any provision by us?

Mr. MACDONELL: It is merely permissive.

Mr. CARVELL: Then the High Court of the Province can do it themselves.

Mr. SINCLAIR: The language of that endorsement is indefinite. I do not know what it means.

Mr. MACDONELL: What does Mr. Blair say about that?

Mr. BLAIR: I have no special instructions in regard to that point. I know the section has worked out all right and there has been no trouble with the orders.

Mr. LEMIEUX: Do you refer to rules of practice or decisions?

Mr. BLAIR: The decisions or orders of the Board. Since the organization of the Board there have not been more than half a dozen cases.

Mr. CARVELL: Has there ever been a case where you have sent an order of the Board down to the Supreme Court of a province and said to them, "Please make this an order of your court"?

Mr. BLAIR: No, but there has been a case where they have applied to make a decision of the Board a rule of the Court of New Brunswick.

Mr. CARVELL: Did the Supreme Court act upon it?

Mr. BLAIR: No, because our chief thought it was not a proper case for the order to go.

Mr. LEMIEUX: Give me a concrete case. What was the New Brunswick case to which you refer?

Mr. BLAIR: That was a case where an application had been made for leave of the Board to prosecute an agent for false billing. The Board after hearing found that there had been certain irregularities or errors. They found there had been misrepresentation. The solicitors for the applicant on that decision applied to the Board for an order making their judgment or order a rule of the Supreme Court of the province. Judge Killam expressed the view that in the circumstances of the case the Board should not intervene and should not exercise any powers it had, but as a matter of fact there have been a few instances where the Board has granted orders under that section making the orders of the Board rules of the Exchequer Court.

Mr. CARVELL: That would be all right.

Mr. BLAIR: That is the only application I remember.

Mr. JOHNSTON, K.C.: Mr. Crysler does not see any difficulty regarding it.

Mr. CHRYSLER, K.C.: It has never been tried. There is a grave constitutional question in it, but some sort of an order of this kind is necessary. Supposing a fine is imposed by the Board, how are you going to collect it?

Mr. CARVELL: Suppose we go to the High Court of Ontario and say, "We want you to make this an order of your court to collect the fine," and they will not do it, what are you going to do about it?

Mr. CHRYSLER, K.C.: I do not think the matter is as serious as Mr. Carvell makes out.

Hon. Mr. COCHRANE: Do you think any court would refuse to take action?

Mr. CARVELL: Let me point out that the constitution of the Provincial Courts is not in the hands of Parliament but in the hands of the local Legislatures.

Mr. CHRYSLER, K.C.: This Parliament has in many cases, I think, imposed duties upon the judges of the Superior Courts.

Mr. CARVELL: That is no doubt true, this Parliament has imposed duties on Superior Court judges, but they cannot say what their duties shall be when sitting as judges of the Superior Court.

Mr. CHRYSLER, K.C.: It seems to me this is not a serious matter; the provision has remained in the Act for some years.

Hon. Mr. LEMIEUX: There is a very serious question involved, but I do not want to delay the business of the committee by arguing the matter.

Section adopted.

Paragraph 5,—Optional with the Board to enforce its decision by its own action.

Hon. Mr. GRAHAM: How would the Board enforce an order by its own action? Suppose a fine were imposed and the Board should say, "We will enforce the penalty ourselves"?

Mr. CARVELL: The situation is worse than that. The Board says it will make the order on the High Court of Ontario, for example, and it will not ask the court to enforce the order.

Hon. Mr. GRAHAM: I would like to know how this provision will work out. Have we had any experience of its operation?

Mr. JOHNSTON, K.C.: Paragraph 5 is a new subsection.

Mr. CHRYSLER, K.C.: Of course, any orders that have been enforced up to the present time have been enforced through the Exchequer Court.

Hon. Mr. COCHRANE: There is no question about our jurisdiction in the Exchequer Court.

Hon. Mr. GRAHAM: How can the Board, without an order of the court enforce anything? I mean, how can it enforce what is equivalent to the judgment.

Hon. Mr. COCHRANE: It can tie up a railway and say: "We won't let you run again."

Mr. MACDONELL: The Board has all kinds of powers.

The CHAIRMAN: Is it the wish of the committee to pass the section?

Hon. Mr. LEMIEUX: I reserve my right to bring the matter up later.

Hon. Mr. GRAHAM: In framing the Railway Act creating the Railway Board, and in the adoption of the necessary amendments since, the Dominion Parliament has come closer to infringing provincial jurisdiction than in any other Act passed by it. So far the provinces have concurred in what was done in order, no doubt, that the intention of the Act might be better carried out. I suppose that will be the excuse for the adoption of this section. Working it out, I do not suppose anything will happen, but if some person did object there might be serious consequences.

Mr. CARVELL: I am not going to ask the committee to vote on this subject, and if it is the wish of members that the section should go through, I do not desire to be obstinate, but in my opinion it is all nonsense so far as the Provincial Courts are concerned.

Mr. JOHNSTON, K.C.: Suppose this Parliament enacted that any judgment or order of the Supreme Court of Canada could be made a rule of Court of the Superior Court of the Province of Ontario?

Mr. CARVELL: Could be, that is all right.

Mr. JOHNSTON, K.C.: Why not the same with the Railway Board?

Mr. CARVELL: But you leave it then to the discretion of the High Court of Ontario whether they adopt it or not. If they do, it is all right, but in this case we are taking power that a creature of this Parliament can pass a decree and then simply say that *ipso facto* it becomes a rule of the Supreme Court of Ontario and the Supreme Court must enforce it, and if they won't enforce it we will enforce it ourselves. That is entirely in violation of Provincial rights.

Mr. BLAIR: Is this not necessarily incidental and ancilary to the powers which the Board exercises in its control over the railways.

Mr. CARVELL: This Parliament did not create the Supreme Court of New Brunswick, for example.

Mr. BLAIR: But this Parliament gave the Board supreme control of railways.

Mr. CHRYSLER, K.C.: Take the Bankruptcy Act. All the courts are the medium for making orders in bankruptcy and carrying them out.

Mr. CARVELL: That is because of the provisions of the British North America Act.

Mr. CHRYSLER, K.C.: So with the Railway.

Mr. CARVELL: Suppose the Provincial Courts would not adopt what this Parliament said, that is the trouble. I admit that if the Provincial Courts adopt this of their own motion and say, "We will make this a rule of our Court," it is all right. But you are pretending to say that you are compelling a provincial court to adopt it, and then if it will not enforce it you will enforce the order yourselves.

Mr. MACDONELL: It is the same under the Winding-up Act.

Mr. CHRYSLER, K.C.: It seems to me to be a similar case.

Hon. Mr. LEMIEUX: I reserve my right to vote against this section.

Mr. CARVELL: I reserve the right also.

Hon. Mr. LEMIEUX: I hope this section is all right, but it seems to me that we are obtruding into provincial jurisdiction.

Section adopted.

On section 50,—Calling for notice in *Canada Gazette.*

Hon. Mr. GRAHAM: Why is that notice required? Is it required to comply with some local machinery or is it intended to give notice? If the latter, it does not give notice.

Mr. CARVELL: It only means that if this is done and it is necessary to prove it in Court you can produce a copy of the *Canada Gazette* to prove that it was done, and meet the requirements of the court.

Hon. Mr. GRAHAM: It is purely technical because the *Canada Gazette* does not give notice to any person.

On section 52, subsection 3—"Appeal to Supreme Court by leave of Board."

The CHAIRMAN: Mr. Nesbitt has asked that in subsection 3 we strike out the words, "or a question of jurisdiction or both."

Mr. JOHNSTON, K.C.: Committee will see that section 43 provides for the Board itself stating a case for the opinion of the Supreme Court of Canada.

Hon. Mr. GRAHAM: It was formerly "on a question of law." Now you have added the question of jurisdiction.

Mr. JOHNSON, K.C.: It is to make it clear that if the Board has doubt of its jurisdiction it shall ask the opinion of the Supreme Court.

Mr. CARVELL: On what grounds has Mr. Nesbitt made the request that these words should be struck out?

The CHAIRMAN: I could not say, but he had to be away to-day, and this is the only note he had with regard to any clauses which might come up in the next two or three days.

Mr. JOHNSTON, K.C.: Mr. Fairweather says that the chairman has misapprehended Mr. Nesbitt's position. He says the chairman is under the impression that the words "or questions of law arising thereon" in the second paragraph of section 43, were the words that should be struck out.

The CHAIRMAN: In both places.

Mr. CARVELL: If they have a doubt as to their jurisdiction they should have the right to submit the question to the Supreme Court.

The CHAIRMAN: The words "question of law or jurisdiction" appear in section 43 and section 52, and he desires that they should be struck out. He asks that in subsection 2 of clause 42 the words "or questions of law arising thereon" should be struck out. I think those words were struck out by the committee.

Mr. JOHNSTON, K.C.: I think the section 43 should read just as it is, except that the last words should be, "or of the jurisdiction of the Board," instead of "or of jurisdiction."

Mr. CARVELL: That makes it a little plainer.

Amendment adopted.

Mr. JOHNSTON, K.C.: In subsection 2, I think the words "or questions of law arising thereon" should be struck out. Then it will not matter whether it is a question of law or jurisdiction.

Amendment adopted.

The section as amended was adopted.

On section 52, subsection 1—Governor in Council may vary or rescind.

Mr. MACDONELL: General Biggar wants to say something to the committee.

The CHAIRMAN: The committee will hear General Biggar.

General BIGGAR: I was asked by the Deputy Minister to inquire whether there was such a radical change from the previous clause as has been suggested. In the previous clause the words "any time" are used. When this is narrowed down to one month, the Deputy Minister feels that decisions of the Board may be given affecting our department very seriously, which we might not have notice of within one month, or which might not be brought to our attention. In the previous clause the words are "may at any time" and now it is narrowed down to one month.

Mr. JOHNSTON, K.C.: The intention of the draftsman in this clause is apparently to provide for three cases: the first is the case of the petition upon which the Governor in Council may act. That petition may be made within one month, or it may be made within such extended time as the Board may allow, and the third case is that the Governor in Council may at any time without petition vary the order of the Board.

Mr. CHRYSLER, K.C.: Supposing there is a position would that last alternative apply? Can they at any time hear a petition after a month?

Mr. SINCLAIR: There should be some finality to it.

Mr. CHRYSLER, K.C.: I agree with General Biggar. I think the clause should stay as it was. I see no advantage in curtailing time. When you consider the body you are appealing to, the Governor in Council, it seems to me it is not a case for limiting the time at all. Why should the Board limit the time for appealing to the Governor in Council?

The CHAIRMAN: I think I should place on the record a letter from General Fiset, which General Biggar has been good enough to call to my attention. He says:—

"DEPARTMENT OF MILITIA AND DEFENCE,

"OTTAWA, April 13, 1917.

"Mr. J. E. ARMSTRONG,
Chairman Railway Committee,
Museum, Ottawa, Ont.

"SIR,—With regard to the revision of the Railway Act now under consideration.

"A review of the proposed legislation has been made, and I wish to express my approval of clauses Nos. 350 and 460, as contained in the draft of the Act.

"Clause No. 52, subsection No. 1, provides that appeals from the Board's orders must be made within one month, otherwise the right is lost except in special circumstances and by permission of the Board. There is no time limit in the present Act, and it is thought that at least three months should be allowed.

I have the honour to be, sir,

"Your obedient servant,

"EUG. FISET, Surgeon General,

"Deputy Minister Militia and Defence."

Mr. MACDONELL: I desire to point out that section 56 of the Act, which is the old section corresponding to the section under discussion, reads as follows:—

"The Governor in Council may at any time in his discretion," etc.

So that the old law was emphatic and plain. One can understand a case where it may be six months before knowledge of an act of the Railway Board may come to the knowledge of a person affected, and it seems no reasonable ground why there should be any limit put upon it.

Mr. CHRYSLER, K.C.: The Governor in Council certainly should not interfere unless there were some grave reason for interference. I know that in one appeal which came before the Governor in Council with reference to the water front at the town of Westminster, the encroachment which was alleged by one railway against another in that case, did not occur until some months after the work had been undertaken.

Mr. MACDONELL: In such a case you would not know what had happened until you saw the work that had been done.

Mr. CHRYSLER, K.C.: In this case not until the year after.

Mr. MACDONELL: No harm would be done in leaving the matter wide open.

Hon. Mr. GRAHAM: Is it not a question of appealing to a court, which would be different, but of appealing to the Governor in Council who really represents the people. I do not think we should restrict in this Act even the power of the Governor in Council. I know that in the city of Ottawa, where it was a question of running C.P.R. trains into Union Station, had the period been limited to one month the appeal would never have been heard. Take the case suggested by Mr. Lawrence, where a Labour Union has a grievance of some kind against a railway company, and the Board gives a decision. If the Union were compelled within thirty days to get up a petition and start all the machinery of their organization at work, it could not be done. I do not think we should restrict the power of the Governor in Council to hear appeals.

Mr. MACDONELL: At any time.

Mr. CARVELL: Look at the other side for a moment: We have created the Railway Board and I do not think there has been any institution in Canada in my day which has given as much satisfaction, or whose decisions are as thoroughly and uniformly accepted all over Canada. The best evidence is that at every session of Parliament since I have been coming here, we have conferred greater jurisdiction upon them and thrown more business into their hands. Now, if that be the case, why should they not be treated as a court? Why should we give any rights to the Governor in Council at the expense of the Board? Why not regard the Board as a court and let people accept their decisions. I cannot imagine the Board accepting a plan and then when their work is completed and it is shown that greater damage has been done than was originally thought likely, I cannot imagine the Board acting otherwise than justly. Why take away powers from a body that is judicial and confer them on a body which is political? The committee would do well to pause before adopting the section; in fact, I would like to see it cut out altogether. I would like to have the Railway Board regarded as a court and their decisions accepted as final.

Hon. Mr. GRAHAM: My idea was to keep the Railway Board as free as possible from technicalities or red tape, and to regard it as a sort of rough and ready court divested of the paraphernalia of a court.

Mr. CARVELL: But suppose that by rough and ready methods they arrive at a decision, do you want to interfere with that decision?

Hon. Mr. GRAHAM: I am not strongly objecting to the abolition of appeals, I am ready to discuss that, but if you have an appeal to the Governor in Council do not limit it.

Hon. Mr. COCHRANE: As a matter of fact there cannot be an appeal to the Governor in Council on a question of law.

Mr. SINCLAIR: Are the appeals frequent?

Hon. Mr. COCHRANE: Not when you consider the number of judgments rendered.

The CHAIRMAN: What shall we do with this section, gentlemen?

Hon. Mr. COCHRANE: It would be better to word the section as it was.

Mr. JOHNSTON, K.C.: Strike out all the words underlined in red ink, reading "within one month after the making of the order, decision, rule or regulation, or within such further time as the Board under special circumstances may allow, or of his own motion."

Section adopted as amended.

On paragraph 2 of section 52,—Appeal to Supreme Court as to jurisdiction by leave of the judge.

Mr. JOHNSTON, K.C.: That deals with appeals upon the question of jurisdiction, and in that case leave must be granted by a judge of the Superior Court. When the appeal is taken on a question of law, leave must be obtained from the Board. The language of paragraph 3 and that of the one following, should, it seems to me, be co-ordinated. Paragraph 3 speaks of "obtaining leave," and it seems to me that is the proper phrase. "Allowing" an appeal may mean "granting" it. I would suggest that paragraph 2 should read "an appeal shall be from the Board to the Supreme Court of Canada upon a question of jurisdiction, upon leave therefor being obtained from a judge of the said court," etc.

Mr. CHRYSLER, K.C.: You have to get the order within one month. You may have a difficulty in getting an order during vacation, if your month runs from the time you make the application.

Mr. JOHNSTON, K.C.: That would impose no limit of time for making the application. That would not do, would it?

Mr. CARVELL: No.

Hon. Mr. GRAHAM: You might as well have no time limit at all.

Mr. CHRYSLER, K.C.: It should be such time as the judge may allow. Perhaps the proper thing to do is to file your security within a month.

Mr. JOHNSTON, K.C.: It says, "upon leave being obtained." I think that language should be carried into subsection 2.

Hon. Mr. GRAHAM: We might have that redrafted and presented to us again.

Mr. JOHNSTON, K.C.: We might make it read "upon leave therefor having been first obtained from the Board."

Hon. Mr. PUGSLEY: I think the question whether there should be an appeal or not should be left to the Supreme Court, because each court is apt to feel that it is infallible. I think there should be an appeal on a question of law.

Hon. Mr. GRAHAM: That is theoretically correct, but in the working out of the findings of the Board of Railway Commissioners no practical difficulty has resulted. They have given leave in every reasonable case.

Mr. CARVELL: And the idea of the creation of the Railway Board was to settle railway matters by that Board and to discourage appeals. The chairman must be a barrister of ten years' standing.

Hon. Mr. LEMIEUX: I remember there was great objection to the multiplicity of appeals which had existed previously under the old regime, and the object of the appointment of the Board was to expedite matters and to cut short appeals. The Board is always presided over by a Judge or a man of great legal ability, and Parliament which creates that Board, representing public opinion, has decided that appeals on ordinary controversies should be discouraged.

Mr. CARVELL: I would rather take the finding of the Railway Board on a question of law than the finding of any Court in Canada, because they are supposed to be especially expert on the questions which come before them. The Chief Commissioner must be a lawyer.

Hon. Mr. PUGSLEY: The Chief Commissioner might be over-ruled by the other members of the Board.

Mr. CARVELL: He cannot be over-ruled by the other members of the Board on a question of law.

Mr. JOHNSTON, K.C.: There is no doubt the statute recognizes the Railway Board as a unique court.

Hon. Mr. GRAHAM: It was tried at first as an experiment and it was found to be a success. The people get speedy and cheap judgment. Every power which can be thought of is given to them.

Mr. CARVELL: The first time I went before them I got a decision before I knew I was in court.

Mr. BLAIR: I have a record made up of the last three years. In no case has an appeal been refused by the Board, and in these last three years there were eleven applications in all. So far as we have any record, no application for leave to appeal has ever been refused by the Board.

Mr. JOHNSTON, K.C.: Regarding subsection 3, Sir Henry Drayton thinks it should be left exactly as it was before, and that the words, "or a question of jurisdiction or both," which you see interlined in red ink, should be omitted. In other words, he thinks the right of the Board to allow an appeal should be limited to questions of law, and the Judge of the Supreme Court should give leave to appeal on questions of jurisdiction; otherwise there might be a conflict.

The CHAIRMAN: That is the point made by Mr. Nesbitt.

Mr. CHRYSLER, K.C.: I think the law as it stands here is right. Nearly every question of jurisdiction is a question of law. When we get to the Supreme Court, we find them asking us, "Is that a question of law or a question of jurisdiction?" It is the same thing in another form, and in many cases we get leave from both tribunals, for fear we would be thrown out. We might get leave from the Board on a question of jurisdiction, and the Supreme Court would say, "That is a question of law." That was the cause of some uncertainty and trouble. If the words were added here giving the Board power to grant leave to appeal on the question of law or jurisdiction, or both, just as it stands, we would not require to ask leave from both places.

Hon. Mr. PUGSLEY: There should be no conflict. Supposing the Board grants it, there is no question about it and there should be no conflict. The application may

be made to the Board if it is left as it stands, and if the party wishes, he can still apply to the Supreme Court for leave.

The CHAIRMAN: Then the section will be carried with these words retained.

Section adopted.

On section 52, subsection 4—Entry of applications.

Mr. JOHNSTON, K.C.: This section is not new.

Mr. CHRYSLER: The time should be sixty days. That is the time for ordinary appeals to the Supreme Court.

Hon. Mr. GRAHAM: Can that be done in vacation just as well?

Mr. CARVELL: You have thirty days after you obtain your leave.

Hon. Mr. PUGSLEY: The offices of the court are always open.

Mr. CHRYSLER, K.C.: The entering of the case here means allowing your security and that may not be done in the absence of the judge. Approving of the bond constitutes part of entering the case.

Hon. Mr. PUGSLEY: Have you not some provision in the Supreme Court Act that in vacation the time does not count?

Mr. CHRYSLER, K.C.: Yes, it counts.

Hon. Mr. GRAHAM: This might restrict you in entering the case. If it were in vacation you might not be able to enter it.

Mr. SINCLAIR: How much time do you want?

Mr. CHRYSLER, K.C.: Sixty days.

Mr. CARVELL: That is all right.

The CHAIRMAN: Then the words "thirty days" will be changed to "sixty days."

The subsection was amended accordingly.

On subsection 5, security for costs; notice of appeal.

Hon. Mr. GRAHAM: That will mean the secretary of the Board, without any further designation.

Mr. JOHNSTON, K.C.: Yes, secretary means secretary of the Board.

Subsection adopted.

On section 55,—Service of summons on companies by delivering to company's agent, or at his residence, or to any person in his employ, or by mailing at any time during the same day by registered letter.

Hon. Mr. GRAHAM: Does any question arise as to what constitutes the day?

Mr. CARVELL: No. You have until the 27th day of the month to make service. When you go to the company's office or the agent's residence. If you are unable to find any body in during that day you go to the post office and register your letter and get your receipt. That constitutes service.

Hon. Mr. GRAHAM: But suppose the man cannot be reached at his place of business or residence, and the post office is closed, you cannot perform the service then by registered letter.

Mr. CARVELL: Then it is your misfortune.

Hon. Mr. PUGSLEY: You go next day.

Hon. Mr. GRAHAM: But suppose a man were deliberately avoiding service, is there not some other method by which service could be made? If you prescribe that it must be by registered letter, failing the other methods, you may absolutely preclude the man who is serving from getting in his notice.

Hon. Mr. PUGSLEY: The person required to make the notice could go to the Board and say that he could not make the service in the method prescribed in the section or by registered letter, and would therefore ask that it be made a matter of special service, which request the Board could grant under this section.

Hon. Mr. GRAHAM: I have known persons to deliberately keep out of the way so as to avoid service. In one instance where I was making service I had to put the notice on the table of the person's dwelling, and that is not a mythical case.

Hon. Mr. COCHRANE: You got your notice served, anyway.

Hon. Mr. GRAHAM: Yes, because I was persistent. I would not provide that a registered letter should be mailed, but I would say that the notice should be mailed and that the person doing so should make an affidavit as to what he had done.

Mr. JOHNSTON, K.C.: That would involve more trouble than registering a letter and taking a receipt.

Mr. CARVELL: It does not seem fair that a corporation or anybody else should be bound by what a man says he did when the official record can be got. It is becoming a very common practice in the courts to provide for service by mail, but it must invariably be a registered letter, because then it is quite easy to refer to the record and ascertain whether the proper procedure was carried out.

Mr. CHRYSLER, K.C.: The old form was much simpler. The section in its present form is complicated and should be reconsidered.

Mr. CARVELL: You must reserve the right of service in some way. There must be service. I should like to have the opinion of Messrs. Chrysler and Johnston on the suggestion that you have the right to mail this letter either that day or the next day following, adopting the principle of the mailing of notice——

Mr. JOHNSTON, K.C.: During the same day or the next following day?

Hon. Mr. GRAHAM: That would cover my objection.

Mr. MCGIVERN: A registered letter.

Mr. CARVELL: I think it should be a registered letter.

Mr. JOHNSTON, K.C.: During the next day or the next day following.

The amendment was adopted.

On paragraph "b," of section 55—Service on Railway Companies.

Hon. Mr. GRAHAM: Any change in this?

Mr. JOHNSTON, K.C.: Originally the section read, "head or any principal office."; and then an amendment was made making it read "principal office." It was changed again and made to read "head or any principal office." That is exactly as it was in the Act of 1906.

Paragraph adopted.

On paragraph "*f*"—Order for service by publication.

Hon. Mr. GRAHAM: Should we not have some words here to locate the newspaper? Say the nearest newspaper to the parties affected. These parties might live in Prince Edward Island, and under this section you might print it in a newspaper in the Yukon.

Mr. CHRYSLER: Does it not say, "newspaper as directed by the Board"?

Hon. Mr. GRAHAM: You should make it clear that the newspaper must be designated by the minister or the Board.

Mr. CARVELL: I think it is clear.

Hon. Mr. PUGSLEY: Before you pass this should you not make a change in "*b*" and "*c*." These paragraphs refer to subsection 1, and there is no subsection. They never number the first subsection and this is really the first subsection.

Mr. JOHNSTON, K.C.: Better strike out the words of this subsection.

Amendment adopted.

On section 59,—*Ex parte* applications.

Mr. JOHNSTON, K.C.: This section will have to be prefaced by the words, "except as herein otherwise provided."

Section as amended adopted.

Hon. Mr. PUGSLEY: It seems hardly necessary, Mr. Chairman, that you should read over the sections where the language is the same as in the old Act and which deal with purely formal matters. Why not in such cases simply read the designation alongside the clause.

The CHAIRMAN: I shall be very glad to do so if it is the wish of the committee. Henceforward I shall follow that procedure except in regard to clauses containing interlineations in red ink indicating a change in wording.

On paragraph 3 of section 68,—Certificate that no order or no regulation made.

Mr. JOHNSTON, K.C.: Mr. Scott made a suggestion at one of the earlier meetings to substitute the following for the present paragraph 3:—

> "A certificate by the secretary, sealed with the seal of the Board, shall be prima facie evidence of the fact therein stated without proof of the signature of the same."

Mr. W. L. SCOTT: The committee were discussing the assistant secretaries the other day, and as they also issue these certificates perhaps the words "or assistant secretaries" should be added.

Mr. JOHNSTON, K.C.: We do not expressly provide for assistant secretaries in the Act. The language used is that the Board may appoint "such officers, clerks, stenographers, and messengers."

Mr. SCOTT: Very well; I am quite satisfied.

Hon. Mr. PUGSLEY: In subsection 3 of section 68 you say, "By the secretary." You have to prove it is his certificate. How would it do to make it read "certificate purporting to be signed by the secretary"?

Amendment adopted.

Section adopted as amended.

The committee adjourned till 11 o'clock to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 5--APRIL 28, 1917

(Contains proposed amendments by Brotherhood of Locomotive Engineers, &c.)

OTTAWA
PRINTED BY J. DE L. TACHÉ,
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM No. 301,

Saturday, April 28, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock, a.m.

Present: Messieurs Armstrong (Lambton) in the Chair, Bennett (Calgary), Bradbury, Carvell, Cochrane, Donaldson, Hartt, Green, Lemieux, Macdonald, Pugsley, Rainville, and Sinclair.

The committee resumed consideration of the Bill.

W. L. Best and C. Lawrence, on behalf of the Brotherhood of Locomotive Engineers, etc., submitted certain amendments, and reasons therefor, which are printed herewith.

At 1 o'clock, the committee adjourned until Tuesday next, at 11 o'clock a.m., with the understanding that no controversial sections will be taken up on that day.

SUGGESTED AMENDMENTS PROPOSED ON BEHALF OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE MEN, THE ORDER OF RAILWAY CONDUCTORS, THE BROTHERHOOD OF RAILROAD TRAINMEN, BY THE UNDERSIGNED DOMINION LEGISLATIVE REPRESENTATIVES OF THOSE ORGANIZATIONS.

To the Special Committee appointed by the House of Commons to consolidate Bill No. 13.

GENTLEMEN,—

Section 5 (page 6): Amend by striking out the second and third lines the words "other than Government railways".

We respectfully submit that, if consistent, the Railway Act and its provisions respecting equipment, maintenance and operation as well as orders of the Board in this respect should, in the interests of safety, apply to lines of railway operated by the Canadian Government as it applies to company operated railways.

Section 6 (page 7): It is important that this section remain as at present, for the reason that its requirements will make for uniformity in the equipment, maintenance and operation of locomotives and cars, as well as in operating rules, thus insuring greater safety on all lines of railway which may be considered as work for the general advantage of Canada. Uniformity in equipment or in operation is regarded as an essential to safety in railway operation.

Section 41 (page 18): Amend by adding to the end of the section the following:

> "But where such regulation, order or decision, requires any work, act, matter or thing to be done, for the safety of the public or employees of the railway, no extension shall be granted without a hearing on notice."

We submit that where the safety of human life or limb is likely to be involved that orders or regulations issued should not be interfered with, or the time in which they are to be made effective extended without notice and hearing being first given.

Section 284 (page 110): Paragraph 5 of this section should be struck out, as we submit that with the modern equipment generally in use on Canadian railways, there is no necessity of taking the filling or the packing out of frogs or guard rails in the winter time. We are of the opinion that the average railroad company does not now resort to this practice. A brakeman or yardman or other railroad employee is just as liable to get his foot caught in a frog or between a guard rail and the main track rail with the packing out between December and April as during any other part of the year. The paragraph is obsolete, we think.

Section 287 (page 111): Amend by adding at the end of subsection 1 the following proviso:—

> "Provided that the conductor or an officer of the company making a report to the company of the occurrence of an accident attended with personal injury to any person using the railway or to any employee of the company shall also forward to the Board duplicate copy of such report and shall, immediately send by telegraph or telephone to the Board notice of the accident."

We believe this proviso is necessary in order that first-hand information respecting the occurrence of accidents upon the railway involving injury or death should be immediately communicated to the Board, and thus enable the Board to deputize one of its representatives to be at the place where the accident occurred, if possible, before evidences of the cause of the accident can be removed, and thus insure the most adequate investigation being made into the causes of such accidents.

Section 289 (page 115), paragraph (j): Certain of the railroad employees object to the inclusion of this language in the Act, and we would respectfully submit that paragraph (*j*) of section 289 may be found entirely unacceptable to the railway employees, and it is hoped that if the paragraph becomes effective that its adoption shall be regarded as without prejudice to any future contentions made by all or any of the railroad organizations.

Section 292 (page 114): We suggest this section be struck out, as we believe that no good reason can be furnished to justify the giving of a railway company the authority to enact common law, section 414, makes ample provision for the imposing of a penalty for the violation of rules or regulations of the company.

Section 294 (page 114): Amend by striking out of the third and fourth lines the words "or impose a penalty."

We submit, as above intimated, that railway companies should not be given authority to impose a penalty on employees for the violation of any by-law, rule or regulation, and if such by-laws were made by them, they should also be submitted to the Governor in Council for approval.

Section 300 (page 116): Amend by adding to the end of this section the following proviso:—

> "Provided, however, that no such change shall be made or allowed without due notice and hearing before the Board."

We submit that, in the interests of the employees, it is undesirable that an order or regulation should be made respecting equipment, maintenance or operation, without due notice and hearing first being given to the representatives of those interested.

Section 302 (page 117): Immediately following section 302, insert new section 302*a*, as follows:—

> "Every locomotive engine shall be equipped and maintained with an ash-pan that can be dumped or emptied without the necessity of any employee going under such locomotive."

Although an order of the Board has been made, providing for the equipment of locomotives with ash-pans, as above suggested, it has been found that numerous cases of violations of the order on the part of railway companies have occurred. Therefore, it seemed desirable, in the interests of safety to the employees, that provision for this equipment be made a part of the Railway Act.

(Page 117): With a view to adequate and efficient inspection of all locomotives and their appurtenances on railways to which the Railway Act applies, we desire to suggest that a new section be inserted immediately following the above suggested section 302a, as section 302b, under the following sub-heading: "Division of Locomotive Inspection." See Exhibit "A."

Section 311 (page 119): Amend by striking out of the fifth and sixth lines the words "or of the tender if that is in front."

We submit that no good purpose can be served by stationing a person on the back of the tender, as provided for in this section, when engine is moving reversely over highway crossing at rail level, for the reason that on the modern locomotive it is no greater distance from the cab of a locomotive to the rear of the tender than from the cab of the locomotive to the front of the engine. The engineer and fireman in the cab of the locomotive can just as readily maintain a timely supervision over the condition of the track with the engine working reversely so as to see that no persons or employees are liable to be struck or injured by the train .

Section 372 (page 145): Amend by adding after both the words "across" in the fourth line, the words "or along."

We submit that leave of the Board should first be obtained before lines of wires for the conveyance of light, heat, power or electricity, especially wires of high voltage, shall be erected, placed or maintained along the railway inside of the right of way.

Section 391 (page 162): Amend by substituting the word "two" for the word "one" in the fourth and sixth lines of subsection 1 of this section.

The representatives of the employees are strongly of the opinion that the time for commencing any action for indemnity, for any damages or injuries sustained by reason of the construction or operation of the railway, should be extended to two years. In many of the provinces the time within which actions or suits for indemnity for damages or injuries sustained in the operation of industries other than railways, is greater than two years. There does not seem to be any consistent reason why the limitations of this section as to railways should not be at least two years.

Section 422 (pages 173-4-5): Amend paragraph (*g*) by striking out of the sixth and seventh lines (page 175) the words "or of the tender if the tender is in front."

Our reason for this suggestion is in order to harmonize with our previous suggested amendment to section 311.

Respectfully submitted,

C. LAWRENCE,
Dominion Legislative Representative B. of L.E.

WM. L. BEST,
Dominion Legislative Representative, B. of L. F. and E.

L. L. PELTIER,
Deputy President and Dominion Legislative Representative, Order of Railway Conductors.

JAMES MURDOCK,
Vice-President and Dominion Legislative Representative, Brotherhood of Railroad Trainmen.

EXHIBIT "A."

DIVISION OF LOCOMOTIVE INSPECTION.

Establishment of Branch.

Section *302b*: 1. For the purpose of efficient and adequate equipment, maintenance and inspection of steam locomotives, tenders and their appurtenances, there shall be established and maintained a branch of the board, to be known as the Division of Locomotive Inspection of the Board of Railway Commissioners for Canada.

Location, office and staff.

2. The head office of the Division of Locomotive Inspection shall be located in the city of Ottawa, Ont., and the Minister, with the approval of the Governor in Council, shall provide such offices, office staff, furnishings, equipment and stationery as may be required to give effect to the provisions of this section.

Appointment of Chief Inspector and Assistant Chief Inspectors and powers.

3. Within three months after the passage of this Act, there shall be appointed by the Minister, subject to approval of the Governor in Council, a Chief Inspector and two Assistant Chief Inspectors, who shall have general supervision over the District Inspectors, as here provided for, direct such District Inspectors in the duties herein imposed upon them, and have general supervision with regard to seeing that the requirements of this section and the rules, regulations and instructions made or given herein and hereunder are carried out and observed by railway companies subject to this Act.

Qualifications.

4. The Chief Inspector and the two Assistant Chief Inspectors shall be selected with reference to their practical knowledge of the operation, construction, equipment, and inspection of steam locomotives, tenders and their appurtenances, and to their fitness and ability to systematize and carry into effect the provisions herein or hereinafter provided for in this Act, or in any order or regulation of the Board, relating to the construction, equipment, maintenance, inspection, and operation of steam locomotives and tenders and their appurtenances.

Districts, establishment of.

5. Within thirty days after his appointment and qualification, the Chief Inspector shall divide the territory comprising the several provinces of Canada into thirty locomotive inspection districts, so arranged that the services of the inspector appointed for each district shall be most effective, and so that the work required of each Inspector shall be substantially the same.

District Inspectors, appointment of and assignment.

6. Within thirty days after the dividing of such districts, the Board shall, subject to the approval of the Minister, appoint thirty District Inspectors who shall be selected with reference to their practical knowledge of the contruction, equipment, maintenance, inspection, and repairs of locomotives, tenders and their appurtenances; one of the inspectors thus appointed to be assigned, by the Chief Inspector, to each of the districts provided for in the last preceding subsection (or paragraph).

Examination of District Inspectors.

7. In order to obtain the most competent inspectors possible, the Chief Inspector shall, as soon as practicable after his appointment, prepare a list of questions to be answered by applicants with respect

to the construction, repair, operation, maintenance, testing and inspection of steam locomotives, boilers, tenders and all their appurtenances and their practical experience in such work, which list, being approved by the Board, shall be used as the examination to be taken by all applicants for the position of District Inspector.

Ineligible for appointment.

8. No person financially interested, either directly or indirectly, in any patented article required to be used on any steam locomotive under supervision, or who is intemperate in his habits, shall be eligible to hold the office of Chief Inspector, Assistant Chief Inspector or District Inspector.

Salaries and allowances.

9. The Chief Inspector shall receive a salary of not less than four thousand five hundred dollars per year; the Assistant Chief Inspectors shall each receive a salary of not less than three thousand five hundred dollars per year; and the District Inspectors shall each receive a salary of not less than two thousand five hundred dollars per year. All such inspectors shall receive, in addition to their salaries, a reasonable allowance for travelling expenses incurred while engaged in the performance of their duties, when away from home; such allowance to be determined by the Board.

Rules and instructions for inspection and testing.

10. Each railway company subject to this Act, shall file its rules and instructions for the inspection and testing of steam locomotives, boilers, tenders or their appurtenances, with the Chief Inspector, within three months after his appointment, and not later than January 1, 1918, and after due notice, hearing and approval by the Board, such rules and instructions, with such modifications as the Board requires with a view to uniformity and greater safety, shall become obligatory upon such railway company: Provided, however, that if any railway company subject to this Act shall fail to file its rules and instructions the Chief Inspector shall prepare rules and instructions, not consistent herewith for the inspection and testing of steam locomotives, boilers, tenders and their appurtenances, to be observed by such railway company; which rules and instructions, being approved by the Board, and a copy thereof being served upon the President, General Manager or General Superintendent of such railway company, shall be observed, and a violation thereof, by such railway company, shall incur a penalty as hereinafter provided: Provided, also, that such railway company may submit from time to time any proposed change in its rules and instructions herein provided for, as it may deem desirable, but no such change shall take effect or be enforced until the same shall have been filed with and approved by the Board.

Duties of District Inspector.

11. It shall be the duty of each inspector to become familiar, as far as practicable, with the condition of each locomotive, tender and their appurtenances ordinarily housed or repaired in the district to which he is assigned; and if any locomotive is ordinarily housed or repaired in two or more districts, then the Chief Inspector or an Assistant Chief Inspector shall make such division between Inspectors as will avoid unnecessary duplication of work. Each Inspector shall make such personal inspection of the locomotives under his care from time to time as may be necessary to carry out the provisions of this Act, and as may be consistent with other duties

herein or hereunder assigned, but he shall not be required to make such inspections at stated times or at regular intervals. His first duty shall be to see that railway companies make inspection in accordance with the rules and regulations established and approved by the Board, and that railway companies repair the defects which such inspections disclose, before the locomotive or locomotives or appurtenances pretaining thereto are again put in service. To this end each railway company subject to this Act, shall file with the District Inspector in charge, under the oath of the proper officer or employee, a duplicate of the report of each inspection required by such rules and regulations, and shall also file with such Inspector, under the oath of the proper officer or employee, a report of the defects disclosed by the Inspector. The rules and regulations herein provided for shall prescribe the time at which such reports shall be made. Whenever any District Inspector shall, in the performance of his duty find any locomotive, tender or appurtenances pretaining thereto, not conforming to the requirements of the law or the rules or regulations established and approved as herein before stated, he shall notify the railway company in writing that the locomotive is not in serviceable condition, and thereafter such locomotive shall not be used until in serviceable condition: Provided, that a railway company, when notified by an Inspector in writing, that a locomotive is not in serviceable condition, because of defects set out and described in said notice, may within five days after receiving said notice, appeal to the Chief Inspector by telegraph or by letter to have said locomotive re-examined, and upon receipt of the appeal from the District Inspectors decision, the Chief Inspector shall assign one of the Assistant Chief Inspectors or any District Inspector other than the one from whose decision the appeal is taken to re-examine and inspect said locomotive within fifteen days from date of notice. If upon such re-examination the locomotive is found in serviceable condition, the Chief Inspector shall immediately notify the railway company in writing, whereupon such locomotive may be put into service without further delay; but if the re-examination of said locomotive sustains the decision of the District Inspector, the Chief Inspector shall at once notify the railway company owning or operating such locomotive that the appeal from the decision of the District Inspector is dismissed, and upon the receipt of such notice the railway company may within thirty days appeal to the Board, and upon such an appeal, and after due notice and hearing said Board shall have power to revise, modify, or set aside such action of the Chief Inspector and declare that said locomotive is in serviceable condition and authorize the same to be operated: Provided further, that pending either appeal the requirements of the District Inspector shall be effective.

Annual report of Chief Inspector.

12. The Chief Inspector shall make an annual report to the Board, of the work done during the year, and shall make such recommendations for the betterment of the service as he deems desirable.

Accidents reported by railway companies.

13. In the case of accident resulting from failure from any cause, of a locomotive or its appurtenances, resulting in serious injury or death to one or more persons, information of such accident shall be immediately communicated by telegraph or telephone by the railway company owning or operating said locomotive, to the Chief Inspector:

A statement must also be made in writing of the facts of such accident, by the railway company owning or operating said railway, to the Chief Inspector within ten days after such accident. As soon as information has been received concerning such accident by the Chief Inspector, he shall immediately investigate, or cause to be investigated by an Assistant Chief Inspector or District Inspector, the cause of such accident. And where the locomotive is disabled to the extent that it cannot be run by its own steam, the part or parts affected by the said accident shall be preserved by said railway company intact, so far as possible without hindrance to traffic until after said inspection. The Assistant Chief Inspector or the designated Inspector making the inspection shall examine or cause to be examined thoroughly the locomotive or part affected, making full and detailed report of the cause of the accident to the Chief Inspector. The Board may at any time call upon the Chief Inspector for a report of any accident embraced in this section, and upon the receipt of said report, if it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendation as it deems proper. Such reports shall be made public in such a manner as the Board deems advisable. Neither said report nor any report of said investigation, nor any part thereof, shall be admitted as evidence or use for any purpose in any suit or action or damages going out of any matter mentioned in said report or investigation.

Penalty for violation, how recoverable.

14. Any railway company violating any of the provisions of this section, or any rule or regulation made herein or hereunder, or any orders of the Board or of any Inspector, shall be liable to a penalty of not less than one hundred dollars, for each and every such violation, to be recovered in a civil suit to be brought on information filed by the Board with the Attorney General of the Province wherein such violation has been committed, with the instructions to take such proceedings as are necessary to the case. But no such suit shall be brought after the expiration of one year from the date of such violation.

(2.) The Board shall file with the Attorney General of the Province wherein any violation of the said provisions takes place, the necessary information as soon as the fact of such violation comes to the knowledge of the said Board.

The Board to enforce provisions.

15. The execution and enforcement of the provisions of this section shall be under the jurisdiction of the Board, and all powers heretofore possessed by the said Board by virtue of any Act of Parliament are hereby extended to the execution and enforcement of the provisions of this section.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS, OTTAWA,

COMMITTEE ROOM 303.

April 28, 1917.

The Committee met at 11 a.m.

The CHAIRMAN: Mr. Johnston, K.C., asks us to turn back to clause 46, and also clause 49, and to strike out the words "under this Act" in the first and second lines of each clause in order to conform with a suggestion by Mr. Bennett.

Mr. JOHNSTON, K.C.: And with the provisions and alterations which we have made throughout the Bill. Mr. Bennett pointed out the other day that there are other Acts than this which give the Board power.

Suggestion concurred in and clauses amended accordingly.

On clause 72,—

Mr. CARVELL: Had we not better go on with the other clauses?

Mr. BENNETT: Of course this section has no place at all in this Act, but it is there.

On section 74,—"Provisional Directors".

Mr. BENNETT: There should be added there some provision with regard to directors signing documents and papers. Do you remember, Mr. Chrysler, there was a case which arose where a man died and there was some difficulty.

Mr. CHRYSLER: There are a number of difficulties, but I think this covers all that it is required to cover.

Section concurred in.

On clause 78,—"Increase of Capital Stock".

Mr. BENNETT: Here are a number of sections that should be more carefully considered to cover a case which we know happened the other day in British Columbia, where they put in money with the one hand and took it out with the other. Sections 76 and 77 permit the abuse by promoters, subscriptions being taken, and a certain percentage being paid in accordance with the requirements of the Act and then being paid out again under the special Act. Cannot something be done to remedy that difficulty?

Mr. CHRYSLER, K.C.: I do not know what can be done—I understand the intention of section 74 is to provide for the opening of stock-books, and the procuring of subscriptions, the payments of 25 per cent on account of the stock subscribed, but the moneys which must be deposited in the chartered bank can only be paid out when the organization is completed, and then you have a Board of Directors who are supposed to be responsible for the expenditure. I do not know whether that is sufficient check, but that is the Act, as it stands now.

Mr. BENNETT: As soon as the organization is completed, the moneys raised on the capital stock shall be applied in the first place to the payment of the cost of procuring a special Act, surveys, etc., and the remainder of the moneys shall be

applied to the making, equipping, completing and maintaining of the undertaking; that is the provision of the Act, but it is not what happens in practice. I mention the difficulty in order that something might be done to prevent that practice.

Mr. CARVELL: I have always had the idea that in some way the practice of promoters of railway companies in this respect should be checked. I have known of cases where companies have been organized with a very small capital, and as soon as organized have applied to the Governor in Council for an increase in the capital stock to a very much larger amount than that originally provided. I would like to see something done if possible that would make the people who undertake the organization of new railway company actually put a substantial amount of money into the undertaking themselves. How many times have those of us who have been in Parliament for some years, found people coming here getting charters, with only a very small amount of money actually invested in the undertaking, and then offering those charters to one company or to another company, bartering them around.

Mr. BENNETT: I think these three sections might be allowed to stand over for further consideration, in the interim.

Mr. CARVELL: I would like some time to think it over.

Sections 76, 77, 78, stand for further consideration.

On section 85, transmission of stock otherwise than by transfer.

Mr. CHRYSLER, K.C.: I have a letter from the Canadian Northern Railway this morning in reference to section 80. They want something considered in connection with that section and section 146. If the committee will allow me to return to it, I will not say anything about it just now. It is some technical question regarding the transfer of shares that they want provided for.

Mr. BENNETT: In connection with the English register?

Mr. CHRYSLER, K.C.: The letter speaks of bonds, debentures and shares.

Mr. BENNETT: Share warrants.

Mr. CHRYSLER, K.C.: Will you allow me to refer to it again in connection with section 146?

The CHAIRMAN: All right.

On section 90,—Certificate of treasurer to constitute title.

Mr. JOHNSTON, K.C.: Have all the railway companies a treasurer, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I think so. In every case I think it is a separate office.

Mr. JOHNSTON, K.C.: The word "treasurer" is used throughout the Act, but there is no express clause declaring that there must be a treasurer.

Mr. BENNETT: There would be no complete organization without a treasurer under the Railway Act.

Mr. CARVELL: They could not handle the shares or transfers without a treasurer.

On section 92,—Shareholders may advance.

Mr. JOHNSTON, K.C.: That is a rather extraordinary clause, but it has been in the Act since the Act was originally drawn. It is contrary to the general rule that no dividends shall be declared except out of profits.

Hon. Mr. COCHRANE: Is it not proper that that should be? They should not declare dividends unless they earn them.

Mr. JOHNSTON, K.C.: Here they allow them to pay interest on principal paid.

Mr. BENNETT: Not out of capital. Subsection 3 provides "such interest shall not be paid out of the capital subscribed." That covers your point.

On section 95,—All shareholders in the company, whether British subjects or aliens, or residents in Canada or elsewhere shall have equal rights to hold stock in the company, and to vote on the same, and, subject as herein provided, shall be eligible to office in the company.

Mr. BENNETT: This is a section that will require some further consideration having regard to what has arisen since the war.

Mr. CARVELL: I have an idea that this section is all right. It will be the hereinafter sections that may require consideration because the section says: "subject as herein provided." There is a provision somewhere that the majority of the stockholders must be British subjects.

Mr. CHRYSLER, K.C.: The majority of directors.

Mr. BENNETT: There is no reason why we should not say that aliens might well be shareholders, but I think with regard to preceding sections we should make some provision that no transfer of such shares should be operated when we are at war with any such aliens.

Hon. Mr. COCHRANE: They cannot transfer in war time.

Mr. BENNETT: While the War Measures Act prevents it, nevertheless, under the New York register it could be done. The sale of shares on the New York Stock Exchange, and the keeping of a register in New York by which transfers can be effected is not controlled by our War Measures Act. It is a complicated question and one about which I do not express any decided opinion.

Mr. CARVELL: I would like to know why it is necessary, if I want to register the transfer of shares in the C.P.R., I have to go to New York?

Mr. BENNETT: You could do it in Montreal. There are three places where that can be done.

Mr. CARVELL: I have had to do it in New York.

Mr. JOHNSTON, K.C.: Because your stock happened to be on the New York register.

Mr. BENNETT: The moment the property became listed on the New York Stock Exchange the necessity for keeping the New York register arose, owing to its being an international market, and the same applies to London.

Mr. CHRYSLER, K.C.: No doubt there is also a rule of the New York Stock Exchange to that effect.

Mr. CARVELL: I do not see why, if I am transferring stock in Canada, I have to go to New York to do it.

Mr. BENNETT: The reason is because that stock is on that register. You could have it put on the Montreal register and the company would be better pleased if that were done.

The CHAIRMAN: Might I suggest that, as Mr. Bennett and Mr. Carvell are meeting to consider a certain clause, that they also ask Mr. Johnston to meet with them to consider the advisability of amending the clause now under discussion.

Mr. BENNETT: That alien question might well be considered.

Mr. JOHNSTON, K.C.: Mr. Fairweather points out that section 107 provides that a majority of the directors shall be British subjects only when a company is receiving aid from the Government of Canada.

The CHAIRMAN: Is it the wish that the gentlemen named and Mr. Fairweather shall meet and submit a recommendation to the committee covering this subject? It is understood that clause 95 stands.

Mr. CARVELL: No, it passes.

On section 105,—President and Directors: chosen at annual meeting.

Mr. BENNETT: All the directors are not now chosen at the annual meeting. There has been a change in the plan, to elect a given number every year, rather than the whole directorate, and that clause is not broad enough to cover that case.

Mr. CHRYSLER, K.C.: That is covered by the clause which says that unless the special Act otherwise provides, this shall govern. It must be under some special legislation applicable to that particular company, which will apply in spite of this.

The section was adopted.

On section 107, subsection 2,—Disability of officers, contractors, and sureties.

Mr. BENNETT: There are directors of railway companies who hold offices of emolument. Is that under special Act?

Mr. CHRYSLER, K.C.: There must be a special clause in the Act permitting it.

Mr. JOHNSTON, K.C.: I suppose if the railway companies are not objecting to this clause it is all right. I suppose you would know if they were objecting, Mr. Bennett?

Mr. BENNETT: Yes. There is a provision in the C.P.R. Special Act dealing with this case. That is how Mr. Bury is a director, and that is how under the Grand Trunk Act the same condition prevails.

I was going to ask whether we should have a majority of British subjects in any event on the railways in Canada.

Mr. CARVELL: Have proposals been made to the Minister of Railways that the majority of these directors should not only be British subjects, but residents of Canada.

Hon. Mr. COCHRANE: The question never arose.

Mr. BENNETT: It did not arise in Parliament with respect to the administration of the affairs of the Grand Trunk, the majority of whose directors reside in London, and it was decided that it was impracticable to limit them to residents in Canada, having regard for that road.

Mr. CARVELL: It was the Grand Trunk situation I had in mind when I raised the question, because I think the Grand Trunk has suffered largely owing to the English directorate. Those directors do not know our local conditions, although they were dealing with the road as best they knew how from their standpoint. Since the management of the Grand Trunk has been placed in the hands of people residing here, I think we have had a very much better condition of things, and I do not know whether it would be worth while considering the proposition that a majority of these people shall be residents of Canada.

Hon. Mr. COCHRANE: I think it would be all right for a new road, but it would be a difficult proposition for the Grand Trunk.

Mr. BENNETT: You could not do it.

Mr. CHRYSLER, K.C.: The mass of the Grand Trunk capital is held in Great Britain.

Mr. BENNETT: There is not a million dollars Grand Trunk capital held on this side of the Atlantic, in the United States and Canada.

Hon. Mr. COCHRANE: It would be unfair to impose that provision on the Grand Trunk.

Mr. BRADBURY: Is there any good reason why any other than British subjects should be allowed to hold stock in those companies?

The CHAIRMAN: That is the point we are discussing.

Mr. CARVELL: We were considering whether the stockholders should be residents of Canada.

Mr. BRADBURY: The majority of directors should be British subjects.

Mr. BENNETT: I think we should stirke out in sub-section 3 of section 107, all the words down to "Parliament of Canada", and make it read, "a majority of the directors shall be British subjects".

Hon. Mr. COCHRANE: A majority might be enough.

Mr. BENNETT: Would any great injustice be done if that section were made to read, "a majority of the directors must be British subjects"? The majority which controls the enterprise should be British subjects. That is the result of the experience in this war.

Hon. Mr. LEMIEUX: I think it would be a good thing and could do no harm. If it worked an injustice in regard to any company you could always provide for it.

Mr. BENNETT: I move that we strike out the first three lines of sub-section 3, to the word "Canada" and make the clause read, "a majority of the directors shall be British subjects".

Mr. CARVELL: I second that motion.

The amendment was adopted.

The section as amended was adopted.

On section 111.—Election of President and Vice President; duties.

Mr. CARVELL: There must be some change in this.

Mr. JOHNSTON, K.C.: I do not think that section is very apt.

Mr. BENNETT: I would suggest that you add a fifth paragraph to the section to provide what the Canadian Pacific now has power to do. That is, to create vice-presidents who are not directors. For example, vice-president in charge of traffic, vice-presidents in charge of other branches, and so on. That is the American practice at the present time with relation to all railways in the United States.

Hon. M. LEMIEUX: Are you sure that their vice-presidents are not directors?

Mr. BENNETT: There is a special provision in the Canadian Pacific Act of a few years ago with regard to that.

Hon. Mr. LEMIEUX: Messrs. Boswell, Beatty and Creelman were directors.

Mr. BENNETT: As a matter of fact a special provision was inserted in the Canadian Pacific Railway Act by which a vice-president need not be a director in the company. Mr. Bury was a vice-president before he was a director and came under the operation of this legislation. The whole operation of the Pennsylvania system in the United States is based upon the assumption that each department is in charge of a vice-president. The same provision could be made here, in a paragraph to be known as No. 5, as is contained in the Canadian Pacific Special Act with relation to vice-presidents. It would not do any harm and it may be beneficial.

The CHAIRMAN: Is it the wish of the committee that these words should be added.

Mr. BENNETT: The special paragraph would have to be drafted and added as No. 5.

Mr. JOHNSTON, K.C.: Is it intended that when such a vice-president, who is not a director, is appointed, he shall have the powers conferred upon him that are conferred upon vice-presidents by this section?

Mr. BENNETT: Of course not. That is why I am asking for a special provision to be made, as contained in the Canadian Pacific Special Act, in another paragraph.

Mr. JOHNSTON, K.C.: It is all a question of names.

Mr. BENNETT: Absolutely.

Mr. CHRYSLER, K.C.: Would it not be better for each railway company to ask for amendments to its charter if it wants such power. To add a paragraph as suggested by Mr. Bennett is going to complicate this section very much. This deals with giving vice-presidents power to preside at meetings.

Mr. BENNETT: Only if they are directors of the company. My point is that it might be well also to provide for the appointment of vice-presidents, the same as the Canadian Pacific is now doing, who need not be directors at all.

Mr. JOHNSTON, K.C.: You would also have to enact that such vice-presidents should not have the power conferred by this section upon vice-presidents who are directors. This section will require a few changes. The first paragraph is all right, but the words "one or more" are added merely to make plurality amongst the vice-presidents possible. The second paragraph is all right. The third paragraph provides that in the absence of the president, the vice-president or one of the vice-presidents, according to such priority as may be prescribed by by-law or determined by the directors, shall act as chairman. I would suggest in lieu of that, the paragraph should read as follows:—

"In the absence of the president, a vice-president shall act as chairman."

I do not think there is any necessity for enacting that there must be by-laws establishing priority, that is clumsy.

Mr. CARVELL: If you thought it necessary to give the senior vice-president the right to preside you could put that in.

Mr. JONHSTON, K.C.: As a matter of fact I understand there is no priority amongst the C.P.R. vice-presidents.

Mr. BENNETT: They rank in the light of the date of their appointment as directors. Outside of those who are vice-presidents and not directors they rank on the basis of seniority, as you will observe from their last published annual statement.

Hon. Mr. COCHRANE: These officials are named first and second, are they not?

Mr. BENNETT: They used to be, but a change has been made under which they are designated "vice-president of traffic", and so on.

Mr. CARVELL: As a fact, are there not more than one actual vice-president in the directorate?

Mr. JOHNSTON, K.C.: Yes, but I am assured there is no priority so far as vice-presidents are concerned.

Mr. BENNETT: But the third paragraph is drawn especially in the terms it is, to meet a special case according as the by-law may prescribe.

Mr. JOHNSTON, K.C.: The company may not desire to establish priorities.

Mr. BENNETT: They do not have to.

Mr. CARVELL: Evidently the draftsman of this section had that in mind. If you want to carry out that idea you could simply say "The senior vice-president present at the meeting", or something like that.

Mr. JOHNSTON, K.C.: Leave it the way I have it. You would have a more workable clause.

Mr. BENNETT: The question of who presides at a meeting is sometimes a very vital point.

Mr. CARVELL: There may be rival claims as to who should preside and who is going to decide between the rival claimants.

Mr. JOHNSTON, K.C.: If you leave the paragraph as it is I am pointing out that there must be a by-law establishing priority.

Mr. BENNETT: Priority to preside, that is all.

Mr. JOHNSTON, K.C.: You are just making it necessary for the Railways to pass such a by-law.

Mr. CHRYSLER, K.C.: I would ask to have the paragraph left as it is. I find by instructions from the Canadian Northern that certain clauses they asked to have inserted in their charter were approved by Mr. Price. Possibly this is one of them.

Mr. JOHNSTON, K.C.: I have a note here, with the request of the railways that it should be left out.

On subsection 4, of subsection 111.

Mr. JOHNSTON, K.C.: Subsection 4 should read: "In the absence of the President and the vice-presidents", striking out the words: "vice-presidents or", in the first line.

Mr. CHRYSLER, K.C.: If you make that change you will also have to make a similar change in section 118.

Subsection 4 concurred in without amendment.

On section 115.—"Directors not to contract with company".

Mr. SINCLAIR: Why should a director be allowed to contract for land, and to make money out of land, when he is not allowed to do so with regard to any other commodity?

Mr BENNETT: It is only for land required for the purpose of the railway.

Section concurred in.

On Section 118,—"Vice-presidents, Powers of."

Mr. JOHNSTON, K.C.: Coming back to the old phraseology again, I think this section should read: "In case of the absence or illness of the president or any vice-president". because if you use the language "one of the vice-presidents, it seems to me you are excluding the powers of the others.

Mr. CARVELL: Who is going to decide which of the vice-presidents is going to have the power?

Mr. JOHNSTON, K.C.: You do not need to decide, give it to them all.

Hon. Mr. PUGSLEY: Is it not all right as it is now? It does not say that it shall be done by one of the vice-presidents but anyone of them can do it under the language as it is now.

Mr. JOHNSTON, K.C.: If you think so; take the question of signing debentures, in the absence of the president, any of the vice-presidents could sign.

Section adopted without amendment.

On section 120,—"Accounts."

The CHAIRMAN: I think we ought to place the correspondence we have with regard to this section on the record, so that the other members may see it. We have here a letter from Mr. Ruel, Chief Solicitor of the Canadian Northern Railway System, which I will read:—

TORONTO, February, 28, 1917

The Honourable FRANK COCHRANE,
Minister of Railways,
Ottawa, Ont.

Re Annual Railway Reports.

"Sir,—I have been directed to apply for a slight amendment to the Railway Act. Our department has been advised that instructions have just been issued

by the Interstate Commerce Commision that all railway reports to be filed with the Commission must be made up to the 31st day of December instead of the 30th day of June, and that they must be filed in the office of the Commission on or before the 31st day of March in each year. The Interstate claims that this is better for all concerned, as it shows the actual operation of the road for the calendar year, which is more natural than to have the account closed in the middle of the summer.

It would be of great advantage to the railways to have the practice uniform on both sides of the International boundary line, and I am directed to ask for an amendment to the Railway Act accordingly.

The two sections involved are section 124 of the Railway Act, which provides that 'The directors shall cause to be kept and annually on the thirtieth day of June to be made up and balanced a true, exact and particular account of the moneys collected', and so on, and section 370 as amended by section 2 of chapter 31 of the statutes of 1909, which provides that, 'Such returns shall be made for the period beginning from the date to which the then last yearly returns made by the Company extended, or, if no such returns have been previously made, from the commencement of the operation of the railway and ending with the last day of June in the then current year.

The amendment would also involve a change in the fourth subsection of section 370 which calls for the filing of a duplicate copy of the returns with the Minister within one month after the first day of August in each year, which means, of course, two months after the first of July. If the accounts were closed at the end of the calendar year, the two months for filing would bring the date to the end of February. The Interstate Commerce Commission have specified the 31st of March, which I presume would be the proper date to be adopted.

I have accordingly to request your favourable attention.

Yours faithfully,

GERARD RUEL."

Hon. Mr. COCHRANE: I think all the railways want it changed. The C.P.R. wanted a Bill introduced making the change.

Mr. BENNETT: They have already made the change and brought their accounts down to the end of the last year for their Annual Meeting.

The CHAIRMAN: There is another communication, from Sir Henry Drayton, which I will read:—

OTTAWA, January 29, 1917.

"Dear Mr. COCHRANE,—Uuder the Act, Canada's accounting year for the railways ends June 30.

The accounting and reporting date fixed by the Interstate Commerce Commission in the United States is the end of the calendar year. Twenty of the State Commissions now require the returns for the calendar year; and six others favour the change, the remaining States have not yet reported Different railways have parts of their different systems located in both countries and have to make similar reports to the different Governments to cover different year-periods. This double date occasions the railways unnecessary labour and expense.

I also found in the Eastern Rates Case, which turned very largely on Grand Trunk figures, a company operating in the States as well as in Canada, that the dual date led to confusion.

If I thought there was any advantage at all in having the year end on the 30th of June instead of on the calendar year, as is usual in most of our commercial businesses, I certainly would not recommend any change; but I can

see no reason why the 30th of June is any better than the 31st of December. On the other hand, it would seem to me that the 31st of December was better than the 30th of June.

I do not know that there is any particular objection to be urged to the 30th of June, except that I have already set out, but there would seem to be no reason for departing from the usual calendar year in the case of our railways.

I note from 'Hansard' that the Right Honourable the Premier proposes to advance the consolidated Railway Act this year. It seems to me that this is a question which ought to be considered either in that Act or in a special Bill.

Owing to the statutory requirements, the matter can only be settled by statute.

Yours faithfully,

H. DRAYTON."

The Honourable
the Minister of Railways and Canals,
Ottawa, Ont.

Hon. Mr. COCHRANE: I do not see any objection to that suggestion.

The CHAIRMAN: There is also a letter from Mr. E. W. Beatty, of the C.P.R. (reads):

MONTREAL, January 11, 1917.

Hon. FRANK COCHRANE,
Minister of Railways,
Ottawa.

Dear Mr. COCHRANE,—I understand a suggestion has been made that it will be desirable for section 124 of the Railway Act to be amended so as to provide that the fiscal year of railway companies will correspond with the calendar year and end on the 31st December instead of 30th June. We favour such a change which will make the practise in Canada the same as in the United States.

In case the matter is under consideration I am writing to suggest to you that the effective date of the change should be far enough ahead to enable the companies to make the requisite changes in their by-laws; in other words, that it should not become effective before the year 1918.

I do not suppose this point will be overlooked but I am dropping this note to call it to your attention.

Yours very truly,

E. W. BEATTY.

What is the wish of the committee in regard to this matter?

Hon. Mr. LEMIEUX: I move that the fiscal year be closed on the 31st day of December.

Hon. Mr. PUGSLEY: I think Mr. Beatty recommended that it should not be this year, that it should not come into effect until 1918.

Mr. CARVELL: I do not understand why they would require it to be postponed until 1918. Take the C.P.R., for instance, they must have their accounts practically closed up now to the end of this financial year.

Mr. BENNETT: They have published their accounts brought down to the 31st December. 1916.

Mr. CARVELL: I do not see any reason why they could not be ready by the 31st December, 1917.

Mr. SINCLAIR: Does the letter from Mr. Beatty mean the end of the year, 1918?

Mr. CHRYSLER, K.C.: I think, perhaps, if you will allow me, I will ask Mr. Beatty how he proposes to carry that out. This financial year will end on the 30th June, 1917. There will be six months to the 31st December, 1917. It is quite a financial question.

Mr. CARVELL: A question of dividends.

Mr. CHRYSLER, K.C.: I do not know whether they will make a fiscal period of six months or eighteen months to conform to the proposed change. It is possible that they may not close the year on the 31st December, 1917, but make it eighteen months to the 31st December, 1918. I would like to ask that question, and it may be necessary to put in a subsection to provide for that.

The CHAIRMAN: That would not interfere with out proposed amendment of this clause.

Mr. CHRYSLER, K.C.: No.

Mr. BENNETT: As a matter of fact, the C.P.R. accounts have been brought down to the end of last year. There will be the period to June 30, and from June 30 to the end of this year. Then they will have two complete six months periods.

Mr. CHRYSLER, K.C.: I will find out. It is a technical question.

On section 121,—Calls, How Made.

Mr. BENNETT: Why should not all these clauses relating to calls appear in their proper place? Sections 76, 77 and 79 dealing with shares and sections 87 and 88 dealing with non-payment of calls and forfeitures, all deal with questions of calls; and now we start again dealing with calls at section 121.

Mr. JOHNSTON, K.C.: That is the old practice. There is no difficulty, however, in removing those clauses bodily.

Mr. BENNETT: The thing is out of sequence.

On section 125,—Failure to pay call. Suit.

Mr. BENNETT: The real significance of this section with respect to forfeiture is contained in sections 88 and 89. The powers of suit are given.

Mr. JOHNSTON, K.C.: That is the old practise. There is no difficulty, however, should go in together.

Hon. Mr. COCHRANE: Supposing Mr. Johnston rearranges them?

Mr. JOHNSTON, K.C.: I think it desirable that there should be a heading of "calls," and that whole section should go in prior to section 97 dealing with meetings of shareholders.

On section 129,—No dividend out of capital—proviso as to interest.

Mr. JOHNSTON, K.C.: There is the point I mentioned before this morning, "no dividend shall be declared whereby the capital of the company is in any degree reduced or impaired." The section goes on however; "provided that the directors may in their discretion, until the railway is completed and opened to the public, pay interest at any rate, not exceeding 5 per cent per annum, on all sums actually paid in cash in respect of the shares, from the respective days on which the same have been paid, and that such interest shall accrue and be paid at such times and places as the directors appoint for that purpose.

Hon. Mr. PUGSLEY: That really means charging interest during construction on capital account, and paying interest out of capital account. That is not unusual.

Mr. BENNETT: It is unusual in relation to capital stock, but not in relation to securities.

Hon. Mr. LEMIEUX: Paying dividends unearned.

Hon. Mr. COCHRANE: I think it should be a capital charge during construction.

Hon. Mr. PUGSLEY: The people who apply for stock should not be kept out of the interest during construction.

Mr. BENNETT: Section 92 provides "any shareholder who is willing to advance the amount of his shares, or any part of the money due upon his shares, beyond the sums actually called for, may pay the same to the company." And the next subsection provides that "the company may pay such interest at the lawful rate of interest for the time being, as the shareholders, who pay such sum in advance, and the company agree upon." The next subsection provides: "such interest shall not be paid out of the capital subscribed."

Mr. JOHNSTON, K.C.: There is the protection provided by section 92. Now you come to section 129 where it is provided that "the directors may in their discretion until the railway is completed and opened to the public, pay interest at any rate, not exceeding 5 per cent per annum, on all sums actually paid in cash in respect of the shares, from the respective days on which the same have been paid" But in section 92 it is provided that they shall not be paid out of capital in definite, positive terms. In section 129 there is no such limitation.

Hon. Mr. PUGSLEY: During construction there is no other fund out of which it could be paid.. It must be paid out of capital.

Mr. BENNETT: Section 92 may apply after the road is completed.

Mr. JOHNSTON, K.C.: Why should the shareholders be put in the unique position that they can get interest on their money when shareholders in other companies cannot do so?

Mr. BENNETT: And railways are never built out of shareholders' money.

Hon. Mr. COCHRANE: They will be in the future in Canada.

Hon. Mr. PUGSLEY: Interest during construction might be an inducement.

Hon. Mr. COCHRANE: I think it should be counted as part of the cost.

Hon. Mr. PUGSLEY: I would think so. It would be charged to capital.

Mr JOHNSTON, K.C.: Possibly the payment of interest during a long period of construction would eat up the capital. In the case of a certain company I will not mention, they have been paying interest out of capital for a long period. Seven years have now elapsed without the project being completed, and the interest is being paid out of the proceeds of the bond issue. That is wrong. When you convert that into a right to take shareholders' money and pay interest with it, it does not seem proper.

Hon. Mr. COCHRANE: There should be a limit.

Mr. BENNETT: Why should shareholders have this right at all.

Hon. Mr. COCHRANE: Your rates are based on cost, and I think it is part of the cost.

Hon. Mr. PUGSLEY: Supposing you do not get your money from capital, but raise it by a bond issue, how are you going to pay interest on your bond issue during construction unless you take it out of capital?

Mr. BENNETT: You are allowed to do that.

Hon. Mr. PUGSLEY: What is the distinction?

Mr. BENNETT: One is the interest payable on fixed terms under a bond issue.

Hon. Mr. PUGSLEY: Out of what fund are you going to pay interest?

Mr. BENNETT: Out of the fund itself.

Hon. Mr. PUGSLEY: Then it is charged to capital.

Mr. JOHNSTON, K.C.: When you are paying interest on the bond you are paying to a creditor of the company, and in the other case you are paying to a shareholder.

Hon. Mr. PUGSLEY: Is it not better to raise your money out of subscribed capital than a bond issue? You have to provide in some way for interest to the investor in the meantime. He gets no dividends and why should he not get interset on what he subscribes for capital, instead of applying it to the bond shareholder?

Mr. BENNETT: If a man has subscribed $100 towards the capital stock of the company, and the road is not completed for ten years, the money he put in would be paid back to him in interest.

Hon. Mr. PUGSLEY: Quite so. If on the other hand you have a bond issue, and you are paying interest out of it, you have taken of the money you have borrowed on the bond, and what is the difference?

Mr. BENNETT: The only difference is what Mr. Johnston says—the difference between the shareholder and creditor.

Would it not be better to make it read in this way: "Provided the directors may in their discretion, subject to the approval of the board," etc. Let the Board of Railway Commissioners use their discretion.

Hon. Mr. PUGSLEY: It is a question how far you are going to give the board financial control of the company during construction.

Mr. CARVELL: I agree with Mr. Bennett on this point. We know, according to the practice of building railways in Canada, that the shareholders will not subscribe moneys to any extent. They rely upon public bonuses and aid to the railways, and I do not see why a man who puts up a few dollars to get on the inside, and have the chance to get a share of the stock, should be allowed to get interest on his investment from the start, regardless of whether the venture succeeds or not. If I go into a transaction with the Minister of Railways, and we start in business together, we have to make the venture pay before we get interest.

Hon. Mr. COCHRANE: In figuring up the cost of the investment you add the interest on the investment.

Mr. BENNETT: If I put $5,000 into a street railway enterprise in some town, and it takes two years to construct the street railway, I receive no interest on my money in that time.

Hon. Mr. COCHRANE: Unless you bond it.

Mr. CARVELL: You get interest on your investment.

Hon. Mr. COCHRANE: But you have the money and have to pay the interest on it.

Mr. CARVELL: Not interest on the stock.

Hon. Mr. COCHRANE: But on the cost of the road. I think, Mr. Pugsley, that you are punishing the man who puts up the money instead of borrowing it.

Mr. CARVELL: But he does not put it up.

Hon. Mr. COCHRANE: Perhaps he has not done it in practice.

The CHAIRMAN: You give him an inducement.

Mr. JOHNSTON, K.C.: You cannot do it in any other concern. Why should we do it with a railroad?

Mr. BENNETT: If the committee wants that clause, let us insert a safeguard, to read in this way: "Provided the directors may in their discretion, with the approval of the board——"

Hon. Mr. COCHRANE: I would not object to that.

Mr. BENNETT: Mr. Chrysler does not like that.

Mr. SINCLAIR: I do not like it either.

Mr. CHRYSLER, K.C.: Sections 92 and 129 as they stand are inconsistent. Section 92 says they may allow interest on capital paid up in advance, but such interest shall not be paid out of capital subscribed. Mr. Pugsley and Mr. Carvell have pointed out that it must be paid out of some other source, sales of security or something else. Section 129 makes an exception and says you may pay it out of capital. The two cannot stand together.

The CHAIRMAN: What suggestion have you to offer?

Mr. CHRYSLER, K.C.: I should say if it is the view of the committee that this should be allowed to continue, strike out the proviso in 129——

The CHAIRMAN: Strike out paragraph "B"?

Mr. JOHNSTON, K.C.: No, strike out the whole proviso.

Mr. CHRYSLER, K.C.: Then you would have section 92 which says they can allow interest but says they cannot pay that out of capital subscribed.

Mr. SINCLAIR: I do not like to make it any harder to get money to build a railway.

Hon. Mr. PUGSLEY: Section 92 and scetion 129 deal with two entirely different cases. Section 92 deals with the case of a man who is paid in advance, where he lends money to his company. There is one provision as to that. Then section 129 deals with the case where a man has fully paid up just what he is liable to pay and allowing him to receive interest during construction, and only during construction, at the rate of 5 per cent, which, of course, would come out of capital account.

Mr. BENNETT: There is a certain principle behind it.

Hon. Mr. PUGSLEY: It seems to me if you can encourage a company to build its road out of capital stock instead of the bond issue, it is better to do so.

Mr. BENNETT: 129 provides that the interest may be paid on all sums actually paid in cash.

Hon. Mr. PUGSLEY: Parliament is trying to encourage the putting in of cash.

Mr. BENNETT: This section has been there the last ten or twelve years.

The CHAIRMAN: Does the suggestion of Mr. Chrysler meet with the approval of the Committee?

Hon. Mr. PUGSLEY: I would rather be opposed to giving the Board very much power with respect to the internal arrangements of a company. Not much harm has resulted from the law as it stands so far.

The CHAIRMAN: Is it the wish of the Committee that section 129 as worded shall stand?

Mr. BENNETT: I am against it, but will not press the matter further.

Section adopted.

On section 132—bonds, mortgages and borrowing powers.

Hon. Mr. PUGSLEY: Paragraph (*a*) says that the bonds shall be signed by the president and then power is given to lithograph his signature to the bonds. This power may be necessary but it is very unusual.

Mr. CARVELL: I think so too.

Hon. Mr. PUGSLEY: Then the paragraph goes on to provide that even though the bonds are not signed by the people who are president or secretary at the time, still they shall be valid bonds. I think myself you should enact that there should be prima facie evidence as to the signatures being those of the officers of the company.

Hon. Mr. LEMIEUX: It may be the actual signature of the president that is being lithographed.

Hon. Mr. PUGSLEY: More than that, the persons whose signatures are being lithographed need not be officers at the time.

Mr. JOHNSTON, K.C.: A clause very similar to that is now inserted in all modern bond mortgages. The idea is that a very large amount of bonds—say 10 millions—will be issued at once, and the signature of the president will be lithographed. Well, the president may change office, or may die, and there may be another president or another secretary.

Mr. BENNETT: This makes provision for a case that has happened in actual practise. The bonds were signed and lithographed with the signature of the president of the company, and then he died. Between the date of their completion and the authorization of the issue and the date of their being actually handed out and certified by the trust company or whoever certified to their being correct. It is to meet such cases as that that the provision, which is in every trust deed, is inserted here.

Hon. Mr. PUGSLEY: That would be right enough, but there is no explanation in the paragraph as to the certification, by whom it shall be done.

Mr. BENNETT: Sometimes it is by a trust company and sometimes it is by on individual. For instance, in England they still follow the old practise of certification by the trustees to the debenture holders. In this country we have certification by a trust company.

Mr. CARVELL: I suppose it is a matter for the railway companies themselves more than anybody else, but it does seem to me a peculiar thing to have bonds issued without being signed by anybody.

Mr. JOHNSTON, K.C.: The other day there was an issue of $8,300,000 of Ontario Government bonds. No provision was made for engraving the signature of the Provincial Treasurer, and I think it took him the best part of a week to sign those bonds.

Hon. Mr. PUGSLEY: Why should he not spend a week in the discharge of that duty. I think we should require companies to exercise some care in matters of this kind. I had a case in the city of St. John some years ago where there was very grave question as to bonds that were issued by the school trustees. In that particular case the question arose as to the signature of the chairman of the trustees. Now, suppose that signature were available, what is to hinder the taking of lithographs of it?

Mr. BENNETT: There was the case of the Great Fingal Trading Company, in which the seal was used in just that way because it was not locked up as it should be, but this is covered, as Mr. Johnston has said, by the provision which is attached to every bond of a railway company, "This bond shall not become effective until such time as it has been certified by, etc.," and that word "certification" here implies certification by somebody.

Hon. Mr. COCHRANE: That does not cover it very well, because it does not imply by whom it is to be certified.

Hon. Mr. PUGSLEY: If this section provided that no bond could be issued until countersigned by the president or a trust company it would meet the case.

Mr. BENNETT: Until it has been certified.

Hon. Mr. PUGSLEY: If it were countersigned by the president or trust company then you would have a safeguard, but this section does not say that.

Mr. BENNETT: I thought Mr. Johnston put the word "certification" in there for that purpose.

Hon. Mr. PUGSLEY: But it need not, under this section, be done in that way. We allow companies to have signatures engraved, but we do not make any provision as to how it shall be certified; there is no safeguard whatever.

Mr. BENNETT: Mark you, Dr. Pugsley, I had overlooked the provision that no bond can be issued until it is signed by the president or one of the vice-presidents, or a director, and countersigned by the secretary, or an assistant, or local secretary of the company, provided that the signature of the president on the bond, and the signature of the treasurer or secretary on the coupons may be engraved, so that we have the signature on the bonds, we were both wrong.

Hon. Mr. PUGSLEY: Then you place absolutely in the hands of some under-official who may have a thousand bonds with the signatures of the president on them, and all he would have to do is to sign his name, some understrapper under that Act may do so, and you do not require it to be certified.

Hon. Mr. LEMIEUX: I have in my hand four Dominion Government bills of small denominations which all have different signatures, but these are real signatures.

Mr. BENNETT: The United States of America issues its bill without any signature at all. There they are (producing bills) lithographed. You see this section is following the old practice, but the United States does not find it necessary to have anybody sign their bills, and they grind them out by the millions.

The CHAIRMAN: Shall clause 132 be adopted?

Hon. Mr. PUGSLEY: I object to it as it is.

Hon. Mr. LEMIEUX: I think the bonds should be signed by the proper party.

The CHAIRMAN: The bond is signed by the president.

Mr. SINCLAIR: I think one signature is enough, with the certification.

Mr. CARVELL: I did not notice at first that there is one genuine signature.

Mr. JOHNSTON, K.C.: There is provision for one genuine signature, the president's signature may be engraved, but there has to be one genuine signature.

Hon. Mr. PUGSLEY: The case has been known where there has been an over-issue of bonds, by an understrapper in the company.

The CHAIRMAN: There was a whisper with regard to some of the Old Country bonds which have been sent out here.

Hon. Mr. PUGSLEY: Why not say that every bond should be certified by the signature of the president, or trustee or trust company, that would be a safeguard?

Mr. BENNETT: The answer to the objection is a very simple one. Nobody will buy a security without a certificate. There is the best safeguard you can have.

Mr. CHRYSLER, K.C.: And the trustee is liable.

Hon. Mr. PUGSLEY: But supposing you have not a trustee?

Mr. BENNETT: Nobody will buy them without a certification.

Mr. CHRYSLER: The securities of the C. P. R. and the Grand Trunk Railway are issued with the trust deed.

Mr. BENNETT: The debenture stock and the old bonds are covered by trust deed in the case of the C. P. R. and all the Grand Trunk bonds are covered by a certificate of some character.

Hon. Mr. PUGSLEY: The difficulty is that we are legislating in the matter of money, and somebody comes to Parliament to get a charter, and it is suggested that there must be a genuine signature on their securities, but the party says: "Look at the labour involved in that, the Railway Companies are not required to do it, and why should we do it.

Mr. BENNETT: The Canada Cement Company issued bonds for some six millions and on those bonds the signature of the president was lithographed, but the secretary's signature was genuine and the bonds had to be certified. There are two safeguards. One, the genuine signature on the bond, and two, the genuine certificate.

Mr. CARVELL: There is one genuine signature provided for here.

Hon. Mr. PUGSLEY: Which may be that of a mere clerk.

Mr. BENNETT: The secretary.

Hon. Mr. PUGSLEY: It does not even require the secretary to sign.

Mr. BENNETT: I remember a case in practice in which I had to get a special minute to make a man in England a local secretary, as the debentures were printed there.

Hon. Mr. PUGSLEY: This practice goes on all right for years, then suddenly people wake up to the fact that some trusted clerk has made away with a lot of bonds.

Mr. JOHNSTON, K.C.: Sir Henry Drayton thinks that after the word "president" in line 21 the words "or the vice-president or one of the vice-presidents," should be inserted, because heretofore we have passed a wording empowering such officials to sign bonds.

Mr. BENNETT: Or a director.

Mr. JOHNSTON, K.C.: If they are going to let a director do the signing, perhaps he had better take his pen in his hand. So far as the president or vice-president is concerned, if you are going to permit the president's signature to be lithographed——

Mr. BENNETT: There is the best reason in the world, because of the reasons Dr. Pugsley has been urging here to-day.

Mr. JOHNSTON, K.C.: Your point is that you relieve the president of signing, but nobody else.

Mr. CARVELL: We are following the old law that securities cannot be issued for more than 5 per cent interest. I wonder if in practice it is not advisable to change that. Suppose a railway company is compelled to sell 5 per cent securities and they go away down to 60 or 70. I doubt the advisability of that.

Mr. CHRYSLER, K.C.: At all events they should have the right to consider whether they will get the higher price for their bonds with the higher interest.

Mr. CARVELL: Than to sell the 5 per cent security at a discount.

Mr. CHRYSLER, K.C.: They might be better with a 6 per cent bond at 90. It is a question of the market often.

Mr. BENNETT: That question is constantly coming up in railway finance in the United States.

Mr. SINCLAIR: Would you put the rate at 6 per cent, Mr. Carvell?

Mr. CARVELL: I would like to leave that to the judgment of the company.

Mr. BENNETT: Put a maximum on it.

Mr. CARVELL: Put 6 per cent then.

Hon. Mr. PUGSLEY: Five per cent is uniform with the interest allowed the shareholders.

Mr. CARVELL: There has been a wonderful change in the financial condition of the world.

The CHAIRMAN: It will drop back to the same old conditions.

Mr. BENNETT: I would like to think so.

Hon. Mr. PUGSLEY: It depends on whether business is active after the war.

Hon. Mr. COCHRANE: What harm is there in putting six per cent instead of five?

Mr. BENNETT: None.

Hon. Mr. COCHRANE: It does not compel them to issue at that rate.

Mr. BENNETT: It is discretionary. On the issue of securities, I am of the opinion that none should be issued without the approval of some board. I may be wrong. I do

not think any railway corporation should be authorized to bond its line without submitting the documents and papers that refer to it, and the proposed issue, and the rate, to the Board of Railway Commissioners, or a court of commerce, if you will. My view has been that industrial enterprises under Dominion charters should also have to submit their proposals for the same reason.

Hon. Mr. PUGSLEY: That, I suppose, would be the subject of a general law.

Mr. BENNETT: It should be. In the case of a railway the Board of Railway Commissioners should approve of it. The moment that it passes into an existing enterprise—is removed from paper—it should be under the control of this board, both with relation to capitalization, to shares and securities issued, with relation to building, the route, selection of grades, and provision of facilities for the public. In other words, there should not be a larger bond issue than reasonably will build the road, larger capitalization than reasonably necessary, and the character of the security issued should be subject to the revising judgment of somebody attached to the board for that purpose.

Mr. CARVELL: Has not Parliament put in certain clauses during the last few years of that nature?

Mr. JOHNSTON, K.C.: There is section 146, which we will come to later. That is where the debate will likely be.

Mr. BENNETT: This section should not stand as it is.

Mr. JOHNSTON, K.C.: There is a grammatical change in paragraph (*b*) of subsection 2. The words "certificates for such stock" should be struck out.

Section 132 passed with amendments.

On section 133.—Securities pledged for loans or advances.

Mr. JOHNSTON, K.C.: Some years ago it was held in an English case that securities issued by a company and pledged merely with a bank and then redeemed had been cancelled by the fact of redemption and could not be reissued.

Mr. CHRYSLER, K.C.: They held it was an issue, and you could not issue that again. When you paid off a loan and got it back, you could not sell it again.

Mr. JOHNSTON, K.C.: There is a similar clause in the Dominion Companies Act.

On section 138.—Other filing, deposit or registration not necessary.

Hon. Mr. PUGSLEY: I doubt very much if that should be carried. I think the railway companies should record their mortgages in the regular registry offices of the province where the railway is situated so that anybody going there would see the title and the encumbrances. It should not be sufficient just to file with the Secretary of State.

Mr. SINCLAIR: Do you mean in every county?

Hon. Mr. PUGSLEY: Yes, every county through which the road runs.

Hon. Mr. LEMIEUX: Would you apply that to the Transcontinental Road?

Hon. Mr. PUGSLEY: Yes, it is not an enormous expense.

Mr. CARVELL: Would it not be a serious thing if you asked the C.P.R. to file a mortgage in every county in Canada where there is a registry office and land titles office?

Mr. JOHNSTON, K.C.: And against every parcel?

Mr. CARVELL: You could not divide the property up.

Hon. Mr. PUGSLEY: No, all you would have to do would be to file a general mortgage.

Hon. Mr. LEMIEUX: You would have to file a volume.

Hon. Mr. PUGSLEY: It might be difficult to carry out under the Torrance system. I would not insist on that. What is the reason for inserting the provision at the end of this section that nothing herein contained shall affect any matter in litigation in or finally decided by any court of justice on the 27th April, 1907?

Mr. CHRYSLER, K.C.: That was in the Act of 1907. There is no reason why it should remain in there now.

Hon. Mr. PUGSLEY: It seems peculiar to fix that date in that section unless there is some reason for it.

Mr. CHRYSLER, K.C.: The section from which that was taken was 6 and 7 Edward VII, "whenever by any Act of the Parliament heretofore or hereafter passed". Then that is introduced here, because that was the date when that Act was assented to. There is no reason why it should remain now.

Hon. Mr. PUGSLEY: Would it not be all right to leave out all after the word "requirement" in the twenty-fifth line of the section?

Mr. JOHNSTON, K.C.: The reason for it at the time the amending Act was passed seems to be gone.

The CHAIRMAN: Then that will be struck out.

Mr. JOHNSTON, K.C.: The references will remain.

The section was amended and adopted.

On section 139—Instruments deposited, evidence of.

Hon. Mr. PUGSLEY: Should we not use the words "purporting to be certified to be a true copy" in line 35? At first you say it shall be certified and then it shall be evidence without proof. The language of the two sentences is inconsistent. I should think if it said "purporting to be certified" it would be sufficient.

Mr. JOHNSTON, K.C.: In the other case we had the additional protection of the seal. It was purporting to be signed by the Secretary of the Railway Board under the seal of the board. Does the Deputy Registrar General of Canada use a seal?

Mr. CHRYSLER, K.C.: Yes.

Mr. CARVELL: That will make it much easier for the petitioner who is using the document to prove it.

Hon. Mr. PUGSLEY: It will be prima facie evidence of the original without proof of the signature. In another part it says it must be certified. Therefore you would have to prove it just the same.

The section was amended and adopted.

On section 140—Ranking of securities.

Hon. Mr. LEMIEUX: Does the committee not think that in the third line of this section the words should be "shall rank against," instead of "shall rank upon"?

Mr. CARVELL: I am not so sure of that.

Hon. Mr. LEMIEUX: It is a mortgage upon the property. The idea of this is to make it a mortgage on the property. It is a mortgage upon everything.

Mr. CHRYSLER, K.C.: This is peculiar language. It was quite different from the section we have taken it from.

Mr. JOHNSTON, K.C.: I have drawn an alternative clause. I propose to substitute the following clause: "The securities so authorized and the mortgage deeds respectively securing the same shall rank against the company and upon the franchises, undertakings, tolls, income, rents and revenues, and the real and personal property thereof, and that priorities, if any, established by such mortgage deeds subject however to the payment of the penalties and the working expenditures of the railway herein authorized."

Mr. CARVELL: The practice lately followed in regard to this legislation is to make the exception first: " Subject to the payment of the penalties and the working expenditures."

Mr. JOHNSTON, K.C.: You suggest that I transpose the language?

Mr. CARVELL: Yes, that is the method that has been followed very largely in drafting.

Mr. CHRYSLER, K.C.: I find the expression here, " subject to any lawful restriction or exception contained in the mortgage deed." That was not in the original section.

Mr. JOHNSTON, K.C.: I find it impossible to understand what that means.

The section was adopted.

On section 145, subsection 2—Note or bill of company, how made.

Mr. JOHNSTON, K.C.: Did Mr. Biggar speak to you, Mr. Chrysler, in regard to the matter of signatures on notes? That is dealt with in subsection 2.

Mr. CHRYSLER, K.C.: No, but I have a memorandum with respect to the insertion of the words, " or treasurer." The treasurer of the Grand Trunk is the official who certifies all the documents of the company.

Mr. JOHNSTON, K.C.: Then I would move to add the words " or treasurer " to the 12th line of this subsection. It will then provide that notes or bills accepted by a company must be countersigned by the secretary or treasurer of the company.

Subsection as amended adopted.

Section as amended agreed to.

Committee adjourned until Tuesday, May 1.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 6--MAY 1, 1917

OTTAWA
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

Tuesday, 1st May, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m. Present:

Messieurs Armstrong (Lambton) in the chair, Bennett (Calgary), Bradbury, Cochrane, Hartt, Graham, Lemieux, Macdonell, Maclean (York), Murphy, Nesbitt, Pugsley, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

TUESDAY, May 1, 1917.

The Special Committee met at 11 o'clock a.m.

On section 144,—Transfer by delivery, or writing, if registered.

Mr. JOHNSTON, K.C.: Mr. Ruel, solicitor for the C.N.R., points out two things that he thinks require amendment in that section. Subsection 2 of section 144 reads:—

> "While so registered they shall be transferable by written transfers registered in the same manner as in the case of transfer of shares."

That applies to securities issued by a railway company, such as bonds. Mr. Ruel points out that when the bonds are registered the method of transfer is to endorse the bond itself, and that the trust company keeps the registered transfers, and not the railway company. That is the practice. He therefore suggests that that clause should read in this way:—

> "While so registered they shall be transferable by written transfers, registered in the manner provided in the mortgage deed or deeds."

Mr. NESBITT: That sounds sensible.

Mr. JOHNSTON, K.C.: Strike out the word "same" and the words "as in the case of the transfer of shares" and add these words:—

> "Provided in the mortgage deed or deeds."

Mr. CHRYSLER, K.C.: I think that should read, "In the manner prescribed," instead of "in the manner provided."

Mr. JOHNSTON, K.C.: Yes, that would be better.

Section adopted as amended.

On section 145, subsection 4,—No bill payable to bearer.

Mr. JOHNSTON, K.C.: Mr. Ruel points out that this subsection absolutely prohibits a railway company from issuing securities payable to bearer. As a matter of fact, some of the short date notes that the railway companies issue are payable to bearer, and this section was not really intended to prevent that, but it was intended to prevent railway companies issuing notes which pass as money.

Hon. Mr. PUGSLEY: Why should they issue them payable to bearer?

Mr. JOHNSTON, K.C.: They are simply short date notes. They are often issued in that way, and are negotiable without endorsement.

Hon. Mr. PUGSLEY: This is the same provision as appears in the Company's Act.

Mr. NESBITT: I do not see just exactly why they should be payable to bearer, or what benefit it is.

Hon. Mr. PUGSLEY: The object is to prevent any company from acting as a bank, from issuing paper which could be used as currency.

Mr. NESBITT: You might call it a note. We often call bills notes.

Mr. JOHNSTON, K.C.: Strike out the word "or" in line 20, just before the word "intended."

Section adopted as amended.

Mr. JOHNSTON, K.C.: I do not think that would answer.

On Section 147,—Deposit of contract evidencing lease, etc., of rolling stock.

Mr. JOHNSTON, K.C.: This section deals with hire receipts and it says that if the contract evidencing the lease or condition of hire receipt is registered in a certain way the same shall be valid. It is really intended that it shall be valid as against all parties and not merely as between parties to the contract, and I think we should add the words "as against all parties." The intention is to make it valid against all parties.

Hon. Mr. PUGSLEY: I do not think you strengthen the section any by adding the word. I think it would be just as well to stop at the word "property" in the 21st line. You take it out of the provincial law altogether, and I do not think you strengthen it any by saying it shall be valid as against all parties.

Mr. CHRYSLER, K.C.: If you look at section 21, which is somewhat similar, it is more definitely put there. Section 221 reads:

> "An agreement for the sale of lands shall be valid, and although such lands have in the meantime become the property of a third person"——

That is a definite statement, and this is not. It does not mean subsequent purchasers or mortgagees or lien holders.

Hon. Mr. PUGSLEY: It strikes me as a little stronger to leave it as it is. If you say, "all parties" that is a limitation to the parties of the contract.

Mr JOHNSTON, K.C.: That perhaps should read "against all persons", and the word "persons" would take the meaning given by the Interpretation Act.

Mr. NESBITT: It would make it plainer to have it against all parties.

The CHAIRMAN: The clause 147 will be amended in the last line by adding the words "against all persons".

Section adopted as amended.

On Section 148,—Company not to purchase railway stock.

Mr. NESBITT: Can anybody tell me why that section is in the Act? I do not see why the company should not retire their bonds if they wish to.

Hon. Mr PUGSLEY: This dates back twelve years ago. Does the Committee not think, that, as we are legislating for the future, we might leave all that out?

Hon. Mr. GRAHAM: It was meant to protect some transaction prior to this date.

Hon. Mr. PUGSLEY: If they had acquired the shares before that or even up to now that would be all right, because it only speaks for the future.

Mr. CHRYSLER, K.C.: There are two matters in this. With regard to the prohibition of the purchasing by a company of its own stock, it is a very old enactment and is contrary to the law everywhere, because the company is diminishing its capital. Five per cent a year in twenty years would take away all the capital of the company.

Mr. MACDONELL: It is a process of winding up.

Mr. CHRYSLER, K.C.: Yes, and it is not permitted except by special leave, for a particular purpose, if you were diminishing your enterprise in some way.

Mr. NESBITT: I can quite appreciate the point in regard to companies purchasing their own stock, but how about other stock?

Mr. JOHNSTON, K.C.: This prohibits the purchase.

Mr. NESBITT: They are doing it right along.

Mr. MACDONELL: It prevents a railway company operating a certain railway from acquiring and operating another line.

Hon. Mr. GRAHAM: The trouble in regard to this point was that a company supposed to be a competitor was not really a competitor at all, when bought by another line and operated by that line for its own benefit. What does the reference to 1st of February, 1904, mean?

Mr. CHRYSLER, K.C.: I think the section will be just as well without that. That is the date of the coming into force of the Act of 1903, and it was made to exempt all prior transactions, but I do not think there is any object in retaining the date there now.

Mr. JOHNSTON, K.C.: That proviso might very well be left out.

Hon. Mr. PUGSLEY: Strike out all after the word "security."

Mr. JOHNSTON, K.C.: And the whole sentence should be preceded by the words "except as hereinbefore otherwise provided" or words to that effect; because later, by section 152, provision is made for the approval by the Railway Board and the Governor in Council, of agreements to acquire shares in other companies and to amalgamate. It should be a qualified prohibition, "No company shall, except as in this Act otherwise provided."

Hon. Mr. GRAHAM: A special Act would over-ride a section of that kind.

Mr. MACDONELL: I am going to bring this matter before the Committee later and discuss the principle.

Mr. NESBITT: In some of these sections it is stated that the provisions take precedence of the Special Act, and in other instances the Special Act takes precedence of them. How is it in regard to this section?

Mr. JOHNSTON, K.C.: Turn back to section 3, paragraph "b," and you will see that it is provided that where the provisions of this Act and of any Special Act passed by the Parliament of Canada, relate to the same public matter, the previous Special Act shall, in so far as is necessary to give effect to such Special Act be taken to over-ride the provisions of this Act. Therefore if you had to deal with a railway which proposed to purchase stock in another company, if it was authorized so to do by the Special Act, it would have the power, notwithstanding the provisions of section 148.

Section adopted as amended.

Mr. BENNETT: This section might permit them to buy shares of other companies outside of Canada.

Mr. JOHNSTON, K.C.: That would be ultra vires.

The CHAIRMAN: You could leave out the words "in Canada."

Mr. JOHNSTON, K.C.: I do not think that would answer.

Mr. BENNETT: The words "in Canada" are superfluous.

Hon. Mr. GRAHAM: Railway companies come to the Governor in Council to get the right to buy securities in another company outside of Canada now. They do that as a matter of practice.

Mr. SINCLAIR: Do you regard that as objectionable?

Hon. Mr. GRAHAM: No, but why say "in Canada." The Canadian Northern road running down to Duluth could not acquire those bonds without the consent of the Canadian Government.

Section adopted as amended.

On section 152,—Agreement for sale, lease or amalgamation of railway.

Hon. Mr. GRAHAM: The words in this section "whether within the legislative authority of the Parliament of Canada or not," cover the point we were discussing.

Mr. BENNETT: But when you grant special charters you have to provide that the company may amalgamate with a given number of railways, one of which was a company owing its existence entirely to provincial legislation. This covers that case.

Mr. GRAHAM: Take where a trunk line wishes to amalgamate with another line, and to have that line form a branch of the trunk line. If the branch had been authorized by the legislature of one of the provinces, and the amalgamation was authorized by the Parliament of Canada, then, as I understand it, that branch line would at once become for the general advantage of Canada. It would seem to me a little strong.

Mr. BENNETT: It comes under the provisions of this Act entirely.

Hon. Mr. GRAHAM: Without the consent of the legislature at all?

Mr. BENNETT: Yes.

Hon. Mr. GRAHAM: It seems to go a considerable distance. I have always thought that the only way to control railways was to get them under Dominion Parliament.

Hon. Mr. PUGSLEY: Of course we could safeguard it with a provision that they should not acquire a branch without an Order in Council.

Section adopted.

On Section 155—Directors may make traffic agreements.

Mr. NESBITT: Why are the words "Company may" underlined?

Mr. JOHNSON, K.C.: The old Act simply said "Directors." Now, the wording is "The Directors of the Company may". I do not see that it makes any difference. I should have thought the section ought to read "The company may at any time make, etc."

Mr. MACDONELL: I have not read the section over carefully, but I should think that an agreement made between railway companies regarding traffic, in which the public are interested, should be submitted to the Board of Railway Commissioners for approval.

Hon. Mr. COCHRANE: It has to go to the Railway Commission.

Mr. BENNETT: In the latter part of the section there occur the words "or vessels". This section only refers to inland vessels, but in the broad sense in which it may be construed it may be held as applicable to ocean-going vessels as well. This might have a very far-reaching effect, and in the case of a railway company owning vessels, might give that Company an advantage over another Company with respect to vessels and ocean-going traffic. The section reads that "agreements may be entered into either in Canada or elsewhere for the interchange of traffic between their railways or vessels" etc. The section does not really refer to ocean-going vessels but is intended to mean that class of ferry boats such as operate on the inland lakes of Canada, but the effect in practice may be very different from what is intended. Furthermore, you will doubtless remember that the Interstate Commerce Commission recently declared that railway companies should not own ships. The Grand Trunk was exempted from the operation of the regulation, but the Morgan Line was divorced from the Southern Pacific.

Mr. CHRYSLER, K.C.: The section is very important to several of the companies just as it stands. The Grand Trunk and the Canadian Pacific Railway Companies carry on part of their railway traffic by means of ships. They carry from Vancouver to Victoria, by ships which are really part of the railway line, under through bills of

lading and through passenger tickets. Vessels are also operated on the Kootenay lakes and all the way from lake Superior to Montreal. The through traffic and through billing is carried on under such agreements as are here referred to, over these lines of ships which are sometimes the only vessels on the road.

Mr. BENNETT: Something should be done to prevent an advantage being given to an ocean carrier by reason of owning its own vessels. Just how we are going to provide against that I do not know, except that any such agreement shall be first approved by the Board of Railway Commissioners and the Governor in Council.

Mr. CHRYSLER, K.C.: It seems to me that the class of cases which Mr. Bennett has in mind do come before the Railway Board when the railway company submits its through tariff for approval.

Mr. BENNETT: If the section is passed in its present form it might tend to give one railway company which owns ocean steamships a monopoly of the ocean-going traffic.

The CHAIRMAN: There is a section later on in the Bill which deals with inland transportation.

Mr. CHRYSLER, K.C.: So far as the construction which Mr. Bennett endeavours to place upon the section has not been made.

Mr. BENNETT: But the larger construction of the section is possible. I am making the point because I know what has been done in actual practice.

Mr. NESBITT: Would not the Railway Commission have to approve of any such agreement.

Hon. Mr. PUGSLEY: The section does not say so, does it?

The CHAIRMAN: Section 358 deals with traffic by water.

Hon. Mr. PUGSLEY: This section (155) provides, as Mr. Bennett points out, for interchange of traffic between a company's railway and vessels. It would do no harm to so word the section as to make it read: "The directors of a company may, subject to the approval of the Board, at any time, make" etc.

Mr. CHRYSLER, K.C.: That is not the purpose of the section. This only makes provision for an interchange of traffic between two sections of two railways. It has nothing to do with the rates and the amounts to be paid. Those are covered by section 336.

Hon. Mr. PUGSLEY: The section speaks of the "apportionment of tolls". If a railway owns vessels the public would certainly be entitled to travel on those vessels, they being common carriers, and the company could make arrangements between its vessel branch and the railway branch, which might be prejudicial to the travelling public. Therefore, control of the apportionment of tolls might not be a bad idea.

Mr. CHYSLER, K.C.: I think the Board has some control under the terms of section 337.

Mr. JOHNSTON, K.C.: Subsection 3 of section 337 provides:—

> In any case when there is a dispute between companies interested as to the apportionment of a through rate in any joint tariff, the Board may apportion such rate between such companies.

Mr. BENNETT: Suppose you have three transcontinental lines operating ships on the Atlantic and on the Pacific, and that there are in existence two other railway lines without ships. There should be some provision that would prevent the latter companies from being at the mercy of the trunk lines with respect of traffic that must be carried to the other side of the water. The through bill of lading should be based upon the same tolls for ocean transport as are enjoyed by the company that

owns the facilities. It is not a question of theory, either. It is one that arises every day in practice.

Hon. Mr. PUGSLEY: You will avoid all possible objection if you insert the words, "Directors of the company may, subject to the approval of the Board, enter into any agreement." If you do not do something of the kind a railway company owning vessels may impose tolls that would greatly hamper another company. The tolls may be framed with the object of shutting out the other line and bringing the traffic to the company owning the vessel.

Mr. CHRYSLER, K.C.: That would compel railway companies to go to the Board for approval of agreements respecting the most trifling transactions. It might apply to an agreement in the case of a single consignment, even.

Mr. SINCLAIR: I suppose a railway company is asked every day to make special rates, or special arrangements.

Mr. NESBITT:. If the railway companies have got to wait until the approval of the Board has been obtained in every case, it means delay, and the shippers will have to pay for that delay. My suggestion would be to allow the section to pass. Later, if any such difficulty as Mr. Bennett fears is shown to have arisen, we can return to the section and amend it. Our procedure surely does not bind us like the laws of the Medes and Persians.

The CHAIRMAN: I think that section 358 meets the difficulty.

Hon. Mr. PUGSLEY: That does not cover the point. There is nothing in that to prevent a railway company from adjusting to its own advantage the tolls as between the vessel and the railway.

The CHAIRMAN: It brings the tariffs under the control of the Railway Board.

Hon. Mr. PUGSLEY: No, it says the provisions of the Act shall apply so far as the Board deems them applicable.

Mr. BENNETT: I cannot see why Dr. Pugsley's suggestion should not be accepted. It deals with the matter as far as we can possibly deal with it.

Mr. JOHNSTON, K.C.: The only objection is that it would involve bringing so many trifling matters before the Board.

Mr. BENNETT: What are they?

Mr. CHRYSLER, K.C.: A single consignment may be a cause of agreement between companies.

Hon. Mr. PUGSLEY: When you come to deal with the apportionment of tolls as between a vessel and a railway it is most important. I would not for a moment consider that trifling. Why not make it subject to the approval of the Board?

Mr. CHRYSLER, K.C.: That is covered by sections 336 and 337. The former provides that companies may agree as to joint through rates. Then section 337 says that if the companies do not agree the Board can make an agreement for them. Then, if they do not agree as to the division of tolls the Board may settle that question also. What we are dealing with here is not tolls at all.

Mr. BENNETT: It is agreements.

Mr. CHRYSLER, K.C.: But the direction of traffic.

Mr. BENNETT: Agreements with respect to traffic over two lines of vessels or routes. That is the trouble.

Hon. Mr. PUGSLEY: Section 155 says that the company may arbitrarily apportion the tolls as between the railway and the vessels. Now, should not the Board of Railway Commissioners have some control over that apportionment.

Mr. CHRYSLER, K.C: I do not read section 155 that way. Here is what it says:

"The Directors of the company may, at any time, make and enter into any agreement or arrangement, not inconsistent with the provisions of this, or the Special Act, with any other company, either in Canada, or elsewhere, for the interchange of traffic between their railways or vessels'"

Mr. BENNETT: Now go on.

Mr. CHRYSLER, K.C.: (Reads)

"and for the division and apportionment of tolls in respect of such traffic".

Mr. BENNETT: Now under that provision, to cite a concrete case, where a shipment is being made to Liverpool, two thirds of the tolls might be imposed on the land carrier and one third on the water carrier.

MR. CHRYSLER, K.C.: You are referring to one question and Dr. Pugsley is dealing with another. Now, if they do not agree as to that the Board of Railway Commissioners has the control under Sections 336 and 337. As to the point that, so far as Section 358 is concerned, the Act does not apply to ships operating between Canada and foreign countries, that is another question altogether.

MR. BENNETT: Absolutely.

THE CHAIRMAN: Is it the wish of the Committee that this section be adopted without amendment?

MR. BENNETT: We can come back to it later.

Section adopted.

On section 158—Application to Exchequer Court for confirmation of scheme—Enrollment in port.

MR. JOHNSTON, K.C.: In Sub-section 4 the words "assenting thereto or bound thereby" should be struck out. As the Sub-section reads it says that the provisions of the scheme when confirmed shall be binding "against and in favour of the Company and all persons assenting thereto or bound thereby, have the like effect as if they had been enacted by Parliament." Surely if the Exchequer Court approves of the scheme it ought to be binding on all persons and not merely on all persons assenting thereto.

HON. MR. PUGSLEY: I suppose what this means is there may be parties who were not parties to the scheme or have not been notified.

MR. JOHNSTON, K.C.: Section 157 provides that it shall be deemed to be assented to if the requisite proportion of the debenture holders and shareholders had voted in favour of it. When you leave in the words "assenting thereto or bound thereby" you seem to me to weaken the effect of the preceding clause.

Section as amended adopted.

On Section 161—Sale of subsidized railways not kept in repair.

HON. MR. PUGSLEY: I do not know that anything better could be drafted than is to be found here, but I would like to know if this provision has ever been of the slightest benefit in practice.

MR. BENNETT: It has only been inserted there since the enactment of 1st and 2nd George V.

Hon. Mr. PUGSLEY: About five years ago. Has the provision ever been put into operation?

MR. FAIRWEATHER: Not in my time. It is only a club, I think, which has not been used.

MR. BENNETT: As I understand it, there are small lines scattered throughout Canada which at times have received subsidies from the Federal Government but were not kept in any condition of repair and were not being operated efficiently. There was nobody to put up any money and it became necessary that in some sense Parliament should have control over them. Therefore the Companies concerned were given notice that if they did not fix their lines so that they really became transportation facilities they ran a chance of losing them, and the bondholders or mortgage security holders, whatever they may be, always have the chance to come in and save the property rather than see it lost to them by reason of their failure to maintain the railway as a transportation facility.

HON. MR. PUGSLEY: I am looking at the matter from the standpoint of the public. The Government has never ventured to take steps under this clause.

MR. BENNETT: It has given this notice.

HON. MR. PUGSLEY: But the Government have never gone any further.

MR. BENNETT: No, because the notice has had the desired effect.

HON. MR. PUGSLEY: No.

MR. BENNETT: I think the notice had the desired effect in the case of some of the railways in the lower provinces.

HON. MR. PUGSLEY: Very small effect, if any.

MR. BENNETT: Sufficient to correct the difference between what could be said to be a facility and what is not one.

HON. MR. PUGSLEY: The minister can tell us whether there has ever been any effect by reason of this notice.

HON. MR. COCHRANE: I believe there has been a little improvement made, but not very much.

MR. BENNETT: As long as you have this power you can give notice that if a company fails to provide the facility for which it was created it will lose any right it has to that road, which is valuable from the public standpoint.

HON. MR. PUGSLEY: I would like to see the section go further and give the minister power, in his judgment, to take charge of the road and put it in repair and make the cost of repairs a first lien. Would it not be much simpler to give to the minister power summarily to take charge of the road, spend what he might think necessary to put it in repair, and make it a first charge? If you go into court it means lawyers' fees and expenses.

MR. MACDONELL: This section of the Act gives the Government a lien and the section further says "such lien may be enforced by His Majesty," etc. You cannot give more than that.

HON. MR. PUGSLEY: The property has to be sold and where the company owning it cannot afford to put it in repair the purchaser could not either. Nothing effectual is done.

MR. BENNETT: It might be done in this way: the court may appoint a receiver or authorize the minister to manage the road pending sale.

MR. NESBITT: The minister could be authorized in the first section to go on and fix up the road, and make it a first charge in place of a subsidy being a first charge.

MR. BENNETT: It was done in one case in Canada and the road is still there.

MR. NESBITT: If it was any benefit to the people in the district through which the road ran it was money well spent.

HON. MR. PUGSLEY: I have raised the question, and, perhaps, the minister might consider it. It is not effective now. The companies go on risking the lives of passengers, and nothing effectual can be done under this section.

Mr. GRAHAM: On the other hand would that suggestion of yours really not enable the minister to subsidize any railway, without getting any authority?

Hon. Mr. PUGSLEY: Why should he not have the power?

Mr. BENNETT: Some people would say that would be a dangerous power around about election time.

Hon. Mr. PUGSLEY: Some of these railways have been built with public moneys. The people have got in the habit of using them. They are a public necessity, and the lives of people are in danger every day. The services are getting poorer all the time. The companies say to the board, "Now, what are we going to do about it? We have no money to put it in repair"?

Mr. BENNETT: The difficulty they have is to maintain an equilibrium between revenue and operating expenses. In the ultimate analysis this would mean the town would take over these roads.

Hon. Mr. PUGSLEY: Yes.

Mr. BENNETT: We have not gone that far. There is no doubt it is a powerful remedy if carried to its end, but the difficulty in maintaining an equilibrium between operating expenses and revenue precludes them from making the repair. The people of this country do not feel like placing themselves behind these enterprises.

Hon. Mr. PUGSLEY: They have not that regard for the service that enables them to take a broad view of it.

Hon. Mr. GRAHAM: The result eventually will be that if these roads are to run the Government will have to take them over.

Mr. BENNETT: I think the word "bond" should be left out.

Mr. CHRYSLER, K.C.: The language of the old section was better. The language here is too indefinite. They should not pay out the money to holders of bonds. The section is all right, giving the Government a prior lien for the subsidy as against the people who have lent money on bonds, and after that the money should go to the people who are registered holders of bonds under mortgage.

Mr. BENNETT: We should insert in the last line, after the word "secured," the words, "by mortgage."

Mr. CHRYSLER, K.C.: That covers it.

Mr. JOHNSTON, K.C.: Secured by mortgage or otherwise.

Mr. CHRYSLER, K.C.: Yes.

Section adopted as amended.

On Section 162, limitation of time for construction.

Mr. BENNETT: There has been a great deal of discussion on this question. This first section was introduced by the railways.

The CHAIRMAN: This met with the approval of the Railway Committee the last two years.

Mr. CHRYSLER, K.C.: There is no objection to the section, but it seems to me that taking that section, and section 167, which provides that they shall not commence the construction until the general location has been approved by the board, and until the plan and book of references have been deposited with the board, which means a large amount of engineering. Two years is too short a time to commence, and this clause is rather severe on the companies. The entire money put into the enterprise is lost unless Parliament extends the time, if fifteen per cent of the work is not done within two years. That is a very short time, taking into consideration the fact that we have only about six months in the year to do the engineering and surveying work.

MR. BENNETT: This raises the old question. There are many people who go into the country hoping that facilities will be furnished at certain points, simply because a charter has been granted for a railway, and probably the charter has been sold out. It seems to me that fifteen per cent is not an enormous amount to be expended in two years. If the companies mean business, they go ahead.

MR. NESBITT: If they cannot spend fifteen per cent in two years on the preliminary work, they are not very serious.

MR. CHRYSLER, K.C.: This is actual construction, not preliminary work.

MR. NESBITT: No; that is in the case of an advanced line.

MR. BENNETT: In survey and actual construction work.

HON. MR. PUGSLEY: In the first case, as to the amount, fifteen per cent of it is capital stock, and as to the extension, there is fifteen per cent bond issue. Of course the amount actually due depends on what the company puts in for capital stock in one case, and what it puts into its bond issue in the other. If the company desires they can have the capital stock very small and the bond issue very large. Why should you limit the fifteen per cent in the case of the main line for the capital stock. You might have capital stock $5,000 a mile and the bond issue $15,000.

Hon. MR. COCHRANE: Parliament would not permit it at $5,000 a mile.

MR. BENNETT: If they will carry their capital stock as low as you suggest, of course that is some assurance that they probably mean business.

HON. MR. PUGSLEY: If the companies realize that they must spend fifteen per cent in two years they will make their capital stock small and the bond issue large.

MR. BENNETT: Parliament won't let them.

HON. MR. PUGSLEY: I know one case where Parliament let them have a capital stock of $100,000, and the bond issue was very large, because it is out of the bond issue they build the road.

MR. CHRYSLER, K.C.: There is an understanding as to the amount per mile of capital stock.

MR. NESBITT: Yes, we never let any of them pass without $10,000 per mile.

Section adopted.

On section 168, location of line.

APPROVAL OF BOARD.

HON. MR. PUGSLEY: Why not consider in dealing with this section the views of the Senate? I was impressed at the time with the desirability of getting the approval of the Board before going to Parliament. It did not seem to me quite consistent that Parliament should approve of a route for a railway and authorize its construction and that the Board should have power to declare that the construction of such a line would not be in the public interest. It seems to me that the company should go to the Board and get approval and then come to Parliament.

MR. BENNETT: A man conceives the idea of a railway; he takes a map and lays it down and comes to Parliament, gets a charter. The map shows the route in a general way. There may never have been even a survey and he just draws a line across the map. As to the practice heretofore prevailing in Canada, it was felt that there should be some authority exercised before the promoter would be allowed to commence work. There should be a survey before a charter is granted.

HON. MR. PUGSLEY: Has the committee ever given thought to the question now, that we have a Railway Board and are proposing to give that Board the right to deter-

mine—irrespective of Parliament, because that is what it means—whether certain things shall be granted and the Board can undo what Parliament has done—has the Committee considered whether the whole thing could not be made effective without coming to Parliament at all?

Mr. BENNETT: Yes. We all remember that the late Senator Davis raised the question in the Senate, and the whole thing was discussed. The proposition was to have parties desirous of obtaining charters for construction of railways to go before the Railway Board and have that Board issue the charter.

Mr. MACDONELL: The difficulty about it is that I am largely in sympathy with the views of Dr. Pugsley. I have been attending the Railway Committee for the last fourteen years, and it would be almost impossible to enumerate the number of rough-hewn applications that come there. Men get a map and draw a line across it with a pencil, and they put up enough fees to get them to Parliament and make an application for a charter. These charters have been granted indiscriminately. No one has passed upon the route or the nature of the proposition.

Mr. BENNETT: In many cases there has been no reconnaissance survey and no information given. We give them a charter, and define in the Act the route the railway shall take. They take it to the Railway Board and the Board is because of our action largely confined to that route. They have no discretion as to the wisdom or unwisdom of the route, or of the need of railway in that section; they practically have to adopt the route we have given them. The company should first qualify by giving proper evidence of the feasibility of the route, and it should be looked over by the officers of the Railway Commission appointed for that purpose. Afterwards let them come to Parliament and say, "We have had our scheme approved and our details sanctioned," and then Parliament could give them an Act of incorporation. But the present method is beginning at the wrong end, putting the cart before the horse, and a lot of work is done that is quite unnecessary.

Mr. NESBITT: I am afraid I cannot agree with Mr. Macdonell. I do not think we should subordinate our rights to the Railway Board, as to whether a railway through a certain locality, not defining exactly the line, is necessary or not necessary in the interest of the country. As I understand it that is what is done now. The Railway Committee say whether a railway shall run from a certain point to a certain point. We do not lay down exactly the line that it shall take. That is a matter which I think might properly be submitted to the Railway Commission, because they will take time to consider it, and put an engineer to work at it, to ascertain whether it interferes with any other parties. Then there is often a dispute as to whether a railway should go through a town or near a town. I think that could be left to the Railway Commission. The Grand Trunk Pacific runs two or three miles out of Saskatoon, a most inconvenient sort of thing. The Railway Commission should be allowed to say whether the line shall go out there or not, but whether the representatives of the pepole should say whether the line was necessary to that country or not. We should be the first to say, and if we say it is necessary, the Railway Commission should be authorized to locate the line, so that no other line is duplicated, and see that it goes through the towns it is supposed to serve.

The CHAIRMAN: Have you any objection to the line being located by the Railway Board in the public interest, as this section reads, "If the Board deems that the construction of a railway upon the proposed location or upon any portion thereof is not in the public interest, it shall refuse the approval of the whole or of such portion."

Mr. JOHNSON, K.C.: That is exactly what Mr. Nesbitt says.

Mr. BENNETT: What Mr. Nesbitt has said is what this section endeavours to say.

Mr. NESBITT: I do not think they should be allowed to refuse to permit a railway to be built between two points.

Mr. BENNETT: All they have to do is to take the location submitted to them.

Mr. NESBITT: That is the idea.

Hon. Mr. PUGSLEY: I really believe it would be a great reform if we would allow the Secretary of State and the Railway Board to grant the Charter and to do everything necessary, instead of coming to Parliament for it and causing a waste of time which might better be devoted to something else.

The CHAIRMAN: This will provide a remedy.

Hon. Mr. PUGSLEY: No, it will not. The Company will still have to come to Parliament first and the whole matter will continue to be discussed, with solicitors in attendance here, and the time of Parliament taken up in a wholly unnecessary way. I remember talking to the late Mr. Creelman, before he died, and he was very strongly in favour of having the charter granted by the Secretary of State, with the approval of the Railway Board. He spoke of the rapid procedure in the case of the Railway built to Spokane, where, instead of having to wait for legislation, the Company was able to get the necessary permission quickly and then go ahead and complete the line in a very short time. It strikes me that it would be very much better to have the Charter granted by the Secretary of State and the Board of Railway Commissioners.

Mr. BENNETT: Of course, that would change the whole system of our legislative jurisdiction.

Hon. Mr. PUGSLEY: So it does, but when we pass this Bill we give the Board of Railway Commissioners very great and very proper power. Now, why not go a little further and leave it to the Board to approve of the proposed Charter, and then have the Charter issued by the Secretary of State.

Mr. BENNETT: If we do that the Special Act disappears and we merely have the General Railway Act, like the Companies Act, which applies to every railway. There is no reason why it should not be done, but in doing it the principle upon which the Act is based would be entirely upset. There would have to be a provision inserted that the Charter should appear in the statutes, the same as Orders in Council do every year, so that we could have a record of all the Companies created.

Mr. MACDONELL: In the case of practically nine-tenths of the legislation we are putting through, the procedure is as follows: A bill comes up before the Railway Committee to incorporate, we will say, the A & B Railway, running for a distance of 500 miles in the West. Some member gets up and says, "I introduced this Bill, and it will go through a certain town", or makes a general statement about it, and the Bill is agreed to without hearing the merits or demerits of the scheme, or learning the views of the municipality or municipalities interested. Now, while we are not in a position to ascertain all the necessary information, the Railway Commissioners are. They can and do bring out all the facts which should be elicited in the public interest.

Hon. Mr. PUGSLEY: In the Board of Railway Commissioners you have disinterested men who are constantly dealing with these subjects.

Mr. MACDONELL: An impartial Board that can make due inquiry. But, as Mr. Bennett has said, we shall be changing the principle upon which the Act now rests.

Section adopted.

On Section 168—Location of line.

MR. JOHNSTON, K.C.: I would suggest cutting out the heading "approval of Board," and allow the heading "Location of line" to remain.

Section adopted as amended.

On Section 180—Unauthorized changes forbidden.

MR. CHRYSLER, K.C.: I do not suppose that anything I say will affect the view of the Committee, but I am instructed by the Grand Trunk that upon principle they

object to the section forbidding them from removing, closing or abandoning any station, or divisional point, without leave of the Board. I have no instructions as to the Company's reasons for the objection, except that they think it is a domestic matter which they should be allowed to determine.

MR. NESBITT: If the Company can show cause the Board would not refuse to allow them to make the change, and if cause cannot be shown the prohibition is quite proper.

MR. BENNETT: You have overlooked the joker, that the Company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated to them thereby.

HON. MR. COCHRANE: Isn't that a fair provision to make? Take a divisional point where the men's homes are located. If that divisional point be changed it is certainly unfair to compel the employees to sell their homes at a sacrifice.

Hon. Mr. PUGSLEY: At all events, Parliament enacted the provision two or three years ago, and I don't think it ought to be changed.

Section adopted.

On section 186—Industrial spurs.

Hon. Mr. PUGSLEY: In requiring a company to pay the whole cost of a spur, the Government deals more harshly with railway companies than it does with the Intercolonial. The Government itself pays a portion of the cost.

Hon. Mr. COCHRANE: No, I don't think so. I think we pay it all.

Hon. Mr. PUGSLEY: The Government allows for the rails and ties, whereas the person constructing has to pay for the road-bed.

Hon. Mr. COCHRANE: We have adopted the standard agreement of the other roads now.

Hon. Mr. PUGSLEY: I am interested in a spur. Under the standard agreement the Government pays the cost of the spur and charges to the applicant 6 per cent interest.

Hon. Mr. COCHRANE: That 6 per cent interest is levied on the rails, but all roads do that.

Hon. Mr. PUGSLEY: Under this section the cost of the rails has to be recouped to the applicant, and I was wondering if the railway companies were raising any objection.

Mr. SINCLAIR: Does not the Intercolonial Railway charge a rental?

Hon. Mr. COCHRANE: It does.

Hon. Mr. PUGSLEY: In this section we are compelling railway companies to make heavier payments than the Government does.

Mr. MACDONELL: The Railway Board has to approve of it, apparently.

Mr. CHRYSLER, K.C.: The Board may approve of the form of the agreement. It seems reasonable.

Mr. NESBITT: As a matter of fact, in practice interest is charged on the cost of the rails.

Hon. Mr. PUGSLEY: That certainly cannot be legally done under this section.

Mr. W. F. MACLEAN: Where is there provision to meet the case of another railroad using an industrial spur?

Mr. BENNETT: That is covered by the section dealing with interchange of traffic.

Mr. MACLEAN: I want to know whether such a case is provided for.

Mr. CHRYSLER, K.C.: Yes, in section 187, dealing with the use of the spur for another industry.

Mr. MACLEAN: My own idea is that industrial spurs should be accessible to everyone on equal terms. Once they are installed they should be accessible to all railways.

Hon. Mr. COCHRANE: There might not be room for more.

Mr. MACLEAN: If there is, it ought to be within the discretion of the Railway Board to say they shall be accessible.

The CHAIRMAN: I will read Section 187, and you will see what the provision is, Mr. Maclean.

Mr. MACLEAN: Does that apply to traffic from another railway?

The CHAIRMAN: No, it does not.

Mr. JOHNSTON, K.C.: Provision can easily be made, if intended, in Section 194. Subsection 5 of that section deals with the joint use of tracks.

Mr. BENNETT: What Mr. Maclean means is that the engines, locomotives and motive power of another railway should be put on the spur. That has to be approved by the Board of Railway Commissioners.

Mr. MACLEAN: A great many industrial spurs are more or less regarded as private property, and other companies cannot use them even if they are anxious to pay for the privilege. I want it set out clearly in the new Act that other companies may use these spurs, on payment of a fair consideration, under regulation by the Board of Railway Commissioners.

Mr. BENNETT: They can do that now.

Mr. NESBITT: Section 187 provides for that.

Mr. BENNETT: Section 187 only covers the case of other industries.

Mr. NESBITT: As a matter of fact, where you have a switch on a railway and want to take in another railway's cars, the railway upon which the switch is, will take them all the way through.

Mr. BENNETT: Absolutely, and the Board of Railway Commissioners regulates that now.

Mr. NESBITT: As a matter of practice that is what is done.

Mr. BENNETT: As a matter of law, certainly.

Mr. MACLEAN: Is the provision clearly set out?

Mr. BENNETT: It is.

Section adopted.

On section 187—Use of spur for another industry.

Mr. BLAIR: The Railway Commissioners are of the opinion it would tend to clearness if you would amend the section by striking out the comma after the word "done" in the second line, and perhaps adding the words "or notwithstanding." The section would then read, "Notwithstanding any agreement or arrangement made or notwithstanding anything done under the last preceding section, the Board may" etc. In discussing this matter with the Commissioners the opinion was held that the section did not make clear what agreement or arrangement may be made with the company irrespective of section 186.

Mr. JOHNSTON, K.C.: What you mean is that it is feared something may be done, under an agreement or arrangement, altogether apart from section 186.

Mr. BLAIR: Quite so.

Hon. Mr. PUGSLEY: I would suggest the adoption of this amendment: "Notwithstanding anything done under the last preceding section, and notwithstanding any agreement made thereunder or otherwise."

Section, as amended, adopted.

Committee adjourned until to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 7-- MAY 2, 1817

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

Wednesday, 2nd May, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

PRESENT: Messieurs Armstrong (Lambton) in the chair, Bennett (Calgary), Bradbury, Graham, Green, Lemieux, Macdonell, Nesbitt, Pugsley, Reid and Sinclair.

The committee resumed consideration of the Bill.

Section 168 being reconsidered, subsection 3 thereof was referred to a sub-committee for redrafting, such sub-committee to consist of Messrs. Bennett (Calgary) and Graham.

At one o'clock, the committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

May 2, 1917.

The committee met at 11.10 a.m.

Mr. H. B. McGIVERN and Mr. Andrew Hayden were present on behalf of the Canadian Northern.

Mr. CHRYSLER, K.C.: Yesterday the committee passed over section 169, and following sections, with reference to the plan, profile and book of reference. There was a point involved there that was discussed some days ago, in connection with the taking of an easement, on the definition of land in the second section. If you will refer to the second section, subsection 15, you will see that land is there defined as meaning, among others, "any easement, servitude, right, privilege or interest in, to, upon, over or in respect of the same. That is as it is printed. I mentioned to the committee at the time that although that was apparently intended to give the Railway Companies, or other Companies operating under the Act, the power of taking an easement, it did not effectively do so, and sections 169 and 170 do not confer that right either. An amendment will therefore be required. I have been discussing the matter with Mr. Johnston, and he understands what is needed and agrees with me about it. If it is the wish of the committee that such power should be given, the addition of a subsection will be required, giving the company the power to take an easement from lands when required without acquiring the land itself by serving a notice, defining the easement necessary as of the planting of a post, the carrying of a wire, or the carrying of a bridge, in each case defining exactly what the Company wishes to take, accompanied with proper plans of the work proposed to be constructed and the area of land to be affected, and making an offer for that privilege which the proprietor can accept or refuse just as he wishes. In many cases the result will be just as already proposed by the section which you have passed, allowing the Company to take the land and give back an easement. Following the reverse operation, you will leave the man his land but subject to an easement, and for that the Company will pay full compensation. There is no such power under the Act as it stands, and the consequence is it is a wasteful system unless by agreement the things which I have indicated are carried out, because the Railway Company is required to take and pay for land which it does not need and which becomes waste land; it is only used for the purpose of putting something over it, which does not really interfere with the use of the land at all. In some cases the thing put over may be a much more serious one than in others. In the case of a bridge, for instance, with a wide arch, a good deal of the value of the land, for passage, at all events, may be left to the proprietor, which relieves the Company from the necessity of paying the cost of the whole of the land.

Mr. SINCLAIR: Give us an illustration of what you mean when you say it would be advisable to allow an easement without taking the land.

Mr. CHRYSLER: A common case is either an overhead bridge, or overhead wires for power companies, or the putting of a pipe under the soil, or it may be a stone or a concrete sewer. You cannot do any of these things without taking the whole of the land, and sufficient quantity on either side, which is, of course, the property of the railway and which they can sell back again if they do not require it under the present Act.

The CHAIRMAN: I understand, gentlemen, that Mr. Johnston would like to have this clause stand.

Mr. SINCLAIR: We discussed this matter before, and the idea at that time was that they had better take the land, that where the Company wanted an easement it should take the land too.

Mr. MACDONELL: That is my understanding, and I have the marginal note "stands" with respect to subsection 15 of section 2, on the occasion of the former discussion. I took rather strong grounds at the time and I am still of the opinion I was then—in fact, Mr. Chrysler has just corroborated what was in my mind: he tells us to-day frankly that the Railway Company, up to the present time, has no power to take an easement or servitude out of land, that it must pay for the land and then that it will only exercise a servitude or easement and the land is waste. But that is from the railway's point of view. Now, what Mr. Chrysler proposes would have the very same effect, only the waste land would be left on the hands of the owner. If you take certain kinds of easements out of the land and not the land itself, that land is left on the hands of the owner and is practically waste land.

Hon. Mr. REID: In many cases.

Mr. MACDONELL: In many cases. Now, the importance of this legislation lies in the fact that it is entirely new. Up to the present time the railways have not had the rights that subsection 15 of section 2 is giving them. That is a most ample and wide power: the right to take and acquire "any easement, servitude, right, privilege or interest in, to, upon, over or in respect of the same", that is, of any land. It does seem to me that is a most revolutionary section. I agree that there are cases—for example, the instance mentioned to us by Mr. Ruel the other day with respect to the Montreal tunnel—where a right of easement is necessary for a railway to have. That was a case of the kind, and the easement granted there was a very proper thing. However, that is an exception, and I doubt very much the propriety or wisdom of giving such wide general power to a Railway Company to take easements in land and leave that land on the hands of the owner, which will be practically worthless, waste land.

Mr. NESBITT: Do not we leave it to the Board of Railway Commissioners to say whether a Company shall have the right to take an easement or not?

Mr. MACDONELL: All you leave to the Board is the assessment of damages.

Mr. NESBITT: I understand that subsection 15 was allowed to stand the last time we discussed it.

Mr. MACDONELL: "Stands" is the marginal note I have made with respect to it. It was considered but not passed.

Mr. JOHNSTON, K.C.: The note I have with respect to subsection 15 of section 2 is that it will stand until section 223 is reached.

The CHAIRMAN: Why not allow the section to stand until Mr. Macdonell, Mr. Johnston and Mr. Chrysler get together and frame something suitable?

Mr. NESBITT: I would like Mr. Chrysler to draft a section in order that we might see what he has in mind.

Mr. CHRYSLER: I shall be very pleased to do so.

Mr. LIGHTHALL: I represent the Union of Canadian Municipalities and would briefly say that we regard such a demand as a very dangerous one. It is one of those things that will affect all our citizens, all our properties, and I know that the stand taken, by our principal municipalities at least, is very strongly against any such request.

Mr. NESBITT: We appreciate the seriousness of it fully as much as the municipalities.

Mr. BENNETT: Illustrating the point raised by Mr. Chrysler, I had three cases which occurred one after the other. One was with respect to the laying of a concrete pipe of large size. Under the law as it stood I had to expropriate the fee simple to the whole of the land in order to lay that pipe. The pipe was laid deeply underground and the land above it might well be cultivated, and in fact was afterwards cultivated. As the law stood, it necessitated the expropriation of the whole of the land and the fencing of it on either side. It caused me considerable difficulty because we had so to do, and we had to let the farmer get back an easement on the land we had taken. The next case was one in which it was necessary to carry an overhead structure over a ravine. All that was wanted was the power to put two piers on either side and carry the structure over the land. The placing of the piers was a very simple thing, but inasmuch as the carrying of the structure from pier to pier was really the use of the owner's land to the extent of an easement and destroyed his right or power of movement over his land, we had, as the law stood—it was my own opinion and I may have been wrong—to acquire all the land between the piers in order that we might be able to carry that structure over it. The other case, and I may frankly say that I was interested in the matter, was the carrying of wires, electric power wires, over land. Under the Railway Act power is given to expropriate farm land, but in this case the farmers owning the land did not care to give the fee simple to land to enable the wires to be strung from pole to pole, and so we bought by agreement. In that case there was an easement which gave us the right to plant the poles, and in the event of the wires being destroyed, through storm or otherwise, we were to repair them and to pay compensation for any injury that might be done to the crop, the right of ingress and egress for the purpose of repairing the poles or wires always being subject to that provision with respect to compensation. As I understand the proposition now before the Committee does nothing more and insofar as cities are concerned the question of compensation is fixed by the Arbitration Board in the same way as if the fee simple were taken.

Mr. MACDONELL: No.

Mr. BENNETT: It may be that the measure of compensation would be larger, but the Board fixes compensation just as it does with the fee simple which is taken.

Mr. MACDONELL: Not necessarily. Suppose it is an easement that shuts out the light.

Mr. MACDONELL: Then the measure of damages, in that case as in all others, depends upon the character of the evidence that is submitted. I know of a case out in Macleod in which the measure of damages was as great as though the soil had been taken in its entirety. In the case of cities I know of instances where the easement has been compensated for and that compensation has been of some value.

Mr. LIGHTHALL: In most cases the expropriation is regarded as a misfortune.

Mr. BENNETT: Always. I think, Mr. Lighthall, we may start with the assumption that expropriation is regarded as the operation of an extraordinary right, and that the expropriation of every property is looked upon as a misfortune, although in practice, I am bound to say, it may be good fortune.

Mr. NESBITT: I can conceive of cases where an easement may be to the benefit of the person whose land is crossed. Mr. Chrysler might draft a section under which a railway company or other corporation, desirous of getting an easement, should first obtain the consent of the Railway Board, and that the damages should not be permanently fixed because a great many people are unable to tell what the permanent damage may be at the time the easement is granted.

Mr. LIGHTHALL: I have suggested to Mr. Chrysler that, the cities, towns and villages should be excepted in whatever clause is drawn by him. That would reduce the areas of the difficulty very considerably.

Mr. BENNETT: Except with respect to carrying drains through pipes. I had a case with reference to drains and ultimately, by agreement, I fixed it up.

Mr. MACDONELL: If you except the drain pipe, you are making special legislation. If the company can get an easement to run a pipe under a piece of land, and they do not disturb the surface, it would be a comparatively trifling amount of damage. A man will be deprived of the use of his land that he has the right to naturally, to the centre of the earth, or some other away down place, and at the same time the Company would be only paying a trifle for it. I can quite imagine the cases of hardship which have been cited by Mr. Bennett.

Mr. NESBITT: Would it not be right for them to apply to the Board, as I suggest, for a right to take that easement.

Mr. MACDONELL: I think not. If you get in to the city with the multiplicity of applications of railway and other companies, who desire to string wires and erect poles, and so on, you would simply destroy the city, because they could take easements of every nature and kind, lands, servitudes, etc., they could create noxious odours. That legislation is all right enough in certain cases, and you would simply say "I am taking a servitude."

Mr. NESBITT: Do you think any sensible Board will allow that?

Mr. MACDONELL: I think a large city should be exempt from this provision.

Mr. JOHNSTON, K.C.: I might mention that this discussion has been precipitated because the Committee passed yesterday section 169. That section provides what the plan, profile and book of reference filed by the railway company shall show. You have laid over for the present the definition of the words "lands" as contained in the interpretation clause.

Mr. NESBITT: That is of section 15?

Mr. JOHNSTON, K.C.: Yes. If you propose to pass the section as it stands, it will be necessary to do something to section 169, because you will see the language of 169 is not appropriate to the acquisition of easements. It requires among other things that the plan will show the areas, the length and width of the lands proposed to be taken, but manifestly that does not cover the proper description of an easement, and because yesterday we passed section 169 without having passed subsection 15 of section 2, I drew the matter to the attention of Mr. Chrysler, and pointed out that if it was intended to give the railways power to take the easements, section 169 would have to be supplemented. While we are dealing with that point I may say that it has been held in England that language that is similar to the present Railway Act does include an easement. That is to say that in the land clauses of the Consolidation Act of 1845, the word "lands" shall extend to all messuages, lands, tenements, and hereditaments of any tenure. That is similar to the present Railway Act. This would have been held to include easements.

Mr. BENNETT: I was of opinion that I was quite right in expropriating an easement as well as expropriating a fee simple.

Mr. JOHNSTON, K.C.: Are Mr. Lighthall and the municipalities not protected by the proposed section 373, which provides that no company shall have the right to enter upon any street without the consent of the municipality, or in default therefor without the Order of the Board? Are the municipalities not sufficiently protected by that?

Mr. LIGHTHALL: We speak not only for the municipalities as corporations, but for the citizens as well. I am referring to that phase of it.

Mr. SINCLAIR: How would it do to decide on the principle of this clause? It seems to me there is some difference of opinion, and if we decide we are going to allow them to expropriate an easement independent of the land, it will be necessary to get someone to draft the clauses as we decide to have them. I am inclined to leave the Act

as it is. I think that would compel the railway and telegraph companies to expropriate the land.

The CHAIRMAN: Supposing we leave this matter over and allow Mr. Chrysler to frame a clause that he thinks will cover this, and consult with Mr. Lighthall in regard to it? We might allow it to stand over for the present until we have something definite before us.

Hon. Mr. GRAHAM: Did the Committee pass the clause yesterday with reference to the method of obtaining charters for railways?

Mr. NESBITT: We discussed the question of Charters.

Hon. Mr. GRAHAM: And the question as to the location of the road?

Mr. JOHNSTON, K.C.: The duties of the minister are now delegated to the Railway Board.

Hon. Mr. GRAHAM: Heretofore they came to the Railway Committee and got their charter. In securing that charter they had only a general outline of their route, and as a matter of practice the railway ran from "A" to "B." Sometimes it had to run into "C," but oftener it was pretty general. Then when the time came for construction they came to the Minister of Railways and had to file their plan and profile of the line, and he had to approve of it in a general way. After he had approved of it in a general way then the plans were filed with the Board of Railway Commissioners. They had to adhere to the approval of the minister, except this, that they could vary the line one mile either way, I think. It might seem to be a little roundabout in the multiplicity of machinery, but it gave the public at least three avenues of protection. First the Railway Committee could protect the public in saying generally where the line should run. Then the minister could get it down a little more definitely, but if he happened to make an error, the Board of Railway Commissioners could vary that one mile either way.

Mr. BENNETT: That did not take them into Saskatoon.

Hon. Mr. GRAHAM: I was not minister at the time, but I know it did not. The Board of Railway Commissioners brought them as near to Saskatoon as they could by the minister's approval. This will relieve the minister of a great deal of responsibility. Whether it will be the same safeguard to the public as to leave it to one body, without practicably any appeal from that body, I do not know.

The CHAIRMAN: This was pretty thoroughly discussed yesterday.

Hon. Mr. GRAHAM: I apologize for bringing it up, but it was a matter I had a good deal to do with.

The CHAIRMAN: It was the unanimous wish of the committee it should pass.

Hon. Mr. PUGSLEY: Not exactly unanimous. It gives the Railway Board the power to absolutely nullify the action of Parliament. I think it is undignified and improper.

Hon. Mr. GRAHAM: Under this the Board can say, "You cannot build the road at all." I think that is giving the Board too much power. Supposing from my viewpoint I was agreeable to giving the Board power to say where the road should go, should we place in the hands of three or four men the power to say, after we have decided that a road shall be built, that that line shall not be constructed? Are they in a better position to judge of a policy of this Parliament—not of the detail but of policy?

Mr. NESBITT: I do not understand section 168 to put it that way.

Hon. Mr. PUGSLEY: Yes, they can absolutely stop proceedings and say the charter shall be null and void.

Hon. Mr. REID: Subsection 3, of section 168, says:—

> But if the Board deems that the construction of a railway upon the proposed location or upon any portion thereof is not in the public interest, it shall refuse approval of the whole or of any such portion, and in any case where the Board deems it in the public interest it may, as to any portion of the proposed railway, make any order or require the taking of any proceedings provided for by section 194 of this Act."

That means that after Parliament passes that Act they can nullify it.

Mr. BENNETT: That is with reference to the location.

Hon. Mr. PUGSLEY: According to the Act if the Board deems that the construction of a railway upon a proposed location, or upon any portion thereof, is not in the public interest, it shall refuse approval.

Mr. BENNETT: Yes.

Hon. Mr. PUGSLEY: It gives them absolute power to say that a proposed line is too near some other line and they can refuse the company permission to construct. Suppose a company proposes to construct a line from Hamilton to Toronto the Board may say, "No, that is too near other lines."

Mr. BENNETT: But no Charter was ever granted by Parliament in terms of that character. We cannot say to a company in general terms you may build from Hamilton to Toronto. The map submitted to the Railway Committee must contain more general information than that. It is open for the Board to permit the line to be constructed along the location submitted. That is what that section is for. For instance, had that power been there and had the Board exercised it, the Canadian Northern, the Grand Trunk Pacific and the C.P.R. would not be running parallel to one another for so long a distance on the western plain.

Hon. Mr. PUGSLEY: Parliament should be the judge of that.

Mr. BENNETT: It comes down to a question whether the Railway Committee, with a Bill submitted by some promoter, to build from "A" to "B," is better able to know what is in the public interest than the Board of experts who are to determine whether the traffic is sufficient to keep up only one road, or whether it is sufficient to divide the traffic between two roads.

Hon. Mr. GRAHAM: Taking the other view, suppose the Railway Committee gives very careful consideration to the granting of a Charter—and I believe in the future greater consideration and more care will be exercised, because the territory is getting pretty well filled up—as a matter of fact that has to be submitted to the Committee of the whole House and to Parliament. Suppose the Government had a policy in regard to railway construction, and had approved of a certain line of railway being built, I should hesitate to support a clause that would even make it doubtful whether the Board of Railway Commissioners could circumvent the Government and Parliament and all of us by refusing to approve of a location at all, and sitting tight and saying, "No, I will not approve of that location, and we will not approve of this location." They might curtail the power of Government, and they might over-ride Parliament in that way.

Mr. BENNETT: The Railway and Canal Committee in England exercised power greater in extent than any power exercised by our Board of Railway Commissioners, but I do not remember what their powers are with reference to the location. Do you happen to remember, Mr. Chrysler?

Mr. CHRYSLER, K.C.: My understanding of the English system is that the Railway Board sits in the House of Commons and is the Railway Committee, and you have to bring your plans there showing to the inch almost where your line of railway is

to run, and the plan is approved before the Charter is granted. That would be impracticable here.

Hon. Mr. PUGSLEY: That would be a sensible thing to do.

Mr. CHRYSLER, K.C.: That Committee hears opposition from municipalities, etc.

Hon. Mr. PUGSLEY: That is a reasonable thing to do. Here, as Mr. Graham says, we do not allow any appeal from the decisions on questions of law, and I do not think we ought to nullify what the Government or Parliament may decide upon.

Mr. BENNETT: The principle is a simple one. The question is whether or not we should adopt it.

Mr. GRAHAM: Suppose it were decided that a certain Company should built a certain road. That may be a matter of Government policy.

Hon. Mr. PUGSLEY: And the Government may think that one location is a fair and proper one and in the public interest.

Hon. Mr. GRAHAM: I should not care to see the Board of Railway Commissioners over-ride what Parliament has decreed after very careful consideration.

Mr. BENNETT: Yet in practice here is what happens in certain cases: Take banks, for example. The power is given them by statute to amalgamate. The shareholders approve of amalgamation, the necessary steps are taken, but the Minister of Finance refuses to give his consent.

Hon. Mr. GRAHAM: The Minister of Finance is responsible to the public.

Mr. BENNETT: It is much more important to have a tribunal that cannot be log rolled.

Hon. Mr. GRAHAM: We can get after the Minister of Finance if he does wrong.

Mr. NESBITT: I do not think the Railway Board should have the right to nullify entirely any action taken by Parliament.

Hon. Mr. PUGSLEY: In Section 168 they have such power.

Mr. NESBITT: The Board should have power, of course, to approve of the general route of a railway.

Hon. Mr. GRAHAM: It would relieve the Minister of Railways of a great responsibility, and perhaps the public would be just as well served, but I do not think that when Parliament has made up its mind with respect to a certain matter the Railway Board should be in a position to say "No, we will not do it."

Hon. Mr. PUGSLEY: Suppose Parliament authorizes the building of a railway, which may be in the public interest, after very careful consideration. The Railway Board might say: "We do not think it is desirable. The location is going to interfere with the traffic of other lines, and it is not needed. We will not approve of that location at all." The Board would have that power.

Mr. BENNETT: Great powers, under Act of Parliament, are given to tribunals, but we must always assume that there will be a reasonable exercise of them.

Hon. Mr. LEMIEUX: Like Dr. Pugsley I believe that Parliament, being supreme, should not surrender its authority. It is not to be supposed that Parliament will ever pass any Act which would be on its face so absurd as to deserve to be over-ridden by the Railway Board. We gave the Board powers, and I am one of those who believe that such powers should be ample powers, so that they might administer the Railway Act in the public interest; but when Parliament has authorized a Railway Company to build a line from such and such a point to a certain other point, for the Railway Board afterwards to say: "Parliament was wrong and we will put its decision to one side," is a pretty severe reflection on the supreme authority.

Hon. Mr. GRAHAM: Do you not think, Mr. Bennett, that giving this absolute power to the Board would tend to make members, both in the House and in the Railway

Committee, more lax and more careless than they ought to be. I am afraid there would be a tendency on the part of members to say, "Oh, what's the odds? Why incur this man's hostility by opposing his Bill. Let the Railway Commission look after it and stop it if there is any impropriety about it."

Mr. BENNETT: That is such an apt description of what takes place now.

Hon. Mr. GRAHAM: But it should not take place.

Hon. Mr. PUGSLEY: Looking at the past I do not think we can properly reflect upon Parliament in the matter of railway legislation. On the whole, Parliament has been pretty careful and no great harm has resulted from the granting of charters. I do not see why, in discussing this matter, one should go to extremes and say, "We have not done any good at all."

Mr. BENNETT: Had there been a practical exercise of the powers provided for in this section, this country would have been saved a million dollars a month.

Hon. Mr. PUGSLEY: I do not agree with that at all.

Mr. BENNETT: All you have to do is to read the figures and look at the map.

Hon. Mr. PUGSLEY: I do not believe that any railway charters have been granted which have been otherwise than beneficial.

Mr. BENNETT: I do not think you should say that seriously.

Hon. Mr. PUGSLEY: I do not think that we should denude ourselves of all powers.

Mr. SINCLAIR: I do not think there is any ground for undue alarm. We have already conferred large powers upon the Railway Board in the belief that it was in the public interest. For example, the Board has been given the right to fix rates. Parliament would still possess that power if it had not divested itself of it. We have denuded ourselves of a great many powers.

Hon. Mr. GRAHAM: Consider how far-reaching the granting of such power might be in effect. Suppose Parliament decided that a certain policy was necessary in the interest of Canadian defence, and some board of strategy were to say: "No, that is a bad policy, we will not carry it out."

Mr. BENNETT: That is what has happened in England for years.

Hon. Mr. GRAHAM: The conditions in England are far different from what they are here.

Mr. BENNETT: They have a committee of experts in whom they have vested control over the expenditure of money. However, Mr. Johnson has made a suggestion which might meet the difficulties and still preserve the exercise of discretion by the Board, but depriving it of the power to nullify Parliament's actions, as suggested by Mr. Pugsley. If subsection 3 of section 168 were modified, and subsections 4 and 5 of section 194 remain, then the discretional power would still be vested in the Board, but the right to absolutely nullify the action of Parliament would be removed. Let me read subsection 4 of section 194 (reads):—

> "4. Where the proposed location of any new railway is close to or in the neighborhood of an existing railway, and the Board is of opinion that it is undesirable in the public interest to have the two separate rights of way in such vicinity, the Board may, when it deems proper, upon the application of any company, municipality or person interested, or of its own motion, order that the company constructing such new railway shall take the proceedings provided for in subsection 1 of this section to such extent as the Board deems necessary in order to avoid having such separate rights of way."

That deals with the utilization of existing rights by a new company. Now then, take subsection 5 (reads):

> "5. The Board, in any case where it deems it in the public interest to avoid the construction of one or more new railways close to or in the neighbour-

hood of an existing railway, or to avoid the construction of two or more new railways close to or in the neighbourhood of each other, may, on the application of any company, municipality or person interested, or of its own motion, make such order or direction for the joint or common use, or construction and use, by the companies owning, constructing or operating such railways, or one right of way, with such number of tracks, and such terminals, stations and other facilities, and such arrangements respecting them, as may be deemed necessary or desirable."

Now, it seems to me those two subsections with the modification of subsection 3 of Section 168 ought to meet the views of all the members of this Committee.

The CHAIRMAN: As I understand it, the minister is in favour of the clause as it stands.

Hon. Mr. GRAHAM: I should think the minister would be anxious to secure unanimity of opinion, and therefore would not be unreasonable.

Hon. Mr. PUGSLEY: I suggest that the provision be reconsidered and that Messrs. Bennett and Johnston be a sub-committee to frame a more suitable section.

The CHAIRMAN: Is it the wish of the Committee that this section be reconsidered and that Messrs. Graham, Bennett, Johnston and Chrysler be a sub-committee to redraft it.

Suggestion adopted.

On Section 190—The taking and using of lands (Crown Lands).

Hon. Mr. GRAHAM: Is this a new section?

Mr. JOHNSTON, K.C.: It is substantially the same as it was before.

Hon. Mr. GRAHAM: Is this because the right of the Federal authority to encroach on provincial Crown lands is in question?

Mr. JOHNSTON, K.C.: The Dominion Expropriation Act makes express provision for the taking of provincial lands.

Mr. BENNETT: The Privy Council has given a decision in this matter. Under the provisions of this section there is power to take provincial Crown lands.

Hon. Mr. GRAHAM: Suppose this Government granted a Charter and the Board of Railway Commissioners approve of the plan. Under this Act could the Railway Company expropriate provincial lands?

Mr. MACDONELL: They have no power under this Act to do it, and this Government cannot give them such power.

Hon. Mr. GRAHAM: Suppose it were desired to run over some of the lands owned by the province.

Mr. CHRYSLER, K.C.: The land is the property of the Crown and not the province. If a competent legislative authority says that a Railway Company can take the land of the Crown, whether it is vested in the province or the Dominion, you have got your right there.

Mr. MACDONELL: Oh, no.

Mr. BENNETT: A decision was given by the Privy Council in an electric light case in the province of Quebec about three years ago, as to the power of expropriation where the Company had a Federal charter.

Hon. Mr. GRAHAM: That the Dominion had the power to expropriate lands in the Crown in the provinces, and could delegate that power to a railway, is that the idea?

Mr. BENNETT: It is the conferring of the right of eminent domain upon the creature of the Parliament of Canada. Is not that the story?

Hon. Mr. GRAHAM: The question was raised some years ago when I was in the legislature of Ontario, and there was quite a clash about it. I was wondering whether the question had been settled in the interim or whether there was any provision in this Bill with respect to it.

Section adopted.

On section 200,—Lands taken without consent.

Mr. JOHNSTON, K.C.: The words "Subject to the provisions of the next following section" have been added, but that is of no importance. I am asked by the railway Companies to suggest that it should be made clear that where the Railway passes through a sub-division it may take the whole of any lot laid down upon the sub-division by paying for it. The railway companies have power under section 205 to purchase more land than they require, where they can purchase the whole thing on more advantageous terms. The railway companies say that sometimes people make plans for sub-division in advance of the laying of the rail, and when the railway reaches them they may find a man has laid out lots of 150 or 200 feet in depth, and the railway can only take 100 feet, and has to pay big damages. They say it is only reasonable that they should be able to take the whole lot in the event of a plan of sub-division being made.

Hon. Mr. PUGSLEY: Is it reasonable that the railway company should make a profit from the rest of the land rather than the owner of the land? I think the companies should be very well content with the power we have given them.

Mr. BENNETT: That is not the point.

Hon. Mr. PUGSLEY: Yes. They may expropriate the whole lot whether they require it for a railway or not, and not allow an individual who has foresight, and lays out his land, believing the railway is going to come there, to derive any benefit.

Mr. JOHNSTON, K.C.: The way it was put to me was this: a lot is 150 feet or 120 feet in depth. The railway has only the right to take 100 feet for right of way, leaving a man with 20 feet. The man claims that he has a right to be compensated, not only for the 100 feet taken, but for the damage done the other twenty feet. He says, "I am left with 20 feet on my hands which has no value to me at all."

Hon. Mr. PUGSLEY: In that case the other 20 feet would not be much advantage to the railway.

Mr. BENNETT: It might be to the railway, but not to the individual. That 20 feet has been a constant annoyance to the municipality, and the question of fences arises, and I can show you where fences are separated by only 15 feet of land. One fence has been put up by the municipality for a street front, and the railway has been compelled to erect the other fence.

Hon. Mr. PUGSLEY: It seems to me it is not so important that we should give the railway company power to take more than required for railway purposes.

Mr. BENNETT: We should give them some power, because the question arises with us in western Canada. I have had a good deal to do with these cases, and those lot ends have caused no end of trouble. I think we should cover it by a provision, subject to the order of the Board.

Hon. Mr. GRAHAM: Where the lot does not exceed a certain quantity of land, I think the Company should be compelled to take it.

Mr. BENNETT: Quite so.

Hon. Mr. PUGSLEY: Yes, in the case of a small lot.

Hon. Mr. GRAHAM: It creates litigation.

Mr. MACDONELL: Give them the power subject to the order of the Board.

Hon. Mr. GRAHAM: I think there should be power given to the Board to compel the company to take all the land, or whatever is necessary.

Hon. Mr. PUGSLEY: There are difficulties both ways. It might be a great hardship to compel the company to take more land than they needed. On the other hand, a company is given very wide powers, however, as a rule, they can make an easy adjustment with the landowners.

Mr. BENNETT: I remember a case which occurred in the heyday of speculation. It was known that the Canadian Northern was coming through Calgary. A gentleman acquired half a section and laid it out in lots. When the railway came along it crossed over those lots. The lots out there are 150 feet. It crossed them in such a way that in some instances they would have ten feet cut off at one end and ten feet in another place, and it was a difficult matter for the arbitrators to settle. Leave it to the Board to say what they shall take, because now they cannot compel them to take more than 100 feet.

Hon. Mr. PUGSLEY: Do hon. members not think the landowners would gladly sell these little pieces?

Mr. BENNETT: They have to serve a notice in order to expropriate what they desire to take.

Hon. Mr. GRAHAM: I had a lot of trouble with the little bits that were left when I was head of the department.

Mr. BENNETT: These ends increase greatly in value.

Hon. Mr. PUGSLEY: It would be a hardship for the company if you compelled them to take the whole lot.

Mr. JOHNSTON, K.C.: I have drafted a proposed clause, which reads as follows:

> Where the land required for right of way forms part of a lot laid down on any resistered plan or sub-division, the railway may, with the approval of the Board, take the whole of such lot.

Hon. Mr. PUGSLEY: Or the railway may be compelled to take it.

Mr. BENNETT: I think in the public interest they should be compelled to take the whole lot.

Hon. Mr. GRAHAM: It looks drastic, but that difficulty arises very frequently.

Mr. CHRYSLER, K.C.: The Holdidge case decides that if it is a bona fide subdivision before the plan was filed, you have to pay for the lot, but the arbitrators have to take into consideration the increased value given to the land by the construction.

Mr. BENNETT: It only touches the part of the land through which the railway travels. It is all right in this section of the country, but where you have twenty-five sub-divisions surrounding a city it is a different proposition.

Hon. Mr. PUGSLEY: There may not be so many in the future.

Mr. GREEN: Most of these cases are settled before they ever come to arbitration. Usually an agreement is reached between the Company and the owners of the lots. It is only the exceptional cases where the arbitration proceedings went so far that the Board required to sit and deal with them.

Hon. Mr. GRAHAM: I had trouble with this question. The parties would not go to arbitration. They seemed to be afraid to deal with each other, apparently. Both were afraid of arbitration, and they often came to me and asked me if I could not suggest something. Time after time I did just what the Board is given power to do, and they both accepted the proposition.

Mr. GREEN: I have seen quite a lot of arbitrations, and I have found as a rule that the company is more afraid of arbitration than the owner of the lot, and unless the claim was very unreasonable they were able to reach an agreement.

Mr. JOHNSTON, K.C.: Mr. Ruel, solicitor for the Canadian Northern, informed me that his company was defendant in the Holdidge case.

Hon. Mr. PUGSLEY: If you try to do justice according to Mr. Graham's idea, and impose the reciprocal obligation, the railway would much sooner have it the way it is.

Mr. CHRYSLER, K.C.: To be candid, I think it is better the way it is. If section 205 were made compulsory, we would be worse off, and as it stands it affords an opportunity of settlement, where people are reasonable.

Section adopted.

On section 201, subsection 6,—Deposit with Registrar of Deeds.

Mr. CHRYSLER, K.C.: The old section as to deposit of plans, deposit when so sanctioned, deposit of plans, profile and book of reference, etc.; deposit thereof when so sanctioned with the Board and with Registrar of Deeds. I do not know where the change is made in this. It is already provided for.

The CHAIRMAN: You have no objection to it, as it is.

Mr. CHRYSLER, K.C.: No, except it is not as plain as before.

Mr. JOHNSTON, K.C.: I have the old section before me. It says:

> "All the provisions of this Act applicable to the taking of land with the consent of the owner for a right of way of the railway shall apply to the lands authorized in this section to be taken", etc.

And the deposit thereof when so sanctioned with the Board and the Registrar of Deeds. The provisions making it necessary to deposit plans with the Board and Registrar of Deeds were excluded. It is now required that this plan shall be deposited. So what was formerly unnecessary is now made necessary, and it seems it is reasonable that when they take extra land they should deposit plans. I think that should stand.

Section adopted.

On section 207—Order of judge may be had.

Mr. JOHNSTON, K.C.: The purpose of the alterations in 207 is to make it perfectly plain that persons who have no legal right to sell must obtain an order from the judge.

Mr. CHRYSLER, K.C.: It is a condition precedent that they should obtain an order. It seems to be a proper change.

Section adopted.

On section 208,—Limitation of powers to convey.

Hon. Mr. GRAHAM: Section 205 is subject to this one.

Mr. JOHNSTON, K.C.: Section 205, provides that the company may purchase more land than is actually required where it can be done advantageously. Section 208 restricts the power of certain persons such as rectors and ecclesiastical corporations, so that they can only sell such lands as the railway absolutely needs. It is manifestly to prevent them from speculating or selling lands which are vested for a certain purpose, and they are limited to the necessities of the railways.

Hon. Mr. GRAHAM: They are really trustees.

Section adopted.

On section 211,—Premature contracts.

Mr. JOHNSTON, K.C.: That simply requires registration.

Mr. CHRYSLER, K.C.: That is all right, except perhaps the provision which says, "If the lands are afterwards so set out and ascertained within one year from the date of the contract or agreement". The question is whether that is the proper date to start your year from. In other cases you have a year from the filing of the plan.

Mr. JOHNSTON, K.C.: The section is as it was in that respect.

Hon. Mr. GRAHAM: The Company at one time had the right to take possession of land or give notice that it was going to take possession of land, and then hold it for two or three years without doing anything. Does this touch that point?

Mr. CHRYSLER, K.C.: No. You are thinking of revoking your notice of taking and not proceeding further.

Hon. Mr. PUGSLEY: When you put in the words, "shall, if such contract or agreement is duly registered with the proper registrar of deeds," you really do not want the limitation as to the year. I understand one year was put in to cover cases where the contract was not registered, where there had been no notice to third party, but if you register the agreement, it stands during the life of the agreement.

Mr. CHRYSLER, K.C.: No, that is not the meaning of the section. They go to a man and say, "We will pay you $100 to cross your land." You settle the price, but you do not start. This section provides that the agreement becomes void if the lands are not ascertained within one year.

Hon. Mr. PUGSLEY: Where it is registered, the contract itself should govern as to the time.

Mr. CHRYSLER, K.C.: That covers my point at any rate.

Section adopted.

On section 212,—Rental when parties cannot sell.

Mr. JOHNSTON, K.C.: Is that not a curious provision? Under section 212, any person interested in any land if not authorized to sell may agree upon a fixed annual rent. Do you know, Mr. Chrysler, for how long a term the practice is to take leases under that clause?

Mr. CHRYSLER, K.C.: No.

Hon. Mr. PUGSLEY: It would have to be perpetual or for ninety-nine years.

Mr. CHRYSLER, K.C.: I think it varies in every case. They could only make this agreement up to the limit of their power.

Hon. Mr. PUGSLEY: And as a rule the solicitors for the railway company would make it 99 years, or as nearly perpetual as they could.

Mr. CHRYSLER, K.C.: With regard to Section 208, the administrators would probably not make a lease for more than one year.

Section adopted.

On section 214, subsection 2,—Company may grant easements, etc.

Mr. JOHNSTON, K.C.: This is added for the purpose of enabling the railway company, when it takes the entire fee simple in the land, to re-grant to the person from whom they take the land an easement over the land.

Mr. CHRYSLER, K.C.: In mitigation of damages.

Mr. CHRYSLER, K.C.: There was a question as to the power of the arbitrators to allow anything where that agreement came before them.

Hon. Mr. GRAHAM: That is quite fair.

Section adopted.

On section 216,—Notice of expropriation to be served.

Hon. Mr. GRAHAM: Paragraph C refers to notification that "if within ten days after the service of this notice, or where the notice is served by publication," etc. Under what circumstance is notice by publication sufficient? What kind of publication is it?

Mr. JOHNSTON, K.C.: To the board, under a previous section.

Hon. Mr. PUGSLEY: Suppose the owner were absent and you could not serve him with notice.

Mr. CHRYSLER, K.C.: The Branch Line section (182) provides for four weeks' public notice. Is that applicable in this case?

Mr. MACDONEL: Notice to the *Canada Gazette* is of not effect.

Hon. Mr. GRAHAM: Where you are really trying to reach a man there ought to be notice given in addition to requiring an advertisement in the *Canada Gazette*.

Mr. JOHNSTON, K.C.: Section 218 provides (reads):

> "If the opposite party is absent from the district or county in which the lands lie, or is unknown, an application for service by advertisement may be made to a judge of a superior court for the province or district, or to the judge of the county court of the county where the lands lie.
>
> 2. Such application shall be accompanied by such certificate as aforesaid, and by an affidavit of some officer of the company, that the opposite party is so absent, or that, after diligent inquiry, the person on whom the notice ought to be served cannot be ascertained.
>
> 3. The judge shall order a notice as aforesaid, but without such certificate, to be inserted three times in the course of one month in a newspaper published in the district or county, or if there is no newspaper published therein, then in a newspaper published in some adjacent district or county."

Hon. Mr. GRAHAM: I would provide for publication of the notice much nearer to the man's domicile. I would say that notice must be published in the newspaper nearest to his last known post office address. The ordinary individual is not known forty miles from his home, and the notice should be published in a newspaper quite close to where he resides.

Hon. Mr. PUGSLEY: This is an old provision.

Hon. Mr. GRAHAM: I know, and I have always taken the ground that the *Canada Gazette* for publication purposes was not in the interest of any person except the man who was legally represented, and whose lawyer would look it up.

Mr. JOHNSTON, K.C.: There might be cases where the party was absent, or might never have had a residence in the county; he might live in England or in the United States. As it stands, the judge will look after the publication of the requisite notice.

Mr. MACDONELL: The idea is to see that the notice reaches the man. Why not leave that to the judge? You can provide that the judge shall order notice to be published in a newspaper, or in such other manner as in his opinion will most likely reach the party in question. Something to that effect.

Section allowed to stand with the understanding that Mr. Johnston submit a suitable amendment at the next sitting.

Mr. JOHNSTON, K.C.: I should like to go back to section 216 and take advantage of Mr. Chrysler's presence, because I have some difficulty of approving of the words "the opposite party." As the section is now worded it provides as follows: "Preliminary to proceeding to arbitration to fix compensation or damages, the Company shall serve upon the opposite party a notice."

Mr. MACDONELL: That is very indefinite.

Mr. CHRYSLER, K.C.: It should not be "the opposite party," but "the owner of the land."

Mr. JOHNSTON, K.C.: The Act previously said "the party." It has been interpreted, and I believe the English Act has been so interpreted that all parties interested must be served with notice.

Section ordered to stand until Messrs. Johnston and Chrysler frame suitable amendment. All other sections in which the words "opposite party" occur, also ordered to stand.

On Section 219—Abandonment and notice where Company decides not to take lands or materials mentioned.

Mr. JOHNSTON, K.C.: I have had some correspondence with Mr. M. D. L. McCarthy, who desires to address the Committee and has forwarded a long amendment regarding abandonment. I have a letter from Mr. McCarthy stating that he will be here to-morrow.

Section allowed to stand.

Committee adjourned until to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 8--MAY 3, 1917

(Containing representations of Sir Andrew Drayton and of Railway Representatives re Section 146, stock and bond issues.)

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM, No. 301,

Wednesday, May 2, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Carvell, Hartt, Graham, Green, Macdonald, Macdonell, Maclean (York), McCurdy, Nesbitt, Sinclair and Weichel.

The Committee resumed consideration of the Bill.

At the request of the Executive Committee of the Union of Canadian Municipalities, *Ordered*, that Friday, May 18, be fixed for consideration of the sections of the bill affecting cities, towns and villages, particularly expropriation of easements in section 216 *et Seq.* and Telegraph and Telephone, sections 367-376 and sections 252 and 358, 254 and 256 *et Seq.*

Ordered, that Thursday, May 10, be fixed for the consideration of the section of the bill respecting compensation for stock killed or injured on railway tracks.

Section 219 being read, Mr. D. L. McCarthy, of the Toronto Niagara Power Co., was heard thereon, and the following new subsections 3 and 4 were proposed to be added to the section. (For these new subsections see Minutes of Evidence herewith.)

The Committee then adjourned until to-morrow at 11 o'clock a.m.

22266—10

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

THURSDAY, May 3, 1917.

The Committee met at 11.15 a.m.

The CHAIRMAN: It has been arranged to take up section 146 this morning, regulation of stock and bond issues (reads):—

146. Notwithstanding anything in any special or other Act, or other section of this Act, no company, whether heretofore or hereafter incorporated shall, unless heretofore authorized by the Governor General in Council, issue any stock, shares, certificates of stock, bonds, debentures, debenture stock, notes, mortgages or other securities or evidences of indebtedness payable more than one year after the date thereof or issued otherwise than solely for money consideration, without first obtaining leave of the board for such issue.

2. The board, as it deems the circumstances warrant, may refuse, or may grant, leave for the proposed issue, or may grant leave for such part thereof as it is satisfied is reasonable and proper, and may in any case impose any terms or conditions it may deem proper, and may, if it deems the circumstances warrant, specify a price below which such issue shall not be sold, and may specify the purposes for which the proceeds of the issue are to be used, or may provide for the application of such proceeds to such uses as the board, by subsequent order shall specify, and may order that such proceeds shall be so deposited or dealt with as the board may direct, and may require an accounting to be given for any such proceeds.

3. No leave or order of the board under this section shall be deemed or taken to constitute any guarantee or representation as to any matter dealt with therein, or to preclude the board from dealing as it may deem proper with any question of tolls or rates. (New.)

Mr. MACLEAN (York): Will Mr. Johnston explain what was in the old law?

Mr. CHRYSLER, K.C.: This section is all new.

Hon. Mr. GRAHAM: This section transfers the power hitherto exercised by the Governor in Council to the Board of Railway Commissioners.

Mr. MACLEAN: The law is much more explicitly stated. They could have done anything under the old order.

Hon. Mr. GRAHAM: When a company wanted to issue any new securities, speaking generally, they applied to the Governor in Council and had to show cause why they should be allowed to do so. Then an Order in Council was passed giving them permission. In this case your suggestion made originally, I think, in the House of Commons—I fancy it is the policy adopted on the other side of the line—was that before a railway company was allowed to issue any new securities they had to get the permission of the board. In the United States, I think, the permission of the Interstate Commerce Commission is required.

Mr. MACLEAN: Does not the Canadian Pacific Railway issue securities without the consent of anybody by reason of something in their original powers?

Hon. Mr. GRAHAM: There may be something in their original charter which allows them special privileges.

Mr. MACLEAN: I want to know if that is coming to an end.

The CHAIRMAN: I understand that representatives of the various railways are present this morning, and if it is the wish of the committee that they should be heard I will call upon Mr. Biggar, general counsel for the Grand Trunk Railway.

Mr. MACDONALD: Who drafted this section?

Mr. JOHNSTON, K.C.: That section appears in that form for the first time in Mr. Price's draft. Mr. Price was instructed by the minister to prepare this Bill. This section is a radical departure.

Mr. MACLEAN: I think the Railway Commission had something to say in the drafting of it.

The CHAIRMAN: Sir Henry Drayton is present, and will speak later.

Hon. Mr. GRAHAM: As a matter of fact, I think my hon. friend from South York (Mr. Maclean) was the first man to bring it up in the House.

Mr. MACLEAN: I know.

Mr. NESBITT: The purpose is to transfer the power of Parliament, represented by the Minister of Railways, over to the board, is it not?

Mr. W. H. BIGGAR, K.C.: I happen to be here only by accident, because it seemed to be understood last night that this section would not be taken up to-day, on account of the enforced absence of Mr. Beatty, General Counsel of the Canadian Pacific Railway, whose company is more interested in the section than we are. Mr. Beatty had to be in Montreal to-day and could not possibly be here.

Mr. NESBITT: Something was said about his inability to be here.

The CHAIRMAN: Yesterday this clause was arranged for.

Mr. BIGGAR: There was some different understanding last night. I am quite prepared to state the objections of the Grand Trunk Railway, but thought it might be better that the views of the Canadian Pacific Railway should be expressed at the same time.

Mr. MACLEAN: How does your company issue stock?

Mr. BIGGAR: Our stock is all issued under special Act of Parliament.

Mr. MACLEAN: Is there a special Act for every company?

Mr. BIGGAR: We only issue one class of stock, that is Grand Trunk debenture stock. Every time we require to issue more stock we come to Parliament and get a special Act, which provides the amount that shall be issued, and provides further that the Act shall not come into force until the shareholders approve of it, the shareholders being the holders of the present stock of that same class. This new section means, so far as we are concerned, that you are going to transfer from Parliament to the Railway Board the right to say how much we shall issue and how we shall issue it.

Mr. MACLEAN: How about your subsidiary companies?

Mr. BIGGAR: We have no more subsidiary companies in Canada; they are all merged in the Grand Trunk, the Canada Atlantic being the last one to be merged. As I say, every issue of this stock ranks pari passu with stock issued under similar conditions and legislation for the last fifty years, and that Act does not become effective, and the directors cannot issue that stock until the present holders agree and say for what purposes the proceeds of the stock will be applied. We feel that Parliament can control in our case the amount we shall issue and the terms upon which we shall issue it, and we think further, so far as the application of the proceeds is concerned, that our directors, our operating heads, our traffic heads, the managers of the road, all of whom are in constant touch with the property, are better qualified to say how that money shall be expended even than the Board of Railway Commissioners. If these powers are transferred to the board they would call our officers before them, hear their views, and probably act accordingly.

Mr. MACLEAN: Suppose, Mr. Biggar, cases should arise in Canada, as they have in the United States, by which great railway systems have been looted by an improper issue of stock carelessly authorized. Would it not be a good thing to have somebody responsible for the issuing of the stock and the disposition of it and to see that it went to the purposes of the undertaking?

Mr. BIGGAR: Parliament has that power to-day.

Mr. MACLEAN: I know it has.

Mr. BIGGAR: The difference is this: in the United States railway companies are not incorporated by special legislation as they are here; they are simply incorporated by filing a memorandum of association.

Hon. Mr. GRAHAM: As is done here under the Companies Act.

Mr. BIGGAR: They do not go to Congress to get their rights. In every Act that Parliament passes there is a limitation put upon the bond issue, and the capital is fixed. It may be in time past that Parliament might have been too liberal in granting bond issues, but you cannot cure that by this legislation.

Mr. MACLEAN: Haven't similar powers been given to the Interstate Commerce Commission in the United States?

Mr. BIGGAR: No. My understanding is that the committee appointed by Congress reported against this proposal, and advised that power be not given to the Interstate Commerce Commission to regulate the issue of securities. In some of the states of the Union they have that power.

Mr. MACLEAN: There is a national proposition to that end before Congress.

Mr. BIGGAR: It was referred to a committee and that committee reported adversely. In some of the states they have that power, but not in the majority of the states. In some of the states that power is exercised arbitrarily, and it is the practice to collect a tax upon each issue of bonds. That is the case in Michigan and in Illinois. You have to go to the State Board and get their approval before you can issue any securities, but they make you pay a heavy tax for issuing them. That is not proposed here. One of the chief reasons why these states have passed that legislation is that they may receive a considerable income as a result. In our case we cannot issue a dollar of stock—there is only one class of stock we issue—without coming to Parliament and getting a special Act limiting the amount. So far as the expenditure of the proceeds is concerned, we think we, the owners of the property, are quite as capable of saying how it shall be expended as the Railway Board.

Mr. MACDONELL: Notwithstanding that the special Act authorizes the stock and debenture issue, that continues to be so under section 146, which, in addition, imposes the obligation of going to the Railway Board. It says: "Notwithstanding anything in any special or other Act."

Mr. BIGBAR: The Railway Board would tell us, for instance, how we would have to spend our money. Surely the men in charge of the property are capable and competent to say how it shall be spent to the best advantage in the interests of the shareholders. Furthermore, it provides that we shall not fix the limit or the price. I think there is a letter—the committee may not have received it yet—from Mr. Smithers, chairman of our board, in which he says that in many cases he has been able to go on the London Exchange and in half an hour sell five or ten million dollars of this stock. How could he cable out here and have the approval of the board as to price? It happens at opportune times that you can sell stock to great advantage in that market. That opportunity may be lost between the afternoon and the morning. What object is there in fixing the price in our case, and what particular object is it to say how we shall spend our own money?

Mr. MACLEAN: The board need not exercise their power. They may say: "We will allow you to issue it at what you can get for it.

Mr. BIGGAR: We have to get their approval.

Mr. MACLEAN; Of the price?

Mr. BIGGAR: Yes.

Mr. MACLEAN: The board may tell you: "Do the best you can, finance yourself."

Mr. BIGGAR: But how can we dare sell it at a certain price, without first obtaining the approval of the board?

Mr. MACDONELL: This gives the board very great power.

Mr. NESBITT: It just changes from Parliament to the board.

Hon. Mr. GRAHAM: Do you think on the whole, speaking generally, that we have arrived at that period, if we ever would arrive at it, when Parliament and the Government ought to divest itself of all these powers and give them to somebody else?

Mr. BIGGAR: It simply comes down to that, as far as the Grand Trunk is concerned. You are transferring the absolute control of our stock from Parliament to the board. That is what it amounts to.

Hon. Mr. GRAHAM: Personally, I am not afraid to take my share of the responsibility in regard to these things. Of course, it is an easy thing to go along the lines of least resistance and divest ourselves of authority and save any trouble by handing it over to a board. No matter how able the board may be, what advantage would it be to the country, the shareholders or anybody?

Mr. MACLEAN: I casually looked at a summary of Mr. Smith's report this morning in regard to the railway situation of Canada, and he recommends the formation of a new company, which shall be governed by some body in the matter of securities.

Hon. Mr. GRAHAM: He recommends that for somebody else's railway, and not his own.

Mr. MACLEAN: Yes, and we have had experience of Mr. Smith and his associates. I think the railways of Canada ought to be governed in the light of the experience of the United States. The men in charge of the different systems of railways in the United States have been plunderers of their own railways, and have looted them, and the worst examples in the world are in connection with probably the Rock Island and the Hartford and New Haven roads. The exposures in regard to these roads have been so bad that there has been a demand in the United States for a change. Some of the companies Mr. Smith has been associated with have been exploited in regard to their finances and stock in a way that the public should be protected against. We have seen a good deal of that here.

Mr. NESBITT: In those cases did they have to go to Congres for approval of their proposals?

Mr. MACLEAN: I do not care where they had to go. The public should be protected. These men went where they liked and issued what stock they liked, and exploited the public. The railway situation in Canada to-day has been aggravated, in my opinion, by the free and easy way in which the Canadian Pacific has been allowed to issue stock —stock that now commands 10 per cent. They get 10 per cent dividends on that stock, whereas a great deal of the money requirements of the Canadian Pacific might have been met by the issue of bonds bearing probably 4 per cent. They have a debenture stock, I believe, of a low rate of interest. There should be somebody who would be authorized to say how the road is to be financed, whether it is to be by stock or whether it is to be bonds. Let me point out something that has happened recently in connection with the Canadian Pacific Railway. It is an absolutely Canadian railway. The purposes of the undertaking are for the benefit of Canada, and yet the control of that railway might pass out of the country. If there is an excessive stock issue the control is likely to be out of the country. If you keep your stock issue down and substitute bonds, there is a much better chance of the control of the railway, the purpose

of which happens to be for the benefit of Canada, being in Canada, but if you are going to have a great issue of stock the control might not remain in Canada.

Mr. NESBITT: Where does the difference come in, whether you issue stock or bonds, in regard to the control?

Mr. MACLEAN: My contention is that if you are going to have private corporations run our railways, the stock issue ought to be small, and, if possible, held in the country.

Mr. CARVELL: Is it more liable to be sold in the country than outside, if the stock issue is small?

Mr. MACLEAN: Yes, you can appeal to the patriotism of the country.

Mr. CARVELL: Not when it comes to a matter of dollars and cents.

Mr. NESBITT: It peters out, when it comes to dollars and cents.

Mr. MACLEAN: When the stock issue was small it was very easy for the country to retain control of its own railways, but the control of the Canadian Pacific Railway, by reason of its large stock issue, has passed out of the country, when it should be kept here. Of course, you can take it over to-morrow, as a war measure, but then you raise a large question of the over issue of stock.

Hon. Mr. GRAHAM: Granted that all you say is correct, do you think this board will exercise better control than the Governor in Council, who is responsible directly to the people?

Mr. MACLEAN: I would think so, yes, because the control in the past has not been good.

Hon. Mr. GRAHAM: The conditions are changing all the time.

Mr. MACLEAN: There has been a recklessness in the issue of stock, as to the character of stock and as to the control of it, and there is a question as to whether all the securites haive beeen applied to the purposes of the undertaking in the best way.

Mr. CARVELL: We were trying to get information from Mr. Biggar. Would you object to hearing him state why he would rather go before the Governor in Council for these things than go before the board?

Mr. MACLEAN: I would be only too glad.

Mr. CARVELL: That is the real question at issue.

Mr. MACLEAN: No, the real question at issue is the interests of the nation, and not the views of the Grand Trunk.

Mr. CARVELL: The question is in regard to the authority to authorize the issue of stock and bonds, whether it should be the Board of Railway Commissioners or the Government.

Mr. MACLEAN: That probably is the issue. This is not quite my proposal, but I did present the question in the House as to whether there should be a control of these stock issues. I think this not only partly meets the ends I had in view, but it embodies the wisdom, or lack of wisdom, of the Board of Railway Commissioners. I think this section is drafted on the lines of public interest. Sir Henry Drayton is here, and I am going to ask him to enlighten us.

Hon. Mr. GRAHAM: What would you think of the point raised by Mr. Biggar, as to the power of this board to regulate the price of stocks? I think the Governor in Council has never regulated the price at which the securities are to be sold.

Mr. MACLEAN: Of course, there could be an improper exploitation of that security. I do not say there would be, but there should be a check on it.

Mr. CARVELL: You think there might be melon cutting?

Mr. MACLEAN: There have been a good many melons cut in this country, but not on the Grand Trunk, I regret to say. I am sorry, but that fine old system, the Grand

Trunk, has not been cutting melons, and perhaps it is because the head office is a long way from Canada.

Hon. Mr. GRAHAM: I think it is because it has to draw that third class rate car of yours.

Mr. MACLEAN: That was a good thing. It was put on, but the people who lived in Brockville and along there did not want to exercise their right in regard to it.

Hon. Mr. GRAHAM: We do not use third class cars.

Mr. MACLEAN: I read of some ex-ministers going across the continent in a private car, and they enjoyed it, but we are getting away from the issue.

Hon. Mr. GRAHAM: Mr. Biggar raised an objection which to me looks like a real objection in regard to fixing the price. Any person who deal in securities, particularly of a railway company, may have a chance on a certain day to dispose of them. Circumstances may arise by which a person can dispose of his securities at an advantage; but if he has to wait to get authority at long range, he will be at a great disadvantage, and he will be just at the disadvantage the Grand Trunk is under at this end of the road. They might have to vary the price half a point to meet the requirements. What would you say as to that?

Mr. MACLEAN: I have gone to the bank to get money at a time when I could use it to great advantage, but they would tell me, "We will have to take time to look into it."

The CHAIRMAN: I suggest that we hear from Sir Henry Drayton and the railway experts. They might lay their suggestions before the committee.

Mr. MACLEAN: I would be only too glad to listen, but so far I have been asking questions.

Mr. CARVELL: I am very much in sympathy with you.

Mr. MACLEAN: I am favouring this clause.

Mr. CARVELL: I would like to hear some argument to the contrary.

Mr. MACLEAN: Let us hear the companies' views on the clause. I would be only too glad to have Mr. Biggar proceed with his statement.

Mr. BIGGAR, K.C: I have not much more to say. I think it was 1884 the Act was passed authorizing the company to issue this class of debenture stock. It is really a mortgage on the property. The holders of that stock have votes just the same as the other stockholders, and they control the company to-day.

Mr. MACDONELL: Will you inform the committee what regulation or supervision is now exercised by the Governor in Council over the sale of stock or bonds, and as to the use of the proceeds?

Mr. BIGGAR, K.C.: As far as we are concerned, there is no control by the Governor in Council. Once we have special legislation passed through Parliament, and that is approved by the holders of the stock with which this is to rank pari passu, we can then sell the stock at the best price possible, as we naturally do, and utilize the proceeds in the best interests of the company, and as far as the Grand Trunk is concerned, as I said before, it is practically controlled by debenture stockholders. They own and control it, and not a dollar of that stock, notwithstanding that Parliament gives authority to issue aditional debenture stock, can be sold until the shareholders who rank pari passu with the new issue say, "Yes, it is in the interests of the company that we put out this stock and use the proceeds in the improvement of the property."

Mr. SINCLAIR: Would you be better satisfied if the control were placed in the hands of the Governor in Council rather than the Railway Board?

Mr. BIGGAR, K.C.: If you give the board control it will hamper us in our disposition of the stock and the utilization of the proceeds.

Mr. SINCLAIR: Would the Governor in Council hamper you just as much?

Mr. BIGGAR, K.C.: He does not interfere with us at present. Of course, until he approves of the Act of Parliament we cannot issue the stock at all, but once he approves of it, and our shareholders approve, then our directors are authorized to sell that stock to the best advantage. If they do not, the shareholders soon raise objection and criticise the action of the directors, and if we do not use the proceeds for the improvement of the property, the directors are called upon to explain.

Mr. CARVELL: I suppose it was the intention of Parliament that somebody must exercise this control and state the conditions under which the stock should be sold and the proceeds distributed. Would you have any preference as between the Governor in Council and the Railway Board?

Mr. BIGGAR, K.C.: Personally I do not see any difficulty. As I said before, the Governor in Council would be influenced by the managers of the property. I think the board would be influenced likewise. I would ask: Who is there on the staff of the board who is as competent to say how that money shall be spent in the interests of the company as the heads of the various departments of the railway?

Mr. CARVELL: Your principal objection is that they should take control of the issue of the company's stock?

Mr. BIGGAR, K.C.: Yes.

Mr. MACLEAN: The question is whether there should be some control or no control.

Mr. CARVELL: I am trying to get Mr. Biggar's point of view.

Mr. BIGGAR: We have not issued any other class of stock the last twenty-five years. This is the only class of stock the Grand Trunk issue, and it sells to advantage in England. It is a very popular stock there, and every issue of stock has been taken up by the holders of previous issues. First of all, if our directors authorize an application to be made to Parliament for an Act giving the company power to issue 25,000,000 of that stock, and Parliament says it is proper, and the shareholders say it is proper, we let the new issue rank with the old stock, and trust to the directors to spend it in the interest of the company, and what can the board do more than the directors and shareholders, to see that the money is properly spent? The board may fix the price. We can only sell that stock in England, and they may fix the price that we are to sell it at. I am not romancing or drawing on my imagination when I tell you that time and again our debenture stock has been sold in half an hour, millions of it. At just the opportune moment, Mr. Smithers, our chairman, who is in close touch with the financial situation over there, seizes a favourable opportunity to go to some brokers and perhaps in ten minutes sells ten million dollars of that stock at a good price.

Mr. MACLEAN: Are dividends paid on that stock?

Mr. BIGGAR: That stock pays four per cent dividend and has done so for years.

Mr. MACLEAN: Have dividends generally been paid on the stock?

Mr. BIGGAR: Always, because it is a statutory first mortgage on the property.

Mr. MACLEAN: And have the stockholders a voice in the administration of the company?

Mr. BIGGAR: The holders of that stock practically control the Grand Trunk today. They have a voice in the administration of the company and they can control the meetings of the shareholders or the whole policy of the company.

Mr. MACLEAN: Do they sit in common with the common shareholders?

Mr. BIGGAR: Yes, certainly. They have twice the voting power that the common shareholders have.

Mr. MACLEAN: And you say that the dividends have been paid on this stock even though there has been a falling off in the maintenance of the road?

Mr. BIGGAR: That stock ranks in priority over every security issued by the Grand Trunk, with the exception of some debenture stock which was issued by the Great Western.

Mr. MACLEAN: And this stock takes priority over even the necessities of the road?

Mr. BIGGAR: It comes next after working expenses.

Hon. Mr. GRAHAM: Is there any person here representing the C.P.R.?

The CHAIRMAN: I understand that Mr. Chrysler is acting in that capacity.

Mr. CHRYSLER, K.C.: I appear for the C.P.R. and the other railway companies, but I expected that Mr. Beatty would be here this morning, and it was so arranged yesterday. He did come to Ottawa but was unexpectedly recalled and had to return to Montreal this morning. I would like to have the position of the C.P.R. in regard to this matter further considered, if the committee think this section ought to be passed at the present time. I am not competent to discuss the financial features of the question because I have not been instructed, but it seems to me the section can scarcely commend itself to the consideration of the committee for reasons which are apparent upon its face. If the committee will look at the wide scope of the language in the first two lines: It provides that notwithstanding anything in any special, or other Act, or other sections of this Act, any company whether heretofore or hereafter incorporated, shall, unless heretofore authorized by the Governor General in Council, issue any stock, shares, etc., without first obtaining leave of the Board for such issue. Might I state the number of things that are required before we get any clear idea of what that means, the wording being ambiguous. The ordinary charter, apart from any of the usual clauses which may appear in the charters of the larger companies like the C.P.R. and the Grand Trunk, for a hundred-mile railroad, authorizes the company to issue stock. The very first thing it says is that the company cannot organize, cannot proceed to do any business whatever, until it has issued a certain amount of the stock which is mentioned in the section which we have been dealing with,—I think it is 25 per cent subscribed and 10 per cent paid up. Now, there is the authority of Parliament to issue stock, I am not talking of bonds. So you have, in the case of a new company, a condition of its existence made by Parliament that it shall issue stock. Why should that company, for instance, go to the Board of Railway Commissioners and ask if it may issue stock. As to a case of that kind, this section is meaningless.

Mr. MACLEAN: To me these words have a meaning with respect to the C.P.R.

Mr. CHRYSLER, K.C.: You have got to deal with the section as it stands.

Mr. MACDONALD: You are not confined to the existing three big railways.

Mr. CHRYSLER, K.C.: This section is applicable to all railways and to all circumstances of companies, otherwise, I contend it should not be adopted. Then take the next case. The railway company has authority under its Special Act, to issue stock —I am still confining myself to stock—and this section proposes that notwithstanding that authority which the company has and upon which its financial arrangements have been carried on perhaps for years, it shall not issue that stock unless some other authority grants the right to issue it. In that respect you abrogate the Acts of Parliament and the transactions that have taken place under them. The member for East York speaks of the C.P.R. As I said at the outset, not being conversant with the financial side of the question I am not prepared to offer any criticism, but there you have a railway chartered thirty or more years ago, with power to do certain things. If it has not got the power to do something it wants it has only got to go back to Parliament for it. That is a question for the consideration of Parliament and Parliament may impose any conditions it likes. But you are dealing here with existing powers to issue stock. I am using the word "issuing" because issuing includes the whole of the operation, includes the making of the necessary by-laws and the getting of the sanction of the shareholders and directors. But that is not really issuing the stock. The

stock is not issued, in the complete sense of the word, until it is sold. Now you propose that at any stage the operation cannot be completed, although sanctioned twenty-five or thirty years ago by Parliament, unless it obtains the sanction of the board, which sanction the board, of course, may refuse. The board has the right to refuse because this section does not mean anything unless the board may do so.

Then take the wording of the first part of the section, "Notwithstanding anything in any special or other Act, or other section of this Act." You propose to compel the person who has to consider the question of the validity of the securities to see whether the authority given under any other section is invalidated by this section, and at what stage of the process of issuing stock it becomes invalid. Some of the companies may have issued stock in one sense of the word. That is to say, they may have the bonds completed, the mortgage completed, the sanction of the shareholders completed, all the steps under the Act which apply to them until this Act comes into force completely effective, but if they have not sold them does this Act apply? Is it intended to apply to the selling of securities which are to-day in the coffers of some one of these companies? The language of the section is wide enough to apply. I mean in the second subsection, which says that the minimum price must be fixed by the board, applies to unissued, unsold securities which are now in existence, which are authorized by Act of Parliament and sanctioned by all the clauses which that Act of Parliament applies to it. Mr. Biggar tells me the Grand Trunk is in that position to-day; they have securities which have been authorized and issued but are unsold. It is to that transaction Mr. Biggar was referring. Of course, the right to create—if I may use that word which is more explicit perhaps—securities, may be carried into operation long before the issue is completed by the sale to the public, but this section stops the very last step.

Now, as to bonds, debentures and debenture stock, these are all authorized by Act of Parliament. The member for East York says, "They do differently in the United States." They do differently in the United States in some respects. Their Act is very different, if I may say so. I know of no legislation in the United States which compares with what is to be found in the Canadian Railway Act with respect to control over railways.

Hon. Mr. GRAHAM: Hear, hear.

Mr. CHRYSLER, K.C.: I have the report of the investigation by the Inter-State Commerce Commission into the New England railways, but unfortunately neglected to bring it this morning. That report deals with this very subject and it points out the laxity which has prevailed in the granting of charters and the control of stock issues in the United States, but it is pointing to a state of things which as far as I am aware, does not exist, and never has existed, in Canada, and certainly does not exist under the present Railway Act. I do not think it is proper that the railway companies which have legitimately followed the requirements of existing legislation should be penalized because of irregularities which have existed in a foreign country. Because that is what it means; we have had no such frightful examples in Canada as Mr. Maclean has pointed out.

Mr. MACLEAN: Let me ask you a question: suppose stock is issued at a premium and it is limited to existing shareholders? Did you ever hear of melons being cut in this country?

Mr. CHRYSLER, K.C.: I do not understand that is cutting a melon at all.

Mr. MACLEAN: Not when the stock is issued at a lower price than the public could get it for, or than it would bring at public sale? That is cutting a melon for the shareholders.

Mr. CHRYSLER, K.C.: It does not do anything of the kind.

Mr. NESBITT: Speaking of melons, what about the last stock sold by the C.P.R.?

Mr. MACLEAN: My question with respect to preference given to shareholders remains unanswered.

Mr. NESBITT: If you deal very much with the stock market you must know that you cannot tell in the morning what the price of stock will be at night.

Mr. MACLEAN: I know that, and a great many other people know.

Hon. Mr. GRAHAM: The C.P.R. is not cutting any melons now.

Mr. MACLEAN: There is a time when this stock can be sold, and somebody, in the public interest, ought to fix what it should bring.

Mr. NESBITT: Who is the sagacious man to whom you are going to entrust that duty?

The CHAIRMAN: If you have no further questions to ask, Mr. Maclean, Mr. Chrysler may continue.

Mr. MACLEAN: I am quite willing to hear Mr. Chrysler, but he referred to me and I came back with a reference to him.

Mr. CHRYSLER, K.C.: I do not want to follow the discussion with reference to the stock of the Canadian Pacific Railway or any other railway farther, but I dispute entirely the premises which are involved in Mr. Maclean's contention with regard to the issue of stock and the premium thereon not going to the company. The issue of stock to the shareholders of the company in preference to the public is the proper method of issuing the stock, because the shareholders are the people who own the company. The proposed additional stock is the property of the shareholders, not the property of the public.

Mr. MACLEAN: But there is a duty to the public.

Mr. CHRYSLER, K.C.: In what way?

Mr. MACLEAN: There is a duty on the part of the corporation to the public in connection with the franchise.

Mr. CHRYSLER, K.C.: I beg your pardon, Sir.

Mr. MACLEAN: I am glad to hear the Canadian Pacific Railway say that, it throws a great light on the question—that there is no duty to the public on the part of the corporation.

Mr. CHRYSLER, K.C.: I did not say so. I said there is no duty to the public to give to them the shares in preference to the shareholders, if they are paid for at the proper price. There is nothing that gives ground for the theory or contention that Mr. Maclean is now putting forward; there is nothing that contains anything about the principles that Mr. Maclean is speaking for, in the first place that the shares should be offered to the public in preference to the shareholders, and secondly that they shall be sold at par. There is no question of issuing them at a discount in the cases of which he is speaking. Stock cannot be sold at a discount, under the Railway Act. Bonds may be, and it may be proper that some authority should say that bonds should not be sold at a greater discount than so much.

Mr. MACDONALD: Is that the situation to-day, that you cannot dispose of the stock of a railway company below par?

Mr. CHRYSLER, K.C.: It has to be paid in full, either in cash or property.

Mr. MACDONALD: With regard to the stock, there is no regulation with regard to the price at which it must be issued.

Mr. CHRYSLER, K.C.: The stock must be paid for in full, it may be issued at a premium, that is another question. Bonds may be issued at a discount, and it is for Parliament to say, when giving authority to issue bonds, whether the limit of the discount at which the bonds may be sold shall be fixed.

Mr. MACDONALD: Bonds have to be sold at what you can get for them.

Mr. CHRYSLER, K.C.: And the discount may be so great that it may be extravagant to sell them at that price; but, within certain limits, bonds are usually sold at a discount.

Mr. MACLEAN: Was the C.P.R. stock paid for at par?

Mr. CHRYSLER, K.C.: That is another question.

Mr. JOHNSTON: If it is not paid for at par, the shareholders will still be liable in case of winding up.

Mr. BIGGAR, K.C.: I think there is legislation authorizing the issue at a certain figure which is less than par.

Mr. CHRYSLER, K.C.: I am speaking of the legislation before us to-day, in the Railway Act. I think I have nothing more to say, except that if Parliament desires to impose a restriction with regard to the issuing of securities it should be confined to bonds, debentures, and debenture stock. Hitherto the determining of the amount of securities to be issued has been made by Parliament itself, and when you have the proper authority for issuing that stock and the amount to be issued has been determined it seems to me that it is not necessary to require the railway company then to consult the board as to price at which those securities shall be sold.

Hon. Mr. GRAHAM: You might perhaps give the committee a little light on the provision of the law at present, where the company applies to the Governor in Council for authority in certain cases.

Mr. CHRYSLER, K.C.: I am glad you asked the question. I did not expect to have to speak on that point to-day, but my idea is that that power is exercised under the authority of special Acts of Parliament which direct that the Governor in Council shall authorize certain things, and the general Act says nothing about it.

Mr. SINCLAIR: Do you object to all control in this matter, either by the Governor in Council, or by the Board?

Mr. CHRYSLER, K.C.: No, but this is a complicated matter, the control of which I spoke, and of which Mr. Graham was speaking just now, is all right in many cases where the company goes to the Governor in Council for authority to issue securities, and it is a proper control, it depends upon circumstances. It may be all right in the case of a large company with a large issue, and it may be inappropriate in the case of a small company. I think it is a matter to be considered and dealt with in the Special Act.

The CHAIRMAN: I notice we have with us this morning Sir Henry Drayton, Chairman of the Board of Railway Commissioners, and the committee will be glad to have his views upon this subject.

Sir HENRY DRAYTON: Mr. Chairman and Gentlemen,—So far as the idea is concerned, if it can be worked out, it is a splendid idea, if we were starting out with a virgin territory, and with a clean sheet to commence with, I should say it is the proper thing to do. The underlying principle is a simple one, and that is that every dollar which can be got by the sale of securities of any kind ought to be got, and that dollar ought to go into the treasury of the company. That is the idea, that is the underlying principle and it is the idea which is put into form in this legislation. It is an idea which, at first, entirely commends itself to me. But since the matter was first brought up, we have looked into the question of what has been done in the American States, where it has been a matter of experiment. I am sorry to say that my time has been so much taken up that I have not been able to bring down any very definite information, but, I understand, speaking subject to correction, that the committee dealing with this subject in the United States Senate have come to the conclusion that the proposed legislation is not enforceable. They have come to the conclusion as a result of the experience of what has already taken place in some of the

States of the Union where the law has been in effect for a year or two. There have been a good many inquiries held in connection with it, if I remember rightly, and when Senator LaFollette first brought the matter up, some four or five years ago, they were very strongly in favour of it. At that time the Government here, or perhaps I should say, the Department of State here, also started an inquiry into the same subject, and the matter was in the hands of Mr. Mulvey, the underlying idea being that this same principle should apply not only to railway companies, but to all corporations. Mr. Mulvey went into it and made a long report. Senator LaFollette, of Wisconsin, in his correspondence with Mr. Mulvey has changed ground, and now says that the principle should not become law. To-day I am opposed to the principle, upon the very simple ground that here in Canada we cannot fix railway rates on the basis of capitalization; there has been watering, there is no doubt about it. And it seems imposible that rates should be fixed on the basis of capitalization. We fix rates here on the basis of value and service, and all the surrounding conditions. It is imposible to enforce this legislation.

Mr. MACLEAN: Not even where the widows and orphans are concerned.

Sir HENRY DRAYTON: Not even where the widows and orphans are concerned; it is impossible in fixing rates to have regard to capitalization. This takes from the board the right to fix rates, but the board ought, under this Act, to make up their mind as to what moneys should be obtained, to what purposes these moneys ought to be put, and at what price the securities ought to be issued. Now, if the board does that, and if that board, exercising that honest judgment, have come to that conclusion, it is put in this position that, so far as the board is concerned, the board must and ought, in all honesty, so to regulate the rates so that the securities to which they have given their approval will receive a proper revenue. That is the position.

Take the Grand Trunk Railway Company. It has a capitalization of over $100,000 per mile, while the average cost of railways in Canada is $60,000 per mile, and we have many railways in Canada which have not cost $30,000 a mile, and, in some parts of the country where construction is very expensive, we have railways which, properly and necessarily, cost $110,000 per mile. The Grand Trunk Company has a very great capitalization. Now, on what basis, on what right basis, can the board approach the question of settling Grand Trunk rates, having regard not only to their old capitalization, but to the new capitalization? Everything would have to be considered because of the new capitalization and the new standard, and the question can only be considered having due regard to the earning powers. The history of the experiments in Massachusetts——

Mr. CARVELL: Before you go on to that, supposing a provision of this kind had been inserted in our statutes fifty years ago, do you think the Grand Trunk would have had a capitalization of $132,000 a mile?

Sir HENRY DRAYTON: I do not think so. I cannot say whether I am right or wrong in my opinion, because it is a matter of many years ago, but I would doubt very much if that amount of money was actually put into the stock.

In Masachusetts the first public control of the issue of securities was given in the Act of 1870 and, by the Act of that year, it was provided that any increase of capital stock of corporation should be sold at public auction at not less than par for the benefit of the corporation. This continued until 1893, and, of course, under the old rule, it meant that shareholders, as in the case of the C.P.R., would get stock worth $200 for $100, and that $100 premium was not put into the treasury of the company, but went into the pockets of the shareholders, so that agitation arose in Massachusetts for a change in the law, which came into effect in 1893. Now the Boston and Maine Railway was a strong road at that time, and the stock was sold at a round $200, and in that year it was paying a very substantial dividend. The principle

involved in the new legislation was that any market value over and above the par value of the security of the corporation went into the treasury of the corporation and not to the shareholders. The so-called anti-stock watering law provides that in the event of an increase of capital stock the new shares should be offered to the shareholders at the market value at the time of the increase, which market value was to be determined by the Board of Railway Commissioners "taking into account the previous sales of stock of the corporation and other pertinent conditions." The law continued with little change until about 1908. The law was inelastic. The Boston and Maine made a new issue of stock. The shares of that company were sold at that time at about $200, and the Commission set the price of the new issue at $190. It is obvious that the price of the new issue must be less than that at which the old stood. A very small block of that stock was taken by the shareholders, and the shares were then offered to the public at auction, and the stock broke thirty points. The second issue after that legislation was made was when Boston and Maine came into the field with a block of stock which was offered to the shareholders, with the consent of the Board of Railway Commissioners, at $165. At that time the shares were selling on the market at a round $178 to $180. You see that the Board thought a cut of 15 points would be enough, but again the shareholders did not respond and the auction sale which followed showed that the actual value of the stock, so far as the public was concerned, was lower than that, because the stock broke from $130 to $140, so that there was a drop of something like 40 points in connection with that issue of stock. So the difficulty arose that the public blamed the Railway Commission for that drop in the stock and the shareholders also blamed the Railway Commission. The shareholders took this position with regard to the Commission: "You have put your approval on our stock as worth $190. You say it is worth $190. Instead of that stock being worth $190, after you have been meddling with the matter for these few years, we have difficulty in selling at $130, and it is all your fault." And the public had the same idea, and as a result the Commission took steps itself to have the law changed so that they would be released from the burden. In 1908 provision was made changing that law. Since that time the stockholders in the first instance themselves fix the price—when I say stockholders, I mean the company—at which the issue shall be made. There is still some control in the Commission, because the Commission have the right to say how much the issue shall be in each case, and that again has been making some trouble in connection with their issues. The stock now, of course, is very low, if I remember rightly, something like $30. I think it is entirely unfair for the stockholders to blame the Commission for that result.

MR. MACDONALD: Who should they blame?

SIR HENRY DRAYTON: I do not know. I do not think we should come to that question. They say: You prevent our making our sales; you prevent us getting our market, and you have to take the responsibility.

Hon. Mr. GRAHAM: The law was at fault.

SIR HENRY DRAYTON: Everybody was at fault, the directors, and everybody. Blame them all.

MR. SINCLAIR: Would the directors not have handled that matter better without any interference of the Board?

Sir Henry DRAYTON: The trouble about the selling of stocks appears to be this: the financial market is an extremely difficult thing to understand. There are very few people who understand it. I do not know that I can say that the companies have exercised poor judgment in the sale of their securities from the companies' standpoint. For example, take the financing of the Canadian Northern. The financing of the Canadian Northern down to a certain point was at an interest rate as low as 3·98. It rose from 3·98 to something like 4·30 down to the year 1914. I am quite confident that

no Board of Railway Commissioners could have obtained anything like the same results in that particular instance.

MR. CARVELL: Would you mind, Sir Henry, on that same point, giving an opinion as to the disposition of the moneys?

SIR HENRY DRAYTON: As to the disposition of the moneys, there is more to be said, there is no doubt about that. There is no doubt that the money should be kept for the purposes for which the stocks are issued.

MR. CHRYSLER, K.C.: They may have to be diverted owing to a change of circumstances.

SIR HENRY DRAYTON: There is room for argument there, Mr. Chrysler. I cannot at the moment point to instances where moneys have been diverted.

MR. CHRYSLER, K.C.: I am not speaking of wrongful diversions. I mean diverted from one thing to another which, six months after realizing the proceeds, appears to be more pressing; that is, improvements are being suspended in order that some more needed work may be done.

SIR HENRY DRAYTON: Of course, Mr. Carvell, so far as improper diversion is concerned, we have only the security of the directors. It would be a breach of trust for them to divert such proceeds. I should very much regret to see rates in this country fixed upon any basis of capital, and so far as the public are concerned, the public's only interest lies in that direction.

HON. MR. GRAHAM: In the rates?

SIR HENRY DRAYTON: In so far as rates are concerned. If we fix rates on capital, there is no doubt that we are interested in squeezing out every single drop of water that has ever been put into it; but you can never get it squeezed out. We have a tremendous railway mileage in Canada. The problems of the future are the best and most intensive use of that mileage. Our problem is the proper utilization of the railroads that we have. If we were, as I say, starting with a virgin sheet, you could prevent water being put into these stock issues; but it is there, and you cannot get it out. The securities are in the hands of innocent people, and you cannot get the water out. If Parliament now turns around and says that securities must be sold only at such and such a price, it must be doing it for some useful purpose. That useful purpose must be one of two things: In the first instance, to see that the company gets every single cent possible so that the public are not going to pay rates based upon a watered security; or else that the securities they issue, receiving the earmark of a public authority, will sell for a greater sum in the public market. Those are the only two possible grounds upon which, so far as I am concerned, it would appear to me that the legislation would be useful. It would be fatal to the public interest to fix rates on capital; and, in so far as the second question is concerned, that is to help our securities, approving of them in that way so that they would command a better market, all those securities are, speaking of the situation as we find it, subject to all the ramifications of the companies, all their bond issues and the like.

MR. MACLEAN: No duty devolves upon the Commission to protect the shareholders as Sir Henry has just said. It is a case of: Let the buyer beware. Taking your argument, Sir Henry, even if you do say it is not in the public interest that you should control these things, because you say you are committed to protect these shareholders, it does not follow that Parliament commits itself to protect the shareholders, and you are only exercising a delegated power.

SIR HENRY DRAYTON: Parliament does not fix the rates.

MR. MACLEAN: It does. You represent Parliament. And there was a time when rates were regulated by Parliament through one of the ministers or through the Governor in Council.

SIR HENRY DRAYTON: There would be a good deal of difficulty. I speak for myself, and I may be wrong. It seems to me, as a matter of common honesty, if I were to say to John Jones: "You can put so much money into that concern, it is right and proper that you should do it; it is a proper investment in the public interest," that, in settling rates I cannot turn around the next day and rob John Jones.

MR. NESBITT: You do not take into consideration the capital?

SIR HENRY DRAYTON: Not in the slightest.

THE CHAIRMAN: The Committee are to understand that, so far as you are concerned, you do not think it is in the public interest that the Board should have the powers conferred in section 146?

SIR HENRY DRAYTON: No, I do not.

MR. MACLEAN: Who put the clause in?

MR. MACDONALD: It was drafted by Mr. Price.

MR. MACLEAN: That is, by the Railway Department.

MR. MACDONALD: By Mr. Price.

MR. MACLEAN: Who is the father of the Act?

HON. MR. GRAHAM: Mr. Price is. He was selected by the minister.

MR. MACDONALD: In Nova Scotia, in our Public Utilities Act, we have a similar clause with regard to the sale of stocks and bonds, more particularly with reference to street railway enterprises. The experience in Nova Scotia has been that in working out efficient control of the sale of securities, it has meant the greatest possible difficulty in financing enterprises which are of importance locally. We found the result was that the Commission, in perfect good faith as Sir Henry has said, would make inquiries, and have appraisements made of the value of the property, and undertake to say that stocks and bonds should be sold at certain figures. The company have gone out and attempted to sell them, and have been unable to do so. The result has been that the improvements have been delayed and their credit has been hurt. The securities have been offered at prices which could not be realized upon. We have had the experience in the working out of such a clause, and I thought I should mention it, in connection with Sir Henry's reference to similar conditions in Massachusetts.

THE CHAIRMAN: Shall the section be adopted?

MR. CARVELL: I am very sorry indeed to hear the statements made by Sir Henry Drayton this morning. If the members of the Board think it is improper that they should assume this responsibility, certainly I do not feel like voting to force it upon them. But I presume every member of this Committee has had something to do with corporations in Canada, speaking now particularly of corporations generally. We all know that water is injected into stocks and bonds in the financing of practically every corporation in this country. We all know that the public are paying for that water, and if there were any way in the world of establishing a method of getting rid of the water in the stock of the railways of Canada I should like to see it done. I realize the difficulties set forth by Sir Henry Drayton that these are the outcome of fifty or sixty years growth, and it is almost impossible to remedy the difficulties that now exist, but I should like to see something done by Parliament while we are codifying the Railway Act, to at least adopt the principle of trying to guard against these errors in the future; and while I have not any suggestions to make, I presume, in view of the bald statement made by the chairman of the Board, that they do not want to take the responsibility, that there is nothing for us to do but to refuse to pass the section; but at the same time, while agreeing to that, I want to voice my sentiments of regret that such conditions of affairs exist, and that something should not be done to at least adopt the principle of controlling these enterprises in the future.

Mr. MACLEAN: I want to add further that if this is the result of our deliberations in the consideration of this question, then there remains nothing but public ownership of the railways of this country, to get away from the condition of affairs that exists at present. The discussion this morning has furnished reasons why we should have public ownership. Sir Henry Drayton confesses here to-day that the Board is unable to govern these things and therefore cure the abuses which have grown up under these conditions, and when we get the confession through Mr. Mulvey, and through those who have made the argument against the regulation of the issue of stocks, that State regulation is impossible, then nothing remains, in view of the exploitation in other countries, and in view of the exploitation in our own country, in connection with watered stock, but that the public must own these great public undertakings that give the public service, and that if we cannot control the stock and cannot control rates by reason of one thing and another, there is nothing else to do but to take over the franchises of these undertakings, and corporations, and to co-ordinate them and in that way to weed out the unnecessary capital which has been injected into them.

Mr. CARVELL: How are you going to weed it out?

Mr. MACLEAN: There is a way to do it. You can refund to all these organizations.

Mr. CARVELL: What are you going to do about the watered stock of the Grand Trunk?

Mr. MACLEAN: The Grand Trunk to-day has confessed itself delinquent and unable——

Mr. BIGGAR, K.C.: If I gave anyone the impression that there is any watered stock in the Grand Trunk, it is a wrong impression. Every man who put a dollar in the Grand Trunk has either lost it or has it still. Millions of dollars of that stock was bought and paid for in England, full par value, and these holders have lost everything they put into it. While the Grand Trunk stands to-day at $100,000 a mile, I think Sir Henry Drayton will bear me out in saying the only people who expect any return on their capital invested at $50,000 a mile——

Sir HENRY DRAYTON: $48,000 at 4 per cent.

Mr. BIGGAR, K.C.: All the rest of it is lost by the people in England who put their money into it.

Mr. MCLEAN: The Railway Department has employed counsel, and they bring forward a proposition in connection with the issue of stock by railways. I would like to have seen the Minister of Railways here to-day.

Mr. MACDONELL: What is the Government policy?

Mr. MACLEAN: I would like to know the Government policy. Even the Acting Minister is not here to say what the Government policy on this question is; and if confession is made by the Department of Railways and the Government of Canada, in a Government Bill, that control of the capital issue of a railway company created by Parliament is not in the public, that it should be controlled by somebody else, then I say in view of that confession, in view of the experience we have had of railways, in view of every consideration, and in view of the report presented to Parliament by the Commission yesterday, each of which practically admits that great errors have been made in capitalization, then nothing remains for this country but public ownership of the railways, and these abuses that exist may be removed in another way. We may have to change our way of approach, and it may be through public ownership that abuses that have been created by laxity in capitalization must be met. These must be dealt with, and in war times they are met and dealt with by the States taking over the railways, and the conclusion I draw from what I heard to-day is that we will have

to take them over. I am going to continue to hold my views on this question, and vote for what the Minister of Railways has put in his Bill, until such time as I hear him or someone on his behalf in the Governement, say that this is a fatuous proposition.

Section was rejected on a vote.

On section 219—Notice may be abandoned.

The CHAIRMAN: I understand Mr. D. L. McCarthy, K.C., of Toronto, is here in connection with the section 219, and wishes to be heard.

Mr. D. L. MCCARTHY, K.C.: The point I desire to call your attention to in regard to section 219, which deals with the notice of abandonment in expropriation proceedings is this: Under the Power Companies' Act—I speak more particularly of the Toronto-Niagara Power Company—the expropriation proceedings which are applicable to a railway are incorporated, and the power company has the right under their Act of incorporation to either expropriate land—that is to take a right of way—or acquire an easement over people's property. In the acquirement of an easement a great deal of difficulty has been experienced, because nobody seems to know exactly what an easement in the air is; and where arrangements have been made with private individuals or public corporations for easements either across their property or across the public street, some difficulty has occurred as to just what the power company is entitled to in stringing its wires. The procedure has been for us to submit our location plans to the minister who approves of them. Then we either agree with the private owner or public corporation, or we expropriate. When it comes to a question of expropriation, the question is, what do you get in an easement? The power companies have always contended that we only get the actual space occupied by our wires. On the other hand the land owner has said: "We doubt that very much. You may have other rights which are not expressed, in other words, if you get an easement, the easement attaches to the land, and you probably have all the rights from the ground up to the height of your wires, and therefore it would be a detriment to the use of our property in the future." What I suggest in regard to this particular clause is this: that some amendment be introduced by which the power company could abandon any rights, if such exist, which it does not wish to exercise in regard to stringing of its wires. May I illustrate by a concrete case? Suppose the power company deals with a man, and obtains the right to string its transmission wires across his property, and they string them sixty feet in the air. The man gives us an easement over his property in regard to the stringing of wires, because that is all the Act allows us to take. The easement must attach to the land, and therefore, for all time to come, that man has the wire over his land and we have an easement as acquired by the use of those wires across the land. The man says to us, "But you have that whole easement from the wires down to the ground." We say, "We do not agree with you, we only get the actual cubic feet occupied by the wire in the air." We say to him, "We are willing to abandon any right to the space between the wire and the ground," but he says, "You have no power to abandon, because a public corporation cannot abandon any rights." Therefore we ask for an amendment to this clause which gives us the right to abandon any right which we have acquired by acquiring an easement across property by stringing wires. It is a protection to the company because of the difficulty which has occurred in every case where we have dealt with the private individual. The owner says, "There is no provision in the Railway Act which enables you to abandon these rights." We are quite willing to abandon them and he is quite willing that we should do it. This question deals with the past more than the future. The whole question arose in a recent case before the courts, as to whether there was power of abandonment, and the Chief Justice of Ontario, when the matter came before him, expressed the opinion that the Railway Act should be amended to allow the railway company to abandon any rights it did not wish to hold by reason of the easement it acquired across land by stringing

wires. The future is dealt with in the provisions of the Bill. I am speaking of the past, where we have acquired easements, and this question comes up in dealing with these people They say, "When we gave you that easement we did not understand we were giving away all the space between the land and the wire," and we say, "We did not intend to take that."

Mr. NESBITT: Does your company not reserve the right to come in and examine your poles and wires?

Mr. MCCARTHY, K.C.: That is where poles exist.

Mr. NESBITT: You cannot come in and examine the wires without using the ground.

Mr. MCCARTHY, K.C.: It would be better expressed by the use of the word "license" to operate, maintain and repair.

Mr. CARVELL: If you do not obtain the right from the ground up, if your wire breaks and you go on the ground to repair it, do you not become trespassers?

Mr. MCCARTHY, K.C.: We would, if we went on the ground without the leave of the owner. We have to ask his permission to go on and make repairs.

Mr. CARVELL: Your expropriation is only a right to keep wires in the air.

Mr. MCCARTHY, K.C.: That is the chance we would have to take. But the landowner says, "You are actually taking our land. You are only asking for an easement, but we can never build on that land. You may be 60 feet in the air to-day, but you may drop 50 feet to-morrow, therefore I could not build a shack 20 feet on the ground." We say, "We abandon that." And they say, "The Act does not give you the power to abandon."

Mr. SINCLAIR: You never want the land?

Mr. MCCARTHY, K.C.: If we do we have to buy it. We have settled with people and acquired easements on the assumption we were only taking rights in the air.

Mr. MACLEAN (South York): But the farmer wants to be paid all the way down. He gives something away he thought he was not giving.

Mr. MCCARTHY, K.C.: Yes, and he wants to exercise the right he thought he had obtained, and we want to give it to him.

Mr. NESBITT: In case you want that air space below your wires, you are prepared to pay him for it?

Mr. MCCARTHY, K.C.: We would have to go through fresh expropriation proceedings and pay for it. All we ever paid him for was the space occupied by the wire, and if we want more we have to pay for it.

Mr. CARVELL: Would that not put the company at a little disadvantage? I have a little knowledge of these things myself. Should the company not have the right to go in there and repair its wires?

Mr. MCCARTHY, K.C.: I think that is provided for. I do not think an easement is required. The easement affects the land. A license to enter would be quite sufficient.

Mr. MACDONELL: What is the nature of the amendment you suggest?

Mr. MCCARTHY, K.C.: I have drafted an amendment which I handed to Mr. Johnstone, and he will submit it to you. A great many cases exist at the present time where we would be quite willing to go to the landowner and say, "True we ask for something, but neither of us understand the exact thing we asked for." We would like to go to him and say: "If any doubt exists we would be perfectly willing to abandon any rights which you think we have but which we did not wish to acquire. We think we only acquired a certain right." I do not think any party understood what an easement in the air was.

Mr. CARVELL: Are there many instances in Ontario where the principle has arisen?

Mr. MCCARTHY, K.C.: Yes, there is a line 250 or 300 miles long. We have gone to people and said, "We want to cross over your property" and have negotiated with them and crossed over. People afterwards found out the agreement which they made to give us an easement affected them much more vitally than they ever thought of or we ever intended.

Mr. NESBITT: You are speaking of the Hydro-electric?

Mr. MCCARTHY, K.C.: No, the Toronto-Niagara Power Company. They have been given certain powers. They can expropriate easements, but I do not think the great majority of the farmers whose lands are crossed appreciate at the time what the easement means, but some do later on.

Mr. SINCLAIR: Are you speaking of transmission lines?

Mr. MCCARTHY: I am only speaking of transmission lines. The Toronto and Niagara Power Company was incorporated by Act of the Dominion House and is subject to the provisions of the Railway Act and certain clauses that are being incorporated in that Act.

Mr. MACLEAN: Give an instance of an easement as between the company and private parties. I would like to know the circumstances of a specific case of easement.

Mr. MCCARTHY: Here is a case which has arisen between the company and the proprietor.

Mr. MACLEAN: Cite one case which will illustrate a number of cases.

Mr. MCCARTHY: For instance, towers were constructed all along Burlington Beach, and the Burlington Beach Commission appeared before the minister. The question of plans were discussed, and after agreeing with the minister on the height of the towers and the way the wires should be strung, those plans were approved. Of course we were not subject to the Railway Board and the towers were simply placed at the points indicated by the minister, we explaining to him the class of towers which we intended to erect. We paid the Burlington Beach Commission—in fact we paid all along the Burlington Beach—a certain amount per tower. Under the Railway Act we had to string the wires at a height of 22 feet when they crossed any highway, but there is no limitation as to the height of wires across private property. Along the Burlington Beach we could lower our wires to 12 feet as long as the wires were 22 feet above a highway. Burlington Beach Commission is now representing this property to be public playgrounds and bathing and recreation grounds, there being boathouses, sailing boats and other things in use there, and the question has arisen, "Have we the right to lower those wires. Not only there, but the question has arisen in many other cases between Niagara and Toronto. For example, there are two cases at Thorold where the question arises in putting in branch lines. The matter has come up from time to time in the courts and we have always said we cannot do anything. When the Burlington Beach case came up the Chief Justice of Ontario suggested to me: "The Dominion Railway Act is being revised. Is not this an opportunity to have this point settled?" Accordingly, judgment was reserved in that case to enable us to submit our views, and judgment stands until the matter has been disposed of by this Committee.

Mr. MACLEAN: What was the issue before the Court?

Mr. MCCARTHY: The issue before the Court was this: We strung our wires 66 feet above Coleman's property, and Coleman said to us: "I want an arbitration." The question arose in arbitration. "What have you acquired?" Coleman's contention was, "You have acquired a right from the ground up." We said, "No, we have not acquired a right from the ground up, but only the cubic space occupied by our wires."

The arbitrators agreed that the cubic space occupied by our wires was all we had acquired, and awarded damages on that basis. Coleman went to the Court of Appeal, and the court referred it back to the arbitrators, and they awarded him additional damages. Not satisfied with that he went to the Court of Appeal again and the Court of Appeal said: "Let us get this matter settled. What did you get by your easement?" Did you get from the ground up or only from the cubic space occupied by the wires. The matter is easily determined and if you say you only got the cubic space occupied by your wires you can abandon the rest." We said, all right.

Mr. MACLEAN: Why should not Parliament define easement more exactly.

Mr. CARVELL: There are many cases in the country districts where a power line can go upon a man's farm and practically do no harm whatever. There is the possibility of the wire breaking and the necessity of making repairs; but the power line might continue for years and years and do absolutely no harm whatever.

Mr. SINCLAIR: There is a certain amount of danger involved.

Mr. MCCARTHY: We have to pay for the right to cross and there is a possibility of accidents happening. But Coleman said "It goes much further than that, I can never build where you are located." We say we are quite willing to abandon, but the man contends "You have no power to abandon."

Mr. MACDONALD: What have you to say about this, Mr. Johnston?

Mr. JOHNSTON, K.C.: It seems to me what Mr. McCarthy wishes to do is to limit his rights to the necessities of the case. He may have taken a great deal more than was necessary, and certainly any easement gives a great deal more than these private persons would wish to give. But Mr. McCarthy says: "We are willing to limit our rights merely to the maintenance of that wire at that point 66 feet above ground, and to abandon anything else."

The CHAIRMAN: Would you kindly read the amendments which he proposes.

Mr. JOHNSTON, K.C.: Mr. McCarthy's proposed amendment is to add subsection 3 to section 219, and it would read as follows (reads):—

> "Where the amount of compensation payable under the notice has been referred to arbitration, the company may, in lieu of abandoning the notice pursuant to sub-section (1) hereof, give to the opposite party and to the arbitrator, a notice varying the description of the lands or materials to be taken or the powers intended to be exercised by the Company; which subsequent notice shall also contain.
>
> "(*a*) A declaration of readiness to pay a certain sum or rent as the case may be, as compensation for such lands or for damages for such materials or powers, and damages suffered and costs incurred by such opposite party in consequence of the former notice.
>
> "(*b*) A notification that if within eight days after the service of such notice the party to whom the notice is addressed, does not give notice to the company that he accepts the sum offered by the company, the arbitrator may proceed to fix the compensation for the lands, materials or powers described in such subsequent notice."

Now, as to subsection 4 (reads):—

> "In the event of the arbitration proceeding pursuant to such subsequent notice, all evidence taken and proceedings had under the former notice, shall, in so far as they are applicable, be used in the arbitration upon the subsequent notice and proceedings on both notices shall be deemed one arbitration, but the company shall be liable to pay all damages suffered and costs incurred by the opposite party by reason of the company having failed to demand by the original notice, the lands, materials or powers as described in the subsequent notice."

The CHAIRMAN: What do you advise?

Mr. JOHNSTON, K.C.: I think it is a very reasonable suggestion. I understand that in the case Mr. McCarthy has referred to they strung the wires 66 feet above the ground. The owner of the land complains that what the company really has taken is a general easement, or license, which entitles the company to lower that wire to any distance at all so long as they keep to a distance of 22 feet in crossing highways. Now, Mr. McCarthy says: "We never intended to take that, we do not want to do you any damage, we are willing to limit our rights to the maintenance of that wire 66 feet above the ground". We are not dealing here with the general question of the rights of easement.

Mr. MACDONELL: Have you given thought to making this of general application? The amendment is aimed at a certain specific case. That is the reason it would seem most desirable that where a company wants to abandon any part of its easement it should be permitted to do so.

Mr. JOHNSTON, K.C.: I think, Mr. Macdonell, that Mr. McCarthy's language is calculated to cover the very point you make.

Mr. CARVELL: Section 219 is broad enough to cover the abandonment of lands.

Mr. MCCARTHY: But not of any powers.

Mr. NESBITT: I would suggest that copies of the proposed amendments be struck off and supplied to us so that we can clearly understand what is proposed when we next take the matter up.

Mr. CARVELL: I would like to say that the proposition seems very reasonable and I would feel like meeting as far as possible Mr. McCarthy's wishes.

Mr. MACLEAN: It would be a good thing to send a copy to the Attorney General of Ontario.

The CHAIRMAN: The section stands, and in the meantime the Clerk will have copies of the proposed amendments prepared and sent to each member of the committee.

Section allowed to stand.

Mr. NESBITT: I have been spoken to by people who want to say something about the insurance clause.

The CHAIRMAN: The Executive Committee of the Union of Canadian Municipalities have asked that a day be fixed for the consideration of the sections affecting cities, towns and villages, particularly the matter of the expropriation of easements in Section 216, and the matters dealt with in sections 252 254 256 and 258. What are the wishes of the committee in regard to the matter.

Mr. MACLEAN: That is the very point I raised with Mr. McCarthy. This question of easement may involve municipalities. These men want to be heard and I would suggest that a date be set for the hearing.

Mr. NESBITT: Leave that to the chairman.

The CHAIRMAN: I would rather the committee fixed the date themselves.

Mr. MACDONELL: I received a letter from the President of the Union of Canadian Municipalities saying he would like to have a day appointed for hearing their views with regard to certain clauses.

The CHAIRMAN: I understand there is a representative from Winnipeg anxious to be given a hearing on some of these clauses.

Mr. MACDONELL: Sir Adam Beck wishes to be heard regarding certain matters of prime importance. He is at present in California, but will be back in Ontario on May 15. I would like a date to be fixed that would enable Sir Adam to be present.

Mr. CARVELL: I have received some communications with respect to the protection of cattle. I thought we might some time in the near future name a day when the sections having reference to that matter might be discussed.

It was decided to hear the representatives of Municipalities on Friday, 18th instant.

Mr. CARVELL: Now as to cattle protection, this is a question that ought to be thrashed out and settled some way. In the first place I do not accept the decision of the court as good law, but we had those decisions, and we are bound by them in the meantime. The question should now be settled so that there will be no doubt about what the rights are.

The CHAIRMAN: Can you suggest any date for taking up the question?

Mr. CARVELL: That is the difficulty, I am tied up in other committees.

The CHAIRMAN: Would a week to-day suit you?

Mr. CARVELL: Yes, that will be all right.

The CHAIRMAN: Then we will take up that clause of the bill on Thursday next.

The committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 9—MAY 4, 1917

OTTAWA
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

Friday, May 4, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Donaldson, Hartt, Graham, Green, Lapointe (Kamouraska), Lemieux, Macdonald, Macdonell, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

Ordered that Wednesday, May 16, 1917, be fixed for the consideration of the telephone sections of the Bill and that the parties interested therein be notified accordingly.

Ordered that Tuesday next, 8th instant, be fixed for the consideration of sections 252, 254, 256, 309, etc., and that Mr. W. D. Lighthall, on behalf of the union of municipalities, be notified accordingly.

Ordered that Tuesday next, 8th instant, be also fixed for the hearing of Mr. Tellier, Mr. Best and Mr. Lawrence on the sections affecting the Brotherhood of Locomotive Engineers, Firemen and Enginemen, Order of Railroad Conductors and Railway Trainmen.

At one o'clock the Committee adjourned until Tuesday next, 8th instant, at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

May 4, 1917.

The Committee met at 11.10 a.m.

On section 168—Location of line.

The CHAIRMAN: This section was held over for consideration and amendment by a sub-committee. Mr. Johnston, K.C., is now ready to report what has been done by that committee.

Hon. Mr. GRAHAM (To Mr. Johnston, K.C.) What have you done?

Mr. JOHNSTON, K.C.: You will recollect that section 168 now gives to the Board the power to approve of the map showing the general location. Formerly that was left with the Minister of Railways, but it is proposed here to give it to the Board. Some of the Committee took strong objection to some of the words in subsection 3. The words read as follows:—

> If the Board deems that the construction of a Railway upon the proposed location, and upon any portion thereof, is not in the public interest it shall refuse approval of the whole or of such portion.

Some of the Committee thought that was nullifying the action of Parliament and degrading Parliament, which has already granted a special act. It was then pointed out that section 194 gives the Board power to prevent duplication and to order the joint use of tracks, which seemed to some of the Committee all that was necessary. I have discussed the matter with Mr. Bennett, and also with Mr. Chrysler, K.C., at the request of the Committee, that we have come to the conclusion that if the words I have just quoted—in fact all the words in subsection 3 of section 168, commencing with the word "but" in the third line—were omitted, and section 194, with subsections 4 and 5 allowed to stand as it is, that would be all that is necessary. I would make that recommendation to the Committee. Mr. Bennett and Mr. Chrysler are of the same opinion.

Hon. Mr. GRAHAM: If that accomplishes what is desired I am satisfied.

Mr. SINCLAIR: What result would be accomplished by the amendment?

Mr. JOHNSTON, K.C.: The result will be, I think, that the Board could not arbitrarily refuse consent to any location.

The CHAIRMAN: They could refuse consent to the duplication of a line

Mr. JOHNSTON, K.C.: Absolutely, under section 194.

Hon. Mr. GRAHAM: I do not think that is too much power to give.

Mr. JOHNSTON, K.C.: The clause as drawn was certainly subject to many of the objections which the Committee made: That whereas the Board of Railway Commissioners are supposed to carry out the law and policy of Parliament, they were here given the power to adopt a course in opposition to the policy of either the Government or Parliament. I think the section as amended, if the Committee accepts the amendment, will be all right.

Mr. SINCLAIR: Would the section as originally proposed have given the power to stop the construction of the Hudson Bay Railway?

Mr. JOHNSTON, K.C.: I believe it would in effect have given the Board that power. I don't suppose it is desirable that you should substitute the Board for Parliament after Parliament has adopted a policy.

Amendment as submitted by Mr. Johnston, K.C. agreed to.

Mr. JOHNSTON, K.C.: I have been asked by Mr. Chrysler to apply for permission to return to section 148 for a moment.

On section 148—Purchase of railway securities.

Mr. JOHNSTON, K.C.: The Committee will recollect that in the first line after the word "shall", these words, "except as in this Act otherwise provided" were added. Mr. Chrysler points out that the addition should read "except as in this Act or in the Special Act, otherwise provided". I think that is manifest.

Mr. CHRYSLER, K.C.: I suggest that the words be added at the beginning of the section. It will then read, "Except as in this Act, or in the Special Act otherwise provided, no Company shall", etc.

Section as amended adopted.

Mr. JOHNSTON, K.C.: There is another matter Mr. Chrysler and I were discussing and that is in regard to section 159. I think you may wish to go back to that again.

Mr. CHRYSLER, K.C.: That is in connection with the question of easements. An amendment will be required to this section.

The CHAIRMAN: Now we come to section 216. This was left over for the purpose of adjustment, and Mr. Johnston, I understand, is ready to report.

Mr. JOHNSTON, K.C.: I have taken that clause up with Mr. Chrysler, and we agree that the word "opposite" in the third line, should be struck out. The reason for that is: it has been held in a number of decisions that all parties interested must get notice. We felt that if we put in the word "opposite" that it might be held to refer to a single party, and we have thought it better in view of the decisions rendered to make the change.

Hon. Mr. LEMIEUX: The same word will have to come out in a number of other places.

Mr. JOHNSTON, K.C.: Yes, in several places. The language may not seem very apt but it has been interpreted in a number of decisions.

Section as amended agreed to.

On section 218—Service by publication.

Mr. JOHNSTON, K.C.: I would like to add some words making it clear that the judge would have discretion. Mr. Graham has pointed out that it might not be fair to limit the publication of notice in a newspaper in the particular district or county where the lands were. I therefore propose to add, after the last word "county" in subsection 3, these words, "and in such other newspaper if any, as the judge may direct".

Hon. Mr. GRAHAM: That is all right.

Mr. CHRYSLER, K.C.: Also leave out the word "opposite" in the first line.

Section adopted as amended.

On section 220—If sum offered not accepted.

Hon. Mr. GRAHAM: There is something new there, what is it?

Mr. JOHNSTON, K.C.: The County Court Judges may be sole arbitrators in all railway arbitrations.

Mr. CHRYSLER, K.C.: It is a serious change but I have no objection to it. It is worth consideration.

Hon. Mr. GRAHAM: Will that add to the red tape, or increase the time it will take to get a decision?

Mr. CHRYSLER, K.C.: No, it will simplify it very much.

Mr. SINCLAIR: I think it is a good move.

Hon. Mr. GRAHAM: It will be more satisfactory to every person. Is that the meaning of the change—that all valuations of land or arbitrations under the expropriation proceedings go before the county judge?

Mr. CHRYSLER, K.C.: No, this only relates to the Railway Act.

Mr. SINCLAIR: Would you strike out the word "opposite" in this?

Mr. JOHNSTON, K.C.: We should strike it out in every place or leave it in all places where it occurs.

Mr. CHRYSLER, K.C.: I would suggest that we insert in the interpretation sections a definition of the word "party" we might say "interested party".

Mr. JOHNSTON, K.C.: If we change that phraseology we might compel the railway company to serve an indefinite number of people.

Mr. CHRYSLER, K.C.: I think there should be a definition inserted.

The CHAIRMAN: The word "opposite" occurs in section 220. Shall we strike that out?

Mr. LEMIEUX: I do not see why we should leave the word "opposite" there.

Hon. Mr. GRAHAM: Mr. Johnston objects to the use of the words "party interested" because it might involve the service of a great number of parties.

The CHAIRMAN: Mr. Chrysler proposes to amend the interpretation section by adding a subsection.

Mr. JOHNSTON, K.C.: If that is intended, perhaps it woud be desirable to accept the suggestion I made yesterday: instead of using the words "party interested" say "every party interested."

Mr. CHRYSLER, K.C.: That is too wide. All persons having a separate interest which they represent themselves should be served, but if the trustee of an estate represents forty or fifty heirs, you should not have to serve all the heirs. The trustee is the person who is entitled to convey, and that is the language we had in the Act before, and you have in the section passed yesterday several cases of representatives who are entitled to deal with the property, but there are a lot of other people interested. Take a piece of land with a right of way over it. You serve the owner, but you are going to serve every person who has a right of way over the land?

Mr. JOHNSTON, K.C.: If you insert "every person interested" you would be in exactly the same position.

The CHAIRMAN: We might pass the clause, and Mr. Johnston and Mr. Chrysler will prepare an amendment, if necessary, to the interpretation section.

Section adopted.

On section 222—Increased value of remaining lands to be considered.

Mr. JOHNSTON, K.C.: The first paragraph is just as it was before. Subsection 3, however, is added to make it clear that the arbitrator may allow interest. It seems that it has been the custom to allow interest sometimes, but in the case of Clark versus the Toronto, Grey & Bruce Railway it was suggested there was no right to allow interest, and this is simply to make it clear it may be allowed.

Mr. SINCLAIR: I do not like this subsection. Cases arise very often where the railway does not take the land within the year, and it might be a great hardship to the owner that his property should be tied up for several years. The Company do not pay for it until they take it, but they file a profile in the office of the Registrar of Deeds. We will say that the property is a lot in a village, where the man cannot

build or sell or do anything. It is tied up for several years, and the Company either pay for it themselves or give it to him. When they do build their railway and take it, then they come forward and pay for it. Is that right?

Mr. CHRYSLER, K.C.: There are other sections which cover that. They have to take it within a year or their notice falls. Is that not the effect of the section?

Mr. SINCLAIR: Yes.

Hon. Mr. GRAHAM: That is an amendment we made some few years ago, thinking it was for the benefit of the property owner.

Mr. CHRYSLER, K.C.: I think it is all right in this Bill.

Mr. SINCLAIR: Am I right in my construction?

Mr. JOHNSTON, K.C.: I think so. That section was added for the relief of the individual whose land was taken.

Hon. Mr. GRAHAM: Has it that effect?

Mr. SINCLAIR: The Company may not take the land until several years after they file their profile. In many cases this must be so, because they are very slow in building the railway sometimes.

Mr. CHRYSLER, K.C.: You have to take the land within one year from the date of your notice.

Hon. Mr. GRAHAM: That is as I recollect the meaning of the statute. The complaint was made that the railways would do just as Mr. Sinclair says, serve the notice and keep you dangling for years. My recollection is that we amended the statute to cure that.

Mr. CHRYSLER, K.C.: This section was intended to remedy another grievance, namely that in the West, where lands have advanced rapidly in price, in some cases they dated the notice back and said that the land should be valued at the time of taking, and the owner of the land said, "No we want the notice to be dated forward, in order that we may get the enhanced value of the land".

Hon. Mr. GRAHAM: That is another point. The owner of the land wanted to get the benefit of the increased value.

Mr. JOHNSTON, K.C.: Subsection 2, of section 172, reads as follows:

> "Where no time is fixed by the Board as above mentioned, if the Company, within one year after such sanction of leave has been given by the Board, or in any case where no such sanction or leave is necessary, if the Company within one year after the plan, profile and book of reference have been deposited with the Registrar of Deeds, does not acquire the lands covered by such sanction, leave, or plan, profile and book of reference, or give the notice mentioned in section 216 in respect thereof, the Company's right to take or enter upon, without the consent of the owner, any part of such lands which it has not within the said year either acquired or given such notice in respect of, shall at the expiration of such year absolutely cease and determine."

Mr. SINCLAIR: Does that conflict with the other?

Mr. JOHNSTON, K.C.: No, the other only deals with the question of value.

Section adopted.

On section 223—Company may offer easement, etc.

Mr. JOHNSTON, K.C.: That section is substantially taken from the Expropriation Act. There is a similar section in the Expropriation Act which enables the Railway Company to offer to the owner of lots whose lands are taken a compensating easement.

Mr. CHRYSLER, K.C.: This does not conflict with the other section. You can pass this without affecting the other. This is an agreement to be made with the owner to give him a cattle pass, or bridge, or water or anything else in mitigation of damages.

Section adopted.

On section 224—Costs of arbitration.

Hon. Mr. LEMIEUX: Have you read the judgment rendered by Judge Mercier the other day in Montreal as to the cost of expropriation in which he cut the fees of the arbitrators in a very high handed fashion?

Hon. Mr. GRAHAM: That would not be very pleasant reading for Mr. Chrysler, I think he would prefer to read something more entertaining.

Mr. JOHNSTON, K.C.: Formerly there was a hard and fast rule as to costs. When the award exceeded the sum offered by the Company, the costs of the arbitration were borne by the Company but otherwise they were borne by the other party. This section gives the judge who was the arbitrator a discretion.

Hon. Mr. GRAHAM: The arbitrator gets nothing.

Mr. JOHNSTON, K.C.: The arbitrator in this case gets no fees either.

Mr. SINCLAIR: He is the judge under this section?

Mr. JOHNSTON, K.C.: He has to be a judge under this section. Previously each party named his own arbitrator.

Hon. Mr. GRAHAM: This cannot be looked upon as graft by a judge.

Mr. JOHNSTON, K.C.: No, the county judges would have a great many objections to that clause. They will say they ought to be compensated.

Hon. Mr. GRAHAM: Should they not be compensated?

Mr. JOHNSTON, K.C.: That is a question. Do county court judges have to work too hard?

Section adopted.

On section 225—Proceedings of Arbitrator.

Hon. Mr. GRAHAM: I suppose this is to prevent the prolongation of the proceedings.

Mr. JOHNSTON, K.C.: There are two points covered. Very often it has been the practice to employ a great number of experts. It lengthens the proceedings and increases costs. It limits the expert witnesses to three on behalf of any party. Then the second part of the clause enables the arbitrator by consent of the parties to view land and make his decision without calling witnesses.

Hon. Mr. GRAHAM: This provision limits the number of experts to three on each side.

Mr. CHRYSLER, K.C.: There is a similar provision in The Evidence Act. My recollection is that it was five.

Mr. JOHNSTON, K.C.: It is three in the Municipal Act for the Province of Ontario. I should think three would be enough. Five experts are too many.

Section adopted.

On section 229—Arbitrator to proceed speedily.

Hon. Mr. GRAHAM: Is that new?

Mr. JOHNSTON, K.C.: It is practically a new section.

Section read by the chairman.

Mr. JOHNSTON, K.C.: That is important. It is so manifestly fair that I do not believe the Committee will have any objection to it. Section 204 of the old Act, which is superseded by section 229, was not fair to the opposite party. I do not think the railways have any objection to section 229 as it is.

Mr. CHRYSLER, K.C.: No, sir.

Section adopted.

On section 233—Appeal from award.

Hon. Mr. GRAHAM: This is a new section.

Mr. JOHNSTON, K.C.: It contains a number of changes. First, the owner was not previously allowed an appeal where he was awarded less than $600. Now he is allowed an appeal.

The CHAIRMAN: Is that practically the only change, Mr. Johnston?

Mr. JOHNSTON, K.C.: No. In subsection 1 the words "upon any other ground of objection" are added.

Hon. Mr. GRAHAM: The only thing I am interested in would be this: If it is a new section to see that it does not make it more difficult to get a final decision.

Mr. CHRYSLER, K.C.: It is practically the same as before but substituting the judge for the arbitrator.

Mr. JOHNSTON, K.C.: There is another thing, Mr. Chrysler, that subsection 3 provides for, that is that there can be only one appeal except where the amount awarded or claimed exceeds $10,000.

Hon. Mr. GRAHAM: Is that new?

Mr. JOHNSTON, K.C.: Yes, that is new.

Hon. Mr. GRAHAM: What did the old Act provide?

Mr. JOHNSTON, K.C.: It had no such provision. Now, there cannot be an indefinite number of appeals.

Mr. CHRYSLER, K.C.: The principle is all right, but I think the amount is too high.

Mr. JOHNSTON, K.C.: It just lessens the number of appeals.

Mr. MACDONELL: The amount fixed in the subsection is too high. A man may desire to appeal, and there is no reason why he should not be allowed to by fixing a reasonable sum.

Hon. Mr. GRAHAM: Suppose we fix the amount at $5,000.

The CHAIRMAN: Does the change from $10,000 to $5,000 in subsection 3 of this clause meet with the approval of the Committee?

Section as amended adopted.

On section 234—Paying money into court.

Hon. Mr. GRAHAM: That is the old principle, if not sure of the amount pay it into court.

Mr. JOHNSTON, K.C.: They have to see that all parties interested get the money. Take a case in which a life tenant is in possession of land, and he may sell to a railway company. The company pays the money to court under this section and allows the interested parties to adjust their rights among themselves.

Section adopted.

On section 237—Compensation in place of land.

Hon. Mr. GRAHAM: What does that mean?

Mr. JOHNSTON, K.C.: The purpose is to protect the owner's lien for unpaid purchase money, but I do not think that it is necessary.

Mr. CHRYSLER, K.C.: I do not think it is necessary, but I do not see any objection to it if it helps any one. In my opinion the necessities are met by provisions already in the Act.

Mr. JOHNSTON, K.C.: The only words that are added are the last four lines, and the draftsman says of the addition:—

> "The owner's lien for unpaid purchase money is expressly protective. There have been some complaints in the case of insolvent companies. The change is in the addition of the last four lines."

Mr. CHRYSLER, K.C.: An insolvent company would not get a title any more than a solvent company would, except by paying for it and getting a deed from the person entitled to convey.

Mr. JOHNSTON, K.C.: I do not see any advantage in the added words. Do you Mr. Chrysler?

Mr. CHRYSLER, K.C.: No.

Section adopted.

On Section 240—Warrant for possession.

Mr. MACDONELL: There is something new there.

Mr. JOHNSTON, K.C.: There was an oversight in the old Act, and the Bill as it is now drawn provides that compensation must be paid or tendered before a warrant for possession is ordered. The railway companies do not object to that.

Mr. CHRYSLER, K.C.: No.

Section adopted.

On Section 242—Paragraph (b)—Deposit of compensation.

Mr. JOHNSTON, K.C.: This provides that the judge shall not grant any warrant under the last preceding section unless, and here is an addition which is new, the amount certified by the surveyor or engineer as the fair value of the land, is greater than the amount offered by the company. Then the amount which the company must pay is determined by the larger amount. In addition to that, the judge may see that the party himself is paid in part and that the company gives security for the balance. This is not for the relief of the railways, it is just the other way.

Hon. Mr. GRAHAM: The basis of settlement will be on a larger scale when the engineer's report is larger than that set forth in the report of the company.

Mr. CHRYSLER, K.C. I have no objection to this, speaking on behalf of the railways.

Mr. JOHNSTON, K.C.: Then as to subsection 2, that permits the judge to order substitutional service where the party cannot be served.

Section adopted.

On section 245—Respecting wages: current rate.

Mr. CHRYSLER, K.C.: That is the old section.

Hon. Mr. LEMIEUX: The fair and reasonable rate is ascertained by the officers of the Labour Department. That is my experience.

Mr. CHRYSLER, K.C.: The words are, "Shall be paid such wages as are generally accepted as current for competent workmen in the district in which the work is being performed." That is really fixed now by the Department of Labour in case of dispute.

Mr. JOHNSTON, K.C.: The word "Minister" in this Act means the Minister of Railways and Canals.

Mr. SINCLAIR: Does this take the railway labourers out of the jurisdiction of the Lemieux Act?

Hon. Mr. LEMIEUX: There is a special Act for disputes in railway matters besides the Lemieux Act, but here it is in regard to work and wages. When a railway has been subsidized by Parliament it is understood that the wages are to be at the current rate, and the railways have to accept the schedule prepared by the Minister of Labour. Each time the railway was subsidized a schedule was sent to you to see that your engineer or your inspector would have such wages paid to the men working on the railway, and if there was a dispute, it was investigated by the Minister of Labour.

Mr. CHRYSLER, K.C.: Yes, that is so.

Hon. Mr. LEMIEUX: I think the word "Minister" applies to the Minister of Labour.

Mr. CHRYSLER, K.C.: No. The section says that mechanics, labourers or other persons who perform labour in such construction shall be paid such wages as are generally accepted as current for competent workmen in the district in which the work is being performed. That is by the Minister of Railways.

Hon. Mr. GRAHAM: I think it means Minister of Railways. The Minister of Labour would usually give his advice to the Minister of Railways as to what was the proper schedule of wages. That was arranged with the Minister of Railways, because he is the only authority to say to the contractor what it should be. His decision was final as to what the proper schedule was. He took his advice from the Minister of Labour in regard to the schedule.

Mr. MACDONELL: I think the labour clause should be inserted in the subsidies agreement. The Minister of Railways gets the schedule of prices from the Minister of Labour, and that is inserted in the agreement.

Hon. Mr. GRAHAM: He puts in the subsidies agreement a clause to pay the proper rate of wages. The rate of wages might not be the same at the time he was contracting as at the time he was constructing the road.

Mr. MACDONELL: Mr. Lawrence would like to be heard on this section.

Mr. LAWRENCE: The committee will remember there was a discussion in the House some time ago in regard to the question of payment of railway employees semi-monthly. We wish to add something along that line to section 245. We did not insert that in our presentation to the committee, but we would like them to consider it.

Hon. Mr. GRAHAM: You do not mean semi-monthly payments to men employed in construction, but to men employed in the operation.

Mr. JOHNSTON, K.C.: This is construction only.

Hon. Mr. GRAHAM: This section applies to a contractor constructing a line.

Mr. LAWRENCE: Then I will ask to have the clause inserted in some other place.

The CHAIRMAN: If Mr. Lawrence drafts a section it will be submitted to the committee under another section.

Mr. SINCLAIR: I would not think it was advisable to place the railway employees under the Minister of Railways.

Mr. LAWRENCE: No, it is proposed to insert in the Bill a provision that railways should pay their employees semi-monthly. I will submit a draft clause later.

Section adopted.

On section 251—Headway over cars.

Mr. CHRYSLER, K.C.: There is a question about that. The C.P.R. ask that seven feet should be made six feet six.

Hon. Mr. GRAHAM: That is between the top of the car and the lowest point of the bridge or tunnel?

Mr. CHRYSLER, K.C.: Between the top of the highest box car and the lowest portion of any structure over the road. As I represent both companies, I may say that the Grand Trunk thinks it should be left as it is.

Hon. Mr. GRAHAM: It is seven feet now.

Mr. SINCLAIR: It is to protect the head of the tall brakeman.

Mr. CHRYSLER, K.C.: I think the only point is the difference in the practice of men going on top of cars. They say it is not now necessary. I do not know whether that is so or not, but it is seven feet in the present act.

Hon. Mr. GRAHAM: I would like to hear the railway men on that.

Mr. TELLIER: They would not like to see the head room diminished. As a matter of fact, if box cars continue to grow in size, we will have to jack up some of the tunnels to prevent men being injured. I speak from about forty years' experience in railway service.

Mr. LAWRENCE: It is just as necessary to have it seven feet now as it ever was; in fact, it should be higher. The rule requires men to get on top of the cars just the same as ever. There should be no reduction. If anything there should be an increase in the height.

Mr. CHRYSLER, K.C.: In subsection 3 they ask for a space of not less than 22 feet 6 inches. The C.P.R. suggest that 20 feet 3 inches would be quite sufficient. That is the same thing. You have got to deduct the height of the car from the total space to get the distance. I think if the 22 feet stands the 7 feet 6 will have to stand.

Section adopted.

On section 252—Where length exceeds 18 feet.

The CHAIRMAN: We have a communication which I believe should be placed on the record for the committee to consider, from the Union of Canadian Municipalities. It is a letter addressed to me, and reads as follows:—

> Dear Sir: Mayor Todd, of Victoria, B.C., is very anxious to have the last 19 words of first part section 252 of Bill No. 13 struck out. He wires me as follows:
>
> "I strongly urge amending section 252 by striking out last nineteen words in first paragraph, on account of various and changing local conditions. Special consideration and order by Board of Railway Commissioners should be required in each and every case of construction, reconstruction or alteration, especially in cases where adjacent to or within confines of cities or municipalities."
>
> Concerning the rest of the Bill I am anxious, as representing the Union of Canadian Municipalities in general, to be present at discussion particularly of clauses of Sections 252, 254, 256, 309, 367, 378, and would be obliged for a wire when these clauses are likely to be discussed. If the sending of such a wire is not too inconvenient.
>
> Faithfully yours,
>
> W. D. LIGHTHALL,
>
> Hon. Secty.-Treas. U.C.M.

We will notify Mr. Lighthall to be here on Tuesday and then we can hear his views. Section allowed to stand.

On section 257—Application for crossings.

Hon. Mr. GRAHAM: The farmers want to be heard in reference to protection for cattle.

Mr. JOHNSTON, K.C.: This question will come up later. Mr. Carvell is going to look after the farmers.

The section was adopted.

On section 259—Preventing obstruction of view.

Mr. CHRYSLER, K.C.: The whole clause is new, and there is no great objection to it except that it goes a little too far. The section gives power to the Board, for the purpose of diminishing danger at any highway crossing, to order:

> (a) That any trees, buildings, earth or other obstruction to the view, which may be upon the railway, the highway or any adjoining lands, shall be removed;
>
> (b) That nothing obstructing the view shall be placed at such crossing or nearer thereto than the Board designates;
>
> and for any such purpose the Board shall have power to authorize or direct the expropriation of any lands, the acquirement of any easement and the doing of anything deemed necessary, and shall have power to fix and order payment of such compensation as it deems just.

Now, a good deal of that is valuable. It is proper that the Board should have power to order the removal of trees, earth or other obstruction to the view, which may be upon the highway, possibly upon the adjoining lands, although I do not know about that. But as to buildings, the Board will have power to order the removal of buildings constituting an obstruction which stand upon the railway itself, and that may happen to be a warehouse, shops, or something of that kind, which would require to be removed because held to be a danger to the crossing. Or it may be a toll house or a gate house that obstructs the view. We think the Board ought not to be given power to impose upon a railway or municipality the removal of buildings which may be on adjoining lands, as well as upon the lands of the company or municipality.

Mr. SINCLAIR: Is this provision for the purpose of giving Railway employees a chance to see the track?

Mr. CHRYSLER, K.C.: It has in mind the interests of the public also, where the view is obstructed of the man who is operating an engine, or the man who is driving over a crossing.

Mr. SINCLAIR: It is a pretty drastic clause. If I had a shade tree on my property that was not in the way, I would not like to have it cut down.

The CHAIRMAN: Trees are in many cases objectionable on account of obstructing the view.

Mr. LAWRENCE: I remember a case where there was a dangerous crossing in a farming community, and the matter was referred to the Board. There were no buildings near the crossing, but there were a number of scrub trees that had grown up and were obstructing the view. The Board suggested that the objectionable trees should be cut down. However, the owners would not cut them down and the Board could not order them to do so. I understand this provision is to cover such cases as that. There may be instances where there are beautiful shade trees which ought not to be sacrificed, but there are a great many other cases where, in the opinion of the Board the trees should be cut down and they should have power to see that it is done.

The CHAIRMAN: Could you not include trees in the amendment you suggested, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I am quite satisfied that the Railway or a municipality should be ordered to cut down trees upon a highway or upon a railway because the Board has control over these things, but to expropriate private property for removal may result in very heavy expense.

The CHAIRMAN: I know of many instances in the country where trees constitute a serious objection.

Mr. CHRYSLER, K.C.: I do not think the hardship there would be so great as it would be where the removal of expensive buildings was ordered.

Mr. LAWRENCE: In the case I referred to the trees were of no earthly value at all. If the power asked for in this section is not granted, the Board can order the Railway Company to place a watchman at the crossing, which would mean more expense to them than paying for the cutting down of trees or the removal of buildings. I do not know why the Railway Companies should object to this provision.

Mr. SINCLAIR: Do you not think that if it were necessary to cut down trees in order to afford an uninterrupted view of the railway, the company should pay for it?

Mr. LAWRENCE: Certainly some person should pay for the trees cut down.

Hon. Mr. GRAHAM: Under the present Act, in cases of this kind, would not the Board have the right to distribute the cost between the Railway and the municipality as they saw fit.

Mr. CHRYSLER, K.C.: There are sections dealing with cost of making improvements to highways, for instance, the raising or lowering of gates, and things of that kind, in which the Board may direct a municipality to assume part of the cost, but I do not think those sections would apply in this case.

The CHAIRMAN: If the word "buildings" were struck out, would it meet your views?

Mr. MACDONELL: A building is often a very great obstruction to the view. Sometimes on railways I have seen freight sheds that are in the way.

Mr. CHRYSLER, K.C.: The company should remove anything the Board ordered them to remove that stood on the road where it constituted a menace.

The CHAIRMAN: Is it the wish of the Committee that the word "buildings" should be struck out?

Mr. JOHNSTON, K.C.: No, that would not meet the case. Suppose we say, Mr. Chrysler, "any trees, buildings, earth or other obstruction to the view, which may be upon the railway or the highway, or any trees on adjoining lands."

Mr. CHRYSLER, K.C.: I think that is all right.

Mr. MACDONELL: You are limiting the obstruction on adjoining lands to trees, exclusively.

Mr. JOHNSTON, K.C.: If I understand the point Mr. Chrysler is raising, it is this: I own an hotel on the corner of the highway and the railway right of way, where I am carrying on a thriving business, is it fair that the railway should be ordered to expropriate my building?

Mr. MACDONELL: This provision does not say they must do so.

Mr. JOHNSTON, K.C.: It gives the Board power to order the expropriation of any land.

Mr. MACDONELL: It is not declared that the railway company shall pay. What the section provides is that the Board may order such compensation as it deems just.

Mr. JOHNSTON, K.C.: Under section 260, Mr. Chrysler, the Board has the very widest power as to the distribution of costs.

Mr. CHRYSLER, K.C.: I would be quite satisfied with the amendment which Mr. Johnston suggests, but we should not be asked to remove buildings from private property.

Mr. MACDONELL: There is nothing here to that effect.

Mr. CHRYSLER, K.C.: Oh, yes.

Mr. MACDONELL: The Board's opinion may be taken.

Mr. CHRYSLER, K.C.: They may be ordered to do it. I do not think the section was intended to apply to other than a shed or shack, probably something which was not of very great value, but it is wide enough to apply to a very expensive piece of property. Mr. Lawrence suggests that if such a crossing is dangerous and such a building exists, the Board may order the provision of gates and a watchman, or else take away the level crossing altogether. They have the right to do that, and it may be the proper remedy, but what is proposed here does not seem to me to be the proper remedy.

The CHAIRMAN: The objection in connection with trees is a very serious one.

Mr. CHRYSLER, K.C.: I would not object to that, requiring payment for trees.

Mr. SINCLAIR: Suppose we adopt Mr. Johnston's amendment. Do you think that covers the compensation for cutting down those trees?

Mr. CHRYSLER, K.C.: I think so.

Mr. JOHNSTON, K.C.: Manifestly, the Board has power in that event to order the railways to expropriate the trees and pay for them.

The CHAIRMAN: Shall section 259 pass with the words added on the third line of paragraph (a) after the word "highway," "or any trees"?

Mr. MACDONELL: I do not think the section should carry in that way because there may be a building on the corner on property other than that of the railway, and the Board would have no power to order it removed.

Mr. JOHNSTON, K.C.: That is exactly what Mr. Chrysler contends should not be given.

The CHAIRMAN: Take the position of the Tecumseh House in London.

Mr. JOHNSTON, K.C.: The Chairman thinks that if the section in its present form passed, the Board might order a railway company to expropriate the Tecumseh House in London, Ontario.

The CHAIRMAN: That hotel is right up against the railway track.

Hon. Mr. GRAHAM: Mr. Lawrence has called attention to the fact that the railway company could be made to put a watchman at the crossing.

Mr. MACDONELL: Yes, the Board could require them to do that.

Mr. SINCLAIR: The only value of the land for many people is that it is there for the shade trees to grow in. I have a tree on the corner of my lot that I would not sell to anybody, and if it were removed I would think I was very badly treated if I were only paid the value of the tree.

The CHAIRMAN: If it were in the public interest you would be glad to let it go.

Mr. SINCLAIR: If it were in the public interest the land should be paid for. The land is of no use to me except that it is there for the tree to grow on.

Mr. JOHNSTON, K.C.: I would suggest that paragraph (*a*) be amended in this way, by inserting the word "or" before the words "the highway" in the third line, and inserting after "highway or," the words "any trees on." The paragraph will then read:

> "That any trees, buildings, earth or other obstruction to the view, which may be upon the railway or the highway, or any trees on any adjoining lands, shall be removed."

Mr. MACDONELL: I want to go on record as being opposed to section 259 as amended.

Section as amended adopted.

On section 263—Appropriation for safety of public at highway crossings at rail level.

Mr. JOHNSTON, K.C.: Provision is made for extending the appropriation for a further term of five years, and the powers of the Board dealing with it are less hampered. The note made by the draftsman on this section reads:

> "Provision is made for extending the appropriation for a further term of five years and the powers of the Board in dealing with it are less hampered than formerly by arbitrary provisions. The changes are in subsections 1 and 3.
>
> "The widened powers now provided for in subsection 3 are the suggestion of the Board."

Section adopted.

On section 267—Application of S. S. 257 to 266.

Mr. CHRYSLER, K.C.: I think that is a clause I was referred to by the Canadian Northern, in regard to the expression, "Other than Government railways."

Mr. JOHNSTON, K.C.: I think that clause is surplusage.

Mr. CHRYSLER, K.C.: The point is as to the right of crossing over the Ontario Government railway, and whether this is excluded by the words "other than Government railways." That surely means other than railways belonging to the Government of Canada.

Mr. MACDONELL: I agree with Mr. Johnston.

Mr. JOHNSTON, K.C.: When I read the Act originally, I marked that as being unnecessary, and I am of that opinion still.

Mr. CHRYSLER, K.C.: You refer to the whole section.

Mr. JOHNSTON, K.C.: Yes. Section 5 says,—

> "This Act shall, subject as herein provided, apply to all persons, railway companies and railways other than Government railways."

So that 267 is unnecessary.

Section struck out.

On section 271—Drainage, etc.; terms and conditions.

Mr. BLAIR: This section provides that the Board shall fix the compensation, if any, which shall be paid to any owner injuriously affected. In discussing these clauses with one of the Commissioners, he felt it would be desirable to relieve the Board from that duty, and provide that the compensation be determined under the arbitration sections of the Act.

Mr. JOHNSTON, K.C.: By the county judge.

Mr. BLAIR: The Board has very broad powers and has a great deal to do. I would suggest that the clause should read as it does, down to the word "and" in the 5th line of the subsection.

The CHAIRMAN: If your Board orders drainage to be done, do you not think your engineer should fix the compensation?

Mr. BLAIR: That entails oftentimes considerable extra work. If the Committee feel that they want the Board to do it, the Board has no serious objection, but it was felt by Commissioner McLean, who went through the different clauses of the Act very carefully, that it was adding a further burden in the direction of requiring their staff to make further investigation, entailing extra work which perhaps it should be relieved of.

The CHAIRMAN: You think the Board should not have the fixing of the compensation?

Mr. BLAIR: That was Commissioner McLean's idea, that it was better that the Board should be relieved from that.

Mr. MACDONELL: But they do the work so well.

Mr. BLAIR: I know the Board quite appreciate the feeling of the Committee in that regard, and if the Committee feel it should be left as it stands, I would not urge the matter further, but that suggestion has been made.

Mr. JOHNSTON, K.C.: Suppose it were left in this way: that "the Board may fix the compensation, if any, which should be paid to any owner injuriously affected, or may direct," etc. If the Board has all the information to fix the compensation let it do so. If the Board has not that information, let the parties arbitrate.

Mr. BLAIR: Yes.

Mr. JOHNSTON, K.C.: So that if you strike out the word "shall" in the 5th line of subsection 2, and insert the word "may," I think it would answer: "May fix the compensation, if any, which should be paid to any person injuriously affected, or may direct the compensation, if any, to be paid under the arbitration sections of this Act."

Section adopted as amended.

The Committee adjourned until Tuesday, May 8.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 10--MAY 8, 1917

(Containing representations of Messrs. Peltier, Best and Lawrence, on behalf of Railway Brotherhoods.)

OTTAWA
PRINTED BY J. DE L. TACHÉ,
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
COMMITTEE ROOM,
TUESDAY, 8th May, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Donaldson, Hartt, Green, Lapointe (Kamouraska), Lemieux, Macdonell, Maclean (York), Murphy, Nesbitt, Reid, Sinclair and Weichel.

A telegram from R. McKenzie stating that the delegation from the Canadian Council of Agriculture cannot reach Ottawa before the fifteenth instant owing to other meetings connected with the grain trade, being read, it was

Resolved, that Tuesday, May 15, instead of Thursday, May 10, be fixed for the consideration of the sections of the Bill dealing with the cattle killed or injured on railway tracks, etc.

Ordered, that Thursday, May 10, be fixed for the hearing of Frank Hawkins, Secretary Canadian Lumbermen's Association, and others, on section 323 of the Bill.

Ordered, that Friday, May 11, be fixed for the hearing of a delegation from the Mutual Fire Underwriters' Association of Ontario.

The Committee then resumed the consideration of the Bill.

Messrs. Best, Lawrence and Peltier, representing the various brotherhoods of railway employees, were heard on several sections of the Bill.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

ERRATA.

OTTAWA, May 8, 1917.

The Secretary.

Special Committee of House of Commons on Bill No. 13.

"An Act to Consolidate and Amend the Railway Act."

DEAR SIR,—Please make the following corrections appearing in Exhibit "A," commencing at page 72 of Proceedings of the Special Committee, No. 5, April 28:—

In clause 10, page 73, the word, "consistent" in the 11th line should read "inconsistent."

In clause 13, in second line appearing at top of page 75, the second word "railway" should read "locomotive."

In clause 13, in second last line thereof, page 75, the word "going"' should read "growing."

Respectfully submitted,

WM. L. BEST,
Legislative Representative,
Brotherhood of Locomotive Firemen and Enginemen.

On behalf of the representatives of the railway employees.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

TUESDAY, May 8, 1917.

The committee met at 11.10 a.m.

The CHAIRMAN: The committee fixed the 10th of this month for hearing representatives regarding cattle-guard legislation. I have a telegram from Mr. R. McKenzie, of Winnipeg, who, I think, represents the Canadian Council of Agriculture. The telegram reads: "Cannot reach Ottawa before fifteenth on account of other meetings connected with grain trade." Is it the wish of the committee that this matter be held over until the fifteenth?

Suggestion concurred in.

The CHAIRMAN: It is understood then that the Lumbermen's Association will be heard on the 10th, the mutual fire insurance companies on the 11th, the delegation regarding cattle-guard legislation on the 15th, the telephone companies' representatives on the 16th, and the municipalities' representatives on the 18th.

The CHAIRMAN: If the committee is ready to hear the representatives of the railway brotherhoods, we will now listen to Mr. L. L. Peltier, of the Order of Railway Conductors.

Mr. L. L. PELTIER: There is some correspondence before you with reference to the semi-monthly pay proposition, Mr. Chairman. Perhaps it might be a good thing for me to reread it and have it go on record. At present, probably we could take up the memorandum signed jointly by the representative of the Brotherhood of Locomotive Engineers, C. Lawrence; of the Brotherhood of Locomotive Firemen and Engineers, Wm. L. Best; of the Order of Railway Conductors, L. L. Peltier; and of the Brotherhood of Railroad Trainmen, James Murdock. I notice that this memorandum has been published already in the proceedings of this committee. With each one of the various amendments we are asking for, we have given a brief explanation which it will not be necessary to enlarge upon.

Section 5: That has been agreed upon during the progress of the committee's work.

The CHAIRMAN: That section stands.

Mr. PELTIER: Section 6 has also been agreed upon.

Mr. NESBITT: That is, agreed upon when we were considering it?

Mr. PELTIER: Yes. Section 41: That was also agreed upon in conjunction with Mr. Johnston, at the chairman's request.

Mr. JOHNSTON, K.C.: We have added a clause to that section which satisfies the brotherhoods.

Hon. Mr. MURPHY: What observations have you to make about the sections you have just mentioned?

Mr. PELTIER: None at all. They are acceptable. Section 284, regarding packing in frogs. This section should be struck out. I will read the paragraph relating to it, and Mr. Best or Mr. Lawrence may have a few words to say later on the subject. (Reads.)

> Paragraph 5 of this section should be struck out, as we submit that with the modern equipment generally in use on Canadian railways, there is no necessity of taking the filling or the packing out of frogs or guard rails in the winter-

time. We are of the opinion that the average railroad company does not now resort to this practice. A brakeman or yardman or other railroad employee is just as liable to get his foot caught in a frog or between a guard rail and the main track rail with the packing out between December and April as during any other part of the year. The paragraph is obsolete, we think.

This is really a trap, to have the frog packing in summer-time and the packing taken out in winter. The men get used to crossing these places when they are packed, and when the packing is suddenly taken out they are liable to get caught.

The CHAIRMAN: Do you mean that the whole clause should be struck out or just subsection 5?

Mr. PELTIER: Just subsection 5.

Mr. NESBITT: You do not want the packing left out between the other months?

Mr. PELTIER: They should be kept packed during the year. There is no particular reason why this clause should remain in the Bill.

Mr. MACDONELL: What does the Railway Commission say about it?

Mr. MACLEAN: It is optional for the Board to allow the packing to be left out or left in.

The CHAIRMAN: Have you any suggestion, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I have no instructions about this. It is new to me. The section as it stands reads:—

> The Board may, notwithstanding the requirements of this section, allow the filling and packing therein mentioned to be left out from the month of December to the month of April in each year, both months included, or between any such dates as the Board by regulation, or in any particular case, determines.

The packing cannot be removed without the sanction of the Board. What their practice is regarding this matter, I do not know at the present time. It is years since this section was before me, and I understood that the practice was in accordance with the section as it now stands. It may vary in different parts of the country very much, as our climate is different, and I think that is the reason why the section is drawn in that way. There are sections of the country, like British Columbia, where there is no frost or snow to interfere with the packing remaining in the year round. Whether or not that is so Mr. Peltier will know better than I do.

Mr. MACLEAN: The section gives power to the Board. Do you not want the Board to have that power?

Mr. PELTIER: We feel that no one should have power to say that a trap shall be set for our men. While we have every confidence in the Board, years and years ago we fought and got that changed, as our men were being caught, and the most horrible thing could occur if a man got his foot caught in a frog and was liable to be run over. These accidents are liable to happen if the frogs are not filled. The only reason advanced why they should not be kept filled is the small additional cost of keeping the wing rails clear. If you will notice, the switches around the yard are the first to be shovelled in order that they may be moved.

Mr. MACLEAN: That is only in the winter-time?

Mr. PELTIER: Yes. I found in the yards at Ottawa on the first day of April that the frogs were filled. To leave this matter to the Board means that we have to collect from the Atlantic to the Pacific, at great expense, the information to support our contention.

Mr. MACDONELL: How can this committee, sitting here, judge of the need or absence of need of this paragraph? We cannot do it here.

Mr. MACLEAN: Is there any one here to justify the paragraph?

Mr. MACDONELL: It has been in the law and it is there now. This subsection gives discretion to the Board.

Mr. NESBITT: Why should the subsection be struck out?

Mr. PELTIER: The only reason was that some years ago, before the use of the present equipment and high rails, the companies thought that it might perhaps cause derailments if this packing filled with ice, which, of course, we who are practical railway men know is not true. We cannot go to work to prove the necessity of this to you except by experience. If the Board of Railway Commissioners have any information we would be glad to have them submit it to you. They thought it might cause derailment by this packing filling with ice which we, of course, having a practical knowledge of the railway service, know is not true. If we can get any information to help you out in the consideration of this matter, we shall be very glad to submit it.

Mr. BEST: One of the strongest objections which has been urged to subsection 5 of section 284 is that it suggests a certain line of action which is dangerous, on the very face of it, in practical application. It is suggested, as a line of action for the railway companies, and whether or not the consent of the Board has been given, the companies have in some instances left the filling out of the frogs and men have got their heel caught and could not release it. A train of box cars comes along, moving slowly, the men could not release themselves and they have had their legs taken off. We think the optional provision should be removed in the interest of the conservation of the human animal, for after all that is the big thing that all of us should bear in mind. If the railway company find it necessary to fill the frog at one part of the year, it does seem essential that the filling should be maintained at all seasons. If it is a matter of leaving it to a railway company or to some officer of a railway company, they or he may not just appreciate the importance of having it filled up at all times. Therefore, I would suggest that it should not be left to the discretion of an officer or employee of a railway company as to when the filling should be left in.

The CHAIRMAN: What is the object the railway company has in making the filling?

Mr. BEST: In order that an employee shall not get his foot caught in the frog. You will understand, Mr. Chairman, that if a man's heel or the sole of his foot is caught, the filling will protect the foot so that it will not be caught under the rail. It is possible that in winter-time snow and ice may collect on the frog so that the maintenance of way men in picking out the ice may remove some of the filling. Or, perhaps for convenience sake the filling has been taken out entirely so that in severe weather ice accumulates there. But that ice can be easily removed. We think, however, that the maintenance of way men, if they were here, would say that the frog should be filled up at all times of the year, and that the company can provide the necessary tools whereby the ice can be easily removed from the top of the frog.

Mr. NESBITT: What does the filling consist of?

Mr. BEST: Just a wooden wedge in the shape of the frog which is driven in and fastened with a spike.

Mr. LAWRENCE: There was a time when the frogs were not filled, as any person knows who has railroaded for any length of time and has had any personal experience in connection with this matter. I remember the time perfectly well when there was no packing in the frogs or wing rails, and I saw a man killed on that account. He got his foot caught inside the wing rail of the frog and a box car came along, rolled him right over and tore his entrails out. That man died in less than twenty minutes afterwards. It was at a place called Woodslee on the Michigan-Central, formerly the old Canada Southern, and I was there and saw the whole occurrence. The railway men

then succeeded in having a clause put in the Railway Act to prevent the recurrence of such accidents, requiring blocks to be put in the frogs.

Mr. CHRYSLER, K.C.: That was thirty years ago. The provision which you speak of, I think, went into the Act of 1888.

Mr. LAWRENCE: The accident I am speaking of happened in 1879 or 1880. At that time there was no packing placed in the frogs.

Mr. NESBITT: We have all heard of these accidents and we want to eliminate them if possible.

Mr. LAWRENCE: While it may not be a matter directly connected with the organization that I represent, at the same time, we feel that as fellow-employees we are more or less bound in doing anything we can to prevent the possibility of accident. We think it is just as important that the packing should be in the frogs in the winter season as that it should be there in the summer season.

Mr. MACDONELL: The packing is more necessary in the winter season.

Mr. LAWRENCE: If the packing is there in the summer season why should it be taken out in the winter season? It is from a desire to conserve human life and limb that we make the suggestion. There is no possible reason why the railway companies cannot do the packing in the winter as well as in the summer, except that it may involve a little more trouble for the maintenance of way men to clear out the space between the guard rail and the rail.

Mr. NESBITT: Suppose there is more trouble, what then?

Mr. LAWRENCE: Even if there is more trouble, the frog should be blocked just as much in winter as in summer.

Mr. JOHNSTON, K.C.: Is that the only reason why the railway companies want the frogs maintained?

Mr. LAWRENCE: At the time we suggested an amendment to the Railway Act requiring the blocks to be placed in frogs the railway companies advanced the argument that they were unable to keep the frogs clear in the winter season. Parliament then added this provision which we would like to have eliminated from the Act.

Mr. MACDONELL: It is more necessary to have the frog blocked in the winter season because if it is not an accident is more liable to happen if the frog be open?

Mr. LAWRENCE: Yes. Of course the climatic conditions are not the same in all parts of Canada, but there is, in our opinion, no excuse for the railway companies taking out the block in the winter months.

Mr. MACLEAN: Has the Board ever exercised the power which this provision gives to it?

Mr. CHRYSLER, K.C.: I cannot answer your question, Mr. Maclean, the matter is new to me in its present form. I agree with what Mr. Lawrence has said in respect to the history of the question. There was a time when packing was unknown. It is, I should think, thirty years since packing was required in certain spaces—it is not required for all the spaces but only as regards the important spaces—about the switch. The clause in the present Bill was enacted, I should think, as long ago as 1888. The object of it was to permit the companies to raise the wooden block during the months from December to April. The wording was changed on two or three occasions and that continued down to quite recently when the wording was altered in order to give the Board descretionary power. It seems to me there must be some good operating reason for allowing this provision to continue, at all events, in certain portions of the country. Mr. Lawrence says that it is owing to the trouble and difficulty of removing ice and snow when the block is there. I think the difficulty was a more serious one. I think it was found difficult to replace the block if it was destroyed. That was one of the reasons and then perhaps the formation of ice resulting from thawing and

then freezing again results in the creation of difficulty at the points in question on the railway. I have no practical knowledge of the question and I think it would be necessary at some stage, if the committee think of adopting the proposition to hear from practical men in the service of the railway on some of these sections.

The CHAIRMAN: Perhaps it would be well to allow the section to stand until Mr. Blair, who represents the Railway Commissioners, can be here, and give the reasons why the section in its present form was enacted.

Mr. JOHNSTON, K.C.: Before you leave the section, the railways contend there is no danger in leaving the packing out during the winter months.

Mr. PELTIER: In regard to what Mr. Chrysler has spoken of, the reason for leaving discretionary power to the Board of Railway Commissioners, it was in case there should be doubt. And in case of doubt the Board took the safe course of permitting the railway companies to leave the frogs unpacked during the winter. However, experience has shown that is unnecessary. With the discretionary power which the provision confers on the Board, it may result in carelessness. The companies will contend that packing is not necessary during winter months and when a duty is not made obligatory on a company or one of its employees, carelessness is almost certain to result.

Mr. MACLEAN: We will hear Mr. Blair later as to whether this power has ever been exercised by the Board.

The CHAIRMAN: If you will proceed, Mr. Peltier, we will hear from Mr. Blair when he comes a little later.

Section 284 allowed to stand.

On section 287—Accidents, notice to be sent to Board.

Mr. PELTIER: What we propose is to amend this section by adding at the end of subsection 1 the following proviso:—

> "Provided that the conductor or an officer of the company making a report to the company of the occurrence of an accident attended with personal injuries to any person using the railway or to any employee of the company shall also forward to the Board duplicate copy of such report and shall immediately send by telegraph or telephone to the Board notice of such accident."

Our object in coming here is not always merely to look after ourselves. With the wide experience and wide knowledge possessed by the men whom we represent, we endeavour sometimes to secure the passage of legislation in the public interest. We argue that the man on the ground at the time of the accident, with the full knowledge of the circumstances and influenced by the feeling which dominates him at the time, should make a duplicate copy of the report which he sends to his superintendent, and this should be sent to the Board of Railway Commissioners.

Hon. Mr. MURPHY: What you propose is, that the record should be made complete at the very place where it ought to be complete?

Hon. Mr. LEMIEUX: How will the report in question be available to the public when it is in the hands of the Board?

Mr. MACLEAN: I thoroughly sympathize with the object in view. I have had practical experience of accidents of the kind in question and the public have had no access to information in any place. It would be a good thing, in all these accidents, that a duplicate of the report made to the company shall go to the Board of Railway Commissioners.

Mr. LAWRENCE: If the information is sent direct to the Board as soon as the accident happens it will enable the Board to send an officer immediately to investigate

the cause of that accident. As it now happens there is a delay of three of four days before an investigation is begun. In the first place the report goes to the local office of the railway company from whence it is forwarded to the head office in Montreal, which in turn transmits it to the Board. In this way a delay of a week may occur, and most of the wreck may have been cleaned up and a thorough investigation is a much more difficult matter.

Mr. JOHNSTON, K.C.: The railway company is required by the present section to give the Board full particulars of an accident.

Mr. LAWRENCE: That is from the head office of the company, as I understand it?

Mr. JOHNSTON, K.C.: It does not say from the head office necessarily.

Mr. MACDONELL: How does the amendment read?

Amendment again read by Mr. Johnston.

Mr. PELTIER: This is a very simple matter, the conductor, if it be the conductor, or whoever the officer is, when he goes into the telegraph office to telegraph his report to his superintendent, addresses also a report to the Board of Railway Commissioners. The way it would work out is that when he is making a report to his superintendent, he makes it in duplicate and a copy of it is, at the same time, sent on to the Board. This is not done with any desire to cast any reflection on the companies, but, probably you gentlemen do not know how busy the local officers of these companies are; if you did you would know how difficult it is for them to act promptly; frequently they are on the road, they are not in their office at the time the accident happens. We as practical railway men know that from every accident that occurs there is a lesson to be learned, and this proposed amendment may get some of our men into trouble. I dare say some of the conductors I represent do not like the idea of having to make this report for the reason that it may expose them when they are implicated, but that is not the question; it is in the public interest.

Mr. MACLEAN: The duty is put on the company to make that report to the Board and your proposed amendment also puts it upon the operator, or the officer, whoever he may be, to do the same, is not that the idea?

Mr. PELTIER: Yes.

The CHAIRMAN: What have you to say to this proposal, Mr. Chrysler?

Mr. CHRYSLER, K.C.: Personally, I do not see any great objection to the proposal. I understood, I may have been wrong, that the Board as it was, received reports directly, practically as provided for in this proposed addition to the subsection, and that it did not go to the circuitous, roundabout way Mr. Peltier speaks of. It is known from the newspaper reports, in a good many cases, when an accident occurs, whether the Board sends their inspectors on information that they may derive from the press reports, I do not know.

Mr. SINCLAIR: Would these reports of which you speak be confidential?

Mr. CHRYSLER, K.C.: The reports to the Board should be.

Mr. SINCLAIR: I mean the reports to the company by their officers?

Mr. CHRYSLER, K.C.: The reports I understand would be confidential in the event of a trial. The report to the company of the accident would not be confidential, but the reports to the Board, perhaps, ought to be.

Mr. MACDONELL: Supposing we decide on the principle, and leave it to Mr. Johnston to recast the subsection in accordance with that subsection.

Mr. JOHNSTON, K.C.: It should not be as a proviso, but if the committee decides on the principle, the subsection can be recast.

Principle of proposed amendment adopted, and Mr. Johnston requested to recast the clause.

Mr. JOHNSTON, K.C.: When the committee reaches the consideration of section 287, I will have an amendment ready.

Mr. PELTIER: The next amendment we ask is to section 298 (page 113) paragraph (j) (reads):

> "Certain of the railroad employees object to the inclusion of this language in this Act, we respectfully submit that paragraph (j) of section 289 may be found entirely unacceptable to the railway employees, and it is hoped that if the paragraph becomes effective that its adoption shall be regarded as without prejudice to any future contentions made to all or any of the railroad organizations."

Mr. MACDONELL: That is always the case.

Mr. PELTIER: Though we come under the operation of this clause, and the representative of the Brotherhood of Engineers will speak on this matter and, I may say that their condition is much more serions than the condition of the men whom I represent, because of the modern locomotives and all those things now in use and there is certainly a need of remedial legislation either by the Board or by the Government with regard to the hours of rest. The paragraph (j) reads: "Limiting or regulating the hours of duty of any employee or class or classes of employees, with a view to safety." Some of us have thought of trying the Board, but we wanted in making that trial to have it understood and so expressed that we accepted the paragraph without prejudice so that if the Board did not administer the operation of this clause, as we believe it should be administered, that we would yet have recourse to Parliament for the enactment of a law such as we ask for.

Mr. NESBITT: You always have the privilege.

Mr. PELTIER: Yes, we have, but it might be said that we had accepted this paragraph when this measure was under consideration, and that afterwards we were coming back to an objection to that which we had agreed to accept.

Mr. JOHNSTON: Do you want the subsection struck out entirely?

Mr. PELTIER: No, sir, but we do not want to be in the position if, after a period of probation we find ourselves compelled to come back and ask for further amendments, that we shall be told that we accepted the paragraph as it stands now. We do not want to be prejudiced in the future, provided the administration of the paragraph as it now stands, by the Board, is not right.

Mr. CHRYSLER, K.C.: This subsection is entirely new.

Mr. LAWRENCES We had a Bill introduced in Parliament, in 1914 I think it was, as Mr. Peltier has said, and there was division of opinion between the engineers and firemen and the trainmen and conductors, as to that measure. It is certainly necessary that some such regulation should be made upon that subject. The Board of Railway Commissioners are, at the present time, very busy men, no men in the country have been as busy during this last winter particularly, on account of the congestion of traffic, as the Board of Railway Commissioners and whether they would make regulations satisfactory to the men, or not, we do not know. But at the present time the railway men of this country are up against a hard proposition which perhaps I can best illustrate by referring to the accident that happened on the Grand Trunk between Hamilton and Toronto, last March. The engineer and the fireman on a freight train, and the conductor and the brakemen had been on duty over 24 hours, from the time the engineer was called, until the accident happened. He was in a side-track at Port Credit and was sent word that after a certain train passed, the line was clear to pull out. You can readily understand in what condition a man is after being on duty for nearly 24 hours from the time he is called out. This was in the evening, about 9 or 10 o'clock, I forget the exact time. After a while a passenger train passed which, he

thought, was the one referred to in his order. The brakeman, without being told, threw the switch.

Hon. Mr. LEMIEUX: Where did you say that happened?

Mr. LAWRENCE: At Port Credit, last March.

Hon. Mr. LEMIEUX: I was there—I was on that passenger train to which the accident occurred.

Mr. LAWRENCE: Then you will understand that it was a miracle that there was not a lot of passengers killed, and I hope that the members of the committee, in considering this question, will remember that one of their members, Hon. Mr. Lemieux, was on the train at the time the accident occurred. As I say the brakeman threw the switch, and the engineer started to pull out on the main track; the engine was slipping, we have sand to keep the wheels from slipping on the rails, and the engine was moving slowly, and the engineer got out on the ground and when he got around to the side on which the main track he was going on was, he happened to look up and saw that there was a passenger train coming along, and he started up the track with a torch, swinging it, in an endeavour to stop the passenger train. He did not have time to do so, it was the International Limited, I think it was her. The brakeman was around on the other side, and when the engineer started back on the track to signal the oncoming passenger train, he hollered to the fireman to jump but the fireman was a new man and he did not hear, or did not understand and remained on the engine. The fireman and the brakeman of the freight train and the engineer on the passenger train were killed, and it was a wonder that more were not killed. You can quite understand what condition those men were in. The engineer and his assistant, who was not a first-class fireman had shovelled two tanks of coal and they were both just tired out.

I have another case here that happened in Hamilton, on the 28th of January, where the engineer was working under trying circumstances, just as this one, to whom I have just referred, was. In this case the engineer came in at 4.30 in the morning, having been working since 11 o'clock on the morning before. These men are called two or three hours before they go to work. In this case the man had been out about twenty hours before he came in, and had only three hours' sleep when he was called out again. This man took out his engine, it was a double-header, and they went by the signal, and a street car went into the side of the train; he was not injured, but that man, after a trial, the week before last was sent to jail for two months in Hamilton. That man was doing everything he could, but he had been working longer hours than he should have been allowed to work. I want to say that the engineer and fireman of the locomotive on a passenger train, are about the busiest men in this country. One locomotive engineer, going over a division of 140 miles, counted the number of different movements that he had to make in that run, and he had between 1,800 and 1,900 different movements to make in the length of time which it took to cover that distance. That means that a man in that position must keep alive all the time, and that while the passenger trains are in danger, we do not complain of the passenger men being kept too long on duty, but it is the freight men, and the lives of people travelling on the passenger train are endangered in consequence.

The CHAIRMAN: Do we understand that you object to paragraph (j) of clause 289?

Mr. LAWRENCE: We are just putting up our opposition to the hours men are required to handle trains, and we think that the legislators of this country ought to know the facts, and the danger to the public which results from that condition of affairs. It is up to you, gentlemen of this committee, to provide the necessary regulations and restrictions in that regard and to protect the public whether the companies or the men wish it or not.

The CHAIRMAN: Is it the wish of you and the other representatives of the different brotherhoods that this paragraph, as it reads here, "The Board may make orders and regulations,—(J) limiting or regulating the hours of duty of any employees, or class or classes of employees, with a view to safety," should be struck out?

The CHAIRMAN (to Mr. Lawrence): Is the committee to understand that you object to or approve of this paragraph?

Mr. LAWRENCE: We do not want to have it understood that we are in favour of it. If Mr. Best and I had our way, Parliament would pass such a law as they have in the United States regulating the hours of service.

Hon. Mr. MURPHY: What is the aim of that law?

Mr. LAWRENCE: It is on the same lines as the Bill we had introduced by Mr. Carroll in 1914. In the United States they have a law where if a man, in connection with the operation of a train, is on duty sixteen hours continuously, he must not go on duty again until he has had at least ten hours' rest. If he is on duty sixteen hours in the twenty-four, that is a few hours on and off, he must not go out until he has had eight hours' rest.

Hon. Mr. MURPHY: If you were satisfied that this subsection should be adopted, the Board might apply it in accordance with the provisions of the United States law. Then you would have no objection?

Mr. LAWRENCE: No, sir.

Hon. Mr. MURPHY: Perhaps you would not say this, but you are timorous about how it may be applied?

Mr. MACDONELL: Mr. Lawrence is not objecting to or approving of this. He is making a statement, and he holds himself at liberty, if this is not effective, to apply to Parliament subsequently for something that will meet the conditions.

Mr. LAWRENCE: For the simple reason that I can bring information—I would not dare to mention any names—where railway companies in Canada running into the United States would run their men until they got near the border, after being twenty hours on duty, turn them around and send them to their own terminal, not daring to let them go into the United States.

Hon. Mr. LEMIEUX: If they crossed the border into the United States they would become subject to their law?

Mr. LAWRENCE: Yes. I have a number of instances like that.

The CHAIRMAN: As I understand it, you are merely going on record.

Hon. Mr. MURPHY: Would you not always have recourse open to you to go to the Board and be heard as to any regulations they might make?

Mr. LAWRENCE: We would, in a way. But, for instance, in the case of congestion of freight the railway companies might say it was on account of the hours of service law that they could not relieve the congestion. The Board might make an order in some district that the law would not apply. We think that would be a dangerous thing. It might have been done during this last winter. I could show you conditions in Ontario last winter where they kept our men on duty 18, 20, even 40 hours. The Grand Trunk leased some engines from the United States. When they were sent over they were furnished with American crews, they would not allow them to be brought by the engineers of the Grand Trunk. When the 16 hours were up, these American men quit work. In one case they stopped on the main line when the 16 hours were up.

Mr. NESBITT: That was bad.

Mr. LAWRENCE: Was it bad? It taught the companies a lesson. It never happened afterwards. This crew had brought the engine near the terminal.

Hon. Mr. MURPHY: They believed that a desperate disease required a desperate remedy.

Mr. LAWRENCE: It did not block things very badly, they were right at a terminal. That incident goes to show that the men over in the United States like that law and are willing to abide by it.

Hon. Mr. LEMIEUX: Have you applied to any railway board for similar legislation?

Mr. LAWRENCE: We had the matter up with the officers some time ago, and we did not meet with any success. As nearly as I can remember, I think the officers said they did not believe that they had jurisdiction. Let me read a bulletin issued by the Grand Trunk Railway, I think four years ago. The person who sent it to me did not put the date on it, but I have had it in my possession three years. It reads:—

> To all concerned:
>
> Commencing at once, trainmen, yardmen and enginemen must not be kept on duty to exceed 18 hours' continuous service without being given rest.

Regardless of that, the man was on duty twenty-four hours.

> Crews that cannot make the terminal within 18 hours must be side-tracked and given 8 hours' rest and 2 hours' call or the train set off at such time that will enable the crew to make the terminal with the engine and caboose. When necessary to tie up for a rest between terminals, provision must be made for a man to watch the engine. No crew must be allowed to leave a terminal until they have had 8 hours' rest, except in case of main line being blocked.

It is always blocked.

> We prefer that any train be annulled rather than require an engine or train crew to leave a terminal without having had 8 hours' rest.

I want to say that that notice cuts no more figure than a snap of my fingers with the officers of the Grand Trunk Railway to-day.

Mr. SINCLAIR: Are the parties whom you represent in favour of removing the management of the railways out of politics in details like this, such as fixing the hours of work?

Mr. LAWRENCE: Yes, I am in favour of that.

Mr. SINCLAIR: It strikes me that this is a step in that direction.

Mr. LAWRENCE: Well, then, put the whole Railway Act under the Board of Railway Commissioners. That will take the whole thing out of politics.

Mr. MACLEAN: When did the American Act come into force?

Mr. LAWRENCE: I think the American men got their law in 1907. I am not quite positive.

Mr. NESBITT: Might I suggest that as these gentlemen do not oppose the clause, but simply want to put their views on record, we pass on. If it were necessary, there is no reason on earth why they could not have a change made later.

Mr. MACLEAN: We can try and get that American clause in the law when the Bill is up in the House.

Mr. NESBITT: There is nothing to hinder their asking for an amendment.

The CHAIRMAN: Mr. Best would like to say a few words.

Mr. WM. L. BEST: I think it would probably be apparent to the committee that the representatives of the various brotherhoods unfortunately are not exactly in accord on that matter; that is to say, the conductors and trainmen have not sought an hours of service law, perhaps, as vigorously as the representatives of the locomotive engine-

men. The reason for that is quite apparent to any practical railroad man, namely that the conditions of locomotive service cannot be compared, so far as exaction of one's physical energies is concerned with those of the conductors and trainmen. Their duties are exacting enough, but they do not at all compare with those of the locomotive enginemen. In addition to that the greater number of employees, as you will understand, is in freight servce, irregular service. When they are laid out on the road the conductor and trainmen, I am glad to say, can go to bed just as comfortably as if they were at home. The engine crew, in charge of a $20,000 piece of property, cannot go to bed. In the district where I put in twenty-one years of the best part of my life railroading on a locomotive, we had from five to six months when the thermometer registered from 40 to 60 degrees below zero. No man can get rest on a locomotive and look after such a valuable piece of machinery under those conditions. It is because of the conditions that locomotive enginmen have worked under, and where they have seen members of their own organization whom they have worked with go down to death as the result of accidents which occur from excessive hours of service, that we favour some regulation of hours of service. I believe that Parliament would have passed a law ten years ago had they been acquainted with these conditions. Mr. Lawrence and I presented to the Minister of Railways and the Special Committee of the Privy Council, and to the Premier before he went to Europe recently, a memorial in which was contained a request for an hours of service law. I have no hesitation in saying that now. Subsequently an understanding was come to that the various railway representatives would probably get together on this matter in the near future, and we have called a meeting for that purpose. I am hopeful that the trainmen's organization and the conductors will see the matter in the same light as we do, that it is a case of necessity, that it is, as I put it to the Minister of Railways, a matter of national importance, to conserve the human element involved in the railway industry. From that viewpoint alone, this committee will appreciate our stand, because they are working hard, I know. When a man has spent, say, ten or twelve hours, or perhaps up to that time if his physical condition is normal he can render very nearly 100 per cent efficiency. As he gets up to twelve, sixteen, twenty-four, thirty-six, or forty-eight hours, as I have often had to do without rest at all, many times eating meals at intervals of twelve hours—a man cannot give 100 per cent efficiency. The liability to accident increases just in proportion to the diminution of a man's efficiency. Many of our accidents occur when men have been long hours on service. Investigations are made, and the public hears that some conductor or engineer has omitted to execute a train order or to properly observe the schedule time of some superior train. As a result, perhaps some lives are lost, maybe lives of employees, perhaps those of the travelling public; and the man may be acquitted, but sometimes he is convicted. Many of our men have gone behind the bars and in many cases, directly or indirectly, have gone there as a result of excessive hours of service. These are facts. I have numbers of cases on my files that, I think, would startle the legislators of this country. I have just recently had a case where a man wired for rest while on the road. A telegram was sent back by the superintendent to the conductor—he did not reply to the fireman's request for rest—but he sent a telegram to the conductor to have one of his brakemen fire the engine into a certain point, and to have him get off the train and report the results when he came in. The man, for fear of losing his position, went through without rest. When he got in he was called to the superintendent's office and he was told by the superintendent that he did not want to have that occur again, that he was giving too much trouble by booking rest on the road.

Mr. MACLEAN: Is the American clause satisfactory to you?

Mr. CHRYSLER, K.C.: The American clause is not in that sense at all. It is a state law.

Mr. BEST: It is a national law. I think there should be a Federal law in Canada; I think that is perferable to regulation by the Board of Railway Commis-

sioners. The reason paragraph (j) is in the Railway Act at the present time is that either the late Chief Commissioner or the late Chief Operating Officer, or some of the officers of the Board, questioned whether or not they had jurisdiction under the existing Act to regulate the hours of service of railway employees; and when Mr. Price was redrafting the Act he put this paragraph in to remove any doubt as to the jurisdiction of the Board. It was admitted, perhaps, by the Board that they could make regulations, but, perhaps these might not suit the conflicting parties. Some of the employees as I have just pointed out desire to have a law. The trainmen and conductors feel that the provisions of the various contracts with the railway companies respecting taking rest on the road should be sufficient.

Mr. MACDONELL: Why not leave this paragraph in so as to afford an opportunity of trying it out to see if it is successful.

Mr. BEST: In reply to that, there is no guarantee in paragraph (j) that the Board is going to make regulations. They may do it. There are many things in the Railway Act giving power to the Board to do things which they never make use of. It seems to me that this is simply giving the Board jurisdiction to do a certain thing if they find they have time to do it, and if they are impressed with the necessity for it. They may do it and they may not.

Hon. Mr. LEMIEUX: Would the American law be satisfactory?

Mr. BEST: If it were reduced to 14 hours. We have it redrafted and are going to submit it in our memorial. For the reason I pointed out, we do not submit it at this time, with a view to amending one of the clauses under "Operation and Equipment" whereby a provision in the Railway Act could be inserted providing for this very thing, because we think it should be in the Railway Act.

Mr. MACDONELL: You have not agreed upon it yet?

Mr. BEST: We have not had a meeting yet to consider it.

Mr. JOHNSTON, K.C.: Is it not, Mr. Maclean that none of the railway representatives had any objections to the clause remaining in the Bill?

Mr. MACLEAN: In the view perhaps that it is better than none at all.

Mr. JOHNSTON, K.C.: Mr. Best thinks it may be necessary to go further in some way, but for the time being they are all agreed that the clause should remain in the Bill.

Mr. LAWRENCE: I would like to draw the attention of the committee to the fact that the Board of Railway Commissioners is not a prosecuting body. If an order is passed by the Board what does it mean? It means that the employee must prosecute his employer for keeping him on duty an excessive length of time. Gentlemen, let any one of you put yourself in that position: a brakeman or fireman prosecuting a railway company for keeping him on duty an excessive length of time. Let a law be passed similar to that which prevails in the United States, where its enforcement is entrusted to the Government. In the Bill which we drafted and presented to Parliament three or four years ago, that was the line followed. The idea was that a committee should be appointed to examine the records of the companies throughout the country and report to the Board. When violations were discovered they should be brought to the attention of the Attorney-General, by whom a prosecution would be instituted. But if subsection "j" carried do not think that is going to relieve the difficulty.

Mr. MACDONELL: It may.

Mr. LAWRENCE: Extend the power of the Board and enact that they must prosecute for violation of the law.

Mr. NESBITT: Suppose you pass an Act regulating the hours of work and the companies fail to observe that regulation, how are you going to prosecute?

Mr. LAWRENCE: If an Act is passed along the lines suggested, let the prosecutions be conducted as they are in the United States. In the country to the south there is a department that carries out that work. That authority has access to the records of the railway companies and can find out whether an employee has been on duty for an exceptional length of time. If so, the case is referred to the prosecuting body, whatever it may be. In this country it would be the Attorney General of each province upon whom would devolve the duty of prosecuting the company. Let me give you a case by way of illustration. I have here a copy of an order passed by the Board of Railway Commissioners regarding the inspection of locomotive boilers. Any company violating the order renders itself liable for penalty of $100. Now, let me cite a concrete case. On the morning of the 17th February last, at seven o'clock, a locomotive exploded at Guelph Junction, Ontario. This was on Saturday. On the morning of the following Tuesday I received a letter from one of our men explaining the circumstances and asking me to find out if the Railway Commission had investigated the cause of that accident. That was on the 20th. Imagine my surprise when I went to the offices of the Railway Commission, to find that the Commissioners knew nothing about it. The boiler explosion happened at seven o'clock on Saturday and on the following Tuesday afternoon the Railway Commissioners were still unaware that such an accident had occurred. Yet, they have adopted a regulation providing a penalty of $100 for such an occurrence.

Mr. NESBITT: The clause we are discussing should include such accidents as that.

Mr. LAWRENCE: In your opinion the clause will be of no avail unless the Board of Railway Commissioners are given prosecuting powers. Unless it is provided that the Board must report such cases to the Attorney General, or to some authority, who will prosecute violators of the Act.

Mr. MACDONELL: Section 392 of the Bill provides for fines, penalties and other liabilities where railway companies and other corporations do not carry out the orders of the Board.

Mr. MACLEAN: Who enforces that provision?

Mr. MACDONELL: Wait a moment please. If the provisions of the section we are now considering are not carried out by the railway companies they are still liable under section 392 to very serious penalties.

Hon. Mr. MURPHY: But the Board may never make these regulations.

Mr. MACDONELL: One objection which was taken was that if they did there was no obligation to enforce it.

Mr. LAWRENCE: I will answer Mr. Macdonell on that point by asking who prosecuted where a violation of the law has occurred?

Mr. MACDONELL: Please do not misunderstand me. I am in sympathy with your purpose and am only trying to help you out.

Mr. LAWRENCE: Who enforces the law when it is violated?

Mr. MACLEAN: That is the very point. This Bill provides for no enforcement of Federal law similar to that which prevails in the statutes of the United States. In the adjoining Republic it is provided in every one of the Federal statutes that it shall be the duty of the Attorney General of the United States to enforce the law, and an appropriation of so many thousand dollars annually is placed at his disposal for the employment of counsel, agents and special officers needed to carry out the law. I have been in Parliament twenty-five years and have been continually agitating this question but I cannot get it to an issue. However, I am going to get it to an issue some day and that is that there must be Federal enforcement of Federal law, and it must be set out in the Act that somebody is responsible for the enforcement

of the law, as has been suggested by the representatives of the railway brotherhoods with respect to prosecutions under the Bill which we are now considering.

Mr. LAWRENCE: I would like to read to the committee, if they do not object, the verdict of the coroner's jury with respect to a railway accident which occurred at Port Credit.

Mr. MACDONELL: If you provide that any person can use the machinery of the law whether it is a civil or criminal action, and if these penalties are not paid for disobedience of the Railway Board's orders, it is open to any one to enforce it.

Mr. LAWRENCE: I understand that very thoroughly, and your experience as well as mine is, that what is everybody's business is nobody's, and no such action is taken. Penalties are provided, but I have yet to hear of any prosecutions for violations of the kind on the part of the railway company. The companies are practically the violators in most of the cases. Sometimes, of course, employees violate an order; we are all human and there has never been a human being who did not do some things he should not have done. Now, the accident to which I have already referred occurred on the 23rd March, 1916, and this was the verdict of the jury which conducted an investigation on March 27 following: (Reads)

> "That brakeman L. W. Martin misinterpreted a verbal message issued by Conductor Leo S. Ward to Engineer Gordon Dennis, and was responsible for his own death and that of Engineer Harry Overend and Fireman W. O. Anderson, on Thursday night last near here, when the ill-fated G.T.R. Chicago Flyer, No. 16, "side-swiped" a G.T.R. freight pulling onto the main line, was the verdict of the jury that heard the evidence here to-day before Coroner Dr. Sutton of Cooksville."

The jury also added another the following rider: (Reads)

> " We also agree that the crew of the freight train were rendered incapable of properly attending to their work, owing to exhaustion, having been on duty for over twenty-four hours."
>
> " In summing up the evidence Coroner Sutton told the jury that a man who had been on duty for over twenty-four hours should not be entrusted with the protection of hundreds of lives on a train. He also pointed out that while certain statements made by Conductor Ward had been corroborated by other witnesses, it was apparent that Engineer Dennis of the freight train was not very wide awake when the message was delivered by Martin, who, according to Dennis, told him to follow No. 108 train instead of No. 16, the Chicago Flyer."
>
> "Dennis may be correct. That is for you to say", concluded the Coroner."

Hon. Mr. LEMIEUX: Why do not the representatives of the various brotherhoods of railway men get together and draft a clause which they think will meet the case?

Mr. LAWRENCE: A clause was drafted with the object of submitting it to this committee, but some objection was raised. Another clause was then drawn up, which we are prepared to show you if you wish to see it. As Mr. Best has already explained, on a freight train there is a caboose to which, when the train is tied up, the conductor and brakeman can retire and obtain rest. But the locomotive engineer and fireman are not so happily circumstanced. There is no place on the locomotive where they can go to sleep, and even if there were they have to take care of the engine, which otherwise, in very severe weather, would freeze up solid. The crew of the locomotive have to remain on duty for a certain number of hours, and it is not until that term has expired that they are at liberty to go to rest. That is one of the reasons, perhaps, why the conductors did not want this provision.

Mr. PELTIER: I think you are going a little too far as to our not wanting this or that, and I should like an opportunity to explain what our position is.

Mr. LAWRENCE: Perhaps I shall not say that you do not want it, but rather that we have not got together in regard to it. At any rate, that is our position, and we felt that when the matter came before the committee if explanations were wanted, we would explain why we could not agree on some provision.

Mr. PELTIER: Just a few words of explanation in regard to the attitude of the men whom I have the pleasure of representing here. The conditions of employment are somewhat different as between the various classes of men employed on a railroad, but we believe that when the matter comes before the Board we can adjust the law and work out any complications that may arise. In the case of some of our employees, if they have been out 14 hours and are ten miles from home, the company will allow them to go to bed and they can get their rest. When they reach the terminal, however, they will be told "You have had your rest in the other place. You can now take your train out again," and so they will be away from home for quite a while. We are not lacking in sympathy for the enginemen. On the contrary, they say: "If the Board of Railway Commissioners do not enforce proper hours of rest under any law or rule that they may adopt, we will join hands with our colleagues and go before Parliament with a demand for a proper hours of rest law no matter how much it may discommode us. We will appeal to Parliament to protect the enginemen, for we realize that in many cases in protecting them we are protecting ourselves also. While you may be a little weary of this discussion, nevertheless I wish you could extend our hearing for a couple of hours longer so that we might give you the advantage of some of our experiences. Violations of the law are not always to be attributed to the officials; there are the necessities of the public to be considered, and of the traffic as well. There is the constant rush which involves the officers with it, and day after day they are involved literally in a treadmill. I do not want to be understood as saying that our railway officers are inhuman, neither does any one of us. It really seems as though sometimes a law were needed to protect us against ourselves, such is the incessant grind in these modern times on a big railway.

Mr. SINCLAIR: There is nobody weary of the discussion, but it strikes me there is nothing we can discuss until you make a proposal.

Mr. PELTIER: Our position is this: We agreed to try the proposition now before Parliament, and if it did not work, if effective means were not provided for carrying out the law we will take the matter up with you later.

Mr. MACDONELL: That is the clause in this Bill?

Mr. PELTIER: Yes. If that is found unworkable we will come back to you again.

Mr. MACLEAN: I wish to repeat the suggestion I have already made, that the enforcement of the Railway Act, or of the regulations made under it, should be imposed upon somebody. That policy has never yet been settled in Parliament, although the Canadian Parliament is now fifty years of age. I brought the matter up in the House of Commons, and what was I told? "Go to the Attorney General of each province." One gentleman said, "Any one can go out and enforce it." But that is not a good law and it is not a modern law. There should be provision by the Federal Parliament for the enforcement of its own legislation. I am going to join issue with somebody in that connection. I have tried very hard so far to make it an issue, and have not quite succeeded, but that result may come this session. We certainly have got to have some such provision. In the United States there is a provision which requires the Attorney General to enforce the law, as I have already said, and money is placed at his disposal for that purpose.

Hon. Mr. MURPHY: Would you favour, in this case, a member of the Board of Railway Commissioners being designated as the person whose duty it is to enforce this Act?

Mr. MACLEAN: I would put the duty upon the Attorney General, that is, the Minister of Justice, I think he is the Attorney General, that was his old title. We

put upon the Minister of Customs the duty of enforcing the Customs Act, but that is the paramount weakness of Federal legislation in this country, that the enforcement of it is left to the Attorney General of the provinces or the man on the street.

Paragraph (j) stands for further consideration.

Mr. PELTIER: I think section 290 is the next section we desire to take up, that is a section providing for a semi-monthly pay.

Mr. LAWRENCE: That matter was brought up the other day and we were asked to draft something that would embody the views of the railway men whom we represent. We have done so, and we propose that a subsection be added to section 290 as follows:—

Payment of salaries and wages—

290 (a). The salaries and wages of all persons employed in the operation, maintenance or equipment of any railway company, to which company the Parliament of Canada has granted, by means of subsidy or otherwise, or which railway has been declared for the general benefit of Canada, shall be paid not less frequently than twice in each month during the term of employment of such persons.

2. Such payments to be made not later than the twenty-sixth day of each month, for the first part of such month, and not later than the eleventh day of each month for the second part of the month previous.

They get their pay month by month, and they get it at all times. I do not know if I can enlighten the committee with anything with regard to the benefit of payment of wages to railway employees twice a month, instead of once a month as at present.

Mr. MACDONELL: Why do you fix these particular dates?

Mr. LAWRENCE: For this reason: if there is not a date fixed when the wages are to be paid, the companies could put off the date of payment until the second semi-monthly payment was due or even later, and then delay the next payment and so on.

Mr. MACDONELL: They could not do that, even if the dates were not fixed, because they would have to pay twice a month.

Mr. NESBITT: If I were you I would not insist upon putting the dates in this amendment; the company could only defer the payment once.

Mr. PELTIER: In order that the committee may better understand the position which the employees of the railway companies take upon this question, I would like to read this correspondence, that it may be placed in the record. I will read a letter which I had the honour of writing to the Prime Minister and which was forwarded by Sir George Foster to the Minister of Railways and Canals, who advised me to appear before this committee. The object I had in writing this letter was that when a similar measure was before Parliament in 1912 the representatives of the Order of Railway Conductors, had, at that time, opposed the measure and when this Bill came up in Parliament I was told both by senators and members of the House of that occurrence. I now want to make it absolutely clear that while the conducters were lukewarm, at that time, they are not in that condition now; on the contrary the Order of Railway Conductors are strongly behind this semi-monthly pay Bill. (Reads)

ALEXANDRA HOTEL,

OTTAWA, April 4, 1917.

Sir ROBERT BORDEN, Prime Minister,
Care of Sir GEORGE FOSTER,
Acting Prime Minister,
Ottawa.

A Plea for the Establishment by Legislation of a Semi-Monthly pay for Railway Employees.

According to the railway statistics of the Dominion of Canada the number of railway employees in service for the year ending June 30, 1915, was 124,142, and for the year 1914, 159,142. Basing our calculation on the figures for 1914, and estimating the number of families as 100,000, with an average of five persons per family, we have a total of approximately 559,000 persons, located in the various railway centres of the Dominion, to whom the establishment by the Dominion Government of a legal semi-monthly pay would be a great benefit. In the first place, by increasing the purchasing power of their earnings; secondly, by minimizing the store credit; and lastly by increasing content.

Under the present system of monthly payment practised by the railway companies and in addition to the two weeks' back pay withheld by most, if not by all, of the railway companies in Canada, a hardship is imposed on these employees which should be remedied. The only feasible way is by an Act of Parliament. For services rendered the public, the railway companies themselves enforce the pay-before-you-enter system in the freight service, and while this is no doubt the only practicable way for the companies in question, nevertheless they cannot claim lack of funds as a justification for opposing the just demands of their employees to be paid for the services they render the company directly, and the public indirectly, or blame the desire for semi-monthly instead of the present monthly pay—in some cases even longer periods.

The railway statistics from which we have quoted give the salary and wages paid by the railway companies of Canada as $90,215,727 for the year 1915 and as $111,762,972 for the year 1914. Basing our estimate on the year 1914, this amount is practically $10,000,000 per month. The establishment of the semi-monthly pay would force the circulation of this large sum of money, primarily collected from the public, back to the public twenty-four times a year instead of twelve times, and favourably affect the whole economic system of Canada.

All would benefit. First, and more largely, the employees; then the retailer, the wholesaler, the manufacturer and lastly, from increased prosperity that would ensure, the railway companies themselves. The co-operation of the railway companies in this matter would benefit them many fold as the farmer whose generous use of fertilizer on his soil is repaid by increased product beyond his expenditure. Therefore any slight—and in our opinion it would be but small—disturbance which the suggested law would cause the railway company should not be taken into consideration as against the large special and public benefits which would accrue from such a law fathered by the present Dominion Government, and which we are sure would receive the hearty support of the parties interested and aforementioned.

Having in view the stress which the nation is now passing through, and the reconstruction under the economic pressure which may follow the conclusion of peace, a measure such as suggested would aid largely, and be a big factor in placing again in shape the economic conditions of the Dominion. And the loyalty that has been displayed by all concerned—and especially by the wage-earners and others in the

trenches—during the present crisis, will no doubt be evidenced by the railway companies not only in withholding serious opposition should the Dominion Government decide to enact the legislation herein suggested, but by giving their hearty support.

I remain,

Yours respectfully,

(Sgd.) L. L. PELTIER.

Deputy President,

Dominion Legislative Representative, Order Railway Conductors.

Mr. NESBITT: I would suggest that these gentlemen give us their remarks as shortly as they can, and if they have anything they would like to put in in writing, in order to have it on the minute, I am satisfied to have them put it in. I think, however, it is useless taking up time in discussing sections of the Bill that they are all in favour of.

Mr. PELTIER: Mr. Chairman, and hon. gentlemen of the Committee, the railroad train service and yard service employees, for whom we speak here to-day, are unable themselves to be present. They are engaged in transporting the nation's goods and people night and day in all kinds of weather. They are moving the trains between the Atlantic and the Pacific. True, they along with the rest of the citizens, have their representatives in Parliament, but obviously to seek remedial legislation by individual appeals to hon. members of the House would be confusing tasks and impracticable. Consequently they endeavour to concentrate their efforts through us, and we bespeak for them your patience and consideration. But there is another class of the railroad employees, the large, a very large majority, who are unable to be present or represented here and who, because of their meagre wages, are especially deserving of your consideration. For these we also appeal. I submit, Mr. Chairman, that this important question should receive your sympathetic and practical consideration, and not, as in one instance, brusque dismissal. It is only proper that these people should speak to you in the few minutes we shall occupy.

Hon. Mr. LEMIEUX: For my part, I have no objection to listening to you day in and day out.

Mr. PELTIER: We want you to be from Missouri, and we will show you why we want these things done.

Mr. SINCLAIR: Have you mentioned the advantages that will accrue from what you have proposed?

Mr. PELTIER: That letter has been in the hands of the Chairman for a month.

Hon. Mr. LEMIEUX: Did you propose the amendment to the Senate Committee when the Railway Bill was there?

Mr. PELTIER: Senator Robinson proposed an amendment at our suggestion, but without consultation with us as to what it was to contain. We quite agree with the way it is put.

Mr. MACLEAN: We are all in favour of the Bill.

Mr. PELTIER: We would like to put our views on the records of the committee.

The CHAIRMAN: In order that the committee may have before it the amendments which Mr. Peltier and his confreres have suggested, perhaps I should read them. It is proposed that the following subsection be added:—

> 290 A. The salaries and wages of all persons employed in the operation, maintenance or equipment of any railway company, to which company the Parliament of Canada has granted aid by means of subsidy or otherwise, or

which railway has been declared to be for the general benefit of Canada, shall be paid not less frequently than twice in each month during the term of employment of such persons.

2. Such payments to be made not later than the twenty-sixth day of each month for the first part of such month, and not later than the eleventh day of each month for the second part of the month previous.

Mr. SINCLAIR: The next question is: Do the railways object to that?

The CHAIRMAN: I think we had better let Mr. Peltier get through with his argument.

Mr. PELTIER: It will only take me ten minutes, and it will be ten minutes well spent. The information I am about to give you has been furnished by the Bureau of Labour Statistics of the United States. It shows you that the railway men in Canada have been behind the railway men in the United States, in many respects, in remedial legislation, and we are tired of it. The following is a list of states that require bi-weekly or semi-monthly payment of wages to railroad employees, together with information as to the dates of enactment of the laws referred to and references as to chapters, sections and pages.

Mr. NESBITT: Does that mean payment twice a week?

Mr. PELTIER: No, it means every two weeks or twice a month. For instance, the Boston and Maine Railway, with which the C.P.R. connects, pays its employees weekly. If our men go on that road they get paid weekly, but if they come back to Canada they are paid monthly.

STATES THAT REQUIRE BI-WEEKLY OR SEMI-MONTHLY PAYMENT OF WAGES TO RAILROAD EMPLOYEES.

Arizona—Companies and corporations, contractors on public works (Penal Code Sec. 615, amended by ch. 10, Act of 1912).
Arkansas—Corporations only (Acts of 1909, No. 13).
California—Except agriculture and domestic labour, and employers having less than six regular employees (Acts of 1915, ch. 657).
Illinois—Corporations only (Acts of 1913, p. 358).
Indiana—(A.S., Sec. 7989a).
Iowa—On railroads; in coal mines if demanded (Code sec. 2110-bl, added 1915, sec. 2490).
Kansas—Corporations only (Acts 1915, Act 165).
Kentucky—Corporations only (Acts of 1916, ch. 21).
Louisiana—Manufacturers employing 10 or more persons; public service corporations; oil and mining companies (Acts of 1914, No. 25, Am. 1916, No. 108).
Maryland—Associations and corporations (P. G. L., Art. 23, Sec. 123).
Minnesota—Public service corporations (Acts of 1915, chs. 29, 37).
Mississippi—Manufacturers employing 56 or more persons, public service corporations (Acts 1914, chs. 166, 167, Am. 1916, 241.)
Missouri—Corporations only (Acts 1911, p. 150).
New Jersey—On railroads (Acts 1911, ch. 371).
New York—On railroads (Con. L., ch. 31, sec. 11).
North Carolina—On railroads (Acts 1915, ch. 92).
Ohio—If 5 or more employees (Acts 1913, p. 154).

We are not asking you to establish any precedent. I have given the list of states which have already enacted this legislation, and similar legislation is pending in nine states. The states which have already adopted this method of payment comprise a far larger railway mileage and an immensely larger population than the Dominion of Canada, and they have evidently found it feasible and practicable, for they are carry-

ing the law into effect. Now, I will not go into that matter any further at present, except to ask that there might be inserted in the record a letter which will cover some objections that have been scattered abroad by some of the railway companies.

Hon. Mr. LEMIEUX: What is that objection—as to book-keeping?

Mr. PELTIER: As to the effect the proposed change would have, I will read the letter. I wrote to two practical men in order that my own word should not be taken by the committee. I do not want the committee to take my word for anything until they find that it is correct.

GRAND UNION HOTEL,
MONTREAL, APRIL 19, 1917.

Mr. L. L. PELTIER,
Legislative representative, O.R.C.,
Alexandra Hotel, Ottawa, Ont.

DEAR SIR AND BROTHER,—Replying to the question you asked as to what would be the effect of a law providing for a semi-monthly pay bill, as applied to our schedules governing compensations, and especially to that feature covering monthly guarantees in certain services involving the payment on some runs of a monthly premium, we would say that in our opinion this would be a matter that could be made to conform to a semi-monthly payment of wages, by simply providing that the premium would apply in the same proportion to the period for payment provided under such a law, or it could be arranged that where the premium applies directly to the earnings of the full month, it could be paid with the second payment, instead of the first payment of the month.

We see no difficulties in connection with such a law that cannot be very easily adjusted.

Fraternally yours,

(Signed) W. G. CHESTER,
Chairman General Committee, O.R.C.
Canadian Pacific System.

(Signed) A. McGOVERN,
Chairman, General Committee, B.R.T.
Canadian Pacific, Eastern Lines.

The schedule referred to in the letter may read: Agreement five thousand miles or less, $125 per month for passenger conductors and trainmen; mileage in excess of that pro rata. The contention was that, with semi-monthly payments, how would a man be paid in the middle of the month for this premium mileage? It is being done now. The men who signed this letter are practical men. What we would like then, if you do not always agree with us, is to let this proposed amendment go before Parliament and the Senate. Give us a chance for our white alley.

The CHAIRMAN: The Bill will have to go to the Senate.

Mr. PELTIER: That is if you will allow our amendment to come up for consideration.

The CHAIRMAN: It must first be printed in the record and distributed among the members.

Mr. JOHNSTON, K.C.: You have first to embody it in the Bill.

Mr. PELTIER: I would like the amendment to go into the Bill. Give us a chance for our white alley before the members of the House.

The CHAIRMAN: We will now hear from Mr. Lawrence.

Mr. LAWRENCE; The following states have adopted a provision similar to the one we are anxious to see passed: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Mr. MACLEAN: How does the matter stand in the state of Pennsylvania?

Mr. LAWRENCE: There, payment is made twice a month. In New York state payment is made semi-monthly. This Bill at a previous session passed the Commons and was referred to the Senate, where it met with defeat. At that time the railway companies objected to the Bill on the ground that they could not get their pay car around, and another objection was because of the expense. The pay car is now obsolete and the payment of railway employees is now made through the medium of cheques.

Mr. MACDONELL: Would you be satisfied with a bi-monthly payment, leaving out the dates, because they make it difficult to carry out the provision?

Mr. LAWRENCE: It is not necessary to specify the dates, that is not a material matter. From practical experience I could mention a railway company that allowed the date for pay to extend and extend until it is very nearly the last of the month before the employees get the pay for the month previous. In other cases postponement of the pay-day by railway companies results in very nearly as long a delay. However, in the state of Minnesota a date is provided for. There they say that payment shall be made not later than the 15th of each month, which practically means fifteen days afterwards. We are not particular about the date so long as it is clearly understood that payment be made twice each month.

Mr. BEST: I expressed my view on this question when the Bill was before the Senate some years ago. At that time the House of Commons was committed to its endorsement. The Bill passed the House but was defeated in the Senate. On that occasion Mr. Lawrence and myself expressed ourselves as favourable to it. Although most of the railway companies oppose it, the New York and Ottawa Railway, which enters this city, pays its employees every two weeks. The Canadian Pacific Railway is also obliged to pay every week those of its employees who reside in the State of Maine. For instance, Bromville Junction, where the Canadian Pacific Railway has a terminal and where it employs a whole lot of men, payment is made every week, notwithstanding the objections raised by it in 1912 that it was quite impracticable on their part. For my part, I believe it is quite practicable. There is not as much clerical work involved in paying every 15 days as there is in paying every 30 days, although it may require a little more stationery and the issuance of cheques twice instead of once a month. The great advantages that will result from the change have already been pointed out by Mr. Peltier, and I need not enlarge upon them more than to say this, that the great benefits to the employees and to all concerned amply justify the enactment of such a proposal.

Mr. CHRYSLER, K.C.: I am not in a position to discuss this proposition. I know that the railways have objected to it and still continue to do so, therefore I would ask the committee at some convenient date in the future to hear the experts of the companies, who doubtless can answer what has been said here this morning.

Mr. MACLEAN: How does the Canadian Pacific Railway pay its employees on its American line?

Mr. CHRYSLER, K.C.: I cannot answer that question.

Mr. MACLEAN: Perhaps the representatives of the railway brotherhoods can give me that information.

Mr. LAWRENCE: The Canadian Pacific Railway employees who live in Minnesota get their pay twice a month. The employees of the company who live in Maine are paid every week.

Mr. MACLEAN: What about the lines of the Grand Trunk in the United States?

Mr. LAWRENCE: The employees of the Grand Trunk living in Michigan are paid twice a month. The law in Michigan was, I think, passed a year ago. The old Canada Southern was leased by the Michigan Central and its employees, with the exception of passenger conductors, brakemen and baggagemen, all live in St. Thomas, Ontario. About six months after the law for more frequent payment went into effect in Michigan, the Canadian employees of the road made the suggestion that it should also be applied to them. It could not have involved any great hardship because it was promptly put into effect so that the employees in Canada of the old Canada Southern, now the Michigan Central, get their pay twice a month. Had it involved very great expense you would have thought the railway company would have strenuously objected to making the change. Payment of wages is now made to the employes at St. Thomas on the 9th for the last half of the previous month. In case the 9th comes on a Sunday the cheque arrives on Saturday the 8th or Monday the 10th. in St. Thomas from the head office in Detroit, on the 23rd or 24th.

Mr. MACDONELL: The fact that the House of Commons has already favourably passed upon the proposition should justify the committee in accepting it. Mr. Johnston should therefore be instructed to draft a clause for the payment of Canadian railway employees bi-monthly. If it is not desired to adopt the clause for the present it can stand over until the railway companies have been heard from.

Mr. NESBITT: Personally, I can see no good reason why we should not accept the proposition. At the same time I would be perfectly agreeable to hear what the railways have to say on the question.

The CHAIRMAN: The railways have asked to be heard, and under the circumstances we cannot very well disregard their request.

Section allowed to stand.

The CHAIRMAN: Mr. Blair is now present on behalf of the Railway Commission. Perhaps he is in a position to inform us why the provision permitting the filling or packing of frogs or guard rails to remain out a limited time should stay in the Bill.

Mr. BLAIR: As a matter of fact, and as a matter of practice that section has never been acted upon in the history of the Board so that, apparently, it is not a practical question whether we strike it out or leave it there.

The CHAIRMAN: Will you get the opinion of your Board upon it, and let us know to-morrow?

Mr. BLAIR: I do know that the Board has never acted upon that section.

Mr. MACLEAN: Nor have the railways ever asked the Board for action upon it.

Mr. BLAIR: Nor have the railways ever asked the Board to give them the benefit of that section.

The CHAIRMAN: Mr. Johnston will advise you as to what information the Committee requires if you will be good enough to confer with him and come again to-morrow prepared to tell us what the opinion of the Board is.

Mr. LAWRENCE: The next section is 292. We suggest that this section be struck out as we believe that no good reason can be furnished to justify giving the railway company the authority to enact common law, section 414 makes ample provision for the imposing of a penalty for the violation of the rules and regulations of the company. The section to which we object (292) reads as follows:—

> "The company may, for the better enforcing of the observance of any such by-law, rule or regulation, thereby prescribe a penalty enforceable on summary conviction not exceeding $40 for any violation thereof."

291 gives them power to enact by-laws and 292 says that they may prescribe a penalty enforceable on summary conviction. Now that is just what we want to have struck out as we believe that no good reason can be given for giving the railway company the authority to enact common law. The words "enforceable on summary conviction" are new and we do not believe that is necessary at all. We are satisfied that section 414 properly covers the case.

Mr. MACDONELL: This section does not affect the employees at all, but the public.

Mr. CHRYSLER, K.C.: I have drawn by-laws for the company and I would like to ask Mr. Lawrence if he knows of any by-law directed against the employees which has been enforced in this way, I do not know of any. This section is intended to provide summary penalties particularly for paragraphs (*e*) and (*f*) of section 291, which apply to "nuisances" and "operation." Paragraphs (*g*) and (*h*) are not included. (*e*) and (*f*) are designed to control the conduct of unruly passengers on cars, people who are travelling. I do not know, but, perhaps in the course of consolidation something has been put in here that was never intended to be put in, but that is the only place in the Act where you have any control over the conduct of people travelling in trains. We have had cases of riot on a train, half a dozen men attacking the conductor and these by-laws, of course, after they have been passed under this section, as in the case of any other section are required to be submitted and approved—at least it was by the old law, I do not know what is provided here, by the Governor in Council and published in the *Canada Gazette*.

Mr. LAWRENCE: I cannot agree with Mr. Chrysler at all because this section says, "Any such by-law, rule or regulation."

Mr. CHRYSLER, K.C.: That is true. Do you know of any by-law passed by any railway company, under that section, containing a penalty upon an employee, which has been enforced under section 292.

Mr. LAWRENCE: I know of a fine which was put on under by-law under that section, and that was in my own case. When I first started railroading, I started as a brakeman, and at that time I was breaking on a way-freight. One morning we had a brick machine to unload at a place called Dutton. The conductor had positive orders not to put off any car containing anything that could be unloaded, on account of the scarcity of cars. The machine was unloaded, and in the course of unloading it fell and was broken and the owner put in a claim to the company for $25 for renewing the part that was broken. The conductor and the three brakemen were notified that they would have to pay it, and $6.25 was deducted from my next pay. They deducted it from my pay, and they have it yet. I also know a case on a road where the engineer broke the pilot of a locomotive. Of course there is a by-law which says that you must not do anything of that kind. The company renewed the pilot, and the engineer was billed for the amount it cost, and it was stopped off his pay. Three years afterwards he left the service of the company, and he claimed the repayment of the amount, he went to the court and collected it. I do not know why this provision has been made, I do not see any reason for it now. Murphy-Gamble, or any other company doing business in this city have not the power to make by-laws, prescribing a penalty, enforceable on summary conviction and I do not see why a railway company should be given that power.

Mr. SINCLAIR: Do you object to its enforcement on summary conviction?

Mr. LAWRENCE: We object to its being there at all.

Mr. SINCLAIR: How about smoking of tobacco and drunkenness on the train?

Mr. LAWRENCE: Section 414 covers that. It provides:—

> "Every person who wilfully or negligently violates any by-law, rule or regulation of the company is liable, on summary conviction, for such offence,

a penalty not exceeding the amount therein prescribed, or if no amount is so prescribed to a penalty not exceeding $20, provided that no such person shall be convicted of any such offence, unless at the time of the commission thereof, a printed copy of such by-law, rule or regulation was openly affixed to a conspicuous part of the station at which the offender entered the train or at or near which the offence was committed."

That applies, as Mr. Chrysler says, to all the by-laws of the company.

Mr. JOHNSTON, K.C.: You have no objection to 414?

Mr. LAWRENCE: We say that section makes ample provision without section 292.

Mr. MACDONELL: Scetion 292 applies to offences on trains, and you are talking of offences in stations.

Mr. LAWRENCE: It applies to offences on trains as well.

Mr. NESBITT: Would you endorse unruly conduct on the part of servants of the railway?

Mr. LAWRENCE: No, far from it, but 414 applies to "Any by-law, rule or regulation of the company" which must be openly affixed to a conspicuous part of the station.

Mr. NESBITT: 414 applies to the public, and you do not object to that?

Mr. LAWRENCE: It applies to the employees also, but the company is required to put up a notice saying "You should not do so and so."

Mr. JOHNSTON, K.C.: I think Mr. Lawrence is right. I do not see any reason why 292 should not go out. It seems to be covered by 414.

Mr. CHRYSLER, K.C.: It should be made clear that in making the regulations and by-laws under 291 such regulations and by-laws may contain proper penalties.

Mr. JOHNSTON, K.C.: If you read 291 and 414 together would it not be plain, because section 414 says:—

"Every person who wilfully or negligently violates any by-law, rule or regulation of the company, is liable on summary conviction for each offence, to a penalty not exceeding the amount therein prescribed."

That implies that the by-law would prescribe the penalty. I think that is clear.

Mr. CHRYSLER, K.C.: That is for you to consider.

Mr. MACDONELL: You have to have a by-law, copy it, print it, and post it up in a conspicuous place at the station where the man got on the train in order to convict him. Suppose a man gets drunk on the train and commits a disturbance three hundred miles away from where he boarded the train? He should be liable in the same way.

Mr. JOHNSTON, K.C.: Section 414 reads: "Provided that no such person shall be convicted of any such offence, unless at the time of the commission thereof a printed copy of such by-law, rule or regulation, was openly affixed to a conspicuous part of the station at which the offender entered the train, or at or near which the offence was committed."

Mr. MACDONELL: For violation or misbehaving on the train, you have to prove that the station where the offender took his train, a thousand miles away, had posted up conspicuously a copy of the by-laws?

Mr. JOHNSTON, K.C.: Why should they not post it up?

Mr. CHRYSLER, K.C.: I think such by-laws are usually posted in the passenger cars in a little frame.

Mr. MACDONELL: The station is no place for it. An offence may be committed on the train.

The CHAIRMAN: Is there any objection to the clause being struck out?

Mr. CHRYSLER, K.C.: Mr. Johnston thinks the point is covered. I will accept his view.

Mr. JOHNSTON, K.C.: That is, in relation to posting them up in the stations or in the trains.

Mr. MACDONELL: When we come to section 414 I will ask that it be enlarged.

Mr. SINCLAIR: Does the section refer to by-laws made by the Board or by the company?

Mr. JOHNSTON, K.C.: The Bill says "of the company."

Mr. SINCLAIR: Does section 414 refer to the company alone?

Mr. JOHNSTON, K.C.: Undoubtedly it refers to the company alone.

Mr. SINCLAIR: Section 291 reads "subject to any orders or regulations of the Board."

Mr. JOHNSTON, K.C.: That means that the Board has power to regulate the by-laws of the company.

Mr. SINCLAIR: Would the penalty be enforced then by section 414?

Mr. JOHNSTON, K.C.: Undoubtedly.

The CHAIRMAN: Is it decided that section 292 be struck out?

Mr. NESBITT: We will consider it together with section 414.

Mr. MACLEAN: When will the committee proceed with the rest of the clauses in which the brotherhoods are interested?

Hon. Mr. LEMIEUX: To-morrow.

The CHAIRMAN: Might I call the attention of the committee to the fact that the brotherhoods are interested also in sections 294, 300 and 302. Is it the wish of the Committee that these gentlemen be heard to-morrow morning.

Carried.

Committee adjourned until 11 a.m. to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 11--MAY 9, 1917

(Representations of Railway Brotherhoods—Continued.)

OTTAWA
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1917

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,

Committee Room,

Wednesday, 9th May, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

PRESENT: Messieurs Armstrong (Lambton) in the chair, Bennett (Calgary), Blain, Bradbury, Hartt, Graham, Green, Lapointe (Kamouraska), Lemieux, Rainville, Sinclair and Weichel.

The Committee resumed consideration of the Bill.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS, May 9, 1917.

The Committee met at 11.10 a.m.

The CHAIRMAN: The Committee agreed yesterday that the representatives of organizations connected with the railways be heard to-day. These gentlemen have been good enough to say, however, that if the Committee continue as they have been doing and allowing them the privilege of expressing their opinions as the clauses come up for consideration, they would very much prefer it, rather than take up our time in the way they did yesterday discussing the clauses en bloc. If it is the wish of the Committee we will therefore proceed in the usual way and whenever the railway men's representatives wish to be heard we will accord them the opportunity.

Mr. JOHNSTON, K.C.: I would like, Mr. Chairman, if the Committee would return to Section 216 for a minute. That was formerly Section 193 of the old Act. A slight amendment, however, has been made, for as this section in the present Railway Act reads, "The notice served upon the parties shall contain." You will observe that the draftsman has commenced Section 216 with the words, "Preliminary to proceeding to arbitration to fix a compensation or damage"—there can be no objection to these words—and then proceeds "the Company shall serve upon the opposite party."

Hon. Mr. GRAHAM: That is the old question of "opposite party" coming up again.

Mr. JOHNSTON, K.C.: Yes. I have discussed this with Mr. Chrysler and read a great many authorities, and I have come to the conclusion that the word "opposite" might remain there with advantage. That makes that section consistent with clause 218.

Hon. Mr. GRAHAM: Then you are putting in the word "opposite" wherever we were talking about it the other day?

Mr. JOHNSTON, K.C.: Yes.

The CHAIRMAN: What other sections should be changed?

Mr. JOHNSTON, K.C.: The change should be made in two places in Section 218, on the fourth line of section 230, and in sections 223, 226 and 230.

Amendments concurred in.

Mr. JOHNSTON, K.C.: I had also wished to discuss the question of Mr. McCarthy's amendment to section 219.

Hon. Mr. GRAHAM: About an easement?

Mr. JOHNSTON, K.C.: No, not about an easement. Mr. McCarthy's difficulty arose over an easement, but the amendment he drew is of general application. It is altogether likely that Mr. McCarthy will be here again when the municipal clauses are discussed and before finally settling upon a wording I think perhaps he had better be given another chance of expressing his views. It is not for me to give an opinion on matters of policy, but I do not see any objection to Mr. McCarthy's clause as drafted. The Committee seems to have thought that the clause was directed to easement only, but that is not so.

Hon. Mr. GRAHAM: Mr. McCarthy when before the Committee was discussing easement, but his amendment covers more than an easement.

Mr. JOHNSTON, K.C.: It covers land generally and provides that after the amount of compensation has been referred to the arbitrator, the Company may, instead of

abandoning notice, which it has the right to do under Section 219 as passed, merely give to the other party, and to the arbitrator, notice describing what they want to take, and then the arbitrator may proceed under the very same order and the very same notice to fix damages. I am quite sure that Mr. McCarthy will be here again. Perhaps we might as well leave the matter until he returns.

The CHAIRMAN: Very well, if that is the understanding.

Mr. JOHNSTON, K.C.: Now, with respect to Section 230—Death or delay of an arbitrator. We passed that clause. It provides that in the event of the death or delay of the arbitrator either party may, on giving certain notice, apply to the Court to which an appeal from the award would lie, or to a judge thereof, and such court or judge may appoint another arbitrator, or may fix the compensation and determine all other matters which the arbitrator might have determined. Then, Mr. Chrysler, you will see in the 4th subsection it is provided that the determination of such Court or Judge as to the amount of compensation or any other matter which an arbitrator under this Act might have disposed of, shall be deemed an award under this Act, but there shall be no appeal therefrom except that where such determination is made by such judge, appeal may be taken to such Court.

Mr. CHRYSLER, K.C.: What does it mean? I have not grasped its meaning yet.

Mr. JOHNSTON, K.C.: I would imagine that to mean this: In the Province of Ontario, for instance, if an application were made to a judge of the Superior Court to appoint another arbitrator, and that judge took upon himself the burden of the arbitration and made an award, there would be an appeal to the Appellate Division.

Mr. CHRYSLER, K.C.: The subsection is a little awkwardly expressed. Does it mean that where he acts as arbitrator, in consequence of the death of the arbitrator previously appointed, his award is dealt with just as any other award under the Act?

Mr. JOHNSTON, K.C.: Yes, but there shall be no appeal from his determination —that would be a Superior Court Judge's award—except to the Court of which he is a member. The difficulty seems to me to be created by allowing the judge to whom application is made to appoint another arbitrator, giving to him power to fix the compensation and act as an arbitrator.

Mr. CHRYSLER, K.C.: That arises under the first subsection.

Mr. JOHNSTON, K.C.: Mr. Ferguson—now Mr. Justice Ferguson—suggested an amendment, in fact an entirely new clause, which I think is better than the one in the draft Bill. That clause reads as follows (reads):

> "230. If the arbitrator dies before the award is made, or is incapacitated, disqualified or unable to act, either party may, on six days' notice to the opposite party, apply to a judge of the Superior Court to appoint, and such judge shall appoint, any county or Superior Court judge to be arbitrator in the place of the arbitrator who has died, become incapacitated, disqualified or unable to act.
>
> 2. The proceeding shall not in any such case require to be commenced again or repeated.
>
> 3. The cost of applications and proceedings under this section shall form part of the costs of the arbitration proceedings."

Mr. SINCLAIR: That says nothing about an appeal.

Hon. Mr. GRAHAM: An appeal goes along in the usual way.

Mr. JOHNSTON, K.C.: The appeal goes along in the usual way. I will give this new clause to the clerk later on and perhaps it would be advisable to substitute it for the clause in the Bill.

The CHAIRMAN: Is it the wish of the Committee that the clause as read be adopted?

Clause as read concurred in.

On Section 222—Determining Compensation.

Increased value of remaining lands to be considered.

Mr. JOHNSTON, K.C.: We passed the other day Section 222, which, in subsection 2, provides that the date of the deposit of the plan, profile and book of reference with the Registrar of Deeds shall be the date with reference to which such compensation or damages shall be ascertained. So far so good. Then we have the proviso, "Provided, however, that if the company does not actually acquire title to the lands within one year from the date of such deposit, then the date of such acquisition shall be the date with reference to which such compensation or damages shall be ascertained." I thought of that provision after we passed it the other day, and it did not seem to me that that would be quite fair. The railway company might give notice. It might delay the proceedings over one year. The land might fall in value, and then the railway company, having delayed the proceedings, might seek to take the land and pay the lower price.

Hon. Mr. GRAHAM: We were rather trying to protect the owner the other day.

Mr. JOHNSTON, K.C.: It is the owner that should be protected in all these cases of expropriation, and not the railway. The owner has to submit to expropriation proceedings.

Hon. Mr. GRAHAM: He has to give up his property whether he wants to or not.

The CHAIRMAN: What is proposed to be done in regard to that section?

Mr. JOHNSTON, K.C.: I would like to consider that section with Mr. Chrysler in order to work out a proper provision.

Hon. Mr. GRAHAM: I would make the suggestion that the higher price be paid. That is the principle.

Mr. JOHNSTON, K.C.: I would be willing to take Mr. Graham's suggestion that the higher price prevail.

Mr. SINCLAIR: The price is fixed when the plan is filed.

Mr. JOHNSTON, K.C.: Yes, but there is a proviso that if the company does not actually acquire the title within one year that shall be the rate.

Mr. CHRYSLER, K.C.: For the information of the committee, I may say that was the old practice from away back, I do not know how long, perhaps 1879. The members of the committee will see the justice of that in many ways, without going into all the aspects of it. When a plan is filed the farmer—it is usually a farmer—could not make use of the land for any other purpose. The railway was going to run through, and he had always to take that into account in any subdivision of it or any sale. The interest was paid from that date. There would be no hardship in that if the price of the land was stable, but if the price of the land went down and the land was not taken for some years then there would be a hardship. Then we tried to obviate that by a provision of this kind as to delay.

Hon. Mr. GRAHAM: An unreasonable delay might take place, and, owing to certain conditions, the bottom might fall out of the real estate market entirely, and the farmer would be in this position, that he once had an opportunity to sell at a good price, but could not sell it because the railway had possession, and it is one of those cases where it would not be unfair to protect him both ways.

Mr. SINCLAIR: On the other hand, the land might go up in value.

Mr. JOHNSTON, K.C.: In that case the railway would not delay, but would hasten.

Mr. CHRYSLER, K.C.: In most cases, in practice, in regard to these farm lands, the interest would compensate for the increased value. There would not be very much difference. I have been over this matter time and time again. If you take the increased value of the land, and then take the value of the land when expropriated and add the

interest, it would come to the same thing. But in regard to the speculative value of village lots and so on, it would not apply.

Section allowed to stand.

On Section 263—Appropriation for safety of public at highway crossings at rail level.

Mr. JOHNSTON, K.C.: That does not seem to me to be a very workable clause. It reads as follows:—

> "The su mof two hundred thousand dollars each year for ten consecutive years from the first day of April, one thousand nine hundred and nine, shall be appropriated and set apart," etc.

Eight years have already been appropriated, and if the intention is that the term shall only be ten years from the 1st of April, 1909, it would exhaust itself in two years more, and it seems to me the more appropriate thing would be—

Hon. Mr. GRAHAM: It would depend what the policy of the Government is. They might extend the term.

Mr. JOHNSTON, K.C.: It might be desirable to consult the minister and find out if it is intended to extend that beyond the two years.

Hon. Mr. GRAHAM: I am the author of that section, and I may say that it was difficult to arrive at a basis on which we could get all parties to work together for the elimination of the danger of level crossings, and this section allowed the board to say how much a municipality should pay, and how much the road should pay, and this section was to provide an amount against which certain charges could be drawn in connection with the elimination. Can any person tell us how it has worked out during the last five or six years? Has it accomplished any good?

Mr. CHRYSLER, K.C.: I think so, but Mr. Blair will know more about the working of it. I think a great many of the dangerous crossings have been eliminated by contributions from municipalities and railways and from this fund, and I have not heard of any serious criticism of the action of the board in locating the amount that should be paid by the different parties interested.

The CHAIRMAN: Better leave it over till Mr. Johnston interviews the minister.

Hon. Mr. GRAHAM: It is a matter of policy. If he is going to extend it at all we might as well extend it in this case.

Mr. CHRYSLER, K.C.: That first section is not an appropriate item here. It should appear in another Act. This section would be flexible and apply to any amount the Government would devote to it.

Hon. Mr. GRAHAM: We were trying to avoid—and Parliament seemed to be unanimous—the necessity of each year putting an item in the estimates, bringing forth a lot of discussion and we desired to avoid taking up needlessly the time of the House in discussing a policy which Parliament wanted to give full opportunity for working out, so that we made it payable by statute rather by yearly appropriation. There were two policies the Government could adopt. Under the statute they could give such sums as the board required year by year for this purpose, or they could establish by statute a certain amount which then could not be stricken out of the estimates.

Mr. CHRYSLER, K.C.: That might very well be placed in another statute.

Hon. Mr. GRAHAM: But it should be in some statute and the amount fixed.

Mr. JOHNSTON, K.C.: Do I understand it would not be proper in the Railway Act to set apart a certain sum, or to declare it should be set apart per annum?

Mr. CHRYSLER, K. C.: I do not see any impropriety in it.

Hon. Mr. GRAHAM: If you take it out of here do you not lose it?

Mr. JOHNSTON, K.C.: If we take it out we shall lose it, unless we re-enact it in some other form. We had better not take it out.

Mr. CHRYSLER: If another Act is passed this section can be repealed.

Section allowed to stand.

On Section 278—Opening railway for traffic, inspection and leave of board.

Hon. Mr. GRAHAM: Has the board found many cases during the past year where roads were opened without the consent of the board?

Mr. BLAIR: There may have been some cases, but they have not been brought to the attention of the board.

Hon. Mr. GRAHAM: On one occasion we had to pass a special Act to cover up the peculiar actions of some of the railway companies.

Mr. BLAIR: I have no doubt railways do proceed before getting the permission required by the Act, but it does not come to the notice of the board. We have no official notification or advice.

Hon. Mr. GRAHAM: Section 278 has worked out pretty well, has it not, Mr. Blair?

Mr. BLAIR: As far as I know it has.

Section adopted.

On Section 279—Board may order railway to be opened.

Hon. Mr. GRAHAM: That is new. What is that?

Mr. JOHNSTON, K.C.: That makes it possible for the board to compel the company to open its railway.

Hon. Mr. GRAHAM: Does it mean to cover the case where, during the construction of the railway, it is possible to keep the road in the hands of the contractors for a longer time, and not subject to the board in any way, because the road would be still under construction? Does this section give the board power to say, "this road or a portion of the road comes under our jurisdiction and you must operate it?"

Mr. JOHNSTON, K.C.: That is exactly what it is designed for—to prevent delay. It might be impossible to give effect to the board's order. If the company was short of money the board could not provide it, but it gives the board power to order them to go ahead and open it.

Mr. CHRYSLER, K.C.: It can declare the railway open, whatever the consequence.

Section adopted.

On Section 283, fire protection:

Mr. JOHNSTON, K.C.: There should be a change in paragraph "E" of this section. The words after the word "way" in the 25th line should be struck out, and should be in the general section. Strike out the semicolon and make the last four lines of paragraph "E" a separate subsection.

Hon. Mr. GRAHAM: There are three parties interested in this clause, if I remember rightly: the Department of Railways, that branch of the Interior Department which has supervision over the protection of lumber for a certain distance from the railway lines, and the provincial authorities. It was adopted as an experiment, and I would like, if possible, to get some information as to how it has worked out in practical operation.

Mr. BLAIR: I understand from our chief fire operating official that the provisions of the Act as at present drawn is satisfactory—that is, there have been amendments to the fire requirements from time to time, but the Bill in its present form is working satisfactorily—and if there are any radical changes to be proposed this official would

like to be notified. I can only say in answer to your inquiry that apparently the conditions as they exist at the moment are satisfactory, so far as relates to the work of the board and the powers exercised by it.

Hon. Mr. GRAHAM: I am the father of two or three of these sections, and I was anxious to find out how they have worked out in practice. Does this section of the Bill deal with the use of oil on the railways operating through the mountains and through the timber territories?

Mr. CHRYSLER, K.C.: That is dealt with in another clause which prescribes the fuel that is to be used in the different districts. Can you find that clause, Mr. Johnston?

Mr. JOHNSTON, K.C.: We have not passed it yet. We were discussing it yesterday. It is clause 289.

Hon. Mr. GRAHAM: We will get to it presently.

Section as amended adopted.

On Section 284—packing in spaces:

The CHAIRMAN: This section was discussed very fully yesterday. Mr. Peltier and some of the other representatives of the trainmen and conductors asked that subsection 5 be struck out. It was desired that Messrs. Johnston and Blair should come prepared this morning to give us full information in connection with the matter.

Mr. CHRYSLER, K.C.: The railway companies have yet to be heard from in regard to this matter, and perhaps you will economize time if you allow the subsection to stand. From what the Railway Brotherhood representatives said yesterday the subsection is not of any importance to the companies at all. However, I would like to inquire with respect to that.

Mr. BLAIR: I took this matter up with the Chief Commissioner yesterday, and, as stated to the committee, no order has ever been made under this section by the board. It does not appear to be one of great practical importance, but the committee can rest assured that if the board was asked to exercise its power under the section it could only do so in a proper case. I am instructed to say further that the board has no strong feeling one way or the other. If it is the wish of the committee that the subsection should be struck out, for the reason suggested yesterday, it is a matter of indifference to the board.

Subsection 5 allowed to stand. The rest of the section agreed to.

On Section 287—notice of accidents to board:

Mr. JOHNSTON, K.C.: You will recollect that the opinion of the committee yesterday was in favour of the suggestion of the Brotherhoods that, in addition to the company itself being required to furnish notice of accidents to the board, any conductor who makes a written report to the companies shall furnish a duplicate of such report to the board, and shall also notify the board as soon as possible by telegraph or telephone. I have drawn a clause which I think is perhaps a little more concise than the one proposed, and I will read it (reads):

> "Any conductor making a report to the company of the occurrence of any such accident shall at the same time transmit to the board a copy of such report, and as soon as possible after such accident notify the board of the same by telegraph."

Mr. LAWRENCE: I do not think that would be satisfactory. It may be a case where the person making a report is not a conductor. I would suggest that it be "any conductor or officer."

Mr. PELTIER: "Or other officer" would be satisfactory.

Mr. CHRYSLER, K.C.: It might not be a conductor making the report, it might be a foreman.

Mr. JOHNSTON, K.C.: I think it would be a conductor in the ordinary course of events. You could say "any conductor or employee."

Mr. CHRYSLER, K.C.: In charge at the point.

Mr. JOHNSTON, K.C.: Yes, who is in charge at the point.

Mr. PELTIER: The suggested amendment might do, but cases might occur where there would be a difficulty in giving effect to the provision. A locomotive engineer, for example, is not always in a position to report quickly as a conductor or other official might be. However, we cannot cover all possible cases that may arise, that would be impossible. Perhaps it would be best to accept the wording "or other employee."

Mr. JOHNSTON, K.C.: I think that would cover the point, for this reason: it does not make any difference what his position is, whether conductor, engineer or other officer, if he makes a report he must furnish a duplicate to the board. I would therefore propose that the section read "any conductor or other employee."

Section as amended adopted.

On Section 289—Paragraph (a) Speed of trains.

Hon. Mr. GRAHAM: There seems to be something new in the last two lines of paragraph (a), "and may in any case limit or fix the rate of speed of trains and locomotives as it deems proper."

Mr. JOHNSTON, K.C.: The new words proposed to be added are "or fixed."

The CHAIRMAN: This matter was pretty fully discussed yesterday.

Mr. JOHNSTON, K.C. (To Mr. Chrysler): I thought when discussing the matter with you the other day you had something to say about it.

Mr. CHRYSLER, K.C.: I think so, but I did not know the subject had been discussed yesterday.

Mr. JOHNSTON, K.C.: Only so far as Mr. Peltier had reference to paragraph (j), (Hours of Duty).

Mr. CHRYSLER, K.C.: We have no objection to paragraph (a) if the words "or fix" are omitted. You can limit the rate of speed, but I do not see how you can "fix" it. You cannot say, "we shall go so fast and no faster."

The CHAIRMAN: Shall paragraph (a) of section 289 be adopted with the omission of the words "or fix."

Paragraph as amended adopted.

Mr. CHRYSLER, K.C.: There is another consideration in regard to this matter. The Committee are probably aware that the whole of this clause has reference to the speed at crossings. It has no reference to the speed of trains running through the country apart from the speed at crossings in cities, towns or villages. There has never been in the Railway Act any limitation of speed in the open country. Whatever crossing protection is required is a matter now governed by other sections; that is, if the crossing is a dangerous one and should be protected, it is otherwise provided for than here. But the rate of speed, outside of cities, towns or villages, has never been limited. If this only means to limit the speed in cities, towns or villages, it is all covered by the preceding lines. I do not know what the object of this is or whether it is proposed there should be a limit to the rate of speed by trains running between stations in the open country. At any rate, the principle is wrong. That is to say, it is not a question of limiting speed—the speed should be governed by the power of the locomotive and the train that it has to carry, and the smoothness of the road upon which it travels, bearing in mind always the safety of the public—the

question is, are your railway crossings sufficiently guarded to protect travellers upon the highways. I would ask that these two last lines be struck out.

Mr. PELTIER: A condition may arise where on account of the state of the road and the state of the rolling stock, protection is needed in the interests of the public as well as in the interest of the employees. This provision leaves open an appeal to the Board if there is felt to be insecurity. I would ask the Committee not to shut the door on that appeal.

Mr. CHRYSLER, K.C.: If Mr. Peltier's view commands itself to the committee, I would suggest that there should be a separate subsection limiting the rate of speed. I do not see any objection to the Board limiting the rate of speed, but if so, that power should be conferred in a separate paragraph.

Mr. JOHNSTON, K.C.: It would seem that paragraph (L) is broad enough to cover the point. That paragraph reads:

> "generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the Company, in the running and operating of trains, or the use of engines, by the Company or in connection with the railway."

Mr. CHRYSLER, K.C.: I think the point would be covered by paragraph (L), but I have no objection to its being made very clear.

Mr. LAWRENCE: I think the amendment was made in order to provide for a number of cases where the Board of Railway Commissioners issued an order that the trains must not exceed a certain rate of speed. I do not believe that paragraph (L) will cover such cases. The Board has also issued an order that anything running tender first must not exceed a certain speed. I do not think paragraph (L) will apply there either. I see no objection to the proposed amendment to paragraph A because it is designed to cover such cases as I have mentioned.

Mr. CHRYSLER, K.C.: There is no objection to the amendment if you embody it in a separate paragraph. Otherwise it only complicates matters. My objection to the last two lines of paragraph (a) is that it seems to me under them the Board can arbitrarily limit the speed of trains in the country without regard to the protection of the public or of the employees.

The CHAIRMAN: Do not the representatives of the Railway Brotherhoods think that the Board has ample power to deal with the speed of trains under paragraph L?

Mr. LAWRENCE: If that is the case it will be satisfactory.

Mr. JOHNSTON, K.C.: Suppose the last two lines of paragraph (a) are struck out and the following words inserted in line 4 of paragraph (L) after the words "running and operating of trains," "and the speed thereof."

Amendments concurred in.

On Paragraph (h)—Board may make regulations with respect to the length of sesction required to be kept in repair by employees of the Company, and the number of employees required for each section.

Mr. CHRYSLER, K.C.: I am instructed by the railway companies that they object to this paragraph as being an improper subject of regulation by the Board. It is a matter of domestic economy, or the operation of the line, and in some cases, I suppose, regulation by agreement with trackmen is always a subject of discussion between the companies and their employees; it is not a thing that the Board can or ought to ask to legislate about. I have not the requisite technical knowledge to voice the practical objections to this provision, but I would ask the Committee to allow the paragraph to stand until those who are interested in the matter on behalf of the

railway companies can be heard. As doubtless the Committee is aware, the length of section varies in different parts of the country, and the track varies also. In Eastern Canada the length of section and track are quite different from those in the West. I suppose also in the mountains the length of section and the number of employees required for each will vary, bearing in mind the conditions of the labour market. The system in the West is also different. The railway companies object to the paragraph and would like to be heard further in regard to the matter.

Mr. LAWRENCE: This matter, along with a number of other questions, was up for a hearing before the Board of Railway Commissioners some time ago, and after a full discussion the Board ruled that under the Railway Act it had no jurisdiction. The paragraph in question was inserted in Section 289 to give the Board jurisdiction. We have with us this morning a gentleman who possibly may not be here again during the consideration of this Bill, Mr. W. Dorey, Woodstock, New Brunswick, Chairman of the Organization of Maintenance of Way Men on the Canadian Pacific Railway system. I would like the Committee to hear what Mr. Dorey has to say with regard to the matter.

Mr. W. DOREY: In regard to any proposals to lengthen the sections we have appealed to the Railway Commission, but were told that they had no jurisdiction in the matter. We are now asking for the insertion of this paragraph in the Bill so as to afford the chance of making an appeal in order to get the sections restored to the proper length where we think they have been unduly extended. Just imagine a section of 11 miles of double track. It is impossible for three or four men to properly take care of sections of such length and keep them safe for the travelling public. The sections to-day are 7 miles. Imagine two men going out with a hand-car in the winter time to look after the track, with great banks of snow on each side of the track, and the danger of meeting a train at any time. That is a condition anything but safe for the public or the right of way men. Consequently we ask that the paragraph be allowed to remain as it is in the Bill, so that we may enjoy the right of an appeal to the Railway Commission and in that way we have a safeguard against the prevalence of improper conditions; otherwise there will be no safety for the railway employees or the passengers on trains. We appeal to you, therefor, to allow the paragraph to remain as it is at present.

Mr. BEST: I want to concur, to the extent of a word or two, in what Mr. Dorey has said. Mr. Chrysler has spoken of the controlling of these matters by the operating railway officers. Doubtless there is something in what he says. I think the operating officers of a railway should, to a large extent, be able to determine the number of employees required for a section of a line. At the same time everyone who is in touch with railroad conditions knows that there are times when economical considerations exercise more weight than motives of safety, and as a result men are taken off sections when the conditions of the road demand that they should be left where they are. Now, that is not a matter of theory. It is borne out by the facts reported to us from time to time by railway employees and supported by our own personal experience. Cases have been reported to us which we in turn have reported to the Board, and investigation by the Board has established that accidents have been contributed to by the inefficient manning of the track and the failure to maintain it in perfect order. Such cases are within the knowledge of railway men as occurring year after year, and it demonstrates most conclusively to those who are closely in touch with the facts that the paragraph in question should remain in the Act. In other words, there should be some authority who could say to a railroad company: "You must have one or more men on your road in order to keep it in perfect condition for the protection of the employees and the travelling public."

The CHAIRMAN: Is the Committee ready to decide this matter?

Mr. CHRYSLER, K.C.: I would urge, Mr. Chairman, that the paragraph be allowed to stand in order that the representatives of the railway company may be heard with respect to it.

Paragraph (h) allowed to stand.

On paragraph (i)—Designating number of men to be employed upon trains.

Mr. CHRYSLER, K.C.: I have very much the same objection to urge to that as to the preceding paragraph. Although I do not know that the question involved is a serious one, it might become so. The whole of the paragraph seems to be new, and it is very much the same as paragraph (h), dealing with trackmen.

Mr. JOHNSTON, K.C.: Paragraphs (h), (i) and (j) all involve the same principle.

Mr. CHRYSLER, K.C.: Then they had better all stand until we can secure the attendance of men from the railway companies who are more familiar with the questions involved than I am.

Paragraphs (h), (i) and (j) allowed to stand.

On paragraph (L)—Providing for safety of public and employees.

Mr. CHRYSLER, K.C.: The latter part of this section, following paragraph "L" should be subsection 2. Strike out the word "and" and commence the section with "any orders or regulations", etc.

On Section 290, Uniformity in rolling stock.

Mr. JOHNSTON, K.C.: Yesterday Mr. Peltier and other members of the brotherhood argued the point that wages should be paid semi-monthly, and I was asked to draw a short clause so that the railway could reconsider it. I have drawn this clause, as section 290a.

> The wages of all persons employed in the operation, maintenance or equipment of any railway to which the Parliament of Canada has granted aid by way of subsidy or otherwise, or which has been declared to be a work for the general advantage of Canada, shall be paid at least semi-monthly.

Mr. CHRYSLER, K.C.: You have inserted the word "equipment". That is more than they are asking.

Mr. PELTIER: Our request is in regard to all employees of the railway.

Hon. Mr. GRAHAM: You confine it to the employees of the railway company?

Mr. JOHNSTON, K.C.: I did not attempt in any way to depart from Mr. Peltier's wording of. I left the word "equipment" because it was in his draft.

Mr. PELTIER: This is an important matter, and concerns the welfare of so many men that I think I should add a word. With regard to the wording of the section, perhaps it would be just as well to let it stand for a day or so, till we got an opportunity fully to consider it. For instance, it would be a benefit if a fixed day could be set, semi-monthly, on which the men would know that they would receive their pay. To do that, without any leeway, would incumber the railway companies to an extent. We do not wish to ask for anything that is not practicable. This matter was discussed yesterday and certain objections were made to the proposed section. The question as to whether for the first half of the month the Company should have until the 26th, and pay not later than the 26th, and pay for the half of the month not later than the 12th, and it was contended that there should be a fixed date. If you have it between the 15th and the 26th the company will make the pay day when it pleases, and the employees, and all business people that depend a good deal on these men's wages, would find it a great convenience, in matters of discounting paper in the bank and

all that sort of thing, to have a fixed date all over Canada for payment of the wages of the men. We are in no way obstinate people, but we do not always see things alike. I do not care personally which way it goes. If I had a vote I would make it a fixed pay day, but we must give the companies leeway, otherwise we put them to great expense, and we will give them an argument against the proposition.

The CHAIRMAN: Do you not do away with all the argument against your proposition if you leave out the fixed day?

Mr. PELTIER: We are leaving too much to the railway.

Mr. JOHNSTON, K.C.: Say twice a month.

Mr. PELTIER: But when will that be?

Mr. JOHNSTON, K.C.: You object, Mr. Chrysler, to the whole section?

Mr. CHRYSLER, K.C.: Yes.

Mr. PELTIER: The 25 or 20 railways in the States, which were mentioned yesterday, pay bi-weekly and semi-monthly and they find no difficulty. They pay twice a month, but you must remember there are very few countries which have railways like the Transcontinental from the Atlantic to the Pacific. With reference to the C.P.R., some time ago they made their time keeping headquarters in Montreal. Lately it has been changed, I am told by a member of this House who knows what he is talking about, to the old system, but even when it is not centralized in one place, with a large railway like that, it is going to be very difficult to pay all the men on one day. They cannot get the cheques away to these men in a day. We have to give them leeway, or else we give them an argument against the proposition.

The CHAIRMAN: Why not fix a date?

Mr. PELTIER: They now have two weeks that they may keep behind, and the back time in the monthly pay. I understand the C.P.R. received interest on the money thus held in the bank, amounting to some $800,000. That is a big thing—banking the employees' money and getting the proceeds. If we leave a certain leeway as a beginning, then we can fix the dates.

Mr. JOHNSTON, K.C.: I should think if you would be content with that section as it is drawn, you would have made a big step in advance.

Mr. PELTIER: We get a gold brick but the gentlemen present do not imagine it. We would have to go back and tell 150,000 employees that we got something that was not tangible.

Mr. JOHNSTON, K.C.: But you have something tangible.

Mr. PELTIER: We will leave it to the Committee.

The CHAIRMAN: I have the section as proposed by you, and the only difference between the draft prepared by Mr. Johnston and your proposed amendment is the fixing of the date.

Hon. Mr. GRAHAM: Do you not suppose as a matter of practice, for the banking operations, for their book-keeping, that the company would of necessity have to have a day of closing their account that they would adhere to pretty strictly, even if no date was mentioned in this?

Mr. PELTIER: Yes.

Hon. Mr. GRAHAM: Naturally Companies, for their own convenience, their financial arrangement, and the office organization, have a pay day.

Mr. PELTIER: You would think so, but they do not always do that.

Mr. BEST: I think the draft Mr. Johnston has submitted would be perfectly satisfactory, and I would not advocate adhering closely to the amendment, although I think there should be a maximum; that is to say that the wages for the first fifteen days of the month of January should be paid on or before the 31st day of that month, and that

the wages for the last half of the month of January should be paid on or before the 15th day of the subsequent month. I make this statement, because I know that it is impracticable for companies, take for instance the Canadian Pacific, to get their returns in to Montreal, for men perhaps working on the north shore of Lake Superior, or the furthest point away from the accounting office, or the head office, from which the cheques are issued, and I would make this suggestion: that while I think the fifteen days will cover all—that is to say that they can very conveniently comply with that—I would rather put in some maximum limit, and I do not think in that case it will work any hardship at all, and it would be sufficient guarantee to the employees that they were going to have pay, not only every two weeks, as provided in the first part of the clause, but it would be paid within the next fifteen days.

Hon. Mr. GRAHAM: Let me ask another question. We want to get at what is best. Do you not suppose the railway companies will be compelled to have a spread of fifteen days between their payments, as a matter of practice? That is really what you want. If they keep you from getting your pay for thirty days one time, they would have to crowd the next into a smaller space. As a matter of financing, they will have to have a spread of half a month between the payments, no matter what the dates.

Mr. PELTIER: Probably we can make them fix the date.

Mr. CHRYSLER, K.C.: I want that clause to stand. We will hear from the companies and they will say whether they want to be heard.

Section allowed to stand.

On section 291, By-laws, rules and regulations of Company—Company can make by-laws.

Mr. JOHNSTON, K.C.: I have a note that Sir Henry Drayton thought the words, "and subject to any orders and regulations of the Board" in the third line might be struck out.

Mr. CHRYSLER, K.C.: I think that would be better. It makes confusion and it is difficult to tell whether a by-law is any good or not until you hunt up the records of the Board to see if the orders are sufficient.

Mr. BLAIR: I have a note to the same effect. The Chief Commissioner advised that those words should be struck out.

Mr. JOHNSTON, K.C.: I think in fairness to all concerned I should make this remark: that if those words were struck out, and the companies, for instance, may make certain rules as to the speed at which any of the rolling stock used on the railway is to be moved, and the Board under the preceding clause 289 may also make orders and regulations, and there may be confusion, unless it is perfectly plain that the by-laws of the company are subject to the orders or regulations of the Board, and notwithstanding Sir Henry Drayton's view, I think the words should remain.

Mr. CHRYSLER, K.C.: I do not care very much. When you get over to the police power under this section, I regard that as more important than anything else. That is "E" and "F", the conduct of people on the trains, station platforms and misconduct of employees, which may happen although they are a very high class of men. You do not want in the middle of the prosecution the argument that you have not proved that there is no conflicting order or requirement of the Board.

Mr. JOHNSTON, K.C.: I can get over that. We can leave the words "and subject to any orders or regulations of the Board under section 289.

Mr. BEST: I wish to point out the importance of leaving that in. Section 290 emphasizes, I think, to the Committee the importance of this clause. The point is that the railway companies should not make operating rules on one part of the road that are contrary to operating rules on the other, or one railway may make operating rules contrary to those in force on other roads.

Mr. JOHNSTON, K.C.: "And subject to any orders or regulations made under Section 289." Add those words after the word "make" in the third line.

Section adopted as amended.

On section 294,—By-laws must be approved by Governor in Council.

Mr. JOHNSTON, K.C.: I have a note that Sir Henry Drayton thinks the words "or impose a penalty" should be removed.

Mr. BLAIR: Yes, that is correct.

Section adopted as amended.

On section 300,—Delay may be allowed for compliance.

Mr. LAWRENCE: In our memo, on section 300, we say, add to the end of the section the following proviso—"

> "Provided however that no such change shall be made or allowed without due notice and hearing before the Board.
>
> We submit that in the interests of the employees it is desirable that an order or regulation should be made respecting equipment and maintainance or operation without due notice and hearing of those interested. Employees are most interested in this matter, and they think that the Board should not make any regulations in respect of that unless due notice of the hearing is given before the Board, to allow their representatives to present the case and make any suggestion."

Hon. Mr. GRAHAM: I think all the parties interested should be notified before any change of that kind takes place, and should have an opportunity to present their side of the case.

Mr. CHRYSLER, K.C.: There are two things here. First, they make a general regulation without notifying all parties. I suppose they may do that. Mr. Blair will know. The other matter would be upon application in a particular case. That seems to be a proper case for notifying.

Mr. JOHNSTON, K.C.: After the word "case" add the words "after hearing, on notice."

Mr. CHRYSLER, K.C.: Yes.

Hon. Mr. GRAHAM: In the matter of rates, which affect a portion of the population, the rates have to be filed a certain length of time before they become operative, to give parties interested an opportunity to study them.

Mr. JOHNSTON, K.C.: This only deals with apparatus and appliances.

Hon. Mr. GRAHAM: Every employee is affected by the apparatus and appliances. If any regulation is going to be put in force it is going to affect employees, don't you think they should have notice that such a regulation is going to be in force before it is put in practice? It might be something very serious and detrimental to their safety, which the Board would be seized of in the first instance.

Mr. LAWRENCE: I think the suggestion of Mr. Johnston is all right.

Section adopted as amended.

On section 302,—Equipment of locomotive engines.

Mr. BEST: We proposed immediately after section 302 to insert a new section, 302 a, as follows:

> "Every locomotive engine shall be equipped and maintained with an ash pan which can be dumped and emptied without the necessity of any employee going under such locomotive."

Mr. JOHNSTON, K.C.: The Board has power to order that already.

Mr. BEST: An order of the Board was issued in 1912 by the late Chief Commissioner Mabee, at the request of Mr. Lawrence and myself, and for reasons best known to some of the railway companies, they have not lived up to the requirements of that law, and men are crawling under engines in the 20th century, when they have had equipment on some railways for the last 25 years to eliminate the necessity of men going under for that purpose.

The CHAIRMAN: The Board have power to make that order, have they not?

Mr. BEST: Some of the roads have not the equipment which obviate the necessity of men going under, and others are not maintaining that equipment, if they have it, in proper condition. I have an accident report from some point on the C.P.R. where an ash pit man, who had to do that raking out of the ashpan, went under the engine in order to rake out the ashpan, and the engine was not equipped with the straight air brake, and the engine moved a little and cut off his hand. That is only within the last month. We think if it were placed in the Railway Act perhaps the railway companies might regard it a little more sacredly than they do an order of the Board. The question that was brought up by Mr. Maclean yesterday that the Board had no prosecuting powers seems to be a matter of vital importance. I wish the Committee would do something along that line. There seems to be a desire for economy, perhaps a necessity, in some places, but the fact remains, when a locomotive comes in, and when an appliance of that kind is out of order, it seems to me it should not be allowed to go into service until the locomotive is put in proper condition and the safety of men will be guarded.

Mr. JOHNSTON, K.C.: Has the Board made an order?

Mr. BEST: Yes, they have made an order, and the order was extended in 1914 for another six months, at the request, I think, of the Canadian Pacific and the Canadian Northern. They had an extension given to them until July 1, 1915. Since that, of course, any failure to comply with that has been a violation of the law as we understand it, but nevertheless complaints keep coming in, and I have been filing them with the Board, and I have a very large file of complaints which have been made, and they have been taken up from time to time, and the reports have been just as varied as the complaints, and we have come to the point where something must be done in order to protect the men, because they feel that they are being imposed upon.

Hon. Mr. GRAHAM: Do you think putting it in the Act would give you the relief you want? In what better position would you be if it were stated in terms in the Act that all locomotives should be equipped with an ashpan that could be dumped without the man crawling in there than you are now with the Board having power to make that order, and having made it? Is the weakness of the Act not in the enforcing of the order, and not the authority itself?

Mr. BEST: That may be true, but I have found that provisions of the Act have been regarded sometimes more sacredly than the orders of the Board. That has been the result of my observation. I have come to the conclusion that many provisions have been looked upon with greater regard and consideration because it was known as a statute, and penalties were provided in the Act for a violation of that statute. It has been recognized that there are certain penalties imposed for the violation of orders of the Board, but that brings us to the question of having no prosecuting body, and as a result it was left to us to prosecute, and because we have not money enough we have never undertaken to prosecute. But I will say frankly that we have considered it very, very seriously, and if something is not done we are going to make a test case at some time, if there is no prosecuting body.

The CHAIRMAN: Is the Committee ready for the question?

Mr. CHRYSLER, K.C.: I would ask that this be allowed to stand.

Section allowed to stand.

On section 305—Condition of passenger cars.

Mr. BEST: There is something we desire to have added.

Mr. JOHNSTON, K.C.: Do you cover that point in your printed memorandum?

Mr. BEST: It is not referred to there, because the matter did not arise until after the memorandum had been submitted. We have received representations that an amendment should be made to the Act in order to prevent railway companies from putting a flanger on the rear end of a passenger train and operating it in winter weather. You will understand that the operation of a flanger is a mechanical one in which compressed air must be applied to the auxiliary under the flanger car on the rear of the train. That air must be taken from the train pipe supply on the locomotive and the principle of the automatic air brake is that any reduction in the air pipe pressure has a tendency to cause the brakes to apply on the train. Under the circumstances you can imagine what would happen trying to operate a train consisting of from 8 to 14 and 15 passenger cars, with the flanger on the rear and the shaking and jolting and lack of protection of the passengers. I think the Railway Act contemplates that no car should be placed in the rear of a train, whether it is a snow-cleaning device or intended for any other purpose. If it is intended to clean a track of snow a locomotive with its snow plough can be run for the purpose. We certainly think no flanger car should be allowed to be attached to the rear of any passenger train in the interests of the safety of the travelling public.

The CHAIRMAN: What words would you insert in the section?

Mr. BEST: I would insert the words "any flanger or snow plough". The section would then read:—

> "No passenger train shall have any freight, merchandise, lumber car or any flanger or snow plough in the rear of any passenger car in which any passenger is carried."

Mr. HARTT: In the case of a train with only one baggage car and one passenger car, such as you find on some short lines, it would be necessary to run the flanger to clear the track, otherwise they would not be able to operate the line at all. The track would then be in a condition likely to result in more danger and inconvenience to the public than if the flanger were operated. Would you not amend the provision by saying it should not apply to a train of two cars? I know of short lines where two cars are operated, and to have a flanger at the rear of that small train would not be at all dangerous.

Mr. BEST: From an economical point of view such a thing is possible, and it may seem to the company to be desirable, but the lives of the passengers of one coach are just as important as the lives of the passengers in a dozen cars.

Mr. HARTT: But the danger would be practically eliminated where the train consists only of two cars.

Mr. BEST: The possible danger to the passengers in those cars would be equally as great as if there were 15 cars. The inconvenience to the operating employees, the employees who are operating the air brake on the locomotive, would not be as great, but there would be as much danger to the travelling public as if there were half a dozen passenger cars attached.

Mr. GREEN: Is the system of carrying flangers behind passenger coaches at all common?

Mr. BEST: I do not think the practice is at all general, but it has been done in some cases and we want a protection against it.

Mr. PELTIER: I think it has been done in the case of some branch lines in the West.

Mr. CHRYSLER, K.C.: What is a flanger?

Mr. PELTIER: You call them scrapers, down here.

Hon. Mr. GRAHAM: One of the difficulties in framing a bill of this kind in which the Board is given such wide powers, is that you make its successful operation when enacted more difficult. For instance, it is proposed to say here that no freight, merchandise, or lumber cars shall be attached to the rear of any passenger car in which any passenger is carried. Now it is proposed to add the word "flanger" to the section. Later on, if something else crops up, which is not set forth in detail in the Act, it may be argued that the Board has no power to deal with it because it is not specified in the Act. We may run the danger of endeavouring to specify too much, which would operate against the advantageous working of the Act. The Board has almost absolute power to do almost anything. Now, if we specify too much it may be argued that anything which is not specified was not meant to be covered by the Act.

Mr. LAWRENCE: If there is any danger of that, do not specify any class of car but simply adopt the language "no car." In reply to Mr. Hartt, who referred to a branch line operating but a few cars, I would ask that if the train can run over the branch without a flanger and scrape off the snow, where does the necessity for the flanger come in? In reality it is dangerous to have any such car at the rear end of the train. The flanger is sometimes as heavy as a locomotive. Just think of the effect of having a flanger as heavy as a locomotive behind a passenger car on a branch line. Why, in case of a rear-end or head-on collision the flanger would go clear through the passenger car and spit it all up.

Mr. WEITHEL: Could you enumerate any cases where accidents have happened on small branch lines?

Mr. LAWRENCE: No; but we say it is just as dangerous to have one car there as to have several.

Mr. JOHNSTON, K.C.: In my opinion, there is a great deal of surplusage in this Bill. There are a great many sections which, in my opinion, are entirely unnecessary, but which I hesitated to strike out when the Bill was presented to me. Now, section 289 gives the Board power to make regulations in regard to a variety of matters. I appreciate Mr. Best's point of view that when a thing is provided for expressly in the Act the brotherhood may think that gives some special sanction to it. It seems to me undesirable to encumber the Act with a great many provisions which might be left to regulation by the Board, because the Board can deal with these things from time to time, as occasion arises and as necessity requires, whereas if you fix these things to which allusion has been made, definitely in the Act, there is going to be trouble in dealing with special cases when they come up.

Mr. PELTIER: Do you think the Board already has authority to deal with them?

Mr. JOHNSTON, K.C.: I do not think there is the slightest doubt about it if the English language means anything. Take paragraph (L) of section 289. The Board may make orders and regulations:

> "Generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains, or the use of engines, by the company or on or in connection with the railway."

That seems to me to be broad enough to cover anything.

Mr. LAWRENCE: I think it does cover it. As you say, there are many things in the Act which ought not to be there.

Mr. JOHNSTON, K.C.: If the matter upon which you desire protection is already covered it would be bad draftsmanship to leave some of these sections in the Act when they are already covered by more comprehensive clauses.

Mr. LAWRENCE: I think the matter is already covered and no person will dispute it. Such being the case, why not strike out section 305 entirely.

Mr. PELTIER: Do not be too hasty. The section is there and if it does not hurt anybody why not allow it to remain. The things complained of do occur on branch lines. Sometimes a railway company will have recourse to certain things to save a few dollars. My own personal opinion is that the organizations are strong enough to see that railway companies do not attempt to impose upon them too much. Personally, I do not like to ask for legislation to control a condition that we can ourselves control. Suppose you strike out the whole section, what would happen? In the event of the splitting up of a passenger train the front end is usually run by a freight crew who take their caboose on to the rear end as they will be required at the next divisional point to return with a freight train. Now, that is done for the convenience both of the employees and of the company, and I would not want to see any amendment adopted which would prevent any such arrangement as that. I would much prefer that the section be left as it is. We have authority to go before the Railway Commission and that body is a good deal like the board of officers of a railway: the operating employees can at any time go before them and protest against any conditions which endanger the public safety or the safety of the employees.

Mr. BEST: Under the circumstances I will withdraw my proposition to amend the section and allow it to remain as it is.

Paragraph (L) agreed to.

I have another suggestion in the memoranda. It is to be found on page 71 of proceedings of the Committee:—

> "With a view to adequate and efficient protection of all locomotives and their appurtenances on railways to which the Railway Act applies, we desire to suggest that a new section be inserted immediately following the above suggested section 302-*a*, as section 302-*b*, under the following sub-heading, 'Division of locomotive inspection." See Exhibit "A."

That is contained in the proceedings on page 71, 7th line. This memorandum is very lengthy. We have prepared it and practically asked for the United States law which takes in all of the inspection of locomotive tenders and their appurtenances.

Hon. Mr. GRAHAM: That is the interstate commerce law.

Mr. BEST: Yes. The original law passed in 1910 and 1911 only contemplated the inspection of locomotive boilers and their appurtenances. Subsequent legislation has been passed in the United States which takes in the tender, locomotive and all the appurtenances and places under the chief inspectors who are appointed under this locomotive inspection, the general supervision of the inspection of every locomotive, and when an inspector finds a locomotive in any condition which is unsafe to run, and not in conformity with certain regulations made under provisions of this Act, he has authority to stop that locomotive from going out on the train. The railway companies have the right to appeal to the chief inspector and then to the Interstate Commerce Commission, and it may be that the decision of the district inspector may be reversed by the chief inspector or by the Interstate Commerce Commission, but until it is reversed the decision of the district inspector, under whose supervision the locomotives are in a certain given district will stand, until the appeal has been either affirmed or dismissed. It would take a long time to read this, and I do not think we can discuss it intelligently without taking it clause by clause and pointing out the reasons why we believe there should be a division of locomotive inspections established as a branch of the Board of Railway Commissioners for Canada.

The CHAIRMAN: You are anxious to have that on the record in order that it may be before the committee.

Mr. BEST: It is in the proceedings. It is contained in Exhibit A which is already printed. We have not time to go into it fully, but I want the committee to realize the importance of it. The Board has made similar regulations which conform very closely to those of the Interstate Commerce Commission with regard to the inspection of locomotive boilers.

The CHAIRMAN: This section is allowed to stand, so that you will have an opportunity to speak to it.

Hon. Mr. GRAHAM: It would help in our consideration of that if the Board of Railway Commissioners would let us have a copy of their regulations to see how far they have gone in this respect. Mr. Best says they have made regulations.

Mr. BEST: I have a copy of them here.

Section allowed to stand.

On section 311—Trains or cars moving reversely.

Mr. BEST: We propose to move to amend this section by striking out of the fifth and sixth lines the words, "For of the tender, if that is in front." We submit no good purpose can be served by stationing a person on the back of the tender, as provided for in this section, when engine is moving reversely over highway crossing at rail level, for the reason that on the modern locomotive it is no greater distance from the cab of the locomotive to the rear of the tender than from the cab of the locomotive to the front of the engine. The engineer and fireman in the cab of the locomotive can just as readily maintain a timely supervision over the condition of the track with the engine working reversely so as to see that no persons or employees are liable to be struck or injured by the train.

Hon. Mr. GRAHAM: You might be using some old fashioned engines in some places where that would not be the case.

Mr. BEST: We have discussed this very fully with the Chief Commissioner, and he has, I think concurred in the suggestion that we made that this served no good purpose. One of the reasons why we took it up first, perhaps, was that the railway companies did construe the clause to mean that they might take one of the men out out of the locomotive, as the man who should be stationed on the back of the tender, and it did cause considerable annoyance until it was finally adjusted and they provided a tender rider, to ride the back tender, for instance, from Bonaventure station, going from Turcot down to the station on the I.C.R., and at London and another place. We think these clauses should be struck out, and the similar words in section 372, and the words where the penalty is provided should be struck out as well.

Mr. JOHNSTON, K.C.: You had a hearing before the committee of the Council, consisting of the Minister of Justice and Minister of Labour?

Mr. BEST: Yes.

Mr. JOHNSTON, K.C.: What was the opinion they expressed on the question, do you recollect?

Mr. LAWRENCE: The Minister of Justice was rather opposed to having it struck out, and as we have not had any definite opinion upon it, we might let it stand till the end of the week. I would not press the committee for any decision at this time. I think it is only fair to let it stand till the Minister of Railways comes back.

Mr. JOHNSTON: I do not see why there should be any objection to the language as it stands. It imposes a further obligation on the railway company.

Mr. LAWRENCE: And it imposes an obligation on the employee. The rules require a yardman to be on the tender when it runs in the yard tender first, but we think in running along the road on the main line, apart from the station, it can serve no good

purpose to have the man stationed there, that the man on the engine can do just as well without him.

Mr. CHRYSLER: This is only in a town or village?

Mr. LAWRENCE: When they run through the country and come into a village, the man must be on the tender, and if the companies lived up to it, it would require an extra man there. We do not object to that. Sometimes the fireman goes up there and leaves the engineer alone in the cab. We think that is more dangerous than if there is no person on the tender. I have known of a case where a man went up on the tender and when the stopping place was reached that man was so benumbed with cold that he was unable to help himself and had to be lifted down. Now, a man in that physical condition is of no earthly use for protection purposes. Take a fireman on a locomotive. He may be dripping with perspiration, and if he has to climb up hurriedly on to the tender in the cold he is subjected to very severe exposure.

Mr. PELTIER: We might as well require that a man should be on the cow-catcher as on the rear end of the tender of a modern locomotive. Where the engineer sits he can see all right.

Mr. HARTT: I agree with you that he can see all right but he is not in a position to give his warning as well as the man on the tender.

Mr. PELTIER: He can sound his whistle and it can be heard far better than the shouts made by a man sitting on the tender if the wind carries in the opposite direction.

Sections 310 and 311 allowed to stand until the Minister of Railways returns to the city.

Section 312 considered and adopted.

Committee adjourned until to-morrow.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 12--MAY 10, 1917

(Containing representations from Toronto Board of Trade and Canadian Lumbermen's Association.)

OTTAWA
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1917

22266—16

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

Thursday, May 10, 1917.

The Special Committee to whom was referred Bill No. 13, an Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Carvell, Hartt, Graham, Lapointe (Kamouraska), Lemieux, Macdonald, Macdonell, Maclean (York), Nesbitt, Rainville, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

Mr. A. C. McMaster, Solicitor of the Toronto Board of Trade, and Mr. Frank Hawkins, Secretary of the Canadian Lumbermen's Association were heard on various sections of the Bill.

At one o'clock the Committee adjourned until to-morrow at 11 o'clock a.m.

22266—16½

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

Thursday, May 10, 1917.

The Committee met at 11 a.m.

The CHAIRMAN: I understand to-day has been set apart for the lumbermen and the Board of Trade of Toronto. Mr. McMaster, K.C. and Mr. T. Marshall represent the Board of Trade of Toronto. Mr. McMaster is desirous of placing on record some arguments in regard to several clauses of the Bill. Is it the wish of the Committee that he be heard?

Mr. A. C. McMASTER, K.C.: We have some questions to raise as to sections which the Committee have already dealt with and also to some that perhaps you have not yet reached, and I thought I would take up first of all the ones that were more important to us than others. The first section, dealing briefly with it in the manner I would like to speak, is section 313. That section provides that the company shall, according to its powers, furnish at the place of starting, and so on, accommodation for various things, such as receiving and loading traffic, and so forth. The Board of Trade feel that there are now certain services that they get and certain privileges and conditions that they have that are not covered by any of these things that perhaps strictly are not traffic. But things such as milling in transit, the right to mill in transit, the right to stop off to pick up loads, the right to certain things of that sort, and they would like to have a clause added to section 313 as subsection (e), to read something like this:—

> Furnish such other service incidental to transportation or to the business of a carrier, or as may be customary or usual in connection with the business of a carrier, as the Board may from time to time order, and shall maintain and continue all such services as are now established, unless discontinued by order of the Board.

So that, even if these things may not be technically traffic, or may not be technically described in the Act, if they have been customary or usual in connection with traffic up to this time, we do not want them taken away, unless the Board authorizes it and we would like to have a clause inserted in the form I have read.

Mr. MACDONELL: Do you enjoy those privileges now?

Mr. McMASTER, K.C.: This clause is aimed entirely at things we enjoy now, such as the right to mill in transit, and cattle men's right to put a car off to complete load, and a whole lot of things like that, with which the Board of Trade representative is of course, more familiar than I am, but he tells me this is an instance of what we want to secure.

Mr. MACLEAN: Have those rights ever been called in question?

Mr. McMASTER, K.C.: No. I do not think they have.

Mr. MACLEAN: But you would sooner have them set out?

Mr. McMASTER, K.C.: We would sooner be certain that we have them.

Mr. SINCLAIR: Are they not covered by the present provisions?

Mr. McMASTER, K.C.: Well these are incidental. We do not think there is anything in that section at present that would cover the right to mill in transit.

Mr. MACDONELL: It is all subject to the order of the Board.

Mr. McMaster, K.C.: It is all subject to the order of the Board, and if we have that right now, and if it is customary to do that now, we do not want the right taken away without an order of the Board. We do not think that proposition is at all unfair.

Mr. Johnston, K.C.: The only point is that it may be surplusage, because section 289, which relates to orders and regulations of the Board for operation and equipment, provides that the Board may make orders generally for the protection, accommodation, comfort and safety of the public and the employees of the road in running and operating trains. That is almost broad enough to cover it.

Mr. McMaster, K.C.: It may be, but still there have been points in connection with this that might come up that might not necessarily be protection, and might not be comfort.

Mr. Johnston, K.C.: Or accommodation—I should think that would be broad enough.

The Chairman: Paragraph "L" of section 289 provides that the Board may make orders and regulations, generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains, or the use of engines, by the company or on or in connection with the railway.

Mr. Carvell: I doubt that that paragraph covers the point.

Mr. McMaster, K.C.: I am afraid it does not. The operating of trains and the speed thereof, accommodation and comfort of the public, and so on, would hardly seem to cover some of these things that the Board have in mind. You will notice that in this section we provide that anything that is customary and usual shall not be taken away without an order of the Board. So that goes further than the paragraph in the bill. It preserves what rights we have now without our having to go to the Board to get an order. On the other hand, if the railway company wants to discontinue something that it is doing for us now, it will have to go to the Board to get an order. We want this provision added as a subsection.

Mr. Maclean: Do you mean with regard to milling and transit?

Mr. McMaster, K.C. We do not want to describe all the things that should be done. We purpose that the company shall furnish "such other service incidental to transportation or the business of a carrier, or as may be customary or usual in connection with the business of a carrier, as the Board may from time to time order, and shall maintain and continue all such services as are now established unless discontinued by order of the Board."

Mr. Maclean: There is no objection to the addition of that section. It is still optional with the Board to exercise the power. If a client of the railway company says he wants something of that kind and can make his request appear reasonable to the Board, he will get the necessary permission. It only means that he should get something that he finds is necessary for his business.

The Chairman: Is that the only amendment you have to suggest?

Mr. McMaster, K.C.: Yes, to that section.

Mr. Chrysler, K.C.: I would be glad if the Committee would be kind enough to allow that section to stand in the same way as a number of others. The paragraph proposed to be added is a new one and the railway companies know nothing about it. I am not prepared to criticize it at the moment and I think the provision should be taken up at a later date after I have had time to communicate with the companies concerned. The first part of the proposition does not seem objectionable to me but of course I am listening to it for the first time. The proposition to continue what is customary and usual is opening a very wide door to controversy, and at

present I do not know what may grow out of it. Mr. McMaster says that there is no trouble or dispute at present about it. I think these things can all be looked upon as conditions of carriage which have all been settled by the Board in the past. I do not thing there is any necessity for adding to those conditions to-day but in the meantime I ask that the proposed subsections be allowed to stand.

Mr. NESBITT: I think that subsection 8 of section 313, covers all such matters.

Mr. CHRYSLER, K.C.: That subsection contains a very wide provision.

Mr. NESBITT: It says that the Board may make regulations applying generally or to any particular railway or any portion thereof. You could not make it much wider in its application.

Mr. MCMASTER, K.C.: The subsection to which you refer relates to a different matter altogether.

The CHAIRMAN: Is it the wish of the Committee that the section remain over?

Mr. MACDONELL: It only confirms what railways are giving the public now. My own opinion is that it should stand.

The CHAIRMAN: Anything further Mr. McMaster?

Mr. MCMASTER: Clause 316. The Board of Trade do not see why there should be any pooling arrangement in this country. They wish me to point out to the Committee that the Interstate Commerce Commission has no power to allow any pooling arrangement, and they do not see any reason why our own Board should have power to allow it. We have looked carefully over the legislation in connection with the Interstate Commerce Commission, and we find that pooling arrangements are entirely prohibited. They have been generally looked upon as objectionable, so objectionable that they cannot be entered into.

Mr. NESBITT: In this case the pooling arrangement is with regard to the division of rates (reads):

> "No railway company shall, without leave therefor having been obtained from the Board, except in accordance with the provisions of this Act, directly or indirectly, pool its freights or tolls with the freights or tolls of any other railway company or common carrier, or divide its earnings, or any portion thereof with any other railway company or common carrier, or enter into any contract, arrangement, agreement, or combination to effect, or which may effect, any such result."

Mr. MCMASTER: Under the Interstate Commerce legislation, each railway takes the part of the rate that it earns and the pooling arrangement which might be made under this clause, and to which we object, would be if one railway company earns in connection with the carriage of certain goods, $30 and the other company earned $100 and they had an agreement by which each should take half and half irrespective of how much each earned.

Mr. NESBLTT: I do not care how they pool the rates, as long as they give the public the correct rate.

Mr. MCMASTER: I do not think any order has ever been made under this section.

Mr. CARVELL: Pooling has gone on between the railways to some extent.

Mr. MCMASTER: If that be so, the thing has been done without leave.

The CHAIRMAN: Do you know whether any application has been made under this clause for leave to pool tolls?

Mr. MCMASTER: I do not know of any case where leave has been applied for.

The CHAIRMAN: You do not know of any case where the public has suffered?

Mr. MCMASTER: I am not instructed as to any particular instance at all.

Mr. MACLEAN: Is there anybody from the Board who can tell us whether the powers given in this clause have been exercised formerly?

Mr. JOHNSTON: This is a prohibitory clause.

Mr. MACLEAN: But has leave been granted at any time under this clause?

Mr. CARVELL: What Mr. McMaster wants is that the Board shall not be given the power to allow pooling.

Mr. MACLEAN: But have there been many cases in which this power of the Board has been exercised?

Mr. BLAIR: No order has ever been made under that section.

Mr. CHRYSLER, K.C.: I do not understand that this section has the meaning that Mr. McMaster attaches to it. I do not think that "pooling" in the sense of dividing rates otherwise than in the proportion shown by the tariffs can be made, but I think this refers to the case of two lines paralleling one another, and where it may be found occasionally necessary by reasons of congestion, or the road being blocked that some of the traffic is sent around by another road. I think that would be pooling; that is to say, you divide certain traffic, it may be some urgent traffic, without regard to the quantity of it, that goes over the road, if it is billed through, and for a certain part of its journey it goes over one or the other road indifferently. I do not know whether the provision has ever been taken advantage of, but I see no object in taking it out.

Mr. NESBITT: That is not what I understand by "pooling" at all or as understood by the Interstate Commerce Commission. It is defined by them as a syndicate who pool their rates, or who pool their business; that is to say, they all do a certain amount of business and the railways are all supposed to be in the same category no matter which road carries it. The railways have a share of the traffic in joint traffic rates. That is not what section 316 means. What I refer to is pooling of the traffic no matter whether particular roads carry the goods or not.

Mr. CARVELL: And with no division of their rates according to mileage.

Mr. NESBITT: No.

Mr. CHRYSLER, K.C.: That is the way I understand it. In its application to Canada it would only apply to a small section of the roads.

Mr. NESBITT: They could all pool their rates if they wanted to; but, as a matter of practice, they do not do it.

Mr. CARVELL: Under the law as it stands now, they could not do it without the consent of the Board.

Mr. NESBITT: Then why strike the section out?

Mr. MACDONELL: I do not think Mr. McMaster's idea is to strike it out. It is to make it stronger.

Mr. JOHNSTON, K.C.: We could strike out the words "without leave therefor having been obtained from the Board," as Mr. Carvell suggests. That would make it very clear that pooling was to be prohibited.

Mr. MCMASTER, K.C.: I want to make it the same as the American.

Mr. CARVELL: When the Railway Board was established, it was to control the operation of Railways in Canada. I think the Board has done great work, and I feel like increasing their powers rather than diminishing them. If there were any abuse of the rights given by this section, the Board is there to protect the people, and I have enough faith in the Board to believe that they would protect the public.

Mr. NESBITT: Mr. McMaster no doubt has a written memo. of the desires of his organization which he could leave with us. When we reach that clause we will consider his views.

Mr. McMASTER: I will leave a memoranda. I may recast it after hearing the discussion this morning.

Section allowed to stand.

Mr. McMASTER: Then there are clauses 309 and 420 taken together, relating to precautions at highways. The Board of Trade think that it is objectionable that a municipality should be able to do away with precautions, and that the railways should then be discharged from any liability apparently by reason of any accident which occurs due to lack of having taken such precautions. For instance, it appears that a municipality can do away with the necessity of railway engines sounding a bell or a whistle, and subsection 2 of section 309 absolves the railway company from responsibility. Some person ought to be responsible unless there is some other protection to be afforded to the public in place of that taken away. If at those crossings along the waterfront at Toronto, the municipality were to take away the necessity of ringing the bell as the engines shunt around there, it would be a serious matter if no person was responsible.

Mr. NESBITT: Who ought to be responsible?

Mr. McMASTER, K.C.: Whoever takes away the protections ought to be compelled to substitute something as good, or put some other protection there. Subsection 2 reads:

> 2. Where a municipal by-law of a city or town prohibits such sounding of the whistle or such ringing of the bell in respect of any such crossing or crossings within the limits of such city or town, such by-law shall, to the extent of such prohibition, relieve the company and its employees from the duty imposed by this section.

Now, that should not be possible, the Board thinks unless some other protection is going to be given.

Mr. MACDONELL: The latter part of this section is amended.

Mr. JOHNSTON, K.C.: It might be possible to meet Mr. McMaster's views, and also be in accord with Mr. Carvell's suggestion that the Board should have more power, by providing that a municipal by-law when approved by the Board shall relieve the company.

Mr. CARVELL: We can only legislate for the railroads, not for the municipalities.

Hon. Mr. GRAHAM: As a matter of practice, have any accidents ever occurred?

Mr. McMASTER: This is a new provision.

Mr. JOHNSTON, K.C.: There have been some accidents in Toronto.

Mr. MACDONELL: What is the reason for this provision?

Hon. Mr. GRAHAM: As a matter of practice what is the reason?

Mr. BLAIN: Are there any cases where the municipalities have passed such a by-law.

Mr. JOHNSTON, K.C.: No. It is really only a re-casting of section 274, which reads as follows:—

> When any train is approaching a highway crossing at rail level the engine whistles shall be sounded at 80 rods before reaching such crossing, and the bell shall be rung continuously from the time of the sounding of the whistle until the engine has safely crossed such highway.

Subsection 2 of that section reads as follows:—

> This section shall not apply to trains approaching such crossing within the limits of cities or towns where municipal by-laws are in force prohibiting such sounding of the whistle and ringing of the bell.

So that it is substantially the same.

Mr. MACLEAN: All the citizens of Rosedale were at the last meeting of the Railway Board in Toronto with a complaint as to the sounding of whistles, the ringing of bells and as to the smoke nuisance. It shows how important this clause is and how far reaching, and it has to be carefully guarded. I would like to see the municipality put in the position that it cannot free itself from responsibility unless it has first brought the matter before the Board and obtained the Board's approval.

Mr. NESBITT: The Board could not stop the municipality from passing any by-law it liked.

Mr. JOHNSTON, K.C.: It could relieve the railroad conditionally on the Board's approval of the action of the municipality.

Mr. BLAIN: I think the trouble is that these bells get out of order. As I understand it I think the railway companies find it very difficult to keep them in order.

Mr. NESBITT: You are referring to the bell on the side of the track, the automatic bell. This refers to the bell on the engine.

Mr. LAWRENCE: This is a very important section to the men whom I represent and the question was asked whether any municipality did pass such a by-law. I may say that such a by-law is in force in Ottawa between the hours of 11 p.m. and 7 a.m., and the rules of the company require an engineer to blow a whistle. The whistle shall be sounded and the bell rung moving about the yard and going over crossings. The municipality of Ottawa passed that by-law, and because the engineer saw that the bell was rung in these places between these hours he was brought to the police court and warned.

Mr. NESBITT: That is adding insult to injury.

Mr. LAWRENCE: That is a short time ago. Then a second offence was committed and another man was brought up and fined. That is unfair. We are up against two propositions. We are blamed if we do a certain thing and we are condemned if we don't. This particular matter I think interests the city of Toronto. I remember a case where the city of Toronto made application to the Board for an order of that kind. The case was put on for a hearing in Toronto. I appeared at that hearing on behalf—

Mr. MACLEAN: You mean the meeting about three weeks ago.

Mr. LAWRENCE: No, in 1914. I think it was the 11th November. I attended that meeting on behalf of the employees, and I explained the situation about the rules. The operating rules of the railway that the employees are working under have been approved by the Board of Railway Commissioners. They have passed an order approving of them, and the Railway Commission say that they have the same force and effect as a law passed by the Dominion Government or an order passed by the Board. The rules say he must do these things. The city of Toronto comes along and wants the Board to pass an order prohibiting it. I would oppose it, of course, unless the municipality would be responsible for any accident if the whistle was not blown or the bell rung. The application was not granted. The city of Toronto then passed a by-law doing as the Board ordered them to do, made further application to the Board and they passed an order.

Mr. CARVELL: That is relieving the employees—

Mr. LAWRENCE: Relieving the employees of the company.

Mr. JOHNSTON, K.C.: Does that not suit you?

Mr. LAWRENCE: Yes. Why should the employees be fined for doing a thing they are required to do by one corporation, and the municipality come along and pass a by-law saying they must not do it.

Hon. Mr. GRAHAM: And the Board approves of both.

Mr. LAWRENCE: In the case of the city of Toronto, the Chief Commissioner asked me the question, if the city of Toronto passed the by-law and that by-law was satisfactory, and the Board passed an order, would I be satisfied? I said yes. We are relieved of that responsibility, and the order provides a fine of $10 if that by-law is violated. If the city of Toronto wants to pass a by-law or wants the Board to pass an order that the trains shall go over these crossings my learned friend mentions along lake front without ringing the bell or blowing the whistle, the city should be responsible, and the onus should not be put upon the employees. I do not care about the railway companies. Mr. Chrysler can look after them. They are capable of taking care of themselves.

Mr. MCMASTER: There is one matter which perhaps I have not made clear. The trouble is that the unfortunate member of the country, the citizen who happens to get killed or maimed may be deprived of his rights, because there is no duty on the railway, if this by-law is passed and the legislation goes through, there is no duty on anybody to see that the bell is rung, and therefore there has been no breach of duty in running the engine through without ringing the bell, and the citizen who is run over may not be able to get any finding from a jury that there was negligence on anybody's part or breach of legal duty, and he may be killed, maimed or hurt without having any recourse.

Mr. CARVELL: Is it not a fact that the municipalities are looking after the welfare of these citizens?

Mr. MACLEAN: They want different things.

Mr. NESBITT: You would not suggest, if the municipality passed a by-law prohibiting the ringing of a bell, that the railways should be fined for not ringing the bell.

Mr. MCMASTER: No, I would only suggest to the Committee that this should be allowed if the Railway Board have approved of the by-law, because the Railway Board may say "We will approve of that by-law if you put a flag man there or put a gate there. We do not care whether the residents of these fine houses like whistling or not, there is a crowd of people pass here, and we won't approve of the by-law.

Mr. MACDONELL: There should be protection.

Mr. MCMASTER: Certainly there should be proper protection.

Mr. CHRYSLER, K.C.: I have been thinking while the rest have been talking. I think the solution of this is plain, and Mr. McMaster's objection seems to me to have a good deal of weight. There should not be a conflict in a matter of this kind between a municipal by-law and the obligations of the railway company or of its employees. The law as it stands in subsection 1 should be obeyed unless first the municipal by-law is passed saying that subject to the permission of the Board there should be no whistles sounded or bells rung at certain points and that the Board should not merely approve of the by-law, because that is not the proper thing but should make an order in accordance with such by-law. The Board would not do that unless the crossings were protected.

Mr. MACDONELL: I do not think that is sufficient.

Mr. NESBITT: Let me ask Mr. Chrysler would not the municipality passing the by-law over-ride any order of the Board?

Mr. CHRYSLER, K.C.: It should not. It should not have the power to interfere with this law unless that is sanctioned by the Board?

Mr. NESBITT: I quite agree but would they have the power legally to over-ride any order of the Board?

Mr. MACLEAN: I think these police court fines, although I am not a lawyer, are unconstitutional.

Mr. NESBITT: You are great on the unconstitutional question.

Mr. CARVELL: I am afraid Mr. Maclean has residents who object to the ringing of bells.

Mr. MACLEAN: I only want whatever is right. We are delegating certain authority not to the municipal councils but the Board of Railway Commissioners, and nothing should be done in that delegated authority to do away with the rights of the public. Here we are putting the rights of the public in charge of a municipal council which we never intended to do in my opinion.

Hon. Mr. GRAHAM: As a matter of fact, are there a great number of people that are hurt by the ringing of bells?

Mr. MACLEAN: All Rosedale is in a rebellion against it.

Hon. Mr. GRAHAM: That may be. Unfortunately, a lot of people are in rebellion against things which they should not rebel against.

Mr. CHRYSLER, K.C.: If it is a question of blowing whistles on the Esplanade, Toronto, it may be an intolerable nuisance to a great many people in the lower part of the city, but there is no reason why it should be stopped if the crossings are to be protected, but what is proposed is to apply this to a line of railway a mile and a half long which will be up in the air and have no crossings when it is completed. Similarily you may have crossings protected by the sounding of whistles and ringing of bells which may be abolished with perfect safety, but that is what the Board should consider.

Mr. MACLEAN: It should be considered by the Board and not by the municipal council.

Hon. Mr. GRAHAM: Above all other things the safety of the public must be considered, and if it is necessary to blow whistles and ring bells to protect the public I say by all means do so. At the same time parliament must retain control over all these matters and over the Board, whatever the municipalities may do.

Mr. CARVELL: As provided, the whole power is vested in a municipal council. It would seem that if the by-law of the municipal council is approved by the Board of Railway Commissioners then there is no further responsibility on the railway company or its employees. I would like to have the opinion of Mr. Chrysler as to that. This does not give the law making into the hands of the municipal council, but into the hands of the Board of Railway Commissioners.

Mr. MACLEAN: Mr. Johnston has suggested a change in the phraseology, which will provide a cure to what seems objectionable.

Mr. JOHNSTON, K.C.: Mr. Chrysler does not accept my suggestion, which is that after the word "by-law" in the second line on page 19 be added the words "such by-law if and when approved by the Board shall to the extent of such provision," etc. Mr. Chrysler thinks the Board should make a confirmative order.

Mr. CARVELL: I agree with that, too.

Mr. JOHNSTON, K.C.: There is no difficulty about making a proper phrase if it is the wish of the Committee.

Mr. MACDONELL: The only point I want to make is along the line of Mr. Graham's remark as I understand it. Here we are taking away safeguards that we have had from time immemorial in the very places where they are needed, namely, thickly populated districts, and it does seem to me that if we absolve the railway from blowing

whistles, and taking all these precautions that are here set forth, there ought to be some adequate provision substituted for that, without leaving it "as in the opinion of the Board may be necessary." I think we ought to emphasize in our legislation that there should be some adequate provision in the matter of protection, for the protection that exists now, without leaving it to the Board to regulate what that shall be. I doubt very much if we should leave it to the Board to say whether protection should be given or not. We should specify in this Bill that there should be some substituted protection for the public.

Mr. CARVELL: Who would know as much about the matter as the Board of Railway Commissioners?

Mr. MACLEAN: That is what they are there for.

Mr. CARVELL: There is not a city or town in Canada that has not had regulations provided for it by the Board. In my own little town in New Brunswick the Board has made certain regulations that are working out perfectly satisfactorily.

Mr. MACLEAN: I am satisfied to give power to the Board but not to the municipal council. I think Mr. Johnston has drafted an amendment which will afford the necessary cure.

The CHAIRMAN: Then it is understood by the Committee that Mr. Johnston will prepare an amendment to section 420 and submit it to the Committee at an early date .

Mr. NESBITT: Also to section 309.

The CHAIRMAN: Have you anything further to submit, Mr. McMaster, because I understand there are a number of other gentlemen who wish to make representations to the Committee?

McMASTER: There are a few other clauses which I desire to see amended. As to section 194, we desire to take out the word "new" in one of the paragraphs.

Mr. JONHSTON, K.C.: The section is one which has already been passed, but Mr. McMaster desires to return to it in order to omit the word "new".

Mr. McMASTER, K.C.: I have reference to subsection 4 of section 194. We do not see why the subsection should be limited to "new" railways.

Mr. JOHNSTON, K.C.: Those are sections to enable the Board to prevent duplication of railways.

The CHAIRMAN: Is it the wish of the Committee that the word "new" in subsection 4 be struck out?

Mr. MACDONELL: Wait a minute; let us see what it means.

Hon. Mr. GRAHAM: This would give the Board power to take up any line now in exitsance where there was a duplication. Would that not be running ahead of the legislation that the Government may have in their mind as a solution of the railway difficulty?

Mr. McMASTER, K.C.: We thought that as some of the old railways were duplicating lines—that might just as well happen to an old railway as to a new one—that the word "new" should be struck out. We thought there were not likely to be any new railways in the near future and the clause is not of much service at present unless you make it apply to all railways.

Hon. Mr. GRAHAM: If you will go through the west you will revise your idea as to whether new railways are wanted or not.

Mr. CHRYSLER, K.C.: Under the proposal you could take up one of the railroads, or two of them between Whitby and Deseronto, and destroy the value of the securities connected therewith.

Mr. JOHNSTON, K.C.: I do not think you could do that because the language of the section is, "where the proposed location."

Hon. Mr. GRAHAM: This would place initiation of the policy itself in the hands of the Board rather than the carrying out of the policy.

Mr. NESBITT: We should not take the policy out of the hands of the Government.

Hon. Mr. GRAHAM: The Board of Railway Commissioners have no more right to create a policy than a judge has to create a statute. The judge is there to interpret a statute passed by Parliament, and the Board are there to interpret a policy upon which Parliament has resolved.

Mr. SINCLAIR: Does the language of the bill mean that a great railway like the Grand Trunk could construct a new railway duplicating its present line?

Hon. Mr. GRAHAM: Yes, but the Board now has power to stop that.

Mr. MCMASTER, K.C.: I think not. Might I make myself understood a little more clearly. I do not mean that an old railway as it now lies could be taken up. What I have reference to was when one of the old railroads proposed a duplication, the law against it ought to apply equally as well as if it were a newly incorporated railway. This does not say, "a new piece of railway", but it says "any new railway". That is just the obscure point about it. Then in subsection 5, you have the same language again; that the Board may in the case of two or more new railways give orders for the joint use of tracks.

Hon. Mr. GRAHAM: I do not know the effect of the language legally, but it does not strike me as it strikes Mr. McMaster. It strikes me that a new railway is a new railway no matter how or where projected; it is not a new "railway company" but it is a "new railway". If the Grand Trunk were to extend their line, that extension would be a new railway.

Mr. JOHNSTON, K.C.: If you see the definition of the word "railway", you will see it is all right (reads):

> "Railway" means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property real or personal and works connected therewith and also any railway bridge, tunnel or other structure which the company is authorized to construct."

Mr. MACDONELL: What is the object of putting in the word "new," it will take a hundred juries to settle that question.

Hon. Mr. GRAHAM: The interpretation clause should confine the Board to a decision as between new lines, and not with regard to lines already laid.

Mr. MACDONELL: There is no definition in the interpretation clause as to what is a new railway.

Hon. Mr. GRAHAM: It will be one that has not existed before.

Mr. CARVELL: Any new branch, or any new line, anything at all that is new.

Mr. SINCLAIR: It cannot apply to an old railway.

Mr. MACDONELL: I think it will lead to great confusion if the word "new" is left in there, it is not needed at all.

Hon. Mr. GRAHAM: This is a new provision, it gives certain powers with regard to new railways that we have not with regard to old railways.

Mr. MACLEAN: If you take out the word "new", you would be giving power to the Board to consolidate and co-ordinate every railway in the Dominion of Canada, would not that be the effect of the clause?

Mr. CARVELL: No, because the word "proposed" is there.

Mr. JOHNSTON, K.C.: I do not think Mr. McMaster is going to press that very hard.

Subsection allowed to stand.

Mr. MCMASTER, K.C.: I will not take up section 202 and all the sections in conection with the taking of land. We have had certain difficulty in Toronto in connection with the fyling of plans and surveys, and the tying up of land indefinitely, and we want some provision introduced to prevent this tying up of land indefinitely as has been done in the case of the new Union Station in that city after the fire. That property has been tied up for six or seven years and we want a provision that when the plans and books of profile are registered against a man's land some limit or definite period of time should be fixed within which the railway company must either take over the land or decide not to take it. That limit should be a reasonable time.

Mr. MACLEAN: What time do you suggest?

Mr. MCMASTER, K.C.: I have not presumed to suggest to the Committee any definite time.

Mr. JOHNSTON, K.C.: Clause 229 provides for preventing delay.

Mr. MCMASTER, K.C.: Clause 222 is not satisfactory, I do not know about 229, but clause 222 provides that if the property was not taken within one year—subsection 2 of 222 says:—

> The date of the deposit of the plan, profile and book of reference with the registrar of deeds shall be the date with reference to which such compensation or damages shall be ascertained: Provided, however, that if the company does not actually acquire title to the lands within one year from the date of such deposit then the date of such acquisition shall be the date with reference to which such compensation or damages shall be ascertained.

That seems to indicate that it is quite posisble for a road to tie up a man's property for much more than a year.

Hon. Mr. GRAHAM: We have another clause there on the same subject.

Mr. MACDONELL: But there is nothing definite and it might be that the value of the land has depreciated during the time which has elapsed between the deposit of the plan and the time that the company says to the man that they do not require his land the clause says: "Provided however that if the company does not actually acquire title to the lands within one year from the date of such deposit, then the date of such acquisition shall be the date with reference to which such compensation or damages shall be ascertained." That date might be two or three years after the plans were fyled.

Mr. JOHNSTON, K.C.: That clause is subject to discussion, Mr. McMaster.

Hon. Mr. GRAHAM: There are two points involved in that section. One is that the land may depreciate in the interim, and the other is that it may appreciate.

Mr. MCMASTER, K.C.: The mere fact that the railroad was going to take the land might cause it to depreciate in value.

Hon. Mr. GRAHAM: But the owner of the land would get the higher price at which it stood when the notice was given in any event.

Mr. MCMASTER, K.C.: But would it not be proper to say that the railway must take it within a certain period and that would make them consider the matter well before they "stick" a plan on a man's property and possibly depreciate it in value, let them decide whether they want it first, and then whenever they do put that plan upon the property, might I suggest that they should be bound to take it, and not be in the position that they may afterward come in and say that they do not want it.

Mr. McLEAN: How would one year do?

Mr. McMASTER: I think that would not be unfair, something like that.

The CHAIRMAN: I might call attention to the fact that this morning was set apart for the lumbermen, and if their representatives are here, we will have to hear them. Are there many other clauses which you desire to deal with, Mr. McMaster?

Mr. McMASTER, K.C.: There is just one other clause I would like to speak on to-day, and perhaps I may be able to make my representations on the other clauses, to which I desire to refer, shorter if I have an opportunity of putting my remarks in writing although I may have to ask leave to speak on one or two clauses to-morrow if I have to appear before the Committee again.

Now as to section 358—the Board is very strongly opposed to that clause which brings the water-borne traffic under the railway Commission. They want free competition. We ask that water competition should be as free and untrammelled as it is now and we do not think that the same regulations that apply to the railways should apply to the steamship companies, and still less so should they be made applicable to the tramp steamships.

The CHAIRMAN: You think that they should not come under any regulations whatever.

Mr. McMASTER, K.C.: Yes, they should not come under these regulations. We contend that they should be left perfectly free to do what they like in regard to rates and to go where they like.

Mr. NESBITT: Your idea is that they should be free to make as cheap rates as they like.

Mr. McMASTER, K.C.: What we ask is that shippers should be able, if they desire to do so, to engage a tramp steamer which can go all over the world, wherever it likes carrying goods at whatever rates it pleases, without any regulation by the railway Commissioners.

The CHAIRMAN: What effect would this provision have on a tramp steamer?

Mr. McMASTER, K.C.: They have put all steamship traffic under the Board. We do not want a tariff on the inland waters.

Mr. MACLEAN: Supposing a railroad company goes into the steamship business?

Mr. McMASTER, K.C.: That is different. I am leaving that part in. I only object to the last part of the section. Any traffic carried by water by a railroad company which owns steamship lines, we want put under the Act, because that has been the situation before. It is the latter part of the section we object to.

The CHAIRMAN: What reasons have you for wanting boats owned by the railroads to be under the Act and not other boats?

Mr. McMASTER, K.C.: For the same reasons that in the United States the Government have prohibited the railways from owning steamship lines, and thus creating a monopoly for the land-borne traffic.

The CHAIRMAN: The boats in the inland waters in the United States are under control.

Mr. McMASTER, K.C.: They have prohibited the railways there from owning any steamship lines.

The CHAIRMAN: The boats in the Inland waters in the United States are under control are they not?

Mr. McMASTER, K.C.: I am not sure as to that. They were when they were owned by the railways.

The CHAIRMAN: They are to-day under control.

Hon. Mr. GRAHAM: One of the objects in having steamship lines in connection with railways under the Board is to bring their whole tariff under the one control. A railway company might make a very cheap rail rate to a competitive point, and might make an increased rate on its steamship line to make up for any loss on its rail rate.

Mr. NESBITT: We want to get after people like the C.P.R. who ship by rail and water.

Mr. MCMASTER, K.C.: We are objecting only to the last part of the section.

Mr. NESBITT: (reads)

> the provision of this Act in respect of tolls, tariffs and joint tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada.

We give a certain amount of authority to the Board. I do not believe that the Board would interfere with a tramp steamer.

Mr. MCMASTER, K.C.: The Board of Trade thinks that shipping should be left as untramelled as possible. They consulted about that and considered it very carefully, and I am instructed to say that they are very, very anxious that the last part of this section should not go into effect.

Mr. SINCLAIR: The point is, it is impossible to regulate tramps. For example, if the Board should deal with the carriage of wheat from Montreal to Liverpool, tramp steamers would not go on that route, they would go to the Argentine Republic or some other part of the world, because these tramp steamers have the whole world for their field, and they go where the highest rates are obtainable. You would drive the tramp steamer away from our ports.

Mr. MCMASTER, K.C.: The Montreal Board of Trade are in the same boat as we are. They are objecting to that provision very much.

Mr. SINCLAIR: You cannot do it.

The CHAIRMAN: It is your idea that the Government should continue to build canals, wharves and piers, dredge rivers, and do everything possible for navigation, and that the steamship lines should then be perfectly free to charge whatever rates they please and stop at whatever ports they choose?

Mr. MCMASTER, K.C.: We are the shippers. We think that without this provision we can get cheaper service. We are shippers, manufacturers, merchants and other shippers.

The CHAIRMAN: You do not intend to speak for all the manufacturers. I know some manufacturers who want this legislation.

Mr. MCMASTER, K.C.: I merely speak for the Board of Trade, who think they will get cheaper rates without that provision. They may be wrong.

Hon. Mr. GRAHAM: As a matter of fact, we cannot control ocean shipping by legislation. We can only control that by agreement with the authorities on the other side. That has been discussed for a long time. This section can only relate to inland waters. What Mr. McMaster has in his mind is this: It often occurs, Mr. Chairman, that a tramp steamer is out of a cargo. She will have a cargo one way to a certain port, a "catch" trip as it is called. She is willing to take a return cargo to some other place very cheap. If she is under the Board of Railway Commissioners the Board not only have the power to fix a rate and say: You shall not charge any more than that; but the Board can also say: "You cannot charge any less than that." Consequently the tramp steamer cannot take back this cargo at a lower rate because she would be violating the order of the Board.

The CHAIRMAN: While it is true that the Board have the power to do what Mr. Graham suggests, it is also true that, if they were to fix a maximum rate beyond which a ship could not charge, under such a provision, the ship could make whatever arrangements they desired below the maximum rate.

Mr. SINCLAIR: I do not agree that this section refers altogether to inland traffic. It refers, for instance, to traffic between British Columbia and Nova Scotia. In the town where I live, lumber is brought from British Columbia through the Panama Canal for the manufacture of cars in the town of New Glasgow, for example, and that means ocean traffic from one point in Canada to another point in Canada.

The CHAIRMAN: Would it not be well for Mr. McMaster to place his views before the Committee in a definite form in a written statement.

Mr. MACLEAN: The communication of the Montreal Board of Trade to this Committee, dated April 28 last, takes the same position with reference to this matter as is taken by the Toronto Board.

The CHAIRMAN: Mr. McMaster, you represent only the Council of the Toronto Board of Trade, not the whole Board?

Mr. MCMASTER, K.C.: I represent the Council; there has not been a meeting of the whole Board.

Mr. MACLEAN: The attitude of the Montreal Board of Trade is as follows: (reads).

> The Council is of opinion that it is inadvisable to apply the provisions of the Railway Act in respect of tolls, tariffs, and joint tariffs on freight traffic carried by water between ports in Canada. There are a great many reasons why the Council considers this inadvisable, the chief being a strong belief that the jurisdiction of the Board of Railway Commissioners would tend to limit competition between the water carriers themselves, which in turn would tend to decrease the competition between water carriers and the railways.

Then the letter goes on to refer to Montreal's location in regard to navigation. This is a very important subject, and I would like to have the section stand over for further consideration.

Hon. Mr. GRAHAM: There is this difference between railways and independent steamship lines; any person or company who has sufficient money can build a steamer; but there can only be a limited number of railways.

Mr. MACLEAN: Yet nothing has been closed up and tied so closely as our steamship lines have been. The small lines and steamers have been driven out by somebody.

Mr. MACDONELL: This is a new provision, Mr. Johnston. What is the reason for it?

Mr. JOHNSTON, K.C.: Only the latter part of the clause is new. That brings under the jurisdiction of the Board the rates of any carrier by water.

Mr. MACLEAN: They do not need to exercise their jurisdiction, do they?

Mr. JOHNSTON, K.C.: Not necessarily.

Mr. MACLEAN: It is a protecting clause. I like both sides of the language. It seems to be protective by the way the clause is written out. I think that the Bill should stand.

Mr. NESBITT: It seems, Mr. Chairman, Mr. McMaster wants the latter part struck out.

Mr. MCMASTER, K.C.: There was a number of other matters which I desire to present. For instance, clause 357, with regard to tolls. That is another subject.

Mr. CARVELL: If the lumbermen are here by appointment we had better hear them.

The CHAIRMAN: The lumbermen are here and we have arranged to hear them this morning.

Mr. MCMASTER, K.C.: I will be here to-morrow.

The CHAIRMAN: We will take up the case of the lumbermen now.

Mr. HAWKINS: The representations of the lumbermen are contained in a copy of a resolution which you have before you passed at our last annual meeting, page 29.

The CHAIRMAN: If you will allow me, I will read two communications in reference to this matter.

THE QUEBEC FOREST PROTECTIVE ASSOCIATION.

QUEBEC, April 25, 1917.

Clerk of the Railway Committee,
Ottawa.

SIR,—The Quebec Forest Protective Association, being a federation of all forest protective associations in the province of Quebec, begs leave to submit to the Railway Commission the necessity of placing under the control of the Board of Railway Commissioners all railway lines administered by the Dominion Government, as are all private owned lines, whether under Dominion or provincial charter.

This request for the object of obtaining an efficient patrol on these lines, as where they pass through our forest lands they are a serious menace, and it is only by an efficient control that forest fires which are so disastrous to the natural welfare of the province can be avoided.

I have the honour to be, sir,

Your obedient servant,

(Sgd.) PAUL G. OWEN,
Hon. Secretary.

At the session of the lumbermen, held on the 6th February, 1917, it was moved by John Donogh, seconded by A. H. Campbell:

"That, as intimated in the public press, a consolidation, or revision of the Railway Act is to be taken up when the present Parliament re-assembles, the Canadian Lumbermen's Association in annual meeting assembled February 6, 1917, confirms the course previously adopted in this matter, viz.:

"That this association co-operate with the Canadian Manufacturers' Association and endorse the resolution forwarded by the latter to the Minister of Railways and Canals, regarding the proposed amendment to the Railway Act, and that the matter be left to the Executive Committee of this association to deal with.—Carried."

"The submission by your Transportation Committee at that time was as follows:—

"Any special freight tariff of any transportation company (subject to its jurisdiction), which may hereafter be filed with the Board of Railway Commissioners, to which exception is taken by any person, company or other party interested, making formal protest, either before or after the effective date mentioned therein against the adoption of said tariff, shall at the discretion of the Board, be disallowed until after such time as the Board shall determine, after hearing evidence produced for or against the adoption of such tariff. The Board may of its own volition, without protest or complaint on the part of others, disallow any such tariff, or any portion thereof, with or without hearing evidence in support of, or against same."

"In any special tariff the rates contained in which are increased, the burden of the proof:

(*a*) that old rates are inadequate, unsatisfactory and, or unworkable.

(*b*) that a larger freight revenue is requisite and necessary, and the reasons therefor:—

shall be on the transportation company or companies, or its or their representatives, filing such tariff."

"In addition to the above, it is urged by your Committee on Transportation that the Railway Act should contain a provision that freight operating expenses should be shown separately from passenger and other operating expenses. This should be a simple matter, as the earnings of each class of railway service are all shown separately."

Mr. HAWKINS: Our position is pretty well covered by the resolution which you have read, and in support of it I merely want to say that at the present time jobbers have no recourse. Under the present Act the railways may file tariffs increasing rates, apply that to the provisions of the Act, and fix a certain day on which that tariff becomes effective. We may enter a protest, but we have no recourse. In the natural course of events the tariff becomes effective and the shipping public is then put in the position of having to prove that those rates should not come into force. We submit that is entirely a wrong position. If the railways are asking a flat increase in rates they certainly should be in the position of having to prove that those rates are reasonable.

Mr. MACLEAN: I agree with that. Was there not a case the other day where the Board held up the enforcement of some tariff that had been filed. How often does that happen?

Mr. HAWKINSS They have done it.

Mr. MACLEAN: You say there is no power in the Board to protect the shipper in that respect?

Mr. HAWKINS: The custom is that tariffs have been allowed to go into effect before any public hearing.

Mr. SINCLAIR: Do you say it applies to all rates, or only lumber?

Mr. HAWKINS: Lumber and especially tariff rates. In that way they can file the tariff with the Board and make the proper provision according to the Act as to the effective date, but if we have a protest to make we are called upon and put in the position of having to prove to the Board why those rates should not obtain.

Mr. MACLEAN: You have to pay the proposed increase in the meantime.

Mr. HAWKINS: Immediately the tariff becomes effective we have to pay the increased rate.

The CHAIRMAN: Sections 323 and 331 are those to which Mr. Hawkins refers.

Hon. Mr. GRAHAM: Supposing you are called on, and you came along and objected to the tariff. Would not the railway company, as a matter of practice in rebutal of your case, have to show cause why the tariff should be increased?

Mr. HAWKINS: It has not worked out that way.

Hon. Mr. GRAHAM: The company files a tariff. There must be behind the filing of that tariff some reason. You object to the tariff. The company has to show your objections are not well grounded—that they have reasons for the increase.

Mr. HAWKINS: That is what we have incorporated in our submission here, as follows:—

"In any special tariff the rates contained in which are increased, the burden of the proof (a) that the old rates are inadequate, unsatisfactory or unworkable,

and (b) that a larger freight revenue is requisite and necessary, and the reasons therefor—shall be on the transportation company or companies, or its or their representatives, filing such tariff."

As it is now, the tariff goes into effect and we are put in the position of having to say why the tariff should not be allowed. We want the onus of proof to be placed on the company.

Mr. CARVELL: Let us get down to a concrete case. The Canadian Pacific Railway has issued a new tariff to take effect in 30 days. What do the lumbermen do, and what action does the Board take in that case?

Mr. HAWKINS: The tariff is filed with the Board. We may protest and do protest.

Mr. CARVELL: Assuming you have protested, would not the Board invariably call upon the railway company to justify the proposed tariff?

Mr. HAWKINS: Not before the effective date. They almost invariably allow that tariff to go into effect.

Mr. CARVELL: I am sorry to hear it. I supposed the Board of Railway Commissioners were doing their duty.

Mr. HAWKINS: The point is that we are helpless in the matter. We can make our protest to the Board and be prepared to submit our evidence to them, but, as I say, the moment that tariff goes into effect we are put on the other side of the fence.

Mr. MACDONELL: What do you ask for?

Mr. HAWKINS: We are asking that the onus of proof be placed on the railway company.

Mr. MACDONELL: How can you regulate a railway company? How are you going to place the onus of proof upon them?

Mr. CARVELL. Or prescribe to whom notice shall be given?

Mr. HAWKINS: I can cite you a concrete case. For example, here is a special tariff dealing with lumber and other forest products.

Mr. CARVELL: The companies give notice that in thirty days from date they propose to apply to the Board for the adoption of the new tariff. Now, then, who are they going to notify to be present?

Mr. HAWKINS: The Board notifies all parties concerned.

Mr. CARVELL: But there might be a lot of parties who would not be notified by a certain date. The railway company satisfies the Board that it needs more revenue or something of that kind, and the order goes into effect. It really seems to me the procedure works out all right as it is at the present time. Because, as I understand it, the company gives notice that it proposes to adopt a new tariff, and then any person interested can apply to the Board and ask that it be not allowed. The hearing of all parties interested follows. I know this myself, because I have acquired the knowledge in my own practice. I do not know that it makes much difference who initiates the proceedings, because the Board takes everything into consideration and decides whether or not the tariff shall be allowed. I know of many cases where they have not allowed the tariff sought to be approved.

Mr. HAWKINS: We have found to our cost that with new tariffs there has generally been an increase in rates. Just to illustrate, let me take the rate from Ottawa to Montreal. In 1908 that rate was five cents a hundred pounds. The rate to-day is seven and a half cents a hundred pounds, having been increased 50 per cent. The rate has gone up time after time. The last increase of half a cent a hundred pounds went into effect last December, and now it is proposed to increase the rate still further by fifteen per cent.

Mr. MACLEAN: Is that made by all companies?

Mr. HAWKES: Yes, all companies.

Mr. MACDONALD: It is for the Board to decide what the rates shall be.

Mr. MACLEAN: Yes, but the point Mr. Hawkins wants to make is that when the railway companies put in a new tariff they shall give a reason for it.

Mr. HAWKINS: Our contention is that they should support and prove their case when they make application for a new tariff to be approved.

Mr. MACLEAN: As it is now, the companies only put in their case when they are called upon to do so by a customer who objects to the increase.

Mr. MACDONELL: And the Board deals with the matter as it deals with all other cases.

Mr. CARVELL: I would like to understand just what Mr. Hawkins is asking because evidently there is something here that I can not understand. We will assume that in November last the railway companies brought a new tariff into effect increasing the rates by half a cent. Now, they certainly gave notice of that; I think the notice required is thirty days.

Mr. HAWKINS: Yes, they complied with the law in that regard.

Mr. CARVELL: What you suggest is that the Board give notice to the world at large that on a certain day there will be a meeting to decide whether or not this tariff should become effective, at which every person who has any objection to offer should be allowed to state his views.

Mr. HAWKINS: We think the Board should automatically suspend the effective date of that tariff until after the case has been heard and the railways have been called upon to justify their application.

Mr. CARVELL: When and where and before whom?

Mr. HAWKINS: The Board will specify that. They will put the case down for hearing, and neither the railways nor ourselves will have anything to say as to when the hearing should take place.

Mr. SINCLAIR: Your understanding is that the new tariff goes into effect without the order of the Board?

Mr. HAWKINS: Practically it does, by the mere filing. The railway companies file a tariff and they say, "Here is our tariff."

Mr. NESBITT: When they do that they do not set forth any reasons for the increase to the Board of Railway Commissioners.

Mr. HAWKINS: None whatever.

Mr. SINCLAIR: I think they should.

Mr. MACLEAN: How many days' notice do they give of a new tariff?

Mr. HAWKINS: Thirty days.

Mr. MACLEAN: And if no objection is heard it becomes effective?

Mr. HAWKIN: It becomes effective and the rate under that tariff becomes the proper rate.

Mr. CARVELL: I suppose if you did not protest, in a formal or informal manner, within the thirty days, the Board would allow that tariff to go into force.

Mr. HAWKINS: I can answer your question by giving a concrete case. We have always had special export rates for the summer shipments via Montreal. This (exhibiting document) is the tariff for 1916. The 1917 tariff was issued on April 16 last to be effective on April 23. It was last year's tariff reinstated with this difference, that the export rate automatically increased with the increase in the rates which was allowed last December. This tariff, as I say, became effective April 23 last. Incidentally I received a copy of it at 3.45 p.m. on Saturday afternoon, April 21,

and the tariff became effective at midnight on Sunday. In that case, you see, we had no opportunity of making any protest against the new tariff.

Hon. Mr. GRAHAM: Is there not a notice given on the filing of the tariff?

Mr. HAWKINS: Notice should be given but it is not done in all cases. The one I have mentioned is a case in point. No notice was given to the lumbermen except that in individual cases they received a copy of the new tariff.

Hon. Mr. GRAHAM: What I am trying to get at is, under the Act is notice given? If that is so that meets the difficulty raised by Mr. Carvell as to giving notice to every person. Was notice given, in accordance with the statute, that this tariff had been filed?

Mr. HAWKINS: There was, of course, the filing of the tariff.

Hon. Mr. GRAHAM: Yes, but, I think, public notice has to be given that the tariff has been filed.

Mr. HAWKINS: Under the Act they have to file a copy of their tariff at every station.

Mr. BLAIN: When a new tariff, say on lumber, is being made, would you have an opportunity of going before the Board and stating your case before the new tariff went into effect?

Mr. CARVELL: You will find that under section 328 notice of a new tariff must be posted up, and the Board have the power, if they wish, to provide for any additional method of publication.

Mr. BLAIN: But notice is given.

Mr. CARVELL: Yes, when the tariff is filed.

Mr. BLAIN: Has the tariff been fixed by the Board before that?

Mr. CARVELL: No.

Mr. BLAIN: Then the lumbermen would have an opportunity of appearing and stating their case.

Mr. HAWKINS: To continue my remarks with regard to the export tariff. The increases in rates were not particularly objected to by the lumbermen but we find on page 6 of that tariff that the minimum rates were increased very considerably. We made a protest, and the Board has requested the railways to postpone putting into effect the tariff, as far as the minimum weight is concerned, until the 21st of this month.

Hon. Mr. GRAHAM: Your representations were, apparently, effective.

Mr. HAWKINS: We had to go to the extreme in that case, and it was only owing to an accident on the part of the Grand Trunk Railway Company, they had not included in their tariff the change in the minimum weight, and the Board thought the best way out of the difficulty was to ask the railways to postpone the change in the minimum weight until the 21st of this month. We are making further representations to the Board and to the railways regarding that matter. There is the sticking point, we were placed in the position that if it had not been for this accident to which I have referred this tariff would be in effect to-day.

Mr. CARVELL: Do I understand you to ask that the law be changed to the effect that when the company wants to make a change in the tariff, they must give notice, and before it becomes effective there must be a decision of the Board, either based on their own knowledge or on representations made to them, and that all parties have the right to be heard?

Mr. HAWKINS: And particularly that a protest may be made before it goes into effect.

The CHAIRMAN: Will you, Mr. Blair, as representing the Board of Railway Commissioners, give us your views upon this?

Hon. Mr. GRAHAM: As to the practice and the custom of the Board.

Mr. BLAIR: The section of the Act provides that the tariffs must be approved by the Board. I do not know how far you want me to go into the history of these tariffs, but the standard tariffs are filed by the railway companies and must be approved by order of the Board before they are effective. With regard to special tariffs, a tariff such as Mr. Hawkins refers particularly to are filed by the company, and these tariffs if not disallowed are effective. Notice is given in the way prescribed by the Act, that is, they should be filed in a public place, and shall not take effect until 30 days after being so filed. But the practice—I cannot believe that Mr. Hawkins has any very serious quarrel with the practice of the Board in connection with these special tariffs because the Board has been very lenient—has been that a letter, for example, from a shipper protesting against the proposed increases, reciting the fact that that shipper has entered into contracts based on the old rates, has been sufficient for the Board to put the onus on the railway company by requiring them to show cause why the proposed increase should go into effect. It is quite a reasonable provision; the Board feels that the shipper should make out, at least, a prima facie case, especially when it can be done so readily and so informally as it has been the practice of the Board to require in that regard.

Mr. CARVELL: Pardon me a moment, that will be quite proper if the shipper is complaining against the existing rate, but is that equally proper in the case of a railway company filing a new rate?

Mr. BLAIR: Well, part of the Lumbermen's Association complaint I think is met, or the powers asked for are covered by Mr. Chrysler's proposed amendment, that is that the Board may "disallow" or rather "suspend" the operation of the tariff before a certain date.

Mr. CARVELL: What clause is that?

Mr. BLAIR: That is clause 325.

Mr. CARVELL: That is the new part.

Mr. BLAIR: That is the new part. As a matter of fact the Board has suspended special tariffs, without, perhaps, having express authority to do so, and this section gives them that power.

Mr. JOHNSTON, K.C.: Read also subsection 4, of clause 331, Mr. Blair. That confirms the Board's right to "disallow or suspend."

Mr. BLAIR: That confirms the right, yes; but the first part of Mr. Hawkin's application is covered by the amendment to which I have referred.

Mr. SINCLAIR: I understand that what Mr. Hawkins asks is that the railway asking a change in the tariff shall be required to make out a case in support for the change. What do you say about that?

Mr. BLAIR: I say that is the practice now; practically they are required to do so, the onus in thrown upon the company to justify the increase. All the Board asks in fact, is what seems to me to be a very reasonable requirement, and that is that the shipper shall make out a prima facie case; that he shall give some reason, some grounds to his objection to the proposed increase. Then the Board takes the matter up.

Mr. CARVELL: For investigation.

Mr. BLAIR: For investigation, and, as I say, and I think the representative of the railway companies will bear me out, it is the practice to require the companies to justify the rates. This puts the simplest kind of proof on the shipper.

The CHAIRMAN: You believe that the Board now has power to cover all the objections referred to by Mr. Hawkins?

Mr. BLAIR: I believe it has, and that it works out in practice as he wants it.

Mr. MACLEAN: By the new legislation?

Mr. BLAIR: Yes, the amendment gives the Board power to suspend any special tariff, that is all it does; it does not state expressly, as Mr. Hawkins asks, that the onus shall be on the railway company to justify the increase in the rates, but as a matter of practice, and as a matter of actual working out, this has been the condition:: The Board has simply said to the shipper "We will require you to show some grounds for your objection" and that has been the usual practice in that regard.

Mr. HAWKINS: Mr. Blair says that the onus has been placed on the railways. I have attended, I think, every case that has come before the Board on the lumber schedules since 1908, and I do not know of a single increase in the rate that the railway companies have ever justified.

Mr. MACLEAN: Did those increases go into effect?

Mr. HAWKINS: Yes, and they are in effect to-day.

Hon. Mr. GRAHAM: Perhaps the Board thought they were justified.

Mr. HAWKINS: I do not know.

Mr. MACLEAN: Did the companies try to justify it?

Mr. HAWKINS: No, they did not. We were simply placed in the position of being called upon to prove that the rates should not go into effect; the railway companies' representatives stand aside and allow the lumbermen and the shipping public to do the talking.

Mr. CARVELL: It is not a question of what the railway companies do, but what the Board does—that is the question that is to be considered.

Mr. HAWKINS: That is what I am trying to get at now.

Mr. CARVELL: If you put your side of the case before the Board, does not the Board call upon the railways to justify their side of the case?

Mr. HAWKINS: They have a hearing, but 99 times out of a hundred the tariff goes into effect.

Mr. MACDONALD: But if the railway companies present their case and you are given a hearing to the fullest extent, you cannot complain of that?

Mr. HAWKINS: But if you put in your law, in the Act there, a provision that when the tariff is objected to, as we have objected to the tariff going into effect, that the railways should be called upon to justify their increase before it goes into effect, that is all we ask.

Mr. MACDONALD: You want to shift the burden of proof upon the railways?

Mr. HAWKINS: That is what we want. That has been the practice since 1908.

The CHAIRMAN: It is your opinion that the Board should have complete power?

Mr. HAWKINS: Absolutely.

Mr. CARVELL: I have been before the Board often, and there was no burden of proof required. Everybody talks. The Board says: "You get this," and you go and get it. That is all there is to it.

The CHAIRMAN: What other representatives have you here?

Mr. HAWKINS: None. That constitutes our whole case.

The CHAIRMAN: Mr. Chrysler have you anything to say?

Mr. CHRYSLER, K.C.: I would prefer to take this up when we reach it. But perhaps I might say that Mr. Blair has fully explained the matter. We do not understand that there is anything in practice which places lumbermen in any invidious position as compared with all other shippers, and the matter of filing a tariff is a daily and hourly occurrence. Thousands of tariffs are filed which are not objected to by

anyone. It is only when a tariff is objected to, when it is examined by the Board, because every tariff is examined as a matter of routine. It is only one tariff in a thousand, or ten thousand, that there is a hearing or a dispute about.

The CHAIRMAN: Perhaps we have time to listen to Mr. McMaster again, if that is the wish of the Committee.

Mr. MCMASTER, K.C.: Section 357, refund of tolls, is the next section we wanted to speak about. It is new, and there is a provision limiting the time in which you can get a refund to one year, and providing that you must apply to the Board for such refund. We do not think there should be such a limitation, and we do not see why it should be necessary for anyone who has been clearly overcharged to have to come to the Board in order to enforce his right to secure a refund. We do not see why we should not be able to recover in any other way, and after the lapse of a year. If a railroad company has made an admittedly improper charge, why should they keep the money if they have succeeded in holding on to it for a year? That is no reason why a man should not get his refund. It is a very simple point.

Mr. CHRYSLER, K.C.: That feature of the Bill was carefully considered when the original Bill was drawn. In the United States, the State Boards and the Interstate Commerce Commission have power to order refunds. It was deliberately decided here by Parliament at that time that it was not the proper policy, and it was left to the ordinary courts to collect the money illegally taken by a company, and we are quite satisfied that the law should remain as it is, and I think the Board do not care about this.

Mr. NESBITT: Does this clause not say that the application for refund shall be "within one year"?

The CHAIRMAN: In connection with this section there is a communication from Mr. J. E. Walsh, manager of the Transportation Department of the Canadian Manufacturers' Association, dated May 5, 1917. He says: (reads)

> In accordance with your invitation of April 26, I beg to suggest that section 357 (Refund of Tolls), be amended by substituting the words "after claim is declined by carrier" for the words "after date of collection or receipt by the Company of such tolls." This would mean the last part of the section would read "Nor unless application is made to the Board within one year after claim is declined by carrier."
>
> It seems to me there should be no objection offered to this, because of the fact that traffic is often carried over several railways, and claims may not be declined within a year from the date tolls are collected. As the section now reads it seems to me the Commission will be asked in many cases to undertake the collection of claims, or, to put it another way, will unnecessarily be appealed to in order to guard against being outlawed. We do not anticipate that the Commission is anxious to take up the collection of claims, except where it is absolutely necessary. Will you please advise in regard thereto.

Mr. NESBITT: That suggestion seems very reasonable. If the claim has been declined by the carrier, the Board could be appealed to.

The CHAIRMAN: Have you any objection to that, Mr. Chrysler?

Mr. CHRYSLER, K.C.: We think that section 357 should be struck out.

Mr. MACDONELL: Leave the matter to the law courts.

Mr. MCMASTER, K.C.: We would like to have both remedies. Sometimes the question of the overcharge of a rate may be a very complicated and difficult question, and we would like, in that case, to be at liberty to come to the Board. But we do not want to be deprived in trifling cases of the right to go to the local court. A person living at a long distance could never go to the Board, and could get his claim adjusted

through the court. But on an important or difficult question I do not see why we should not come to the Board. We should like to have this additional right to appeal to the Board, and not to be limited to coming within a year. We do not want to be deprived of the resort to the local court, yet we do like what the Committee has suggested that in certain cases we should be at liberty to appeal to the Board if we think proper.

Mr. NESBITT: You do not want to be limited to a year.

Mr. MCMASTER, K.C.: No. Any other debt can be collected for six years. Why should a railway company, by keeping the money in their pocket for a year escape payment?

Mr. NESBITT: There is some sense in that.

Mr. CHRYSLER, K.C.: I suppose this section is not really under discussion, but while Mr. McMaster is here I would like to ask him a question: Would it meet your views, Mr. McMaster, if the Act gave the Board power to declare a toll or rate illegal, leaving the parties to fight it out in the local courts? That would remove your difficulty, would it not?

Mr. MCMASTER, K.C.: I think that would be very useful, provided it is not a condition precedent to our recovering in the local courts that the Board should make a declaration.

Mr. CHRYSLER, K.C.: No, but it would be a final decision in the local courts if the case was illegal.

Mr. MCMASTER, K.C.: I think we could very well agree on such a question. That looks quite workable. It would not be limited to a year.

Mr. CARVELL: Is the limitation of time to remain in or go out? I do not think the person should be compelled to bring his action within a year. This is simply for the debt.

The CHAIRMAN: Mr. Chrysler objected to the limitation of time.

Mr. CHRYSLER, K.C.: We will see what the other section says.

Mr. NESBITT: Sometimes railways will stand off claims for rebates for a year. I do not think the company should be confined to a year.

Mr. CARVELL: My experience is you cannot get a claim paid in a year.

Mr. NESBITT: Sometimes we get claims paid with very little delay.

Mr. SINCLAIR: Why not let the Statute of Limitations apply?

Mr. MACDONELL: That is reasonable, limiting these matters to the operation of the general law.

The CHAIRMAN: How would it do to allow Mr. Johnston to prepare a suitable amendment to this section?

Mr. JOHNSTON, K.C.: Do you want to preserve the right to go to the courts?

Mr. CHRYSLER, K.C.: Perhaps the committee have forgotten that we have passed in section 44 a clause which governs a great many things of this kind: "The finding or determination of the Board upon any question of fact within its jurisdiction shall be binding and conclusive." Under that, if you have a finding of the Board that a certain toll is illegal you go into court with proof.

The CHAIRMAN: Has Mr. McMaster amendments to submit to any other clauses?

Mr. MCMASTER, K.C.: In regard to section 149, subsection 2. The Board of Trade thought difficulty might arise on this subsection. It allows the turning over of lands granted to the company as a subsidy, to a subsidiary company. There is nothing to show that the directors, or other people connected with the railway, might not be interested in the subsidiary company. We think those lands should not be turned over in such a manner unless the whole transaction is satisfactory to the Railway Board.

Mr. SINCLAIR: If the undertaking is turned over to a new company why should not the lands go with it? What is the effect?

Mr. MCMASTER, K.C.: The lands of the company have been obtained from the province and they are being turned over to a mere construction company perhaps, or to some little subsidiary company. If the railroad has obtained public lands we feel that the public, represented by the Board, ought to have something to say as to how those lands are being given away, and whether proper considerations are being obtained for them.

Mr. CARVELL: You would not construe subsection 2 of section 149 as strong enough to cover townsites?

Mr. MCMASTER, K.C.: Yes, I would. The railway company may have been granted a million acres. It can turn those lands over to some other subsidiary company which it may incorporate. Take the language of the subsection:

> "Such company may convey such right or interest, or any part thereof, to any other company which has entered into any undertaking for the construction or operation, in whole or in part, of the right of way in respect of which such land or interest in land was given."

I take it under the wording of this subsection, a railway company may turn its lands over to a mere construction company that has just entered into a contract with it. It may turn over to that company the whole of its land subsidy without any person having a word to say about it. The Government has perhaps given the company a million acres of land. Well, that land can be turned over to a construction company that the railway directors are perhaps directors of, or interested in. Is that a proper thing to do? We do not suggest that any railroad company would do it, and yet there is nothing here to prevent it being done.

Mr. NESBITT: That is an objection we should take notice of.

Mr. MCMASTER, K.C.: As for the rest of the objections, they are of a minor nature and if the Committee will permit us to put in a written memorandum we shall be very glad to do so.

The CHAIRMAN: Now, we will take section 149—have you any suggestions to offer, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I do not quite understand what the suggestion is. The section provides that when a subsidy in lands has been granted to a company, the company may dispose of it. I suppose that is what it is given to the company for, and the second subsection simply provides that instead of selling it for cash it may induce a contractor to build a road and take the land grant and, perhaps, cash or other consideration in payment. Now what objection can there be to that. It may be that there is objection to the policy of giving land subsidies at all, but once the subsidy is given it is not given to be retained by the company for any particular purpose, or for any special object, but it is given to the company to be disposed of and the proceeds of it to be used in the construction of the railway.

Mr. NESBITT: Mr. Chrysler can easily imagine the case where the company getting the grant of land turned it over to a construction company, or to another corporation, and then did not go on with the construction of the work for which the land was given.

Mr. CHRYSLER, K.C.: You cannot get this subsidy—I suppose this land grant has been obtained from the Crown—I do not know whether it is the same with regard to the provinces or otherwise, but the Dominion land subsidies are not now available.

Mr. JOHNSTON, K.C.: The railway company cannot get the land grant until they have earned it.

Mr. CHRYSLER, K.C.: The Dominion land subsidies are not available until the companies have earned them. The clauses of the Act are very stringent—it is not here in the Railway Act, it does not need to be, but the Crown does not hand over the land which is given as a subsidy until the road is built by someone's money being put into it and, if it is a contractor who has agreed to take the land in payment for the construction of the road surely that is a matter between the company and the contractor.

Mr. MCMASTER, K.C.: If this section is so simple as Mr. Chrysler says it is, it is not needed in the bill at all, and it might be struck out. The land which is given to these companies as a subsidy, may have been earned by them, but the public have a right to see that it is put to the use for which it was given. There should be some regulation by statute of the right to turn over this land that has been received as a subsidy to a mere construction company upon their entering into a contract to build the road. We do not care if they have absolutely earned these lands, we maintain that they were public lands given for a specific purpose, and we want to see and we want to know, how and why they are turning them over to others. Why do the railway companies want to put in that section at all, if it is such a simple matter as Mr. Chrysler says it is? Should not the public know what is being done with these lands, so they will not be turned over to some private individual, without any capital at all, who has entered into arrangements with the railway company to build the line, when those lands may be worth five times the value at which they are turned over.

Mr. NESBITT: The Government gives the lands to the railway.

Mr. MCMASTER, K.C.: The railway may have already taken the lands over from the Government for the purpose of constructing their lines. Large quantities of land have been given to different railroads, and those railroads still have the land; they incorporate a small company, and the railroad transfers a large amount of those lands which they have received from the Government to the smaller company in consideration of the construction of a part of that line; It may not be a bona fide transaction, it may be that they are throwing over a large block of land which has increased greatly in value to the smaller company in which the contractors are largely interested.

Mr. CARVELL: Why should they not have the right to do so if they have earned the land?

Mr. MCMASTER, K.C.: Of course if the Committee looks at it that way, that it is the company's own land, but we contend that the land was originally given to the road by the Government for the purposes of the company and that the country is interested in seeing that the land is properly used and disposed of.

Mr. CARVELL: Supposing you sell the land to me, would you follow it up after that?

Mr. MCMASTER, K.C.: We are not seeking to interfere with any cash transaction, but we only want to control the disposition of these lands to parties entering into construction contracts, lands that rightly belong to the company. We want to see that the shareholders should have the benefit of the increase in the value of those lands that are turned over to a construction company in which somebody in the railway company is also interested.

Mr. CARVEL: Is it not a fact that that would be interfering with the right of private companies to deal with their property? It is not the policy of parliament to interfere between the shareholder and the company.

Mr. MCMASTER, K.C.: It is also a question for the public insofar as it affects the situation in respect of rates, because if the railroad land is sold at the proper figures and the proceeds go into the treasury of the company it can carry traffic perhaps at a different figure than it could if the land were sold or given away to some of its friends at a lower price; it is a question of policy.

Mr. CHRYSLER, K.C.: Perhaps it will simplify the matter, if you direct attention to subsection 2. As I understand it is not the conveyance of lands that have been earned and patented to the company which it is desired to control. I do not know whether that is what Mr. McMaster has in his mind, but that is not what he has been referring to. This subsection 2 does not refer to that at all. This subsection refers to the company that has obtained a subsidy on the same terms, and without having earned the land deals with another company to convey to it the right to earn the land. This subsection reads:—

> 2. Such company may convey such right or interest, or any part thereof, to any other company which has entered into any undertaking for the construction or operation, in whole or in part, of the railway in respect of which such land or interest in land is given, and thereafter such other companies shall have in respect of such land or interest in land, the same authority as that of the company which has so conveyed it.

Mr. NESBITT: That seems just and right.

Mr. MACDONELL: Why should this be in the Act at all? Why not leave the company in the same position as any other company or individual who owns land?

Mr. JOHNSTON, K.C.: Otherwise it would be contended that the company could not assign the right to dispose of the land. This is to make it clear that the company can assign its rights. It may be contended that the railway has not got the land until it earns it.

Mr. MACDONELL: That is a proper matter for agreement between the parties, that is the railway company and any company that the railway should deal with.

Mr. NESBITT: I move that this section stand as it is.

Mr. MACDONELL: I do not think it should stand as it is.

Mr. NESBITT: I do not see why they should not have the right to transfer the land grant to some other company. If the original company has not earned it, it will have to be earned by the company to which the land is transferred.

Mr. MACDONELL: I leave that to the law, in any such case as Mr. McMaster has indicated or as occurs to the mind of any of us. I think it should be left in the same position as that of any other company having interest in lands. I think the clause should be struck out.

Hon. Mr. LEMIEUX: Either a company earns or does not earn land grants. If it earns the land grants the company can dispose of those lands as it pleases. If it does not earn the land grants, or the cash subsidy, the Government intervenes.

Mr. MACDONELL: There are many things that occur. For instance, supposing a railway company is dealing with a province, and that province makes them a grant of land, and there are terms and conditions regarding these lands. The province desires to safeguard itself that the proceeds of these lands are used properly and for the purposes of the railway. We come along with legislation which over-rides that agreement—because this Act prevails—and we say that the company can hand over its lands to anybody mentioned in this subsection. That may be in direct contravention of the terms of the provincial agreement.

Mr. NESBITT: The subsidy is given under certain conditions, and they have to live up to the conditions.

Mr. CARVELL: The provincial government will not give patent until the conditions have been lived up to.

Mr. SINCLAIR: Every dollar of the proceeds should go to the work. The public have given it for railway purpose. If we can prevent its going to private people we should do it.

Mr. JOHNSTON, K.C.: No company gets its land until it earns it by doing the work.

Mr. SINCLAIR: Is it not important that they should be prevented from disposing of it to people who will not use it for railway purposes?

Mr. CARVELL: That is not the object of subsection 2.

Mr. MACDONELL: Subsection 1 is powerful, and it is there.

Mr. CARVELL: Subsection 2 only provides that a company, having received a land grant, can make a contract with somebody else to do its work, and earn these lands.

Mr. MACDONELL: I think the matter should be left to the approval of the Railway Board, or the section cut out altogether.

Mr. NESBITT: I am willing that the words "subject to the approval of the Board" should be inserted there, but I do not see any necessity for it.

The CHAIRMAN: Any objection?

Mr. CHRYSLER, K.C.: No, I think it should stand as it is. Mr. Macdonell says it was not necessary. It stood there a good many years, although I have no recollection when it was enacted. I am sure it was not put in without some request for it.

Mr. MACDONELL: A good many things have been done under this authority since it was put in, but I think it is undesirable and should not be repeated.

Mr. MACDONELL: I move that this provision be made subject to the approval of the Railway Board.

Mr. JOHNSTON, K.C.: You do not propose to qualify the first section? Supposing the company has actually earned the land?

Mr. MACDONELL: No, I do not.

Mr. CARVELL: If they have earned the land and own it, you do not object?

Mr. MACDONELL: No.

The CHAIRMAN: That would cover your objection, if it were made subject to the approval of the Board.

Mr. NESBITT: But that has nothing to do with it. This subsection only gives the right to somebody who has got it. To give the right to somebody who will carry out the agreement. I do not see any sense in it.

The CHAIRMAN: The members are here and have heard the discussion fully, and I do not suppose any group of members will hear the matter so thoroughly discussed and we may as well dispose of it.

Mr. JOHNSTON, K.C.: The committee has already passed the section.

Mr. NESBITT: Better leave it until we have a quorum and reconsider it.

Section allowed to stand.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 13-- MAY 11, 1817

(Containing representations from Mutual Fire Underwriters' Association of Ontario and from Mr. McMaster.)

OTTAWA
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1917

22266—18

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

Friday, May 11, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Hartt, Green, Lapointe (Kamouraska), Lemieux, Macdonald, Macdonell, Murphy, Nesbitt, Sinclair and Weichel.

The Committee resumed consideration of the Bill.

Section 387.—"Fires from locomotives" being read, representatives from the Mutual Fire Underwriters' Association of Ontario were heard thereon.

Section 313 being further reconsidered, Mr. A. C. McMaster, on behalf of the Toronto Board of Trade, was again heard thereon, and also on some other sections.

At one o'clock the Committee adjourned until Tuesday next, 15th instant, at 11 o'clock a.m.

22266—18½

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
May 11, 1917.

The Committee met at 11 o'clock.

The CHAIRMAN: We have with us this morning the representative of the Mutual Insurance Companies, Mr. V. G. Chisholm, and I will read the correspondence in connection with section 387 in which the companies are interested. The first communication is a letter from Mr. Richard Blain, M.P., to Hon. F. Cochrane, Minister of Railways, Ottawa, which reads as follows:

BRAMPTON, Ontario, April 14, 1917.

Hon. Mr. COCHRANE,
Minister of Railways,
Ottawa, Ontario.

Dear Mr. COCHRANE,—Please find enclosed a copy of Resolution sent by Peel Farmers Insurance Co. No doubt such resolution has reached you before this. I regret very much not being able to attend the special meeting, and shall not be in Ottawa until the opening of the House and therefore thought it best to place this resolution in your hands.

Hoping you are keeping well, and with best wishes, I remain,

Yours very truly,

RICHARD BLAIN.

The resolution referred to in this letter reads as follows:

Re Amendment to Railway Act.

Resolution passed at the Annual Convention of *The Mutual Fire Underwriters' Association of Ontario,* held in Toronto, February 22 and 23, 1916:

Moved by James Cochrane, seconded by James McEwing "That this Mutual Fire Underwriters' Association respectfully request W. S. Middleboro, M.P., for North Grey, to take the first opportunity to bring before the Railway Committee of the House of Commons the desirability in the interests of the farmers of Canada, that the amendment to the Railway Act 1-2 George 5, Chap. 22, sec. 10, passed and assented to on the 19th of May, 1911, be repealed and the Act restored as it was before the said amendment was passed—that the Secretary of this Association send a copy of this motion to Mr. Middleboro at the earliest possible moment, and a letter setting forth reasons why this action is sought.

Then we have a presentation from Mr. Chisholm, who is the secretary of the Glengarry Fire Insurance Company, which he thinks should be placed on the record. This is addressed to myself and reads as follows:

Re Insurance.

Mr. J. E. ARMSTRONG,
Chairman of the Railway Committee,
House of Commons,
Ottawa, Ontario.

DEAR SIR,—I appear on behalf of "The Mutual Fire Underwriters' Association of Ontario, as well as for, The Glengarry Farmers' Mutual Fire Ins. Company.

Our complaint is, an amendment to the Railway Act in 1911, which affects adversely the interests of Insurance Companies.

1911 10. Section 10 of chap. 32 of the Statutes of 1909 and section 10 of chap. 50 of the Statutes of 1910 are repealed and the following is enacted as section 298, of the principal Act. Section 298, see page 214 Ry. Act.

Following is the amendment:

298. Whenever damage is caused to any property by a fire started by any railway locomotive, the company making use of such locomotive, whether guilty of negligence or not, shall be liable for such damage, and may be sued for the recovery of the amount of such damage in any court of competent jurisdiction: Provided that if it be shown that the company has used modern and efficient appliances and has not otherwise been guilty of any negligence, the total amount of compensation recoverable from the company under this section in respect of any one or more claims for damage from fire or fires started by the same locomotive and upon the same occasion, shall not exceed five thousand dollars; provided also that if there is any insurance existing on the property destroyed or damaged the total amount of damages sustained by any claimant in respect of the destruction or damage of such property shall, for the purposes of this subsection, be reduced by the amount accepted or recovered by or for the benefit of such claimant in respect of such insurance. *No action shall lie against the company by reason of anything in any policy of insurance or by reason of payment of any monies thereunder.* The limitation of one year prescribed by section 306 of this Act shall run from the date of final judgment in any action brought by the assured to recover such insurance money, or in the case of settlement from the date of the receipt of such monies by the assured, as the case may be.

"2". The compensation, in case the total amount recovered therefor is less than the claims established, shall be apportioned amongst the parties who suffered the loss, as the court or judge may determine.

"3". The company shall have an insurable interest in all property upon or along its route, for which it may be held liable to compensate the owners for loss or damage by fire caused by a railway locomotive, and may procure insurance thereon in its own behalf.

"4". The Board may order upon such terms and conditions as it deems expedient, that fire guards be established and maintained by the company along the route of its railway and upon any lands of His Majesty or of any person lying along such route, and subject to the terms and conditions of any such order, the company may at all times enter into and upon any such lands for the purpose of establishing and maintaining such fire guards thereon and freeing from dead or dry grass, weeds and other unnecessary inflammable matter the land between such fire guards and the line of railway.

We humbly request that section 298 as amended in 1911 be repealed, and that section 298 be restored as prior to this amendment, namely as 6-7 E. VII, Chap. 37, entitled "An Act respecting Railways".

The clause which affects insurance companies especially, is the one which provides "that where the property has been destroyed or damaged by fire caused by a railway locomotive the loss for the purposes of the Act be reduced, by the amount accepted or received, by or for the benefit of the owner in respect of his insurance. In this way the railway company receives the benefit of an insurance that may be upon the property without in any way contributing towards the cost of such insurance. Our objection is that the principle is wrong. No insurance company would have

any desire for obtaining premiums for providing insurance for which it would not hold itself responsible, but on the other hand the railway company is held to be entitled to the benefit of an insurance for which it does not pay. The reason of this is that the railway is made liable for something which is not its fault. It is a unique liability and there is no reason why if the railway company is negligent. The result naturally will be to take away the feeling of responsibility which the company should have and lessen the care that it should justly exercise to prevent fires along its rights of way, and by this the railway loss would naturally be increased and the prospects of profitable business for the insurance company correspondingly reduced.

Copy resolution passed at convention of Mutual Underwriters at Toronto 25th Feb. 1914.

It was moved by James McEwing seconded by Col. T. R. Mayberry. That whereas this Association is satisfied from information given in a paper received by Mr. V. G. Chisholm, Secretary of the Glengarry Farmers Mutual Fire Insurance Company at its annual meeting held in Toronto on the 24th and 25th of February, 1914, that the interests of the insurance companies are very seriously prejudiced by the operation of clause "298" of the Railway Act of Canada, which deals with liability of Railway Companies for property destroyed by fire originating from the operation of railways; and whereas if such property is insured in an insurance company, neither the individual owner of such property nor the insurance company, carrying the risk have a recourse against the railway company for such loss as may have been covered by the policy of the insurance company; and whereas the numerous railways now traversing the country establishes an ever increasing menace to property contiguous to lines of railway transportation. Be it therefore resolved that the Dominion Minister of Railways be petitioned to so amend the Act as to place property owners and insurance companies in the same position towards railway companies as to fire losses, as they occupied prior to the passing of clause No. 298 of the Railway Act of Canada.

And that a copy of this resolution be properly attested by the president and secretary of this Association and forwarded to the Dominion Minister of Railways. (Carried.)

At a session of the above Association held at Toronto 28th February, 1917—

It was verbally agreed that the Secretary of each Mutual Farmers' Company would get in touch with their representative in the Dominion House, and request him to use whatever means at his disposal to bring pressure on the Government to enact legislation along the lines suggested.

The Secretary of the Association was instructed to correspond with the Canadian Council of Agriculture and the Dominion Underwriters Association for co-operation in seeking the above alterations to the Railway Act.

1. We submit that from and including the word "Provided" in the 10th line of section 387, page 160, to the end of said section should be struck out.

2. That the whole of subsection 2 should be struck out.

V. G. CHISHOLM.

The CHAIRMAN: Mr. Chisholm is here and wishes to be heard on behalf of the Mutual Fire Insurance Company, is it the wish of the Committee that he be heard.

Agreed to.

Mr. V. G. CHISHOLM: Mr. Chairman and gentlemen of the Committee, I am here on behalf of the Mutual Fire Underwriters' Association of Ontario. This Association is a convention of delegates appointed by the different Fire Insurance Compa-

nies in the Province, numbering about 70. In reference to section 387 of the present Bill the last nine lines of the said section, and the whole of subsection 2, are the part complained of as adversely affecting Insurance Companies. The experience which we have had along those lines in 1913 may serve to illustrate our grievance. In that year Mr. McDermid suffered the loss of his outbuildings and contents on which he had a policy of insurance for $800. We paid the amount called for by the policy, the cause of the loss being traceable to a locomotive. A couple of weeks afterwards Mrs. A. D. McRae had a similar loss of her barns, the origin of which could be traced to a similar cause. We also paid the amount of her insurance, which was $1,300. Now, our Board of Directors felt that the Railway Company were responsible to us for the insurance money. I was directed to counsult a solicitor in the matter. I laid the case before our solicitor on the 1st November, 1913, and this is his reply to me: (reads).

CORNWALL, Ont., Nov. 1, 1913.

V. G. CHISHOLM, Esq.,
Lochiel P.O., Ont.

DEAR SIR,—In response to your verbal enquiry to-day we have considered the position of the Glengarry Farmers' Mutual Insurance Company in reference to the policies held by D. J. McDermid and estate of the late Alexander D. McRae.

If it were not for recent amendment of the Railway Act your insurance company would be entitled to the same protection and the same remedy against the railway company that the owner of the property is, with the effect that the railway company would have to pay the entire loss and the insurance Company would not be bound to pay any part of it; but by an amendment of the Railway Act, 1, 2, George V, Chapter 22, Section 10, passed and assented to on the 29th May, 1911, the rights of the insurance company are taken away and the railway company is exonerated from paying any part of the damage which is covered by the policy of insurance.

We send you herewith a copy of the amendment passed in 1911. We have no doubt whatever that this amendment does great injustice to insurance companies. It practically takes away the rights which they formerly enjoyed and it is now in order for the insurance companies to attempt by a combined effort to get this Statute repealed.

Yours truly,

(Sgd.) MACLENNAN & CLINE.

As we understand it, before the amendment to the Railway Act in 1911, the principle of fire insurance as it applied to losses covered by fire, the origin of which could be traced to a railway company, was set out in a long series of decisions in Canadian and other courts. By these decisions the law was thoroughly established that if the damage was caused by the railway company under such circumstances as would render it liable to an action by the owner of the property, then upon the payment to the owner of the full amount of his loss by the insurance company, the latter was entitled to stand in his shoes and bring an action against the railway company in his name, or in their own name, to recover the amount of the loss. Under this amendment, made in the year 1911, the railway company is declared to have an insurable interest in all property along its line which is liable to be destroyed by fire from its locomotives and is thus authorized to insure any such property for its own benefit. To this part of the amendment, no objection can be reasonably taken, as such insurance would be beneficial to all parties interested. The clause, however, which does affect insurance companies especially, is the one which provides that where the property has been damaged or destroyed by a fire caused by a railway company, the loss shall for the purposes of the act be reduced by the amount accepted

or recovered by or for the benefit of the owner in respect of his insurance. In this way the railway company receives the benefit of an insurance that may be upon the property without in any way contributing towards the cost of such insurance.

The objection to this is that the principle is wrong. No insurance company would have any desire to obtain a revenue for providing insurance for which it did not hold itself responsible, but, on the other hand, the railway is held to be entitled to the benefit of insurance for which it does not pay. The result naturally will be to take away the feeling of responsibility which the company should have and lessen the care that it should justly exercise to prevent fires along and on its right of way, and by this the risk of loss would naturally be increased and the prospect of profitable business for the insurance company correspondingly reduced.

No demand, so far as is practically known, was ever made by anyone excepting the railway companies themselves, for this amendment to the law, and no one else will benefit thereby. The insurance companies will certainly lose (if their policies along the railway track are not cancelled) and in addition, the owners of properties interested are almost sure also to suffer, as, in the state of the law before this amendment, they were entitled to receive from the insurance company the payment of the full amount of their insurance, and, only if this was equal to the full amount of the loss, or only if the full amount of the loss had been paid, was the insurance company entitled to look to the railway company for its proportion and in this way any owner of property who safeguarded it by a proper policy of insurance, was certain in case of fire caused by actionable negligence on the part of the railway company that he would suffer no loss whatever." I do not think I will take up any more time in connection with these resolutions, as they have been already fully set forth.

The CHAIRMAN: Does any member of the committee wish to question Mr. Chisholm?

Mr. NESBITT: In its present form the bill provides that, "Where the company has used modern and efficient appliances and has not otherwise been guilty of negligence, the total amount of damages sustained by any claimant in respect of the destruction or damage of such property shall, for the purposes of this section, be reduced by the amount received or recoverable by or for the benefit of such claimant in respect of such insurance." How does that affect you?

Mr. CHISHOLM: I understand the new clause is practically the same as before.

Mr. JOHNSTON, K.C.: Mr. Nesbitt points out that there has been a serious alteration in the bill as proposed in favour of the Insurance Companies. As Mr. Price has drawn the Bill, the insurance company can only claim the benefit of the insurance in reduction of their liability where the railway companies have used modern and efficient appliances, and have not otherwise been guilty of negligence. If the company has been guilty of negligence it cannot claim the benefit of the insurance.

Mr. WEICHEL: (to Mr. Lawrence) May I ask if there are any practical spark arresters in use at the present time by railways that tend seriously to interfere with the production of steam?

Mr. LAWRENCE: I am unable to answer that question. The Board of Railway Commissioners has made stringent regulations regarding the equipment of locomotives with fire extinguishers such as netting and the companies have put in a fire mesh in the netting in use. That is to say there is now a smaller hole in the wire netting so that there is not so much chance for fire or sparks to get through. At certain seasons of the year the engines must be so equipped. That is provided for by the Board of Railway Commissioners. I think the provision now made will eliminate a lot of the fires that have occurred in the past from this cause. At present I believe it would be almost impossible, unless something goes wrong, for a spark to escape through the mesh in that netting large enough to kindle a fire.

Mr. HARTT: The railway companies, then, live up to the order?

Mr. LAWRENCE: Yes, as far as I know. If there are any that do not do so they would have to pay damages. As far as my personal experience goes of the railway company that I worked for, I have never known a fire started since their locomotives have been so equipped.

Mr. WEICHEL: Is there any difference in the coal used?

Mr. LAWRENCE: Not in the coal used in this part of the country.

Mr. SINCLAIR: Some accidents are likely to happen.

Mr. LAWRENCE: Very seldom, I think.

Mr. SINCLAIR: We have provided for cases where accidents do happen.

Mr. LAWRENCE: Yes. There may be cases where locomotives have started on a trip and the netting has broken in the front end; there may be a hole in it, and a draft underneath through which a large spark could escape. But there are men detailed to examine these appliances, who report on every trip, and the engine is not allowed to go out unless the netting is all right.

Mr. WEICHEL: Did this equipment not interfere with the production of steam in any way?

Mr. LAWRENCE: It did a little at first. For instance, the Railway Companies adopted a sort of arrangement to go in near the front end of the boiler—or the smoke box as we call it, in front of the boiler—to clear the netting if it gets stopped up. The netting is liable to get stopped up and there was a little difficulty in that regard in the first pace after the netting had been put in. I think, however, that has been overcome.

Mr. WEICHEL: Why not put in a practical spark arrester?

The CHAIRMAN: Mr. Smith, M.P., is here to be heard. If you have nothing further to ask Mr. Chisholm, I will call upon Mr. Smith to address the committee.

Mr. SMITH, M.P.: I do not know that I am here particularly to be heard. I am interested in one of these Mutual Fire Insurance Companies, and would like to emphasize the statements made here this morning by Mr. Chisholm. In connection with the question put by Mr. Weichel, our experience is that whilst locomotives may be properly fitted, perhaps the fire occurs twenty or thirty miles away from the head office, and it may be days before we know anything of it.

Then it is a practical impossibility to trace anything about the fire. That is our experience. I may say that three years ago we had a case similar to the one spoken of by Mr. Chisholm. It was some four or five days before the company was notified of the fire. It was started on the track, went under the fence and ran about 10 rods to the barn, and the barn was soon in flames. The C.P.R. admitted they should pay for that damage at the outset, but I suppose they were a good deal like the company I have the honour to be connected with; perhaps they had overlooked the law. I can assure you, however, they paid good attention to it before they handed over the money, with the result, of course, that we had to pay the insurance and got nothing out of it. It seems to me that while the railway company has many rights, and it is proper that we should accord those rights to them, at the same time the insurance companies have a good many rights also. The result will be if those clauses are passed as they appear in the bill before us, Mutual Insurance Companies will before long absolutely refuse to take a risk upon buildings contiguous to a railway line, and that, it appears to me, would be a most unfortunate thing. These men have a great many rights, and it would be no source of pleasure, it would simply be a matter of business with the companies, to refuse these risks.

This is about all I have to say, except that our experience is very similar to that of Mr. Chisholm, and I dare say other mutual insurance companies have the same experience.

Mr. SINCLAIR: I would like to get some information on this matter. As I understand this section, the railway company is liable in any case to pay $5,000, whether they are negligent or not.

Mr. JOHNSTON, K.C.: That is right.

Mr. SINCLAIR: What is the object of insuring the property when the railway company will pay? Why should the mutual insurance companies insure it at all, when they are sure of getting the $5,000, unless the property is worth more, and they desire to insure to cover the excess.

Hon. Mr. MURPHY: The answer to that, I presume, would be that when the insurance is taken they do not know whether the property is going to be destroyed by a spark from a locomotive or in some other way.

Mr. SMITH: They are insuring it for other risks than locomotives. If it is burned by a locomotive, that is one thing, but it may be burned in half a dozen other ways.

Mr. NESBITT: You can put a clause in your policy to insure against all losses except losses incurred by fire from sparks from locomotives.

Mr. SMITH: I am afraid not.

Mr. NESBITT: Oh, yes.

Mr. SINCLAIR: It is a common thing to except certain risks.

Mr. SMITH: I think the mutual companies have decided that they cannot.

Mr. NESBITT: I cannot help that. I know something about insurance myself. I know they can put in an exception for anything. It is a pure matter of agreement between the party insuring and the insurance company. They can put in anything they like.

Mr. SMITH: We cannot insure automobiles.

Mr. NESBITT: You can if you take out a license to do it.

Mr. SMITH: A mutual company cannot.

Mr. NESBITT: If you take out a license you can.

Mr. SINCLAIR: It is the simplest thing in the world. Some policies cover accidents from lightning and others do not. It is a common thing to exclude certain risks from certain policies, and there is no trouble at all about making a contract like that, and it strikes me that would cover the case, and if the fire occurred from any other cause the insurance company would pay. If it was caused by sparks from a locomotive, the railway company would pay.

Mr. SMITH: I do not think the mutual companies would complain very much if you would make it absolutely clear to them that they could insert a clause of that kind in their policy.

Mr. NESBITT: Nearly all the mutual companies are under the provincial Act. Mr. Smith says that insurance companies would cut off these risks. That seems to me to be an extreme view. In our section of the country where we have a great many railways, I cannot remember a fire from a railway, excepting a crop fire. I cannot remember a building fire from a locomotive in the last ten years. The insurance companies are in the business to insure against fires, and if they do not have fires occasionally they would not get any insurance. As a matter of fact, that would be an extreme view, I should think, for the mutual companies to take, and I know the big corporations would not take such a view, because they are perfectly willing to insure properties right alongside the railway.

Mr. SMITH: But consider the rate they charge.

Mr. NESBITT: Not so much more.

Mr. SMITH: About double.

Mr. NESBITT: I represent both mutual and stock companies, and I may say that it is not very much more. The insurance companies are bound to run the risk. That is what they are in the business for.

Mr. SMITH: No doubt that is part of their business.

The CHAIRMAN: Mr. Chrysler has asked me to have this clause stand as he was unable to be present this morning, and after the representatives of the insurance companies present their case perhaps we had better let it stand and proceed with the other sections.

Mr. NESBITT: I would like to know from Mr. Chisholm what he thinks about the few lines I read to him. We must have railways as well as insurance companies, and if the railway companies use all proper precautions, is it not fair that they should have the right that is given them in this section?

Mr. CHISHOLM: I suppose it is.

Mr. NESBITT: I agree with Mr. Smith very much in his contention that it is almost impossible to prove that they did use these precautions. Mr. Lawrence says that it is very seldom an engine is allowed to go out of the yards until the smoke-stack is examined. I do not know anything about that.

Mr. JOHNSTON, K.C.: The onus is on the railway now under the law to show it has been examined. The railway company is made negligently liable, so that in order to escape liability they must show that the engine has been examined. There is no doubt about the law on that point.

Mr. SMITH: That is one of the difficulties. We do not want to go to law. A great many of the insurance companies cannot fight against the big railway corporations.

Mr. NESBITT: I have found it altogether different. The small corporation generally gets the best of it with the jury.

Mr. SMITH: The railway company can fight you to the bitter end.

Mr. NESBITT: The part of the clause which strikes me as the worst feature of it is the paragraph which limits the amount to $5,000. I do not see why we should make that limit. I think they should pay the loss.

Mr. WEICHEL: Mr. Nesbitt will know that there are a great many insurance companies in my home town of Waterloo and I would like to get a little more information with regard to this matter. I would therefore ask that it be brought up at a later date.

Mr. NESBITT: We have not reached the section this morning. We are just hearing these gentlemen.

The CHAIRMAN: You have presented your argument, Mr. Chisholm.

Mr. CHISHOLM: Yes.

Section allowed to stand.

On section 350—Carrying His Majesty's Mails.

The CHAIRMAN: I have a letter from Brigadier-General Biggar, Director General of Supplies and Transport, which reads as follows:

OTTAWA, CANADA,
April 30, 1917.

The Secretary to the Parliamentary Committee,
Relating to Railway Act,
House of Commons, Ottawa.

DEAR SIR,—Would you be kind enough to let me know, either by note or telephone, about what time clause 350 will be under consideration, as I am

anxious to be present and suggest an amendment. If you will kindly do so I shall be much obliged.

Yours truly,

J. LYONS BIGGER, Brig.-General,
Director General of Supplies and Transport.

General Bigger is present now. Does the Committee wish to hear him?

Brig.-General BIGGER: I want to call attention to part of that section which is now obsolete, which reads as follows:

> "His Majesty's service shall, at all times, when required by the Postmaster General of Canada, the Commander of the Forces, or any person having the superintendence".

In the old days we had a Commander of the Forces, when the original Act was drawn, but we have not one now. The forces are managed by what is called the Militia Council, and I suggest that instead of the words "Commander of Forces", we insert the words to make it read "The Minister of Militia, or the Deputy Minister of Militia".

Amendment adopted.

On section 313—Traffic, tolls and tariff.

Mr. JOHNSTON, K.C.: I have a note in my copy of the Act that in the 3rd line of subsection 8 of section 313 the Chief Commissioner suggested that the words "or make an order in any case where it sees fit" be struck out. Have you a note to that effect, Mr. Blair?

Mr. BLAIR: Yes.

Mr. NESBITT: What are those words in there for?

Mr. JOHNSTON, K.C.: I do not know.

Mr. NESBITT: Supposing they were left out, what would be the effect?

Mr. JOHNSTON, K.C.: That would mean the Board would have to make orders of general application.

Mr. NESBITT: Does Mr. Price the draftsman say why those words were put in?

Mr. JOHSNTON, K.C.: I do not think he makes any comment.

Mr. NESBITT: It seems to me unnecessary.

Mr. SINCLAIR: Is there a distinction between generally and a particular case? It says, "The Board may make regulations applying generally".

Mr. JOHNSTON, K.C.: I observe that Mr. Price has a comment which reads as follows:

> "In subsection 8, the words "or make any order in any case where it sees fit" have been inserted to make clear the Board may deal with specific cases."

Sir Henry Drayton is evidently of opinion that these words should be of general application.

Mr. NESBITT: I rather incline to Mr. Price's view.

Mr. SINCLAIR: I think the section is all right.

Mr. JOHNSTON, K.C. I suppose Sir Henry's idea is to cover the matter broadly by general regulation, and prevent probably a number of petty applications.

Mr. NESBITT: Yes, I can appreciate that, but there are many things that turn up in railway transportation that are special cases, that will not occur perhaps once in a year.

Section adopted.

Mr. MCMASTER, K.C.: We discussed a proposed subsection "E" of section 313 yesterday, and I want to hand in a clause to the Committee. I have prepared the clause and now submit it.

Mr. JOHNSTON, K.C.: Let us get your clause and have Mr. Chrysler look at it.

Mr. MCMASTER, K.C.: The proposed subsection "E" will read as follows:

> "Furnish such other service incidental to transportation or to the business of a carrier, or as may be customery or usual in connection with the business of a carrier as the Board may from time to time order, and shall maintain and continue all such services as are now established, unless discontinued by order of the Board."

Just at present we have a lot of incidental privileges which may or may not be under any other definition in the Act. Any incidental privileges that we have, which it has been customary and usual for us to have, and which we are now enjoying, should not be taken away from us, in our opinion, unless the Board so decrees.

Mr. JOHNSTON, K.C.: Are you willing to limit that to what you now have and what is now usual?

Mr. MCMASTER, K.C.: Yes, I am not so strong on the first part of the clause as on the last, if the Committee thinks it should be put in that shape, but we do not want to have any privileges withdrawn on any technical suggestion that it is not something we now have. If it is something we now have it should not be taken from us unless the Board says so, whether it is traffic or accommodation or falls under any of those expressions. I will illustrate it by a number of things we now enjoy. For instance, the right to mill in transit if it becomes necessary, and the right to stop, the peak load, and a number of things over which discussion might arise rightly or wrongly as to whether they were included in any of these other clauses. If that has been the customary practice, if we have enjoyed that privilege, we do not want it taken away unless the Board says so.

Mr. JOHNSTON, K.C.: Could we cut it down to an irreducable minimum and make it read as follows:

> "Furnish such other service as is customary or usual in connection with the business of a carrier and as the Board may from time to time order, and shall maintain and continue all such services as are now established unless discontinued by order of the Board."

That would be striking out the words "incidental to transportation or to the business of a carrier.

Mr. MCMASTER, K.C.: I have no objection to that.

Mr. NESBITT: I do not like the word "no."

Mr. MCMASTER, K.C.: Leave it out.

Mr. JOHNSTON, K.C.: Simply leave it "as is customary." I think you will have a better chance if you left out the words "incidental to transportation or to the business of a carrier."

Mr. MCMASTER, K.C.: Yes.

Mr. SINCLAIR: Would this be a general law throughout Canada?

Mr. MCMASTER, K.C.: Yes.

Mr. SINCLAIR: Would it make any difference if the custom in one province were different from the custom in another Would it be clear what is meant?

Mr. MCMASTER, K.C.: There are businesses which are only carried on in the east, and some only in the west. Some of the customs would not be of universal application, because the business would not be carried on.

Mr. SINCLAIR: If it were customary in Nova Scotia to carry lumber and allow it to be taken off the train for the purpose of dressing—

Mr. MCMASTER, K.C.: That is one of the matters we have in view.

Mr. SINCLAIR: Would it apply to a place where it was not customary?

Mr. MCMASTER, K.C.: I think not, but it is customary in Ontario, I think.

The CHAIRMAN: It is understood the section stands.

Mr. MCMASTER, K.C.: At any rate the Board can take away the right if the custom becomes antiquated.

Mr. JOHNSTON, K.C.: Would it be possible to pass the remainder of the section and allow this subsection to stand?

Mr. NESBITT: Yes.

The CHAIRMAN: Then the remainder of the section is passed and this subsection stands.

Mr. JOHNSTON, K.C.: Sir Henry Drayton suggested that the words "or may make an order in any case where it sees fit."

Section adopted; subsection stands.

On section 315,—Equality as to tolls and facilities.

Mr. JOHNSTON, K.C.: In the former Act it read "all such tolls." The word "such" is not necessary. The words "or conveyances" are added in the first subsection of this section, and the words "line or route" take the place of "portion of the line of railway."

Then subsection 3 formerly read "the tolls for larger quantities, greater numbers or longer distances." The word "carload" did not appear in the former Act.

Mr. NESBITT: It is not customary to give a lower rate for less than carload lots.

Mr. JOHNSTON, K.C.: No.

Mr. NESBITT: The word "quantities" is not as specific as carload.

Section adopted.

On section 316,—Pooling prohibited.

Mr. JOHNSTON, K.C.: Mr. McMaster objected to this section yesterday.

Mr. MCMASTER, K.C.: I have a copy of the Interstate Commerce Act and what is aimed at there and what we wanted to conform to will be found in section 5 of that Act, which reads as follows:

> "That it shall be unlawful for any common carrier, subject to the provisions of this Act, to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof, and in any case of any agreement for the pooling of freights as aforesaid to the date of its continuance shall be deemed a separate offence."

Mr. NESBITT: That is exactly what I told you yesterday. It would be pooling, that is the offence, and then dividing up the proceeds. I made some inquiries as to

what had been aimed at in the American Act, and I found they often agreed in connection with the shipments of large shippers, that there would be no competition between the roads for it, but that every one of them would take the shipments they chose to give them and pool those. Therefore the shipper had no competition and no advantage from the fact that there was more than one road. The American Act has made it impossible that that kind of thing could be done, and our Act says, "Unless the Railway Board permits it". Why should it ever permit it?

The CHAIRMAN: Is it likely to permit it?

Mr. MCMASTER, K.C.: I should think not.

Mr. PELTIER: Under the tariff, subject to the approval of the Board, could there be any profitable pooling?

Mr. MCMASTER, K.C.: It might be we would be losing facilities. It might not be a question of charging us a higher rate, but we would not be getting perhaps the same prompt service or the same facilities. Where they were getting half of our business any way there would be no object in carrying our goods promptly or facilitating the carriage of our goods in any respect.

Mr. NESBITT: The pooling of rates would be a very bad thing, but I cannot agree with Mr. McMaster that it would not be sufficient to leave the control in the hands of the Board. I cannot imagine the Board allowing pooling, as I understand it.

Mr. MCMASTER, K.C.: I don't think they ever would.

Mr. SINCLAIR: What would happen if that were struck out, Mr. Johnston?

Mr. JOHNSTON, K.C.: Mr. McMaster does not want it struck out.

Mr. MCMASTER, K.C.: I want to strike out the words, "without leave thereof having been obtained from the Board", so that there shall be an absolute prohibition as in the Interstate Commerce Act.

Mr. SINCLAIR: If you struck out those words what would happen, or who would be injured?

Mr. NESBITT: And who would enforce the Act if the Railway Companies did engage in pooling?

Mr. JOHNSTON, K.C.: I do not know whether the Railway Companies want the words left in. There must be some reason for it, because the Committee will recollect that Mr. Chrysler said yesterday that he wanted to speak on the question. I would like to point out to Mr. McMaster these two safeguards which are provided in the Act: First, the Company is prohibited from making any pooling arrangements without leave therefor having been obtained from the Board. Next, it is also prohibited from making any pooling arrangements except in accordance with the provisions of this Act.

Mr. MCMASTER, K.C.: That is so.

Mr. GREEN: I think the section is all right as it stands.

The CHAIRMAN: Do not the provisions referred to by Mr. Johnston cover your objections, Mr. McMaster?

Mr. MCMASTER, K.C.: I suppose we can depend upon the Railway Board not giving the Railway Companies any such right. I don't think the Board ever will do so.

Mr. JOHNSTON, K.C.: And then the Act itself does not seem to give them the right.

Mr. MCMASTER, K.C.: The Act seems to be prohibitory. Of course the Board would never give Railway Companies such a right, or contribute towards their getting it.

The CHAIRMAN: Is it the wish of the Committee that the section stand as it is?

Section adopted.

On section 332,—Competitive tariffs.

Mr. JOHNSTON, K.C.: Two lines have been added to this section, "or may" (that is the Board) "in any case make a special order or direction allowing any such tariff to go into effect as the Board shall appoint".

Mr. SINCLAIR: Do all these tariff sections, taken together, mean that companies cannot cut rates without the leave of the Board?

Mr. JOHNSTON, K.C.: Railway Companies cannot do that, it is expressly prohibited. That constitutes discrimination and is expressly prohibited by a section which we have passed.

Hon. Mr. LEMIEUX: Discrimination against whom?

Mr. NESBITT: Opponents or competitors.

Hon. Mr. LEMIEUX: That is not the object of Mr. Sinclair's question. That had reference to the fact that a Company cannot reduce its tariff in favour of the public without the permission of the Board.

Mr. JOHNSTON, K.C.: I do not think that is what Mr. Sinclair asked.

Mr. SINCLAIR: I will tell you what I do mean: Suppose a man has 20 tons of freight at Vancouver. He goes to each transcontinental Railway Company and asks what rate he can get to Montreal, and perhaps secures a better rate from the Canadian Pacific than from the Grand Trunk Pacific, and then hands the business over to the former. Would a transaction like that be prohibited?

Mr. JOHNSTON, K.C.: That is absolutely prohibited.

Hon. Mr. LEMIEUX: Then, if a Railway Company is willing to reduce its rates, the Board can put its veto on it.

Mr. JOHNSTON, K.C.: Under Paragraph (a), subsection 3, section 317, a Railway Company is debarred from giving any undue or unreasonable preference or advantage to any particular person or company.

Mr. NESBITT: There will be no difficulty if the Companies want to reduce rates.

Mr. JOHNSTON, K.C.: That is if they do it generally.

Section adopted.

On section 333—Passenger tariffs.

Mr. MACDONELL: Does this section deal with commutation tickets in a certain defined area near large centres of population?

Mr. JOHNSTON, K.C.: No.

Mr. MACDONELL: Because the city of Toronto and other municipalities want to be heard with respect to the matter of commutation rates

The CHAIRMAN: I may say that the member for Peel (Mr. Blain) also wishes to be heard on the question. The town of Brampton, in his constituency, has been discriminated against in favour of another place whose mileage from Toronto is the same as that of Brampton.

Mr. MACDONELL: There have been complaints in regard to commutation rates from places along the lake front near Toronto. I think Mr. Blair knows something about that.

Mr. BLAIR: Section 345 deals with commutation rates.

Mr. MACDONELL: The cases I had in mind were those of people living at a distance of say 18, 20 and 25 miles from big cities like Toronto and Montreal. In summer the Railway Companies grant cheap rates to people living within a certain distance of large cities. The same advantages have not been extended to other people

similarly situated in other districts. Because of that a complaint was made and the matter was brought up in the House on one or two occasions.

Mr. BLAIR: That would come under section 345.

Section adopted.

On section 341—Filing and publication of Joint Tariffs.

Mr. JOHNSTON, K.C.: It has been suggested by Mr. MacLean that a change should be made in the sixth line of this section, to read as follows, "until such tariff is superseded by another tariff or disallowed by the Board."

Mr. NESBITT: That is superfluous, isn't it?

Mr. JOHNSTON, K.C.: The suggestion is that it should be, "Until such tariff is superseded by another tariff."

The CHAIRMAN: Shall the words "by another tariff" be added to the section?

Section amended adopted.

On section 345—Reduced rates and free transportation.

Mr. JOHNSTON, K.C.: Now, this is where you deal with commutation tickets.

Mr. MACDONELL: I would ask that this section should stand because there are a number of people who want to be heard with respect to it.

Hon. Mr. LEMIEUX: I would like to hear what Mr. Blain has to say about this section.

Mr. SINCLAIR: What is your point, Mr. Blain?

Mr. BLAIN: What I have to say refers to commutation tickets, and it is a matter in which my own town of Brampton is greatly interested. Some years ago we enjoyed commutation tickets between Brampton and Toronto, which is 21 miles distant by railway. The privilege was cancelled and our citizens on making application to the Grand Trunk to have it restored, met with refusal.

Hon. Mr. LEMIEUX: On what ground?

Mr. BLAIN: On the ground that the Company were not granting commutation tickets in that district. We found, however, that Oakville, similarly situated to ourselves, and exactly the same distance from Toronto by railway, enjoyed the commutation ticket rate. Our claim is that that constitutes discrimination against Brampton. The distance from Toronto to Brampton is exactly the same as from Toronto to Oakville, and yet Oakville enjoys commutation ticket rates which give it a great advantage over Brampton. The proposition now is that an amendment should be made to the Railway Act compelling Railway Companies to give commutation tickets within a cretain area—say 25 or thirty miles or whatever distance might be determined upon —adjacent to every city in Canada, thus placing all on the same footing.

Hon. Mr. LEMIEUX: Would you say every city?

Mr. BLAIN: Whatever the Committee may decide as being suitable. Brampton is a county town, but Oakville is not, although it has about the same population and the distance from Toronto is the same. The result of the discrimination is that people who would prefer to live in Brampton if they could get cheaper rate enabling them to go to Toronto and do business, because of the fact that commutation tickets are with-held from Brampton, locate in Oakville. They pass by Brampton and go to reside in Oakville, whence they can go every day to Toronto to do business and return.

Mr. MACDONELL: I may say that a number of other places adjacent to Toronto have made the same complaint that Mr. Blain is voicing now. There are certain other districts which may be called favoured districts, which have a commutation rate, and it was said that insofar as Montreal was concerned that the railways had applied the

system Mr. Blain mentioned and established zones of some 25 or 30 miles, giving a uniformly cheap rate within that distance.

Mr. NESBITT: Do you want to force them to give commutation rates?

Mr. MACDONELL: We want to prevent them discriminating between people living the same distance away from a large centre.

Mr. NESBITT: Railways give week-end tickets at a cheap rate from cities.

Mr. BLAIN: Everybody gets the week-end tickets.

Mr. NESBITT: From the cities, but not from the towns.

Mr. BLAIN: Oakville gets commutation tickets, but Brampton does not.

Mr. MACDONELL: I would suggest that Mr. Blain draw an appropriate clause and submit it to the committee—something that would prevent discrimination.

Section allowed to stand.

On section 353,—Passengers refusing to pay fare.

Mr. JOHNSTON, K.C.: That simply adds the words "or produce and deliver up his ticket upon request of the conductor may be expelled."

Hon. Mr. LEMIEUX: There was a train running from Rigaud to Montreal, and trouble occurred simply because the passenger did not understand the conductor. I would not insist that every conductor in our province should speak both languages, but we should enact something to protect the public against unfair interference.

Mr. NESBITT: Whether a man can speak English, French, German or any other language, if the conductor comes along and holds out his hand to the passenger anybody would understand what he requires.

Mr. SINCLAIR: I do not like the words "or near any dwelling house." It enables the conductor to put a man off the train with his baggage between stations.

Mr. NESBITT: He should put him off at the next station.

Mr. MACDONELL: A man might board a train honestly and find he had no money.

The CHAIRMAN: Is it the wish of the committee that the words "or near any dwelling house" be struck out?

Mr. W. L. SCOTT, K.C.: That means that any person who wants to ride free from one station to another can do so. Supposing the man's destination is the next station, he can board a train and they must carry him there. He rides free.

Hon. Mr. LEMIEUX: But he does not go away from that station; he meets the policeman. Mr. Scott belongs to the Humane Society, and I would ask him, does he think an old or young lady, travelling on the railway, and having honestly forgotten her purse, should be ejected between stations?

Mr. SCOTT: Do you not think the conductor can be trusted to act judiciously. This has been in the Act many years, and there have been very few complaints.

Hon. Mr. LEMIEUX: In the case Mr. Scott refers to, the party would be put in charge of a policeman at the next stop.

Mr. SINCLAIR: I do not understand the ground of your objection, because the section says that every passenger shall deliver up his ticket upon the request of the conductor. That refers to passengers who have tickets, and who want to go to the regular stopping place, but it does not refer to the passenger who wants to get off at a house between two stations.

Mr. SCOTT: That is not my point; the point I want to make is that suppose a man gets on at Station "A" to go to Station "B" and does not pay his fare. If this section is amended as proposed, that man will have reached his destination before he can be put off, and he gets what he wants; the section as it is with the proviso that he may be put off between stations near any dwelling house is a

deterrent to people who might be disposed to take advantage of the provision requiring that they must be carried on to the next station. If, on the other hand, the man knows that he will not be carried free to the next station, and that he may be put off anywhere between stations he will not be disposed to take the risk. I submit it would be a great mistake to take out the words "or near any dwelling house," as proposed; they have been in the Act for a long time and should remain.

Mr. MACDONNELL: Under the next section, 354, if the man refuses or neglects to pay his fare, he is liable to be sued for it.

Mr. PELTIER: As one who has handled many hundreds of thousands of passengers as conductor in years gone by, and having practical experience, I would like to urge that as Mr. Scott says this provision has been in the Bill for a great many years. When I was on the passenger train in '74 or '75 it was the law. If the proposed amendment is made to this section, those people desiring to get a free ride between two stations, will soon get acquainted with the fact that the law has been amended and will take advantage of it. In that way they will secure a free ride by getting on the train without money, knowing that the conductors will have to carry them to the next station. And it is not only the difficulty that arises with respect to that class of persons to which I have just referred, but if a man is really endeavoring to beat his way it is a good deal better to put him off near a house or a place where he can be looked after than it is to take him on to the next station and then get him put into jail for simply desiring, what any man would desire under the circumstances, to save himself from walking a long distance. No conductor likes, simply because a man is hard up, to turn him over to the police officer at the next station; that is the practical way in which the conductor looks at it.

Mr. SINCLAIR: Where do you find in these clauses anything that prevents the conductor doing that?

Mr. PELTIER: There is nothing in these clauses, it is the proposed amendment to which I am objecting. The clause is all right as it stands.

Mr. SINCLAIR: If the words "or near any dwelling house" are struck out what would be the result? Do you think it would prevent the conductor from giving the man over to the police officer at the next station?

M.r PELTIER: If those words are stricken out and it is provided that the conductor must take his passenger on to the next station, it will not make any difference as far as the conductor is concerned, but as far as the company is concerned it is going to create a condition of affairs that men will attempt to beat the company and get a free ride to their destination, and even if they do not get a free ride on that train as far as they want to go, they will wait at the station where they are put off for the next train going in that direction and so save their money. Now, in the case of a woman, or any person having lost their ticket, which has been spoken of here, no conductor will take action without first making inquiry. If the party claims that they have purchased their ticket and lost it, the conductor will go largely by the appearance of the lady or gentleman making the claim, and if he thinks they are respectable he will take steps to find out by wire whether their statement is true or not before putting them off. It is not only for the conductor I am saying a word, but the companies have rights also.

Mr. NESBITT: I think there is a good deal in what Mr. Scott says.

Section allowed to stand.

On section 357—Refund of tolls.

Mr JOHNSTON, K.C.: This is one of the clauses Mr. McMaster was speaking about.

Mr. McMASTER, K.C.: This is the clause which both Mr. Chrysler and myself agreed ought to be amended. I have an amendment drafted, but I have not had the opportunity of showing it to Mr. Chrysler. I have had the amendment typewritten and hand a copy to Mr. Johnston and the Chairman.

Section allowed to stand.

On section 358—Traffic by water.

Mr. McMASTER, K.C.: I turned up the Interstate Commerce law on this subject and, as far as I can see, the Interstate Commerce Commission can only deal with steamboat traffic when it is controlled by a railway.

Mr. JOHNSTON, K.C.: There is no doubt about that.

Mr. McMASTER, K.C.: So far as I can read the Act, the Interstate Commerce Commission have not those powers they were supposed to have, and I thought I would like to call the attention of the Committee to that fact. What the Interstate Commerce Commission reaches is, "Any common carrier or carriers engaged in the transportation of passengers or property all by railroad, or partly by railroad and partly by water, when both are used under common control, management or arrangement, for a continuous carriage or shipment," which is very like the first part of the Act, but is not a bit like what the second part would result in.

Mr. MACDONELL: Of what date is the provision you have read?

Mr. McMASTER, K.C.: January 1, 1917.

Mr. NESBITT: As a matter of fact, I think that is right.

Mr. McMASTER, K.C.: I have not read the whole thing, and it may be that I am wrong in my conclusion, but that is as far as I got a chance to look at it this morning.

Mr. MACDONELL: This section is an extremely important one, and it would be very desirable to have the Minister of Railways present before we dispose of it.

Section allowed to stand.

Committee adjourned until Tuesday, 15th instant.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 14--MAY 15, 1917

(Representations of R. McKenzie, on behalf of Canadian Council of Agriculture, etc., re Fences, Gates and Cattle-Guards.)

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

Tuesday, 15th May, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

PRESENT: Messieurs Armstrong (Lambton), in the chair, Blain, Carvell, Cochrane, Hartt, Green, Macdonell, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

Ordered, That Tuesday next, 22nd instant, be set apart for the consideration of section 358 of Bill No. 13, dealing with "Traffic by water".

Ordered That Wednesday next, 23rd instant, be set apart for the consideration of section 387, dealing with "Fires from locomotives".

R. McKenzie, and others, on behalf of the Canadian Council of Agriculture, were heard on sections of the Bill respecting Fences, Gates and Cattle Guards.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS, OTTAWA.

May 15th 1917.

The Commitee met at 11 a.m.

The CHAIRMAN: Representatives of the Canadian Marine Association are present to-day, and wish to have a hearing on section 358. Tuesday is the first day on which we will have an opportunity to hear them, and if it is the wish of the Committee, we will appoint that day for the consideration of the section.

Carried.

The CHAIRMAN: The Boards of Trade of Toronto and Montreal are asking to be heard also on Tuesday next, and there may be a number of other deputations too.

There are some communications dealing with cattle guard legislation which should be placed on the record. The first is a letter from R. McKenzie, Secretary of the Canadian Council of Agriculture, to Mr. E. W. Nesbitt, and is as follows:

Winnipeg, Man., April 17th 1917.

Mr. E. W. NESBITT, M.P.,
Ottawa, Ont.

Dear Sir:—I am enclosing herewith a copy of the Amendments to the Railway Act, suggested by the Canadian Council of Agriculture, also copy of a letter I have addressed to Mr. J. E. Armstrong, Chairman of the Special Committee to consider a bill to consolidate and amend the Railway Act.

This proposed Amendment is of vital importance to the stock growers of Western Canada, as the losses sustained by them through stock destroyed by the Railways each year, without receiving any compensation, is very large.

Yours truly,

CANADIAN COUNCIL AGRICULTURE,
R. McKenzie, Secretary.

Then there is a further letter from Mr. McKenzie to myself, which is as follows:—

April 13th, 1917.

Mr. J. E. ARMSTRONG, M.P.,
Ottawa.

Dear Sir: I notice by the press that you are Chairman of a Committee now engaged in consolidating the Railway Act, preparatory to having it submitted to Parliament after it meets on the 19th instant. I take the liberty of enclosing you copy of amendments to the Act which has been suggested by the Grain Growers' Associations of the West with a view to enabling farmers to more readily secure compensation for stock killed or injured on the railway tracks.

For your information I may explain that these proposed amendments were drafted by the late Chairman of the Board of Railway Commissioners, Mr. George Mabee, at the suggestion of the then Minister of Railways, Mr. George P. Graham. It was subsequently submitted by the Minister to a conference of representatives of the railways and farmer organizations,

the Hon. Clifford Sifton and the Minister of Railways, and agreed to in the form which I am submitting to you. It was afterwards submitted to the House, along with other amendments to the Railway Act, but on account of opposition from certain members of the House, in order to enable the rest of the bill to pass, the minister withdrew those particular amendments, but the rest of the bill passed and is now Chapter 22, "an Act to amend the Railway Act," assented to May, 1911.

Representatives of the farmer organizations asked the Hon. Mr. Cochrane, Minister of Railways, to have this proposed amendment put through in the session of 1913. The minister stated at that time that the Railway Act was to be consolidated shortly, and asked that the matter be deferred until the consolidation took place.

By instruction of the Canadian Journal of Agriculture, I sent a copy of these proposed amendments to the Hon. Mr. Cochrane, Minister of Railways, a few days ago. Now that consolidation of the Railway Act is under way, I hope that consideration will be given to this request of the Canadian Council of Agriculture. Almost invariably when claims are made on the railways for compensation for stock killed or injured on the track, they shield themselves under the provision of Section 294 of the Act, regardless of whether the animals got on the track through defective fences or lack of cattle guards, making the plea that the claimant has committed a prior breach of the Act by permitting his animal to be at large, whether they have been habitually so, or simply at large by accident, through the breaking of a pasture fence or gate or something of that kind. Most farmers prefer suffering the loss quietly rather than incur heavy law expenses and get nothing, trying to collect damages, through the courts, so long as the Act remains as it is.

Yours truly.

It is understood that we place these letters on file in order that members of the House who care to look over them can do so.

Hon. Mr. COCHRANE: Cannot we take them as read?

The CHAIRMAN: Here is a memorandum of amendments to the Railway Act suggested by the Canadian Council of Agriculture in order to facilitate the getting of remuneration from railway companies by farmers and others for stock killed or injured on railway tracks. (Reads):—

"Section 254 of the Railway Act is amended by repealing subsection 4 threeof, and enacting as subsections, 4 and 5, the following:—

4. The Board shall have power upon application made to it by the company, to relieve it, temporarily or otherwise, from erecting and maintaining such fences, gates and cattle guards where the railway passes through any locality in which, in the opinion of the Board, such works and structures are necessary.

5. Where the railway is being constructed through enclosed lands, it shall be the duty of the company to take effective measures to protect the crops to prevent cattle and other animals entering upon or escaping from such enclosed lands.

Section 294 and 295 are repealed and the following substituted therefor:—

295. The company shall be liable to pay the full value thereof to the owner for all horses, sheep, swine or other cattle that may be killed or injured upon the company's lands, through the operation of the railway, save where the killing is caused by reason of any person,

(a) failing to keep the gates at any farm crossing, at each side of the railway, closed when not in use; or

(b) leaving open any gate on either side of the railway provided for the use of any farm crossing, without some competent person being at or near such gate to prevent animals passing through such gate on to the railway; or

(c) turning any animal upon or within the enclosure of any railway company; or

(d) except as authorized by this Act, without the consent of the company, riding, leading or driving animals upon any railway and within the fences and guards thereof;

(e) permitting such animal or animals to stray or loiter upon any public crossing between the cattle guards on any railway."

Mr. JOHNSTON, K.C.: Subsection 4 of the proposed Act covers the point dealt with in subsection 4 of the memorandum quite clearly.

Mr. CARVELL: Absolutely, except that subsection 4 of the Bill says that the Board may, whereas subsection 4 of the memorandum says that the "Board shall". I am perfectly satisfied with the clause as it stands.

Mr. JOHNSTON, K.C.: Then subsection 5 of the Bill is a much more comprehensive one than subsection 5 in the memorandum. It goes a great deal further.

Mr. CARVELL: Yes, subsection 5 of the proposed Bill goes much further than subsection 5 of the memorandum. The subsection in the Bill practically makes it incumbent upon the railway company when it is constructing a new railway to see that no person suffers loss or damage from fences being torn down or cattle getting on the track.

The CHAIRMAN: There are a number of persons from the West here this morning, who desire to be heard in regard to the question of cattle killed or injured on the railway track. For instance, there are Messrs. McKenzie and Wood, of the Canadian Council of Agriculture.

Hon. Mr. COCHRANE: Have they seen the clause in the Bill which deals with that?

Mr. CARVELL: I was going to suggest that it might save time if you allow me to state my position with regard to this matter. I may say I have received a number of communications on this question and they appeal to me very strongly. My experience has been gained from a somewhat extensive general law practice, and I have been a great many times up against the propositions involved here. There seemed to be incongruity in the law as it stood, because section 254 of the old Act provided that a company shall fence and provide cattle guards, and I think these are the exact words: "Such fences, gates and cattle guards shall be suitable and sufficient to prevent cattle and other animals from getting on the railway." Afterwards the courts held in two important cases, namely: in Becker vs. C.P.R., and Bourassa vs. C.P.R., that notwithstanding the railway company was negligent and did not have proper fences, gates, or cattle guards on the track, still if the owner of the cattle could be considered in any way negligent in allowing his cattle at large, the railway company was exonerated from blame, even if the statute required them to provide fences, gates and cattle guards. Now, in going over the matter I find that section 276 of the Bill under consideration provides that there shall be fences, gates and cattle guards, and goes further than that. There was always some difficulty in the mind of every lawyer who had to deal with such cases as to what was included in the words "improved or partly improved lands." The law, heretofore, provided that where the railway passed through improved or partly improved lands the railway company may not be required to fence the railway. Every practitioner knows that there was a great deal of difficulty in deciding what was improved or partly improved land. Suppose the road went through the rear of a man's farm, in which there were 50 acres of woodland

unoccupied by him for any purpose whatever; still if his cattle strayed on that woodland, and got on the railway, it was very grave question whether the railway company was liable. That is now covered by subsection 4 of section 276 of the proposed Bill, because there the burden is put upon the railway company to fence, unless the Board of Railway Commissioners decide that it is unnecessary for them to do so. As far as I am concerned that is quite satisfactory. I take it that if a railway is to be constructed, if the Bill becomes law, the railway company must fence, unless special relief is given by the Board, and I take it, the Board will not relieve the railway company from the necessity of fencing unless there are good reasons for so doing.

That brings us down to the next question, that of contributory negligence on the part of the owner. The old law provided, and the provision is retained in this bill, and I think it is reasonable, that if cattle are allowed to run at large within half a mile of a railway crossing, and they are injured on the crossing, the owner of the cattle had no redress. That seems to me to be perfectly reasonable. A man has no right to turn his cattle at large near a railway crossing, and then because they are killed at the crossing expect the company to pay the damages. But the interpretation of this statue was carried further than that by the courts: They held that no matter where or how, or through what negligence on the part of the company the cattle were killed, if the man himself were negligent, in not keeping his cattle properly impounded and enclosed, he had no right to redress. Section 386 of the proposed Bill meets this contribution of affairs, and as far as I can see, it ought to satisfy any reasonable person, because the enacting clause provides that

> "When any horses, sheep, swine or other cattle, whether at large or not, get upon the lands of the company, and by reason thereof damage is caused to or by such animal, the person suffering such damage shall be entitled to recover the amount of such damage against the company in any action in any court of competent jurisdiction unless the company establishes. . . ."

Then it goes on with the exceptions. If they can establish that the man's gates were not kept closed, he cannot recover, or if the gates were wilfully left open he cannot recover, or if the fences were taken down, or if the animals were turned upon the railway, or if the animals were ridden upon the railway he cannot recover. That means, if the man were riding horses on the railway, or if the animals were killed at a highway crossing, the man would have no redress. If any of those exceptions were proved to have existed, the owner has no right of action, but unless some one of those exceptions exist, as I construe section 386, the owner has a right of action against the company, regardless of whether he turned his cattle on the highway or not, regardless of whether his fences were adequate or not, or, in other words, these two sections, read conjointly, put the burden on the company of fencing every mile of railway which they possess, unless they are relieved from so doing by the Railway Board; and it is their duty to keep the fences in repair, and pay the liability, unless the owner of the cattle has been guilty of some negligence as set forth in the exceptions in section 386. Therefore, while I must confess that when I made the request that a day be set aside for this section, I have to admit that I had not read it over carefully; but after having done so, and after having compared it with the decisions, I am satisfied. I have half a dozen letters from railway companies in the last four or five years referring to these two cases, saying, "Surely, Mr. Carvell, you must have read Becker versus C.P.R. and Bourassa versus the C.P.R., and they decide that as your client was guilty of contributory negligence, therefore we are not liable." Having read that section in connection with these cases, I am thoroughly satisfied that the Bill as drafted protects the public.

Mr. RODERICK MCKENZIE: Before we received a copy of this Bill amending the Railway Act, the secretary of our Association sent to the members of the Committee

certain proposed amendments to the Act. The amendments proposed by this Bill seem to meet the conditions we were looking for. Section 276, subsections 4 and 5, are word for word with our proposed amendments, except that the word "may" is used in place of the word "shall" in subsection 4. We do not think there is any need of pressing for that change, but we suggest that an addition be made to that section to the following effect:

> "That nothing herein contained shall relieve the company from liability under Section 386."

That suggested amendment is proposed in case the Railway Board relieve the company of building a fence in a certain district and animals get on the track and are killed. We submit that that should not relieve the company of liability under Section 386.

Mr. CARVELL: It is section 276 that provides for the erection of fences.

Mr. MCKENZIE: It provides the penalty when animals get on the track.

Mr. CARVELL: But if section 276 provides that the railway company must fence, then, no matter how the animals got on the track, the company would be liable, unless it were in a case provided by subsection 4 of 276.

Mr. MCKENZIE: That is the one I have reference to. If the Board relieves the company of fencing a certain portion of their railway, and in that portion of the railway animals get on the track, then we ask that this addition be made to the clause, that nothing herein contained shall relieve the company from liability under section 386.

Mr. CARVELL: You want the company made liable, even if the cattle get in on the excepted portion?

Mr. MCKENZIE: Yes, that is the idea.

Mr. JOHNSTON, K.C.: It does not appear to me those words are necessary. The company is liable under 386, no matter how the cattle got on the track, unless they can bring themselves under one of these exceptions.

The CHAIRMAN: You are satisfied as long as the company are liable, no matter how they got there?

Mr. MCKENZIE: Yes.

Mr. JOHNSTON, K.C.: You will see the company is made liable by 386, but the company must establish that the damage was caused by gates being left open, or the fence taken down, or the animal turned on the railway, etc.: so that if the Board under section 276, relieve the company, the company would nevertheless be liable, if the cattle got on the track.

Mr. CARVELL: That seems to be the proper construction.

Mr. JOHNSTON, K.C.: I do not think there is any objection to adding it, but I think it is surplusage.

The CHAIRMAN: You would be satisfied with it?

Mr. MCKENZIE: If that is the way it works out, we are satisfied.

The CHAIRMAN: I do not think there is any doubt about it. Mr. Johnston says that is the proper construction of it.

Mr. MCKENZIE: We say section 294 should be repealed. In the new bill it appears as section 208, almost word for word. Our objection to that clause was that whenever there was an action entered against a railway company in the west, as far as I know—at least I know of a good many cases of this kind—the railway companies always put in a defence that the animals were running at large, contrary to section 294, and very

frequently the railway company won out under that section. You will notice that section 294 contains these words: subsection 4:

> When any horses, sheep, swine, or other cattle at large, whether upon the highway or not, get upon the property of the company and are killed or injured by a train, the owner of any such animal so killed or injured shall, except in the cases otherwise provided for by the next following section, be entitled to recover the amount of such loss or injury against the company in any action in any court of competent jurisdiction.

The railway company say that the owner of the animal committed a prior breach of the Act by allowing his animals to get within half a mile of the railway crossing; consequently he was out of court. That section 4 was repealed by section 8 of the amendment to the Railway Act in 1910, entitled "An Act to amend the Railway Act, assented to May 10th, 1910, Chapter 5". Those words are contained in that same section, as follows:

> When any horses, sheep, swine or other cattle at large, whether upon the highway or not, get upon the property of a railway company, and by reason thereof damage is caused"

and so on.

I wanted to draw your attention to the fact that this exception was always made in section 294, and then in the subsequent amendment to that section the words were, "Whether the animals were running at large or not on the highway." But still the railway company successfully defended damage actions in cases were animals were not running at large.

Mr. CARVELL: What objection would you have if section 280 of the proposed bill were read in conjunction with 386?

Mr. MCKENZIE: It appears to me that the words used there are nearly the same words that have been used in the previous Act, and section 294 was carried.

Mr. CARVELL: Section 386 now entirely shifts the burden of proof.

Mr. JOHNSTON, K.C.: And uses the words "whether at large or not".

Mr. CARVELL: It provides that no matter where your cattle may be, or how they got there, if they get on the railway track and are killed, unless the company can establish the fact that you opened the gate or tore down the fence on the track, they must pay.

Mr. MCKENZIE: Suppose the railway company claims that it was through negligence of the owner, could they still recover under section 386?

Mr. CARVELL: No, whether the cattle were on the tracks or not.

Mr. MACDONELL: It is up to the railway company to show that the owner was guilty of negligence, or the company pays.

Mr. MCKENZIE: That is the intention?

Mr. MACDONELL: That is the effect of section 386, as I read it.

Mr. MCKENZIE: So far as we are concerned, I do not think we have any objection if that is the effect of that clause.

The CHAIRMAN: The first part of section 386 is as follows:

> When any horses, sheep, swine or other cattle, whether at large or not, get upon the lands of the company and by reason thereof damage is caused to or by such animal, the person suffering such damage shall be entitled to recover the amount of such damage against the company in any action in any court of competent jurisdiction unless the company establishes that such damage was caused by reason of,—

certain other things.

Mr. CARVELL: I would like to call your attention to another point, which, I think, you will see covers the ground. Are you a lawyer, Mr. McKenzie?

Mr. MCKENZIE: No, sir.

Mr. CARVELL: I thought you were by the way you argued the case. However, you evidently have read the case up pretty well. If you take the trouble to look up the two cases which the railways always put up to us, that is Becker vs. C. P. R., and Bourassa vs. C. P. R., under the law as it stands today the farmer wins unless the railway company were able to prove that he had been guilty of some negligence; and these decisions might be produced as some evidence of negligence under the law as it stands at the present time. But under the proposed Bill, if we are right in our construction of it, the railway company loses under any circumstances unless they can prove that you wilfully did something, opened the gates, tore down the fences, drove your cattle on the tracks, or something of that kind.

Mr. MCKENZIE: We are satisfied with that.

Hon. Mr. COCHRANE: It would be pretty hard to establish that it had been wilfully done.

Mr. MCKENZIE: The railway companies make use of section 294 of the present Act in seeking to have the farmer withdraw, or make a settlement for a smaller amount than his claim. They will tell him: "Here is the Act; the Act says you are not to allow your animals to run within half a mile of the railway; you did that; you are guilty; then you cannot recover."

Mr. CARVELL: That is because another section of this Act says if you are negligent you cannot win, and this is the evidence of your negligence. Now, the law is proposed to be changed so that no matter how negligent you were, the company must pay unless you have done something wilful.

Hon. Mr. COCHRANE: The burden of proof is on the company.

Mr. MCKENZIE: There is another point I was going to refer to. Paragraph (b) of Section 386 reads as follows:

> (b) Any person other than an officer, agent, employee or contractor of the company wilfully opening and leaving open any gate, on either side of the railway provided for the use of any farm crossing.

The objection is that, supposing a tramp going along a railway opened a farmer's gate at a crossing and left it open, it may be it is the pasture, and the animals get through that gate on to the railway, the farmer could not recover for accidents in such a case. I have known of cases of that kind, where the gate was at a distance from the farmer's home, and where there were obstacles which prevented him from seeing that the gate was open.

Mr. GREEN: The farmer in that case has not wilfully left the gate open.

Mr. JOHNSTON, K.C.: There is something in that contention.

Mr. CARVELL: I think so. You will notice there is a difference in Paragraphs (a) and (b). In Paragraph (a) it says:

> (a) Any person for whose use any farm crossing is furnished, or his servant or agent, or the person claiming such damage or his servant or agent,—

Paragraph (b) does not provide that.

Mr. MCKENZIE: When we come to Paragraph (b) it is any other person, "any person."

Mr. CARVELL: Mr. McKenzie, would you be satisfied if Paragraph (b)—I think that also would refer to Paragraphs (c) and (d)—were to read as follows:

> Any person for whose use any farm crossing is furnished, other than the officer, agent, employee or contractor of the company, wilfully opening and leaving open any gate, on either side of the railway provided for the use of any farm crossing.

Mr. MACDONELL: There it is, you see; it is in there.

Mr. JOHNSTON, K.C.: Mr. McKenzie is quite right. If an entire stranger opened the gate, the company would be relieved.

Mr. W. L. SCOTT, K.C.: It would mean that the railway company would be deprived of the advantage of that clause. The railway company could presumably prove that no one of the persons excepted here, that is "an officer, agent, employee or contractor" had done this. But in most cases it would be impossible for the railway company to prove who did do it. Therefore, if it is necessary for the railway company to prove that it was the person for whose benefit the crossing was put in who opened the gate, or some one acting for him, it would mean that the railway company would fail in any case practically.

Mr. CARVELL: If a railway company is allowed to send a dangerous object through the country at a speed of fifty miles an hour, why should they not be required to keep the gates closed?

Mr. SCOTT, K.C.: There is another side to it. The farmer leaves his gate open and an animal gets on the track. A train coming along at fifty miles an hour, strikes the animal and the cars are derailed, with the result that many people are killed. Surely there is some duty devolving on the people who have had these gates put in for their benefit.

Mr. CARVELL: The cow usually leaves the track before the train does. At any rate, I for one, think there is something in Mr. McKenzie's contention.

The CHAIRMAN: What suggestion have you to offer, Mr. McKenzie?

Hon. Mr. COCHRANE: Do you think it is sufficient for the farmer to be responsible for his employees and not for anyone else?

The CHAIRMAN: You have not prepared an amendment along the lines you are advocating now?

Mr. MCKENZIE: No, I have not. It is very easy to submit an amendment.

Mr. JOHNSTON, K.C.: I would say strike out paragraph (*b*) entirely, and leave it to paragraph (*a*).

Mr. MACDONELL: Supposing the farmer's employees leave the gate open, that would make the railway company still liable.

Mr. JOHNSTON, K.C.: If you read paragraph (*a*) you will see that, if the railway company establishes that if the farmer or his servant or agent or the person claiming such damage wilfully or negligently fails to keep the gates at each side of the railway closed when not in use, it is released from liability.

Mr. MACDONELL: Yes.

Mr. MCKENZIE: I have in mind a clear instance that came to my attention of a farmer a few miles outside of Winnipeg. The railway ran through the back part of his farm. His house was on the other side. There was a bluff of timber between his house and the gate. He supposed that officers of the railway, who were working on the track, opened the gate to get access to this block of timber, but could not prove it. In any event, it was somebody outside of the farmer that left the gate open. He did not notice the gate was open, neither he nor any member of his family was in the habit of going that way, and the first he knew that the gate had been left open was the notice that his cows had been killed, and, under this Bill, he could not recover damages.

The CHAIRMAN: As Mr. Johnston has suggested, paragraph (*b*), the one you are objecting to, could be struck out of the Bill. Would you be satisfied in that event?

Mr. CARVELL: And paragraph (*c*) as well.

Mr. LAWRENCE: There is another gate that the employees would not want to see left open. If you take that paragraph out, will it have the effect of causing people to become careless, and putting the onus upon a tramp, whereas someone else might have left the gate open, thus allowing cattle to get on the railway track, resulting in the derailment of a train and the killing of employees and other persons. Let me tell you that such cases have occurred in the past. I can recall two cases in particular in my experience, on a railroad, where an engine was running tender first, which is necessary in some cases. It was at night, cattle had got upon the track, the engine came along with no pilot and ran over the cattle, derailing the train and killing employees in both instances. I do not wish the farmer, or anyone else, to be deprived of getting damage for his cattle if they are killed; but I would like the committee to consider the matter carefully before anything is done in connection with it, and not throw the bars down entirely so that onus can be shifted to a tramp, or someone else, and the responsibility laid at their door of allowing cattle to get upon the track. I ask you not to go one single step in that direction more than is absolutely necessary. If there were a law prohibiting tramps, or anyone else not in the company's employ, from walking on the railway track it would be a good thing, but until there is, it might not be advisable to remove this subsection.

The CHAIRMAN: What makes you think that railway employees will be responsible if we strike out this paragraph?

Mr. LAWRENCE: If you leave the bars down it will give a chance to any person to say that the gate was left open by a tramp or somebody else walking upon the railway track. In any event it may result in accidents and the killing or injuring of employees. In the course of my 35 years' actual experience in railway work, I have never known a case where tramps have left gates open.

Mr. MCKENZIE: In reply to the gentleman who has just spoken, I want to say, and in all sincerity, that no farmer is going to allow his gates to be left open wilfully, with the danger of having his cattle killed or maimed on the track, because in any event his loss is always greater than he can recover. You can therefore take it for granted that a farmer will exercise all possible care to keep his gates closed. If somebody else who happens to be passing leaves the farmer's gates open, and the animals stray on to the track and are killed, the farmer is cut off from relief under the Act as proposed.

Mr. MACDONELL: There is undoubtedly something in what Mr. Lawrence says. There should be some precaution adopted against the possibility of gates being left open and damage occurring to railway companies or their employees, to say nothing of passengers travelling on the road. It seems to me, therefore, the paragraph in question is a proper safeguard to have in the Bill.

Mr. CARVELL: How would you deal with the farmer who suffered loss because some person opened a gate and allowed the farmer's cattle to get on the track.

Mr. WEICHEL: Let me give you an instance of what occurred last year in my constituency. A certain farmer lost three fine horses owing to some persons, he thinks they were boys, allowing the gates at the railway crossing to remain open. The horses strayed on to the track and were struck by a Grand Trunk engine and killed. The farmer being a Mennonite, and not wishing to have anything to do with the legal fraternity, had no recourse whatever.

Mr. CARVELL: Serves him right.

Mr. WEICHEL: However, he put his case before me and asked if I would take it before Mr. Weatherston at Stratford. I did so, and after a delay of some months the railway company disclaimed all liability but finally settled with the farmer because

they found he was a fine old gentleman. The company only allowed him $75 each for the horses, which were valued at $150 each. Profitting by his experience, the farmer bought a Yale padlock and put it on the gate, with the remark: "I shall never allow a case of this kind to recur. I do not want to lose any more stock. It's an easy matter to put a padlock on and keep the gate locked and only to open it when I need to do so."

Mr. MACDONELL: The gate is there for the farmer. It is his own private crossing and the matter is in his own hands, to see that every precaution is taken against the gate being left open.

Mr. JOHNSTON, K.C.: Under section 277 the obligation rests upon farmers to keep their gates closed, and in section 407 there is a penalty provided in case they fail to do so.

Mr. MACDONELL: If the farmer keeps his gate closed no danger will arise.

Mr. CARVELL: You would have to read that in conjunction with paragraph (b), which provides that a company is not liable in case any person other than the officer or agent takes down a part of the railway fence. You cannot lock a barbed wire fence, and if you relieve the company of the liability in the one case you would have to relieve them of the liability in the other. It seems to me that it is only fair to lay down the principle that the railway company must keep the fences up and keep the gates closed. I am willing to go that far.

Hon. Mr. COCHRANE: But suppose somebody else takes it down?

Mr. CARVELL: The railway company has its section men to look after the track. It is their business to look after it, they are running a dangerous machine through the country.

Hon. Mr. COCHRANE: They are running it for the benefit of the public too.

Mr. CARVELL: Yes, secondarily.

Hon. Mr. COCHRANE: Oh no, primarily.

Mr. CARVELL: I feel very strongly on the point: the burden should be on the railway company to keep those fences, and cattle guards in order, and if damage results to the farmer's stock, the company should pay him unless they can show he is guilty of some negligence.

Mr. MACDONELL: The Act must be fair, we all agree to that. It is hard enough to do even-handed justice to everyone, but it seems to me that where there is a farm crossing owned by the man who has the farm—it is there for his protection and his use, and he has the means of locking that gate up and putting the key in his pocket—and any loss or injury or damage taking place by reason of the gate at that crossing being left open, the railway company or its employees should not be responsible, but the farmer.

Mr. CARVELL: It is very easily seen that my honourable friend is not a farmer. I am, and know what I am talking about.

Mr. MACDONELL: Look at the question from both points of view.

Mr. CARVELL: The farmer may get along for a few months with a Yale lock and key, but the following year when he comes to open that lock it will not be a key he will need but an axe.

Mr. SCOTT, K.C.: My point is that if paragraph (b) is struck out it will tend to promote negligence among the farmers. I think every class of people are apt to be negligent. I do not think we can assume that the farmers will not be guilty of negligence any more than other people, and if a farmer thinks he need not worry because whatever happens he will receive compensation, but there is no question but what he will be apt to be negligent, because the railway company will in no case be able to prove who left the gate open. As to the amount of damages, my experience is that if the farmer goes to court he gets full value for his cattle.

Mr. CARVELL: Yes, but with regard to that question of damages it always happens that the company tries to settle with the farmers without going to court.

Mr. SINCLAIR: If the farmer is not guilty of negligence, he should get paid for his cattle.

Mr. SCOTT, K.C.: The railway company will not be in a position to prove who left the gate open; the only case where the gate was left open in which the company will be able to prove negligence will be when the farmer is prepared to own up to it, but unless the company has that proof, it will be liable, and that will tend towards negligence on the part of the farmer and be productive of danger to the travelling public.

Mr. CARVELL: I think Mr. Scott has given us the answer to the whole proposition. He has referred to the tendency of jurors to give damages against the company; that such tendency exists may be true, but if it be true it is because the railway companies richly deserve it. It is because the railway companies up till very recent years did not treat the farmers fairly, they did not pay him, they put him off with all sorts of technical objections, and, if they were not successful in that way, as Mr. Weichel says, they would ruin him by going to court and the consequence was he would rather suffer loss than go into court. I think my view is logical, and I hope that the Committee will not decide this question hastily, but that they will in some way decide it so as to protect the farmer.

The CHAIRMAN: Mr. McKenzie informs me that he will be here for a few days, and he will prepare and submit an amendment to Mr. Johnston which will come before the Committee again for disposal.

Mr. CARVELL: I will be quite willing to agree to that and I would want to consider Clause 3 as well.

The CHAIRMAN: Will you be willing to go on that Committee to confer with Mr. Johnston in reference to the amendment?

Mr. CARVELL: Unfortunately I have to leave for New Brunswick to-morrow, and will not be back until Tuesday.

The CHAIRMAN: Then we will leave the consideration of that particular paragraph until you return and in the meantime Mr. McKenzie will place his amendment before Mr. Johnston, so that it will be in shape for the consideration of the Committee when we next take up this section. Have you anything further to offer, Mr. McKenzie, upon this question?

Mr. MCKENZIE: Not on these points.

The CHAIRMAN: Is there any other gentleman here who wishes to be heard in reference to cattle-guard legislation?

Mr. R. C. HENDERS, President Manitoba G. G. A. I wish to say, Mr. Chairman, and gentlemen of the Committee that the proposal which you have just agreed to will be entirely satisfactory, and, as far as I am concerned, I have no further objection to offer. I want, however, to be very clear upon this one point: our friend here (Mr. Scott), says that the farmers are apt to become negligent with regard to leaving gates open, and so get into trouble. But I want to draw your attention, gentlemen, to the fact that the railway company have their section men going up and down their railway, every day, and, if the responsibility is on the railway company when the damage is done by the farmer's stock being allowed to get on the railway then the eyes of those section men would be cast towards the fence to see that they were in such condition that the cattle could not get on the tracks. The responsibility which this gentleman desires to place on the farmer might, I think, be very well shared by the employees of the railway company who are going up and down that line every day.

Mr. JOHNSTON, K.C.: It is understood that the proposed amendment is only as to paragraph (b) and (c).

Mr. CARVELL: That is all, I do not think there is any objection to (d) and (e).

Mr. JOHNSTON, K.C.: I was going to ask whether the Committee could not now pass sections 274, 275 and 276, which is the fence section. Section 274 is the "farm crossings" section. These three clauses stood over because they were all cognate clauses, until these deputations had been heard.

The CHAIRMAN: Will the Committee pass sections 274, 275 and 276.

On Section 274—Farm crossing, live stock.

Mr. CHRYSLER, K.C.: What is the meaning of the words "when at rail level?"

Mr. JOHNSTON, K.C.: Those are added words.

Mr. CHRYSLER, K.C.: Does it mean that there is no responsibility on the company's part when there is an overhead bridge and subway? If so, that is understandable, but does it mean only that? However, I have no objection.

Section adopted.

On Section 407—Safety and Care of Roadway—Leaving gates open.

Mr. CARVELL: What about the penalty clause?

Mr. JOHNSTON, K.C.: For leaving gates open or closed?

Mr. CARVELL: Yes.

Mr. JOHNSTON, K.C.: That is section 407, subsection "A."

Mr. CARVELL: Have you passed that yet?

Mr. JOHNSTON, K.C.: No, we have not come to it.

Mr. CARVELL: I want to call the attention of the committee to a certain matter. Mr. Mackenzie objected very strongly to a clause that provided that cattle should not be at large within half a mile of the crossing. (Section 280). Perhaps it would be advisable to consider that in the light of section 407, because I cannot see what jurisdiction this Parliament has in the matter of impounding cattle, other than being used by the railway companies as an evidence of negligence. It is mere surplusage, because this Parliament has no right to say that horses, swine, sheep and cattle shall be impounded and put in a closed pound. You might as well say you would put them in my house.

Mr. CHRYSLER, K.C.: I do not know. In practice, what that means is that very often the sectionmen take cattle to the pound, and it is a very summary and effective method of securing the safety of the public and the safety of the cattle.

Mr. CARVELL: Suppose the sectionmen take my cattle and drive them off the right of way, and I come along and say, "I want my cattle back," who will win? Unless the sectionmen are appointed by the municipal authorities they have no power to impound cattle.

Mr. CHRYSLER, K.C.: I do not know about their being appointed by the municipal authorities, but the Bill provides for the appointment of pound-keeper, etc., and somebody else prosecutes.

Mr. CARVELL: What jurisdiction has this Parliament to appoint a pound-keeper in New Brunswick?

Mr. CHRYSLER, K.C.: He does not require to be a pound-keeper to drive a stray cow to the pound and lay a charge.

Mr. MACDONELL: Any person who finds them at large may impound them.

Mr. CARVELL: I feel that the railway companies are entitled to protection. I would rather consider this as a fine or penalty, and bring it under this section 407, and then there is no question but this Parliament has jurisdiction.

Mr. CHRYSLER, K.C.: We have found it used just in the way I say. Some cattle are incorrigible.

Mr. CARVELL: I have no objection to it, but I think it is all surplusage.

Mr. MACDONELL: There are a great many matters of doubtful legality in the Act.

Mr. SINCLAIR: Cattle are allowed to pasture where the land is not owned by the farmer who owns the cattle. There are villages with common pastures, and a difficulty sometimes arises there. The farmer cannot show that the animal was on his own property.

Mr. CARVELL: That is covered by section 386.

Mr. CHRYSLER, K.C.: The provision in regard to going before a magistrate and laying a charge is not as immediately effective as this is. The jurisdiction has never been questioned, and I imagine it would be covered in case of dispute by the general power which it gives this Parliament to protect the cattle, and, as I have said, the public are interested, and the lives of the men who are engaged in operating have to be considered.

Mr. CARVELL: No doubt they would have the right to drive the cattle off the right of way, but unless they have some status under the provincial law I do not think they can do anything further.

Mr. CHRYSLER, K.C.: Oh, no; that is under the municipal law, but if there is any difficulty of this kind it is easy enough to arrange that there shall be a pound in the neighbourhood to which railway employees can drive cattle. It would be only in case of serious difficulty.

Hon. Mr. COCHRANE: The cattle would not have any right to be there, and any one would have a right to impound them if there were a pound established.

Mr. CARVELL: Yes, but this does not help them any.

Section adopted.

On Section 386—Cattle getting on railway.

The CHAIRMAN: Could we not dispose of section 386, all except the paragraphs which are asked to stand?

Hon. Mr. COCHRANE: Could we not dispose of section 383?

The CHAIRMAN: I thought we could dispose of cattle guard legislation.

Mr. CHRYSLER, K.C.: I ask to have that matter stand.

Section allowed to stand.

On Section 363—Tolls not to be charged until filed and approved.

Mr. SINCLAIR: What does that mean?

Mr. JOHNSTON, K.C.: That merely preserves the rights of express companies that were doing business prior to July, 1906, to charge tolls that it then had the right to charge for such period as the Board allows. There is no alteration in the Act.

Mr. CHRYSLER, K.C.: It seems to me that was just a temporary bridge, to allow the companies to go on with their business until the Board had time to examine their tolls, and its usefulness is gone.

Mr. JOHNSTON, K.C.: The whole proviso?

Mr. CHRYSLER, K.C.: Yes.

The CHAIRMAN: The clerk has handed me a letter in connection with section 360, which I think should be placed on record. It is a letter from the man in charge of

the transportation end of the Fruit Growers' Association of the province of Ontario, Mr. McIntosh, and the letter reads as follows:—

"TORONTO, April 18, 1917.

"Mr. J. E. Armstrong, M.P.,
Ottawa.

"DEAR MR. ARMSTRONG,—I attended a sitting of the Railway Board in Ottawa yesterday, but did not have time to look you up.

"During the hearing on express classification it came out that express companies, under the interpretation of the Act by the Railway Commission, have the right to refuse to carry any kind of shipment they may so desire. The fruit growers are up against this very thing at St. Catharines. The Dominion Express Company has an officer there, but refuse to accept fruit.

"Probably you noticed in Tuesday's "Journal," I think, Mr. Walsh referred to the matter, stating it should be placed before the committee now considering the new Consolidated Railway Act. I agree with him, and believe it is in the public interest that carriers be not permitted to refuse carriage of any article or commodity *without* the approval of the Railway Commission.

"You certainly would be doing a great public favour if you would look into this matter.

"I may be in Ottawa in a few weeks. In the meantime let me know what you think of the matter.

"G. E. MCINTOSH."

Have you anything to say, Mr. Blair, on this matter?

Mr. MACDONELL: He alleges discrimination against fruit growers in the Niagara peninsula.

Mr. CHRYSLER, K.C.: No, not that.

Mr. BLAIR: It was a question, Mr. Chairman, whether express companies can refuse to accept traffic that it ordinarily carries when offered to it. The late Commissioner, Judge Mabee, in the acetylene gas case, in his reason for judgment, said that it was open to the express company to refuse to carry certain goods offered.

Hon. Mr. COCHRANE: On account of the danger of explosion.

Mr. BLAIR: That was the reason in that case, but apart from the character or nature of the article, the Chairman took the broad ground that it was competent for the express company to say whether it would accept or refuse goods. That happened to be a dangerous commodity. He did not confine his view in that judgment to that particular character of traffic.

Hon. Mr. COCHRANE: What right would they have to refuse to carry an article if it were not dangerous? I can understand an objection to carrying dynamite or anything like that.

Mr. BLAIR: I am just coming to that point. The question is being considered by the Chief Commissioner at the present time, but he has not yet given his ruling.

Mr. CHRYSLER, K.C.: Is it the case from St. Catharines?

Mr. BLAIR: I do not know the particular case. I know we were discussing a few days ago the late Chairman's judgment, and I know the present Chairman has not made up his mind or given a ruling on the question at the present time. His view, I think, is that express companies, as common carriers, are bound to carry whatever is offered.

Mr. CHRYSLER, K.C.: Which they profess to carry in the ordinary course of their business.

MR. MACDONELL: If the Chief Commissioner should be of the opinion that the express companies are not obliged to carry whatever freight is offered, I think we should know it at a sufficiently early date so that we can make provision in this Bill that they shall carry as common carriers.

MR. BLAIR: I shall discuss the matter with the Chief Commissioner and let the Committee know. Speaking without special instruction, I think his mind is that as common carriers they are bound to carry. That is my view at the moment, but I will discuss it with the Chairman and let the Committee know.

THE CHAIRMAN: Mr. Blair will take this matter up with the Chief Commissioner, and let us know his opinion in a day or two.

Section allowed to stand.

On Section 363, Tolls not to be charged until filed and approved. Proviso.

Mr. JOHNSTON, K.C.: It is proposed to strike out the proviso.

MR. MACDONELL: The proviso was put in originally for some special purpose?

MR. CHRYSLER, K.C.: It was just a temporary provision.

Section adopted.

On Section 364, Board may define carriage by express.

MR. CHRYSLER, K.C.: There are pretty wide powers under this section.

The CHAIRMAN: The section will stand until we receive a report from Sir Henry Drayton.

On Section 367, Telegraph and Telephone Lines.

The CHAIRMAN: This clause is to be dealt with to-morrow, as I understand.

MR. JOHNSTON, K.C.: This clause relates only to telephones and telegraphs for railway purposes. It does not deal with telephone companies, but it may as well stand.

Section allowed to stand.

On Section 368, Special Powers of Railway Companies. Electric and other power.

MR. JOHNSTON, K.C.: Sections 368, 369 and 370 are added, because, as Mr. Price says in his notes, it is the intention to avoid the necessity of having the details of these powers repeated in every Special Act. This section is adopted without change of meaning from what are known as the standard clauses. It has been customary to put them in the Special Act.

THE CHAIRMAN: Mr. Lighthall, who represents the municipalities, and others, has asked that clauses 367 to 376 stand until the municipalities are heard.

On Section 376, Marine Electric telegraphs or cables.

MR. SINCLAIR: Does this mean that we are bringing the cable companies under the jurisdiction of the Board, Mr. Johnston.

MR. JOHNSTON, K.C.: It means that Section 375 shall apply to marine electric telegraph or cables. We had better let this section stand until the preceding sections are dealt with.

On Section 379, Annual Returns to the Minister.

THE CHAIRMAN: Are there any particular objections to these?

MR. JOHNSTON, K.C.: There will be, because the words "every carrier by water" are added. We had better leave this section until Section 358 is disposed of.

MR. MACDONELL: It is a part of the same matter.

MR. JOHNSTON, K.C.: As the section stands it covers every person that runs a boat for hire.

MR. SINCLAIR: I think it would be a good thing to get returns from the boats that are subsidized. We are getting them now, but I do not know whether they are complete enough. We should have these returns.

On Section 384. Statistics and Returns to the Board.

MR. JOHNSTON, K.C.: Have you anything to say about this section, Mr. Chrysler?

MR. CHRYSLER, K.C.: No, it is all right.

Mr. MACDONELL: Perhaps Mr. Blair may want to say something about this section as to whether the Board wants enlarged powers. It is very important for the Board to get returns from the companies. Are the powers wide enough?

MR. JOHNSTON, K.C.: The telephone companies are coming here tomorrow. The purview of that clause is widened so as to include railway, telephone, telegraph and express companies. Hitherto the Board has not had power to order telephone companies to make returns. No doubt the telephone companies will have something to say about that.

Mr. MACDONELL: Mr. Blair may, in the meantime, consider whether these powers are ample enough.

Mr. BLAIR: I have no special instruction about that section, but it was suggested——

Mr. MACDONELL: By to-morrow you can be able to say.

Mr. BLAIR: I will find out.

On Section 385, Damages for Breach of Duty under Act.

> Any company, or any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such company, that does, causes or permits to be done, any matter, act or thing contrary to the provisions of this or the Special Act, or to the orders or directions of the Governor in Council, or of the Minister, or of the Board, made under this Act, or omits to do any matter, act or thing, thereby required to be done on the part of any such company, or person, shall, in addition to being liable to any penalty elsewhere provided, be liable to any person injured by any such act or omission for the full amount of damages sustained thereby, and such damages shall not be subject to any special limitation except as expressly provided for by this or any other Act.

Mr. MACDONELL: Is this section new?

MR. JOHNSTON, K.C.: It is only recasted. I will read the Act as it was formerly.

Section 427 reads as follows:

> Any company, or any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such company, that does, causes or permits to be done, any matter, act or thing contrary to the provisions of this or the Special Act, or to the orders or directions of the Governor in Council, or of the Minister, or of the Board, made under this Act, or omits to do any matter, act or thing, thereby required to be done on the part of any such company, or person, shall, if no other penalty is provided in this or the Special Act for any such act or omission, be liable for each such offence to a penalty of not less than twenty dollars, and not more than five thousand dollars, in the discretion of the court before which the same is recoverable.

Then by 9-10 Edward VII, Chapter 50, Sec. 12,

> "and such damages shall not be subject to any special limitation, except as expressly provided for by this or any other Act."

There does not seem to be much variation.

Mr. MACDONELL: There is a substantial difference, I do not say it is not properly changed, but in the section as we have it in the new Act it says "shall, in addition to being liable to any penalty elsewhere provided." It makes it still more strict. I think that is desirable.

MR. JOHNSTON, K.C.: Are you satisfied, Mr. Chrysler, with that clause? I have a note here that the railways wanted to be heard about it.

MR. CHRYSLER, K.C.: I have no instructions about the matter at present.

Mr. SINCLAIR: A person might disobey the Minister on some rules without any damages at all being incurred. This section makes him liable only for the actual damages that arise through his default. I can conceive of many cases where no damage at all can be proven, but where it would be improper to allow a man to break the rule.

Mr. MACDONELL: In the old Act, he is held liable for any damages that have been sustained.

HON. MR. COCHRANE: In addition to the penalty?

Mr. MACDONELL: There is no penalty of the kind mentioned.

MR. SINCLAIR: Is he liable for an offence where no damage has been incurred?

Mr. MACDONELL: If there is any penalty in that Act he is liable.

MR. JOHNSTON, K.C.: He is also liable in an action for damages.

MR. SINCLAIR: A man would be criminally liable if he put a stick on a railway and a sectionman took it off before any damage was done.

Mr. MACDONELL: He is liable in addition for any penalty which any Act imposes.

Section adopted.

On Section 386, Cattle getting on railway.

THE CHAIRMAN: This section stands.

On Section 387—Fires from locomotives.

The CHAIRMAN: Mr. Chrysler, you asked that this section should stand. Are you now agreeable to proceeding with it?

Mr CHRYSLER, K.C.: I understood the Committee had agreed to fix a day for hearing of operating officers of some of the railway companies.

The CHAIRMAN: Very well, let us hear them a week from to-morrow.

Mr. JOHNSTON, K.C.: Are the railways not satisfied with the clause in its present form?

Mr. CHRYSLER, K.C.: There are other sections also in regard to which they desire a hearing.

The CHAIRMAN: If it is the wish of the Committee to hear the railway companies in connection with this section we will allow it to stand once more. The lumbermen have been heard in regard to it, and the Mutual Fire Insurance Companies also.

Mr. JOHNSTON, K.C.: I was under the impression that the representatives of the Insurance Companies were satisfied when it was pointed out that the clause was amended.

Mr. WEICHEL: I believe there are some further representations to be made.

Mr. SINCLAIR: Is this not the section that Mr. MacMillan was desirous of a hearing upon?

The CHAIRMAN: Mr. Chisholm has been heard on behalf of the Mutual Fire Insurance Companies. It was for him that Mr. MacMillan was speaking.

Section allowed to stand.

On Section 388—Failure to properly equip trains.

Mr. WEICHEL: I would like to ask it the law does not require the rear end of all passenger trains to be equipped with what is called the channel gate, as a safeguard against people falling off. I notice that in many cases this is not being done.

The CHAIRMAN: There is a provision in the Act for the protection of the public.

Mr. CHRYSLER, K.C.: Yes.

Mr. PELTIER: Section 390 reads as follows:

> No person injured while on the platform of a car, or on any baggage, or freight car, in violation of the printed regulations posted up at the time, shall have any claim in respect of the injury, if room inside of the passenger cars, sufficient for the proper accommodation of the passengers, was furnished at the time."

If no enclosure is provided at the rear of the train, a passenger is liable to walk off. I know conductors that have switched from the rear end, and on that account have been reprimanded. This protection could be very easily provided. It is one of those matters that a man in my position does not care to speak very much about, but the committee can readily understand the position, and for my part I am glad the gentleman brought the matter up.

Mr. CHRYSLER, K.C.: You must remember, Mr. Chairman and gentlemen, that you are legislating here in regard to a great many different classes of trains and a great many different rules It would not be reasonable to expect that all trains should be equipped in the same way that first-class express trains running on the main lines of railway, are. The suggestion brought up by Mr. Weichel is a new one to me, I never heard of it before; and I do not know whether it is possible to provide such equipment in the case of all passenger trains. I believe that the rear of trains is usually closed in with a chain or some device of the kind. On the the 1st or 2nd class cars they set up a gate; some safety device, I think, is almost always in use there. The rear platform is for the purpose of enabling passengers to get on and off of trains when stationary at a station; it is only in the case of the luxurious observation cars that passengers habitually make use of this part of the train. I would like to ask whether the matter is not covered practically by Section 388. You must have the standard of equipment according to the circumstances of the case. For example, one ought not to be too exacting where trains are operating in remote, new districts where perhaps only one passenger car at the end of a freight trian is run during the day.

Mr. WEICHEL: That would be a mixed train.

Mr. CHRYSLER, K.C.: That is the point I was thinking of. It is difficult to legislate in a matter of this kind without exacting too much.

Mr. PELTIER: We are speaking of cases where a passenger opening the rear door at night thinks he is going to enter another car and falls off the train. There is a contrivance by which the possibility of such an accident can be obviated. I will not dilate on the point. It is far from pleasant for employees of a railway to be bringing up matters of this kind.

Mr. SCOTT: Is not this a matter that should be left to the Railway Commission to deal with.

Mr. JOHNSTON, K.C.: It is, under Section 289 of the Bill.

Mr. SCOTT: Is it not better to allow the matter to rest there. The Board can tell in what cases it may be necessary to make certain provision better than the Committee can.

Mr. JOHNSTON, K.C.: The Board has general power to make orders and regulations as to the equipment on trains. Under paragraph (L) of section 289 the Board may make orders, "generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public," etc.

Mr. WEICHEL: I am quite willing to leave the matter in the hands of the Board.

Mr. MACDONELL: I want to speak on a matter of importance that arises under this section, and which I brought to the attention of the Minister of Railways recently with regard to the Intercolonial railway. The question was urged upon me by the Railway Mail Clerks' Association of Canada, and it has reached an acute stage since the drafting of the present Bill. I do not think there is any provision in the measure to meet the case of the men I have in mind, that is, the railway mail clerks, who form a large and important section of our civil service. The ordinary mail car on all our railways is a poor structure, composed entirely of wood, and without any buffer or protection of any kind. The mail car is usually right behind the locomotive and on the other side of the perishable mail car we usually find steel pullmans. It is placed between two steel cars, and from its flimsy construction in case of accident or fire, is very rapidly demolished. A good many deaths have resulted lately from accidents to mail cars. My attention has been directed to them and I have been requested to urge that some proper provision be made in regard to mail cars on Canadian railways similar to that required in the United States by the Inter-State Commerce Commission. It is provided in the country to the south, in most states in the union at any rate, that railway mail cars should be made of steel. This has been found to give much better protection on the railways operated there, and I think the same provision is being favourably considered by the Minister of Railways of Canada in regard to Government railways. It seems to me there should be some better protection for the railway mail clerks who are on duty in all kinds of weather and exposed to a great many dangers in one way or another.

Hon. Mr. COCHRANE: If the matter commends itself to the committee sufficient time should be allowed the railway companies to provide the proper equipment.

Mr. JOHNSTON, K.C.: Who owns the mail cars?

Mr. MACDONELL: The railway companies.

Hon. Mr. COCHRANE: The railway companies furnish the cars, that is provided for in the contract for carrying the mail.

Mr. MACDONELL: Any one who has travelled by railway or observed trains at railway stations, must have been struck with the flimsy construction of the mail car. There it is between the steel locomotive and the steel pullman, and it does not stand one chance in a thousand of escaping intact in case an accident happens. In my opinion there should be a better type of mail car. I would think it should be constructed of steel. I urge this matter in the interests of a very worthy and hard-working class of Government employees.

The CHAIRMAN: Do you ask, then, that the section should stand?

Mr. MACDONELL: I think it should be thoroughly considered in the light of the representations made.

Mr. JOHNSTON, K.C.: Would it not be better to amend section 289, which deals with orders and regulations made by the Board, as to operation and equipment, so

as to give the Board power to deal with this particular matter instead of drafting a special paragraph to cover it?

Hon. Mr. COCHRANE: I think that would be better.

Mr. JOHNSTON, K.C.: It seems to me the point ought to be dealt with in paragraph (g) of section 289, where the Board has power, "with respect to the rolling stock, apparatus, cattle guards, appliances, signals, methods, devices, structures and works, to be used upon the railway, so as to provide means for the due protection of property and the public."

Mr. MACDONELL: Railway mail clerks would not be covered by "employees," they are Government officials. If a special paragraph were drawn giving the Railway Commission power to deal with this matter, I think it would be the proper thing to do.

The CHAIRMAN: You could put in any government officials if you want to.

Mr. MACDONELL: I would deal specially with the class of officials I have mentioned.

Hon. Mr. COCHRANE: They would have to be specially mentioned, I think.

Mr. PELTIER: If something of the kind were provided for, even although it might seem the Board had power to deal with the matter, it would act probably as a stimulus to them.

The CHAIRMAN: Mr. Johnston will prepare an amendment for submission to the committee, to section 289.

Mr. JOHNSTON, K.C.: That is the logical section for it.

The CHAIRMAN: Then it is understood that clause 388 carries.

On section 391, Limitation and Defences.

Mr. W. L. BEST: In the memorandum submitted on behalf of the railway employees, you will, Mr. Chairman, notice we have proposed an amendment to this section. We ask that it be amended by substituting the word "two" for the word "one" in the fourth and sixth lines of subsection 1, of this section. The representatives of the employees are strongly of the opinion that the time for commencing any action for indemnity, for any damages or injuries sustained by reason of the construction or operation of the railway, should be extended to two years. In many of the provinces the time within which actions or suits for indemnity for damages or injuries sustained in the operation of industries other than railways is greater than two years. There does not seem to be any consistent reason why the limitations of this section as to railways should not be at least two years.

Hon. Mr. COCHRANE: Will not a man who sustains injuries know within one year that he is damaged?

Mr. BEST: He will know that he has been injured, but I do not need to go outside the city of Ottawa to find an illustration showing why it should be two years instead of one. A locomotive fireman fell off the tender of a locomotive in the Hochelaga yard in November, 1914, just before the Ontario Workmen's Compensation Act came into effect. He was a resident in Ottawa so that he would have come under the Act, had it been in effect, but he did not come under the Act, and it was over eleven months before the fracture in his limb healed, and before he knew whether he would be able to go to work again or not. The company offered him hospital and surgical expenses, and they amounted to something over $200. That was all they offered him. He did not desire to take action against the company because he wished to go back to his work again if he was able to, but it was a year before he knew whether he would be able to do so or not. He entered an action and as a result he got a verdict of something between $2,200 and $2,300, because, I think,

in the evidence, it was brought out in the examination for discovery, that he admitted some liability. Another case just mentioned to me was that of an engineer. He was running on the Grand Trunk at Toronto, I believe, and was injured and laid up for three years. It was almost three years before the leg healed, but he has since gone back to work. There are many cases where the fracture will not heal up readily —it may apparently heal up and then get worse again—so that a man will not always know within a year how long it will be before he can resume work, if he is able to do so in any event. We have another case of a fireman who jumped off a locomotive a few months ago at Smith's Falls where he was standing on a passenger train from here. He saw a yard engine coming, could not stop it, he saw there was going to be a collision and jumped, sustaining a fracture of his ankle; that man has been off a long time, and does not know just when the wound is going to heal up. There have been so many cases of injuries to railway employees of that nature, that we think it should be two years, especially when in other industries than the railways, they have more than two years and in many of the other provinces the same provision exists.

Mr. CHRYSLER, K.C.: You do not understand, Mr. Best, that a man does not need to wait until his damage is completely ascertained; he could begin his action, for instance, when he is able to walk about if he does not know how long it is going to last, you understand that?

Mr. BEST: I quite understand that, but the railway man does not think of taking action at all unless he is compelled to do so; he would much prefer to go back to his job again as soon as he is able to do so. Sometimes he is liable to lose his job altogether; he has no chance to get back if he takes action against the railway company.

Hon. Mr. COCHRANE: I move that it be two years instead of one.

Mr. CHRYSLER, K.C.: You are, sir, making a very important change. The great difficulty, Mr. Minister, is that if the thing is left over for two years it is very often most difficult to get witnesses; the company may be able, of course, to do so in some cases, but the employees of a railway company are very often shifting about and, after two years have elapsed, you cannot get the men who have knowledge of the matter.

Mr. PELTIER: I may be permitted to remark just here that there is a great deal of hazard in railway employment. Some of that hazard naturally belongs to that employment, and some is artificially brought about by the neglect of employees or of the company's officials. The ranks of these railroad men are filled up from the best class of working men in Canada. It should be borne in mind that whatever the company pays them by way of compensation for injuries they may sustain while engaged in their occupation, it comes out of the public. This amendment that is asked for is just as much for the railway companies as it is for the men, and it is not going to kill anybody.

Mr. SCOTT, K.C.: It must not be lost sight of that this clause does not apply only to railway employees. In Ontario and Quebec, and some of the other provinces there are Workmen's Compensation Acts, under which these cases are taken out of the operation of this Act altogether. The railway companies have to report all accidents at once, and these cases never come to the courts at all, so that in Ontario and Quebec—and it may be some of the other provinces, I am not quite sure of that— this will not apply to such cases as have been referred to. The difficulty that the companies should be protected against is, supposing some man comes along and says: "I was injured two years ago and I want compensation." How the world is the company going to find out anything about it. I have had cases against a railway compapny where the claim was made within a year, and even in those cases I have found it very difficult to get the necessary information.

Mr. MACDONELL: That same difficulty applies in any other kind of business.

Mr. SCOTT, K.C.: A man brought an action here some time ago, some months after the accident, and it was extremely difficult to find who was on the gate at the time the accident occurred.

Hon. Mr. COCHRANE: It would be a very trifling accident you would not have notice of.

Mr. SCOTT, K.C.: No, very often cases happen where they do not give notice to the company.

Mr. MACDONELL: Does not that same argument apply when accidents happen in the street, where it is most difficult afterwards to get evidence relating to it?

Mr. SCOTT, K.C.: But the municipality must have notice within a month so that they have an opportunity of obtaining evidence before it is too late. If you put in a proviso that notice should be given to the company within one month, it does not matter so much how long a period may elapse before the issue of the writ. But if a man comes along and brings an action for injuries sustained in an accident that the company has never heard of and which occurred two years before, that is not fair to the company.

Mr. C. LAVERGNE: I think if Mr. Scott will examine the records, he will find that Quebec has not any Workmen's Compensation Act; the Act they have is not worth five cents to the railway employees. In some of the provinces the limitation is three years with regard to injuries. So far as the company having knowledge about an accident is concerned, I want to say that the railway company has the best system in force of any corporation in the world for finding out all about an accident. Every accident that causes a loss or disability is known to the railway company very promptly. The employees are bound to report it to the company, and they do report it and because this clause has been in the Act for some years past is no reason why it should be retained there and why the change should not be made. I do not mean to say that it should be extended for an unlimited length of time, but the existing limit should be extended for the simple reason that a man running a locomotive, or working as conductor on a train, has probably worked a lifetime to get up to the postion which he occupies, and if that man meets with an accident he is the last person in the world that will want to start an action against the company to recover any compensation if he can get over his injuries and retain his position. Starting an action against the railway company means, practically, that that man is out of a job and, at that age, he cannot go to another place and get employment,; he is not fit for anything else. I think it is a reasonable request we are making. Many of the representatives of the employes when this matter was discussed wanted to make the limit three years instead of two.

Mr. SINCLAIR: I think the proposition is reasonable because other companies, like the steel companies and the coal companies, have to abide by the Statute of Limitations in such cases, and that is six years in most of the provinces.

Amendment of Hon. Mr. Cochrane to substitute the word "two" for "one" in the fourth and sixth lines, agreed to, and the clause as amended adopted.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 15--MAY 16, 1917

(Containing representations, etc., from Mr. Dagger, on behalf of the Ontario Provincial Government; Mr. Geoffrion, on behalf of the Bell Telephone Company; Messrs. Mackay, Scott and Col. Mayberry, on behalf of the Canadian Independent Telephone Association. Also, proposed amendment by Mr. Lemieux, M.P., to section 385, and Memorandum submitted by Mr. McMaster for the Toronto Board of Trade, and also Memorandum for the Railway Brotherhoods.)

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1917

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MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

Wednesday, May 16, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Carvell, Cochrane, Green, Lapointe (Kamouraska), Macdonald, Macdonell, Maclean (York), McCurdy, Murphy, Nesbitt, Rainville, Sinclair, Turriff, and Weichel.

The Committee resumed consideration of the Bill, and proceeded to the consideration of section 375 dealing with telephones, etc.

Mr. F. Dagger, representing the Ontario Provincial Government, Mr. Geoffrion, the Bell Telephone Co., and Messrs. Mackay, Scott and Mayberry, the Canadian Independent Telephone Association, were heard.

Ordered, that further consideration of section 375 be postponed until Tuesday, 29th May, instant.

At one o'clock the Committee adjourned until Friday at 11 o'clock a.m.

Notice of Proposed Amendment.

By Mr. Lemieux: New section 385*a* to be inserted:

"385*a*. When a company fails to make delivery at destination of any goods which it has agreed to transport, and when the inexecution of the contract is accompanied by an appropriation, on the part of the company, of the goods shipped, or by any other offence, the damages for which it is liable shall comprise—in addition to all those mentioned in section 385, and all those which have been foreseen or might have been foreseen at the time of the making of the contract, all damages, foreseen or unforeseen, which are of an immediate and direct consequence of the offence and of the inexecution of the contract"

Memorandum submitted by Toronto Board of Trade.

J. E. ARMSTRONG, Esq., M.P.,
Chairman Special Committee
re Revision of the Railway Act,
House of Commons,
Ottawa.

DEAR SIR,—I enclose you herewith memorandum submitted by the Toronto Board of Trade covering the items that we were discussing before your Committee last week.

Some of the items in this memorandum, of course, you dealt with as you proceeded, but some of them are still standing over.

The items that the Board are most concerned about are sections 313, 357 and and 358. I am sending to Mr. Chrysler a copy of the proposed amendment to section 357. You will see it set out at the top of page 4 of the enclosed Memorandum.

At the top of page 3, you will see the addition that the Board of Trade want to get to section 313; as originally proposed by the Board, it was typed on this memorandum—the words striken out in ink are the words Mr. Strachan Johnston suggested should be stricken out. I have also quoted in full certain sections of American Interstate Commerce Act, which were referred to.

Yours truly,

A. C. McMaster,

Memorandum submitted by the Toronto Board of Trade to the Special Committee of the House of Commons dealing with Bill 13—"An Act to Consolidate and Amend the Railway Act."

The Toronto Board of Trade seek to have this Bill amended as follows and for the reasons set out, in addition to what was verbally said on behalf of the Board of Trade before the Committee.

In the interpretation clause, subsection 2 of the Act, subsection 30, the Board of Trade points out that the provisions in respect to telegraph tolls are not as wide as those in section 31 in respect to telephone tolls and they suggest that subsection 30 should be made to conform to the phraseology of subsection 31 substituting "telegraph" for telephone.

Section 42—This is the section providing that in matters of special importance the Minister of Justice may instruct Counsel to argue the case or any particular question arising in the application. The section in the third to last line provides that the Board may direct that the costs of such Counsel *shall be paid by any party to the application.* The Toronto Board of Trade submits that this might be a very onerous thing and that there should be no such power but that in case the Government feels the matter involved is of sufficient public importance to justify the appointment of special Counsel that the Government should pay the expense.

Section 149.—This is the section dealing with disposition of lands obtained by way of subsidy.

The Toronto Board of Trade feel that for the protection of the public subsection 2 of this section should be amended by limiting the right there given to transfer the Company's interest in such lands to a construction company so that such right can only be exercised with the sanction of the Board. The Boards of Trade view on this subject and the reason for their asking for this amendment were yesterday fully laid before the Committee by Counsel for the Board.

Section 194, subsections 4 and 5.—Throughout these sections the Board submits that the word "new" as qualifying the word "railways" should be stricken out wherever it appears. What is intended, it is submitted, is not that the section should only apply to a new railway but that it should apply to every new location and that this construction is sufficiently protected by the phrase "the proposed location" which appears in the sections and which shows that new construction is what is aimed at.

Sections 202-203 and 222—These are sections dealing with expropriation proceedings. Without suggesting any phraseolgy the Board of Trade for the reasons submitted by counsel yesterday urge that amendments should be introduced that will prevent the railway company from tieing up indefinitely any person's property under this clause, and suggest that the line of amendment should be that the railway

companies on filing their plan shall become thereby bound to take the property and shall complete the purchase within a year or within some other reasonable time to be named in the Statute.

Section 267—The Board of Trade is strongly of opinion that all Government railroads should be brought fully under the provisions of the Act.

Sections 309 and 420—These sections were fully discussed before the Committee by Counsel for the Board yesterday and the Board understands that the intention of the committee is to amend these sections by making the provisions of any by-laws introduced by any municipality effective only when approved by the Railway Board and upon *the terms contained in any order so approving.*

Section 313—Section 1—The Toronto Board of Trade feels that there are services now accorded to the public incidental and customary which are not expressly covered by any of the provisions of the Statute and therefore the Board asks that there be added to section 313, sub-section 1, another clause to be styled (e) reading as follows:

> "(e) furnish such other service as may be customary or usual in connection with the business of a carrier as the Board may from time to time order and shall maintain and continue all such services as are now established unless discontinued by the Board."

Section 316—Pooling of Traffic.—When this clause was discussed before the committee yesterday there was some difference of opinion as to what was meant by "pooling the traffic." Just what is meant very fully appears in section 5 of the American Act to regulate Commerce, revised January 1, 1917. This particular clause dates back to the 24th August, 1912, and will be found in the memorandum on this Act published by the Interstate Commerce Commission at page 13, reading at that page as follows:

> *"Section 5*—(As amended August 24, 1912). That it shall be unlawful for any common carrier, subject to the provisions of this Act, to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offence."

The Statute under discussion before the Committee insofar as it prohibits pooling is qualified by the phrase "*without leave of the Board.*" The American Statute is an *absolute* prohibition and the Board of Trade thinks that the prohibition should be absolute and that the American Statute is right.

Section 357—This is important, particularly to small shippers who have not the same means through a special traffic man or department of checking up the tolls charged them as the larger shippers have and therefore it is not proper that they should be tied down too closely as to when they are to make their claims, and while it is important that on large claims the Board should have this additional new power, in fact, very important that they should have it, it is also important that the small shipper should not have to bring his small claims to the larger centres where the Board sits in order to have them adjudicated. In the first place,. the Board should not be troubled with small claims if it can be avoided and, in the second place, the small shipper should not be at this expense. He should be able to recover small

charges in his local court. And the clause should further be amended so that there be no suggestion or implication that the carrier is justified in waiting for the making of a claim before refusing excessive charges if they have come to the carrier's notice.

Therefore the Board of Trade takes the liberty of suggesting that the section should read as follows:

357. The Board may, where it finds that a toll which has been collected or received by the company is illegal, order the company to refund the portion of such toll which is in excess of the legal toll, with interest upon such excess at the rate of five per cent per annum from the date of collection of such toll; but no such refund shall be ordered by the Board unless application for adjustment has first been made by the claimant to the Company, *nor unless application is made to the Board within two years after the company has decided to pay the claim. But nothing herein claimed shall be held to deprive the claimant of his right to recover any such claim in any court of competent jurisdiction nor relieve the company from the duty of making refund immediately on its discovery of any improper charge and without awaiting demand.*

Note—Two years is suggested. It is the statutory period for bringing an action for damages in most of the provinces.

Section 358—Traffic by water. Counsel for the Board yesterday put before the Committee the Board's objection to the amendment set out in the last five lines of this section reading as follows:

And the provisions of this Act in respect of tolls, tariffs and joint tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by ANY carrier by water from any port or place in Canada to any other port or place in Canada.

In opposing this section the Toronto Board of Trade is fully in accord with the Montreal Board of Trade which has filed a written objection.

The first part of the section is satisfactory. The Board should have jurisdiction where a railway company controls the shipping but not otherwise. It was suggested by some one before the committee yesterday that the American Interstate Commerce Commission had jurisdiction over independent shipping companies or ships. On looking at the Act to regulate Commerce it is submitted that this is an error, and that the Interstate Commerce Commission has no such power. The first section of the Act shows clearly that the cases referred to throughout the Act do not include independent shipping companies. For instance, in defining the carriers that are to be subject to the Act this phraseology is used: "and to any common carrier or carriers engaged in the transportation of passengers or property wholly by road and partly by road and partly by water when *both are used under a common control, management or arrangement* for a continuous carriage or shipment."

Finally, as to section 389, the Board submits that subsection 2 should be stricken out. The penalty for an infraction of an Order respecting tolls, namely, that the company may be sued for three times the amount of the toll, is not a bit too severe. There is no reason why, in adition to the expense and annoyance caused by having to sue in connection with a thing of this kind, the claimant should be put to the additional expense of making an application to the Board for leave to bring his action. If he brings it improperly no doubt the Courts will make him pay the costs of it and that will be a sufficient penalty on his part.

MEMORANDA SUBMITTED BY RAILWAY BROTHERHOODS.

OTTAWA, Ontario, May 3, 1917.

Mr. J. E. ARMSTRONG,

Committee on Consolidation and Amendment of Railway Act,

HOUSE OF COMMONS,

OTTAWA, Ontario.

DEAR SIR: With reference to the various sections of Bill No. 13, "An Act to Consolidate and Amend the Railway Act," respecting the appointment, territorial limits and powers of constables to be appointed on request or recommendation of railway companies, as provided in sections 449, 450, 451 and 452, pages 185 and 186, we desire to respectfully submit the following observation:—

1st. It would seem that, in time of industrial disputes, the duty and responsibility for the preservation of the peace and good order of the community, and for the security of persons and property against unlawful acts on a railway and on any works belonging thereto, should devolve exclusively upon the civil authorities. If the civil authorities find themselves unable to immediately cope with the situation, owing to some unforeseen exigency, they have the right to appoint or call upon such assistance as may be required to adequately deal with all such exigencies.

2nd. It will be observed that the appointments of constables, under the provisions of section 449, are made on recommendation or application of the railway company, or of a clerk or agent thereof, and when so appointed, such constables are practically and in fact the private employees of the company, paid by the company and under its entire control, as is shown in section 442, where provision is made for imposing a penalty and for deducting from the salaries of such constables the amount of any fine thus imposed. We are strongly of the opinion that no appointments of special constables should be made by railway companies in cases of industrial disputes. If railway companies deem it advisable, under any unusual condition or circumstances, that special constables should be appointed application should be made to the civil authorities, who are primarily responsible for maintaining good order, and such civil authorities shall immediately furnish such additional protection as may be necessary.

3rd. The objections herewith submitted do not refer to permanent constables which may be employed by railway companies for police purposes in and about railway stations, etc., but has special reference to the employment of special constables or gunmen in times of industrial disputes; and the arrival of such persons in any community usually has a most irritating effect upon strikers to acts of violence, which otherwise would not have been committed.

4th. We are also of the opinion that it is important that all persons appointed to the position of constables shall be British subjects, and that when such persons take the oath of office, such oath should contain a provision wherein such persons shall make a solemn declaration that they are British subjects. Upon all such persons taking this oath falsely, a severe penalty should be imposed.

5th. We submit, therefore, that the law should be so amended that railway companies will be prohibited from appointing special constables in times of industrial disputes, for the reasons above mentioned.

Respectfully submitted,

(Sgd.) C. LAWRENCE,
Dominion Legislative Representative,
Brotherhood of Locomotive Engineers.

(Sgd.) WM. L. BEST,
Canadian Legislative Representative,
Brotherhood of Locomotive Firemen and Enginemen.

(Sgd.) L. L. PELTIER,
Dominion Legislative Representative,
Order of Railway Conductors.

(Sgd.) JAMES MURDOCK,
Dominion Legislative Representative,
Brotherhood of Railway Trainmen.

OTTAWA, May 3, 1917.

DEAR SIR,—In reference to clauses 442, 449, 450, 451 and 452, we submit it is quite true that the constables are proposed to be appointed by certain civil functionaries designated by section 449, but these appointments are made on the application of the railway company or of a clerk or agent thereof, and the persons appointed are recommended by them for that purpose. When appointed these constables are practically and in fact the private employees of the company, paid by them and subject to the control of the company. This is shown by clause 442, which provides that any penalty imposed on a constable so appointed may be deducted from any salary due to him from the company and by clause 452, which clothes the company, or any clerk or agent thereof, with powers to dismiss such constable. We also wish to point out that although the said clause 449 provides that the person appointed a constable thereunder should be a British subject, he is not required by the form of oath prescribed by that section to swear that he is such. The said form of oath should be amended so as to make the person appointed constable swear that he is a British subject, and the proper penalty should be provided when any person appointed a constable falsely swears that he is a British subject. The sections above referred to are undoubtedly framed to meet conditions which may arise in the event of a strike or industrial disputes, and it is a well-known fact that in the past, railway companies have almost entirely sought to protect lives and their property, in the case of such strikes and industrial disputes, by means of guards or watchmen supplied by certain well known detective agencies, and and in the latter capacity may properly be characterized as a sort of a private military or police force. The use of these guards or watchmen designated constables, only tends to create an irreconcilable hostility between the companies and their striking employees, and nothing is better calculated to incite the latter to deeds of violence.

As example of this your attention will be drawn to the report and recommendations of the Deputy Minister of Labour, Mr. Acland, concerning a strike of the C. P. R. freight handlers at Fort William, in 1909.

Frequently the men supplied are not of such a character as to make it advisable that they should be appointed as constables under the Act, but, owing to the haste with which they are generally appointed, there is no opportunity afforded to inquire into their antecedents or previous character, and some of the disastrous consequences resulting from strikes and labour disputes frequently arise from the employment of such men as constables, especially where there are many foreigners among the employees involved in a strike or industrial dispute. Moreover, the fact that the private constables are not in uniform have a tendency to make them less respected, whereas the ordinary or civil constables in uniform are always respected by the striking employees. These objections do not apply to the constables at present and ordinarily employed by railway companies to protect the property and preserve the peace. The practice of employing men supplied by private detective agencies as watchmen or guards by railway companies and other corporations in case of strikes and industrial disputes has become a menace in the United States as may be seen from the reports of the Secretary of Labour up to and including June, 1916, Department of Labour, Washington, and may have grown there very largely out of the sloth and dilatoriness of the civil authorities to render efficient and prompt protection to persons and property in such cases. But we believe this cannot be alleged of Canadian civil authorities, and to allow companies to employ men as constables in large numbers doubtlessly supplied by such detective agencies in Canada is well calculated to produce similar deplorable results here, and is bound to cause irritation among strikers and those involved in industrial disputes, frequently resulting in hostile demonstrations and bloodshed. Such actions upon the part of corporations should never be allowed in Canada, and the duty of rendering efficient and prompt protection to persons and property in cases of strikes and industrial disputes should be imposed on the civil authorities exclusively; we have the means of calling the proper authorities to their assistance in case of need. A contrary course tends to bring the local civil authorities into contempt, whereas its employment the officers of the civil authority appreciating their duty, is the surest guaranty for the protection of life and property and the maintenance of the public peace. Strikers or their friends will not molest or resist the officers of the civil authorities, when, under exactly similar circumstances they will assault and be assaulted by the watchmen or guards hired by the company and designated as constables.

Your attention will be called to the Fourth Annual Report of the Secretary of Labour, W. B. Wilson, Department of Labour, Washington, on this important question and his recommendations to Congress for remedial legislation. This report emphasizes the deplorable industrial warfare brought about there by the failure of the civil authorities to assume their proper function and we would sincerely deplore similar conditions obtaining as firm a foot hold in our beloved Canada.

If notwithstanding what we have stated it is proposed to maintain or partly maintain the said clauses in the Act, we respectfully submit that they should be so amended as to provide that the persons to be appointed constables should be appointed by and be subject to the exclusive control of the civil authorities, and should not be recommended for that purpose by the company or any clerk or agent thereof, or be under their control, thereby constituting them the private guards or watchmen of the company. There should be no

difficulty in defining the proper civil authority to have the appointment or control of such constables.

Yours respectfully,

L. L. PELTIER,

Deputy President, and Dominion Legislative Representative, Order of Railway Conductors.

J. E. ARMSTRONG, Esq., M.P.

Chairman, Committee on Consolidation and
Revision of the Railway Act,
House of Commons,
Ottawa.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

May 16, 1917.

The Committee met at 11 o'clock, a.m.

The CHAIRMAN: This morning has been set apart for the purpose of hearing representatives of the different telephone organizations, and I understand that Mr. Dagger, who represents the Government of Ontario, also wishes to be heard. First I will read some of the correspondence on the subject.

Mr. MACDONELL: Under what section of the Act does this come?

Mr. JOHNSTON, K.C.: Section 375. The discussion will mainly centre on subsection 7.

The CHAIRMAN: The first letter is from Mr. Dagger, and reads as follows:—

"LEGISLATIVE BUILDINGS,
TORONTO, May 11, 1917.

Re Bill No. 13—Telephones.

DEAR SIR,—I beg to advise you that the writer has been instructed by the Attorney General to attend before the Special Committee on Bill No. 13, on Wednesday, the 16th instant, for the purpose of submitting the views of the Government of Ontario with regard to certain suggested amendments to section 375 of this Bill.

I am enclosing herewith a copy of these suggested amendments, together with a short statement in support of same. It is possible that a copy of these documents has already reached the committee through some of its members, but I am enclosing these in conformity with the request contained in your letter of the 3rd instant.

Yours faithfully,

(Sgd.) F. DAGGER.
Electrical and Telephone Expert.

N. ROBIDOUX, Esq.,
Clerk of Special Committee on Bill No. 13,
House of Commons, Ottawa, Ont."

These are the suggested amendments:

7. Whenever any company or any province, municipality or corporation, having authority to construct and operate, or to operate, a telephone system or line and to charge telephone tolls, whether such authority is derived from the Parliament of Canada or otherwise, is desirous that such telephone system or line be connected with a telephone system or line owned, controlled or operated by any other company for the purpose of obtaining direct communication, whenever required, between any telephone or telephone exchange on the one telephone system or line and any telephone or telephone exchange on such other telephone system or line, and cannot agree with the company for such connection, such first mentioned company or province, municipality or corporation may apply to the Board for relief, and the Board may, subject to the provisions of subsection 7 (b) hereof, order and direct how, when, where, by whom, and upon what terms and conditions such connection shall be held, constructed, installed,

operated and maintained: Provided that wherever one of such systems or lines is within the legislative authority of a province, and there exists in such province a provincial board, commission or other body having power to make orders respecting telephone systems or lines within the legislative authority of the province, then the Board and such provincial board, commission or other body, may, by joint session or conference, or by joint board, on the application of the company or of any company, province, municipality or corporation above mentioned, and on such terms as are deemed just, order any such connection in respect of any such telephone systems or lines and anything deemed necessary or expedient therefor, and the provisions of subsection 3 of section 254 of this Act, with the necessary adaptation, shall apply to every such case.

7. (a) No order made under the preceding subsection shall apply to the interchange of local conversations between persons using the telephones of two competing systems or lines where such telephones, systems or lines are both located within the municipal limits of the same city, town or village.

7. (b) In every case where an order is made under the provisions of this section for connection between the long distance lines of any company and the subscribers of any other company, such other company shall pay the cost of terminating its connecting lines upon the switchboard of such first mentioned company at the point of connection, and the charge to such other company for each long distance conversation or message transmitted to or from points on the system of such first mentioned company shall be the established long distance rates of such first mentioned company.

8. Upon any such application the Board shall in addition to any other consideration affecting the case, take into consideration the standards, as to efficiency and otherwise, of the apparatus and appliances of such telephone systems or lines, and shall only grant the leave applied for in case and in so far as, in view of such standards, the use, connection or communication applied for can, in the opinion of the Board, be made or exercised satisfactorily and without undue or reasonable injury to or interference with the telephone business of the company, and where in all the circumstances it seems just and reasonable to grant the same."

Then follows a statement entitled "*Re* proposed amendments to section 375 of Bill No. 13, to Consolidate and amend the Dominion Railway Act":

"1. The long distance telephone lines and local exchanges in the majority of cities and towns in Ontario are owned and controlled by companies under Dominion jurisdiction.

2. In Ontario there are some six hundred telephone systems under provincial jurisdiction operating in towns, villages and townships.

3. Public convenience requires that intercommunication be possible between telephone systems whether under Dominion or Provincial jurisdiction.

4. Intercommunication already exists under agreements between a large number of provincially controlled systems. Where, however, the interests of the Provincial and Dominion systems conflict the public convenience is hampered because of the fact that no legislation exists under which an order for interchange of service, which will be equally binding on the Provincial and Dominion systems, may be made.

5. Ontario legislation provides that the Ontario Railway and Municipal Board shall order every telephone system under provincial jurisdiction to interchange service with its neighbouring system, but, as the lines of the latter system in many cases terminate upon the switchboard of a Dominion-controlled system, no means exists in such cases of making an order effective other than

by the duplication of plant and the rupture of relations between the Dominion and provincial systems.

6. Section 375 of Bill No. 13 provides that the Board may order connection, for long distance purposes only, between a Dominion system and a system owned by a Provincial Government, municipality or incorporated company. This legislation does not provide for local and rural interchange of service. As it is more important that rural subscribers should have connection with their local centre and with their neighbours upon other adjacent systems, this legislation is necessary to enable a joint board to hear and determine applications for such connection, whenever inter-communication involves the use of the equipment of two systems, one under Dominion and the other under provincial control.

7. The legislation, which the Dominion Parliament has considered desirable in the case of affording the commercial interests long distance connection, is just as necessary in order to afford the farmers interchange of service with merchants and others with whom they do business in their local centre, whether it be a village, town or city.

8. The Dominion Railway Act ignores entirely the right of the farmer to apply for relief in those cases where the only means of obtaining communication with his nearest city, town or village is by means of connection with the Bell Telephone Company's system. This places the owners of rural telephone systems entirely at the mercy of a Dominion company as regards the terms upon which such local connection may be obtained.

9. It is also submitted, that the non-existence of any authority to deal with the matter of affording connection between local exchanges and rural systems places in the hands of a Dominion company the power to cut the lines of any Ontario system and isolate the farmers from their local business centre should that company disapprove of any order the Ontario Board may make in regard to interchange of service between rural systems. The probability of a Dominion company carrying this power into effect has been suggested by counsel during the hearing of more than one application before the Ontario Board for a connection order between two Ontario systems.

10. What is desired is machinery for the appointment of a joint board having jurisdiction:—

(1) To hear and determine applications for connection between two Ontario telephone systems in cases where the lines of one or both of these systems terminate upon a Bell switchboard and where in order to avoid duplication of local systems it is essential that the Bell company should be ordered to perform the necessary switching of the calls between the aforesaid two Ontario companies.

(2) To hear and determine applications for connection between a rural telephone system and a local exchange of the Bell Telephone Company.

11. It is further suggested that it be made clear in this Bill that the Board in deciding the terms upon which long distance connection between a provincial and Dominion telephone system shall be carried out shall consider only the cost of furnishing such long distance connection and shall not import into its consideration the question of competition."

There is a short letter from the Hon. I. B. Lucas.

Mr. NESBITT: You have the correspondence in your hands. Would it not be better for us to proceed and hear the gentlemen present?

The CHAIRMAN: It would take two hours to read all the correspondence, but I imagine that I have covered practically all the points at issue in the correspondence

which has been submitted by Mr. Dagger. If not, the gentlemen who are present to-day will explain. So that if the committee will take the correspondence as read, and will be satisfied with having it embodied in the report, in order that the members may be able to read it, it will be satisfactory.

Mr. MACDONELL: You might read the letter from the Hon. Mr. Lucas.

The CHAIRMAN: The letter from Mr. Lucas reads as follows:—

DEAR MR. ARMSTRONG,

re Railway Act Telephone Sections.

I understand the telephone sections of the Railway Act will be dealt with by your Committee at the meeting on the 16th instant.

Mr. Dagger of the Ontario Railway Board will represent the views of the Government before your Committee.

I am, yours truly,

I. B. LUCAS.

J. E. Armstrong, Esq., M.P.,
Ottawa, Ont.

I understand that Mr. Dagger is to be heard this morning.

Mr. DAGGER: Mr. Chairman and gentlemen of the Committee, I have been instructed to appear this morning on behalf of the Ontario Government, to represent the views of the Government in connection with certain suggested amendments to section 375 of the Railway Act. I may say that the Government of Ontario is interested in this matter, because there are in the province of Ontario more telephones operated by what are known as independent companies than in any other province in Canada. These systems number in the neighbourhood of 600, with approximately 80,000 telephones, all of which have been furnished by Ontario capital, the larger portion, probably 90 per cent, by the farmers of Ontario, and by reason of the extent of the telephone business comprising these rural and local systems in the province, in 1910 an Act was passed by the Legislature known as the Ontario Telephone Act. Under that Act the Government has brought into existence a certain number of these systems. Part 2 of the Act provides that municipalities may establish and operate a telephone system, and there are to-day some 62 or 63 telephone systems in the province, which have been established as a result of the legislation passed by the Ontario Government, and to that extent the Government feels that it is responsible for bringing them into existence, and is naturally interested very much in the telephone proposition. The main object of the Government being represented here is the public interest. Certain suggested amendments have been drafted by the Attorney General, copies of which are in your hands. These amendments ask for practically three things.

Mr. NESBITT: Which of these are the Attorney General's suggestions?

Mr. DAGGER: In the copy you have in your hand, the amendments suggested by the Government are in red. Part of the present Act is eliminated, and new words are inserted. This amendment asks for three things. The first is that subsection 7 which applies only to long distance connections, that it should apply to local and rural connections, as well as to long distance connections.

Hon. Mr. COCHRANE: You would not ask, if a man had a telephone system in the city of Toronto with a hundred subscribers, that the Bell Telephone Company should give him connection with the whole of their local system.

Mr. DAGGER: No, that is not the intention.

Mr. JOHNSTON, K.C.: If that is so, why strike out "long distance"?

Mr. DAGGER: It will probably be more convenient if I deal with each amendment in order.

Mr. SINCLAIR: Is your proposal to strike out "long distance" in section 77.

Mr. DAGGER: Yes.

Mr. BLAIN: Might I ask, is not the chief point of your request to the committee to-day that the Bell Telephone Company be compelled to accept long distance messages from independent companies; is not that the point?

Mr. DAGGER: That is one of the points.

Mr. BLAIN: Is not that the chief point?

Mr. DAGGER: Yes.

The CHAIRMAN: Will you explain why you want to strike out "long distance"?

Mr. DAGGER: In the sixth line of subsection 7, you limit it to "long distance"; that is limited as to the terms, but not as to ordering the connection. I may say the position in Ontario to-day is this: the Ontario Telephone Act provides that the Ontario Railway Board shall order connection between any systems within its jurisdiction. Now there are to-day some 500 or more telephone systems in Ontario who have no exchange of their own; their lines terminate upon the switchboards of the Bell Telephone Company. The Bell Telephone Company at present is giving the systems connection under an agreement, and the very fact that these agreements are in existence shows the necessity of the connection. But assuming that the company is unable to arrange what it may think are reasonable terms and, if for any reason, the parties may not agree to make an agreement they have no tribunal to-day to which these companies can apply to settle the terms or to order the connection. Long distance connection does not give local connection at the point where the long distance connection is made.

Mr. SINCLAIR: Are you satisfied we have jurisdiction over local 'phones?

Mr. DAGGER: There is no doubt about that.

Mr. NESBITT: The reason you want to strike out "long distance" is that you want connection between the local companies, through the Bell.

Mr. DAGGER: That is it. I may say that several conditions have arisen in cases before the Ontario Railway Board which render section 33 of the Ontario Telephone Act, the section which provides for interchange of service, absolutely useless, because if the Board made the order they have to rely upon the Bell Telephone Company to do the switching. Now, here are one or two illustrations: I have in my hand a letter from the Lanark and Carleton Telephone Company, in which they say:—

"DAIRYMEN'S ASSOCIATION OF EASTERN ONTARIO,

ALMONTE, July 16, 1915.

"Mr. H. SMALL,
Secretary Ontario Medical Board,
Parliament Buildings,
Toronto.

"DEAR SIR,—The Lanark and Carleton Telephone Company have been paying the Bell Company $2.50 per phone for switching from their central in the town of Almonte, and $1 per phone for the phones at our own central at Union Hall, we have 190 phones at Almonte and 110 at Union Hall. The Bell Company have notified us that they intend to raise the rate at Almonte to $3, and as the long distance work off our lines is bringing the Bell Company a revenue of $40 per month, we felt that the increase is unfair. We are charging our people $12.50 per phone which only pays expenses, we are making no money out of the business.

"I am taking the liberty of writing you to see if anything can be done to prohibit the Bell Company from imposing this extra rate. They have switched for us at Almonte for three years for $2.50, and there is no reason why they should raise the rate now.

"Thanking you in anticipation of an early reply.

"Yours very truly,

(Sgd.) "T. A. THOMPSON,

"*Pres. L.O.C. Co.*"

Now, I am not prepared to say whether that increased rate asked for by the Bell Company is fair or unfair; I do not propose to suggest anything of the kind, but the point is that this company must accept the Bell Company's terms or go without the connection.

Mr. MACDONELL: Is your reason for dropping the words "long distance" to put the connections betweeen all telephone systems, hereafter, on the same basis as the long distance connection is now?

Mr. DAGGER: To enable the joint board to deal with applications of that nature.

Mr. MACDONELL: I want to know why you want the words "long distance" stricken out; you want to reduce this matter to the basis of connection between all local telephones hereafter being on the same basis as the long distance connection is given now, is that your reason?

Mr. DAGGER: That is my reason, yes. Some time ago the Ontario Railway Board had an application before it which was made by the Ingersoll Telephone Company for a connection with a company known as the Burgessville Telephone Company; that company had no switch, all its lines being connected with the switchboard of the Bell Telephone Company. It happens that the Ingersoll Company is a competitor of the Bell Telephone Company, and at that hearing the counsel for Burgessville Telephone Company, Mr. Cowan, was the gentleman who represented the Bell Telephone Company, throughout the application before the Dominion Railway Board for a number of years for an extension of the long distance connection to competing systems. This, I think, explains more clearly than I can the position. If you will bear with me a minute I would like to read what Mr. Cowan said (reads):—

"Mr. COWAN: When the Board adjourned for lunch I was pointing out the territory and the necessity of the village of Norwich to the life of Burgessville Company. Without the village of Norwich the usefulness of the Burgessville telephone system would largely fail or be materially reduced.

"The CHAIRMAN: And that depends on the Bell.

"Mr. COWAN: And that depends absolutely on the Bell. They own Norwich. Their 'phones are established there and we have six lines going into Norwich and into this Bell central, which, as I have said before, they switch for us and connect up our subscribers from Norwich.

"For that service the Bell Telephone Company receives in return a free interchange with the subscribers of Burgessville Company surrounding Norwich and for the service performed by the Bell in the town of Norwich the Burgessville Company pay one hundred dollars a year. Unfortunately or fortunately, as the case may be, the Bell Telephone Company being under the jurisdiction of the Dominion Board only, we cannot drag them here and thrash out on this one anvil all the troubles and differences and harmonize them and bring them into touch with each other and further unfortunately—and when I use that word, I am using it only in reference to this case—the amendments in the Dominion Act preclude any tribunal from ordering connection with a local exchange and the Bell Telephone Company.

Now, I want to make myself perfectly clear on that point. We are in the grip of the Bell as far as Norwich is concerned and we may say that the Bell is in our grip as far as Burgessville is concerned. A satisfactory arrangement has been made between these two companies and that arrangement is, as I have stated to this Board. Now, supposing any order which you may make would have the tendency on the part of the Bell to break the arrangement or terminate it, it has only got a year to run; and if they terminate it at the end of that agreement the Burgessville Company is not in a position to come to this Board and ask you to order a connection with the Bell in Norwich, because it is beyond your jurisdiction. I cannot, acting for the Burgessville Company, go to the Dominion Railway Board and ask them to order that connection with the town of Norwich, because that again is beyond their jurisdiction.

The CHAIRMAN: That is, you cannot give the Bell, against the will of the Burgessville people, connection with all these lines.

Mr. COWAN: No, but whether I can do that or not I cannot apply the converse and give the Burgessville Company connection with the Bell and there is no power that I can appeal to, and no tribunal which has authority to make it.

And then he goes on further:—

If the Bell Telephone Company cut the connection at Norwich or refused to continue the agreement after its termination, we could, at a considerable expense, connect our line around Norwich so that we could handle all the subscribers with the Burgessville Company from one to the other; but that means rural conversation; and the country villages and the post office, the express office, the telegraph office and all; which is literally the heart which disseminates the blood in a local telephone service through its system and makes it valuable.

Mr. NESBITT: Apparently they were served by the Bell Telephone Company?

Mr. DAGGER: Yes. Then he concludes:—

That arrangement may continue on, but supposing it does not continue, then what is to become of the Burgessville Company? They are shut out of Norwich. Ingersoll Company is not shut out of Woodstock. What becomes of them then? They are bound to fall into the lap of the Bell Telephone Company or go to the wall. There is not a subscriber on that Burgessville line that will pay for a 'phone there, the price that he is paying, if he cannot get access here and there. And I then say, Mr. Chairman, in all fairness, that any tribunal should hesitate before it forces a position upon this company which, if that position gets it into trouble it has not got the strength and the power to extricate it from. This argument would not count if my learned friend could say to me, "Well, you can go to the Dominion Board of Railway Commissioners and make the Bell Telephone Company connect with you.

And then he concludes:—

I think it is unfortunate that all telephone companies are not under one tribunal and all railroads under one tribunal, so that this question of province and Dominion could not arise. I think it would be in the best interest of everybody if it were in your power. You could then say, if we do a wrong we will set it right.

Now, what is asked for in this amendment to subsection 7 is a tribunal in the form of a joint board, where questions regarding connections at a local point, if that point happens to be controlled by the Bell Telephone Company, can be heard.

Mr. CARVELL: What would the Ontario people say if these questions went to the Dominion Board alone?

Hon. Mr. COCHRANE: They would not have any right to kick.

Mr. DAGGER: That is not the question. I would hardly——

Mr. CARVELL: You are representing the Ontario Government. I would like to have your views.

Mr. DAGGER: I think complications might arise. There would then be divided jurisdiction.

Mr. CARVELL: That is what I feel there would be under a joint board.

Mr. DAGGER: This amendment in regard to the joint board is exactly that which at present exists in connection with railways.

Mr. CARVELL: I appreciate that, but it is not law yet. I am assuming that this Bill——

Mr. DAGGER: I beg your pardon. This law in regard to railways does exist. Only the other day there was the case of the Metropolitan Railway in Toronto and the town of Aurora and the Grand Trunk, which was settled by a joint board. It is exactly the same legislation that now exists regarding railways that we ask to have applied to telephone companies.

Mr. NESBITT: I take it that you object to the Dominion Railway Board having supreme control.

Mr. DAGGER: I have not been instructed by the Government on that point. I would not care to say what the Government's view would be regarding the Dominion Parliament taking out of its hands any of its present powers.

Mr. SINCLAIR: Do you think you have worked out all the difficulties that might arise by adopting the joint idea? Have you provided for a quorum, and who is to call the two bodies together?

Mr. DAGGER: That is already provided for in the Dominion Act and in the Ontario Act. I might say that at the last session of the Ontario Legislature the Ontario Telephone Act was amended as follows to meet this very case:—

> Where the telephone system or lines of any company within the legislative jurisdiction of the province of Ontario and the system or lines of any telephone company within the jurisdiction of the Parliament of Canada are situate in such proximity to one another as to make it practicable for such systems or lines to be so connected as to provide direct communication whenever required, between any telephone on the one system or line and any telephone on the other system or line either of such companies or any municipal corporation or other public body or any person interested may file with the secretary of the board, and with the secretary of the Board of Railway Commissioners for Canada, an application for an order that such connection should be made together with evidence of service of such application upon the companies interested or affected, and the provisions of paragraphs (*b*), (*c*), (*d*) and (*e*) of subsection 1 of section 131 of the Ontario Railway Act, with the necessary adaptation, shall apply to every such application.

That is identical to the reference which is made in Bill No. 13.

The CHAIRMAN: What clause?

Mr. DAGGER: Section 375, subsection 7. q, commencing at line 38 reads:—

> Provided that wherever one of such systems or lines is within the legislative authority of a province, and there exists in such province a provincial board,

commission or other body having power to make orders respecting telephone systems or lines within the legislative authority of the province, then the Board and such provincial board, commission or other body, may, by joint session or conference, or by joint board, on the application of the company or of any company, province, municipality or corporation above mentioned, and on such terms as are deemed just, order any long distance use, connection or communication in respect of any telephone systems or lines and anything deemed necessary or expedient therefor, and the provisions of subsection 3 of section 254 of this Act, with the necessary adaptation, shall apply to every such case.

Section 254 of the Dominion and section 131 of the Ontario Railway Act are almost identically the same.

Mr. MACDONELL: Would you answer my one question? Would you not be complicating the matter and involving it by a reference to a Joint Board consisting of the Dominion Railway Board and a Provincial Board? The Dominion Board is competent to deal, and familiar with, matters of this kind. Would it not be simpler and just as effective to have a reference direct to the Dominion Railway Board? They could use the information that could be supplied to them by the various provincial Boards throughout the country.

Mr. DAGGER: I venture to take exception to your statement that the Dominion Board is as familiar with the telephone business in Ontario as the Provincial Railway Board.

Mr. MACDONELL: The Dominion Board has control over Dominion Railways and telephone systems form a part of such railways. What is your reason for asking that the Provincial Board be associated with Dominion Board?

Mr. DAGGER: Because they are two separate Boards and there is the Bell Telephone System.

Hon. Mr. COCHRANE: We have no authority over the Provincial Board, we have over the Dominion Board.

Mr. MACDONELL: We have no authority over Provincial Boards, we cannot legislate them into this Act.

Mr. DAGGER: You have done it in connection with railways.

Mr. MACDONELL: No.

Mr. JOHNSTON, K.C.: Yes, you have.

Mr. MACDONELL: We have no power to do it.

Mr. DAGGER: If a railway under the jurisdiction of the Province of Ontario, wants to interchange service with the lines of railway under the jurisdiction of Canada an Order is made by a Joint Board under the sections of the Railway Act referred to. We are asking the same thing in connection with the Bell Telephone Company.

Mr. MACDONELL: Yes, but we have no right to enforce such order. If the order is not carried out this Parliament, or the Dominion Railway Board, cannot enforce it. There is the difficulty.

Mr. DAGGER: If you go as far with telephones as you have done with railways, we shall be prepared to take our chances on the enforcement of it.

Mr. MACDONELL: What is your objection to leaving the matter to a quick and final reference to the Dominion Railway Board?

Mr. DAGGER: Simply the fact that it would be infringing on the rights of the Provincial Government to deal with provincial companies.

Hon. Mr. COCHRANE: It is nothing of the kind. It is the case of a provincial company asking a connection with a Dominion company.

Mr. MACDONELL: That is what it is.

Hon. Mr. COCHRANE: No authority but the Dominion Railway Board can give the power asked for.

Mr. MACDONELL: It seems to me you would be infringing on Dominion rights if you legislate into this Dominion Bill what the Provincial Board can do.

Hon. Mr. COCHRANE: All you want to do is to control the Bell Telephone Company, which has a Dominion charter. That is what you are after us for.

Mr. DAGGER: And we want these agreements for local interchange to be subject to the control of some tribunal.

Hon. Mr. COCHRANE: Local interchange with local companies can be assented to by your Provincial Board, not by us at all.

Mr. DAGGER: I beg your pardon, sir. Our Board has no authority to order the Bell Telephone Company to give connection to one of our companies, and if two rural systems terminate on the same switchboard, unless the Bell Telephone Company is willing by agreement to connect, there is no tribunal that can order it, as stated in the case I have quoted of the Burgessville and Ingersoll Company.

Mr. MACDONELL: If there are two provincial companies and there is friction between them as to interchange of rates or messages, what power has this Parliament to legislate that they shall interchange messages? We have no such power.

Mr. DAGGER: A joint Board would have the necessary power.

Mr. NESBITT: Your Provincial Board now has the power where it is an interchange between two local companies. That is what Mr. MacDonell's question had reference to.

Mr. MACDONELL: Yes, between two essentially local companies.

Mr. CARVELL: Are yon not trying, Mr. Dagger, to get legislation so that two local companies can get connection through the medium of the Bell Company? That is what you are asking for, is it not?

Mr. DAGGER: No, what we are asking for is that where they are unable to make an agreement——

Mr. CARVELL: What you want is the right to make connections through the Bell Telephone Company so that the subscribers of one local company can talk to the subscribers of the other local company.

Mr. NESBITT: I understand that where two local companies run into the Bell switchboard, you want the Bell people forced to connect the two if they want connection.

Mr. DAGGERS We want to go further.

The CHAIRMAN: Will you state in a few words exactly what you do want; there seems to be some confusion as to what you are asking.

Mr. DAGGER: There are four or five different classes of telephone systems operating in Ontario. One class is the class that has its own central office in a village or town, and is operating in rural districts adjacent to and for the Bell Telephone Company, as its local agent, the long distance lines of the company terminating on that switchboard, the Bell Company under an agreement paying them a commission on the long distance business which they handle. Then there is another set of companies that have an exchange in the country and build a toll line between that exchange and the Bell Telephohne switchboard in the nearest town or village, and connect with the Bell by a toll charge say of five or ten cents a message. Another, and probably the largest class, consists of some three or four hundred systems which

are built in the townships but have no central office whatever. Their lines come into the municipal limits of a town or village where the Bell Telephone Company is operating, and they are brought in by the Bell Telephone Company and terminated upon the latter's switchboard. The Bell Telephone Company is their operator and under an agreement providing for payment of three, four or five dollars a year, whatever it may be, per telephone, the Bell Company switches these calls for these rural systems. Now, the position is this, in regard to the last-named company with no exchange and its lines terminating at the municipal limits of the town or village. If for any reason the Bell Telephone Company and the local company cannot agree, the lines are cut at the boundary and the investment of the local company is rendered absolutely worthless unless it duplicates, which is something the Ontario Government is anxious to avoid. Under those conditions the rural company is helpless, and what we want is to insert something in this Bill which will enable these disagreements between the Bell Company and a rural company to be settled and connection made on suitable terms.

Mr. BLAIN: Are there many such cases?

Mr. DAGGER: There are probably 400 companies connecting under those conditions. As I said before, I do not wish to criticize these agreements; they may be perfectly fair, but from the correspondence which the Ontario Railway Board has received from time to time there are causes of complaint and there is no remedy.

Mr. CARVELL: Would there be, among the cases you have cited, any where the local company is parallelling the Bell, where there is competition between the two companies, or are they altogether in districts that have not been developed by the Bell Company?

Mr. DAGGER: Ninety per cent of them would be in districts that have not been developed by the Bell Company.

The CHAIRMAN: Very nearly an hour has been consumed in hearing the Ontario Government's side of the case.

Mr. SINCLAIR: Is there anybody opposing this?

The CHAIRMAN: I understand there are a number of men present this morning who are anxious to be heard.

Mr. NESBITT: Before you retire, Mr. Dagger, will you allow me to ask you one question? So far as your knowledge goes, are there many grievances between the Bell people and the rural companies, such as you have just spoken of as to charges?

Mr. DAGGER: The Ontario Board has received quite a number of communications, one of which I have just read to you.

Mr. NESBITT: That is one where they propose an annual charge of 50 cents.

Mr. DAGGER: Yes. Here is another letter from the Adamston Rural Telephone Association (reads):—

ADAMSTON STATION, Ont., February 14, 1917.

To the Chairman of the Railway Municipal Board,
Toronto.

DEAR SIR,—In April, 1910, when we built our rural telephone line to connect with the Bell system at Renfrew, they gave us a switching rate of five cents per call, which we are well satisfied with. Now they say they will cut our wires on March 22 if we do not pay them a flat rate of $5 per phone per year.

Now, $5 a year per phone may be perfectly fair, but there is no tribunal to settle whether it is a reasonable or unreasonable charge.

Mr. NESBITT: I see what you mean.

Mr. DAGGER: There is another case I might mention; the Temiscaming & Northern Ontario Railway Board's lines terminate at North Bay. There is no tribunal that could give the people in that northern country connection at North Bay. They could give them long distance connection beyond, but not with North Bay.

Mr. NESBITT: Following that I would like to ask another question. Going back to the case where you say they were formerly charging 5 cents a message and now want to charge $5 a telephone, is there any reason why that should not be referred for settlement to the Dominion Railway Board?

Mr. DAGGER: If that Board has the power, all right. I would not like to say the Provincial Government would be perfectly satisfied with leaving the question to the Dominion Railway Board to be settled.

Mr. NESBITT: They certainly would not have the power to force the rural company to accept their judgment, but they would have the power to force the Bell people to accept their judgment.

Mr. DAGGER: And I suppose it might be possible for the Ontario Government to provide in the Legislature that the rural systems should obey its order. I have not raised the question as to the expediency of the joint board to deal with the cases I have mentioned. It is rather a serious matter where you have some 600 telephone systems, and 500 of them dependent absolutely upon the Bell Company for the service, and no way to settle these disputes. There is another point I might mention, and that is the public interest. I have no doubt if they were asked, the majority of these companies would say they were perfectly satisfied with this agreement, because under these agreements it is not the company that pays, it is the public. I have a case in point, the Norfolk County Company. I have a statement by one of their directors, which states that they receive an income of $5,000 a year by reason of their agreement with the Bell Telephone Company, and the question was asked: "How is that $5,000 that you got from the Bell Company made up? Do you mean commission for handling long distance business?" and the answer was: "No, that is about 25 per cent of the $5,000. We get about $4,000 of other line charges." Members of the committee will see that under that agreement the public pays $4,000 a year. The long distance service pays the other $1,000. That may be perfectly fair, but there is no one to adjudicate upon it.

Mr. NESBITT: The Norfolk Company gets back at the other company.

Mr. DAGGER: You can imagine the Norfolk Company is perfectly satisfied with the agreement, because the public is paying.

Mr. CARVELL: They get their revenue out of the smaller company.

Mr. DAGGER: I may say that the view of the Ontario Government is that this idea of increasing the cost of a long distance message because there is a connection between two companies is not right. When a man pays a rental for his telephone, he should only pay the toll for his long distance message.

Mr. NESBITT: In accordance with the distance.

Mr. DAGGER: In accordance with the distance. This idea of making subscribers pay a surcharge of 10 cents or more on the long distance call, simply because he does not happen to be on the Bell Telephone Company line, is not right. Take the village of Waterford, where they had this Norfolk County Telephone Company. When Waterford was operated by the Bell Telephone Company I could telephone to Toronto from Waterford, and pay just the established long distance rate. The Bell Company and the Norfolk Company came to an agreement whereby the Norfolk Company took over the village of Waterford. To-day you have to pay, as the result of that arrangement the established long distance rate of the Bell, plus 10 cents.

The CHAIRMAN: I will have to ask Mr. Dagger to be good enough to conclude his remarks now and let us hear some other representative. We have spent an hour dealing with the local Government's presentation of the case. I have read all the amendments which you or the minister have suggested, and I am sure you will see the wisdom of the committee hearing some of the outside men.

Mr. DAGGER: I would like to say that the reasons for the suggested striking out the word "compensation" are stated in this document.

The CHAIRMAN: Your case is fully covered in the amendment presented by the Hon. I. B. Lucas.

Mr. BLAIN: I would like to make a suggestion, although perhaps it is not a very good one, and the committee can take it for what it is worth. I understand the Bell Telephone Company are willing to concede very many points that are in question by the application that is here. How would it do to take up these points that they are willing to agree upon and let the Bell Telephone Company representatives make a statement. Then we can deal with the contentious matters.

The CHAIRMAN: Is it the wish of the committee that the Bell Telephone representatives be heard?

Mr. AIME GEOFFRION, K.C.: With regard to the question as to whether there should be a joint board, or whether it should be settled by the Dominion Railway Board, we are not much concerned. We have no objection to proper machinery being provided for applying the law. We are inclined to prefer the Railway Board, and personally I fail to see any reason why it should be otherwise. The municipal corporation, as such, is a provincial creation, as is the provincial telephone company, and there has never been any difficulty in the Railway Board settling the disputes which have arisen between the Federal companies and municipal corporations, but whatever the law is, it must be applied to the case. There must be a tribunal and machinery for enforcing the law. We do not care how it is arranged, except we think the Railway Board has always been a satisfactory tribunal, and is the most logical tribunal. It is less cumbersome than other tribunals and is most efficient. That is all we have to say on that point. The next suggestion is that there be connection, not only for long distance purposes, but for local purposes. We are quite willing that that should be arranged. As a matter of fact, we have been giving by private contract connection for local purposes to everybody except to our competitors, and we are quite willing that the law should say that we should do as we have been doing for some years. We have connection with 675 systems and have refused connections to 74. We have connections with 89,000 telephones and refused connection to 8,000 on the ground of competition. We are therefore willing to submit to the words "long distance" going out provided that we have a protecting clause inserted which will protect us as against competitors. We object to a small local system which is just beginning to compete with us in our own town asking the next day after its incorporation to have the use and advantage of all our local system. That is our first difficulty, we want to be protected by the prohibition of any power to order connections for local purposes, where there is competition. The next point with which we differ is the question of compensation in the case of a competitor who secures long distance connection. We want to maintain the former lines of the statute as interpreted by the Supreme Court, confirming the decision of the Railway Board, to the effect that where there is competition the Board should be able to order compensation. There are a number of other points, of comparatively trivial importance, to which we desire to call attention, but we want to be protected against the demands for local business from a competitor, and we want to have the right to refuse to give connection without compensation.

Hon. Mr. COCHRANE: What do you mean by "competitor," two systems in one town?

Mr. GEOFFRION, K.C.: We want to be protected in the case of competition by, say, a small company who want to have the use of our local system in the same town, and who although their plant is small and less expensive want to be placed in the same advantageous position as we are.

Mr. BENNETT (Simcoe): In the case where a local line is coupled up with one of these competing lines in the same town or village, what then?

Mr. GEOFFRION, K.C.: If the rural line is going through the town I do not see how we could give connection with one and not with the other.

Mr. NESBITT: What do you say about paragraph (a) of section 7?

Mr. GEOFFRION, K.C.: I do not think the draft is quite broad enough; it is this way, we have two sources of competition—local business and long distance business. In other words, I can conceive of somebody building a long distance line between Ottawa and Montreal, with no local connections between those places, paralleling our long distance lines, and asking for the use of our local lines at both ends and we want to be protected in regard to local service against the competitor, not only in local business, but also a competitor in long distance business. The Ontario Government does not know what the full effect will be if the Bill passes in the suggested form, because the proposition will become, financially, attractive the moment the Bill is amended in the way suggested. A mere long distance line from Ottawa to Montreal will become an attractive financial proposition. Then with regard to 7 (a), the criticism is that it is limited to the boundaries of the municipality, and you know, gentlemen, perfectly well, there are many places where the local system goes outside the limits of the municipality. We need to be protected as against long distance, as well as the local competitor, in respect to local service. It already applies with regard to long distance connection, but with regard to local service we want protection in the case of a long distance with local connection. In the case of a system extending beyond municipal limits is the Bell Telephone Company to give connection to those subscribers of that system outside the municipal limits and to refuse connection to those subscribers who are within the limits, or are you going to compel the company to give a competing company connection because they have some subscribers outside the municipal limits.

Mr. NESBITT: You want the whole system included.

Mr. GEOFFRION, K.C.: The local system should be included as a whole as regards competition.

Mr. NESBITT: Supposing you have a town in which there is a local company who have some subscribers in the town and also some subscribers in the country. For the long distance message in the first place you charge them compensation for connection with you.

Mr. GEOFFRION, K.C.: If the Railway Board authorizes it.

Mr. NESBITT: You charge them compensation for connection with you, and you also charge so much for each message, say, 10 cents, by way of illustration, for any long distance message going over your line, whereas you may be benefited to some extent by the long distance messages which come into your line over the same rural routes. Have you any objection to these messages going through on the same charge?

Mr. GEOFFRION, K.C.: Over which line?

Mr. NESBITT: Over both; you benefit both ways.

Mr. GEOFFRION, K.C.: We benefit both ways if it is not a competitor.

Mr. NESBITT: Suppose it is a competitor, to a certain extent, in the town it is not a competitor in the country, you have no lines in the country, and it might benefit these country subscribers. You make the usual charge, and you have to have your operators at the central in any event.

Mr. GEOFFRION, K.C.: The whole difficulty is a practical one, you cannot split up the system, I do not see how you can draft a law or a decision even of the Board, that will say when it is a competing system.

Mr. NESBITT: You are willing to leave the settlement of compensation to the Railway Board?

Mr. GEOFFRION, K.C.: That is the present law; the Railway Board is not bound to give us compensation at all, even if it is a competitor, they can say there will be no compensation, or that there will be so much and in such form as they direct. We say that the Board should simply have the power to say that they think it is just, where we are forced to give long distance connection to a competitor and where there is no local business as a consequence, that we shall receive such compensation as they determine.

Mr. LAPOINTE (Kamouraska): The Supreme Court must give compensation.

Mr. GEOFFRION, K.C.: No, "may" is not compulsory. Wherever we get it, it is because the Board thought it was just compensation should be made.

Mr. JOHNSTON, K.C.: You are substantially content with clause 7 as it stands in the Bill?

Mr. GEOFFRION, K.C.: Yes, strike out the words "long distance," if you like, so long as we are protected, and, if that goes through, you will have to repeat the words with regard to compensation.

Mr. MIDDLEBRO: Have not the courts decided that by reason of the fact that compensation is provided for, you may make an extra charge?

Mr. GEOFFRION, K.C.: The Supreme Court have decided that may be the case that an extra charge may be made.

Mr. MIDDLEBRO: As a matter of fact, the extra charge has been made.

Mr. GEOFFRION, K.C.: In some cases, undoubtedly.

Mr. MIDDLEBRO: Just because you have been, in certain districts, deprived of business by reason of competition arising from this connection, the Board have already decided that you were entitled to make the extra charge.

Mr. GEOFFRION, K.C.: Where they have been of opinion that in consequence of connection we have been deprived of business they have given us compensation.

Mr. MIDDLEBRO: Following that to its logical conclusion, won't that give you a virtual monopoly of all the business in Canada, first because you can refuse to take them except upon being compensated not only in the usual way, but because they have deprived you of some patrons?

Mr. GEOFFRION, K.C.: We can trust to the Board applying some reason in that.

Mr. MIDDLEBRO: The Board has already decided, as I understand.

Mr. GEOFFRION, K.C.: That they "may."

Mr. MIDDLEBRO: They are going to follow the precedent which——

Mr. GEOFFRION, K.C.: That is why we differed on the word. Your conclusion does not follow. If they are using our lines, they would be able to take clients from us, then we should have compensation.

Mr. MIDDLEBRO: In other words, if they get some subscribers in a certain portion of the country which you could have gotten if they had not come in, then you are entitled to compensation?

Mr. GEFFRION, K.C.: We would not go as far as that. I doubt if that is a logical conclusion. And then I am sure the Board will not carry it out to that extreme. If that extraordinary condition happens—well, Parliament sits every year.

Mr. JAMESON: Would you take that attitude before the Railway Board?

Mr. GEOFFRION, K.C.: There is one difficulty. I probably won't be asked.

Mr. JAMESON: That probably accounts for your attitude here.

Mr. MIDDLEBRO: Is it not a fact that the chairman of the Dominion Board gave a dissenting opinion from that of his colleagues?

Mr. GEOFFRION, K.C.: He was against us as follows: He said he was bound by statute; it was unjust to us; he said he did not think the law means it. Sir Henry Drayton's judgment must be read in full. His judgment is this: As a matter of law, he did not think the wording gave him the power—I am summing it up—but he added that he entirely agreed with the fairness of our position. You will find the express terms of the judgment in the memorandum we have submitted to the committee. He did not think that in law he could give us what we were asking for. We are seeking that our competitors should not use our own tools to fight us.

The CHAIRMAN: Mr. F. D. Mackay, Treasurer of the Independent Telephone Lines, is here, and we will call upon him.

Mr. MACDONELL: I would suggest that as far as possible the gentlemen who address the committee divide the matter up so that each one will deal with a certain phase.

Mr. NESBITT: Let them talk.

Mr. F. D. MACKAY: I will try to be brief and to the point. I heard the discussion that has occurred, and I will try, as far as my humble powers will permit, to meet what I think is the desire of the committee—to get the meat of the thing and get it quick.

First of all, I am speaking for the executive of the Canadian Independent Association, an organization representing these local systems, both municipal—that is, most of the municipal systems in Ontario—and those operated by locally-owned or co-operative associations. I have with me here all the members of the executive, and the only reason we desire to say a word to you would be to state the conditions of the agreements under which we are working with the Bell, to show the diversified character of these agreements and to be able to convince you of the necessity of establishing some uniform plan of operation between the two companies.

Now, let me preface my remarks further by this statement, that 75 per cent of these men in the telephone business, the men representing these systems here, were not ambitious to become telephone men. They were farmers, millers or something else in a small country village. I may say that the doctor played an important part because he wanted to reach his patients by telephone and save long drives in the cold. They went into the business because it was the only way they could get telephone service. Now, how were they going to get it? I may say that there is not a man in the business to-day that did not go to the Bell Telephone Company. What did the Bell Telephone Company say to the offers made? They said: "Gentlemen, we won't accept; but if you are out three miles we want a hundred dollars." They made a price that was prohibitive.

Hon. Mr. MURPHY: A hundred dollars for what?

Mr. MACKAY: A connection. What I say to you is this: when you come to consider our request for amendments, I want you to keep in mind the fact that where these systems came from; and why they come into existence. Further this Parliament saw fit to give the Bell Telephone Company a charter, as you know, the like of which could not be obtained to-day. They have powers which if Parliament granted to-day, the people would rise up in rebellion and sweep you out of existence. Every one recognizes that. When you have granted these powers and privileges, when these local companies came into existence because they had to, I ask you to put your sympathies not on the side of the large corporation, but, as representative of the people, on the side of the people's companies. They are not in the telephone business

to make money, but for the sole purpose of giving their local communities service, and with that fact in your mind, I want you to consider these amendments.

First of all, let me refer to the statement of the gentleman who just sat down (Mr. Geoffrion) and to enlighten you on his remarks. Let me say that this fight in regard to this amendment has lasted eight or ten years; that we have spent tens of thousands of our own money trying to secure what we are asking you as the people's representatives to give us. We have failed, and it is not my intention to try to trace our efforts to get this connection. All I need tell you is that we went about it in the best way we knew how, and we were defeated at every turn. There is an order of the Railway Board. Mr. Geoffrion says that the Board "may" give compensation. Gentlemen, they have imposed it. To-day, if the Bell Telephone Company comes to the owner of these local companies whose agreement has expired, and they discuss terms, and the local man says: "Now, we don't like your terms; we think you are asking us to subscribe to much," the Bell man can say: "If you don't like these, we think they are reasonable, we know they are, you can take what you are given under the order of the Dominion Board." In other words, that order of the Dominion Board is a club in the hands of the Bell Telephone Company to give them absolute control of every local system as far as the agreement is concerned. That may be denied; but, in practice, that is the fact, gentlemen, and you can get the facts, as I say, if you desire to question the men who are with me.

Mr. SINCLAIR: What order do you refer to?

Mr. MACKAY: The order of the Dominion Board issued after three years of fighting on our part. The order was issued in 1914.

Mr. CARVELL: What is the portion to which you object?

Mr. MACKAY: To that order the chairman dissented. I may say that Sir Henry Drayton's dissenting judgment was entirely in accordance, as far as essentials are concerned, with our opinion. He did make certain references regarding the Bell Telephone Company, to the sadness and sorrow it gave him to deal with the interests of the Bell Telephone Company, but he said on the interpretation of the law that there was nothing for the Board to do, but that "the Bell Telephone Company would appear bound to afford the subscribers of the Independents just as much as members of the general public that may seek to go into a long distance station that the Bell Telephone Company at its own expense provides, all reasonable and proper facilities for the forwarding of telephone messages, a service which must be performed without discrimination or preference."

Mr. CARVELL: What did the Board decide?

Mr. MACKAY: The Board issued an order, and under that order they said that we must pay compensation for what? For the loss of the business that the Bell Company was going to suffer; and, gentlemen, these local systems have been a continual source of new revenue to the Bell Telephone Company. These men have invested their money and built up their local systems, and brought their long distance customers to the Bell's doors.

Mr. SINCLAIR: You object to pay compensation?

Mr. MACKAY: Yes. It is a new and novel law, that applies in no other business. If you are in any other line of business there is no talk about getting compensation for the business a competitor may take away from you.

Mr. NESBITT: Just there, ordinarily there would be no request by the opposition for connection with the other company, you understand? You say if a competitor comes into a town in any business he does not ask compensation from the other fellow. In that case he would not ask accommodation from the other fellow.

Mr. MACKAY: Quite true. In this case the Bell have their long distance lines established there under special privileges given them. I understand that they are

supposed to serve the general public. The chairman of the Railway Board said that they are there to serve the general public. We are part of the general public. We are not only prepared to bring our subscribers to their switchboard, and right into their central office, but we have invested our own money and are willing to bring new subscribers to the Bell Telephone Company at our own expense and hand over the business to them. We are not asking any commission for doing that. We are simply asking them to take our subscribers and trust them the same as if they went into a booth in a railway station and asked for a long distance call.

Hon. Mr. COCHRANE: Would you be willing to grant that same privilege on your own line?

Mr. MACKAY: We are quite willing that any advantage that exists should be reciprocal.

Mr. TURIFF: Would you pay the regular fare?

Mr. MACKAY: We would be quite willing to pay the regular long distance fee, and we are not asking for any divisions at the present time.

Mr. SINCLAIR: You are criticizing the decision of the court rather than the law.

Mr. MACKAY: I am criticizing it to the extent of saying that it exists. My friend says it is only a case of "may," but I say the Board has issued an Order. It has placed a club in the hands of the Bell Company under which they can say, "If you do not accept our terms then you must accept these terms and pay compensation."

Mr. SINCLAIR: Assuming you are right, what is your remedy?

Mr. MACKAY: Our remedy is to amend the Act in accordance with the suggestion that was made, giving us the right to use the Bell Long Distance line the same as any other class of the community. We are quite willing to submit to the inspection of our system as far as the standard quality of our equipment is concerned. If our equipment is not up to standard do not allow us to connect with the long distance line. If it is up to standard we say there is no reason why we should not get that service if we pay the established tariff.

Mr. NESBITT: Who pays the expense of making connection?

Mr. MACKAY: We do.

Mr. NESBITT: You do not want to pay any additional charge?

Mr. MACKAY: We do not.

Mr. SINCLAIR: Am I to understand from you that if we amend the Act in accordance with this suggestion, the Company will not have the power to charge compensation?

Mr. MACKAY: No, Sir, that is eliminated entirely. The Supreme Court differ, and the Dominion Board of Railway Commissioners differ, in the interpretation of the word "compensation." We say, therefore, eliminate it, so that there can be no further misunderstanding. Now in addition to that compensation a surcharge of ten cents was put on. If that ten cents had gone to the local men who had ten, fifteen or twenty thousand dollars invested in the local telephone system, it might have been reasonable and some excuse made for it, but that was not done. Of that sum, 7 cents goes to the Bell Company and 3 cents to the local company. We say that charge should be eliminated altogether. It is unreasonable to ask the local subscriber to pay that amount on a local system, and it is no less unreasonable to ask a man in Toronto who may call up a subscriber on Mr. Hoover's system. As far as the Toronto man is concerned, he is an innocent party, he had nothing to do with Mr. Hoover getting an independent telephone; nevertheless, if he calls Mr. Hoover over the Bell line, that Company says, "You must pay us the 35 or 40 cents, whatever the regular fee is, and we will fine you 10 cents additional because Mr. Hoover has an independent telephone." We say that is unjust to the man in Toronto.

Mr. NESBITT: Suppose they have the right to divide equally?

Mr. MACKAY: If there were no supercharge made there should be an equal division.

Mr. NESBITT: The reason I asked the question is because I use a rural phone and the Company I am connected with make a surcharge of ten cents. Now, should the Companies divide it equally?

Mr. MACKAY: We say there should be no surcharge, but if there is one, then let it work both ways.

Mr. NESBITT: Personally, I find no reason to object.

Mr. MACKAY: We do not think there should be a supercharge.

Mr. BENNETT (Simcoe): Assuming that ten cents surcharge is made, does the independent company get 3 cents and the Bell company 7 cents?

Mr. MACKAY: Yes, under this order referred to.

Mr. BENNETT (Simcoe): Is there anything to compel the independent company to accept the 3 cents? Cannot they forego it if they wish?

Mr. MACKAY: I do not think the discrimination would be allowed. It would be a matter of discrimination because the men in Toronto would have to pay the 3 cents, which would be collected from him by the Bell company, and so there would be created a situation of discrimination which would be a source of trouble. So far as the local company would be concerned, they could collect the 7 cents and pay it over to the Bell company. But they should not be called upon to do a thing like that just because the conditions are not fitted to suit the circumstances in a reasonable way. Now that, as far as the long distance service is concerned, is our claim. We have gone into the business because we had to. We have invested our money in local systems. We are prepared to bring those systems up to standard as regards equipment of lines, we are prepared to bring that connection into the Bell office at our own expense and we say that our subscribers who pay the regular long distance rates should get that long distanace connection.

Mr. BLAIN: I understand the Bell Telephone Company is willing to do that.

Mr. MACKAY: If so, we are very pleased, the Bell company has never been willing to do that up to the present time. I might say there is a gentleman right here on our executive who gets the regular Bell long distance rates under agreement. That is only an isolated case, and that gentleman is here to-day anxious for a new agreement. We want to know what you are going to do. If you are going to confirm the present legislation then I can tell you you place every one of us in the hands of the Bell Telephone Company, and when the agreements expire they may give us a new agreement, or new terms. We want you to remove that club from their hands and let it be known beyond any question of doubt how this long distance connection is going to be secured. Now let me touch upon another matter.

Mr. NESBITT: Just before you leave that point: You want to do away with the charge for compensation and the surcharge. You want us to legislate on these questions in place of leaving the matter to any Board?

Mr. MACKAY: We want you to make it clear that the Board, as we say in the amendment, shall have control of the question. Let the Board decide whether our equipment is standard and whether it is reasonable to allow such a line as I have to connect with the Bell long distance line or not. The Board will decide that and will also say how much expense is to be borne by us in making connection. We are willing to leave that in the hands of the Board, but we do say, because there has been this disagreement in the Board of Railway Commissioners and in the Supreme Court, "Remove that doubt and make it unequivocal and plain beyond any question.

Mr. NESBITT: But you want us to legislate on the surcharge and the compensation charge.

Mr. MACKAY: We simply ask for regular long distance rates.

Mr. JOHNSTON, K.C.: You want to deprive the Board of any right to award compensation?

Mr. MACKAY: That is the thought exactly.

Mr. LALOR: Where the Bell Telephone Company makes a reasonable arrangement with some companies and does not make it with others, does the fault lie with the local company on account of their acting unreasonably?

Mr. MACKAY: No.

Mr. LALOR: But the Bell Company make a reasonable arrangement with certain independent companies.

Mr. MACKAY: The answer to the gentleman is rather difficult to explain. In some cases a very reasonable and satisfactory agreement is made through the ignorance of the man acting for the local company, who may be entirely lacking in experience of the telephone business. The Bell Company's agents are all very courteous and pleasant gentlemen to meet. They simply get the agreement from the other fellow, who, not knowing any better, is satisfied. That forms an answer with respect to a certain number of cases. Now, in other cases there is an agreement which is satisfactory for the reason that Mr. Dagger has stated: the Bell Company and the local company are making money, and the public is paying in every case, of course. In other cases the agreement may be satisfactory for some other reason. I think probably there are two or three cases where there are no working arrangement, but Mr. Scott, our president, who represents the Brussels municipal telephone system, gets 20 per cent of the long distance receipts. Mr. Scott does the Bell operating for them, but he says, "I want a uniform agreement. I want everybody to get as good an agreement as I have got." That is all we are asking. If the Bell Company can afford to pay Mr. Scott 20 per cent—true, he does their switching—they should be able to do the reasonable thing in all other cases.

Now, as to the question of the joint Board. The Association was not so directly interested in the matter of the joint Board because it is one which has arisen out of the difficulties that have confronted the Ontario Municipal Board in connection with local companies and the Bell Telephone Company. The suggestion therefore comes from the Government or from the Railway Board, but as far as our Association is concerned, let me say this: There must be some tribunal that will deal with disputes between the Bell Company and the local company. At the present time our local companies must connect with these others; we have no choice in the matter. The Ontario Telephone Act says every Ontario company must connect with its neighbouring company, so that we have no choice. We have to submit.

Mr. BLAIN: Without any charge?

Mr. MACKAY: On terms which are agreed upon. If they do not agree they come to the Railway Board. Mr. Dagger's statement with regard to the joint board was confusing at the time, because you had not heard as much of the discussion as you have now, and therefore I think if I state the case of the local company you will see the point better than you did at the commencement. Take the case in which I was interested directly, and it will give you a concrete statement of the difficulty. The township of Brighton has a municipal system. When they built that municipal system they took in the rural district around Brighton, several townships, and got three, four or five hundred subscribers. They made an arrangement with the Bell Company to connect with the Bell Telephone on their switchboard at Brighton, where they got the local subscribers in Brighton and the long distance connection at their regular rates for a fee of $2 a year per subscriber. I think that was the rate. It was a very

good arrangement, because they were bringing 600 municipal subscribers into the town of Brighton to the Bell Telephone switchboard, and these men were using the long distance line and paying long distance charges, and they were getting $2 for each subscriber for switching them around 150 or 160 subscribers in the town, and the town subscribers, by the way, had an advantage and the Bell Company had an advantage in increasing their local subscribers by reason of the fact that they could get connection with all the farmers out there, and it was good business for them. So that the local system helps the Bell Telephone in a town every time. It is not one-sided. When a man builds up a system of 600 subscribers around a town, and they are able to make an agreement with the Bell Company, it is to the advantage of both. The Brighton agreement was approaching an end and they went to the Bell Company and said: "We are dissatisfied, we are paying the money and we are getting no night service, and the day service is bad. Subscribers are complaining, we must make a new arrangement." And the Bell Company said: "What can we do?" and they discussed terms, and they were not satisfied. It came to a point where the municipal concern went to the corporation of Brighton and asked for a franchise and said: "We will put in a switchboard," and the Bell Telephone Company said, "If you put one in, you cancel your agreement, and you cannot get long distance connection, except under the order of the Board." That is a concrete case which tells the story better than any one can. I know the facts, because I went down to Brighton when the matter was under consideration. That case has not yet been settled.

Hon. Mr. COCHRANE: If you obtained legislation compelling the Bell Company to give you long distance connection would you be satisfied?

Mr. MACKAY: Yes, if it were given without any extra charge. I am now speaking of the joint board, and showing the necessity for the creation of the joint board in the case of Brighton. If that joint board had been in existence, all that the village of Brighton would have required to do would be to apply to that joint board. Then the board would have to call the Brighton representatives and the representatives of the Bell Telephone Company before them and would say to them, "Here is the old agreement which is at an end. What will be the terms of the new agreement. We do not think this old agreement is fair. What will you do?"

Hon. Mr. COCHRANE: If they were compelled to give you connection without compensation, what would you want a joint board for?

Mr. MACKAY: But there is a case where it is not long distance connection. That is the point the board is trying to get over the difference between different kinds of service.

Hon. Mr. COCHRANE: If they were obliged to give you connection for long distance service, would that satisfy you?

Mr. MACKAY: As far as that point is concerned, but the appointment of the joint board to deal with the local connection is necessary for the reasons I have indicated. My friends, the Bell Telephone Company, mentioned the fact that they did not want the local competition. It was dangerous to their interests.

Hon. Mr. COCHRANE: Were they in there as well as you.

Mr. MACKAY: No, they are not in the townships. They never develop the townships, but they are in the town of Brighton. As far as that is concerned Mr. Scott's case applies exactly to the case of these genltemen. He tells me the moment they established their municipal system they had to have Brussels. What good is the system without being able to reach the market town? They must have communication with the towns. They discussed the matter of putting in a switchboard, and the Bell Company immediately said: "No, if you put in your switchboard, there will be a different state of affairs." That is the local connection that is talked of. That is not included

in an order for the long distance connection. There is a certain condition existing in the rural districts. The Bell Company at different times had indicated a willingness to do different things. In the presence of several of us gentlemen before the Railway Board a statement was made by Mr. Macfarlane that they were willing and had always been willing to give this free local connection to companies that were not competing with them. That statement has been made to you in a little different manner to-day. He said they were always willing to do that, and he said "not only that, but we are willing to give that connection to the non-competitive companies." That is just the point. If they will do that there can be no possible objection to the local connection. However, we are not asking the committee to decide that. We are asking you to create a body that will be able to deal with that question. The Dominion Railway Board cannot. You have a joint board that deals with the railway. Why not treat us in a similar manner, and say to us, "Here is a body that will hear your representatives and deal with your requests."

The CHAIRMAN: Why cannot the Dominion Railway Board not deal with that?

Mr. MACKAY: I understand there is a clash of authority between the Dominion Railway Board and the Provincial Board. That has been our understanding. We have to go to the Ontario Railway Board in regard to provincial matters, and when it comes to a matter of the Bell Telephone, we are in court on one side and out of court on another side.

Mr. CARVELL: Why could the Dominion Railway Board not make an order and say: "You shall give either long distance connection, or connection with a rural system?" Why has the Dominion Board not power over the Bell Telephone Company?

Mr. LUDWIG: They have not the corresponding power over the provincial authorities.

Mr. CARVELL: If the local company will not accept it, that is not our fault, but if the Railway Board say to the Bell Company: "You must given connection with the local companies under certain terms and conditions," surely that is all you want from this Parliament.

Mr. MACKAY: But we have gone into court, and on the one side we were in court, and on the other side we were out of court, and where the order says "you must do so and so," it is done, but simply where it is an order that does not have to be obeyed, it is entirely different.

Mr. CARVELL: Then do I understand you to want power by which the Bell Telephone Company will be ordered to do a certain thing, and then you want power also to make the local company accept that proposition.

Mr. MACKAY: No, We are not asking to compel the Bell Telephone Co. to do anything in this case with regard to this local connection, but simply to put the matter where it can be argued and decided by a tribunal which has power over both sides.

Mr. MACDONELL: You are asking something that we have no power to give. You are asking us to pass legislation here dealing with local, provincial, companies, and also for legislation dealing with the local, provincial, Railway Boards who have jurisdiction in their respective provinces and who are in no way amenable to the jurisdiction of this Parliament or of any Act that we may pass. That is the difficulty I see. Is it not sufficient for your purpose if this Bill be made definite, and clear-cut, that the Dominion Railway Board is to deal with this matter—what is the objection to that?

Mr. MACKAY: As far as the long distance is concerned, we are willing to have it remain there. My answer to the other question is this, I am not a lawyer, and we have only to act on the information and advice we have received, both from the legal authorities, and from the local Government, that the Ontario Board had no authority

over the Bell Telephone Company and that the Dominion Railway Board had no authority to enforce orders against the local systems. Then we were told that the only remedy we had was that in the new railway Act provision should be made for a joint Board to deal with certain questions when they arose. If we are wrong in that regard, our information and our instructions are wrong.

Mr. MACLEAN: The Bell Telephone Company is a creature of this Parliament and this Parliament can say to its own creature, which it created, "You must put yourself under the jurisdiction of another body with regard to certain things."

Mr. NESBITT: I would like to ask Mr. Mackay with regard to the proposition to strike out the words "long distance" in subsection 7. Supposing that is done, at the bottom of subsection 7, that wherever there is a Provincial Railway Board having power to make orders respecting systems within the authority of the province then the Dominion Railway Board may by joint session or conference make orders—what is the matter with that part of the clause?

Mr. MACKAY: That is part of the old clause.

Mr. SINCLAIR: Is that part satisfactory to you?

Mr. NESBITT: If you strike out the words "long distance," is that not sufficient?

Mr. MACKAY: That clause is drafted with a view to having a joint board.

Mr. GERMAN: I am not a member of this committee, but will have something to say upon the subject later on, but what is the matter with the clause if you strike out the words "long distance"?

Mr. MACKAY: Speaking offhand, I do not know just how that will affect it.

Mr. GERMAN: If the words "long distance" and "compensation" are struck out, it seems to me you will have a clause that will be satisfactory.

The CHAIRMAN: Colonel Mayberry, President of the Canadian Independent Telephone Association, is present, and the committee will be glad to hear what he has to say upon this question.

Col. T. R. MAYBERRY, Ingersoll, Ontario: Mr. Chairman and Gentlemen, I am here representing only the competing companies. I have listened to the arguments of those representing the independnt companies, and they have put the question, I think, very fairly before this committee. We are objecting principally to the interpretation placed upon the word "compensation" in the Act, as it is at present enforced. It does seem rather strange that we are to pay compensation to the Bell Company for doing its business and also pay a surcharge, or those of our people who are on our line have to pay to the Bell Company a charge of ten cents also for messages coming in over our line. We have always had since the first order of the Board to pay a surcharge for people using our line and the Bell, but we object to paying a charge of $300 to the Bell Company for loss of business. Can any person claim that the ten cents surcharge is not sufficient to pay them for the labour and inconvenience caused by giving our people that connection. As a matter of fact the people send in over the Ingersoll telephone line system about nine-fourteenths of the business between the two companies. We sent out about 5,000 calls and they sent in over 9,000 calls; that is a charge upon the people using these lines of $1,439 per year. We perform for the Bell; we give them 80 per cent more connections than they give us, and we think the initiating company should pay something for the connection; that is a matter that should be dealt with by the Board. We receive out of $1,439, $431, and by the interpretation placed upon the word "compensation" we pay back to the Bell Company $300, thus leaving out of the whole amount collected only $131 for the work we do for the Bell in connection with the long distance business.

Mr. NESBITT: They send in 9,000 messages over your system and you send in 1,500 over their system.

Col. MAYBERRY: That is our principal objection. When it comes before the Railway Board, we believe we should have a fairer proportion of the surcharge, if there is to be a surcharge. The matter of a joint board is one which affects this question. While there may be no power whereby the Dominion Parliament can appoint a joint board, by mutual agreement the Legislature and the Dominion Parliament may agree to appoint such a board and, if the Railway Board at the present time should assume the authority to make an order between the Bell Telephone Company any local company there is no power that can compel the local company to accept that order. By mutual legislation passed by the two bodies, there is no doubt such a board could be appointed and they will have jurisdiction to deal with both sides of this question. That has been provided for by legislation with regard to the railways, and we believe that this matter is of such importance to the people that in their interests legislation should be passed for the appointment of some body to whom application could be made to fix the charges as between the two companies. These are the matters that are before you, they have been placed before you by the representatives of the companies interested, and I hope some action will be taken by this committee that will bring about a better state of affairs between the Bell Company and the local companies, than exists at the present time.

Mr. CARVELL: As a competing company do you feel that there should be power to compel the Bell Telephone Company to give you connections and to carry on a regular exchange of business between the two companies.

Col. MAYBERRY: Locally?

Mr. CARVELL: Yes.

Col. MAYBERRY: No, I do not think that would be fair if there are two companies in the one town; it might be of advantage to the Bell Company in one case, and in another case it would benefit the local company, but it should not be compelled to give connection without proper rates.

Mr. NESBITT: You do not want the compensation charged, but you are not objecting to the surcharge if it were evenly divided according to the number of messages.

Col. MAYBERRY: I am on record when appearing before the late Commissioner Mabee, that I did not expect to get it without a small charge; of course the Railway Board fixes the division, but I have always expected we would have to pay some fee. With regard to the question of what the Bell is actually receiving in our case they are getting 33 per cent more for the business done on our lines than they would get for the regular long distance business at the regular toll, which seems a rather unreasonable amount to charge to the people in that case.

The CHAIRMAN: Are there any representatives here outside of the independent telephone organizations who care to be heard?

Mr. MORRIS, M.P.: Mr. Chairman, I stand probably in about that position.

Mr. TURRIFF: I want to ask the Bell Telephone Company one question. On what grounds does the Bell Telephone Company charge an independent telephone company more for transmitting a message that is brought to their office than they would charge me individually? If I go in to their office and ask for one message, they charge me the regular rate, but when any of these independent companies, judging from what I have heard this morning, bring five or six hundred subscribers to the Bell Telephone Company, they are charged a higher rate than I would be charged individually. In addition the Bell Telephone Company gets the advantage of sending long distance messages to the three or four hundreds subscribers of the independent companies. I would like to know the grounds advanced by the Bell Telephone Company for charging a company that brings them 100 per cent more business than an individual more than they do the individual.

Mr. LAWRENCE MACFARLANE: Mr. Chairman, I would like to ask Mr. Sise to answer that question.

Mr. C. F. SISE, JR.: Mr. Chairman, the company charges all connecting companies exactly the same rate for long distance calls as it charges its own subscribers, with the exception of the cases ruled upon by the Railway Board where compensation was ordered, and that compensation was decided upon by the Board in view of the possible loss of business locally by the Bell Company where competing systems existed. In every other case, if the line is brought in and connected to any of our exchanges, the rate which the Bell Company receives for long distance business coming in over that local line is exactly the same as charged to the local subscribers in our exchange. But the local company adds a rate which is called "another line charge," a charge over which we have no control and neither has—I believe the Railway Board has control over the through rate. That charge is based on the use of their local line and is added to our through rate, it makes up the through rate. We collect that on all business originating on our own line and pay it over to the local company. While I am on my feet, if you have a few minutes to spare——

Mr. NESBITT: Would you retain a certain amount of the charge?

Mr. SISE: We do not retain any portion of the "other company" charge.

Mr. NESBITT: Suppose there is a surcharge of 10 cents. You retain 7 cents and the other fellow gets 3 cents.

Mr. SISE: I think you are probably confusing the surcharge with the "other line" charge. The "other line" charge is confined to agreements made with non-competing companies. The surcharge is the charge ordered as a compensation fee, in addition to the flat rate mentioned by Colonel Mayberry, where competition exists, That charge is divided in the ratio of 7 cents to the Bell Telephone Company and 3 cents to the local company.

The CHAIRMAN: Might I call your attention to the fact that it is now very nearly one o'clock and there are two other gentlemen from outside who would like to be heard before we adjourn.

Mr. TURRIFF: I did not get any answer to my question.

The CHAIRMAN: I thought, Mr. Sise, you had given an answer to Mr. Turriff.

Mr. SISE: I thought I had.

Mr. MORRIS: Mr. Chairman, as far as I can see, and from what I have heard here to-day, the object of the Bell Telephone Company is to eliminate competition. If that is allowed on the part of a telephone company it certainly should be permitted in other branches of business. I have been in business for a great many years, and if the principle is adopted that has been advocated before this committee, I think I have the right to claim certain compensation from companies who have come into my territory and taken business away from me.

Mr. NESBITT: You would have a perfect right to claim compensation but you would have a lot of trouble collecting it.

Mr. MORRIS: Nor do I expect this Government to fix or to make any regulations whereby I could collect anything from a competing company. Let me state briefly the conditions that exist in my district. There we have a company which has been organized entirely by farmers. The privileges we sought, the Bell Telephone Company would not give us, notwithstanding repeated applications made to them. I could cite several cases where farmers in my district offered to pay $24 a year for the use of the telephone, and $20 bonus if the company would put a telephone in their houses, but the offer was refused. The Bell Telephone Company were not reaching out for local business. In our district they wanted long distance service. That is to say they wish to draw a revenue from every message that passed over their line, and they were doing so, and evidently found it profitable. Later on a company from the

American side came in and competed in our district. They gave the farmer rural telephone service that we felt was a great benefit to the people of that country. Unfortunately that company, being an American concern, sold out to the Bell. We understood what that meant, namely, that the same conditions would obtain in due course of time. The farmers in my district came together, organized a company and built their lines and made them up to the standard, as I think the Bell Telephone representatives will admit, as they know pretty nearly what conditions exist in that locality, and I may say that we have the best rural telephone system that I know of in the province of Quebec, and I maintain that ours is the only genuine independent company in the province of Quebec. There are between four and five hundred so-called independent companies, but they are not independent companies, inasmuch as to-day they are under the control of the Bell. We are not under that control, and we have objected to paying this surcharge, but do not object so much to the 10 cents exchange. We would consent to that. We are only interested in long distances, and we object to paying this $300 a year to the Bell Company. I would ask the committee to take that matter into consideration. The question of local connections does not interest our company. We are concerned principally with long distance.

Mr. CARVELL: Is your new company in competition with the Bell Company?

Mr. MORRIS: Yes.

The CHAIRMAN: I hope the committee will hear Mr. Scott, representative of the independent companies, before adjournment.

Mr. SCOTT: I wish to say a word on the question of the joint board. We are a municipal company in Brussels, and we organized a telephone system there. South of us is the McKillop Telephone Company. We have a switchboard of our own and they have none. Their lines terminate on the Bell system and they operate them. We applied to the Ontario Board to get connection. The Ontario Board made an order first that we should get connection, but the matter was taken to the court of appeal and the order was set aside. We applied again and the Ontario Board laid down the rule that they had power to force the McKillop system to connect with us, but had no power to force the Bell Company to run the switchboard, to give us the connection, and all they could do was compel the McKillop people to put in a switchboard and new lines, and that new switchboard cost $800 or $1,000. We had to pay our share of putting in the switchboard and new lines, for the reason that they had no power to order those people to run the switchboard. We were before the late Justice Mabee on the Dominion Railway Board, and also before Sir Henry Drayton, and they both laid down the rule that they had no power whatever to compel local companies to give connection, that they had the power to compel the Bell to give us long distance connection, but they could not say to us that we should accept it. It was natural that we would accept it when we asked for it, and that is the reason we ask for the joint board, so that Parliament would have an opportunity to compel them to give the connection. I understand the province of Ontario has passed legislation authorizing the appointment of a joint board. If the Dominion Parliament would pass legislation on similar lines, we would then come under the law at once, but if the Dominion will not pass the legisation we will have to wait for another year for the Ontario Government to do something. When we first started our system in Brussels we had fifty odd subscribers. The farmers around the district wanted to get telephone connection with the market, which was in the next township, and they wanted connections with other places. We tried to arrange with the Bell Company, and the Bell people said: "You go out and build your lines around the district, and we will connect with the switchboard at the rate of $3 a 'phone." I refused that because we are in independent municipality and we wanted to settle it in our own town. There was a small village in Grey wanted to start a system there, and we wanted to take the initiative in this locality, and could not issue bonds unless it was

in our own town. We wanted to build our own system at our own convenience, and the result was that the Bell ceased to exist in that town. We wanted to get the long distance connection, we got the order, but before the order was made public the Bell people came to us and made an arrangement that was satisfactory, but we felt that some day there may not be an agreement, at the present there is no jar between us and the Bell Company whatever, and if the same agreement were made between all the companies I do not think there would be any jarring. We get ten per cent.

Mr. NESBITT: On the originating business.

Mr. SCOTT: On the originating business.

MR. NESBITT: You do not get anything on business originating with them?

Mr. SCOTT: No.

The CHAIRMAN: Might I ask the Independent companies to appoint three representatives to meet three representatives of the Bell Telephone Company this afternoon, and discuss these questions, and see if thy can come to some definite conclusion in regard to the amendment, and, if they can do so, be prepared to submit to the Committee in writing a definite decision, as far as their sides are concerned so that we will be able to dispose of it more expeditiously when next we take up the consideration of this section.

Mr. NESBITT: I would like to hear what Mr. Mackay has to say with regard to competition and non-competition in respect to telephone interests.

Mr. MACKAY: You have heard reference to "competing" and "non-competing" companies. The Ontario Board refuses to decide who is a competitor and who is not, and the decision rests in the hands of the Bell Telephone Company. Therefore there has been a lot of doubt from the first on that question. One gentleman took his individual case to the Dominion Board and asked them to decide whether his was a competing company, and if it was, to say so, but they dismissed the case so that the matter is entirely in the hands of the Bell Telephone Company as to whether a man is a competitor or not a competitor. You must realize that this matter has been a source of agitation among us, there have been all kinds of conferences for eight years, so I would suggest that the Committee do not expect too great results from the conference which is to take place this afternoon. But, on our side, we will approach it with an open mind.

Mr. GEOFFRION, K.C.: In view of the possibility of the conference not being productive of any good results the Committee will remember that I was asked simply to state the points that we were willing to concede and I had not presented our whole case when I sat down in order to allow other gentlemen to be heard. I would like to ask that if necessary I have a further opportunity of presenting to the Committee the case of the Bell Telephone Company.

Mr. NESBITT: I do not think we should shut off any representations or any arguments on either side of the question. I would suggest that if these gentlemen will approach the conference in a reasonable spirit and try to get together that we should hear both sides again if they want to be heard.

The CHAIRMAN: It is understood that if either side wishes to make further representations when this section is again taken up for consideration, they will have an opportunity to be heard.

Mr. GEOFFRION, K.C.: We will be very brief.

The CHAIRMAN: We might go on holding gatherings of this kind for days. Let the Committee decide definitely what they are going to do in this matter.

Hon. Mr. COCHRANE: They have agreed to meet and discuss it, and if they cannot get together the Committee will appoint a day to hear them.

The Chairman named Friday, May 25, as the date upon which the representatives of the various telephone organizations would be reheard in the event of failure to arrive at an understanding.

Mr. MACDONELL: Before we adjourn, I want to say that I have a telegram from Mr. W. D. Lighthall asking that the municipalities be heard on Friday on telephone questions, not such as we are dealing with to-day, but questions arising out of these clauses of the Bill.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 16--MAY 18, 1917

(Containing representations from Municipalities, Toronto, Niagara Power Co., and from the Bell Telephone Co., also proposed amendments to Section 373 by D. E. Thomson, K.C.)

OTTAWA
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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
COMMITTEE ROOM,
Friday, May 11, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Bradbury, Cochrane, Graham, Green, Macdonald, Macdonell, McLean (York), McCurdy, Nesbitt, Sinclair, Turriff and Weichel.

The Committee resumed consideration of the Bill.

On section 373, "Putting lines or wires across or along highways, etc.," Mr. W. D. Lihgthall, on behalf of the Union of Canadian Municipalities, Mr. D. E. Thomson and others on behalf of the City of Toronto; Mr. Geo. H. Kelmer, representing the Ontario Provincial Government; Mr. Pope, for the Hydro-Electric Commission; Mr. McCarthy, representing the Toronto Niagara Power Co., and others were heard.

At one o'clock the Committee adjourned until Tuesday next, 22nd instant, at 11 o'clock a.m.

PROPOSED AMENDMENT BY MR. LIGHTHALL.

Ottawa,
May 18, 1917.

The Union of Canadian Municipalities are very much afraid of and averse to the expropriation of *easements* seperately from land. If the words "and any easement, etc.," are retained, they request this amendment to section 2, subsection 15 (defining land") :—

Insert before "any easement" the words "shall, except in cities, towns and villages, include."

Any other sections or suggested amendments to be treated so as to reject "easements and servitudes, etc.," for exproporiation.

W. D. LIGHTHALL,
Hon. Sec. U. C. M.

To the Chairman of the
Revision of Railway Act Committee.

PROPOSED AMENDMENTS BY D. E. THOMSON, K.C., ON BEHALF OF CITY OF TORONTO.

Amend section 373 as follows:—

Strike out the words "or line for the conveyance of light, heat, power, or electricity" where they occur in the first, second and sixth sub-sections. In sub-section 7 insert after the word "any" in the second line the words "telegraph or telephone". Strike out subsection 9.

NEW SECTION—373A

In this section—

1. (a) "Company"—means any person or company having legislative authority form the Parliament of Canada to acquire, construct, operate or maintain works, machinery, plant, lines, poles, tunnels, conduits, or other means for receiving, generating, storing, transmitting, distributing or supplying electricity or other power or energy, but does not include a railway company, or a telegraph company or telephone company.

(b) "Municipality"—means the municipal council or other authority having jurisdiction over the highways, squares or public places of a city, town or village, or over the highway, square or public place concerned.

2. Notwithstanding anything contained in any special or other Act or authority of the Parilament of Canada or of the legislature of any province, the company shall not, except as in this section provided, acquire, construct, maintain or operate any works, machinery, plant, line, pole, tunnel, conduit or other device upon, along, arcoss, or under any highway, square or other public place within the limits of any city, town or village without the consent of the municipality.

3. If the Company cannot obtain the consent of the municipality or cannot obtain such consent otherwise than subject to conditions not acceptable to the Company, the Company may apply to the Board for leave to exercise its powers upon such highway, square or public place; and all the provisions of section 373 of this Act with respect to the powers and rights of any Company covered by that section and with respect to proceedings where the Company cannot obtain the consent of the municipality shall, subject to the provisions of this section apply to the Company and to any application to the Board and to all proceedings thereon and to the powers of the Board in the premises.

4. Nothing contained in this section shall be deemed to authorize the Company nor shall the Company have any right to acquire, construct, maintain or operate any distribution system or to distribute light, heat, power or electricity in any City, Town, or Village; or to erect, put or place in, over, along or under any highway or public place in any City, Town or Village any works, machinery, plant, pole, tunnel, conduits, or other device for the purpose of such distribution without the Company first obtaining consent therefor by a by-law of the Municipality; provided that this subsection shall not prevent the Company from delivering or supplying such power by any means now existing or under the provisions of any contract now in force for use in the operation of any railway or for use by any other company lawfully engaged in the distribution of such power within any such city, town or village.

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.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS, OTTAWA,

May 18, 1917.

The committee met at 11 a.m.

The CHAIRMAN: To-day has been set aside to hear the representatives from the different municipalities. There are a number of gentlemen here who wish to be heard, and I would ask the representatives to be as brief and pointed as possible as our time is limited and we wish to hear all of the representatives. I have a communication from Mayor T. L. Church of Toronto, which reads as follows:—

TORONTO, May 11, 1917.

J. A. M. ARMSTRONG, Esq., M.P.,
Chairman, Railway Committee,
House of Commons,
Ottawa, Ont.

DEAR SIR,—The larger cities in Canada have grievous complaints against the railways with regard to the shunting that goes on in the railways' various local yards during the night, also the ringing of bells and blowing of whistles. I think it would be well to have a clause passed, giving the Railway Commission full power to regulate this. A lot of this shunting could be done in the daytime, and not between the hours of 11 p.m. and 7 a.m. We receive various complaints from different parts of the city and it is of great injury to the working men who have their rest disturbed in this way.

There is provision in the railway law of the United States, which I think should be copied into your new Act. Two years ago when the new Railway Act was brought down, a deputation from the municipalities met the minister, who promised to give it consideration. I hope a time may be appointed to hear us; it will only take about ten or fifteen minutes.

With kind regards,

Yours very truly,

T. L. CHURCH,
Mayor.

I have also a communication from the Mayor of Brandon, which reads as follows:—

OTTAWA, May 8, 1917.

L. E. ARMSTRONG, M.P.,
Ottawa.

Chairman Special Committee, Revising Railway Act.

DEAR SIR,—I have looked through the new Consolidated Railway Bill, and can see no provision in said Bill for the protection of municipalities in the following cases:

1. For the collection of taxes by municipalities on local improvements, constructed on streets, or lanes abutting on railway property.

2. For the collection of taxes on property owned by railways and not used for railway purposes.

These are important matters to the municipalities, and I trust some provision will be made in the Bill for their protection.

Yours sincerely,

H. CATER,
Mayor of Brandon.

I have also a communication from Mr. W. D. Lighthall, honourary secretary treasurer of the Union of Canadian Municipalities, which reads as follows:—

MONTREAL, April 26, 1917.

J. E. ARMSTRONG, Esq., M.P., Chairman,
Railway Commission,
House of Commons,
Ottawa.

DEAR SIR,—Mayor Todd, of Victoria, B.C., is very anxious to have the last nineteen words of first part section 252 of Bill No. 13 struck out. He wires me as follows:—

"I strongly urge amending section 257 by striking out last nineteen words in first paragraph, on account of various and changing local conditions. Special consideration and order by Board of Railway Commissioners should be required in each and every case of construction, reconstruction, or alteration, especially in cases where adjacent to or within confines of cities or municipalities."

Concerning the rest of the Bill I am anxious, as representing the Union of Canadian Municipalities in general, to be present at discussion, particularly of clauses of sections 252, 254, 256, 309, 367, and 378, and would be obliged for a wire when these clauses are likely to be discussed, if the sending of such a wire is not too inconvenient.

Faithfully yours,

W. D. LIGHTHALL,
Hon. Secretary-Treasurer, U.C.M.

I understand Mr. D. E. Thomson, K.C., of the City of Toronto, is here to represent that city. Is it the wish of the committee that he be heard?

Mr. D. E. THOMSON, K.C.: Mr. Chairman, I desire to address the committee in reference to points arising under proposed section 373 of the Act, and its has occurred to us, as advising the city that there to be a separate section dealing with power companies, that section 373 might perhaps be limited to the other cases that are referred to there, and that for reasons which I will try to explain, there should be separate provisions governing power companies. What we are asking is that Parliament should say in the present Bill that under the provisions of this Railway Act it was intended to preserve to cities, towns and villages complete control of their streets. What we are asking Parliament to declare is that in the present Railway Act it has been the intention of Parliament to preserve to municipalities the complete control of their streets with reference to the distribution system. The record, I think, makes that intention quite clear. We realize it does not follow that the declaration that we ask should be introduced into the present Bill; consequently the committee is entitled to a frank statement of our reasons for the request we make. I think the matter will be simple if I give you a plain statement of the facts. They are these: The Toronto Electric Light Company has been carrying on business in Toronto since 1883. It opened

operations on the strength of an agreement between its promoters and the city giving it a terminable franchise with respect to the central portion of the city, about a mile square. That has been followed up with some 130 further agreements with the city for different extensions of its lines, each of which is terminable. It has also been followed by a special agreement authorizing the company to put certain portions of its system under-ground. That agreement is made for our present purposes with reference to two of these clauses. One is clause 6, which gives the city the right at the end of the 30 years from the date of the agreement, which is 1889, to purchase the business of the company. The language is: "To purchase all the interests and assets of the company, comprising plant, buildings and material used or necessary for the carrying on of its business. The price is to be fixed by arbitration in the usual way, and there is the further right, if the purchase is not made at the end of 30 years, to purchase at the end of succeeding periods of 20 years. The other clause is one whereby the Toronto Electric Company covenants, that it will not, without the consent of the corporation lease, amalgamate with or sell out to any other company. I hope I have made the positions in that agreement clear with reference to these two points, that it gives the city the right to purchase at the end of 30 years at arbitration price, and the company agrees that it will not sell, amalgamate with any other company or lease in the meantime.

Mr. MACDONELL: When does the agreement expire?

Mr. THOMSON: In two years, which would bring it to 1919. Latterly the company has contended that by virtue of its letters patent of incorporation, which are under the Ontario Companies Act, it had a perpetual franchise, or at any rate had the right to extend its lines along the city streets without the consent of the municipalities.

Mr. MACLEAN: And in violation of its agreement.

Mr. THOMSON: They claimed the agreement was unnecessary, that they always had the right under their letters patent of incorporation to extend their lines without the consent of the city, and, as a matter of fact, a great many extensions were made without any formal consent of the city. Matters were brought to a point finally by the city forbidding certain extensions, and removing some of the poles the company had actually erected. In the resulting litigation. the Privy Council, sustaining the decision of our own Appellate Court, held that the Toronto Electric Light Company had no right whatever in the streets of Toronto, except the rights they were given by the original agreement, with the promotor, and the subsiduary agreements, 100 in number for extensions of the line and the so-called underground agreement. It was made clear by the dicision of the court of last resort that the city, as against this company, had the control of its streets, and was entitled to purchase the company's assets, as provided by that agreement. Now it will be known to members of this committee that the Toronto Electric Light Company is one of a formidable group of transportation and electrical development, transmission, distribution companies, which from time to time have been referred to in the financial prospectuses as being under one administrative control and worked practically as one enterprise.

Since the decision of the Privy Council, which was in October last, Mr. Fleming, the manager of the Toronto Electric Light Company, and of several of the other companies constituting this one enterprise, has been good enough to give, by an interview in the public press published shortly after the opening of this session of Parliament, some indications in the matter. Now what are these intentions? Does he propose to submit to the terms of the contract that his company has entered into to submit to the right of the city to buy out the company, or does he make any different proposal for adjustment as between the parties? Not at all. In fact he says that if the charter of that particular company does not entitle it to a perpetual franchise, at any rate a franchise without the consent of the city, if it does not entitle it to treat these con-

tracts as scraps of paper, he has his pockets full of other charters, and he contends that one of these places another of the companies in a better position which he intimates would be made use of.

Mr. NESBITT: What have we to do with that. Let us get down to business.

Mr. THOMSON, K.C.: I think the whole point is whether they are to be allowed to substitute another company.

Mr. MACDONELL: That is the point.

Mr. THOMSON, K.C.: That is the whole point of the case. Now he bases this contention on the fact that the Privy Council in 1912 decided that the Toronto and Niagara Power Company had a right under its charter, being a special Act of this Parliament, to extend its lines along streets without the consent of the municipality. Now the Privy Council judgment in that case (Toronto and Niagara Power Company vs. North Toronto) recognized that Parliament had sought to protect the municipalities and the public, and after referring to the dangers incident to the business, Lord Haldane uses this highly significant language (reads):

> "The Parliament of Canada, not unnaturally anxious to avoid dangers of this kind, accordingly passed general statutes conferring upon municipal authorities large powers of control. Section 90 of the Railway Act, 1888, was amended by the Railway Act, 1899, which added to it a subsection illustrative of this kind of control. The new subsection enacted that when any company had power by any Act of the Parliament of Canada to construct and maintain lines of telegraph or telephone, or for the conveyance of light, heat, power or electricity, such company might, *with the consent of the municipal council or other authority having jurisdiction over any highway, square or other public place,* enter thereon for the purpose of exercising such power. . . . . If the powers conferred by this section displaced the less restricted powers of entering without any consent conferred by the Act of incorporation the appellants are in the wrong. Their Lordships have, therefore, to determine this question. They have to bear in mind that a court of justice is not entitled to speculate as to which of two conflicting policies was intended to prevail, but must confine itself to the construction of the language of the relevant statutes read as a whole."

In applying this rule of construction you have this result which, I think, would strike any layman at any rate as being extraordinary: The court held that the quoted subsection of the general Railway Act did not apply to the power company because by reference to the interpretation clause of the Railway Act, section 2, it was held that the word "company" meant a railway company, and because section 3 of the Act provided that the provisions of any special Act relating to the same subject if inconsistent, should override the provisions of the general Act, and because the Act incorporating the Power Company (2 Edward VII, chap. 107) in embodying certain provisions of the Railway Act, made them applicable only "in so far as the said sections are not inconsistent with the provisions of this Act."

It will be observed that the point before the court in the North Toronto case was the right to extend the Power Company's transmission line to connect with a particular customer (a suburban railway). The case of an attempt to establish a general distribution system in a city, town or village, without the consent of the municipality, would present other features. Had such a case arisen it would be seen that by the Railway Act of 1903, Parliament had gone a step further and had distinguished sharply between extensions of transmission lines and the establishment of distribution systems in urban municipalities. In the latter case the right of the municipalities

to the absolute control of their streets was supposedly put beyond doubt by subsection 3 of section 195 (reads):

> "Nothing contained in this section shall be deemed to authorize the company exercising the powers therein mentioned for the purpose of selling or distributing light, heat, power or electricity in cities, towns or villages without the company having first obtained the consent therefor by a by-law of the municipality."

This section is re-enacted as subsection 8 of section 147 of the Act of 1906.

Mr. SINCLAIR: You do not want to submit these questions to the Railway Board at all.

Mr. THOMSON, K.C.: Under the law as it stands now, the extension of transmission lines is subject to an appeal.

Hon. Mr. COCHRANE: Subject to what?

Mr. THOMSON, K.C.: Subject to an appeal to the Railway Board, but distribution systems are supposed to be governed by the subsection that I have read to you, which says they are not to exercise any of the powers referred to without the consent of the municipalities. I hope I have made myself quite clear: That, so far as we can gather from the policy of this Parliament, there was in 1903 a clear distinction made between the two classes of companies, namely, the extension of a transmission line and the establishment of a distribution system. The Privy Council in the North Toronto case laid particular stress on the fact that the Toronto and Niagara Power Company had to traverse a long distance and would probably pass through scores of municipalities, and that it was unreasonable that any one municipality should have power to hold them up. You understand that reason applies in a very potent way, to a transmission line, but it has no application to the question of the actual establishment of a distribution system in a city.

Mr. NESBITT: Yes, we grasp that fact.

Mr. THOMSON, K.C.: All we ask, because we fear in view of the Privy Council's decision the intention of Parliament has been defeated, is that Parliament shall now make that provision effectual.

Mr. MACLEAN: How do you propose to do that?

Mr. THOMSON, K.C.: We propose to do it by asking that this be a new clause and that it be declared to be applicable irrespective of the interpretation clause of the statute, irrespective of any provision in any special Act, and moreover that it be declared to have been the law since this clause was enacted.

The CHAIRMAN: What is the wording of the new clause which you propose?

Mr. THOMSON, K.C.: We propose, in the new clause, that in view of the difficulty arising from the general definition of "company" to give a separate definition of what "company" means, just as has been done in the case of telegraph and telephone companies.

The CHAIRMAN: You have distributed copies of your proposed amendment?

Mr. THOMSON, K.C.: Yes, and therefore I need only refer to the concluding part, the proposed subsection 4, which reads as follows:—

> "Nothing contained in this section shall be deemed to authorize the company, or shall the company have any right to acquire, construct, maintain or operate any distribution system, or to distribute light, heat, power or electricity in any city, town, or village; or to erect, put or place in, over, along or under any highway or public place in any city, town or village, any works, machinery, plant, pole, tunnel, conduits, or other device for the purpose of such distribution without the company first obtaining consent therefor by a by-law of the

municipality; provided that this subsection shall not prevent the company from delivering or applying such power by any means nows existing or under the provisions of any contract now in force for use in the operation of any railway or for use by any other company lawfully engaged in the distribution of such power within any such city, town or village."

And then we ask for the adoption as subsection 5, of the following (reads):—

"The provisions of the last preceding subsection shall apply to and restrict the powers of any company heretofor 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."

That is all we ask.

Mr. NESBITT: That is your whole platform?

Mr. THOMSON, K.C.: That is the whole thing.

The CHAIRMAN: It will all be placed on the record.

Mr. MACLEAN: How many companies do you say that would apply to?

Mr. THOMSON, K.C.: I do not know that it would apply to any company except the Toronto and Niagara Power Company.

Mr. MACLEAN: Would it apply to the Toronto Electric Light Company or any of its subsidiaries?

Mr. THOMSON, K.C.: What is suggested is this: The Toronto Electric Light Company finds itself defeated in its contention. We are now told in effect that it is going to hand over the enterprise to the Toronto and Niagara Power Company. You understand this is what we are confronted with, and we have a wholesome appreciation of the ability and resourcefulness of the legal advisers of these concerns: It is idle to try to control the Toronto Electric Light Company because here is another company that has power to go in and duplicate the system. It is idle for us to buy out the Toronto Electric Light Company because the older company says: "We could go in and re-establish the system." The contention of the Toronto and Niagara Power Company is, as I think I can show you, gentlemen, entirely on account of the inadvertence of a draftsman in preparing former legislation and in defiance of the clear intention of Parliament, that it has a right, not only to extend its lines but to establish distribution systems in any municipality without the consent of that municipality at all; and moreover, if they have that right at all it must be a perpetual right as against the terminable one which has been granted to this company.

Mr. SINCLAIR: In your suggested amendment you have used the words "any city, town or village."

Mr. THOMSON, K.C.: That is the language used in the Act, we are following the language of the Act.

Mr. SINCLAIR: It does not refer to municipalities outside of cities, towns or villages?

Mr. THOMSON, K.C.: No, we accept the clause which Parliament has already passed in that regard. There is another point. If Mr. Fleming's contention is right the Toronto Electric Light Company may enter any municipality and use its streets and public squares for the establishment of a general distribution system and may maintain such system perpetually in defiance of the wishes of the municipality.

Possibly it has the further power to take over existing distribution systems without being bound to carry out the terms of existing contracts with reference thereto.

Mr. MACLEAN: In other words, Parliament would be justifying that kind of predatory treatment of municipalities?

Mr. THOMSON, K.C.: Not only that, but I submit, with all due respect, there would be a defiance of the clearly expressed policy of Parliament, and under the judgment of the Privy Council it is possible to apply the reasoning there set forth to a distribution system. Therefore, the clear intention of Parliament as we contend, as embodied in this subsection, is rendered nugatory by the application of the strict rule of construction.

Mr. MACDONELL: What you are fearful of is this: under the Privy Council's decision, unless you have your amendment or some similar amendment passed, the Toronto and North Power Company can go on *ad infinitum*, not only entering the city and its streets and highways with these lines, but putting its wires and distributing power, light and heat without the consent of the municipality.

Mr. TOHMSON, K.C.: Absolutely. What we are in effect told is: The Toronto Electric Light Company will not submit. They will transfer the business to the Toronto and Niagara Power Company, which has larger powers. Now, there can be no possible question in anybody's mind, I think, except as to the one point, namely, it will be said we are seeking to make this retroactive. Well, in a sense it is, and we have to justify that. I admit that proposition.

Mr. MACDONELL: Under the decision of the Privy Council you are apprehensive that if that section or some suggested amendment is passed, the Toronto Niagara Power Company can take over the Toronto Electric Light, and forever have a franchise to run these wires in Toronto.

Mr. THOMSON, K.C.: Yes, it would defeat our right to purchase the company, and make scraps of paper of all our contracts with the company, and convert a terminable franchise into a perpetual one.

Mr. NESBITT: We have the amendments before us, and I think we understand Mr. Thomson's contention.

Mr. MACDONELL: The issue between the Electric Company and the city originally was as to the right merely to put poles wherever they wanted to.

Mr. THOMSON, K.C.: Yes, the Electric Light Company claimed that for different reasons, relying chiefly on the terms of their letters patent of incorporation, and partly by alleged acquiescence on the city's part, they did not need to make an agreement with the city, and that they could extend their lines just as they chose.

Mr. MACDONELL: The Privy Council held that they could not.

Mr. THOMPSON, K.C.: Yes, they decided against them in that respect, and, as I said, they have no rights in the streets, except the rights given to them by the agreement. That agreement includes our right to buy them out in 1919, and we have to give a year's notice of that. We want to know where we stand with this other matter over our heads. Even if they did make the transfer, which Mr. Fleming mentions, it would be no use, because this company could step right in after we had bought them out and establish a new system. It is impossible to make too emphatic the point that the issue involves the municipality's control of the streets for distribution purposes.

Mr. NESBITT: That is what we intended in our Bill. I remember that very well.

Mr. THOMSON, K.C.: I may point out that in regard to section 373 as drafted, in the notes of the draftsman, which are public property, show he intended to cover the point.

Mr. MACLEAN: We are only clarifying our own legislation.

Mr. THOMSON, K.C.: That is all—making it effective from the time it was passed.

Mr. MACLEAN: I think that is a good case.

Mr. SINCLAIR: Does this refer only to distribution?

Mr. THOMSON, K.C.: That is all.

Mr. SINCLAIR: I thought you said you were not providing for an appeal to the Board in the case of distribution. I find section 3 gives the right to appeal to the Board.

Mr. THOMSON, K.C.: That is the transmission line.

Mr. SINCLAIR: This amendment refers to both distribution and transmission.

Mr. THOMSON, K.C.: The only new material will be found in subsections 4 and 5. The first three subsections are practically repetitions with reference to this company of the clauses that are in existence now with reference to transmission lines. All I desire to urge is that I hope it is clear that this cannot be made effectual without being made to relate back, because even if the transfer were made—it is only necessary for me to point this out to you—even if the transfer were not made and the language of the Act made applicable in the future, it would not take effect until after this Bill had received the Royal assent, which would leave two or three months for these gentlemen to complete the transfer, and enable them to snap their fingers at us again. The change is no benefit unless it refer back. They have either done it already, or have lots of time between now and the Royal assent to do it, and you do no harm to make it relate back, because they have done no business and there is no distribution now. it is only raking up an old charter to defeat our rights against the Toronto Electrical Company.

Mr. NESBITT: You seem to be leary of that company.

Mr. THOMSON, K.C.: No.

The CHAIRMAN: Mr. George Kilmer, K.C., representing the Ontario Government desires to address the Committee.

Mr. KILMER, K.C.: The desire of the Ontario Government is to protect as far as possible, or have protected as far as possible, the rights of the municipalities in their own streets. That has been done by the general Act and it has been done in most of the special Acts of incorporation by this Parliament, but the alarming case of the Toronto & Niagara Power Company comes up, and while Mr. Thomson has put that plainly before you for the city of Toronto, I would like to say that, that applies to every municipality in Ontario. I may say that it applies to every municipality in the Dominion but particularly in Ontario, and there are many municipalities in Ontario which have constructed systems of terminable franchises, the same as the Toronto Electric Light Company. Now if the town of Lindsay, or any town of that character, has a terminable franchise, these people whose franchise is terminating can sell to the Toronto Niagara Power Company exactly as the Toronto Electric Light Company, or some other company similarly empowered may. The sections of the present Act were intended to meet this very kind of a case, but the province wishes to point out that the difficulty lies in section 21 of the special Act of Incorporation of the Toronto and Niagara Power Company.

Mr. MACDONALD: Is that a Dominion corporation?

Mr. KILMER, K.C.: Yes, that is the Act of Incorporation of 1902.

Mr. MACDONALD: There is a question as to whether they have vested rights under their charter.

Mr. KILMER, K.C.: I do not think the question of vested rights is very important, because I think there is only the transmission line to deal with, but under that section the peculiar situation is this: that section 91 of the original Railway Act of 1888, that any additions or any substituted sections down to the present time are made applicable to the Toronto & Niagara Power Company, in so far as they

are not inconsistent with the other powers of their Act. Take any company like the Toronto & Niagara Power Company, and no matter how you amend section 90, the more you amend it to help the municipalities, the more inconsistent you are going to make it with the original special Act of Incorporation, and the consequence is that I support the position taken by Mr. Thomson, and we ask, for that reason, to have a new section and to have it retroactive, because, while the Toronto and Niagara Power Company is the only one we know of at present, there may be others, and if one company like the Toronto & Niagara Power Company possesses these extensive powers all through the province, every municipality which already has a constructive system and a terminable franchise is in danger.

Mr. MACLEAN: Would Mr. Thomson's amendment suit you?

Mr. KILMER: Yes, it covers that point, and it also covers the point about subsection 3. That is one of the interpreting sections of the present Bill which provides just as the general law is, that where a special act conflicts with the general act, the special act prevails. The municipalities derive their power from the Ontario Government, and they exercise delegated powers. It is the duty of the province in good government to assist them in practical home rule, in exercising those delegated powers.

Mr. MACDONALD: It is really a municipal interest and not a provincial interest.

Mr. KILMER, K.C.: It is a provincial interest because it is an interest for every municipality. When Mr. Thomson speaks about the clause being retroactive, I have no doubt no other special bill will ever get through the House of Commons without having its powers restricted so that unless you go back and restrict the powers in the way Mr. Thomson points out, no matter what legislation you put through, it may become ineffective. I would ask two things: first that that disputed section be enacted, so that paragraph 1 of the special Act of the Toronto & Niagara Power Company will not apply, not only for that company but any other company with special clauses, and passing special clauses in the Railway Act will have a similar effect.

Mr. SINCLAIR: Is this draft satisfactory to you?

Mr. KILMER, K.C.: Yes, and this section will stand by itself, not covered by the special Act.

Mr. MACDONALD: Your proposition after all is this; that this Parliament has given to a special company, and it may have given to other special companies, certain definite rights, free from certain restrictions which you say should be put on. You say now that we should amend the Railway Act so as to retroact and make these special companies submit to certain restrictions you now wish to put on.

Mr. KILMER, K.C.: Yes, and I am going to step further, and saying that was the apparent intention of the legislation already passed.

Mr. MACDONALD: It is pretty hard to interpret the intention except by the words.

Mr. KILMER, K.C.: The reason I say that is this: The Court of Appeal of Ontario did decide that it had that effect.

Mr. MACDONELL: You might mention the effect of the Privy Council's decision which meant that the Railway Act did not apply to companies of this character.

Mr. KILMER, K.C.: Mr. Thomson covered that fully. The Privy Council decided that the section which was intended to cover all these companies applied only to the railway company having rights to transmit power and distribute it. They said the section was contracted by its wording, and I say the section was so worded that it could not possibly help but be in conflict with the special Act.

Hon. Mr. GRAHAM: I am not sure but the framers of the Act intended it only to apply to railways.

Mr. KILMER, K.C.: I hardly think so, because I do not know of any railway that has any such power.

Hon. Mr. GRAHAM: It is only of recent years that railway companies began to develop electric light.

Mr. KILMER, K.C.: They were dealing with the subject of telephone, telegraph and transmission companies in that very same section. The main point I tried to make this morning was the difficulty the municipalities will be in, in terminating franchises: that is franchises falling in and being so-to-speak continued when they are bought by a company like the Toronto and Niagara Power Company. Then they say: "We have the power to operate." I will refer to subsection 7 of section 373. That subsection provides that it shall not apply to works already constructed. You see that would prevent the city of Toronto objecting to the perpetual franchise of the Toronto and Niagara Power Company and it would shut out any other municipality in which there was an actual system operated by anybody. So that that clause would completely defeat all our objects, and at the same time it must remain in the section as it stands on account of the telephone and telegraph companies. So that that is an added reason for giving us a definite and distinct subsection covering the transmission lines. It was that way under the old Act. I mean to say there was section 247 covering transmission line, and 248 covering telephone and telegraph companies. Why combine those? Why not have the two sections separate as they were before, and let us have our separate section for the transmission line.

Mr. SINCLAIR: You have no doubt about our jurisdiction in this matter?

Mr. KILMER, K.C.: Not the slightest.

Mr. SINCLAIR: You see here the words: "Notwithstanding anything contained in any Act of the Parliament of Canada or of the legislature of any province the company shall not, except as in this section provided, construct, maintain or operate its lines of railway upon, along, across or under any highway, square or other public place within the limits of any city, town or village incorporated or otherwise without the consent of the municipality."

That means that the line cannot be erected in the municipality without the consent of that municipality. Provided the province of Ontario referred back the right to put the line in without the consent of the municipality, you think this would cover.

Mr. KILMER, K.C.: No I do not think it would. It would cover everything you do.

Mr. THOMSON, K.C.: We do not set any store by that language. We only copied it from the rest of the Act.

Mr. CHAIRMAN: Mr. Lighthall wishes to address the committee, I believe.

Mr. LIGHTHALL, K.C.: The suggested clause as read is quite new to me, but I have had an opportunity of looking over it very cursorily the last few moments. Unfortunately it was not communicated to us by the city of Toronto.

The CHAIRMAN: But it would cover all the objections you have to offer.

Mr. LIGHTHALL, K.C.: I think it covers the general situation. It is practically a fuller redrafting of subsection 9, but I wish to simply emphasize the fact that the question of local distribution of both power, electricity in general and telephones, is one in which the municipality in which the question arise is more concerned than the city of Toronto. All the municipalities were very decided on the occasion of the introduction of the distinction between local distribution, particularly in the matter of telephones ,and also in regard to subsection 9, very decided on what they wanted, the difference between, for instance, a long distance telephone line and a local telephone line was very carefully drawn, after extremely careful consideration. I believe I am expressing the feeling of the important municipalities of the country in saying that this is one of the things that they will strongly insist upon, and that they look

quite unfavourably on any redrafting that will obliterate that distinction either in the matter of telephones or telegraphs, or in the matter of power, light, etc.

Mr. MACLEAN: It is in the Act now.

Mr. LIGHTHALL, K.C.: It is subsection 9, but it is apparently, as far as I can see, in this new enlargement of subsection 9, and also contained a special clause applicable to Toronto, and I think, saving the possibility of slight amendments, that that clause will be proper.

Mr. JOHNSTON, K.C.: You are not addressing yourself to section 373 particularly, are you?

Mr. LIGHTHALL, K.C.: Well, of course it deals particularly with the larger question, but I am addressing myself to section 373.

Mr. JOHNSTON, K.C.: I find it difficult to follow you on that section.

Mr. MACLEAN: You are supporting what the others have put forward.

Mr. LIGHTHALL, K.C.: Yes, for the moment.

The CHAIRMAN: Mayor Bowlby of Brantford, is present, and the Committee might hear what he has to say.

Mr. BOWLBY, K.C.: It is hardly necessary for me to repeat the important and common sense arguments presented to you on this matter. Brantford has a large interest in this matter. We have the Cataract Power Company, assuming large powers following the lead of this other company, and no doubt the Hon. Mr. Gibson, late lieutenant governor, did what he could to queer the city of Brantford and give the company all the powers he could. I endorse the arguments of the gentlemen who have preceded me.

The CHAIRMAN: Mr. Pope, of the Hydro-Electric Company, desires to address the meeting.

Mr. W. W. POPE: There is not very much left for the Hydro-Electric to say, after the presentation of the facts by Messrs. Thomson and Kilmer. They feel very keenly that the distribution question should be carefully considered, because there are a great many municipalities in Ontario, something like 175, distributing power on their own account, and it would be a very serious matter and would be against their interests, as well as the interest of the Hydro-Electric Company, if powers as great as have been described here were given to any company: that is, that they can distribute without first getting the authority of the municipality. The Hydro-Electric can only do business when there is a by-law of the municipality.

Mr. MACLEAN: Are you satisfied with the proposed amendment?

Mr. POPE: I am quite satisfied. If this amendment is adopted, for the reasons given, it would protect the municipal interests and the interests of the Hydro-Electric, and we are strongly in favour of its adoption.

The CHAIRMAN: Mr. McCarthey represents the Toronto-Niagara Power Company and desires to address the committee.

Mr. D. L. MCCARTHY, K.C.: I wish, in the first place, to take issue, both with Mr. Kilmer and Mr. Thomson, when they say they do not think that Parliament appreciated the powers they gave the Toronto and Niagara Power Company in the passing of their special Act, because I think that Parliament did understand exactly what the Toronto and Niagara Power Company asked for. The matter was fully considered and Parliament at that time knew that the Toronto and Niagara Power Company could never raise one copper if its rights were in any way restricted beyond those given in the Act.

Mr. MACDONALD: They gave no evidence of that statement. It was a peculiar statement that Parliament did not know what it was doing.

Mr. McCarthy, K.C.: You will pardon me if I take longer than I should, perhaps, because I propose to take issue with some of their statements, as I think it is important at this stage. When that Act was passed you must remember that this was a pioneer company. So far no line of that length had ever been constructed. The only transmission line in existence, that I know of, at that time was the line between Niagara Falls and Buffalo, and that was a low tension line. The experiment which the Toronto and Niagara Power Company wished to put into operation was a high power line between Toronto and Niagara Falls. It was purely an experiment. They had no track to begin with.

Mr. Thosmon, K.C.: I did not address any argument on that phase of it, that Parliament did not appreciate what it was doing when it passed that Act. My whole argument was based on the contention that there was a misunderstanding of the terms of the general Railway Act in making them applicable.

Mr. McCarthy, K.C.: I quite appreciate that and I propose to deal with that when I come to it. If we had simply gone to capitalists with an experimental line which had never been tried before, do you think it would have been possible to raise one copper to finance that company. Now having got our contract from the Dominion Parliament our next point was to get contracts with companies. Before we could build our line or expect capitalists to invest one cent. We accordingly made a contract with the Toronto Electric Light Company, and another one with the Toronto Railway Company, for supplying power for these purposes. Having got that power we were able to take our charter, our Act of incorporation, to the capitalists in England, show them the power which Parliament had given us, show them the contract, which we had made with the Toronto Electric Light Company and the Toronto Railway Company, and ask them to invest their money in the enterprise; and, gentlemen, on that Act of incorporation and those contracts 18 million dollars of English capital were invested in electrical development. A further six millions were invested in the Toronto and Niagara Power Company for the erection of these transmission lines, representing in all over twenty million dollars of English capital which are invested in these companies on the authority of Act of Parliament in connection with which my learned friend Mr. Thomson suggests perhaps Parliament did not appreciate what it was doing. If I might apply Mr. Thomson's scrap of paper argument to this proposition, I would ask: Is an Act of Parliament to be made a scrap of paper, and all this English capital to be simply thrown into the dustheap, for that is what will become of it if these proposed sections which I am sorry to say I have not had time to consider, are put through.

Now it is argued that at the expiration of any franchise with any municipality, we should not be allowed to step in and buy the assets of the company.

Mr. Macdonell: And repeat the process forever.

Mr. McCarthy, K.C.: Wait one moment, I am coming to that point. The Toronto Electric Light Company, Mr. MacDonell knows as well as I do, has a perpetual franchise which is renewable every twenty years, and the remedy the city of Toronto has is to buy the company out; and they can buy us out to-morrow if they want to. The city could buy us out at the end of 1919, or they could buy us out at the end of 1939, after another 20 years. The only effect of the Privy Council's decision was this: You shall not extend your overhead system, but you can go on with your underground system perpetually unless the city sees fit to buy you out. In 1919 the question will come up, and what is the city of Toronto going to do? Are they going to buy us out or not? If the city decides not to buy us out the Toronto Electric Light can continue for another twenty years on its underground system, and the Toronto & Niagara Power Company, for the purposes of keeping up their connection with the Toronto Electric Light Company, may purchase their overhead poles and wires. That is exactly what

was contemplated when this charter was given to us. I think it was Mr. Kilmer referred to the town of Lindsay. We do not supply the town of Lindsay, but let us take an example. Suppose in any small town in Niagara district, to which we are to-day supplying power, the Company's franchise expires and the town refuses to renew it or buy the company out. In that case their plant becomes so much waste material. What we say is, we will step in and buy those assets and continue to operate. The wires remain as they are, but we must step in for the purpose of preserving our right to sell power. If that right is cut away from us, then we have a development system and no outlet. In other words, the money which has been put into this concern becomes absolute waste paper.

As I said, gentlemen, I have not had the opportunity of considering the amendment proposed. Since the rights of the Toronto and Niagara Power Company were determined in the litigation with North Toronto, we have never attempted, and I think the honourable the Minister will bear me out in this, to lay down a transmission line or extend our system without submitting our plans to him. In every case where we wanted to extend, we have done as every railway company has done, and we did not ask anything more. We have come before the Minister, we have submitted our location plans, and we have never put up a pole or built a line without his approval.

Mr. THOMSON, K.C.: Would you put yourself in that position if you had a right to buy out all existing lines?

Mr. MCCARTHY, K.C.: We are perfectly willing to put ourselves in the position of any railway company and be dealt with the same as anybody else.

Mr. THOMSON, K.C.: You are begging the question.

Mr. MCCARTHY, K.C.: Can my learned friend ask any more than we should be put under the Board? We have applied to go under the Board. On the last occasion of application, to show my learned friend just what the situation is, not a month ago——

Mr. NESBITT: Would you be willing to go to the Board in case you wanted to buy out an existing line? For example the one at Lindsay.

Mr. MCCARTHY, K.C.: For what purpose?

Mr. NESBITT: To get consent.

Mr. MCCARTHY, K.C.: To get the consent of the Board. I cannot see any objetcion to such a proposal. The difficulty, of course, is that in some of these sections a joint Board is proposed. It depends upon what board the company would have to go to. You must bear in mind that our opponents in Ontario are also a Board. I refer to the Hydro-Electric Commission. They are our principal competitors, and if we have to go to them to know whether we can do anything, it would be almost a waste of time to make the application.

Mr. NESBITT: I meant the Dominion Railway Board.

Mr. MCCARTHY, K.C.: I see, you referred to the Dominion Railway Board. Now, as an illustration of what is likely to happen, let me mention what happened the other day. We proposed to extend a line into the village of Islington, I think that was the place, and we submitted plans to the Minister. We were opposed by the city of Toronto, we were opposed by the county authorities, we were opposed by the municipalities from the Niagara district, we were opposed by the Hydro-Electric Commission, and naturally the minister found himself in a very awkward situation through our being opposed by all these municipalities, in matters which perhaps did not always concern them except as to the principle. The result is the minister did not approve of our plans. What did our competitors do who did not require any approval? In two weeks they had a line in there on the very street that we had asked to lay down our lines on. That is what would happen if the terms of this Act as originally set forth are carried out. Suppose we go to a municipality and ask leave to lay down our lines or string

our wires. The Act says we must get the consent of the municipality as expressed by by-law. Very well, we ask for the necessary consent, and in some cases it may take a year to have the by-law passed. In the meantime our competitors are in that town, because they require no by-law. In other words, every market we have will be cut off from this company if the terms of this Act, or of this amendment, are carried out.

Mr. JOHNSTON, K.C.: You object, not only to the proposed amendments but to the Bill as drawn?

Mr. MCCARTHY, K.C.: I object to the Bill as drawn. As to the amendments, I must admit I am not sufficiently conversant with them to criticize them in detail. What we feel is this, and it really comes down to a question of vested rights; I do not believe that Parliament ever intended to give us less than we have got, and we are face to face with this situation: We have spent our money, we have got our development company, we have gone ahead with our lines, six millions of dollars are invested in transmission lines and now every market we have is to be cut off.

Mr. MACDONALD: Those of us who come from other provinces do not know the extent of the development and operations of your company. Will you explain, please, what expenditure you have made and where you get your power?

Mr. MCCARTHY, K.C.: In the first place, our power is developed on the banks of the Niagara river under a contract with the Queen Victoria and Niagara Falls Park Commissioners. They are the men authorized by the Government to give us a lease enabling us to take power from the river.

Hon. Mr. GRAHAM: You mean, authorized by the Ontario Government?

Mr. MCCARTHY, K.C.: Yes, the Ontario Government. That contract is in existence to-day, but notwithstanding that fact, and notwithstanding that it contains a clause that the Government will never enter into competition with us, a year ago the Ontario Government passed an Act which abrogated that clause in regard to competition and now they are empowering themselves to enter into competition with us. Therefore, we are going to have very serious competition from the Government itself notwithstanding the clause by which they agreed not to compete with us.

Mr. MACDONALD: What expenditure have you made on development?

Mr. MCCARTHY, K.C.: We have expended eighteen millions of dollars.

Mr. NESBITT: What is the distance of your transmission line?

Mr. MCCARTHY, K.C.: From Niagara to Toronto?

Mr. NESBITT: Yes, how long is that?

Mr. MCCARTHY, K.C.: I suppose it is about 100 miles.

Mr. MACLEAN: Are you selling your product now?

Mr. MCCARTHY, K.C.: We are selling all our product, the most of it I may say for the purpose of manufacturing munitions. The Toronto Street Railway Company is now operated largely by steam in order to permit the munition plants in the Niagara District to use our water-power.

Mr. MACDONALD: Those of us who come from the other provinces have not the local knowledge, and therefore we want to know what has been done.

Mr. MCCARTHY, K.C.: Our main transmission line is between Toronto and Niagara Falls. It is a large transmission line, I suppose there are eight lines of three wires each between these points. We are doing business with Thorold, St. Catharines and other towns and in all the towns through the district we naturally expect to get contracts. We encourage industries to locate there. I can name to you, gentlemen, an industry that we have induced to go there which has been beneficial to the district, and of course, beneficial to us. But if a big company settles in a small town, say, for example, Thorold, if we have induced that company to go there and have made a contract with it, and our rights are to be cut off in that municipality, we may as well

take down our copper wires and sell them for scrap. That would be the result of the legislation proposed here if it were carried into effect. As I say, since the Toronto and Niagara Power Company's decision from the Privy Council no one can suggest that we have acted arbitrarily or that we have exercised the full powers our Act gives us. There is nothing in our Act which requires us to go to the Minister for approval of our plans, yet we have gone, in order that there may be no difficulty and that everybody may know what we are doing. But in consequence of our doing that, as a result of our making known what we propose to do, our competitors slip in ahead of us and while the Minister is considering whether he shall give approval to our plans, our competitors have their lines built.

Hon. Mr. COCHRANE: I think the hydro-electric line was built before you came to the Minister.

Mr. MCCARTHY, K.C.: You mean their line?

Hon. Mr. COCHRANE: Yes.

Mr. MCCARTHY, K.C.: Well, they bought out the Erindale Power Company, and since then they have strung other lines.

Mr. SINCLAIR: How do you propose to overcome the difficulty?

Mr. MCCARTHY, K.C.: The Board of Railway Commissioners are the proper parties to act. Here you are requiring the consent of municipalities to be obtained. Well, we go to a municipality and ask for their consent, and they say, "We will give you that consent by by-law." That means a long delay.

Mr. MACDONELL: This is a general rule applying to all.

Mr. MCCARTHY, K.C.: Not all railways.

Mr. MACDONELL: All railways that are selling power.

Mr. JOHNSTON, K.C.: Yes, go to the municipality and ask for a by-law. If that is not granted within a reasonable time you can go to the Board of Railway Commissioners and say, "We have not received that by-law."

Mr. MCCARTHY, K.C.: Yes, but then when we go to the Board we are met by the municipalities, who say, "We are considering the matter. In the meantime, do not let these gentlemen go ahead."

Mr. JOHNSTON, K.C.: Suppose it is provided that if the by-law is not passed within a certain time after application, then you can go to the Board.

Mr. MCCARTHY, K.C.: Why go to that trouble at all? Why not let us apply to the Board instead of to the municipality?

Mr. NESBITT: You would not want us to authorize you to establish a system without the consent of the municipality?

Mr. MCCARTHY, K.C.: No, although our charter at the present time gives us that right. If the city of Toronto buys out the Electric Light Company, that ends our charter, and our wires are cut, so far as that is concerned. Those are chances that we take. But if the Electric Light Company continues to operate underground we want to continue our contract by the purchase of their overhead poles and wires, we want to feed their underground system, if necessary, by the wires and poles aboveground. We want the right to purchase those poles and wires and continue our contract with them. Unless we get that right we might never be able to continue our contract with them, and they may never be able to live up to their contract with their customers.

Mr. JOHNSTON, K.C.: Subsection 2 of the proposed Section 373 provides that you shall go to the municipality and require its consent in the first place. If you cannot get it then you can go and get an order from the Board.

Mr. McCarthy, K.C.: What does a railway Company do? A Railway Company files its plans with the Board. Why should we be put in a worse position than railway companies are, which are only compelled to file their plans with the Board?

Mr. Nesbitt: And they file their plans with the municipality too.

Mr. McCarthy, K.C.: So do we. We file our plans in the registry office and then we make our request for approval and the Board have to say whether the scheme is feasible or proper.

Mr. Johnston, K.C.: Mr. McCarthy says the Board is the final arbitrator under the section as drawn, why not go to them direct. That is what you mean?

Mr. McCarthy, K.C.: That is what I submit.

Mr. Bowlby, K.C.: Of course the people have no rights. They have no right to be considered at all.

Mr. McCarthy, K.C.: The people are represented by the Town Council or City Council as the case may be. The Council are interested and I have no doubt will take care of the people's rights in the locality.

Mr. Macdonell: You want to go direct to the Railawy Board as I understand it.

Mr. McCarthy, K.C.: Certainly. We file our plans as a railway does, and then we serve notice on the municipality that we will on a certain day apply for approval of those plans.

Mr. Macdonell: But you object that you should first have to apply to the municipality?

Mr. McCarthy, K.C.: Simply for this reason: If we go there first they can hold us up for an interminable period. They can say, "We will not give our consent. We will leave it to the people". A year afterwards they submit the matter to the vote of the people, and by that time our competitors have got their own lines built and their wires strung.

Mr. Bowlby, K.C.: You could obviate that by a time limit.

Mr. Johnston, K.C.: Is there not an Act of the Province of Ontario that requires any Company, before laying its poles or wires on any highway, to get the consent of the ratepayers?

Mr. McCarthy, K.C.: No, not necessarily.

Mr. Johnston, K.C.: I think, under what is known as the Franchise Act, no municipality in Ontario can grant a franchise, unless it is submitted to the ratepayers. Therefore, that would be another delay you would have to submit to.

Mr. McCarthy, K.C.: Yes, if that is so.

Mr. Johnston, K.C.: Is that not so, Mr. Pope?

Mr. Pope: Yes.

Mr. Johnston, K.C.: That is a step in advance.

Mr. McCarthy, K.C: A step backward.

Mr. Johnston, K.C.: I think it is a step in advance. You cannot get the consent of any municipality to erect your poles and string your wires in the Province of Ontario unless a by-law is submitted to the ratepayers, as the law stands to-day.

Mr. McCarthy, K.C.: That does not apply to our company, but if this legislation went through it would apply.

Mr. Johnston, K.C.: This says they cannot enter on any highway except with the consent of the municipality expressed by by-law. If the municipal law requires that that by-law must be submitted to the ratepayers, Mr. McCarthy must get the consent of the ratepayers.

Mr. HARRIS: It has to be sanctioned by by-law of the municipality before the Hydro can go in and operate, or before they can enter into any agreement with them it is necesasry that they must pass the by-law.

Mr. JOHNSTON, K.C.: The Hydro-Electric require a by-law approved by the ratepayers.

Mr. HARRIS: Or any other company. Before a municipality can grant a franchise within the limits it must be endorsed by the ratepayers.

Mr. MACLEAN: Does Mr. McCarthy ask the right to enter the city irrespective of the law?

Mr. MCCARTHY, K.C.: No, we are a Dominion company and work for the general advantage of Canada, and so considered when we were incorporated; and there was no word of complaint against the powers given this company until we found a competitor in the Hydro-Electric, and the whole idea now is to cut down our powers as much as possible. The result of the legislation would be that if we were to try to get the consent of any municipality, that municipality would have to submit it to the ratepayers; it would have to be done by by-law. If they turned us down we would have to go to the Board. Why go through all that machinery if the Board is the final arbiter?

The CHAIRMAN: If the Hydro-Electric has to go through the proceeding which you have just outlined, why do you object?

Mr. BOWLBY, K.C.: Because they want to get rid of it.

Mr. MCCARTHY, K.C.: We cannot compete with them under the conditions under which we have to operate.

The CHAIRMAN: The Hydro has to go through the proceeding which you object to.

Mr. MCCARTHY, K.C.: Without having to pay taxes. We cannot compete with them on these terms.. If this proposition goes through, it means absolutely wiping out our company. That is the result.

Mr. MACDONALD: You say that the Parliament of Canada granted to your company these rights in this charter, free from municipal interference, and you say on the faith of that charter you invested capital?

Mr. MCCARTHY, K.C.: Yes.

Mr. MACDONALD: You say now further, that you are willing to submit the whole of your locations to the Railway Board and not to the public; and these gentlemen come in, representing, not a Federal charter, but a Provincial company, working under an Ontario charter, and they say "We are compelled to submit to municipal direction, and you must be compelled also"; and you say, in answer to that, "If that is done, having regard to circumstances, our money will be imperilled and we will be wiped out"?

Mr. MCCARTHY, K.C.: If we had not got the charter we did get, there would never have been a cent of money invested. We got the charter, and on the faith of it twenty millions was invested, and the representatives of the municipalities come and say "Cut down the powers of that company." We say "If you cut them down that simply means the loss of the capital invested. We have those rights, and we object most strenuously to our rights being cut down in any particular. But if the committee determines our rights shall be cut down and our privileges interfered with, then I say the only fair thing to do is to put us under the jurisdiction of the Railway Board, like any other company.

Mr. JOHNSTON, K.C.: You say that under the present Act you are not subject to Provincial control?

Mr. MCCARTHY, K.C.: Yes.

Mr. JOHNSTON, K.C.: And the present Bill would bring under it?

Mr. McCarthy, K.C.: Yes.

Mr. Johnston, K.C.: You object to that, but are willing to have the matter submitted to the Railway Board.

Mr. McCarthy, K.C.: Yes.

Mr. Nesbitt: I want to ask Mr. McCarthy a question, in order to make clear the position in Toronto. You say that if Toronto bought out the Toronto Electric Light Company, then you would not be able to buy the poles of the Toronto Electric Light Company?

Mr. McCarthy, K.C.: No. If the City of Toronto buy them out, that is an end of us.

Mr. Nesbitt: You do not interfere any further in the matter after that?

Mr. McCarthy. K.C.: No.

Mr. Nesbitt: But if Toronto does not buy them out, and the Toronto Electric Light Company's charter is renewed——

Mr. McCarthy, K.C.: It can only be renewed for an underground system, according to the decision of the Privy Council. Certain outlying portions had been constructed, which the Privy Council said they had no right to construct. That was in the new district of Toronto as extended? Those new poles and wires are up there, but if the franchise is renewed for another twenty years, the City of Toronto may say "Take down your wires and poles." All we say is that we want to have a right to buy those wires and poles to still continue our operations to the Toronto Electric Light Company.

Mr. Johnston, K.C.: That company is subject to purchase by the city.

Mr. McCarthy, K.C.: Yes.

Mr. Johnston, K.C.: If it sells to the Toronto and Niagara Power Company, would the Toronto and Niagara Power Company be subject to the same agreement?

Mr. McCarthy, K.C.: Yes.

Mr. Maclean: Would your company carry out the agreement that the Toronto Electric Light Company made with the city. Mr. Thomson thinks they could evade it.

Mr. McCarthy, K.C.: Mr. Thomson says, if the City of Toronto buy out the Toronto Electric Light Company, we could start a new business. Well, if we were fools enough to do it, we might. But with two companies operating there, and the City of Toronto in full control of all the companies, what object would we have to push ourself into competition with those other companies?

Mr. Maclean: Mr. Thomson says they have rights which they may lose, but by purchasing the company, you would retain these rights.

Mr. Thomson: I will explain it. For instance, the right they have now in the central part of Toronto is overhead. The underground system is a mere bagatelle, and it is not an independent system; it is fed from the overhead.

Mr. McCarthy, K.C.: Yes.

Mr. Thomson, K.C.: Their original franchise is a terminable one, on six months' notice; they have to take down their polls. Is my learned friend willing, if they make a purchase of the Toronto Electric Light Company, that they should be subject to the same terms and bound to take down their poles on six months' notice as provided for? Are they willing to be subject to the obligations of the Toronto Electric Light Company, if they buy them out?

Mr. McCarthy, K.C.: Now. How could we take down the poles in six months and continue the supply? That is the whole issue.

Mr. Macdonell: That may be an issue, but it is not in issue before us. We are here to make a statute for the whole country, and we are not here to deal with any particular case.

Mr. McCarthy, K.C.: There is the difficulty. If each place has to be dealt with individually, it is going to be a difficult matter. If our charter rights are worth anything to us, we would certainly have the right to step in and build poles in the City of Toronto. Why not buy them?

Mr. Johnston, K.C.: You have a right to-day to do that?

Mr. McCarthy, K.C.: Yes.

Hon. Mr. Cochrane: Which they have not availed themselves of.

Mr. McCarthy, K.C.: No. If the Toronto Electric Light Company's contract is continued for another 20 years, and we want to continue supplying them, we want to utilize the poles and wires now on the streets to enable us to feed their underground system, and instead of building wires and poles, we would buy the ones that belong to them.

Mr. Nesbitt: But if the City of Toronto decides to buy out the Toronto Electric Light Company, that settled the whole thing.

Mr. McCarthy, K.C.: Yes.

The Chairman: Has Mr. Fleming anything to say?

Mr. Fleming: As Mr. McCarthy has dealt with the question very fully, I have not much to add. We look upon that contract as something sacred, which is not to be interfered with, because the innocent people in the old country have invested their money in it on the faith of that contract. You will never have any trouble after this with these contracts, because people with any common sense will keep away from any public utility, because they know to-day it is not safe. We have no objection to your inserting all the clauses you like in future contracts, because people take the contracts with their eyes open: but to interfere with something that has been done already, and something people have put their money in in good faith, is a bad thing. And if you adopt the proposals that are suggested here, you wipe out the company practically.

The Chairman: You object to the sections in the present Bill, as well as the amendment proposed?

Mr. Fleming: Yes; we object to any amendment, except this: we are perfectly satisfied to come under the Railway Board, and not to excerise our rights, except with their approval. Outside of that, we do not think any changes should be made.

Mr. Macdonald: Mr. McCarthy stated that he had not had an opportunity of perusing the suggested amendments. I think he should have an opportunity of stating what he considers the effect of them.

The Chairman: He could present it in writing. After you have studied these proposed amendments, could you submit your views in writing?

Mr. McCarthy, K.C.: I should be glad if the committee would give me an opportunity of considering these amendments.

Hon. Mr. Cochrane: Put your views in writing and the committee can consider them.

Mr. Harris: Will Mr. McCarthy submit those views to me, so that I can send in any reply that may be desirable.?

Mr. McCarthy, K.C.: Yes, I will do that.

The Chairman: Mr. Harris wishes to address the Committee.

Mr. Harris: Mr. Chairman and gentlemen, I want to refer to two or three points which Mr. McCarthy made. Mr. Macdonald evidently thought Mr. McCarthy said twenty million was invested in this enterprise covered by this charter. He said there were six million in the Toronto and Niagara Power Company investment, and eighteen million in the electrical development which is a separate enterprise. Mr.

McCarthy said the overhead distribution system of the company consisted of some poles in outlying districts and new districts. The overhead system of the Toronto Electric embracing over six thousand poles, forming a forest in the downtown section of the city and spread all over Toronto, from the centre of the city to the limits, a great many poles spread in the outlying sections. Toronto has the right in 1919 to buy out the Electric Light Company. The company has extensive franchises, the city having the right to buy it out in any five-year period. The city may purchase the Toronto Electric Light Company in 1919. What we fear is that in 1920 the Toronto and Niagara Power Company, an affilitated company, may step into the streets of Toronto and nullify our investment. We may buy one branch for investment, and may find that investment destroyed to-morrow by another branch, established by the company, because of the very wide powers given in this charter, which they are able to exercise absolutely, without municipal control.

Mr. JOHNSTON, K.C.: And that may have taken place already, as far as you know.

Mr. HARRIS: It may have taken place already, for all we know. The Toronto and Niagara Power Company may be in possession of the Toronto Electric Light Company, although the Privy Council said that the Toronto Electric Light poles had no rights on the streets of Toronto after notice had been given that they should be removed. If the Toronto and Niagara Power Company comes along and acquires these poles, under this charter the rights of Toronto are destroyed.

Mr. MACDONALD: That is the way in which things stand at present, as far as legal rights are concerned. Would the proposed amendment interfere with that, or is it only proposed to deal with future construction?

Mr. HARRIS: We propose it shall be retroactive. We do not know but what the transfer has been already effected.

Mr. JOHNSTON, K.C.: The amendment would nullify any transfer.

Mr. HARRIS: We do not interfere with the transmission system at all, in which six million is invested.

Mr. SINCLAIR: Does the city want to buy the transmission system?

Mr. HARRIS: Oh, no, we have not the power to buy it, if we wanted to.

Mr. MACDONALD: Do you want to buy the distribution system?

Mr. HARRIS: An offer was made at one time which the city did not accept. I cannot say what the desire of the city may be, but I think we would not be here combatting something which would not affect us, if we had not some intention. The Government has from time to time passed legislation to protect municipal rights since this charter passed Parliament. In the notes before your committee under section 373 you quote the judgment in the case of the Toronto and Niagara Power Company v. North Toronto and give that as a reason for remodelling section 373. The Privy Council said that sections 247 and 248 did not apply because they were inconsistent with the original charter. We say 373 would apply, and we ask you to enact this legislation which we place before you, not only to preserve the rights of Toronto, but the rights of the municipalities as a whole, because other municipalities may find themselves in the same position as the city of Toronto relative to this company, and the rights of the municipalities may be destroyed, and you know how serious a matter that would be in connection with growing cities.

Mr. MACDONALD: What do you say about the argument of Mr. McCarthy with regard to vested rights?

Mr. HARRIS: We do not take away any vested rights whatever. Mr. McCarthy's company issued bonds for six million for a transmission line for the purpose of conducting power between two points. The Toronto Electric Light Company had a

franchise from Toronto to sell power within the city of Toronto. One branch of the company sold to the other branch of the company. There was the Toronto and Niagara Power Company and the Toronto Electric Light Company. The Toronto Electric franchise expires in 1919, and we have a right to purchase, and Mr. McCarthy comes along now and asks you to protect the investors in the Toronto and Niagara Power Company, so that their market with the Toronto Electric Light Company shall be preserved to them. The franchise of the Toronto Electric expires in 1919. We have the right of purchase or renewal, and if we purchase the company may come in next day and operate alongside of us, and our investment is gone. Mr. McCarthy wants to acquire another franchise. His franchise at the present time brings him to the limits of Toronto, and he now wants to extend that through the city of Toronto, and make a distribution through the city.

Mr. SINCLAIR: I understood Mr. McCarthy to say that if the city purchased it he had nothing further to say, but if the city did not purchase, and the Electric company was in the market, then they wanted to have an opportunity to buy it.

Mr. MCCARTHY, K.C.: That is exactly what I said.

Mr. HARRIS: No; what he said when the question was put to him was that if the city of Toronto acquired the Toronto Electric Light Company, that the Toronto and Niagara Power Company, under its charter—and it was right that they should have that power—could come in and lay out a distribution system and sell power within the city of Toronto, a power which he says they have never exercised since 1902. They have never exercised it, but they can exercise it, and it is right that they should, under the wide powers given them under Dominion legislation.

Mr. MACDONALD: I am trying to get your position in regard to vested rights. We have not Mr. McCarthy's charter before us, but he says his company has vested rights to distribute power in Toronto anywhere.

Mr. HARRIS: In the Dominion of Canada.

Mr. MACDONALD: The effect of this legislation would be to impair that vested right and take it away.

Mr. HARRIS: Yes, undoubtedly, but we say it is to protect municipal rights, and to protect, as far as this company is concerned, taking clandestine advantage.

Mr. JOHNSTON, K.C.: You want to prevent the electric company from really breaking its agreement with the city?

Mr. MACLEAN: Mr. McCarthy has alluded to the rights possessed by railway companies, but Parliament can modify the powers of railway companies at any time. We have appointed a commission to regulate the rights of railway companies which was not in the original understanding when the powers were conferred on the companies. I ask, should not a power transmission company or an electric light company have its vested interests modified in the public interest?

Mr. MACDONELL: Just a word on that point:

Mr. MACLEAN: I mean, have its rights regulated, not taken away.

Mr. MACDONELL: The objection has been raised here of hardship, as if we were singling out this company as an exception and putting drastic legislation on the statutes affecting it. You must bear in mind that in 1902, when this company got its charter, the Railway Board was not established—it was not called into existence until the following year—and there was no machinery then to which this Bill might have been referred. I want to point out to the committee as a constant attendant at the committees before whom these Bills came up, during all the years since 1904 in every case where a company like the Toronto and Niagara Power Company has come to Parliament, the rule has been to apply to it what are known as the public safeguarding clauses. I recollect the charter of the Ontario and Minnesota Power Company in 1905, in which the same safeguarding clauses were inserted.

Mr. NESBITT: What we call the municipal clauses were applied to them.

Mr. MACDONELL: Yes. Whenever a company came, even after the Railway Board was established, these safeguarding clauses were inserted in each case and the companies were all made amenable to them.

Mr. MACDONALD: Were these operating companies or new companies?

Mr. MACDONELL: There were a lot of old companies that came back for legislation.

Mr. MACDONALD: But they were not operating companies?

Mr. MACDONELL: Yes, they were.

Mr. MACDONALD: Name one.

Mr. MACDONELL: The Ontario and Michigan Power Company came to us only two years ago. We also had the case of the Edwards Company, the company controlled by Senator Edwards, who is developing power here, and the safe guarding clauses were applied in that case. Then we had the case only the other day of the Continental Light, Heat and Power Company, I think a Montreal power corporation.

Mr. NESBITT: That has not started business yet.

Mr. MACDONELL: Yes, they are doing business, so I am informed by the promotors. This company has a charter giving very much the same powers as the original Act of the Toronto and Niagara Power Company gave. The company asked for the right to increase their capital and for added powers, and the committee unanimously decided to apply the safeguarding clauses to them.

Hon. Mr. GRAHAM: The Continental Company is not operating much, I am afraid, but if it is, do the new restrictions to which you have referred become retroactive?

Mr. MACDONELL: Yes, I think they do.

Hon. Mr. GRAHAM: It appears then that whether they were operating or not these provisions would be effective.

Mr. MACDONELL: I am just coming to the important section, more important than any of the others, which was added as subsections 5 of the Bill. It is in substance what is provided for here. It was declared that nothing contained in the orignal Act of incorporation of the Continental Power Company, should be deemed to authorize the company to exercise the powers therein mentioned for the purpose of selling or distributing light, heat, power or electricity, in cities, towns or villages, without the company having first obtained the consent therefor by a by-law of the municipality. In that case there is no appeal to the Board.

Mr. NESBITT: That is the same clause we have been putting in legislation of recent years.

Mr. MACDONELL: Yes.

Mr. NESBITT: But the company you were talking about is not an operating company at the present time.

Mr. MACDONELL: Yes, it is.

Mr. NESBITT: If it is it is only to a trifling extent.

Mr. MACDONELL: I am told it is an operating company.

Hon. Mr. GRAHAM: Does any one know to what extent the company is operating?

Mr. POPE: They stated at the hearing before the committee that they had been in operation for twenty years.

Hon. Mr. GRAHAM: To what extent?

Mr. POPE: Supplying mining companies and institutions of that kind, supplying power.

Mr. MACDONALD: Where?

Mr. POPE: In Quebec.

Mr. MACDONELL: I merely rose for the purpose of pointing out that what we are asked to do to-day by the municipalities is in pursuance of a public duty.

Mr. MACLEAN: There does seem to be a conflict of interest, and these companies are entitled to consideration in approaching a settlement of the situation. Inasmuch as Parliament in my opinion must put a measure of this kind on the statute book, the solution of the case of these particular companies and the issues raised, and this conflict of interest lies in the Ontario Government, largely in the Prime Minister, Sir William Hearst, in that he has the power to buy out these companies in the same way that he endeavoured to buy out the Seymour Power Company. While we are endeavouring to go on with this legislation and take full control of these companies, yet the solution is the power of the provincial authorities to acquire these interests and to remove for all time the friction that exists to-day and may continue.

Mr. NESBITT: I want to get this matter clear in my head if I can. It is said that if the city bought out the Toronto Electric Light Company the Toronto and Niagara Falls Power Company would come along and erect poles and string wires and start up a business again.

Mr. HARRIS: That is what the Toronto and Niagara Company claim they can do under their charter. That is the claim they made this morning.

Hon. Mr. GRAHAM: They could buy the poles from the other company.

Mr. NESBITT: If they bought out the whole enterprise would they have to put up new poles?

Mr. HARRIS: Yes, they would have to put up new poles.

Mr. NESBITT: If the city buys out the Electric Light Company it would not want the Toronto and Niagara Company to put up new poles for the distribution of power.

Mr. HARRIS: We say we do not want them to distribute in the city at all.

Mr. NESBITT: Exactly. Then that will render the lines of the Toronto and Niagara Power Company absolutely useless.

Mr. HARRIS: Oh, no. Their line is there for every purpose they require.

Mr. JOHNSTON, K.C.: There is a provision that takes care of that.

Mr. THOMSON, K.C.: Yes, at the end of the proposed subsection 4 (reads):—

> "provided that this subsection shall not prevent the company from delivering or supplying such power by any means now existent or under the provisions of any contract now in force for use in the operation of any railway or for use by any other company, lawfully engage in the distribution of such power within any such city, town or village".

Mr. HARRIS: That will not affect existing contracts.

Mr. NESBITT: I do not know what the company is going to do if it cannot get into the city of Toronto.

Mr. HARRIS: They themselves say in effect "If the city of Toronto purchases the Toronto Electric Light Company, we will not have that company as a purchaser for a large block of our power."

Mr. SINCLAIR: Would it not place this company in the power of the city of Toronto?

Mr. HARRIS: No.

Mr. SINCLAIR: If the city of Toronto has a distribution line and will not buy from the Toronto and Niagara Power Company or allow them to distribute power themselves, does that not put the latter company in the city's power.

Mr. HARRIS: But you must remember that the Toronto and Niagara Power Company's line is not a line for the service of Toronto alone.

Mr. SINCLAIR: I understand, but as far as the city of Toronto is concerned, they would be given the power to say whether the rights of the Toronto and Niagara Power Company shall be of any value or not.

Mr. HARRIS: No, sir. All their rights are preserved under their existing contract in the city of Toronto. They have the entire district between Toronto and the Falls to develop and distribute power in, and they are distributing power in that district now.

Mr. JOHNSTON, K.C.: Suppose the Toronto Electric Light Company has a contract to-day with the Toronto and Niagara Power Company for the purchase of power, and the city of Toronto purchases the plant of the former company. Would the city have power to take it, subject to the contract with the Toronto and Niagara Power Company?

Mr. HARRIS: No, sir.

Mr. JOHNSTON, K.C.: That would leave the Toronto and Niagara Power Company at loose ends.

Mr. HARRIS: They fear they would lose customers for a large block of their power. In other words, they ask you not only to preserve their rights under their charter but to preserve the market which has been created by the evolution of companies.

Mr. NESBITT: Suppose the Toronto and Niagara Power Company were supplying a manufacturing industry somewhere in the city of Toronto, and that the city bought them out and would not allow them to erect any poles in the city limits, thus cutting them off at the entrance to Toronto. How would they get the power to that industry which they had contracted to deliver.

Mr. HARRIS: That is safeguarded under this legislation, the rights they have in any contract at the present time.

Mr. NESBITT: How would they supply the power?

Mr. HARRIS: Just as they are supplying it now.

Hon. Mr. GRAHAM: The Electric Light Company's franchise expires in 1919 if you so desire it.

Mr. THOMPSON, K.C.: The Power Company's contract with the Electric Light Company expires in 1919 also.

Mr. HARRIS: They are supplying the largest block of power to the Toronto Railway Company and the contract does not expire until 1921.

The CHAIRMAN: Are there any other representatives of municipalities who wish to be heard on this question. If so, and they will come forward, we shall be very glad to hear from them.

Mr. BOWLBY, K.C.: We would like to hear from Mr. Lighthall.

The CHAIRMAN: Mr. Lighthall has been heard.

Mr. BOWLBY, K.C.: But only on one question.

The CHAIRMAN: Are there other questions he wishes to discuss?

Mr. BOWLBY, K.C.: There are a multitude of other questions.

Mr. J. B. DALZELL, Galt: It occurred to me while the discussion was going on, that the points were being narrowed down to issues between Toronto and the Toronto Electric Light Company, and the Toronto and Niagara Power Company. Now, what affects Toronto in this case also affects smaller municipalities who should be safeguarded in this legislation quite as much as Toronto. The argument has been made here that these companies should not be subject to conditions that are not imposed upon railroads. If a railroad is in the enjoyment of an unfair advantage, that is no reason

why the Toronto Electric Light Company, or the Toronto and Niagara Power Company should enjoy an unfair advantage also. The legislation we are considering is a Bill governing railways, and you should see that no railway gets any unfair advantage. Galt is a small town, but we have many miles of streets on which we are anxious to get electric facilities. But first of all we must know whether we can safely permit the operation of such lines, and I do not think we can do so under existing circumstances. If the Toronto and Niagara Power Company can come in and buy out an existing franchise and then hold us down to it, hold us down to something entirely different from what we expected, we do not know what might happen.

Mr. MACLEAN: Has not Mr. Kilmer covered your case?

Mr. DALZELL: I did not hear what Mr. Kilmer has said.

The CHAIRMAN: Do the amendments presented by Mr. Thompson suit you?

Mr. DALZELL: Yes.

The CHAIRMAN: We shall now hear from Mr. Lighthall.

Mr. LIGHTHALL: There is one very important question which has already been the cause of very much discussion in the committee. That is the question whether the definition of lands shall include easements, as far as expropriation is concerned, and the lawyers of the municipalities—those who have been able to meet here, representing the cities of Montreal, Toronto, Ottawa and other places—agree on this amendment: That section 2, subsection 15, which contains that addition to the definition of lands should be amended by inserting before the words "any easement" the words "shall, except in cities, towns and villages, include any easement."

Mr. JOHNSTON, K.C.: You are content that these companies should be permitted to take easements through the country but not in cities, towns and villages.

Mr. LIGHTHALL: That is our point exactly.

Mr. JOHNSTON, K.C.: Why?

Mr. LIGHTHALL: In the first place, we represent more particularly in the union of Canadian municipalities, cities, towns and villages. In the second place there is a very great difference in the position of urban communities as compared with rural districts. In the populous centres buildings are multiplying, institutions are multiplying, and land is of considerable value. Complications arise in the cities which do not present themselves on a farm. Under the expropriation clauses, if this definition is used a man will be unable to sell his property to the same advantage.

Mr. NESBITT: I happen to live in what is called a city, and I would think that would be the very place where an easement should apply.

Mr. LIGHTHALL: I think I can express the views of those in the larger places, and the views of a very large number of those in the small places.

Mr. TURRIFF: Better make it apply to the farmer as well.

Mr. NESBITT: It does apply to the poor old farmer.

Mr. MACLEAN: You want to limit it.

Mr. LIGHTHALL: I say we are willing to limit it. I do not want to limit it. It may affect the farmer also.

The CHAIRMAN: Have you any other suggestion.

Mr. JOHNSTON, K.C.: Mr. Macfarlane has something to say regarding section 373.

The CHAIRMAN: Mr. Macfarlane, representing the Bell Telephone Company, wishes to address the committee.

Mr. MACFARLANE: Just one suggestion I would like to offer with reference to section 373. Subsection 2 provides:—

> "No telegraph or telephone, or line for the conveyance of light, heat, power or electricity, within the legislative authority of the Parliament of Canada,

shall, except as hereinafter in this section provided, be construed, operated or maintained by any company upon, along or across any highway, square or other public place, without the consent, expressed by by-law——"

And so on. That subsection as drawn would cover the making of small additions, for instance running off distribution lines, etc., and I would suggest that the words "Expressed by by-law" be struck out, and let them proceed in any lawful way, say by the municipal council giving the consent. It would involve a great deal of unnecessary expense and delay if the consent had to be given by by-law. I understand where a company has entered a town they might have to get consent by by-law, but it should not be required in the case of small additions.

Hon. Mr. COCHRANE: I think it should be. I think the municipality should have the control of the streets.

Mr. MACFARLANE: I do not agree with that.

Mr. JOHNSTON, K.C.: Mr. Macfarlane wants to get the consent of the municipalities.

Hon. Mr. COCHRANE: Is there any way of getting it except by by-law.

Mr. MACFARLANE: Yes, by resolution of the council.

Mr. NESBITT: You want this to apply to a telephone company.

Mr. BOWLBY, K.C.: I decidedly object to that.

Mr. MACFARLANE: Take an existing telephone line operating in the city, they have to go to the municipal council to get a consent to any addition, even to build a runoff line to a subscriber, or to add lines to our existing pole lines.

Mr. NESBITT: If you want to go up another street, you have to go to the municipality, and you object to having a by-law for that.

Mr. MACFARLANE: We say the consent should be given in some effective manner, say resolution of the council, or by-law.

Mr. JOHNSTON, K.C.: If by-law is necessary you are willing to consent to that.

Mr. MACFARLANE: In Quebec resolution of the council would be sufficient.

Mr. NESBITT: For extending a telephone connection up a street, it seems nonsense to insist on a by-law.

Mr. MACFARLANE: I quite appreciate that he has to get the consent of the municipality in some way but I do not think it should be necessary to have a by-law in the case of minor additions.

Mr. GRAHAM: Would this not be satisfactory; make some limit to the length of the extension; if it were a very minor affair, that the city council could give it to you, but if it were an extensive affair it would have to be by by-law.

Mr. MACFARLANE: I think extensions should be sanctioned by resolution of council.

Mr. JOHNSTON, K.C.: In the province of Ontario the municipalities can only act by by-law; therefore in Ontario they will have to get a by-law. In the province of Quebec municipalities may act by resolution. Mr. Macfarlane is quite content that he should get the consent of the municipality in every case, but why compel them to have a by-law where the municipality can act without a by-law?

Mr. NESBITT: In Ontario they will not be able to act without a by-law.

Mr. JOHNSTON, K.C.: Then in that case he runs his own risk.

Mr. MACLEAN: He proposes to strike out the word by-law.

Mr. JOHNSTON, K.C.: Quite so, but Mr. Macfarlane wants to leave the clause in this way: That the company shall not cross any highway without the consent of the municipality. If a by-law is necessary he will get it. If a resolution is sufficient he will get that.

Mr. MACLEAN: We say that the company should be required to obtain a by-law, but you propose to substitute for that a resolution.

Mr. JOHNSTON, K.C.: I am saying by-law also. He has got to get the consent of the municipality in any lawful manner.

Mr. MACLEAN: I know, but when you require a by-law, it provides for a reasonable consideration and publicity.

Hon. Mr. GRAHAM: That is the case in Ontario, but not in some other provinces. The difficulty is that in Ontario the consent of the municipality must be obtained by by-law, but in some other provinces the by-law is not required. That is Mr. Macfarlane's point.

Mr. MACFARLANE: Yes, that is it exactly.

Mr. MACLEAN: Yes, but when you are meeting this point you are taking away the protection that exists in Ontario.

Hon. Mr. GRAHAM: We will not do that.

Mr. LAURENDEAU: Speaking for the city of Montreal, it is not correct that we grant franchises by resolution. There must be by-laws.

Mr. JOHNSTON, K.C.: Mr. Harris tells me that in Toronto permission without by-law is sometimes granted. You are only going to make more trouble for the Bell Telephone Company and for the city councils if you insist upon the passage of a by-law.

Hon. Mr. COCHRANE: The streets belong to the people, and if these companies want privileges they ought to get the consent of the people.

Mr. JOHNSTON, K.C.: Mr. Macfarlane is willing to get that consent.

Hon. Mr. COCHRANE: As some one has said here to-day, if there were not proper safeguards provided the company might, while ostensibly seeking only an extension, establish a whole new system in a municipality.

Hon. Mr. GRAHAM: You could put in that the consent must be by by-law so far as Ontario is concerned.

Mr. MACFARLANE: Perhaps you will permit me to draft an amendment.

The CHAIRMAN: Very well, if you will draft an amendment we will consider it.

Mr. BOWLBY, K.C.: There ought to be a copy sent to us.

Mr. MACLEAN: While the committee is talking about the rights of the municipalities, the city of Toronto is very much concerned in regard to its treatment by express companies. It is said there is discrimination against Toronto, as compared with Montreal, in the delivery of express parcels. I am now simply directing the attention of Mr. Johnston to this contention on the part of the city of Toronto, and I hope we shall have a chance of re-opening the question so as to regulate the express companies by requiring them to accord equality of terms.

Committee adjourned until Tuesday, 22nd instant.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 17--MAY 22, 1917

(Containing representations, for and against, freight traffic by water carrier being placed under Board of Railway Commissioners.—(Section 358.)

OTTAWA
PRINTED BY J. DE L. TACHÉ,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
Committee Room,
Tuesday, May 22, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Bradbury, Cochrane, Cromwell, Graham, Green, Macdonell, Murphy, Nesbitt, Oliver, Reid, Sinclair, and Weichel.

The Committee resumed consideration of the Bill, and proceeded to the consideration of section 358 dealing with "Traffic by Water".

The Chairman read telegrams and letters in connection therewith, after which he expressed a desire to vacate the chair by reason of his active interest in the provisions of the section under consideration.

On motion of Hon. Mr. Cochrane, Mr. Macdonell took the chair.

Mr. Francis King, counsel for the Dominion Marine Association, and other persons representing certain Boards of Trade and Transportation Companies were then heard.

At one o'clock the Committee took recess until four o'clock p.m.

At four o'clock the Committee resumed the hearings against the provisions of section 358, and then Mr. Armstrong, M.P. for Lambton, was heard in favour of the same.

At six o'clock, the Committee adjourned until to-morrow at 11 o'clock a.m.

The following was ordered to be printed in the Proceedings of the Day:—

LEGISLATIVE BUILDINGS,
Toronto, May 18, 1917.

Re Section 375, Bill No. 13.

DEAR SIR,—

At the session of your Committee on the 16th instant the writer quoted from a letter received by The Ontario Railway and Municipal Board from the Admaston Rural Telephone Association.

Upon my return to Toronto I find a further communication from this Association has been received by the Board, with reference to a recent agreement with the Bell Telephone Company of Canada. I now beg to hand you a copy of the communication referred to, in which you will notice the writer claims that, because of the fact that no Board has jurisdiction to decide the terms for local interchange, his Association has been forced to sign an agreement with the Bell Telephone Company, and that under existing conditions there is nothing for this Board to do but to approve of such agreement in order that the Association may continue to have local connection with the Bell

Telephone Company upon terms which the Admaston Association has no alternative but to accept. This emphasizes the necessity for questions of this nature being heard by a joint board having authority to enforce its decision upon each party in interest.

Yours very truly,

F. DAGGER,
Electrical and Telephone Expert.

J. E. ARMSTRONG, Esq., M.P.
Chairman, Special Committee on Bill No. 13.
House of Commons, Ottawa.

Admaston Station, Ont.
May 14, 1917.

H. C. SMALL, Esq.,
Secretary Ontario Railway and Municipal Board,
Toronto.

DEAR SIR:—

Yours of the 11th to hand *re* Admaston R. T. Association, Ltd.

When I wrote to your Board when the Bell Telephone Company of Canada wanted us to take a flat rate instead of a 10 cent switching rate you referred me to Ottawa and the Board in Ottawa said they had no jurisdiction over them; so we were forced to pay them $5 (per telephone per annum) where our switching rate cost most of us from $1 to $2 per year; so we were forced to sign the agreement they have sent to you now, for three years, so there is nothing to do only approve it.

Yours with thanks,

C. L. McCRADY.
Sec. A.R.T. Ass'n., Ltd.

LEGISLATIVE BUILDINGS,
TORONTO, May 19, 1917.

Re Section 375—Bill No. 13.

Dear Mr. ARMSTRONG,—I beg to hand you herewith, for your further information, copy of a communication received this day from the Udney Telephone Company, Limited, together with the reply of this Board thereto.

Yours very truly,

F. DAGGER,
Electrical and Telephone Expert.

J. E. ARMSTRONG, Esq., M.P.,
Chairman, Special Committee on Bill No. 13.
House of Commons,
Ottawa.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD, TORONTO.

WEDNESDAY, May 17, 1917.

Gentlemen,—We are extending our telephone system in another direction from the Bell Exchange or our central and the Bell Telephone Co. wants us to supply and erect 18 poles from the Bell Exchange or our central as a bonus for connection. Our agreement with the Bell Telephone Co. is that they will meet us ¾ mile from their exchange at Brechin with free circuits on their existing lead and we pay them $4 per subscriber per annum for switching. They claim the territory within ¾ mile of their exchange. Might say that at present they have a lead of five poles in the direction we are extending our line. Are we obliged to give the Bell Co. this bonus, or can we build to the end of their existing line and compel them to give us a connection there, or should the Bell Co. meet us ¾ mile from their exchange?

Hoping to receive a prompt reply,

Yours truly,

Udney Telephone Co., Ltd.,

ALEX. MARTIN, Jr.,

Secretary.

LEGISLATIVE BUILDINGS,

TORONTO, May 19, 1917.

Re Extension of System—Bell Telephone Co. Agreement.

DEAR SIR,—I have the honour to acknowledge the receipt of your letter of the 17th instant and in reply thereto beg to advise you that this Board has no jurisdiction to deal with matters affecting local connection between the Bell Telephone Co. of Canada, and locally-owned telephone systems in Ontario.

The Provincial Government is endeavouring to secure such amendments to the Dominion Railway Act which would enable questions of this nature to be settled by joint board, consisting of members of the Board of Railway Commissioners for Canada and this Board. At the present time your only course is to endeavour to secure the best terms you can from the Bell Telephone Company.

I have the honour to be,

Your obedient servant,

H. C. SMALL,

Secretary.

ALEX. MARTIN, Esq., Jr.,
Sec. the Udney Telephone Co., Limited,
Udney, Ont.

ERRATA.

ALEXANDRA HOTEL,

OTTAWA, May 17, 1917.

Mr. J. E. ARMSTRONG, M.P.,
Chairman of the Committee on Bill No. 13,
An Act to Consolidate and Amend the Railway Act,
House of Commons, Ottawa.

DEAR SIR,—In the printed proceedings of your Committee the following errors occur, will you please make the corrections in some future issue.

In the second paragraph in my letter to Sir Robert Borden, Prime Minister, it is made to read "for services rendered the public the railways companies themselves enforce the pay before you enter system in the freight service," this should read "the railway companies themselves enforce the pay before you enter system in the passenger service and the pay before delivery system in the freight service." Page 189 of the proceedings, No. 10, May 8.

The same date and proceedings, on page 191, under the heading "States that require bi-weekly or semi-monthly payment of wages to railway employees" omissions of the following States occur:—

Oklahama, on railroads, in mines, factories and quarries if demanded. R. L. section 3760, Acts 1913, Ch. 46.

Pennsylvania, Acts 1913, No. 76.

Texas, corporations employing more than ten contractors on public works, Acts 1915, Ch. 385.

Wisconsin, corporations only, Acts 1915, Ch. 114.

Michigan.

Respectfully submitted,

L. L. PELTIER,
Dominion Legislative Representative,
Order of Railway Conductors.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
May 22, 1917.

The Committee met at 11 o'clock a.m.

The CHAIRMAN: I will read the clause which is under consideration by the Committee this morning:

358. The provisions of this Act shall, so far as deemed applicable by the Board, extend and apply to the traffic carried by any railway company by sea or by inland water, between any ports or places in Canada, if the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by sea or by inland water between any such ports or places, and the provisions of this Act in respect of tolls, tariffs, and joint tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada.

The following communications have been received:

HAMILTON, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk of Railway Committee,
House of Commons,
Ottawa.

The Transportation Committee of the Hamilton Board of Trade feel that it would be a mistake to hamper present steamship arrangements. Up to the present we have not been able to compile sufficient data to see where it would be an advantage to place steamship lines under the jurisdiction of the Railway Board and would strongly urge that if legislation of this kind is contemplated time should be given for further consideration of same.

T. L. BROWN,
Secretary Board of Trade.

CHATHAM, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk of Railway Committee,
House of Commons,
Ottawa, Ontario.

Clause No. 358, traffic by water, inclusion of in consolidation of Railway Act strongly opposed by Chatham Board of Trade; favour free and unmolested traffic on inland waters of Canada.

WILLIAM ANDERSON,
Pres., Chatham Board of Trade.

FORT WILLIAM, Ont., May 21, 1917.

J. E. ARMSTRONG, M.P.,
Chairman Special Railway Committee,
House of Commons,
Ottawa.

At a special meeting of the Fort William Board of Trade held to-night the following resolution was unanimously carried, that this Board not having yet received a copy of the Bill affecting steamships and steamship tolls earnestly urges that it be given time for consideration and to be heard as steamship traffic is a vital matter to the head of the Lakes. Please give full opportunity for our representation.

W. A. DOWLER,
President.

FORT WILLIAM, Ont., May 21, 1917.

Chairman of the Railway Committee,
House of Commons,
Ottawa.

Information received Saturday of Bill placing steamboat tolls between Canadian ports under Railway Commission; Fort William vitally interested in steamboat traffic and our Board desires opportunity for consideration and to be heard if so desired after Bill wired for Saturday has been received and ask that hearing be delayed to enable consideration take place. Matter exceedingly important and far reaching. Please wire quickly if Bill may be deferred to a later date and the date.

W. A. DOWLER,
President, Fort William Board of Trade.

The WINNIPEG BOARD OF TRADE,
May 19, 1917.

Mr. J. E. ARMSTRONG, M.P.,
House of Commons,
Ottawa.

DEAR SIR,—I beg to enclose a copy of a telegram which I sent to you to-day, with reference to the proposed bill to place the water carriers under the control of the Railway Commission in the matter of rates.

Yours very truly,
A. E. BOYLE,
Secretary.

J. E. ARMSTRONG, M.P.,
House of Commons,
Ottawa, Ont.

Proposed legislation place all water carriers plying between Canadian ports under jurisdiction of Railway Commission in the matter of rates is measure so detrimental to interests of this country that Winnipeg Board of Trade desires to protest most emphatically against it. To us it looks as though Parliament would say to the shippers: "There shall be no competition in rates for evermore". Please have this bill killed at the earliest possible moment.

A. E. BOYLE,
Secretary.

WINDSOR, Ont.,

Mr. ROBIDOUX,
Clerk of the Railway Committee.

The Executive of the Border Chamber of Commerce comprising Boards of Trade of Ford, Walkerville, Windsor, Sandwich and Ojibway deems it advisable that the traffic by water clause number 358 should be adopted. Freedom of trade and competition on the waterway should remain free to everyone.

T. C. RAY, Secretary.

WALLACEBURG, Ont., May 21, 1917.

Mr. ROBIDOUX, Clerk,
The Railway Committee,
House of Commons, Ottawa, Ont.

DEAR SIR,—It has just been brought to our attention that it is the intention of Mr. Armstrong, of East Lambton, to introduce certain legislation regarding the governing of traffic on steamships on the inland waters of Canada, and we further understand that this legislation is likely to be introduced to-morrow. As very large shippers of glassware to Port Arthur and Fort William by Canadian boats, we wish to enter our vigorous protest against any legislation which will in any way interfere with the freedom of these boats to name such rates and charges as they see fit. While we are not speaking for the boat companies at all, it seems to us that in view of the fact that the boats of American register are not under government control, it would be a grave act of discrimination against Canadian boats to place them in any such position. In addition to this, it would absolutely prevent the making of fair rates to such points as are most favourably located as far as water shipments are concerned.

We trust that our protest will be duly registered.

We remain,
Yours very truly,

DOMINION GLASS COMPANY, LIMITED.

Mr. NESBITT: Does the provision bring tramp steamers and all other steamships under the control of the Railway Board? If I owned a little boat would it be in the same category?

The CHAIRMAN: There is a limit to the size of the vessel. I have received the following other letters and telegrams: (reads)

"CANADIAN MANUFACTURERS ASSOCIATION,
TORONTO, April 25, 1917.

N. ROBIDOUX, Esq.,
Clerk, Railway Committee,
Room 301, House of Commons,
Ottawa, Ont.

DEAR SIR,—I am pleased to advise you that Bill 13, "An Act to consolidate and amend the Railway Act," now being considered, contains a number of amendments suggested by this Association.

Strong objections have, however, been taken by a large number of our members to section 358, bringing water carriers, other than those owned, chartered, used or maintained, or working under an arrangement with a railway company, under the jurisdiction of the Board. Some of the objections thereto were stated at a meeting of the Special Committee of the Senate and the House of Commons, held on May 28, 1914. The question also came up afterwards in con-

nection with Bill 3, "An Act to amend the Railway Act," 1915. The position then taken, so far as we know, has not changed. It may be, in view of the opposition which has developed, that the amendment has been dropped. If not, we would respectfully ask for an opportunity to again present our objections thereto. If it is desired that we should appear before the Committee, will you be good enough to advise us as far in advance as possible when it will be convenient to do so.

Thanking you, I am,

Yours faithfully,

(Sgd.) J. E. WALSH,
Mgr. Transportation Department."

TORONTO, April 27, 1917.

N. ROBIDOUX, Esq.,
Clerk, Special Committee on Bill No. 13,
House of Commons, Ottawa, Ont.

DEAR SIR,—I am very much obliged for yours of the 26th advising of the procedure adopted by the Committee on Bill No. 13.

As we wrote you on the 25th, a large number of members of this Association objected to that portion of section 358 placing port to port water carriers under the control of the Railway Commissioners. Some of these objections will be found in the printed proceedings of the Special Committee at the sittings in Ottawa, May 28, 1914. Will this evidence be incorporated in the present proceedings, or is it your desire that the evidence then given should be now repeated.

Thanking you for an early reply, I am,

Yours faithfully,

(Sgd.) J. E. WALSH,
Manager Transportation Department.

FORT WILLIAM, Ont., May 18, /17.

J. D. HAZEN,
Minister of Marine and Fisheries,
Ottawa.

TELEGRAM.

Information just received that an important bill is coming before Parliament on Tuesday affecting steamships and steamboat rates and steamship companies by placing same under Railway Commission the head of the Lakes is vitally interested in the steamboat business and our board desires opportunity for consideration and to be heard if so desired after bill itself has been received. Please cause copy bill to be forwarded to reach us Monday if possible.

(Sgd.) W. A. DOWLER,
President Fort William Board of Trade.

TELEGRAM.

CHATHAM, Ont., May 21, 1917.

Mr. ROBIDOUX,
Secretary Railway Committee,
Ottawa, Ont.

Most shippers here strongly opposed to proposed amendment Railway Act clause 358 and council will likely rescind resolution sent to you shippers think present elasticity preferable.

(Sgd.) J. G. KERR,
Mayor.

TELEGRAM.

CHATHAM, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk of Railway Committee,
Ottawa.

Do not consider up to the best interest of water shippers in Canada to have steamships company tariffs controlled by the Board of Railway Commission there are so many varying conditions entering into water traffic that we believe waterways of Canada should be open and free to everyone.

(Sgd.) DOMINION SUGAR CO.

TELEGRAM:

COURTWIGHT, Ont., May 19, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee,
House of Commons,
Ottawa.

With reference to clause 358 traffic by water being included in bill for consolidation of Railway Act we most strongly are opposed to any legislation of this kind being passed as being detrimental to our interests and the interests of other shippers on water routes and we trust that this clause will be struck out of the bill.

(Sgd.) THE WESTERN SALT CO.

TELEGRAM.

SARNIA, Ont., May 18, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee,
House of Commons,
Ottawa.

Mr. Armstrong, member for East Lambton, under date May 12, wrote our Board regarding clause number three fifty eight traffic by water being

included in Bill for consoldiation of Railway Act and requested if our body intended to support the clause you should be communicated with and we beg to advise that the clause was discussed in general meeting last night and resolution unanimously passed that you would be communicated with and advised that in the opinion of our Board it would not be to the best interests of Canada or of this community to pass any legislation that would stifle ship building or owning or interfere, hamper or cause any change in any condition that have heretofore existed in the free and unmolested traffic carried by ship on the inland waterways of Canada or the high seas which are natures highways open and free for everyone to use.

Sarnia Board of Trade,

(Sgd.) J. L. BUCHAN, Pres.

THE DOMINION MILLERS' ASSOCIATION.

TORONTO, May 18, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee, Bill No. 13,
House of Commons,
Ottawa.

DEAR SIR:—Our association is interested in sections No. 313, 357 and 358 and would like an opportunity of appearing before your Committee when the above sections are being considered.

Will you kindly advise me what date and time we can have a hearing, and oblige,

Yours truly,

(Sgd.) C. B WATTS.

TELEGRAM.

QUEBEC, May 21, 1917.

The CHAIRMAN,
Railway Committee, House of Commons,
Ottawa, Ont.

Council of Quebec Board of Trade is strongly against any Federal legislation which would have for object to put all our inland Steamship Companies under jurisdiction of the Board of Railway Commissioners of Canada because our shippers would lose advantage of competition during season of navigation.

(Sgd.) T. LEVASSEUR.

TELEGRAM.

TORONTO, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk of Railway Committee,
Ottawa, Ont.

Strongly deprecate proposed clause 358 bringing shipping under Railway Act as being inimical to best interests of and promotion of shipbuilding insistently called for by critical shortage of tonnage throughout Empire consider time most inopportune for any such measure.

(Sgd.) THOR IRON WORKS.

TELEGRAM.

OWEN SOUND, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk of Railway Committee,
House of Commons,
Ottawa.

We are opposed to clause 358 of the Bill entitled Traffic by Water and believe that it would hinder the development of shipbuilding and the owning of ships by Canadians. The competition between ships on the Great Lakes is sufficient in our judgment to regulate freight charges.

THE COLLINGWOOD SHIPBUILDING CO., LTD.,
(Sgd.) H. B. Smith, President.

TELEGRAM.

WIARTON, Ont., May 21, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee,
House of Commons, Ottawa, Ont.

The Wiarton Board of Trade protest against clause 358 of Traffic by Water Bill so far as applicable to carriers by water, other than Railway Companies and asks last fifty-one words of clause be struck out.

(Sgd.) J. CARLYLE MOORE,
Secretary.

The following is an extract from a letter, signed by George Hadrill, Secretary, Montreal Board of Trade, dated April 28, 1917.

> The Council is of opinion that it is inadvisable to apply the provisions of the Railway Act in respect of tolls, tariffs and joint tariffs on freight traffic carried by water between ports in Canada. There are a great many reasons why the Council considers this inadvisable, the chief being a strong belief that the jurisdiction of the Board of Railway Commissioners would tend to limit competition between the water carriers themselves, which in turn would tend to decrease the competition between water carriers and the railways.

MONTREAL, May 3, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee,
House of Commons,
Ottawa.

SIR,—I am directed by the Council of this Board to supplement, as follows, the representations to your Committee made in my letter to you of 28th ult.

That the Council unanimously renews the representations made in its letter of the 18th May, 1914, to the Joint Committee of the Senate and House of Commons which then considered Senate Bill B2, intituled, "An Act to Consolidate and amend the Railway Act," which were to the following effect:—

That the railways claim that the Board of Railway Commissioners has no jurisdiction over special arrangements, such as Stop-over, Reshipping, Milling-in-transit, etc., styled by the railways "special services" or "privileges", and therefore that the railways may grant, amend or cancel same as may best suit their purpose, provided of course this is done without unjust discrimination.

That the Council therefore, believing that the Board of Railway Commissioners should be empowered to control or to order any services incidental to the business of a carrier, strongly urges that provision should be made in the Railway Act to extend the jurisdiction of the Board of Railway Commissioners for Canada over such special services rendered by the railways.

I am, sir,

Your obedient servant,

GEO. HADRILL,
Secretary.

MONTREAL, May 11, 1917.

Mr. ROBIDOUX,
Clerk, Railway Committee,
House of Commons,
Ottawa.

SIR,—Referring to my letter to you of 28th ult. stating that the Council of this Board takes strong exception to that portion of Section 358 of the Bill which provides that phovisions of the Act in respect of tolls, tariffs and joint tariffs shall, so far as deemed applicable by the Board of Railway Commissioners extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada. I am now to say that if the Committee feels that, with this protest and with the oral evidence given in 1914 with regard to this provision of the Bill by its special delegates, Messrs. Huntly Drummond and Alex. McFee (recorded in No. 4 of the Proceedings of the Joint Committee which considered a similar amendment to the Railway Act in 1914) it is fully possessed of the objections of this Board to include water-borne traffic in the jurisdiction of the Board of Railway Commissioners, the Council will not further trouble it, but if on the other hand the Committee feels that it would like to hear oral objections to the said clause the Council will arrange to be represented before the Committee at any date it may appoint.

I am to add that the Council, believing this question to be of great importance to business interests, prays the Committee will not pronounce

upon it without the fullest consideration of the objections to placing the tariffs of water-borne traffic under the jurisdiction of the Board of Railway Commissioners, and in so representing the Council desires it to be clearly understood that it has nothing but admiration for the work of the Board of Railway Commissioners, though, with respect to water-borne traffic, this Board does not believe that in the matter of rates there should be any control.

I am, sir,

Your obedient servant,

GEO. HADRILL,
Secretary.

TELEGRAM.

PORT ARTHUR, Ont., May 21, 1917.

N. ROBIDOUX,
Clerk of Railway Committee,
Ottawa.

Regarding section 358, proposed Railway Act amendment placing Canadian steamers under jurisdiction Railway Commission stop in view of no such rectrictions on American bottoms we consider this will seriously affect Canadian steamship traffic and thereby reflect on the Canadian shipbuilding industry therefore we vigorously protest against proposed legislation.

(Sgd.) PORT ARTHUR SHIPBUILDING CO.

I will now ask you to temporarily appoint another Chairman, as I would like to have the privilege of making some representations to the Committee.

Mr. Armstrong then vacated the chair, and on the motion of Hon. Mr. Cochrane, seconded by Mr. Nesbitt, Mr. Macdonell was temporarily appointed Acting Chairman.

The ACTING CHAIRMAN: I understand that a special arrangement has been made for the consideration this morning of section 358 which deals with water-borne traffic, and a number of gentlemen interested are here for the purpose of being heard. Mr. Armstrong has vacated the chair for the purpose of addressing the Committee on this section, and perhaps it would be desirable to hear him first.

Mr. ARMSTRONG: A number of gentlemen are here, some of whom have come a long way, and they should be heard first.

Mr. CLIVE PRINGLE, K.C.: A number of gentlemen are here who are opposed to the section as it stands, and if they address the Committee first, I ask that we should have the right of reply.

Mr. FRANCIS KING, K.C., Counsel for the Dominion Marine Association: I submit, Mr. Chairman, there is no reason whatever in favour of the legislation.

Hon. Mr. COCHRANE: The legislation is there; tell us why you are opposed to it.

Mr. JOHNSTON, K.C.: This is new legislation insofar as it provides that the provisions of the Act in respect to tolls, tariffs and joint tariffs are to extend to all freight carried by water. Formerly it only applied to freight carried by railway companies.

Mr. ARMSTRONG: I move that Mr. King, representing the Dominion Marine Association be heard.

Motion concurred in.

Mr. KING, K.C.: Mr. Chairman and gentlemen, I appear as counsel for the Dominion Marine Association, an organization which includes in its membership practically all the tonnage affected by the clause in question trading between Fort William and Montreal, the Great Lakes and the Upper St. Lawrence. Perhaps I should mention one exception from this, and included in that exception are particularly the boats operated by railways. The boats running in connection with the C.P.R. on Lake Superior are not included in our membership and have consistently withheld from membership, for the reason as advanced to us, that their interests are not the same as ours, but are, to some extent, opposed to us. Let me say that I am speaking under a very, very great handicap at present, in so far as have not before me a single word in favor of this legislation beyond what has been said at the various sessions of the Committee of the House of Commons and at the joint session of the two Houses in 1914, and again I think, in 1915. That may be held to have placed me in possession of the arguments in favour of the legislation, but will you let me say that we were represented at those sessions, and that each time Mr. Armstrong, who was the chief spokesman for the legislation, made some arguments to the Committee in favour of the legislation, we had something to say in reply, and in the session of 1915, according to the record, conclusively satisfied the Committee that the onus of proof was upon the promoter of the legislation. I here refer to the record of 1914, and, if permitted, will read it into the record to-day, and I wish to refer particularly to the statements made by Mr. Lawrence Henderson, the Managing Director of the Montreal Transportation Co., Montreal, and Senator Richardson, one of the principal grain dealers in Canada who, in the course of two hours and under a fire of interruptions and in spite of strong opposition established the justice of his contention and brought from the Committee a definite expression of opinion that it was up to the promoter of the legislation to make out a case, and then the Committee adjourned. I want to refer to those statements and ask that they form a part of the present record.

The ACTING CHAIRMAN: That is before the Committee now, as are all records in this House. You might hand it in and it will be copied into the report of the proceedings.

Hon. Mr. COCHRANE: Will you tell me why the carriers in Canada should not be under the same jurisdiction as the carriers in the United States on the same territory?

Mr. KING, K.C.: I see no special reason why they should not, but I feel that that is only a partial answer to the question, and in reference to what the minister has asked me perhaps I might take that point up at the moment, although I did not intend to bring it up at this particular stage. I have only heard incidentally—and it is brought to my mind again by the question—that one of the arguments against the contention of the owners of lake tonnage to-day is that on the United States side of the line vessels are under the jurisdiction of the Interstate Commerce Commission. My information on that point is to the exact contrary. I understand that under the Interstate Commerce Act, in its original provisions, vessels were placed under the jurisdiction of the commission in so far as they operated on continuous trips in connection with and under agreement with railways, and only insofar as they operated in that way. Then at a later date an effort was made to place the bulk carriers under the jurisdiction of the commission, and the effort failed, and that at present the bulk carriers, the boats engaged in the carriage of grain on the United States side, the boats engaged in the carriage of ore and those engaged in the carriage of coal are not under the jurisdiction of the commission, and that their jurisdiction applies exclusively to those boats largely engaged in package freight business, which are running under trade agreements with the railways on through traffic, either as to passengers or to freight.

Mr. SINCLAIR: You are not objecting to jurisdiction over the boats that are running in connection with railways?

Mr. KING, K.C.: Not at all. The Act reads that way now, and it is only to the last few words of the section that we raise objection. An effort is there made to extend the jurisdiction to tariffs and tolls.

Mr. ARMSTRONG, M.P.: If I could furnish you with conclusive proof that in the United States the boats are under the jurisdiction of the Interstate Board, that that board controls the rates and regulates the traffic and everything in connection with the business, that would be satisfactory to you, and you would have no objection to the section.

Mr. KING, K.C.: Conclusive proof would be satisfactory to me as far as the facts are concerned, but it would not satisfy me that it was in the interest of the trade and commerce of Canada, and I maintain that it is not.

Mr. ARMSTRONG, M.P.: Just a few minutes ago you were prepared to take that position.

Mr. KING, K.C.: I do not think I went that far. I meet you on both points. In the first place, the facts are not properly represented, in so far as the boats are stated to be under the jurisdiction of the Interstate Commerce Commission, and in the second place, if that has been made law over there, it is not a good law in the interests of trade and commerce in Canada, and I say that, not from any selfish point of view, but having regard to the best interests of the trade on the lake, and the best interests of the consumer and shipper.

Hon. Mr. COCHRANE: Tell us the reason why you say that?

Mr. KING, K.C.: I am calling attention to this in order to show the feeling that we have personally as representing the lake tonnage. I do not for a moment suggest that Parliament has not jurisdiction to impose rules and regulations regarding tolls, if it is so desired, but I do think that Parliament does not indulge in legislation of that sweeping and radical policy unless there is a very, very strong expression of opinion from the public on the subject, or unless there is proof in the minds of the members of Parliament, that legislation is desirable or necessary. On both those points I am sparring with the wind so to speak, because I do not know either of the popular demand or of a necessity for it, and I do know, and I have with me here a list proving the fact, that the popular demand is, so far as I can find it out, absolutely to the contrary of the proposal.

Hon. Mr. COCHRANE: Has that been worked up?

Mr. KING, K.C.: No, it has not been worked up. So far as the list which has been read to-day is concerned, a great many, in fact most of the names, are absolutely unknown to me and left off the list I prepared this morning. How this list was made up I do not know. I had no personal hand in it, and I might be called the chief conspirator on behalf of the Dominion Marine Association.

Mr. ARMSTRONG, M.P.: You want to be a law unto yourselves, as far as rates and traffic arrangements are concerned.

Mr. KING, K.C.: Not for a purely selfish reason such as has been suggested, and I was going to answer the minister in these same words. I had reached that point. I wanted to be clear, in the first place, that there is a proposed interference with the right of private agreement, that there is a proposed control of private enterprise. I know that one reason for that proposal is that an analogy is drawn between water traffic and that of the railways, and I propose to meet that. But answering the minister, I do want to say that one reason, and one of the main reasons that we are opposed to the proposal, in so far as, for instance, it affects the grain trade, is that the country is infinitely better off without the control than with it.

Hon. Mr. COCHRANE: You would not say that about the railways?

Mr. KING, K.C.: I would not say that about the railways, no, and I do not wish to break that analogy between the railways and the boats at this stage. I do not say that the Government has not spent tremendous sums of money in developing the waterways of Canada. They have deepened harbours, improved channels, provided aids to navigation such as lights and buoys, built canals for us, and all that sort of thing; and that, to some extent, is such as the expenditure made in favour of railways. But that is only an indirect aid to no particular boat now charged with making too high a tariff. That waterway is provided not as a roadbed on a railway is provided to carry the trains of one particular company from point to point; it is provided to carry the boat of any individual or company who has the nerve and the capital to build it. And we say that the analogy fails absolutely at that point. There is no public franchise given to any boat company. No boat company represented here to-day enjoys in the slightest the exclusive privilege to trade from Sarnia to the Sault, from Sarnia to Port Arthur, or from Port Colborne to Fort William. Any one can come in; and the Government has spent this money for the benefit of the whole country.

Mr. ARMSTRONG, K.C.: You would not furnish them with any safeguards whatsoever?

Mr. KING, K.C.: I do not say that. I say the safeguards exist. The analogy is wrong. If I may be allowed to follow the drift of my argument, will the committee permit me to continue that analogy between the railways and the boats? May I refer again to the record of 1914, very briefly, and in a hasty summary compiled at the conclusion of the committee's session, I attempted to place in writing an answer to what had been said by Mr. Armstrong.

> The railway does enjoy a franchise or monopoly on the road it uses and which the Government helped to build.
>
> It operates between definite points on definite schedules on a fixed roadway.
>
> It does not necessarily tie up a whole train and a train crew in taking on or unloading freight, and in any event it does not as a rule carry freight and passengers on the same train, although it may so carry express traffic.
>
> It is not subject to marine risks and does not pay from 5 per cent to 8 per cent for insurance against them.

I am speaking now of 1914.

Railway traffic does not include the infinite variety of classes of carriers to be found among the vessels trading in any one district which will include everything from a large vessel to a gasolene launch, from a steamer to an old-fashioned sailing craft and from a long distance carrier merely passing through the district to a vessel whose trade is confined to a very limited area.

The railway is not subject to variations in carrying capacity due to fluctations in the available draft of water. In one year recently the gross earning capacity of one fleet was lowered at least 20 per cent by low water.

A variety of other differences might be named and the above are merely hasty suggestions.

That is so far as that analogy is concerned. But once more I may say that there is somewhere an argument which will at some time be presented against us having regard to the general good of the trade and commerce of the country. Let me deal with that point now. I say that while we have no public franchise, no exclusive privileges, we should have no special burdens. That is an answer in itself against the suggestion for intervention. But the remedy is there in the very freedom that exists upon every one of these water routes, the freedom of absolute competition, not only between the boats that are now on the lakes—because the public can build a boat at any time in opposition to any particular route—but further, that absolute competition insures a proper, fair rate and the water routes of the country operated under

those conditions have been the best safeguard the country has enjoyed in the way of control of rail rates. I am speaking now without reference to the splendid control exercised by the Railway Board.

Mr. ARMSTRONG, K.C.: May I ask why it is that the railways have not increased their rates since the war began, while you have practically doubled yours?

Mr. KING, K.C.: We have a number of reasons for that. Rates have doubled when boat capacity goes down. A heavy amount of tonnage has been removed from the lakes to the ocean, and we are working now under tremendous difficulty.

Hon. Mr. COCHRANE: It gives you a chance to raise the rate?

Mr. KING, K.C.: It gives us a chance to meet competition on the other side. But I do not think the committee realize the tremendous handicap the boat men work under. Mr. Armstrong at a previous session quoted the coasting laws of the two countries in full. From time to time it is suggested that the coasting laws be abrogated to let the American tonnage come in and fight us on our own ground. Every year the Minister of Customs is bothered by telegrams of protest from us. If it could be made a reciprocal abrogation, we might join in the tremendous traffic on the other side, coal up and ore down. As it is, we get what grain is dribbling through in the summer and in the fall, when all the grain is flowing from the West, the American tonnage has the opportunity to raise further cut-throat competition.

Mr. ARMSTRONG, M.P.: Two or three years ago your association asked that it should come in.

Mr. KING, K.C.: We never asked that it should come in.

Mr. ARMSTRONG, M.P.: Did Mr. Henderson not ask?

Mr. KING, K.C.: Mr. Henderson did not ask.

Mr. ARMSTRONG, M.P.: Did he not so report?

Mr. KING, K.C.: He did not so report. Mr. Armstrong is relying on his memory. Speaking from memory, I think it will be found that the Hon. Senator Richardson—

Mr. ARMSTRONG, M.P.: Yes, Senator Richardson.

Mr. KING, K.C.: —did make the statement that the Marine Association asked for a suspension. The Marine Association did not ask for the suspension, never asked for the suspension, and has invariably protested against the suspension of the coasting laws. It happened that Mr. Richardson was a prominent member of the association. Mr. Richardson was a grain man first and a vessel man second, and, personally, he asked for the suspension. We had to take our medicine as best we could lying down; that is what happened. Mr. Richardson is now primarily a vessel man. We have invariably repeated since then our protests against such intervention. That is, perhaps, by the board a little bit. The point I was making at the time was that the vessel men in Canada are so handicapped in having only a limited grain trade, poor in the summer and good in the autumn, when the American comes in and competes with him. Now it is suggested that there ought to be a control of these rates, and may I call the committee's attention to the fact that the suggestion set out in the Act is perhaps not clearly understood. The clause as it did read for a number of years, merely giving control over those boats which were operated over an arrangement with a railway, was not open to objection, but the amending part is the last four lines, and it is against that change that we are making our protest. (Reads):—

> "and the provisions of this Act in respect of tolls, tariffs and joint tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada."

That is what we object to.

Mr. NESBITT: You note that the words there are, "as deemed applicable by the Board." You are not willing, I understand, that the Board should say whether the rates should be applicable or not.

Mr. KING, K.C.: I do not fear the Board very much, but an ounce of prevention is worth a pound of cure, and we do feel they should not be placed in the position of having control over our rights in that way. And why do we take that ground?

Hon. Mr. GRAHAM: You would fear them less if they had not the power?

Mr. KING, K.C.: Oh, undoubtedly.

Mr. NESBITT: What do you say as to the monopoly on the Great Lakes created by the buying out of a number of steamships. A year ago, I think it was, an organization called the Canada Steamship Lines, bought up a number of vessels. Are you opposed to competition?

Mr. KING, K.C.: Opposed to competition?

Mr. NESBITT: Yes.

Mr. KING, K.C.: The question is asked in such a way that several answers might be given to it. As regards the amalgamation to which you refer, it does not by any means cover the whole field of lake traffic. There is active, and in some cases bitter, competition still, as between some of the companies operating on the lakes. What the exact percentage of tonnage owned by the Canada Steamship Lines is, I do not know, but I hesitate to say that it is more than the majority of the tonnage. There are companies that may be operating under fairly close arrangement with the Canada Steamship Lines, that would bring up the percentage, but there are at the same time a large number of independent concerns that are operating in opposition, and the competition which has existed is one of the very things which the committee is seeking to avoid by passing this legislation which would undoubtedly drive out the small man and assist the company which was able to stand regulation by the Railway Board.

Mr. ARMSTRONG, M.P.: I understood you some time ago to state that the Dominion Marine Association represented practically all the boats operating on inland waters.

Mr. KING, K.C.: Yes.

Mr. ARMSTRONG, M.P.: And you represent them here to-day?

Mr. KING, K.C.: Yes.

Mr. ARMSTRONG, M.P.: You say that the Association has no understanding as regards the regulation of tolls or tariffs?

Mr. KING, K.C.: Absolutely none. I notice a smile on the interrogator's face, Mr. Chairman.

Mr. ARMSTRONG, M.P.: I have reason to smile.

Mr. KING, K.C.: If I may be permitted to forestall a remark which perhaps Mr. Armstrong intends to make on that point, I would say that as long ago as 1905 or 1906, when competition had reached such a cut-throat stage that there was not a living rate for the carriage of grain on the lakes, we did have a sort of agreement, and we actually got so far as the drawing up of schedules as to what the minimum rate should be. However, we burned our fingers, and representatives of the Government of Canada, if I may use the expression, pulled us up with a rather short turn, and from 1907 on the association has never dared to attempt anything of the kind, a scheme which by the way is entirely outside its constitution and which should never have been attempted, and there is not the slightest understanding of that kind now. You may take the evidence of Mr. Henderson or Senator Richardson on that very point, given in 1914. These gentlemen gave the most flat contradiction to the statement that anything of the kind existed, and I have no hesitation in saying that every gentleman that will follow me this morning will back up what I say in so far as the association is concerned.

Mr. ARMSTRONG, M.P.: Have you any arrangement with the United States Marine Associations, or with any shipping organization in the country to the south?

Mr. KING, K.C.: Absolutely none.

Mr. ARMSTRONG, M.P.: Not in any way?

Mr. KING: Absolutely none.

Mr. ARMSTRONG, M.P.: And you never had any such arrangement?

Mr. KING, K.C.: We never had. I feel a little bit as though I were a criminal in the dock under this cross-examination.

Mr. ARMSTRONG, M.P.: Surely there is no harm in asking you questions.

Mr. KING, K.C.: The gentleman is perfectly free to ask any question he wishes, in fact, I invite questions, so sure am I of my ground.

The ACTING CHAIRMAN: It is customary on occasions of this kind for members of the committee to put questions.

Mr. KING, K.C.: Quite so, sir, and I do not object to reasonable questions. Let me say that there is absolutely not a shadow, tittle or iota of basis for the suggestion which Mr. Armstrong has made. I say that fearlessly.

Mr. ARMSTRONG, M.P.: Do you call yourselves common carriers.

Mr. KING, K.C.: We do not. As far as a bulk freighter is concerned, we say we are not common carriers.

Mr. ARMSTRONG, M.P.: Then there are no common carriers on the inland lakes?

Mr. KING, K.C.: I do not say that. What I say is that so far as the bulk freighter is concerned we are not common carriers. A common carrier, to give the legal definition, is supposed to take what is delivered on his dock and carry for the public in the ordinary way, as a railway does, and must not discriminate in his choice. But the man who lets the whole of his cargo space from port to port is not a common carrier, because he can say with perfect right and freedom: "I will not take your grain, I will take somebody else's that I get one-eighth of a cent a bushel more for. I will not go to Colborne or Midland because of unloading conditions there. I would rather run my boat through to Montreal so that I can get a return cargo and a return freight." He does that and nobody can say he is wrong, he is not a common carrier and cannot be ordered to do what he would not wish to do.

Mr. ARMSTRONG, M.P.: What kind of a carrier would you call a man connected with the Canadian Marine Association?

Mr. KING, K.C.: The Association has common carriers among its membership as well as others.

Mr. ARMSTRONG, M.P.: "Others" is very indefinite.

Mr. KING, K.C.: Well, I find it a little difficult to select the proper term to apply. I might say that in the Interstate Commerce Commission Act, the words used are "common carrier" and "carrier" and the Association, I may say, is made up of common carriers and carriers; further than that there are passenger carriers, of course, because we have passenger boats, and they are a large factor. In the case of a common carrier perhaps the best definition I can give is by, if I may, referring again to the record of 1914, with regard to that question:

> "Mr. Armstrong, apparently, doubts the contention that the bulk freighter is not a common carrier. May I submit the following definition from Hutchinson on Carrier, Third edition, section 27:—
>
> "A common carrier is one who undertakes as a business for hire or reward to carry from one place to another the goods of all persons who may apply for such carriage, provided the goods be of the kind which he professes to carry, and the person so applying will agree to have them carried under the lawful terms prescribed by the carrier; and who, if he refuses to carry such goods for those who are willing to comply with his terms becomes liable to an action by the aggrieved party for such refusal."

That is a common carrier. That is a position that the boats do not occupy except in so far as they are running upon a scheduled route in connection with the railways, and are bound to take what comes on their docks and carry it.

> "If goods are carried under a charter party giving to the hirer the whole capacity of the ship, the owner is not a common carrier, but a private carrier for hire."

Mr. SINCLAIR: What do you say to making the Act apply to the common carrier, and exclude the carrier?

Mr. KING, K.C.: I see no good reason for distinguishing between the common carrier and the carrier. But this is entirely a subsidiary branch of the case. I say that the Act as it stands at present is an Act which should remain in force, that is, that the boats that carry in connection with the railway companies should come definitely under the jurisdiction of the Board in accordance with the words of the statute, but when you go farther than that you go farther than is either necessary or desirable. In the United States, as I said, boats such as I have been speaking of are not under the jurisdiction of the Interstate Commerce Commission, and no longer ago than the 17th of May, 1917, I have a letter from the Secretary of the Lake Carriers Association, of the United States, who is a man who ought to know, as follows:—

> "CLEVELAND, Ohio, May 17, 1917.
>
> "Mr. FRANCIS KING,
> Kingston, Ont.
>
> "DEAR SIR,—Your telegram with reference to proposed Bill to place lake freight carriers under jurisdiction of the Canadian Railway Commission was duly received yesterday, and I have taken the matter up with Mr. Goulder.
>
> "There has not been any attempt as far as I know, to place the bulk freight carriers on the Great Lakes under the jurisdiction of the Interstate Commerce Commission, but the package freight vessels operated in connection with the railway companies were included in the Interstate Commerce Act when that became a law. At that time it was proposed also to include the port to port traffic of the package freight vessels and Mr. Goulder was instrumental in having that feature eliminated from the Bill and was looking up the papers in connection therewith, which he has agreed to have in your hands prior to your regular meeting next Tuesday.
>
> "Yours very truly,
> (Sgd.) "GEO. A. MARR,
> "*Secretary.*

I understand that the port to port and bulk freight vessels are not included in the vessels that come under the jurisdiction of the Interstate Commerce Commission. But returning again to the section under consideration, the proposal before the committee is that there shall be control by the Board over the tolls and tariffs of all carriers. Supposing that is merely control over the tolls and tariffs, let me tell you what the result of that will be. Supposing the Railway Board had jurisdiction and that Board says that such and such a boat should not carry from Fort William to Midland, or Port McNichol on the Georgian Bay, at a higher rate than 3 or 4 cents a bushel; what might the result be if that boat could get 5 cents a bushel to take the grain to Buffalo? She would take it there.

Hon. Mr. COCHRANE: Yes, but if she loaded in Canada she would be under the jurisdiction of the Railway Board.

Mr. KING, K.C.: The minister perhaps overlooks the fact that loading at Fort William and Port Arthur is all right but we must not forget that there are other ports

from which western wheat is shipped, and that fact must be considered in dealing with this question. In the Canadian law is a prohibition that freight cannot be shipped from one point in Canada to another point in Canada except in British or Canadian bottoms and a similar provision exists in the laws in force on the other side, it must be in American bottoms from a point in the United States to another point in the United States, with this difference in their favour there that it must be remembered that they further provide "or over the whole or any part of the route," so that with regard to the interchange of traffic between Canada and the United States, it may be over or upon the boats of both countries, and the boats will be able under this section as it stands to carry grain from Fort William to Buffalo, whether she belongs to one nation or another.

Mr. SINCLAIR: Your contention is that the operation of this section will be to send the grain via Buffalo.

Mr. KING, K.C.: I can hardly say that but it is a fact that the shipper fixes the route and not the carrier, and that the grain now goes to Buffalo, 50 or 60 per cent of the grain that goes out of Fort William, goes to Buffalo.

Mr. NESBITT: If that is the case, will not the Board have jurisdiction over the freight from Port Arthur to Buffalo?

Mr. KING, K.C.: As to American boats?

Mr. NESBITT: No, no; Canadian boats.

Mr. KING, K.C.: Most assuredly, but Parliament would never suggest legislation which would make the Canadian boat carry it at from one to two cents less than their American cousins are carrying it for.

Mr. NESBITT: The Board would certainly not do any such thing.

Mr. KING, K.C.: But the legislation is supposed to have been designed for the purpose that might bring about that result.

Mr. JOHNSTON, K.C.: It only gives jurisdiction to the Board on freight as between ports in Canada.

Mr. SINCLAIR: It does not cover the tolls on a ship carrying grain to Buffalo.

Mr. KING, K.C.: No, but the point I make is that if the Board did control it that way, the natural tendency for the grain to go to Buffalo in order to reach the other side of the Atlantic would be tremendously increased.

Hon. Mr. COCHRANE: The export from New York has been greater than it has been from Canadian ports.

Mr. KING, K.C.: And the Government has, from time to time, considered the question of bringing tonnage to Montreal to help us out, and they have done wonders themselves in the way of providing shipping facilities at Montreal, but the trouble with these facilities has been that after a time the elevators at Montreal come to be used for storage purposes and the consequence has been that what grain goes to Montreal is only that which is left over when Buffalo is through. Montreal takes what it can hold, it takes what is left over as soon as Buffalo is filled.

Hon. Mr. COCHRANE: How is it that Canadian grain comes to Montreal from Buffalo?

Mr. KING, K.C.: That is the result of circumstances the explanation of which I would rather you asked Senator Richardson to give, or some one like him who is thoroughly acquainted with all the details of the grain trade. There is very little goes straight from the head of the lake to Montreal, except from Fort William.

Hon. Mr. COCHRANE: Yes, there was a great deal went from the head of the Lakes to Montreal, three years ago.

Mr. KING, K.C.: Yes, there was a line of boats which was going to develop that trade down there, the Wolvine, which were going to develop a line of trade from the head of the Lakes to Quebec; I do not know where those boats have gone to, they are not running now, it did not work out.

Mr. ARMSTRONG: Why is it that boats do not find it advantageous to carry grain to Montreal?

Mr. KING, K.C.: Because the Montreal elevators are filled and there is also insufficient outlet at that port for the ocean trade. I think you want to know further the reason why there are fewer vessels available at Montreal than at New York; it is because of the long haul up of the St. Lawrence.

Hon. Mr. COCHRANE: I think the insurance rates also have something to do with it.

Mr. KING, K.C.: And the insurance rates also on the St. Lawrence route and there is another thing, the alleged ocean combine which, from time to time, as you know has absorbed any difference that we made in the tariff on the Lake route in an effort to hold the Lake trade to Canadian ports.

Hon. Mr. GRAHAM: This argument has been laid before me time and time again that the conditions applying to navigation change so rapidly on the Great Lakes that it will be very hard work for the Board to control the rate. For example, here is the condition which arises on account of the change of facilities offering, by which the rate may change a cent a bushel, and it is very difficult for the Board to keep up with the changing conditions and control these rates; while in the case of railways there are only two conditions to be considered, summer conditions and winter conditions.

Mr. KING, K.C.: I am very glad you called it to my mind. That is covered fully by what Mr. Henderson and Mr. Richardson said in 1914, and I would say that it would not only be difficult but absolutely impossible for the Railway Board to establish a fair rate on the grain trade. If they go so far as to establish a maximum rate, beyond which we could not go, or a minimum rate, below which we could not go, they would be going a very long way, and would be handicapping us and driving the trade towards Buffalo. Rates are not made with any possibility of giving a week or a month's notice before you raise or lower them. Things are done in ten seconds, as Mr. Henderson said the other day. It is the process of competition, and it is done by wire, telegram, telephone, long distance at all times, and they may change a dozen times in a day and they have to.

Mr. ARMSTRONG, M.P.: Similar conditions exist in the United States and they are under control.

Mr. KING, K.C.: I differ absolutely with you as to their being under control. I suppose it is no use arguing, because we are not on sufficiently common ground to argue the point. I feel convinced that I am right, and that they are not under control. I am asking the committee—perhaps I should do it at this stage—for leave to say something in reply, because we are trying to make a case without knowing what we arguing about.

Mr. ARMSTRONG, M.P.: I do not think there will be any objection to that.

The ACTING CHAIRMAN: No.

Mr. KING, K.C.: The argument I was following up when I answered some question, control purely of tolls and tariffs by the Railway Board, would be most objectionable, I do not mean not in the interests of the boats, because the Board would be fair, but not in the interest of trade and commerce in the country. It would increase the tendency to drive the grain out of the Canadian channel into a channel where it would run through Buffalo. Over 50 per cent of the grain from Fort William will run into Buffalo, and the Government is trying to keep the grain in Canadian channels.

Mr. SINCLAIR: The ship would only go to Buffalo if the rate were higher.

Mr. KING, K.C.: Yes. No, perhaps I am wrong in assenting to that.

Mr. SINCLAIR: If the rate were attractive to the ship it would go that way.

Mr. KING, K.C.: She may go there for a dozen other reasons.

Mr. SINCLAIR: If there were a fixed rate that would be satisfactory to the shipper, why would that drive the trade away, unless the rate to Buffalo was higher?

Mr. KING, K.C.: Let me take it up again. The Grain Commission of Canada within the past year asked us certain questions, one of which was, why do you ship so much grain by way of Buffalo rather than by Canadian ports; and the answer in a nutshell was this, "because the shipper sends it that way." It is the shipper that says where it shall go, and we have to take it. The tendency has been to Buffalo by reason of the various conditions outside. Granting that tendency, suppose the rate is fixed by the Board to the bay, and suppose a more advantageous rate can be given to Buffalo—and that is a condition that will have to be faced—it will go without saying that that is an added argument for the grain going out by way of Buffalo, if it can be carried that way cheaper. If the boat can make a profit by going that way, it will that much more readily play into the hands of the shipper, and do what the shipper would wish to have done. The lake rate is magnified in the minds of a great many people, as a tremendous rate in the carriage to the old country. Mr. Armstrong, speaking before the committee in 1914, quoted from the report of the Grain Markets Commission of the province of Saskatchewan, and he quoted a schedule showing the rate in 1913 on 1,000 bushels of grain to the old country was $346, and the proportion of that which was charged by the lake carrier was $20, 2 cents a bushel, a mere bagatelle in connection with the whole thing, and a fluctuation in that of a half or a quarter of an eighth of a cent a bushel might mean something to the carrier, and absolutely nothing to the through shipment.

Mr. NESBITT: The through shipments must be cheaper via Buffalo.

Mr. KING, K.C.: Putting it on the basis of the cost, that is the main argument for it going that way.

Mr. GRAHAM: How do you deal with the insurance?

Mr. KING, K.C.: We treat that as one of the elements of cost. That is covered by the element of cost.

The CHAIRMAN: Which is the cheapest rate, via Buffalo to Liverpool or via Montreal to Liverpool?

Mr. KING, K.C.: That varies from day to day.

The CHAIRMAN: Give us a general opinion.

Mr. KING, K.C.: We have had a rate by the Canadian route, so far as it is controlled in Canada, down to within one, two or three cents of what it would be the other way, and it would still go by Buffalo time and again. We have found the change in the rate here did not affect the through routing of the grain, which was covered by larger conditions.

Mr. SINCLAIR: What would the conditions be? The facilities of shipment from New York?

Mr. KING, K.C.: Take the list which Mr. Armstrong quoted, I would like him to have in mind the infinite variety of things that would govern the rate.

Hon. Mr. GRAHAM: Does the Erie Canal govern the rate very much?

Mr. KING, K.C.: It is a controlling factor. Perhaps it is magnified to some extent in some of the arguments. It has limited capacity on account of the locks, but it does undoubtedly control the rail rate. Every water line does control the rail rate. That is part of my argument.

Hon. Mr. GRAHAM: Does much tonnage go by the Erie Canal?

Mr. KING, K.C.: I do not know the actual figures. The tendency is to avoid breaking bulk as much as possible, and once the grain gets to Buffalo it may go either by rail or by water and when one says that the canal here and there governs the paralleling railway, what is meant is that by its mere existence, and by the ability to move the grain that way, the rate is affected.

Hon. Mr. GRAHAM: The fact that it is there and that the grain could go that way keeps down the rate.

Mr. KING, K.C.: Yes. Following up one question asked me just a moment ago, here are the arguments made use of by Mr. Armstrong as to the cost of carriage.

"The country elevator owner—

For receiving, weighing, elevating, cleaning, etc.. .. .. ..$	17 50
The Railway Company—	
For hauling from a shipping point in Saskatchewan to Fort William, a distance of 641 miles to 1,086 miles..	120 00
For hauling from a Georgian Bay port or Port Colborne to Montreal..	42 50
The Dominion Government—	
For sampling and inspecting at Winnipeg, 50 cents per car, for weighing at Fort William, 30 cents per car, for cargo inpection out of Fort William, 50 cents per 1,000 bushels..	1 60
The Commission Merchant—	
For selling wheat on Winnipeg Grain Exchange, one cent per bushel..	10 00
The Exporter—	
The Terminal Elevator Owner—	
For receiving, elevating, etc..	7 50
The Bank—	
Interest and exchange on money supplied to meet draft of shipper on commission merchant, interest on say $700 for one month..	3 80
Exchange on say $700..	1 75
Interest on money supplied to exporter to finance the exporting of the wheat on $1,000 say for two months.	10 85
The Lake Steamship Company—	
For carrying wheat from Fort William to Port Arthur to Georgian Bay ports or Port Colborne..	20 00
The Ocean Steamship Company—	
For carrying wheat from Montreal to Liverpool, London or Glasgow..	75 00".

Of course these rates are ancient history now. Then we have marine insurance.

Interest while on Great Lakes for September-November shipments to lower lake ports, 7 per cent on $800..	$ 5 60
Interest while on Atlantic, 4 per cent on $1,000..	4 00
Sundry charges—	
Interest against fire while in eastern transfer elevators transfer of money from Europe to Canada, etc.. ..	10 00
Making in all..	$346 00

I have to some extent lost the thread of my argument, but I have endeavoured to point out that, having regard to the grain trade it would have no beneficial effect and

would work to the contrary and I wish to revert to what I have said at the outset, that it does seem to me that unless Parliament is convinced of an actual necessity or of a strong public demand, it is not going to indulge in legislation so radical in character, particularly where it does not apply on the other side of the line, and where the public interests have expressed an opinion through the pronouncement of Boards of Trade and other institutions throughout the country, and where they are absolutely opposed to it.

I want to file a list which I brought with me this morning, a partial list only, of telegrams and communications which we have in opposition to the legislation. I will read this and hand it in:—

Quebec Board of Trade, Three Rivers Board of Trade, Montreal Board of Trade, Montreal Corn Exchange, Kingston Board of Trade, Toronto Board of Trade, Windsor Board of Trade, Sarnia Board of Trade, Hamilton Board of Trade, Winnipeg Board of Trade, Ashdown Hardware Co., Winnipeg, Collingwood Shipbuilding Co., Ltd., Kingston Shipbuilding Co., Ltd., Port Arthur Shipbuilding Co., Ltd., Davidson & Smith Elevator, Fort William, Lake Port Elevator Company, Fort William, Western Salt Company, Mooretown, Dominion Sugar Company, Chatham, Dominion Glass Company, Wallaceburg; Canada Atlantic Grain Co., Ltd., Winnipeg, Gooderham, Melady & Co., Ltd., Winnipeg, Parrish & Heimbecker, Winnipeg, Baird & Botterell, Winnipeg, E. R. Wayland & Co., Winnipeg.

The last five mentioned are shippers of grain. There is a long list of other communications of which I have no particulars. May I also file a list of those present with me to-day in opposition:—

A. A. Wright, President, Dominion Marine Association; Roy Wolvin, President, Montreal Transportation Company; W. E. Burke, Asst. Mgr., Canada Steamship Lines; L. A. W. Doherty, Traffic Manager, Canada Steamship Lines; J. E. Walsh, Transportation Manager, Canadian Manufacturers Association; Hon. H. W. Richardson, Great Lakes Transportation Company, Fort William Elevator Company, Midland Elevator Company; D. J. Bourke, Great Lakes Transportation Company; R. H. McMaster, Montreal Board of Trade; W. S. Tilston, Montreal Corn Exchange, Montreal Board of Trade; J. T. Tebbutt, Three Rivers Board of Trade; W. R. Dunn, International Harvester Company; W. W. Near, Page, Hersey Iron & Tube Company; W. Henderson, Canada Salt Company.

The ACTING CHAIRMAN: We had better hear all the testimony on one side first.

Mr. ARMSTRONG, M.P.: If we are going to get through to-day, it had better be shortened up.

The ACTING CHAIRMAN: The gentlemen wishing to speak will try and divide among themselves the ground that is to be covered. There is no use in going over the same ground half a dozen times.

Mr. J. E. WALSH, Manager, Transportation Department, Canadian Manufacturers Association: There is not very much, gentlemen, that I have to add, except that when I appeared before the joint committee of the Senate and House of Commons——

The ACTING CHAIRMAN: You are representing the Canadian Manufacturers Association.

Mr. WALSH: Yes.

Mr. ARMSTRONG, M.P.: You do not mean to say that you represent the whole of the Canadian Manufacturers Association?

Mr. WALSH: That is my position, sir, manager of the transportation department of the Canadian Manufacturers Association. I might explain that we have nearly 3,500 members in our association spread all over the Dominion of Canada, with branches in the principal centres; and when Mr. Armstrong asked me the question if I represented the individual views of all the manufacturers, that would be a pretty diffi-

cult undertaking. Therefore I am only speaking for the majority I presume, there are members of the Canadian Manufacturers Association that are in favour of control of the organized water carriers. But we have got to look upon this question in its broadest sense. Of two evils, we must necessarily choose the lesser. Therefore, as I say, I appear here to-day, as representing, as I understand it, the majority of the members of the Canadian Manufacturers Association.

Hon. Mr. GRAHAM: You are here officially, Mr. Walsh?

Mr. WALSH: Yes, sir. We went on record fairly fully in 1914 on this question and again in 1915. We still think that it is not in the best interests of trade and commerce that port to port carriers should be placed under the control of the railway commissioners. We have every faith in the Railway Commission; we think it does good work. But there are reasons, as Mr. King has pointed out, against putting carriers by water under the control of the Board of Railway Commissioners. For one thing, it would destroy entirely the right to contract, the freedom of carriage. The waterways have been made free for the purpose of encouraging competition. We feel that this legislation as suggested would destroy to a very large extent that competition. I think we gave our reasons in 1914, and I would like that that evidence should be embodied in the record of to-day.

The Hon. Mr. Graham has raised the question with regard to the movement of grain. We are indirectly interested in the question of the movement of grain. I simply want to quote from a letter received some time ago from the Railway Commission on this subject. The letter encloses an order made by the Board of Railway Commissioners in 1905 just to meet the conditions I have referred to. This has to do with the water carriers forming part of a continuous route, which is provided for in the present Bill, and to which we have no objection. The order reads:—

> In the matter of—
>
> The application of the Grand Trunk Railway Company and the Canadian Pacific Railway Company, hereinafter called "the Companies," to the Board, under section 275 of the Railway Act, 1903, for permission to issue special rate notices in certain cases, without previous application to the Board, prescribing freight rates lower than the rates published in the Companies' freight tariffs to Montreal applicable on traffic for export to trans-Atlantic ports, whenever, in consequence of lower ocean rates prevailing from the port of New York than from the port of Montreal, the companies find it necessary to reduce the rail rates to Montreal in order to equalize the through rates via Montreal, in the said certain cases, with those in effect for the time being via New York.
>
> Upon the report and recommendation of the Chief Traffic Officer of the Board.
>
> *It is ordered:*
>
> That the companies be, and are hereby, authorized to issue Special Rate Notices under the circumstances and conditions recited above; the said notices to bear the designating letter "X," and in addition to the rail rate from Montreal the ocean rate therefrom.
>
> *It is further ordered:*
>
> That a copy of each and every such Special Rate Notice shall be filed with the Board without delay, and shall show, for the information of the Board, the ocean rate from New York which has made the Special Rate Notice necessary, and the rail rate to Montreal which would have to be charged in the absence of such notice.

This came up in connection with a complaint we had from a member of ours in Chicago who found that they had to pay the published tariff rate whereas by these mid-

night tariffs special rates were being issued from day to day in favour of their competitors. In a letter from the Chief Traffic Officer of the Commission, January 29, 1915, the following explanation was given:—

> You will doubtless see the reasons for an arrangement which exempts the rail carriers from publication of these competitive rates, which, if published and posted, would undoubtedly be used by the independent water competitors as their maximum bases. *The primary object was the protection of Canadian routes against unregulated competition.*

That is the story to-day. It is a question of protecting the Canadian interests against the unregulated carrier in the United States to-day. We have only to refer to the canal statistics report for last year to find that 57·99 per cent of Canadian wheat shipped eastward by water for 1916 went to Buffalo. In other words, a total of 107,279,977 bushels out of 185,003,667 bushels. I venture to say that the majority of that was carried in United States bottoms.

The ACTING CHAIRMAN: Can you say at this point what the effect of that volume of grain going by Buffalo would be when the new Welland canal is completed?

Mr. WALSH: I think that Mr. King has answered that very fully. It is all governed largely, I think, by the ocean tonnage. Buffalo has advantages, and always will have advantages, in that it has all the year round ports. There is no question about that. Buffalo grain is always moved via Buffalo, and, I think, will always continue to move that way.

Mr. ARMSTRONG, M.P.: I understood your great objection to be in 1914 that United States vessels were not under any control.

Mr. WALSH: Yes.

Mr. ARMSTRONG, M.P.: If it is proved to your satisfaction that United States vessels are under control to-day you would have no objection to proceeding with this clause?

Mr. WALSH: May I ask if you have in mind the Shipping Board that was recently appointed in the United States?

Mr. ARMSTRONG, M.P.: Yes, that is what I have in mind.

Mr. WALSH: The Act which you refer to gives the Board control over operations.

Mr. ARMSTRONG, M.P.: Yes, control in every way.

Mr. WALSH: But as I interpret that Act it does not contemplate any control over rates. The primary object of the Act, and it has only been given effect to at the present time, is to control ocean transportation. It is not brought into force in any shape or form with respect to inland transportation. In addition to that it applies only to Inter-State traffic and in no way to Intra-State traffic.

Mr. ARMSTRONG, M.P.: I think I can satisfy you in that regard.

Mr. WALSH: If the Act were brought into effect on the Great Lakes, I do not think it would have any effect so far as we are concerned or that it would really have any control on Lake shipping.

Mr. ARMSTRONG, M.P.: Would you be willing to allow the Board of Railway Commissioners to have a control similar to that of the United States Board?

Mr. WALSH: From my reading of the Act I do not think I would agree to our shipping being controlled in that way. I think the conditions are entirely dissimilar in that respect.

Mr. ARMSTRONG, M.P.: That has been your whole argument for years past.

Mr. WALSH: My argument has been against any interference at all with the waterways. We say they have been made free to the people of Canada for the purpose of affording some kind of competition, and I think that if you place these carriers under

the control of the Board of Railway Commissioners you are going to kill initiative to a very considerable extent and wipe out the smaller carrier.

Mr. ARMSTRONG, M.P.: You do not pretend to represent Eastbound traffic. You are representing Westbound traffic here to-day, are you not?

Mr. WALSH: Of course we are manufacturers, but indirectly we are interested in eastbound traffic.

Mr. ARMSTRONG, M.P.: If the Board did not interfere with a chartered ship you would not object, would you?

Mr. WALSH: Well, I do not know about that. You are distinguishing between what Mr. King called the common carrier, and the private carrier. I have not given any thought to that phase of the question. I have simply taken the legislation as suggested here and am speaking in regard to that.

Hon. Mr. GRAHAM: I suppose, Mr. Walsh, as a matter of fact, Westbound freight or Eastbound freight depends for its rate to a large extent on the return cargo.

Mr. WALSH: Unquestionably.

Hon. Mr. GRAHAM: If you have a cargo going West you can get a cheaper rate if the vessel is assured a return cargo.

Mr. WALSH: Take the movement of coal from Lake Erie ports to the head of the Great Lakes. In normal times coal is carried anywhere from 25 to 30 cents a ton, and that is largely by reason of the Eastbound load.

Mr. SINCLAIR: Can you quote the clause in the Act of Congress that refers to lake traffic?

Mr. WALSH: Do you mean the Act itself creating a federal shipping board?

The ACTING CHAIRMAN: Have you a copy of that Act?

Mr. WALSH: No, I have not got a copy. The organization in question is a board which has been recently appointed in the United States, and is known as the United States Shipping Board.

Mr. SINCLAIR: Can you quote from the Act any clause which refers to lake traffic?

Mr. ARMSTRONG, M.P.: I will give you full particulars. I have a copy of the Act.

Mr. SINCLAIR: When was it passed?

Mr. WALSH: The Act was approved September 7, 1916. It is largely for the purpose of governing an appropriation of 50 million dollars voted by Congress for the encouragement of shipping generally. I will read a clause from a memorandum in my possession explaining the nature of the various sections (reads):—

> "Sections 5 to 13, inclusive, contain provisions relating to the construction, purchase or lease of vessels, the transfer of vessels from the War and Navy Department to the Board when suitable for commercial uses; the power of the Board to charter, lease or sell any vessel to any person or citizen of the United States; also for the registry, enrollment and license of vessels; also authorizing the president to take possession of any such vessel for naval or military purposes when, in his judgment, the circumstances permit; for the creation by the Board of one or more corporations to acquire and operate merchant vessels; also an appropriation of $50,000,000 for carrying out the provisions of the Act."

Mr. ARMSTRONG, M.P.: I understand you to say that only refers to inter-state traffic.

Mr. WALSH: Yes, sir, it only applies to inter-state traffic. Ocean transportation was the primary object of this legislation according to my interpretation, but it was also intended and does apply to inter-state traffic.

Mr. ARMSTRONG, M.P.: Those are the two objects, in your opinion?

Mr. WALSH: Yes. The Act does not apply to traffic within a State.

Mr. NESBITT: I would like to hear Senator Richardson, he can give us the cold hard facts of this question.

Hon. Mr. RICHARDSON: I would prefer to wait until you have heard from the Montreal Board of Trade.

Mr. ROSS H. MCMASTER: (Representing the Montreal Board of Trade). On April 28 we addressed a letter to Mr. Robidoux, clerk of the Railway Committee, setting forth the views of the Board and stating (reads):—

> "The council is of opinion that it is inadvisable to apply the provisions of the Railway Act in respect of tolls, tariffs and joint tariffs on freight traffic carried by water between ports in Canada.
>
> "There are a great many reasons why the council considers this inadvisable, the chief being a strong belief that the jurisdiction of the Board of Railway Commissioners would tend to limit competition between the water carriers themselves, which in turn would tend to decrease the competition between water carriers and the railways. Montreal is located on a waterway reaching some thousand miles from the Atlantic and some thousand miles further inland to Fort William, and it is essentially to the advantage of Montreal merchants that there should be no restriction to competition between the water carriers themselves or between the water carriers and the railways."

That part of the letter, insofar as it refers to this section of the Bill, has been sent in to the committee, and to save your time, which appears desirable owing to the delay in commencing this morning, I would like to ask your permission to insert in the record of this hearing statements made by two prominent members of our Board at the hearing in 1914. The Montreal Board of Trade at that time was represented by Mr. Johnston and Mr. McFee.

The Acting CHAIRMAN: State the effect of it.

Mr. MCMASTER: Mr. McFee, with respect to the export of grain from the port of Montreal, pointed out that at that early period (May 28) there had already been 30 tramps chartered to leave the port.

Hon. Mr. COCHRANE: For overseas?

Mr. MCMASTER: For export shipping.

Hon. Mr. COCHRANE: We are not interfering with that at all, this applies only to inland traffic.

Mr. MCMASTER: The whole question is bound up together, as I understand it, the inland rate, and the ocean rate, the whole cost of transportation from one market to another must be taken into consideration. Mr. McFee went on to point out the cost of carrying grain.

Mr. NESBITT: Your Board of Trade is opposed to it, that is what I understand.

Mr. MCMASTER: We are opposed to it, and if it is not wise to go into all these details, and to take up the time of the committee in doing so, perhaps I can dispense with reading further from the record of 1914 which the committee has before it.

The CHAIRMAN: It will form part of the record.

Mr. MCMASTER: Then Sir George Drummond appeared before the committee and spoke in regard to the project pointing out that the position of Montreal at the head of ocean navigation, and also at the foot of the inland water routes, would be very seriously jeopardized by any rate control. He said:—

> "I would make my argument in a very brief way on these two general principles. Firstly, that the commercial community is satisfied with what they have

now, and they see no reason for a change. I do not want to elaborate that. I am stating it as a fact, and I believe I am justified in doing so. Then secondly the fact that having competition by water is of enormous importance to Montreal, the practical effect of that is that it extends the water front of Montreal as far west as Fort William. That fact is recognized by the railways, because in the fall, as soon as the water competition is withdrawn the rates immediately go up."

In speaking to-day on the question we find that there is absolutely no difference in the situation, and that there is, at the present time, no precedent that would justify the consideration of the question as applying to the Canadian traffic. The only question is in regard to the control of late carriers working in conjunction with the railroads on the lake and rail routes. The reason why that should be so is perfectly obvious.

Mr. ARMSTRONG, M.P.: Have you given any consideration to the rules and regulations governing the United States shipping lines?

Mr. MCMASTER: I have not heard anything which indicated that there is any legislation in the United States which regulates the shipping lines, and if there is I would like to hear it. There are some gentlemen here who can clear that up right away, and I think that point had better be settled now, as it has come up several times.

Hon. Mr. RICHARDSON: I operate on both sides of the line, and there is no restriction whatever as to rates for boats on the other side.

Mr. MCMASTER: I have put down here briefly my views upon the proposition to place the lake carriers under the control of the Railway Commission (reads):—

"APPLICATION TO PLACE LAKE CARRIERS UNDER CONTROL OF RAILWAY COMMISSION.

"OBJECTIONS.

"There is apparently no precedent elsewhere in support of the project, except insofar as lake carriers owned by railway companies where the Board establishes differentials against all rail traffic.

"Control by the Railway Commission of all steamship and water rates will be unjust to the shippers and receivers of freight as well as unfair to the carriers. Relative rates as compared with rail rates must be based upon some differential which can be determined accurately and intelligently. It does not seem possible that this can be done as the units engaged in water transportation vary in respect to carrying capacity, speed, cost of operation, time for loading and unloading, and it would be unwise to hamper the ability of a modern cargo steamer to obtain traffic, by establishing rates in keeping with the costs of unsuitable steamers less economical to operate.

"This question is not one of rate control, but it is a fundamental consideration involved in the operation of plants or businesses, whose establishment or successful operation in their respective localities is primarily based upon possibility of obtaining cheap water transportation, and whose ability to compete under controlled rates would be absolutely jeopardized. Cargo rates on many basic and essential commodities such as wheat, oats, flax seed, coal, ore, cement, lumber, pig iron, oil, sugar, chemicals, pulpwood and innumerable semi-finished and finished goods must move at minimum uncontrolled rates unless the whole fabric of trade and commerce affecting agricultural, manufacturing and trading interests, is to be upset.

"Routes differ, local conditions differ, terminal facilities differ, time of loading and unloading varies according to the steamer, commodity and package, and in so many respects other factors upon which rates would be established, vary that a proper determination of rates is an impossible proposal. The position of the consumer and of the manufacturer would be affected to their detriment through inability to make

charter rates on specially favourable traffic and on large quantities, and the position of the Canadian receiver and shipper of freight would be placed at a serious disadvantage in comparison with the advantages available to shippers and receivers of freight in the States.

"There is no control over American carriers, therefore, facilities here would vary in accordance with the conditions obtaining in the States, and free competition would be eliminated, so far as Canadian trade is concerned a serious handicap would be placed upon all concerned, and the Canadian public would be unable to obtain proper advantages it should derive from the expenditures which have been made by the Government for the development of our waterways and canal system.

"There is no justification for the elimination of water competitive rates, they should be free to all, just as the waters are open and free, and there should be perfect freedom in respect to the rates which can be named.

"As far as we are particularly concerned, it would place this company at a very serious disadvantage owing to the ability of American competition to obtain special rates and charter on cargo lots, and we know of rates of 3½ cents to 3¾ cents per 100 pounds having been made on steel products from Chicago to the head of the lakes, in comparison with the usual rate of about 10 cents. We are bringing down six or seven hundred thousand tons of ore in a season, and would be at a serious disadvantage if we were unable to obtain what is known as a lower lake port rate in competition with American mills. Certain large interests like the United States Steel Corporation own their own steamers, thereby enabling them to obtain water freight at cost, and in Canada steamers are owned by the Dominion Iron and Steel Company, who are thereby enabled to control their own rates of freight from Sydney to the head of the lakes.

"This same company can also ship iron and steel products in cargo lots from Sydney via Panama to British Columbia coast points, and it would be a distinct handicap that special rates should not be obtainable against this competition or in competition with American rates via New York and the Panama which fluctuate from time to time. In controlling water rates on navigable water with outlets to the sea the entire question becomes involved immediately with world-wide rates and competition from all sources. It would be an impossible position that boats looking for return cargoes on any route should be handicapped by restrictions which affect economical operation and prevent a saving to the ultimate consumer. In seeking iron and steel orders the question of freight rate transportation cost is frequently a deciding factor in determining whether the business can be obtained or held in Canada, and anything restricting ability to use facilities of water transportation would be tantamount to preventing the proper development of business in this country, and would affect the position of the workmen of this country.

"Viewed from all standpoints there appears no feasible or workable plan, nor does there appear any good reason for any action in the matter.

Speaking now, I might say, representing the Steel Company of Canada, who have plants at several points in this vicinity, one particular plant, that at Hamilton, would be particularly at a disadvantage if they were unable to be in the same position as American mills are to obtain as advantageous rates on ore coming from the north of Lake Superior to our plant at Hamilton, and if we are further unable to take advantage of current rates which are made every season, and which change in accordance with the conditions, we would, in such case, be at a disadvantage in meeting the competition from the American mills selling in this country. We want to be in a position to take matters up with the transportation interests with the object of obtaining the best rates possible in order to enable us to meet competition.

Hon. Mr. COCHRANE: The idea will not be to prevent a lowering of the rates, but to provide a check on the raising of rates, because Mr. King has told us there is a

scarcity of ships and that rates have been raised a great deal in consequence, whereas if there had been lots of ships the rates would not have been raised.

Mr. McMaster: That question will take care of itself; these waters are free; it only needs the investment in one, two or three steamers to enable a man to take part in that traffic, and if the rates are so promising and remunerative men will be willing to invest their capital in that enterprise; the traffic is open to anybody to take part in it.

Hon. Mr. Cochrane: The statement has been made that they have doubled their rates. Now the railways have not been able to double their rates, although the cost of operating the railways has increased just as much as the cost of operating the steamers.

Mr. McMaster: As I understand it, this question does not involve the cost of operating railways but the condition:—

> "And the provisions of this Act in respect to tolls, tariffs and joint-tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada."

Now that does not involve any consideration of the cost of operation by the railroad or by the steamship company.

Hon. Mr. Cochrane: But I say the statement has been made here that on account of the scarcity of ships rates have been doubled. Now I maintain that the cost of operating the ships has not increased in any greater proportion than the cost of operating the railways, and the railways are not permitted to raise their rates, although it costs them a great deal more to operate.

Mr. McMaster: They, of course, would not be able to raise their rates above the rates of the railroads, they must provide a proper differential below the railroad rates, in order to get the traffic. I do not see that the question hinges in any way, upon the question of cost, the question is whether we shall put the boats under the control of the Railway Commission in respect to tolls and tariffs.

Mr. Armstrong, M.P.: We have heard about the scarcity in shipping, there is a similar scarcity of cars on the railway.

Mr. McMaster: I have not mentioned the scarcity of shipping; it was the Minister mentioned that. For instance we compete for the Western business with the Steel interests in Sydney who have their own steamers, and can ship their product in bulk direct from Sydney to the head of the lakes, landing their goods there, at the cost of carriage.

Hon. Mr. Cochrane: But you have the same privilege.

Mr. McMaster: I know we have, but you could not control a carrier who was a seller at the same time. The United States Steel Corporation operate their own boats to the head of the lakes. They control their rates and you would have no control over them. Take the shipment of products from Montreal or Hamilton via Panama canal, you would be there entering into the question of ocean rates, which would apply from New York to the Pacific coast, and those have changed and fluctuated from time to time, according to the situation as it is affected by world-wide tonnage. This memorandum further states:—

> "In controlling water rates on navigable waters with outlets to the sea, the entire question becomes involved immediately with worldwide rates and competition from all sources. It would be an impossible position that boats looking for return cargoes on any route should be handicapped by restrictions which affect economical operation and prevent a saving to the ultimate consumer. In seeking iron and steel orders the question of freight rate transpor-

tation cost is frequently a deciding factor in determining whether the business can be obtained or held in Canada, and anything restricting ability to use facilities of water transportation would be tantamount to preventing the proper development of business in this country, and would affect the position of the workmen in this country."

Mr. Tilston will speak for the Montreal Corn Exchange.

Mr. W. S. TILSTON: I am representing both the Montreal Board of Trade and the Montreal Corn Exchange, but as Mr. McMaster has explained the position of the Montreal Board of Trade, I will speak for the Corn Exchange. That association is composed of prominent men in Montreal, local dealers and exporters, and their views are expressed in a very short resolution which reads as follows:—

"The local and exporting grain interests are most strongly opposed to any regulation or control of the inland water rates which would result, as we are confident the present proposal would if adopted, in the elimination of competition among water carriers and consequently in the removal of a check on rail rates.

"Enforced uniformity of water rates would undoubtedly tend to concentrate the water borne business in the hands of the larger companies, and would drive the smaller companies, whose irregular service and lack of equipment would not entitle them to the standard rates, out of business. Another very serious objection to the proposed regulation of water rates is that United States vessels, being entirely free of regulation, could at all times underbid the Canadian boats for the grain carrying trade, they being free to carry Canadian grain from Canadian ports to American ports and any grain from American ports to Canadian ports without limitation as to rate or service.

"In so far as the grain trade of Canada is concerned, it is the unanimous opinion of the grain merchants here that the adoption of the proposed legislation would militate most seriously against the interests both of producers and shippers, and this association therefore strongly urges the amendment of the draft Railway Act by the elimination of the clause proposing to regulate and control the tariffs of water carriers."

There is not the slightest doubt that the water routes do compete with the railways and influence the railway rates, and Mr. Bosworth, the vice president of the Canadian Pacific Railway, in giving testimony in the Western Rates case said, "The Canadian Pacific Railway does not make any rates east of Fort William; the rates are made for us by the water carriers." The proposal to put the rates of the water carriers under the jurisdiction of the Commission means, in the first place, that they would have to file a tariff for any traffic they carried before they could call it a toll, that if there were an increase in the rate they would have to give thirty days' notice before it could be put into force, and if there were a reduction they would have to give four days notice before they could reduce it. With those provisions it seems to me the water carriers would be very careful to make the rates high enough, so that if they were called to task for unreasonableness or discrimination, or to explain why they did not apply the long or short haul clause, there would be plenty of room to get under it. I am very strong in the belief that any control by the Board of the rates of the water carriers would limit the competition with the water carriers, and would limit competition in the rates by rail and water.

Mr. NESBITT: Why do you say it would tend to destroy the small carrier?

Mr. TILSTON: That was in connection with the grain business. There are, as you know, large modern grain boats, and small old-fashioned grain boats?

Mr. NESBITT: Yes.

Mr. TILSTON: The insurance on the small boats is higher.

Mr. NESBITT: You take it for granted the Railway Board would fix such a low rate that it would drive them out of business?

Mr. TILSTON: I do not know what the Board would do. It says that the regulations as applied to railways shall apply to boats in so far as the Board deems applicable. Nobody knows what that means. We know we can make arrangements with the boat lines and do the best we can. I am speaking now for the Corn Exchange.

Mr. SINCLAIR: The cheaper the rate the more you are pleased?

Mr. TILSTON: Certainly.

Mr. SINCLAIR: And you think this interference would make you pay more for the service?

Mr. TILSTON: Both by water and by rail. It would not only stiffen up the water rate but the rail rate.

Hon. Mr. RICHARDSON: There has been an impression here that the Americans have a rate to cover boats and rail carriage. That is altogether wrong. They take any rate they can get. I am the owner of American bottoms, and I charge $1 a ton or perhaps $1.25, whatever I can get, and there is no regulation. The larger boat can carry cheaper than the smaller. Many men in the trade cannot afford to charter a boat that would carry 350,000 bushels and of course you can see the larger boat can carry at a cheaper rate than the small boat. These boats are built for special trades. There are some ports that a large boat does not want to go to, and there are other ports that the small boat can do much better than the large boat. There is absolutely nothing in the grain trade if you buy and sell and take your freight and everything else at the same moment. You cannot get a profit. It is the flexibility of the trade that makes a profit possible. There is the exchange charge. There is the chance of getting a slight reduction in the freight. There is the chance of the market, and all these things added together make it possible for the grain man to sell in Europe and buy in Winnipeg. There would not be any margin with hard and fast rules. I do not think there is a grain man in existence to-day who can really buy and sell and take his freight and everything else at the same moment and have a margin of profit that would be satisfactory.

Mr. NESBITT: As a matter of fact, when he gets an order or request for a certain shipment for a certain tonnage of grain, what does he do?

Hon. Mr. RICHARDSON: I am offered grain for July shipment, the new crop in the United States. An important calculation comes in: what will be the probable rate of freight in July? How early will the harvest be? What quantity of grain will there be to move? That is what makes the freight rate, supply and demand. If there is more grain to move than there are boats to move it, the price goes up: if there is less grain to move than there are boats to carry it, the rates go down. It is a matter of speculation in every one of these fields. Very little May grain or June grain is offered. The seller says: "I will offer my grain for July," and you offer for July, because the European buyer has to figure ahead. He buys July grain, and you figure what your July rate is. That is flexible. The one who makes the lowest offer in Europe—and there are a hundred offering there every night by cable in normal times—one wants shipment by Buffalo, another by Montreal, another by Buffalo and New York, another by Buffalo and Baltimore—all these things are figured out, and the man figuring the cheapest rate is the man who gets the business. There is no favouritism. You must be the lowest or cheapest man, or you cannot deal.

The ACTING CHAIRMAN: That is already provided for. That is in the old law, everybody is satisfied with that. It is about the inland question we are considering.

Hon. Mr. RICHARDSON: I do not see how it is possible to consider it. There are times in the year when a boat can make good time, particularly in the summer time. She can make three round trips then, when in the fall she can only make two. A rate

may be a fair paying rate in the summer time, perhaps in the spring. But suppose there came on a late harvest, as we have been having in the West, like last year for instance: suppose grain began to pour in in November and the first half of December, and you had a low rate of freight suitable for summer, and the weather got very boisterous and cold, what do these boats do? They tie up, and they leave your grain in Fort William, and leave the banks to carry that crop until next spring. Boats won't run unless they make money. You cannot fix a flat rate.

Then, again, the water is free to anybody. You can load a Norwegian boat at Fort William and deliver its cargo in Norway or England. And there will be lots of Norwegian boats coming to Fort William after the war. You cannot have any jurisdiction over that boat. An American boat can come to Fort William and load to Buffalo. You have no jurisdiction over that boat.

Hon. Mr. COCHRANE: Why not?

Hon. Mr. RICHARDSON: What the Government is trying to do is to encourage the building of ships to take the place of ships that have been submarined, not to put any restrictions or difficulties in the way of shipowners, but to encourage them every way they can to reproduce the ships that have been lost. By putting a Bill like that on the statutes, you simply put a cold blanket on the shipbuilders of the Great Lakes, nothing surer. I thank you, gentlemen.

The ACTING CHAIRMAN: Is there any one else desiring to be heard on the marine side?

Mr. ARMSTRONG, M.P.: Can we not meet this afternoon at four o'clock in the Railway Committee room and have this matter threshed out? I move that the committee do so.

Mr. KING, K.C.: I was going to say it would be only fair to those who have come long distances to have another session to-day, and to be given an opportunity to answer the arguments advanced against us.

Hon. Mr. COCHRANE: I do not see any objection to the proposal to meet at four o'clock.

Motion agreed to.

Committee took recess.

The committee resumed at 4 o'clock, p.m.

The CHAIRMAN: We will resume where we left off at one o'clock. Is there anybody here, in addition to those whom we heard this morning who desire to be heard in opposition to the latter part of section 358.

Mr. FRANCIS KING, K.C.: There are a number here who would like to be heard, some would prefer to address the committee after hearing what is advanced in favour of the section as it stands, but there are some others who would like to be heard now.

The ACTING CHAIRMAN: I think it was the pleasure of the committee that a reasonable time should be given to these gentlemen for a reply after the argument of those in favour of the clause has been put in.

Mr. KING, K.C.: Mr. Roy Wolvin would like to be heard now.

Mr. ROY M. WOLVIN: President of the Montreal Transportation Company: I would first like to answer a question which Mr. Cochrane asked this morning. He asked why it was so much grain going from Duluth and Chicago to Buffalo. The reason is that practically all the grain that is being shipped on the lakes to-day is being shipped by the Imperial Government.

Hon. Mr. COCHRANE: I was referring to the shipments of two or three years ago.

Mr. WOLVIN: The matters that we were discussing this morning were with regard to the important bearing which the time taken in loading and discharging at the elevator and the water facilities of the ports have on the transportation of grain. It must be borne in mind that these charters are made a long time ahead, most of them, three, four or five months ahead and in making those charters at that time the vessel man who is making his rate will figure out a rate at which he would get a profit, taking into consideration the number of days his vessel would be employed under that charter. He is not a common carrier. He has no regular route between ports and does not come under the definition of a common carrier under the Shipping Bill, but he figures how many days a certain trip will consume. All he has to sell is the time of his ship. A certain piece of work will take him ten days, and he knows he can do it for so much, and if it is going to take fifteen days, he knows it will cost that much more money. He is simply selling the time of the ship, the same as a man sells any commodity. The bulk freight carrier on the lakes is absolutely a tramp steamer which is not a common carrier. A great many of those boats are constructed so that they are better fitted to the carriage of iron ore and coal. A large company will build a boat knowing they have profitable business to take care of it. That boat would come under the Railway Commission, under the provisions of this Bill. Instead of being used for private purposes, it will be used for public purposes. With regard to unloading ore and coal from vessels, some of them can unload for three or four cents a ton for labour, while in the case of some boats it costs 20 cents. The same thing applies to the carriage of grain. The boat that will carry 380,000 bushels of grain can carry at a much less rate than a boat that carries a smaller quantity of grain. Still the large boat could not render the same service as the little boat. A shipper may have a small shipment of grain, and he must have a special boat to carry it. Another man with two million bushels of No. 2 Northern can use any large boat for his shipment. Certain firms require small boats, and others want large boats. It will be a difficult matter to say what will be a proper maximum rate and a proper minimum rate. The great difficult would be to say where you should start from to get that point of departure. In considering this question of grain, which seems to be the important matter, I would like to say that the grain and ore which a Canadian boat could carry does not amount to more than ten per cent of the total lake business. When you are dealing with that ship, you must remember that the boat only has available ten per cent of that business. I venture to say that seven per cent of the total is competitive with American vessels which would not and cannot be controlled by our Commission. So that out of 100 per cent of the lake traffic, only three per cent is purely Canadian business. That three per cent is almost all grain. What you are legislating about is really three per cent of the lake movement and possibly 30 per cent of the business that is usually carried by Canadian vessels.

The question came up as to how and why the rate was increased. I do not think rates have gone up. I think they have gone down. The vessel is not receiving the same proportionate price of grain at the seaboard as she was in 1914, when War was declared.

The farmer probably is receiving three times as much with a small increase in the cost of operation. The boat has an increase of 75 per cent in the cost of operation to-day, with probably twice the freight rate.

The rate on grain is controlled by the American vessel. The surplus is the thing that makes the rate. If we have a big crop here, and an exportable surplus of 80 million bushels, it is the price on the 80 million bushels that makes the price on the crop. To-day we have surplus Canadian tonnage carrying grain to Buffalo. When business is very poor, and our Canadian boats lie up in the summer time, the American boats work along steadily with their ore and coal. Then, when September arrives, the American boats come along, having carried their ore, and carry our grain at 1½ cents a bushel and make a profit. The American business has increased now, and they are getting some big rates on the other side, so they do not offer their boats to

carry our grain. I will make the statement that yesterday we offered boat space from Port Arthur and Fort William to Georgian Bay at 1½ cents less than the rate to Buffalo. We can send that same Canadian boat to Buffalo on the rate the American boats are making. We are, you see, limited on the kind of purely Canadian business we can carry.

Mr. ARMSTRONG, M.P.: Is it not a fact that the *Globe*, for instance, on May 14 said that the grain shippers were paying 6¼ cents to Buffalo?

Mr. WOLVIN: Yes, they might be paying 6¼ cents in the morning and 4 cents in the afternoon. An owner must know conditions, and he has to get in under cover in time when conditions change.

Mr. ARMSTRONG, M.P.: How is it that between the 8th and 10th of May, with lots of ice in the upper lakes, you were only receiving as low as 4¼ cents?

Mr. WOLVIN: The American boats were making their first trips on the lakes; possibly 250 vessels would come in for ore at the same time. The machinery of ore shipping had not reached smooth-running shape. There is always a surplus of boats on the first trip. They start them out, and put the surplus in for grain, thus taking care of our grain rush. They had this one trip free for grain; they got up to the Soo, and got stuck in the ice. They were anxious to get at their contract work. They lost two or three weeks of actual operation due to ice. These people had contracts that they figured would take all their boat capacity on the American side. They would carry coal and ore alone. Practically this business is done in Cleveland, with shippers who feed them in the poor seasons. Some firms carry only one cargo of wheat in the season. The man who gets the boat space is the fellow who calls you up on the telephone and says: What is such a boat to do next; and being able to keep you supplied with cargoes at all times, gets every preference. He is the one who is able to pay you all the time, and he gets your boat. They are paying $1.50 a ton on ore for boats to work continuously from now until the first day of September. This will pay the boats better than 6 cents, and that is why the rate is up.

Mr. ARMSTRONG, M.P.: Is is customary to put it up when the ice risk is on?

Mr. WOLVIN: As soon as the shipper must have a boat. That is the beauty of this tramp business. When the shipper needs the boat badly he will, and can, pay to get her.

Mr. ARMSTRONG, M.P.: Your companies are receiving just so much more. There is no limit to what you can demand from these shippers.

Mr. WOLVIN: We are limited by the American boat as to what we can demand. We are asking less by a cent and a half

Mr. ARMSTRONG, M.P.: When the American boats were in competition with you on the 8th and 9th of May, you offered a much lower rate than you are offering to-day from Superior to Buffalo.

Mr. WOLVIN: That is the American rate, sir. That is not a Canadian rate. No such rate has been paid on a Canadian boat this year.

Mr. ARMSTRONG, M.P.: It was stated in the *Globe*.

Mr. WOLVIN: That is incorrect. No Canadian boat has received 5¾ cents this year.

Mr. NESBITT: What have they received?

Mr. WOLVIN: They have started at 4½ cents, and they have received as high as five cents.

Mr. ARMSTRONG, M.P.: Here is the *Globe* report of May 10. It says: Cleveland, May 7, 5½ to 5, 4½ for June; 5½ for second trip. On May 15, the *Globe* reported Cleveland, May 14, grain shippers were bidding 6¼ to Buffalo.

Mr. WOLVIN: When you undertake to regulate what is in the Cleveland *Plain Dealer* you are dealing with conditions in the United States, not with conditions here.

Mr. KING: That is the rate from Lake Superior.

Mr. WOLVIN: It is American business that is referred to in that paper and that is the place where the rates for Canada with respect to the movement of grain, are made. Now, if you adopt any changes in the law whereby you expose our Canadian boats to any hindrance at all in fixing their tariffs, you are going to put them at a terrible disadvantage as compared with American vessels. Over 60 per cent of our grain shipments are going to Buffalo. At present Canadian vessels are carrying grain to Buffalo. There are at present Canadian vessels with a million bushels en route to Buffalo, because they cannot take it to Canadian ports. The rate to-day on grain shipped from Fort William to New York, via Buffalo, is 12·6 cents per bushel, whereas the rate to Montreal is 10·1 cents, or a difference of 2½ cents per bushel.

Mr. NESBITT: Why does that grain not go via Montreal?

Mr. WOLVIN: That point has been brought up a great many times, it is because we have not ocean facilities enough from Montreal; we should have twice and three times the facilities that exist there. This year we have a peculiar condition. I was of opinion we would have ocean vessels for all the shipments we could carry there, due to the fact that the Imperial Government took over all the tonnage but something prevented the realization of that expectation. A great many of the vessels that should be on the St. Lawrence go to New York to load munitions. There is no reason, however, why there should not be a larger movement through the port of Montreal, because we have the boats on the Upper Lakes to carry the shipments to that port.

Let me tell you that the Canadian vessels have been built by private enterprise and private capital, and when a man undertakes to build a ship he has to see a pretty good profit ahead or he will not go into it. Since the war broke out over one-third of our inland fleet has gone to help out ocean tonnage. The vessels so diverted will not return to us, but there are still sufficient vessels on the upper lakes to take care of all the shipments offering for Montreal.

A big company like the Hamilton Steel and Wire Company will not feel free to build boats to carry their own ore and coal unless they are at liberty to do it without being hampered by unreasonable restrictions. As a private individual I would hesitate to do so myself. I would rather prefer to build in United States, where there is a big steady trade without interference. Rather than impose fresh handicaps it is up to us to see whether we cannot get a little more freedom.

Mr. ARMSTRONG, M.P.: In what way do you figure out you could get more freedom than you have at present.

Mr. WOLVIN: There are a whole lot of privileges which American vessels enjoy and that we do not. I could enumerate a good many things in their favour if you only had the time to listen to me. For one thing, I would put a duty on the freight that comes into Canada, which would ensure a steady traffic for our vessels during the whole season and not merely in the spring and fall. I would suggest putting a duty amounting to 2½ cents a ton on coal entering Canada for Port Arthur and Fort William on American vessels. This would mean that Canadian vessels would carry this large freight instead of it being carried mainly as it is by American ships. Taking it all in all, American vessels enjoy far more protection than we do. A Canadian vessel cannot be transferred to the United States to engage coastwise traffic. Formerly if Canadians were in need of more vessels they could purchase them in the United States, pay the duty and bring them into Canada, but now the exportation of ships from the United States has been prohibited. Our vessel owners have no such large volume of steady business as have vessel owners in the neighbouring republic. We have to take our chances with the business that offers in the spring and fall. The war beginning as it did in 1914 still further placed Canadian vessels at a great disadvantage, and it was not until the month afterwards that a great many of them turned a screw. They were laid up. Bearing in mind the limited period during

which business is available for Canadian vessels and considering what their owners have to meet in the way of insurance and fixed charges, even the imposition of a duty of two cents a ton on freight from the United States will be of material assistance.

Profitable traffic on the Canadian lakes depends upon so many conditions that have to be met the moment they arise, that such control and regulation as is proposed in the Bill will be an unsurmountable obstacle.

Mr. ARMSTRONG, M.P.: Then from what you say the vessel owners in the United States must be in a serious position.

Mr. WOLVIN: No, sir, not by any means. They have never undertaken in any way to regulate this traffic over there. The Bill to which you allude was passed in September, and since that time many contracts for ships have been made with the ore people, in fact as a broker I have closed ten-year contracts without any one questioning for a moment that they had not the right to enter into such contracts.

The ACTING CHAIRMAN: We will now have the pleasure of hearing from a gentleman from Three Rivers.

Mr. J. T. TEBBUTT: I represent the Board of Trade of Three Rivers, and also the Board of Trade of Quebec on the present occasion. The Three Rivers Board of Trade want to know, "Who asked for this interference with present conditions," but no one can answer the question. I was present this morning and the only gentleman I heard in its favour was Mr. Armstrong. I, as a manufacturer, have a strong personal interest in this matter, and I feel that I am representing the people. For 30 years I have been interested in manufacture at Montreal and Three Rivers, and I know almost every town in the Dominion. I have sold goods in those towns and from my general knowledge I do not think there is a Board of Trade, a manufacturer, or a retailer of any kind in the Dominion who wants any interference with the present steamboat rates. Why, we can get much better rates from steamboats than we can get from any railroad.

Mr. ARMSTRONG, M.P.: Have you a special rate?

Mr. TEBBUTT: Any manufacturer can get special rates. The question was asked this morning if there has been a big increase of rates. That is not my experience, I am paying the same rates that I paid in 1910 and 1912.

Mr. ARMSTRONG, M.P.: But you say you have a special rate.

Mr. TEBBUTT: Yes, but other manufacturers enjoy it also, it is not confined to me alone. Now take the Wayagamac Pulp and Paper Company, the biggest sulphite mill in Canada, take the Canadian Iron Foundries, the Dominion Casket Company and the Wabasso Cotton Company and other industries we have at Three Rivers, and there is not one of them wants any interference with the existing rates. But if you put these rates under the control of the Railway Board we would not get the rate we enjoy to-day. Look at what has been done as to the matter of rates since the railways have been put under the Railway Board. The Railway Committee has done splendid work in the past. Who has asked that the control of these rates should pass from them to the Railway Board? The people ought to be represented here before this Bill goes through, we are paying the Dominion of Canada to legislate for us.

Mr. ARMSTRONG, M.P.: We think we are representing the people.

Mr. TEBBUTT: You are not in this matter.

Mr. ARMSTRONG, M.P.: You told us you are receiving special rates from these people.

Mr. TEBBUTT: I did not. I say that we are receiving a rate which is lower than I could get from the railway company. No sooner do the steamboats begin to run than we get from 20 to 30 telegrams from our customers, I ship all over the Dominion from Halifax to Vancouver, asking us to ship by boat. It is not the shippers who

govern that, it is the people who are buying, they are the people who settle that in our business and I presume it is the same with the grain trade. I have never seen such a strong feeling aroused by anything since I have been on the Board of Trade of Three Rivers as in this and Quebec is feeling just as strongly as we are. Why should the change be made, can you tell us? You are attempting to do something that no other Government has ever done, as far as my knowledge goes, and I have some little knowledge in regard to transportation. I have sold goods all over the British Isles as well as in Canada, and shipped them.

Mr. ARMSTRONG, M.P.: You are, apparently, perfectly satisfied with the present condition of affairs?

Mr. TEBBUTT: Perfectly, and I do not think you can give us as good conditions as we have to-day if this Bill is put through. I can get as good rates from the boats as from the railways, and the moment we get the chance our consumers are asking us to ship their goods by lake and rail. I think you are raising a hornet's nest for the present Dominion Government by trying to pass this legislation. For some of the lower ports, from Quebec down, you cannot ship anything by rail; how are you going to get goods to the lower ports on the Saguenay, some ports in Nova Scotia and New Brunswick, unless you ship by water; they have no competition; these boats that run down there are a great blessing. There is no other way of getting their stuff; take Charlottetown, we have to wait until the boats run in order to ship our stuff, and it is the same with regard to a great many other places. There are no railroads going in to some of the places along the routes of these steamers. If you put the steamship companies under the Railway Board, there will be regulations with regard to rates, there must necessarily be regulations, to-day there are none, we have absolute freedom of trade. If you once put it under the Board if I want to ship my stuff by steamer the company would have to go to the Board before it could give me a lower rate.

Mr. ARMSTRONG, M.P.: The company should not object to going before the Board if it could get a higher rate.

Mr. TEBBUTT: I have nothing to do with that, I am representing the people, I consider, and the Board of Trade of Three Rivers and Quebec. I am a shipper and I am a manufacturer, and I cannot see where you can help, as far as the manufacturers of the Dominion are concerned, by this legislation.

Mr. ARMSTRONG, M.P.: If by putting these men under the Board of Railway Commissioners they are enabled to increase their rates, then surely these gentlemen are not very wise in opposing the adoption of this section.

Mr. TEBBUTT: To some extent, perhaps they are not, but I think these gentlemen, from what I gathered this morning, prefer freedom of trade. By reason of the fact, however, that in Great Britain, which is the home of shipping, they have never attempted to legislate for rating either on the railroad or on the boats——

Mr. ARMSTRONG, M.P.: They have control there to-day.

Mr. TEBBUTT: This is war-time, but they never had it before. You can ship from Newcastle-on-Tyne, any time you want it, a cargo of steel billets and you make your own rate with the railway people, without any interference whatever by the Government. I do not believe that the Government can do any good at all in the way of regulation of rates on boats under this section if it passes, because now we have a lot of small boats, which carry about 100 tons of freight, running from Montreal all the way down the gulf, and the port along that coast would get the benefit of the low rate at which those boats carry freight. They give a low rate, a few cents a hundred pounds; there are many of these independent boats. If the Canada Steamship Company which is the old Richelieu and Ontario Navigation Company had increased their rates, I would not be here to-day to oppose this section, I would say, "Put them under the Railway Board." But they have not done so.

Mr. ARMSTRONG: They have raised rates on wheat coming from the West.

Mr. TEBBUTT: Slightly.

Mr. ARMSTRONG: Slightly? A cent a bushel.

Mr. TEBBUTT: One cent a bushel. I heard this morning the statement made that it cost the railway companies more to operate than it formerly did, and I do not think it is any different with the Canada Steamship Company or any other company than it is with the railway; it costs more to run boats now than it did formerly just the same as it costs more to run trains. In my own small village it costs more, twenty-five per cent more, to operate than it formerly did, and I think under the circumstances the steamship companies have a right to a small percentage of profit out of the increased price of grain. I have been in the West, and I did not find there was a very strong kick about rates there; with regard to the freight on boats, there was some years ago a strong kick against the Canadian Pacific Railway, that was before the Canadian Northern and the Grand Trunk Pacific were built, but I do not think that kick was quite justified because the Canadian Pacific Railway have done a great deal for the West by developing it and building it up.

Mr. A. A. WRIGHT, President of the Dominion Marine Association: Mr. Chairman, I will try to be as brief as possible, but there seems to be some misapprehension as to this Bill. Sometimes I have been under the impression that Mr. Armstrong wants it as a war measure on account of war conditions, but the Bill as it is drawn would apply for all time to come, and it is absolutely unfair to take rates which all over the world have been run up on account of war conditions and fix on that as a ground for attempting to interfere with lake traffic and the freedom of contract. As far as the grain rates are concerned, Mr. Wolvin has gone into them very fully, but I do not know whether he made it quite clear to the committee that it would not make any difference to the Canadian farmer if the grain were carried by the lake vessels from Fort William to Montreal for nothing. The port of Montreal is closed for at least five months in the year, and when the grain buyer is figuring at what rate he will pay the farmer for the grain he has to keep in mind first of all what the grain is selling for in Europe and what the amount he has to pay for freight rates is going to be. He figures the cost of getting his grain from the West to the seaboard, and thence to the European market, and he subtracts that, and all other expenses which he is under from the sale-price in Europe, making allowance for a fair profit upon the business in order to tell what price he should pay the farmer in the West. There is only one route open all the year round, and he has to fix a price for the grain which covers the cost of getting it to the market. Any reduction in the grain rates goes into the pocket of the man who sells the grain; if he can get cheap ocean rates he gets the benefit of it. There is absolutely no value to the country at large in any reduction that there may be in the grain rates between Fort William and any Canadian port for the reason that the proportion of the grain going that way is a very small percentage of the total amount. It is seldom that more than half the grain from Fort William to the seaboard goes to a Canadian port; the bulk of it will go to Buffalo because when the shipper gets it to Buffalo he has the choice of ocean tonnage from a number of Atlantic ports, from Newport News, Philadelphia, New York, Boston or Portland. On the other hand when you bring it to Montreal you are tied up to shipments from Montreal, or else you have to reload it again and send it to Portland. No country in the world has ever attempted to regulate bulk freight rates. Great Britain has been the greatest shipping country in the world, and her wealth has been very largely gathered because she has seized the opportunity to make it easy and profitable for men to operate ships under the British flag. As to this Bill that Mr. Armstrong is quoting, and which he says has been productive of good, the United States Government control over Lake rates was brought in because under foolish legislation, the United States flag had been driven from the ocean, and the United States Government brought in that bill with

the object of bringing that flag back on the ocean if they could find a way of doing it. When it comes to attempt to regulate bulk freight boats, there is such a variety of traffic and such different conditions in different ports, that it is a difficult proposition. At Port Colborne there is an elevator which will unload a large steamer in ten hours, and if you fix a rate per hour which would be fair for that boat, it would be unfair in other cases. At Port Stanley they have a small elevator which will only unload 2,500 bushels per hour, whereas at Port Colborne they could probably unload 100,000 bushels per hour. How can you regulate that? If you take a large steamer into Collingwood, she would be there a week before she was unloaded, and the shipper says "There is the rate, you have to carry my grain at that rate." That is confiscating a man's property. How can a man succeed in business, if he is going to be subject to an arrangement and regulation that takes no notice of the different kinds of traffic. There was a time when there was any amount of coarse produce which could not be moved at the standard rates, but a man is sometimes able to make a sale of his produce and convert it into money, if he can go to a man and make a bargain with him, and say "I can afford to pay you so much to move that; will you take it?" That man will look at the other end, and perhaps find a cargo there which he can take back, and he will say "Yes, I will take your lumber or ore, or whatever it is, at that rate." You are absolutely going to make it impossible to interest men in this business and it will be impossible to do business. Here is a condition that may arise. Ocean rates out of New York may become very low, and there is a certain fixed rate by Georgian Bay by rail to Montreal and out of Montreal, and the American can cut it say to two cents, and the shipper wires to the Canadian owner and says "I want the cargo to go by Montreal." Instead of answering in five minutes, he has to wait to get permission of the Board, who cannot be cognizant of the conditions.

I think I have said enough to let you know that this question should be left alone. Some of the witnesses have said package freight boats should be controlled. The minute you attempt to regulate the rate on package freight you put the small boats out of business. A man has to take a cargo of salt, or apples or anything else he can get, and he is looking round for business and is not running on a regular route. You ask why grain came from Chicago to Montreal. That is mainly corn, and they prefer the Canadian route because it is colder than going down through the southern district, and it is usually booked ahead when rates are low at Montreal, which bring it that way.

Mr. SINCLAIR: I am not sure that I understand Mr. Walsh correctly, but I think he said that there was one branch of the Manufacturers' Association that did not agree with the view he took, and, if so, I would like to know about it.

Mr. WALSH: I do not know of any branch of the Manufacturers' Association that is opposed to it. I said that in a large association such as ours it would be impossible to harmonize the views of every individual member. There might be some who favoured this legislation.

Mr. SINCLAIR: There is no one here representing the Manufacturers' Association but yourself?

Mr. WALSH: No. There is a number of our members here.

The ACTING CHAIRMAN: You have not consulted with the smaller manufacturers?

Mr. WALSH: My instructions are from the executive committee.

Hon. Mr. RICHARDSON: I think there is a misapprehension. The shipper of the goods does not say how they shall be shipped. The western houses stipulate how these goods are to be sent every time. If there is any advantage, the consumer gets it and not the manufacturer. Do not be in error in that respect, and do not imagine that because the big shipper gets the contract with the boat that he gets any advantage at all. It is the man who receives the goods gets the advantage. If this measure became

law, you would have to insert rates for different sized boats and for different elevators, and you would have to provide for elevators that are full and for delays. Very often hte rates are determined by the length of time occupied in discharging, the crowding of the elevator, and so on. It seems to me the committee is attempting to do something that is impossible.

Mr. W. R. DUNN: I represent the International Harvester Company. I appeared before the commitee in 1914, and my views are set out in the report of proceedings, so that what I say will be repetition. However, I want to say that as this Dominion protest is very broad, coming from all interests apparently and the arguments that have been put forward by the gentlemen in connection with the eastbound traffic have been so clear—and I hope very effective—showing exactly what we will be up against if this legislation goes through, I will speak about the shipper in the west.

Now, we are fairly large shippers by water to the west, and we have always, of course obliged the lake lines. We are not shippers by any means. That business has extended over the last ten or twelve years. Since this legislation has come up, it has frightened us very much, and we would decidedly oppose any change in our water conditions or regulations that will bring our boats under what might possibly be the same condition that exists with the privately owned railway. That is really what is in front of us if it comes on. The waterways as we see them are free. We located our Canadian manufacturing plants with that in view. We have no boats of our own, but there is nothing to prevent our having them unless this legislation is enacted, which will promptly tie us up. I cannot see how we could possibly be a competitor on the water even if our business were large enough to do so. I have not yet heard any of the redeeming points in favour of this legislation whatever they may be.

It seems to me also that it would make a joint rail and water condition that would be very drastic indeed. For instance, boats under private ownership or, say, for instance, our own ownership, if we saw fit to put them in service, could never meet with any tariff conditions as far as railroads are concerned. We would be tied up completely. We have to issue a tariff, but the railway might refuse to be a party to this tariff consequently we would be without terminals and other facilities at the head of the lakes.

Furthermore, if we should have the privilege of picking out our neighbour's stuff during the slack season, we would either have to tie our boats up or beg railroad facilities if they would permit us to do it.

As it stands now we have the privilege of going out and getting independents at any time we want. We want the same facilities that the Canadian Pacific Railway steamers have at the other terminals, and we want to retain that privilege if we possibly can. I do not see how we can.

Mr. ARMSTRONG, M.P.: Did you receive special rates for your shipments to the West?

Mr. DUNN: Our rates are regulated to a great extent.

Mr. ARMSTRONG, M.P.: The ordinary shipper could not expect to receive rates like you do.

Mr. DUNN: If he has the volume, he could.

Mr. ARMSTRONG, M.P.: The small shipper could not possibly receive the same rates.

Mr. DUNN: We ship in a great many instances, we have certain contracts, I admit, that cover certain classes of traffic; and then we have to fall right in with the regular tariff on other classes of traffic. On all our L.C.L. stuff we pay the same rates as any one else. If we are able to charter a boat, and give it 50, 80 or 100 cars, as the case may be, the volume does naturally regulate that rate to a certain extent.

Mr. KING, K.C.: That question can be answered in a word by Mr. Bourke, manager of the Great Lakes Transportation Co. The same rate applies irrespective of the quantity.

Mr. BOURKE: Mr. Armstrong has asked that question. We, for instance, are practically a transportation organization, although we run a package freight service. Every rate we make, irrespective of the size of the shipment, whether half a cargo, one carload or ten carloads, irrespective of who the shipper is, everybody gets that rate in common. As good business men we naturally find it pays us to do it. We cannot have a paper manufacturer in Windsor charged a higher rate than the one next door to him. Of course, when we do make changes from season to season everybody gets them.

Mr. DUNN: I was just wondering, Mr. Chairman, what the Harbour Boards that we have at Toronto and Hamilton are striving for at the present time in establishing free wharves and other facilities, for this legislation is simply going to eliminate all our steamships. That is the way it looks to me. I cannot see anything else for it. Of course, all these docks and water facilities are now being put in by means of government moneys. We feel that they were put in there for a purpose, and that was simply to keep competition free upon waterways.

The Acting CHAIRMAN: We have heard from the Toronto Harbour Commissioners.

Mr. DUNN: On that score?

The ACTING CHAIRMAN: Yes. Is there anything further?

Mr. KING, K.C.: Reference was made this afternoon to the protest of Boards of Trade. I read this morning a list of Boards of Trade who have protested. I would like to fyle their protests.

It was ordered that the documents not already in the records be printed.

The ACTING CHAIRMAN: I think everybody has been heard on the anti-side who desires to be heard. Those who are supporting this Bill will now be heard. Before that is done, I want to read a telegram that has just been handed me by the Secretary. It has been the custom to read telegrams during the sessions of the committee.

TORONTO, Ont., May 22, 1917.

Mr. N. ROBIDOUX,
Clerk, Railways Committee,
House of Commons, Ottawa, Ont.

In view of the present conditions and the uncertainty as to the effect it will have upon the vessel carrying and ship-building interests, I consider it in the best interests of the country that no action be taken at the present time towards bringing the Canadian steamship traffic under the control of the Railway Commission.

J. P. MILLER,
President, Polson Iron Works, Ltd.

The ACTING CHAIRMAN: Is there any gentleman present who desires to support this legislation?

Mr. ARMSTRONG, M.P.: Two gentlemen were here this morning from St. Catharines, but they had to leave this afternoon.

The ACTING CHAIRMAN: Is there anybody, besides Mr. Armstrong, who desires to be heard now?

Mr. ARMSTRONG, M.P.: There were two gentlemen here this morning from St. Catharines, who strongly supported the measure. I have a communication from them which I will hand in. Mr. McKenzie, the Secretary of the Grain Growers' Association of the West was here on Friday last, and was most anxious to support the section in question in every way that he could. Several other people have written to me that they are most anxious to oppose this legislation.

Mr. KING, K.C.: I do not wish to interrupt the honourable member, but I would like to ask if the gentlemen to whom he refers are coming back at a later date?

The ACTING CHAIRMAN: The Committee will regulate its conduct as occasion arises.

Mr. ARMSTRONG, M.P.: I have handed in these communications, and I will also file certain other letters, as did Mr. King this morning. Now, in making my statement to the Committee, I will be as brief as I can. In the session of 1913-14, two days were occupied in the House of Commons in discussing this very subject, when the members from the Northwest strongly objected to the rates that were then being charged for grain and other freight coming East. Since that time the rates have increased very materially and there is still better reason than there was at that time that some legislation be enacted to bring those rates under control. The Grain Growers' Grain Company of the West has presented strong petitions which I will ask to have placed in the record. United Farmers of Alberta have also strongly supported this legislation. The Saskatchewan Grain Growers' Commission after investigating, some years ago, the rates in the West, placed their views on record in the blue book and I will hand those views in to be also embodied in the record of these proceedings. Furthermore, the fruit growers of the Niagara District and of Western Ontario, as well as the fruit growers in British Columbia, have addressed communications to me supporting the position taken by the Railway Committee and the passage of the clause under discussion. The Vegetable Growers' Association also support the passage of the section. I have been in touch with a number of small shippers who also strongly favour the enactment of the section. Lake vessels, passing as they do the small ports, ignore the small shippers, and there seems to be no control over them whatever at present. If you take Sarnia and Windsor, along with other small ports on our lakes and rivers, you can readily understand the position in which the small shippers are placed.

A couple of years ago a deputation from Western Ontario asked for the construction of retaining walls along the River St. Claire, because of the fact that there is no limitation of the speed at which vessels shall run. On the United States side vessels are under strict regulation as regards speed. On the Canadian side vessels go at such speed that the docks and piers and embankments along the river are washed down and even bridges are interfered with. No such condition prevails on the United States side of the river, owing to the enforcement of regulations limiting the rate of speed.

Mr. KING, K.C.: There is nothing in the section of the Bill under consideration which deals with such matters. The Bill relates to tolls and tariffs. I agree that there should be regulated where there is any risk, and in the United States the matter is regulated under the War department. But there is nothing of the kind in this Bill.

Mr. ARMSTRONG, M.P.: The people who are sufferers in Canada from the absence of any limitation of speed believe that the matter should be brought under the Railway Board and that if such action is taken the Board will enforce proper regulations.

We have listened to the gentlemen who are representing here the large shippers and the Marine Association in regard to the discrimination in rates. These gentlemen under the conditions as they exist to-day, and under the favourable terms they enjoy,

are opposing the enactment of any regulation. But the Railway Commissioners believe it is quite feasible for them to undertake the operation of the provision in question in such a way that it will not bear too harshly on the shipping interests or on the producer and the consumer. The representatives of the shipping interests claim they are not common carriers, and they seemed unable to-day to definitely define to the committee just what kind of carriers they are. If these interests were under the control of the Railway Commission the Board would soon find out that they are in reality common carriers and should be so named.

Mr. Walsh said this morning that it was a question of unregulated competition in the United States. Now, I happen to have a copy of the Act passed by the United States for the regulation of shipping.

Hon. Mr. GRAHAM: You refer to the Federal Bill on the subject.

Mr. ARMSTRONG, M.P.: Yes. On March 15, 1917, I wrote as follows to the Private Secretary of President Wilson: (reads)

> DEAR SIR,—I understand that President Wilson appointed a Federal Shipping Board, whose duty it will be to investigate shipping conditions and regulate and fix rates and water transportation. Also organized a fifty million dollar company whose duty it will be to obtain ships, for the purpose of establishing a Government owned Merchant Marine.
>
> I understand that Mr. Bernard N. Baker, one of your Congressmen, is attached to the Board.
>
> As a member of the Canadian Dominion Parliament I respectfully ask that you be good enough to forward me a copy of this measure, and any information of a public nature that you may have in regard to same.
>
> Thanking you for any consideration you may give this matter, I am,
>
> Yours sincerely,
>
> (Sgd.) J. E. ARMSTRONG.

In reply to my application I received the following letter from William Denman, who is Chairman of the United States Shipping Board at Washington. (reads)

> UNITED STATES SHIPPING BOARD,
>
> WASHINGTON, May 29, 1917.
>
> Hon. J. E. ARMSTRONG,
> c/o House of Commons,
> Ottawa, Canada.
>
> DEAR SIR:—Your letter of March 15th, 1917, addressed to the Secretary to the President, has been referred to the Shipping Board for reply. In accordance with your request, there is enclosed a copy of the Act of Congress approved September 7th, 1916, together with a copy of Shipping Board Circular No. 1, setting forth a proclamation of the President, dated February 5th, 1917. We trust that these documents contain the information you desire.
>
> Very truly yours,
>
> (Sgd) WILLIAM DENMAN,
> Chairman.

I have before me a copy of the proclamation issued by the President, which is as follows: (Reads)

EMERGENCY IN WATER TRANSPORTATION OF THE UNITED STATES.

1917
SHIPPING BOARD CIRCULAR
No. 1

UNITED STATES SHIPPING BOARD,
WASHINGTON, February 6, 1917.

To shipowners and others concerned in vessels registered or enrolled or licensed under the laws of the United States, and all officers of the United States, charged with execution of the laws thereof:

The following proclamation of emergency in water transportation of the United States is published for the information and guidance of all concerned.

[Emergency in Water Transportation of the United States.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

WHEREAS, Congress did by "An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes," approved September 7, 1916, provide that "during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the Board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag";

And Whereas, many shipowners of the United States are permitting their ships to pass to alien registers and to foreign trades in which we do not participate, and from which they can not be bought back to serve the needs of our water-borne commerce without the permission of governments of foreign nations;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, acting under and by virtue of the authority conferred in me by said Act of Congress, do hereby declare and proclaim that I have found that there exists a national emergency arising from the insufficiency of maritime tonnage to carry the products of the farms, forests, mines, and manufacturing industries of the United States to their consumers abroad and within the United States, and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of said Act of Congress, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted, and I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of said Act, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 5th day of February in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States of America the one hundred and forty-first.

[SEAL.] WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

The text of the law referred to in the Proclamation is contained in Section 9, paragraphs three and four, of the Shipping Act, approved September 7, 1916, and is as follows:

"* * * during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the Board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. * * *"

"Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000 or to imprisonment of not more than five years, or both such fine and imprisonment."

Attention of shipowners, agents, charterers, and others interested is directed to the fact that under the President's proclamation, all officers of the United States charged with the execution of the laws thereof, are requested to observe the foregoing proclamation and to see that its provisions are enforced so far as their respective duties are concerned, and all officials and employees of the United States are requested to report promptly through their respective departments any violations of the proclamation coming within their knowledge.

UNITED STATES SHIPPING BOARD,
WILLIAM DENMAN,
Chairman.
JOHN A. DONALD,
J. B. WHITE,
THEODORE BRENT,
Commissioners.

This (producing document) is a copy of the United States shipping Act—Public, No. 260, 64th Congress.

"An Act to establish a United States Shipping Board for the purpose of encouraging, developing and creating a naval auxiliary and naval reserve, and a merchant marine to meet the requirements of the commerce of the United States within its territories and possession, and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes."

The interpretation is there given

"That when used in this Act:

The term 'common carrier by water in interstate commerce' means a common carrier, engaged in the transportation by water of passengers or property on the high seas or the Great Lakes, on regular routes from port to port between one state, territory, district or possession of the United States and any

other state, territory, district, or possession of the United States or between places in the same territory, district or possession."

"The term 'common carrier by water' means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port."

Mr. WOLVIN: Please notice the provision "on regular routes."

Mr. ARMSTRONG: (continues reading):

"The term 'other person subject to this Act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities, in connection with the common carrier by water."

Section 3 provides:

"That a Board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as 'The Board.' The Board shall be composed of five commissioners, to be appointed by the President."

Now then let us turn to Section 14, of that Act, which reads:

That no common carrier by water shall directly, or indirectly—

FIRST, pay or allow, or enter into any combination, agreement or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term 'deferred rebate' in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipment to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the periods for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement of arrangement.

THIRD, retaliate against any shipper by refusing, or threatening to refuse, space accommodations, when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has fyled a complaint charging unfair treatment, or for any other reason.

FOURTH, make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violate any provision of this section shall be guilty of misdemeanour punishable by a fine of not more than $25,000 for each offence.

Section 15, that every common carrier by water, or other person subject to this Act shall fyle immediately with the Board a true copy, or if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailing between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any

manner providing for an exclusive, preferential or co-operative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

The Board may by order disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications or cancellations.

Agreements existing at the time of the organization of the Board shall be lawful until disapproved by the Board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the Board.

Hon. Mr. GRAHAM: I did not quite catch the purport of that clause which gives power to the Board to disapprove, cancel or modify any agreement, does that apply to agreements made prior to the Act or not?

Mr. ARMSTRONG, M.P.: This Act was approved by Congress on 7th September, 1916.

Hon. Mr. GRAHAM: Would any contract made prior to that date be interfered with except by order of the Board.

Mr. ARMSTRONG, M.P.: According to the latter part of section 15 which I read, all agreements existing at the time of the organization of the Board shall be lawful until disapproved by the Board. The Act continues (reads)

"Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in civil action.

" Section 16. That it shall be unlawful for any common carrier by water, or other persons subject to this Act, either alone or in conjunction with any other person, directly or indirectly——

"First, to make or give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic, in any respect whatsoever, or to subject any particular person, locality or description of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever.

" Second, to allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

" Third, to induce, pursuade or otherwise influence any marine insurance company or underwriter, or agent thereof not to give a competing carrier by water as favourable rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act.

" Section 18. That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications and tariffs, and just and reasonable regulations and taxes relating thereto, and to the issuance, form, and substance of tickets, receipts and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample and excess baggage, the facilities of transportation, and all other matters relating to or connected with the receiving, handling, transporting, sorting or delivering of property.

" Every such carrier shall fyle with the Board and keep open to public inspection, in the form and manner and within the time prescribed by the Board,

the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for, or in connection with transportation between points on its own route and points on the route of any other carrier by water.

"No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges fyled in compliance with this section, except with the approval of the Board, and after ten days' public notice in the form and manner prescribed by the Board, stating the increase proposed to be made; but the Board for good cause shown, may waive such notice.

"Sec. 19. That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight, to or from competitive points, below a fair and remunerative basis, with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates, unless after hearing the Board finds that such proposed increase rests upon such changed conditions other than the elimination of such competition.

I might go on and read other clauses of this Act which are of the most stringent kind. The regulations governing the bodies in the United States are under the control of this Board, and are almost more drastic, in my way of thinking, than the regulations issued by the Board of Railway Commissioners for Canada, and why the shipping interests would think it unreasonable to allow this clause to remain in the Bill when the Board are given reasonable leeway in regard to dealing with them I cannot understand.

Mr. GREEN: In that Bill did you find anything relating to charges other than the charges of common carriers.

Mr. KING, K.C.: Yes, in the Interpretation sections. I thought it was not fair to allow the discussion to go on without interrupting. The interpretation clause is clear that it is not the tramp boat. It is the boat that plies from port to port that is a common carrier. Mr. Armstrong has not read the whole of the Interpretation section to the committee. He left out the common carrier part, which expressly excludes the tramp boat.

Mr. ARMSTRONG, M.P.: I have no objection to reading that, and I think your construction of it will be hardly a fair one. The section reads as follows:—

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act, the term 'Common carrier by water in foreign commerce' means a common carrier, except ferry boats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade. Provided, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

That is, an ocean tramp shall not be considered a common carrier, nor a ferry boat. Those are the only two exceptions they make.

Mr. KING, K.C.: Take the next clause.

Mr. ARMSTRONG, M.P.: The next clause reads:—

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the great lakes on regular routes from port to port

between one State, Territory, District or possession of the United States, and any other State, Territory, District or possession of the United States or between places in the same Territory, District or possession.

Mr. KING, K.C.: The ore, coal and grain in the United States are not covered by that Bill. I speak with some authority because I am in close touch with the Lake Carrier's Association on the other side, and we know what is going on in this matter.

Mr. ARMSTRONG, M.P.: Would you explain what a tramp carrier is? This section says that a cargo boat commonly called an ocean tramp shall not be deemed such common carrier by water in foreign commerce.

Mr. KING, K.C.: That is not the clause that relates to a common carrier in foreign commerce. That clause might apply—it does not say so—to foreign commerce—but foreign commerce would be Fort William and Buffalo, and the ocean tramp would apply. The word "ocean" seems to limit to the ocean, but if you go to the next clause, the lake business, it is expressly stated that it applies to the port to port regular route traffic, and that is not the business of the ordinary lake carrier.

Mr. ARMSTRONG, M.P.: You finally call your boats tramp steamers. All the boats under the Dominion Association are tramp steamers.

Mr. KING, K.C.: All the freight carriers. We have regular passenger boats running on regular routes. I cannot say that all the boats in the association are tramps.

Hon. Mr. GRAHAM: A tramp steamer is one that any one can charter.

Mr. KING, K.C.: Yes, the owner can charter it to any party.

Hon. Mr. GRAHAM: He is not confined to any regular route, no time table, does not start at ten and get there at twelve.

The ACTING CHAIRMAN: No regular route.

Mr. KING, K.C.: No.

Mr. ARMSTRONG, M.P.: All these will come under this clause.

Mr. KING, K.C.: I have not said so. You are now trying to establish to the committee that the United States have imposed a regulation here, something that we tested this morning, and I say our contention has been amply upheld by the reading of the one clause in question.

Mr. ARMSTRONG, M.P.: I cannot agree with Mr. King. I am sure this includes boats similar to the ones that are engaged in the Dominion Marine Association. Section 21 says:—

> That the Board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent or employee thereof, to file with it any periodical or special report, or any account, record, rate or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, or memorandum shall be under oath whenever the Board so requires, and shall be furnished in the form and within the time prescribed by the Board. Whoever fails to file any report, account, record, etc.

Then section 22 says:—

> That any person may file with the Board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act and asking for reparation for the injury if any caused thereby.

And the remainder of the section largely deals with the investigation and violations of the Act. I would ask that all the sections that I have interlined be included in the report. If the committee would like to have the whole Act printed, I have no objection.

Mr. NESBITT: Print the Act.

The CHAIRMAN: Is it the wish of the committee to print the whole Act?

Hon. Mr. GRAHAM: Print the whole Act.

Mr. ARMSTRONG, M.P.: The objection, as you have heard by the gentlemen this morning, has largely been owing to the fact that they should be left perfectly free to charge whatever they please, to stop at any port they please, take whatever freight they please, or leave it, wherever they like. That is a serious condition of affairs. It surely is not in the public interest. We have expended in the Dominion of Canada as I will be able to show you by a report from our statistician, over four hundred millions on dredging our rivers, improving our waterways by buoying and lighting and building docks and piers and canals, in order that the transportation facilities of this country may be cheapened and improved. Instead of that, these gentlemen have gone on increasing the rates year by year, and if they had, for instance, to deal with ocean ports or ocean traffic, where they would be liable to come in contact with submarines or mines, or something of that kind, it might be a very different matter, but here we are, with no regulations whatever, they wish to be a law unto themselves, perfectly free to do whatever they please on our rivers and inland waters. Let us take, for instance, this position: the railways, as you know, have a number of boats under their control, and they do a large carrying business on inland waters. They are under the control of the Railway Commission. They are not here objecting to this legislation. There is no opposition whatever from the railways in regard to this legislation. We have not heard of any complaint as far as they are concerned with the treatment that the Railway Commission have dealt out to our railways. Then why is it conceivable that they would not deal fairly and generously with the merchant marine as well. I would like to ask what the people have received for these large expenditures. I asked some gentlemen this morning and they were unable to tell us. They come here and ask for certain improvements in regard to water transportation. Year after year we are expending enormous sums of money and the public are left in the position where they have to pay higher freight rates and receive whatever treatment the Marine Association cares to meet out to them.

The words "So far as deemed applicable by the Board" mean that the Board would define its own jurisdiction in regard to this matter. The increase in freight rates on the Great Lakes in 1913 amounted to 20 per cent. That was the statement made by Mr. Henderson on page 49. I think it would be wise to place on the record a statement of the freight rates by water as it appears on page 19 of our Canal Statistics, to give the committee some idea of the increase in freight rates. The statement is as follows:—

FREIGHT RATES BY WATER.

High freight rates by water obtained during the season of 1916. The test made by the department had reference solely to wheat; but that may safely be accepted as indicative of the character of the business as a whole.

The volume of Canadian wheat moved by water was the largest in the history of the Great Lakes trade. The facts have been given on preceding pages.

The rates of freight over the different routes during the year were as follows:—

	1914.	1915.	1916.
Port Arthur—Fort William to Montreal—			
Per ton per mile	0·124 cent.	0·132 cent.	0·205 cent.
Per bushel	4·58 "	4·99 "	7·55 "
Per ton	$1.52	$1.66	$2.52
Port Arthur—Fort William to Georgian Bay—			
Per ton per mile	0·095 cent.	0·282 cent.	0·264 cent.
Per bushel	1·46 "	3·54 "	4·10 "
Per ton	48·61 "	$1.18	$1.37

	1914.	1915.	1916.
Port Arthur—Fort William to other Canadian ports—			
Per ton per mile	0·065 cent.	0·124 cent.	0·169 cent.
Per bushel	1·48 "	2·84 "	3·68 "
Per ton	49·29 "	94·80 "	$1.22
Port Arthur—Fort William to Buffalo—			
Per ton per mile	0·061 cent.	0·159 cent.	0·159 cent.
Per bushel	1·63 "	3·97 "	4·27 "
Per ton	53·72 "	$1.32	$1.42
Port Colborne to Montreal—			
Per ton per mile		0·288 cent.	.....
Per bushel		3.25 "	.....
Per ton		$1.08	.....

The rates from Duluth were substantially the same as from Port Arthur-Fort William.

This merely goes to show that as the years go by, instead of decreasing the freight rates, they are constantly being increased.

I have at least tried to show that so far as United States shipping interests are concerned, they are under control, and I feel confident, in spite of the statement made by Mr. King, that he will find on investigation that they are under absolute control as far as the inland waters are concerned.

We should empower the authorities to provide a speed limit. I introduced a deputation regarding this matter, as I said. We should have safe guards so that steamers can do business on the basis of reasonable sevice.

Hon. Mr. GRAHAM: Could not our Marine Department regulate the speed of the ships? The Department of Railways and Canals can regulate the speed of vessels in the canals. The Minister of Marine can regulate the speed in lake St. Clair. If they are violating that regulation, it should be stopped at once.

Mr. ARMSTRONG, M.P.: I understood there was no way of regulating speed on the Canadian side of the St. Clair river. I am satisfied that it has not been put into effect.

Hon. Mr. GRAHAM: I imagine it has not from what you say. It strikes me that the Marine Department could regulate the speed there.

Mr. KING, K.C.: That regulation is already in effect in the St. Marys river and in the St. Clair and Detroit rivers where it has so far been asked for, and Colonel Anderson, Chief Engineer of the Marine Department, who, is chiefly in charge of the lights, was in very close touch with Colonel Mason M. Patrick, who was the late engineer of the United States War Department for the Detroit district, and is also in touch with Colonel Burgess, his successor. They are now consulting and enacting regulations on certain critical points in the Detroit river with regard to speed, and all that sort of thing. I am quite sure that the vessel-owners of Canada will comply as cheerfully as they have done in the United States with any regulations that may be deemed expedient.

The ACTING CHAIRMAN: The Department of Railways and Canals regulate the speed in the canals.

Mr. ARMSTRONG, M.P.: I quite understand that the section as drawn does not include that provision as to speed. I wish to put a few more things on record. As far as we are able to gather information from the Department of Marine, or from the Customs Department, in regard to statistics covering the amount of tonnage carried, the tolls charged, and the rates, it is practically impossible for us to obtain that information. I would like to read a letter from Mr. J. Lambert Payne, our Controller of Statistics.

Hon. Mr. GRAHAM: He is Controller of Statistics in the Railways and Canals Department.

Mr. ARMSTRONG, M.P.: Yes. (Reads):—

OTTAWA, May 21, 1917.

DEAR MR. ARMSTRONG,—You left with me this morning a list of requests for statistical information regarding the business of transportation on the inland waters of Canada. Unfortunately, there is no source from which you may ascertain how many vessels are operating in Canada, what transfers have been made to other countries, nor what has been the progress of building vessels during any period in the history of the Dominion. We have not had anything in the nature of a statistical system applicable to carriers by water, except to a very limited extent with regard to traffic through our canals. I am hoping all that will be corrected when the Consolidated Railway Act is passed by Parliament.

I am, happily, able to tell you that the capital cost of canals up to 31st March, 1916, was $120,210,308. The cost of maintenance for the fiscal year 1916 was $1,575,272.

With regard to the capital cost of aids to navigation, such as dredging, deepening of rivers, wharves, lighting and so on, this would involve the gathering of data from a number of official sources. I made an attempt several years ago to ascertain the volume of expenditure under those heads, and found to my disappointment that it would be necessary to go through the annual reports of the Public Works Department since 1882, and through the reports of the Department of Marine and Fisheries for a still longer period in order to get the facts in complete form. In 1913 the accountant of the Public Works Department gave me a statement showing that up to 31st March, 1912, his records showed expenditures on dredging, dredging plant, harbours, piers, breakwater, etc., aggregating $90,000,000. This was exclusive of the St. Lawrence Ship Channel. The operations of the Montreal Harbour Commission were not included for the full period. I tried to make a comprehensive summary of expenditures in aid of navigation made by Department of Marine and Fisheries but I cannot lay my hands on the figures. I remember, however, that the final total of all expenditures for the development of navigation, including the canals, came up close to $400,000,000. It is a great pity that the facts are not ascertainable in accurate form, and I shall not be satisfied until something is done to get them.

Yours sincerely,

J. L. PAYNE.

J. E. ARMSTRONG, Esq., M.P.,
House of Commons.

I do not know whether or not the Marine Association is willing to allow statistics to be gathered in regard to their operations. It will be impossible for the Board of Railway Commissioners to have control of the Marine Association and compel them to come under regulations until statistics are gathered with respect to their operations. For instance, the Government have issued a proclamation claiming to have brought under their control the vessels that are owned and operated in Canada. We are supposed at present to have 8,500 vessels registered but the Marine Department are satisfied that those figures do not cover nearly all the boats that should be registered. I have a statement issued by the Marine Department giving a list of steam vessels owned in Canada and registered elsewhere, which are operated on the Great Lakes. Well, there are 36 large boats, which the department know are operating on our inland waters and yet are not registered in Canada. That tends to show the prevailing condition of affairs.

Now common sense requires that the people should have some control over shipping on our inland waters. A proper moderate common-sense control is demanded. I

cannot think of a justifiable reason for this control not being given. If we have allowed traffic on our inland waters for the last 50 or 100 years under present conditions, it is high time that a change was made. The people of Canada furnish every means to assist transportation—why should they not control? We protect marine interests from foreign shipping. If placing shipping interests under Board means increased freight rates why object? Vesselmen are continually asking for improvements to our harbours and rivers. We have a large fleet of dredges, icebreakers and tugs continually employed in assisting navigation. Our rivers are buoyed and lighted, wireless telegraphy installed, and many other aids to navigation all operated by the people, practically all free to vesselmen. Is it unfair to ask that the public be surrounded with some safeguard in return for these many advantages?

Public interest demands a report of what is going on in transportation. Here is a big arm of our transportation which we know little or nothing about. Quantities of business do not go through our canals. You have a statistical system applied to the United States waters, but not to the Canadian. The United States Government obtains most accurate statistics, while we pay little attention to that subject. All carriers on land or water should be subject to some control. Canada is now in a position to obtain international control over ocean-going vessels since the United States has come into this world's war.

Great Britain and the United States, and France and Canada and their Allies could make a definite international arrangement whereby they would have absolute control over ocean-going vessels if we had control. It is folly to say we cannot control rates, and that the consumer and producer would be injured. Railways have not been allowed to increase their rates during these strenuous times, while the vessels have increased theirs several times over. We control the railways, why not the water-borne commerce. Justice will be the basis of Commissioners' control. We have seen vessel owners run wild as regards rates on Atlantic, and we have instances of material increase on our inland waters. We have wild speculation on our inland lakes. No submarines there to interfere. Some tribunal vested with power should be established controlling freight rates on our inland waters. The present increase in freight rates are shown in the increased prices of food to our people.

Now I have statements from the Marine Department and the Customs Department with respect to the matter of shipping statistics, and I would like to place them on the record. I will read first the letter from the Customs Department

OTTAWA, 21st May, 1917.

J. E. ARMSTRONG, Esq. M.P.,

House of Commons,

Ottawa.

DEAR SIR:—As requested by your telephone message this morning I send you herewith copy of the Trade and Navigation Report for the fiscal year ended 31st March, 1916, and would refer you to statement No. 17 page 474 *re* shipping.

You will note by the attached memorandum from the Chief Statistical Clerk that in all shipping statements the aggregate tonnage for vessels is shown irrespective of whether the number of arrivals or departures covers one or more vessels, that is if the return shows 10 arrivals and these are for the same vessel of say 100 tons the return would show 1,000 as tonnage.

Yours respectfully,

R. R. FARROW,

Assistant Commissioner of Customs.

OTTAWA, 21st May, 1917.

MEMORANDUM FOR MR. FARROW,
Assistant Commissioner of Customs.

Referring to your inquiry of this afternoon, *re* statement No. 17, page 474, Part II, Customs Trade and Navigation Annual Report for the fiscal year ended 31st March, 1916.—

This statement and all similar shipping statements in our annual publication show the actual number of arrivals or departures as the case may be, irrespective of whether the same vessel or different vessels figured in the transactions. Thus, if a vessel of, say, 100 tons register arrived at a certain port ten times in the course of the season, Customs returns would show 10 arrivals of an aggregate tonnage of 1,000 tons.

R. M. HEINTZ,
Chief Statistical Clerk.

I have a similar statement from the Department of Marine showing the condition that exists in regard to this public utility (reads):

OTTAWA, 21st May, 1917.

SIR:—

In accordance with your verbal request of this morning, I am sending you herewith copies of:—

(1) Canada Shipping Act;
(2) Latest Marine Report;
(3) Latest List of Vessels; and
(4) List of British Vessels owned in Canada and operating on the Great Lakes but registered as British ships outside of Canada.

With regard to these, I would draw your attention to sections 5 and 6 of the Canada Shipping Act which show what vessels must be registered in order to be deemed British ships within the limits of Canada. Sections 32 to 38 of the said Act provide for the licensing of such ships as are not required to be registered and vessels which are not ships within the meaning of the Act.

The list of vessels shows the name, description and tonnage of each vessel registered in Canada on the 31st December, 1915. (The 1916 list is still in the hands of the printer.) You will notice it does not contain the names of those vessels which are being operated in the coasting trade of Canada but which are registered as British ships at ports outside of Canada. The list printed on pink paper shows a number of the vessels that were owned in Canada but registered elsewhere and operated on the Great Lakes in 1913. A great many of these vessels have been transferred to Canadian registry since this list was published, but a few of them, such as the *Easton, Edmonton, Keyport, Keywest* and *Saskatoon,* are still registered in the United Kingdom, and their tonnage does not appear in the statistics published by the department of ships registered in the Dominion. These statistics for the year ended 31st December, 1915, will be found in the Report of the Department of Marine and Fisheries.

As promised this morning, I enclose herewith a copy of the Water Carriage of Goods Act of 1910.

I am, sir,

Your obedient servant,

E. HAWKEN.

J. E. ARMSTRONG, Esq., M.P.,
House of Commons,
Ottawa.

Full information is obtained from the railways with regard to the number of employees, wages, etc., but for the shipping companies we have no accurate data. We furnish means and facilities to assist transportation and why should we not have control and protection of the marine interests from foreign ships. We have absolute control over the railways, why should we not have control over the steamship companies.

Mr. KING, K.C.: We are afraid that if this section goes through, coastal laws will be broken. I am continually in receipt of telegrams from the department stating that such and such a company want to bring in an American boat to run on a certain route upon which it is intended to develop trade in Canada, but invariably I answer: No.

Mr. ARMSTRONG, M.P.: The public interest demands that there shall be a full report of what is going on in the transportation lines in this country. We ought to have a statistical system that is complete with regard to water navigation. We control the railways with regard to rates but with regard to water-borne commerce we have seen the vessel owners run wild in respect to rates and in the interests of the public it is necessary that there should be some controlling body which will regulate the rates on water-borne commerce. I merely wish in closing to urge the Committee to give this clause their most careful consideration. I am satisfied that it is in the interests of the people of Canada that it should become law at the earliest possible date, and I respectfully urge upon the marine men to look at it in a fair and reasonable light. I am sure the Board of Railway Commissioners will deal with them justly and fairly.

The ACTING CHAIRMAN: Gentlemen of the Committee, shall we now hear the reply of those gentlemen who are opposed to this section?

Mr. SINCLAIR: We have heard them pretty fully already, if there is any new matter brought up by Mr. Armstrong, I think it will be well to hear somebody on that.

The ACTING CHAIRMAN: These gentlemen were promised the right of reply. Is there any gentlemen who would like to reply to Mr. Armstrong's arguments?

Mr. KING, K.C.: I think it would be unfair to take up the time of the Committee further.

Mr. NESBITT: There is just one question I would like to ask somebody and it is this: when you have a regular route, say from Montreal, to the head of the Lakes, on which you pick up package freight, do you make any discrimination between shippers?

Mr. D. J. BOURKE, Great Lakes Transportation Co., Windsor: There is absolutely no discrimination in the traffic.

Mr. NESBITT: If I want to send something, do I get the same rate as a regular shipper?

Mr. BOURKE: You get absolutely the same rate, we publish our tariff, and you will get the same consideration as the largest consumer or shipper will get.

Mr. KING, K.C.: I would like the Committee to understand that my construction and interpretation of the United States Statute is entirely different to the interpretation placed upon it by Mr. Armstrong. I wish to make that quite clear.

The Committee adjourned.

ENDORSEMENT OF SECTION 358 BY VARIOUS ORGANIZATIONS.

The Committee agreed to the insertion of the following documents in the record as requested by Mr. Armstrong:—

As representatives of the Municipality of the City of St. Catharines, we believe in and favour the proposal by the Railway Committee to vest in the Railway Board power to regulate and control tariffs on shipping by water as well as by rail as proposed in Section 358 amending the Railway Act as considered by the Committee May 22, 1917.

(Sgd) Alderman JAS. A. WILEY.
Alderman D. W. EAGLE.

We leave the above statement as we are not able to be present at the afternoon Committee Meeting, having to leave for Montreal.

JAS. A. WILEY.

FRUIT GROWERS ASSOCIATION OF ONTARIO.

Mr. J. E. ARMSTRONG, M.P.,
HOUSE OF COMMONS,
Ottawa.

DEAR MR. ARMSTRONG:—

At a meeting of the Lambton County Fruit and Vegetable Grower's Association held in Sarnia, Wednesday, the 21st inst., the following Resolution, moved by Issac Frayn of Forest, and seconded by John Forbes of Wyoming, was unanimously passed, and Mr. McDonald and myself appointed to see that it was forwarded to you;—

"Resolved, that whereas the Dominion Government is spending thousands of dollars each year in keeping up inland waterways, harbours, etc., and whereas navigation companies by control of service are hampering production and damaging marketing facilities of agricultural products, especially fruits and vegetables. Be it therefore Resolved, that this Association strongly supports the adoption of Mr. J. E. Armstrong's Bill, so amending the Railway Act that all Navigation Companies operating on inland waters be placed under the jurisdiction of the Board of Railway Commissioners of Canada."

I might point out that last season just when marketing facilities were mostly needed, the Northern Navigation Co., refused shipments to Sault Ste. Marie, from Sarnia. The Niagara, St. Catharines and Toronto Navigation Co., operate in the Niagara district. Last season shipments from Port Dalhousie to Toronto were refused from Friday to Monday, causing considerable trouble. All through the season such occurrences develop, and they certainly should be under some control. They jump rates to suit themselves, and seize every opportunity. The railways, as you know were granted a raise equal to one cent fifth class a few months ago, now the Northern Navigation Co., announces an increase as per attached schedule.

Yours truly,

G. E. McINTOSH.

NORTHERN NAVIGATION COMPANY.

The following is a statement showing the rates which were in effect last year on Fruits and Vegetables and the rates they intend to place in effect for the season of 1917.

	Old.	New.
Fruits and vegetables of all kinds, any quantity in baskets, 10 pounds and under, each	3 cents.	5 cents.
Fruits and vegetables of all kinds, any quantity in baskets, oover 10 pounds to 18 pounds, each	5 "	7½ "
Fruits of all kinds (except apples), in boxes, crates or barrels, any quantity, per 100 pounds	30 "	37 "
Apples in boxes, L.C.L., per 100 pounds	30 "	37 "
Apples in boxes, C.L., per 100 pounds C.L. Min., 24,000 pounds.	20 "	25 "
Apples in barrels—		
Under 10 barrels, per barrel	40 "	45 "
10 to 49 barrels, per barrel	30 "	35 "
50 barrels and over, per barrel	25 "	30 "
Vegetables, green, as per Canadian classification, in bags, crates, boxes, or barrels—		
L.C.L., per 100 pounds	30 "	37 "
C.L., per 100 pounds C.L. Min., 24,000 pounds.	15 "	16 "
Vegetables, winter, same as above.		

Mixed cars will be accepted on the following basis:—

Vegetables, green or winter, in bags, crates, boxes or barrels and apples in boxes when shipped with fruits and vegetables in baskets, will be accepted, at rate of 25c. per 100 lbs., the baskets to be charged at 5c. or 7½ per basket respectively. Min. carload, 20,000 lbs.

MEMORANDA AS TO CHARACTER OF SERVICE.

In 1912 The Northern Navigation Company gave continual service from Sarnia to Soo, Port Arthur, and Fort William.

The Soo is a good natural market—for Western Ontario fruit.

In 1913 and 1914 the service discontinued for all freight out of Sarnia.

In 1915 the company were persuaded to put the service into effect and they carried freight again to the Soo. The markets however were disorganized.

In 1916 they continued the service until the start of the fruit season. Shipments sent to Sarnia knowing that they would not be accepted.

Western Ontario Vegetable and Fruit Growers increased their output believing they would have a continual service.

The trade went to New York State Growers then up to the Michigan Soo and American Commission men opened up offices to handle American produce in the Canadian market.

The Fruit and Vegetable men want to get to the markets. It is a question of service.

The service from St. Catharines across to Toronto—Take shipments offered on Fridays, then nothing taken from Friday until Monday.

WINNIPEG, MAN., May 23, 1914.

Mr. J. E. ARMSTRONG,
Chairman of the Commons Committee,
Ottawa, Ont.

DEAR SIR,—I am in receipt of your favour of the 20th inst., urging me to appear before a Joint Committee of the Senate and House of Commons who have the consoli-

dation of the Railway Act under consideration. I did not receive the telegram from you which you state you sent under the same date as letter.

I would be very pleased of an opportunity to appear on behalf of the Manitoba Grain Growers' Association before the Committee on the important question of the consolidation of the Railway Act, more especially clause 358 of the Bill to which you drew my attention. It appears to me that the Railway Commission or any other body have not effective control on export rates unless that same body can also control the rates on vessels that are a part of a through transportation system. It is a simple matter of bookkeeping for the railways to apportion a loss made on the railway, and make up on the water portion of the through system.

Wire if my travelling expenses will be paid if I appear before the Committee.

Yours very truly,

R. McKENZIE,

Secretary.

Letter dated March 23, 1914, from the Ontario and Western Co-Operative Fruit Company, as follows:—

> It is with a good deal of pleasure we see you are making a strenuous effort to obtain certain amendments or additions to the Railway Act. Our Company is composed of one hundred and fifty fruit growers on whose account last season we handled nearly 350,000 baskets of fruit, equal to about two hundred and twenty-five cars, about half of this going out by Express. From this you will see that this matter is of vital importance to us. We placed the matter before the Councils of the Village of Grimsby, and the Township of North Grimsby, who passed resolutions endorsing the proposed legislation, as you will see by the enclosed copies of the resolutions as passed.

The resolutions following were pased by a Company of Fruit Growers in Western Ontario.

> At present no navigation company which is not owned, chartered or used by a railway company subject to the jurisdiction of the Board, comes under their control. In other words the Richelieu and Ontario Company operating between Queenston, Niagara-on-the-Lake and Toronto, carries a very large amount of fruit. At Niagara-on-the-Lake there is no protection or shelter whatever for receiving the fruit at the dock, and losses have occurred because of destruction by rain. We have no way of compelling this company to provide a shelter because it is not owned, chartered or used by a railway company that is under the Board's control. The Northern Navigation Company, operating the steamers *Huronic, Hamonic,* and *Sarenic* from Sarnia to up-lake ports, have for two years past refused to accept fruit or freight of any kind for Sault Ste. Marie, claiming they have not time to unload same there. This action lost for the western Ontario fruit and vegetable shippers one of their very best markets, because of the natural advantages of getting their shipments there quicker than by all rail. That market has now been diverted almost entirely to New York state. This is another instance where there is no way of remedying conditions, because the Railway Commission has said, 'These companies are not owned, chartered or used by the railway companies subject to the jurisdiction of the Board for the carrying of traffic, and are not, therefore, under the Board's control.'

Mr. ARMSTRONG, M.P. (Chairman).—Now I would like to read just a clause or two from the Secretary of the Fruit Growers' Association of Ontario Transportation Committee at Forest, Ont.:—

> In regard to shipments by water last year, 52,053,913 tons of freight passes through the various canals. Of this amount 39,951,661 tons were products of

mines, 8,522,327 tons the products of agriculture, and the next highest was that of manufactures, 1,881,699 tons. It is well to note that the average rate per ton on Canadian traffic by water in 1912 was 91·04 cents, and in 1913 it was 99·37, while for the same years American traffic was 56·62 cents and 55·19 cents, respectively. Canadian traffic increased per ton in 1913 while American traffic decreased.

From the Fruit Interests of British Columbia.

NAKUSP, B.C., April 6, 1914.

ROBT. F. GREEN, Esq., M.P.,
Ottawa, Ont.

DEAR SIR,—The fruit interests of B.C. are very much interested in House of Commons Bill number eighty-five. This Bill, I think, is being pushed by J. E. Armstrong, M.P., of Lambton.

As it is so far away from Ottawa, I don't know how the Bill is getting along, but it would appear to me that there will be a lot of opposition to such a Bill, therefore I will ask you to give your support to this Bill, and if convenient kindly convey to Mr. Armstrong that he has the solid support of the fruit interests of British Columbia, and that as a member of the British Columbia Fruit Growers' Association I wish him every success.

If the Bill has not already passed, I will ask you to help in getting it put through during the present session, as it is of great importance to the fruit interests as well as all other lines of merchandise that has to be carried by the ordinary lines of transportation. Should you not be too pressed for time, let me know how this Bill is progressing, or if it is passed, or is it side-stepped for the present, but try and do not let the latter happen to same,

You might send me a copy of said Bill, if there is any of them printed.

Sorry to be bothering you with so many letters, but this Bill is of great importance to our interests, therefore I think it is my duty to help, if a letter will aid.

I remain, yours respectfully,

THOS. ABRIEL,
Vice-President, B.C.F.G. Assn.

From the Ontario Vegetable Growers, as follows:—

I note by the morning paper that Leamington waited upon the Government one hundred strong, asking that they be granted a large appropriation for a harbour. That is the same cry that every other port on the lakes is making. What avails it, for the Government to spend our millions opening harbours for the transportation companies, who are willing to accept the advantages of them, and the other untold millions that have been freely spent by the Canadian people to enlarge and deepen our waterways and make navigation possible, when the people who furnish the money have no control whatever of the navigation companies? It seems the height of absurdity, that Lambton county, which is in the centre of inland navigation, is asked to forward their freight all rail to Owen Sound, there to be placed on the Northern Navigation Company's steamers for transportation to Sault Ste. Marie. This means to us four or five days in transit, as against less than twenty-four hours, if loaded at Sarnia.

What object would there be in the Government spending thousands of dollars to open up a harbour at Leamington, if Leamington is in the same position as Lambton in connection with the same market? What advantage does Lambton derive at the present time from its geographical position in connection with its business at the head of the lakes? While rates for this have not been published as yet, it was an ordinary matter for a shipper at Montreal and Toronto to be quoted an all water rate to the head of the lakes, at the same rate as Lambton, and worse than that, was the fact that a Lambton shipper, to secure space, had to get in touch with Toronto three or four days ahead of the date of shipment, to be able to secure space at all. Often it was promised and then the shipper failed to get it.

This matter of Soo connection came up at the executive meeting of the Board of Trade and the representative of the Northern Navigation Company, who also is a member of the Council of the Board of Trade, explained the position of the company, and he most emphatically stated that as he was in charge largely of the operating department, that he was not in favour of their company accepting Soo business.

His argument was that Lambton shippers were at the present time highly favoured with regard to rates, and he considered them extremely unwise to suggest that your proposed legislation should come into effect, as he argued that the Lambton shippers would be the losers by it. This was his talk as a member of the executive.

In the same breath he demanded to know why the Government, or the people, should tell any navigation company how they should run their business.

Allow me to affirm that you have behind you, in this proposed legislation, the entire support of every fruit and vegetable shipping association of the province, and to assure you that they appreciate the good work which you are doing, which we trust you will carry forward to a completion, and that very promptly.

Last spring the Northern Navigation Company notified us of a large advance on all produce rates. After a strenuous session or two with them and a good deal of newspaper agitation we secured an adjustment, allowing them some advance on basket goods only. We pressed for lower rates on certain commodities, such as potatoes, in straight car loads, but were unable to secure any reduction.

The railroads grant what is known as a commodity rate, where shipments of certain products are heavy.

Our county is becoming fast a heavy producer of potatoes, and will need the benefit of much lower rates than are being obtained at the present time, and we cannot press you too strongly to secure for your home county these advantages.

As an illustration, we are to-day paying a water rate on potatoes, to Sault Ste. Marie, 300 miles, 15 cents per cwt., plus dockage at each end, making a total of 20 cents per cwt. Port Arthur, 600 miles, takes the same rate. Compare this with all rail rates, as furnished New Brunswick shippers.

New Brunswick to Toronto, 900 miles, 22 cents per cwt.

New Brunswick to Sarnia, 1,075 miles, 26 cents per cwt.

New Brunswick to Port Arthur, 1,450 miles, 36 cents per cwt.

This all lake rate is altogether out of proportion for services rendered and we see no chance of securing any better rate until Board of Railway Commissioners are in control of the situation.

We might say that our association is the largest co-operative association in the province, and our production unquestionably exceeds any other strictly vegetable association.

Moved by Peter Gardiner, seconded by W. J. Menzies—

That we, the Council of the Township of Sarnia, hereby place ourselves on record as approving of the legislation now being placed before the House of Commons at Ottawa, by J. E. Armstrong, M.P., in Bill No. 85, being an Act to amend the Railway Act. We firmly believe same to be in the general interest of the business community as a whole.

JOHNSTON TAYLOR,
Reeve.

SARNIA, ONT., March 20, 1914.

(*From Lambton Growers Co-operative Association.*)

Moved by A. J. Wellington, seconded by Jared Moore:—

That we, the Lambton Growers Co-operative Association of Lambton County, in meeting assembled, hereby place ourselves on record as approving the legislation now being laid before the House of Commons at Ottawa, by J. E. Armstrong, M.P., viz., Bill No. 85, being an Act to amend the Railway Act.

We further believe that this legislation is in the general interest of all classes of the community who have to transact business with transportation companies, and we, as a co-operative association of over one hundred members who will have products to exceed two hundred cars to move this year, request that this legislation should become operative at the earliest possible date.

(Sgd.) J. W. SMITH,
President.

W. D. FERGUSON,
Secretary.

SARNIA, Ont., March 21, 1914.

Telegram from the Lambton Fruit Growers, which is as follows:—

SARNIA, ONT., May 25, 1914.

J. E. ARMSTRONG, M.P.,
Ottawa, Ont.

We note with pleasure that your Committee considering the new Railway Act meet to-morrow, also note that representatives of Inland Navigation Company have entered strong protest against coming under jurisdiction of Railway Commission when said company are attracting shippers of certain commodities 75 per cent higher freight rates all water and all rail rates on same as quoted based on basis of per ton per mile they no doubt would protest against having their extortionate rates interfered with, but on behalf of London shippers who will have four to five hundred cars of this commodity this season, we request prompt action on this legislation.

LAMBTON GROWERS CO-OPERATIVE ASSOCIATION,
Per GEO. FRENCH, *Manager.*

(Memorandum read by Mr. Armstrong to the Senate and Commons Committee.)

CONSOLIDATION OF THE RAILWAY ACT, CLAUSE 358.

I assume full responsibility for the placing of Clause 358 in the Railway Act. Early in the session, I urged upon the Minister of Railways and Canals the importance of bringing the vessels on our inland waters under the Board

of Railway Commissioners. I am confident that this is legislation in the interests and for the benefit of the people as a whole and after listening to the debate in the House of Commons which took up a great deal of time on three occasions during the present session discussing the conditions on our Great Lakes in regard to the handling of freight, I decided to bring the Bill before Parliament. The amendment which I have added to the present Clause merely gives the Board of Railway Commissioners control over all vessels coming to our ports, compelling them to file with the Board their tariff agreements and tolls.

My object in asking that all vessels coming to our ocean ports should file their tolls and agreements with the Board of Railway Commissioners is in order that we may have some definite data to assist the commission now appointed for the purpose of investigating the ocean freight rates. By making this request of the ocean liners I do not feel that we are interfering in any way with ocean traffic, but it is important, at this time, that we should be made acquainted with the agreements entered into by the interests coming to our ports. It has also been represented to me that there is discrimination by ocean steamships as between Canadian ports. This clause further requests that all boats carrying freight or passengers between a port or place in Canada to a port or place out of Canada on our inland waters, shall come under the jurisdiction of the Board of Railway Commissioners.

For many years past, it has been represented to me that large shippers on our inland waters receive very low freight rates and that their goods are carried by the vessel-men at a very low profit, while, on the other hand, the small shipper is charged, in many instances, for the carriage of similar commodities excessive freight rates. I am convinced that discrimination in freight rates exists on our inland waters to the detriment of the producer, small manufacturer, shipper and consumer.

The purpose of this clause is to try to bring about some solution whereby the small shipper, whether manufacturer or producer, shall not be discriminated against and I know of no better way of judging between these two interests than to place the control of adjusting their differences under the jurisdiction of the Board of Railway Commissioners.

I have in my possession representations from manufacturers and producers complaining against excessive freight rates; the lack of regulations in regard to ports of call, whereby vessels carrying freight will not stop for a few cars of manufactured goods, hay, fruit or vegetables, and will allow these products and materials to remain for days, if not weeks, in some instances to the serious detriment of said products and the loss of trade to the producer.

It is true that the vessel-men claim and I know of some instances where they are perhaps justified in making the following statements:—That the docks in many instances are either owned by railway interests or private corporations and that the charges made by these interests are so excessive that they would rather lose the trade than be held up by the stoppage charges. That the stevedors and help necessary at shipping points have to be taken into consideration. These are matters which would come under the jurisdiction of the Board of Railway Commissioners and satisfactory adjustments brought about. The expenses entailed on the shipper in many instances is most serious and at present he has no one to apply to for a remedy.

Vesselmen are at liberty to call or not, as they choose; the same trouble exists on freight coming from the head of the lakes, and applies particularly to package freight of all kinds, both ways.

I think it well to place on record a short memorandum in regard to the American coasting vessels and the manner in which they are conducted:—

AMERICAN LAWS.

The American Congress by Act of June 19, 1886, as amended by Act of Feb. 17, 1898, provides:—

'No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.'

It is further provided by s. 26 of the Act, Feb. 17, 1898.

'No merchandise shall be transported by water under penalty of forfeiture thereof, from one port of the United States to another port of the United States, either directly or via a foreign port, or for any part of the voyage, in any other vessel than a vessel of the United States.'

'This section shall not be construed to prohibit the sailing of any foreign vessel from any one to another port of the United States: Provided, that no foreign merchandise other than that imported in such vessel from some foreign port which shall not have been unladen, shall be carried from one port or place in the United States to another.'

CANADIAN LAWS.

The Canadian Legislature by Act, 2 E. VII, c. 7, s. 3 (1902) and now Section 955 of Chapter 113 of the Revised Statutes, 1906, provides:

'No goods or passengers shall be carried by water, from one port of Canada to another, except in British ships.

'If any goods or passengers are so carried, contrary to this Part, the master of the ship or vessel so carrying them shall incur a penalty of four hundred dollars; and any goods so carried shall be forfeited, as smuggled.

'Such ship or vessel may be detained by the collector of Customs at any port or place to which such goods or passengers are brought, until such penalty is paid or security for the payment thereof given to his satisfaction, and until such goods are delivered up to him, to be dealt with as goods forfeited under the provisions of the Customs Act.'

COASTING REGULATIONS IN REPORT OF FOREIGN VESSELS.

All foreign vessels trading on the coast and entering the harbours of Canada from sea or inland waters, are governed by the following rules:—

Section 1. Foreign vessels may transport cargo and passengers from a foreign port and land the same at two or more Canadian ports, clearing from each in succession until all of said cargo and passengers are landed.

Sec. 2. Foreign vessels may take cargo and passengers from two or more Canadian ports and transport the same to a foreign port, clearing from each in succession, but taking final clearance from such foreign port at the last Canadian port which they enter on such voyage.

Sec. 3. Foreign vessels shall not take freight or passengers at one Canadian port and land the same at another Canadian port, and the master or owner of any vessel found to have violated this rule shall be subject to a penalty of $400 for each such offence, and the vessel may be detained until the same is paid.

Sec. 4. Foreign vessels bringing cargo or passengers from a foreign port may, after landing the same, be permitted to clear light to another Canadian port for the purpose of loading cargo for a foreign port, and may clear from port to port to complete such cargo, taking final clearance as above.

Sec. 5. Foreign vessels may tow other vessels or things from a foreign port to a Canadian port; but if they drop or part from any such vessel or thing in Canadian waters, they shall not again take such vessel or thing in tow for the purpose of moving the same further in Canadian waters.

Sec. 6. Foreign vessels may tow other vessels or things from a Canadian port to a foreign port, but having parted from such vessels or things, or any of them, in Canadian waters, they cannot take such vessels or things in tow to move them further in Canadian waters; but this and the preceding rule are not to apply to an accidental parting of such vessel by breaking hawser or other temporary damages.

Sec. 7. Foreign vessels shall be entitled to the foregoing privileges only on condition of strict compliance with the provisions of 'The Customs Act,' respecting reporting inwards and outwards on entering and leaving Canadian ports by the masters of such vessels.

Sec. 8. Where vessels bring cargo or passengers from a foreign port consigned to more than one Canadian port, the masters of such vessels must make a full report of the whole contents at the first port of entry, and distinguish therein the items to be there landed and the ports at which all other items are to be landed. Such report must be made in duplicate, with an additional copy for each succeeding port at which there are goods to be landed; and the collector or proper officer of Customs shall mark each item in such report with the entry number, if entered, and in case of any item landed and placed in sufferance warehouse without entry, it shall be marked with the letter 'L' in the said report; duplicate copies to be filed at said first port of entry, and the others to be carried with the vessel, and one to be filed at each succeeding port of entry.

Sec. 9. Repealed.

Sec. 10. For any violation of the requirements of these rules the master or owner of any such vessel shall be subject to a fine of $400, or such other fine or penalty provided by the said Act as may be applicable to the case, and the vessel may be detained until such fine or penalty is paid.

Senator WATSON: Have they any control of rates in the United States? They do not say anything about rates.

Mr. ARMSTRONG, M.P. (Chairman). They have no control of rates on their inland waters. I am merely trying to show that the marine laws of Canada and the customs regulations in regard to our vessels plying or trading along our coasts give absolute protection from any foreign vessel in regard to that work; and by merely stating that I wish to emphasize the fact that we do protect our shipping.

Senator WATSON: The Americans have the same protection for their vessels.

Mr. ARMSTRONG, M.P. (Chairman): Very much the same.

Senator WATSON: It is a question of control of rates.

Mr. ARMSTRONG, M.P. (Chairman): I am merely showing that they have absolute control over our coastwise trade. Now I would like to quote from the Report of the Grain Markets Commission of the Province of Saskatchewan for 1914, and if you will be good enough to allow me to embody these extracts I will not trouble the Committee further with them. The Commission made use of some very strong statements, and I think it is wise that we should have all the information we can have on this subject.

Perhaps the most serious objections to the present conditions are being made by the shipper of grain in the Northwest.

The Royal Commission mentioned was appointed by the province "to examine into the ways and means for bettering the position of Saskatchewan grain on the European markets."

This Commission reports that the grain of Canada pays more freight to reach Liverpool than does the grain of any other country in the world; also that there has been practically no change since 1909 in the cost of transporting a carload of wheat to Fort William or Port Arthur and selling it on commission. (Mr. Henderson said the rate increased in 1913 by 20 per cent.)

The Commission adds:—

> Were Winnipeg to Fort William the ultimate market for our wheat, it would be unnecessary to pursue the inquiry east of these points. Some of our wheat is finally disposed of at Winnipeg, of course, but the great bulk of it is not. Moreover, the price received for that which goes the farthest is what sets the price for the remainder throughout the season of heaviest marketing. It therefore concerns the farmer even more than it concerns any one else what the relation is between the Winnipeg market and the importing markets of Europe, for upon the transportation and other connecting links between these markets will be the price received by the farmer in one part depend.

(Extracts from Grain Market Commission's Report.)

SECTION VI.

Cost of Marketing and Exporting Wheat from Saskatchewan.

In order to set forth in complete form and as clearly as possible the services which must be performed by the different interests in connection with exporting wheat from Saskatchewan to Great Britain, a table has been prepared and is presented herewith setting forth those services and the charges that were levied in 1913 for their performance. For the sake of comparison, the charges levied for the same services in 1909 are also given.

The services enumerated are those performed in connection with 1,000 bushels of No. 3 Northern wheat shipped through a country elevator in Saskatchewan, hauled to Winnipeg, there sampled and graded by the Government, sold on commission to an exporter, hauled to Fort William elevator, inspected out into a lake steamer before the close of navigation, carried to a Georgian Bay or Lake Erie port, unloaded through a transfer elevator into a railway car, hauled to Montreal, unloaded from the car into a transfer elevator, unloaded thence into a steamer and carried to Liverpool or London. This procedure and route are selected because more grain has been handled by this procedure than by any other, and more has been exported via this route than by any other Canadian route. The charges on other routes by which large quantities of wheat are shipped will be considered later.

The charges may be grouped naturally under two heads:

1. Charges paid directly by grower and shipper of consigned grain.

2. Charges paid directly by purchaser of consigned grain, but indirectly by grower and shipper because deducted from the price the grain realized.

The Country Elevator Owner—

	1909.	1913.
For receiving, weighing, elevating, cleaning (when possible) spouting, insuring against fire, storing for first fifteen days and loading into car.	$ 17 50	$ 17 50
(For subsequent storage and insurance, if any, three-quarters of a cent per bushel per month. No change.)		

	1909.	1913.
The Railway Company—		
For hauling from a shipping point in Saskatchewan to Fort William, a distance of from 641 to 1,086 miles, $96 to $144 per 1,000 bushels, on an average, say	$120 00	$120 00
For hauling from a Georgian Bay port or Port Colborne to Montreal	42 50	42 50
(This is a five per cent rate, but it includes elevator charges at either end of the haul; for these services three-quarters of a cent has been deducted.)		
The Dominion Government—		
For sampling and inspecting at Winnipeg, fifty cents per car; for weighing at Fort William, thirty cents per car; for cargo inspection out of Fort William, fifty cents per 1,000 bushels; for cargo weighing out of Fort William, thirty cents per 1,000 bushels.	1 60	1 60
The Commission Merchant—		
For selling wheat on Winnipeg Grain Exchange, one cent per bushel	10 00	10 00
The Exporter—		
Not possible to determine exactly, say	10 00	5 00
(See chapter on exporting.)		
The Terminal Elevator Owner—		
For receiving, elevating, cleaning, spouting, insurance against fire and storage for the first fifteen days	7 50	7 50
The Bank—		
Interest and exchange on money supplied to meet draft of shipper on commission merchant; interest on say $700 for one month	3 50	3 80
Exchange on say $700	90	1 75
Interest on money supplied to exporter to finance the exporting of the wheat on $1,000 for say two months	10 00	10 85
The Lake Steamship Company—		
For carrying wheat from Fort William or Port Arthur to Georgian Bay ports or Port Colborne (October or November charter)	10 00	20 00
The Transfer Elevator Company—		
For elevation from vessel to cars at Georgian Bay or Lake Erie port and fifteen or thirty days' free storage of export grain	2 50	2 50
For transfer from railway car to ocean vessel at Montreal and twenty days' free storage	9 00	9 00
The Ocean Steamship Company—		
For carrying wheat from Montreal to Liverpool, London or Glasgow	40 00	75 00
(On the basis of November, 1912, freight rates, May, June, July and August rates were higher in 1913.)		

Marine Insurance—

	1909.	1913.
Insurance while on Great Lakes; average figure (first and second-class boats) for September-November shipments to lower lake ports, 7 per cent on $800	$5 60	$5 60
Insurance while on Atlantic (first half of November rate from Montreal) .4 per cent on $1,000	4 00	4 00
Sundry Charges—		
Insurance against fire while in eastern transfer elevators, transfer of money from Europe to Canada, fees connected with sundry documents, certificates, &c., say	10 00	10 00
Total	$304 60	$346 60

These charges it will be remembered are those levied on wheat exported by one of the direct and most used routes and with the least delay. More wheat is shipped through without being held for any length of time at any point in transit, than is held in store for extended periods *en route*. This condition results in higher charges being asked and secured for lake and ocean carriage in the fall, and in lowering of the price that importers are willing to pay for our wheat delivered during the last months of the year.

Whether the higher price that could be obtained from importers for later deliveries would more than offset the storage and interest and insurance charges, that must accumulate month by month against grain once it has been delivered at a public grain storage, is a point that cannot in the nature of things be determined.

So, too, is the question of whether finances could be obtained to permit of a larger percentage of our wheat being held in public storage elevators over the winter for sale to Europe in the spring.

An imaginary shipment of one thousand bushels of wheat has been traced through a much frequented route with a view to noting the various charges it encounters in its journey to the ultimate markets. To corroborate in general the total of the charges as above set forth, and to give some idea of how these compare with charges encountered by our grain when exported through the United States the following statement by a leading exporter will be of interest. We find at present (late fall of 1912) the cost of taking wheat from Fort William by lakes to a foreign market, such as Antwerp, Rotterdam or London, is very closely as follows:—

Elevation at Fort William and fees	$ .83 per bus.
Lake freight, Fort William to Buffalo, average for the season	1.50
Marine Insurance	.40
Rail, Buffalo to New York including elevation at Buffalo	6.00
Elevator and lighterage at New York	1.00
Seaboard commission for handling grain and documents	.25
Ocean Insurance	.35
Average tramp steamer rate last fall	10.50
Total	$20.83

Besides this there are some incidental items, such as interest on the money invested in this grain between the time it is paid for in Fort William until it is on board ocean steamer and draft can be drawn against ocean bills of lading; also small items of exchange between west and east. From Winnipeg to New York this amounts to in the fall about one-eighth of a cent more on exchange and one-quarter of a cent more on interest and adding an exporting profit of one cent per bushel, will make a

total cost of about twenty-two and a half cents between Fort William and foreign markets.

Ocean freights this fall, 1912, have been exceedingly high, much higher than we have ever known them in twenty years and I am satisfied much higher than they will be this coming summer. For instance, we find during the fall of 1911, a usual tramp steamer rate from standard ports like New York or Philadelphia to standard ports abroad ruled about six and a half cents instead of ten and a half cents this past fall. Going back further than that we find a series of several years in which the standard rate was about four and a half cents per bushel.

Our own judgment is that by the time the Welland Canal is completed to its proposed larger depth the standard ocean freight will be found to be not over five cents per bushel. In our judgment this Welland improvement is exceedingly important to the grain growers of Western Canada. With that improvement we believe grain can be shipped during most of the open season of navigation via Montreal at something like the following cost:—

Elevation and fees at Fort William	$ .83
Lake freight on large steamers to say Ogdensburg for tranship to Montreal	1.50
Marine insurance Fort William to Montreal	.60
River freight Ogdensburg to Montreal including elevation	1.75
Harbour charges at Montreal	.30
Ocean insurance	.50
Seaboard commission for shipping and handling documents	.25
Ocean freight to standard ports abroad	5.00
Total	$10.73

Adding interest and exchange, say one-half cent, and exporting profit of one cent and you have a total cost between Fort William and foreign markets of twelve and a quarter cents as against an average cost this past fall of twenty-two and a half cents.

In our judgment with normal conditions again in the ocean freight market and with the improvements in the Erie canal, the deeper Welland and a normal lake freight this cost of reaching a foreign market will be found not far out of the way.

The actual cost of exporting grain in the spring of 1913 via Montreal as given by a firm of Canadian dealers is as follows:—

Cost via Great Lakes, St. Lawrence River and Montreal:—	
Charges at Fort William	$ 1.00
Lake freight, Fort William to Montreal	7.25
Lake insurance	.35
Montreal broker	.25
Ocean freight, Montreal to Europe	9.75
Ocean insurance	.25
Total	$18.85

The cost of exporting via New York at the same time, is estimated by the same firm as follows:—

At Fort William	$ 1.00
Lake freight	2.25
Lake insurance	.22
East from Buffalo (rail)	5.50
Jobbers at New York	.90
Brokers and weighing	.25
Ocean freight	9.00
Total	$19.32

SECTION XI.

Lake Freight Rates.

There are three classes of lake freight rates on Canadian grain ex Fort William or Port Arthur. These are:—

(*a*) The through rate, all water to Montreal;

(*b*) The rate from upper lake ports such as Fort William, Port Arthur or Duluth to lower lake ports such as Tiffin on Georgian Bay; Goderich and Port McNicoll on Lake Huron, Port Colborne and Buffalo, on Lake Erie, or Kingston on Lake Ontario;

(*c*) The rate from Lake Erie or Lake Ontario ports to Montreal.

These, with the rail rates from lower lake ports to Montreal and to United States Atlantic ports, cover the entire lake freight situation.

Unquestionably the cheapest means of carrying wheat from Fort William to Montreal should be by continuous passage in the hold of one steamer. The efforts of those responsible for developing and controlling the inland waterways of Canada and their trade. This can be done in two ways at least.

AVERAGE Lake Freight Rates on Wheat from Fort William or Port Arthur to Montreal for each month of the season of navigation in the years 1909 to 1912 inclusive.

	CENTS PER BUSHEL OF WHEAT.			
	1909.	1910.	1911.	1912.
April	.....	5·400	5·062	.....
May	4·825	5·402	4·750	6·022
June	3·977	4·026	3·812	5·178
July	3·100	3·171	3·187	4·750
August	4·000	2·190	4·250	4·750
September	4 670	3·750	4·625	5·125
October	6·080	4·791	5·520	6·666
November	5·103	4·611	6 041	7·332
December	3·666	.....	.....	.....

YEARLY AVERAGES (FROM SAME SOURCE.)

	CENTS PER BUSHEL.			
	1909.	1910.	1911.	1912.
Wheat	4·930	4·164	4·993	5·932
Oats	2·781	3·142	2·520	4·015
Barley	5·750	3·500	2·416	3·625

The Department of Trade and Commerce gives the following as having been the rates during 1910 and 1911.:—

1910.—'Rates opened at from six cents per bushel on wheat for first trips; for second it quickly went up to five cents per bushel. Early in June it dropped to four

cents per bushel. Eary in June it dropped to four cents per bushel where it remained until the beginning of July, when the low rate of the season, three cents for wheat, was charged. In August the rate went back to three and one-half cents. At beginning of September it went to four cents; later on to five cents. During October and November the rate fluctuated between six and seven and one-half cents; the top rate being eight cents which was charged early in November.'

1911.—'Rates opened at five and one-quarter cents per bushel of wheat. In May dropped to four and one-quarter cents per bushel. About middle of September rose to four and three-quarter cents. October and November rose to six and one-half cents per bushel.'

The Department of Railways and Canals gives the rates from Fort William to Montreal during 1912 as follows:—

Month.	Cents per bushel.	Cents per ton mile.
May	5·444	·147
June	4·433	·120
July	5·203	·141
August	5·227	·141
September	5·439	·214
October	6·149	·184
November	7·129	·193

Another advantage which the lake and rail route enjoys is access to the cheapest winter storage in Canada. During the months of September, October and November export trade is largely in the next month, whichever that may be. Subsequent business is largely for May or June delivery. Thus the exporter must be prepared to acquire a quantity of grain in the late fall and store it until the following spring. Following are the rates per bushel charged for winter storage at the principal points at which any large amount of space is available:

Short Period for the Winter.

Country elevators in the west, 1/40 cents per day equals 4½ cents.

Terminal elevators at Fort William or Port Arthur, 1/30 cents per day equal 6 cents.

Goderich and some other Lake Huron or Georgian Bay elevators, ⅛ cents per day, 15 days, 1 cent.

Port McNicoll, ⅛ cents per day, 15 days 1½ cents.

Port Colborne, ⅛ cents per day, 15 days 1½ cents.

Montreal, ¼ cents per day, 10 days 1½ cents.

It will be noted:—

1. That western storage costs three or four times as much as eastern;

2. That some Georgian Bay elevators, at least, offer winter storage for half a cent less than it can be obtained elsewhere in the eastern.

In addition to the cheapness of the storage it should be noted also that there is several millions of bushels more capacity available at Georgian Bay and Lake Huron ports than at the principal ports on the all-water route. Thus lake and rail routeing to the shipper desiring winter storage carries with it advantages, not at once apparent in a comparsion of rates via this route and via the all-water route, equivalent to one and five-sixths cents. The two Canadian routes, therefore, may be regarded as being on a parity the one with the other.

THE ROUTE VIA BUFFALO AND UNITED STATES ATLANTIC PORTS IN BOND.

It is to be regretted that with such a magnificent waterway as the St. Lawrence in our possession, Canadian grain should be exported through any but Canadian channels. There is, however, some slight compensation in the fact that a considerable quantity of United States grain is exported via some Canadian ports, principally Montreal. The following statement sets forth the volume of these two crossing streams:—

Quantity of Canadian wheat exported from United States ports in the years mentioned:—

	Bushels.
1909	23,487,488
1910	27,129,471
1191	24,192,228
1912	55,507,853

Quantity of United States wheat exported from Canadian ports in the years mentioned:—

	Bushels.
1908	10,908,194
1909	12,761,605
1910	3,884,202
1911	1,623,172
1912	7,335,494

Practically all of these exports were from Montreal.

It has been pointed out that an increasing percentage of our grain shipments from Fort William and Port Arthur, amounting in 1912 to forty-two per cent, go to Buffalo or other United States lake ports for export in bond through United States Atlantic ports. This condition exists in spite of the following charges levied against wheat exported via Buffalo:—

	Per bushel wheat.
Lake freight rate Fort William to Buffalo say	2 cents.
Rail haul Buffalo to New York or Boston including elevation charges at Buffalo of half a cent per bushel and lighterage at New York	5½ "
(This rate is increased to six cents when navigation closes at Montreal.)	
Elevation, weighing, &c., at New York	¾ "
	8¼ "

As compared with:—

	Per bushel wheat.
Fort William to Montreal, all water, including all port charges at Montreal and twenty days free storage	6⅜ Cents.
Fort William to Montreal, lake and rail, including all port charges at Montreal and additional fifty days free storage	7 "

It will be noted that in spite of the much greater distance from upper lake ports, and the fact that Buffalo lies east of Cleveland (the source of the return cargo) lake freight rates to Buffalo are as a rule less than to Canadian ports on Georgian Bay and Lake Huron. The Commission believes that the principal cause for this apparent discrimination lies in the fact that shipments from Canadian upper lake ports to

United States lower lake ports are international business and as such are open to either Canadian or United States vessels, while shipments from Canadian upper lake to Canadian lower lake ports are Canadian business and as such are, under Canadian Government coastal regulations, available only to vessels of British register. Whatever the causes may be this alternative remains: either the lower rate for the longer haul to Buffalo is unremunerative (in which case United States vessels would scarcely accept this business, whereas at present they do the most of it), or the higher rate for the shorter haul is unduly remunerative to Canadian Vessel owners who are only enabled to levy the extra charges by reason of being protected from outside competition by the costal regulations.

The explanation of the increasing shipments to Buffalo in spite of the heavier charges levied on shipments routed via United States channels is to be found in four facts:—

1. The ports of New York, Baltimore, etc., are open twelve months of the year, whereas the port of Montreal is open only seven months of the year; it is to these United States ports that grain shipped to Buffalo goes for export;

2. Ocean insurance rates and, partly in consequence, ocean freight rates, are much lower from United States Atlantic ports than from Montreal;

3. In consequence of high insurance rates and the port being smaller there is less certainty about securing ocean space at Montreal just when needed than at United States Atlantic ports;

4. Both United States and Canadian vesssels are available for shipments to Buffalo or other United States ports, while only Canadian vessels are available for shipments to Canadian ports, and owing to the seasonal nature of the business there is not always sufficient Canadian tonnage to take care of it.

The first three reasons concern ocean rather than lake transportation, and consideration of them will be reserved to a more appropriate place.

Regarding the fourth reason, it is to be noted that the Canadian lake shipping interests are protected by the coastal regulations of the Department of Customs. These interests should provide the service they are protected to enable them to provide, or, as far as Canada is concerned, the carrying trade on the great lakes should be thrown open to all comers. The service required of Canadian lake shipping interests is the provision of an adequate amount of tonnage for the carriage of Canadian grain from upper lake ports to Canadian lower lake ports or Montreal at a reasonable freight rate.

It is more important to Canada that the St. Lawrence waterway be established as the principal artery through which shall flow the grain exports of Canada, and that western grain shall secure reasonable rates on the lakes and upper St. Lawrence, than that an irresponsible and unregulated Canadian merchant marine shall be built up on the great lakes. The Dominion Government can seek to secure an adequate service at a reasonable cost in one or more of several ways. It can:

1. Endeavour to reach an agreement with the United States Government by which, in place of the present childish arrangement that enables the shipping interests of each country to levy higher tolls on domestic business than they can levy on international business, all ports of the great lakes shall be thrown open to the ships of both countries for all classes of business. This would widen the competition on the lakes and should redound to the advantage of Canadian lower lake ports and the western farmer; or

2. In the event of such an arrangement not being made, throw the carrying trade between Canadian lake ports open to the United States vessels in the interests of the St. Lawrence route and the western farmer; or

3. Establish a government operated line of steamships on the great lakes to provide sufficient Canadian tonnage for Canadian business and to keep freight rates on a reasonable level; or

4. Fix certain maximum rates on grain freights between Canadian ports, with the understanding that if Canadian tonnage does not prove adequate to the proper handling of the business, tonnage of other flags will be admitted to the trade.

As has already been pointed out, a very large portion of our grain reaches market through the port of New York. It is transported by boat to Buffalo, thence by rail to New York, where, for many reasons, it can find a European market in the easiest way. The present cost of transportation of our wheat from Buffalo to New York is five and a half cents per bushel in the summer and six in the winter, with an additional charge in New York harbour of three-quarters of a cent for elevating from the lighters and weighing. This service has been performed in past years for as low as two and a half cents by the old Erie canal in small boats carrying about eight thousand bushels, which quantity is called in the trade a load of grain. This canal has become obsolete and there is being built a new canal. This canal is one of the largest works of the kind ever undertaken, and is said to be only second in that respect to the Panama canal. Boats are now being contracted for by a number of companies who expect to operate them as soon as the Erie canal is opened. The Commission has been informed by some of the men who are building these boats that after going into the question with engineers and others, they are satisfied that wheat from Buffalo can be put alongside ocean steamers in New York harbour at a cost to them of one cent per bushel. They expect to be able to develop a trade by which they will get return cargoes and serve the whole of the Great Lakes region with package and other freight transportation. They are going into the matter in a thoroughly comprehensive and business-like way and some of the directors of these companies are now in Europe studying similar situations there, from the standpoint of securing and handling west bound freight.

One of the largest exporters of Canadian grain, and a man who is active at the present time in the building of these barges, recently said that there was no doubt in his mind but that as soon as the Erie canal was in complete operation Canadian grain would be carried from Buffalo to New York during the period of navigation at a rate not exceeding two cents per bushel. The present rate as previously stated is from five and a half to six cents per bushel.

The expense per day in connection with running a 10,000 ton freighter on the lakes, carrying about 300,000 bushels of wheat, as given by the president of a lake freight line at Duluth and by the captain of a large Canadian freighter, is given below. There is little difference in the cost of operating Canadian and American boats, wages being slightly lower on Canadian boats.

Wages	$ 55 00
Coal	100 00
Provisions	10 00
Towage	10 00
Oil and grease	15 00
Insurance	50 00
Total	$ 240 00

The earnings of this class of boat carrying a bulk cargo of grain between upper and lower lake ports would be $4,500 per trip at one and a half cents per bushel. A vessel makes a trip in about seven days and a round trip in fifteen days. The large ships usually get coal cargoes back, on which they earn thirty cents per ton or, on a cargo of 10,000 tons, $3,000.

If the above cited figures are approximately correct and traffic could be so arranged that a boat would have full cargoes of grain during the whole season between the upper and lower lakes the business would be immensely profitable one at one and a half cents per bushel. On the contrary, if the traffic has to be crowded into eight

trips out of the fifteen that the boat should make, a much higher freight charge must be made. To take full advantage of the finest of all inland waterways, which has been improved at an expense of about $300,000,000 by the Canadian and American Governments, grain must be available for freights during the whole shipping season, so that rates may be reduced and kept at the minimum.

The traffic must be so arranged that the boats shall be loaded with all possible dispatch, and the expense of about $250 per day shall be available for grain moving and not for lying idle in ports.

The information given to the Commission goes to show that with the same business methods adopted as exist in the ore business grain could be carried just as cheaply, i.e. for twenty-five cents net per ton.

Mr. ARMSTRONG, M.P. (Chairman) then proceeded to read his memo. as follows:—

The vesselmen have been here to protest against this legislation. They claim that parliament should not surround them with restrictions of any kind; that they should be left free to charge whatever freight or passenger rates they choose; that regulations as to time or place of stopping, filing of rates or traffic agreements, in short, no restrictions whatever should be placed on their operations. They further state that they are not common carriers in the same way as that term is applied to railways.

Permit me to remind the Committee that the people of Canada, through their representatives, have spent through the Public Works Department, since Confederation——

Statement showing total expenditure by this Department on Harbour Works and improvements to navigation. (Sea coasts and inland) from Confederation to March 31, 1913.

Construction and repairs	$56,523,856 36
Dredging	34,129,833 04
Total	$90,653,689 40

This total includes the sum of $6,845,460.34, expended from Confederation to June 30, 1904, for improving the River St. Lawrence Ship Channel. Cost of buoying and lighting since Confederation, $34,318,455 for construction and maintenance.

The expenditure by the Department of Railways and Canals up to March 31, 1913, $138,308,079.51. Making a total of $263,280,223.91.

When the Welland Ship Canal is completed this will be increased, along with the other improvements under consideration at Halifax, St. John, Quebec, and Montreal, Vancouver and other ports, to $350,000,000.

In the statement of the Department of Railways and Canals, page 85, you will find a further amount of $1,929,021.97. This expenditure is increasing year by year and the charges of maintenance of operation are borne by the people.

Vesselmen are continually asking for improvements to our harbours and rivers. We have a large fleet of dredges, ice-breakers and tugs continuously employed in assisting navigation. Our rivers are buoyed and lighted, wireless telegraphy and many other aids to navigation are maintained and operated by the people of Canada, practically all of which are free from the vesselmen and for which they are not compelled to make any sacrifice. Is it unjust or unfair to ask that the public be surrounded by some safeguards in return for these many advantages? Is it too much for the people to ask that some assurance be given them that their interests will be protected and that whatever is done by the vesselmen is in the interest of the public.

The vesselmen protest strongly against being controlled by the Railway Commission and say that such control will result in increased freight rates and combinations. They insist that the speculative element will be removed.

If by placing the shipping interests under the Railway Commission, as they argue, means increased freight rates, why should vesselmen protest or object to this legislation? Increased freight rates mean increased profits and as the vesselmen have plainly told us they are not in the business for their health alone, why should they object to this legislation? I am also told that increased profits will bring added competition and that more freighters will be added to the fleet. I do not believe that the people of Canada would object seriously to increased tonnage on our inland waters.

On January 1, 1913, there were 8,380 vessels numbered on the Register Book of the Dominion, and the total to-day is 8,500.

The Marine and Fisheries Department estimate that 42,490 men and boys inclusive of the masters, were employed on ships registered in Canada during the year 1912.

Total tonnage through Canadian and American canals, 79,718,344 tons; 55 per cent of this passed through Canadian canals.

Forty thousand four hundred and ninety-six passengers passed through Canadian canals in 1913, this being 52 per cent of the total.

We furnish every means to assist transportation; we protect the marine interests from foreign shipping.

There is nothing in the proposed measure that will in any way interfere with the supervision exercised by the Marine Department over steamers—this control being entirely in connection with the safety of navigation and the protection of seamen.

We retain for our own vessels the exclusive right to enjoy the coasting privileges. It is therefore necessary in the interest of the public that the shipping interest should be controlled in some way by the Government and I know of no better way than to have them come under the control of the Board of Railway Commissioners.

By the statement in the Bill which says from any port in Canada to any port out of Canada, the Board of Railway Commissioners will be able to compel the ocean-going vessels to file with them all trade arrangements, tolls, traffic, etc. They will, if thought advisable, have to file with the Board their Standard Tariffs. Similar to R.R. Sec. 325 they will further file from time to time any special tariffs which will be lower than the standard rate. There are three sets of rates. On our railroads very little of our commerce moves under standard tariffs. These are the tariffs which provide for the different rates on all the different classes in the further classification. The standards are valuable because they make a maximum rate, irrespective of the fact that very little business may move, or that carriage is expensive, but their greater use is in constructing the different commodity tariffs which are scaled down from the standard. In like manner it is used for town and distribution tariffs. These also are scaled down from the standard. Generally speaking, all commodities moving in bulk, are handled on commodity rates, which are very much lower than any standard rate. While the practical movement or distribution of merchandise is made from distributing centres under town tariffs which are again lower than the standard rates, town tariffs would not have ready application to the steamship business, except as forming part of a rail and water movement. Commodity rates would from the first be important, as independent carriers might well handle a large proportion of the grain and flour movement from terminal to terminal, or from terminal to flour mill. For instance, from Fort William to flour mill at Port Colborne.

The vesselmen seriously objected to this legislation because of the competition likely to be brought about by the United States vesselmen. We already have restrictions protecting our shipping interests from foreign competition, such as our customs regulations, marine laws governing shipping, which are certainly most lenient.

Clause 358, as recommended by me, compels United States shipping interests to file their tariff and trade agreements when taking traffic from our ports, the books will be open to inspection and the Railway Commission will be in a position to better judge the wisdom of the statement made by the vesselmen.

Grain is the only commodity which the United States vessels are likely to carry for Canadians from the head of the lakes in large quantities. Restrictions were removed last year from these vessels entering our ports; no serious harm appears to have resulted to our vesselmen. In fact, Mr. Ferguson admitted the other day that he personally came to Ottawa and urged the Government to remove these restrictions knowing that the Canadian fleet could not handle the grain.

The railways which have large boats on the Great lakes for the carriage of passengers and freight are now working under the Railway Commission in a similar way to the manner in which we are asking all vessels by this legislation to operate. I have not heard any serious objection from the railway men as to the manner in which they have been treated by the Railway Commission, and as they are not experiencing any hardships through the present arrangement why should not all other vessels be treated in the same manner?

It has frequently been stated that the Canadian vessel owners do not receive a reasonable return for capital invested.

I read the following clipped from the Canadian Courier, March 5, 1914:—

R. & O. RUMOURS.

MARCH 5, 1914.

There has been some talk on the "Street" about the possibility of Mr. James Playfair organizing a rival steamship enterprise to the Canada Steamship Lines. This does not seem to be very probable, for the steamship merger is now so secure, largely because of its terminal arrangements, that any new concern would have their difficulties.

Some facts as to the year's business of the R. & O. are to hand. Recently, Mr. James Carruthers said that the earnings would be very near the million mark, and it is now stated that they are $976,512. Mr. Carruthers points out that the different companies making up the Canada Steamship Lines would show net profits of $1,600,000.

The shares of the Canada Steamship Lines are to be placed on the London market, it being the desire of the directors to establish a market for the securities before they are transferred to old R. & O. holders. Up to date $3,500,000 has been received from the sale of the new issue in London; the greater part of this has been used in settling obligations of the new merger.

This Bill will empower the commissioners when necessary to provide a speed limit. For instance, on the River St. Clair the United States Government control the speed of vessels; on our shore no limit is enforced. Consequently vessels are forced through our waters at very rapid rate, and as a result the shore line is being washed away at many places and much property seriously damaged.

I introduced a deputation from several townships bordering on the River St. Clair to the Minister of Public Works some weeks ago, asking that the shore lines and bridges be protected, and for retaining walls to be built that appeared to me would cost hundreds of thousands of dollars. The grievances referred to by me call for a remedy. I believe the remedy is provided in the clause and my amendment.

There is no law at present regulating tolls and trade agreements on our inland waters, other than with boats connected or controlled by our railways.

It is the duty of this Government to provide fair regulations.

To enable manufacturers, producers and merchants to do business on basis of reasonable service.

To make steamboat owners responsible for failure of certain duties.

To fix reasonable penalties and insure reasonable service.

To give the Commission power to control the speed limit.

To provide for fair and equitable treatment of all interests using our navigable waters.

Vessels which give reasonable service need not fear this law; those which do not give such service should be compelled to do it.

Give shippers a fair show to secure a fair service for a fair rate.

I regret exceedingly that this matter should have been forced on the Committee at such an early stage in its proceedings, because I feel that in the position in which I am placed as chairman, representing the House of Commons, it may be thought that I am taking an unfair advantage of that position as chairman and forcing my views on this Committee. I can assure you that nothing is further from my thoughts. Were I removed from the chairmanship, I would feel more free to force my views and opinions on the Committee than I am in the position I occupy. All I would ask is that this Committee will give all interests an opportunity to present their views in regard to this very important matter, and I am sure that it is the wish of the Committee that whatever legislation is enacted that it will be for the general welfare of our people as a whole, and that this clause will be decided on its merits. Up to the present I have not heard anything to convince me that I am not right in proposing this legislation and pressing for its acceptance by the Committee, and I hope that my being chairman of the Committee will not prejudice the case one way or the other.

UNITED FARMERS OF ALBERTA.

CALGARY, ALBERTA, May 28, 1914.

J. E. ARMSTRONG, Esq., M.P., Chairman,
House of Commons Committee for Consolidation of Railway Act,
Ottawa.

DEAR SIR,—I am in receipt of your of the 20th instant, together with the copy of Bill No. 2 and notes on same, I thank you for your courtesy in forwarding us this information.

After discussing the proposed amendments with our president and several other members of our executive who happened to be available, I beg to advise you that we are entirely in sympathy with the object of clause 358 and unanimously endorse same. We believe, however, that as at present worded, the clause opens the way for a legal action as to the extent of its meaning.

Lines 2 and 3, clause 358, read at present, 'extend and apply to traffic carried by any railway company, etc.' We believe that to make this clause really effective it must be made to cover all water traffic, whether carried in boats owned by railway or other company or individual, and would respectfully suggest that the word 'railway' be eliminated from this clause, making it read, 'traffic carried by any company or individual,' etc., etc., or whatever amendment your committee might suggest which would effect the purpose hereinbefore outlined.

Yours faithfully,

(Sgd.) P. P. WOODBRIDGE,
Secretary.

List of Steam Vessels Owned in Canada, but Registered Elsewhere, and Operated on the Great Lakes.

Official Number.	Name of Ship.	Port of Registry.	Where built.	When built.	Built of.	Length in feet and 10ths.	Breadth in feet and 10ths.	Depth in feet and 10ths.	Gross tonnage.	Net tonnage.	Horse power of Engine and how Propelled.	Owner, Manager or Managing Owner. (+) signifies Manager. (M.O.) signifies Managing Owner.
114,149	A. E. Ames	Newcastle	Howden-on-Tyne.	1903	Steel.	246·2	37·0	21·6	1,637	1,637	217 screw.	Merchants Mutual Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
129,491	A. E. McKinstry	Glasgow	Port Glasgow	1910	"	240·4	42·7	18·3	1,963	1,203	159 "	The Canada Interlake Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
124,258	Acadian	Glasgow.	Port Glasgow	1908	"	248·5	43·0	23·7	2,305	1,457	162 "	The Canada Interlake Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
125,440	Beaverton	Newcastle	Hebburn-on-Tyne.	1908	"	249·3	42·7	21·0	2,012	1,357	106 "	Merchants Mutual Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
129,497	C. A. Jaques	Glasgow	Dumbarton	1908	"	249·0	43·0	22·7	2,105	1,590	212 "	Richelieu & Ontario Navigation Co., Ltd., Montreal, Que.
125,427	Canadian	Newcastle	Newcastle	1907	"	248·3	43·0	22·8	2,214	1,444	186 "	The Canada Interlake Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
124,212	Carleton	Glasgow	Greenock	1907	"	240·0	41·0	14·2	1,351	830	152 "	F. E. Hall, 14 Place Royal, Montreal, Que.
99,224	Corunna	Leith	Leith	1891	"	230·0	34·1	19·7	1,269	792	99 "	The Canadian Lake Transportation Co., Ltd., Toronto, Ont.
129,479	D. A. Gordon	Glasgow	Port Glasgow	1910	"	249·3	43·0	23·7	2,301	1,434	162 "	The Canada Interlake Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
123,950	Dunelm	Sunderland.	Sunderland	1907	"	250·0	43·2	23·5	2,319	1,481	230 "	Richelieu & Ontario Navigation Co., Ltd., Montreal, Que.
132,069	Easton	Sunderland.	Sunderland	1912	"	250·0	42·7	16·4	1,757	1,129	157 "	Mathews Steamship Co., Ltd., Board of Trade Bldg., Toronto, Ont. (+) J. T. Mathews.
122,856	Edmonton	Newcastle	Hebburn-on-Tyne.	1906	"	249·2	42·7	20·6	1,983	1,341	106 "	Mathews SS. Co., Ltd., Board of Trade Building, Toronto, Ont. (+) J. T. Mathews.
*125,443	Empress of Fort William.	Newcastle	Wallsend	1908	"	250·0	43·0	22·3	2,181	1,383	205 "	Richelieu & Ontario Navigation Co., Ltd., Montreal, Que.
125,428	Empress of Midland.	Newcastle	Wallsend	1907	"	252·0	42·5	23·2	2,224	1,630	200 "	Richelieu & Ontario Navigation Co., Ltd., Montreal, Que.
133,077	*Fordonian*	Glasgow	Port Glasgow	1912	"	250·0	42·6	23·6	1,368	1,905	... "	The Canada Interlake Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
114,446	H. M. Pellatt	Newcastle	Port Glasgow	1903	"	239·7	37·0	21·8	1,502	1,038	164 "	Merchants Mutual Line, Ltd., Toronto, Ont. (+) J. W. Norcross.

* Formerly "Mount Stephen."

125,442	J. A. McKee	Newcastle	Newcastle-on-Tyne.	1908	Steel	248·0	43·1	22·5	2,158	1,375	204	screw.	Western Steamship Co., Ltd., Toronto, Ont.
114,447	J. H. Plummer	Newcastle	Low Walker	1903	"	246·0	37·0	21·8	1,582	992	210	"	Merchants Mutual Line, Ltd., Toronto, Ont. (+) O. W. Norcross.
125,457	Kaministiquia	Newcastle	Wallsend	1909	"	250·0	43·0	22·6	2,173	1,401	205	"	Western Navigation Co., Ltd., Fort William, Ont.
125,459	Keyport	Newcastle	Newcastle-on-Tyne.	1900	"	250·1	42·5	17·9	1,721	1,298	110	"	The Keystone Transportation Co. of Canada, Ltd., Montreal, Que.
125,458	Keywest	Newcastle	Wallsend-on-Tyne.	1909	"	250·0	42·5	18·0	1,725	1,298	110	"	The Keystone Transportation Co. of Canada, Ltd., Montreal, Que.
97,990	Leafield	Newcastle	Sunderland	1892	"	249·6	35·2	16·6	1,454	922	150	"	Algoma Central & Hudson Bay Ry. Co., Sault Ste. Marie, Ont., (+) S. V. McLeod.
123,961	Mapleton	Sunderland	Sunderland	1909	"	250·0	42·7	16·4	1,782	1,140	106	"	Merchants Mutual Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
118,615	Meaford	Newcastle	Wallsend-on-Tyne.	1903	"	248·6	42·0	20·6	1,889	1,201	225	"	The Farrar Transportation Co., Ltd., Collingwood, Ont. (+) Geo. E. Fair.
118,618	Neebing	Newcastle	Low Walker-on Tyne.	1903	"	247·6	42 0	21·8	1,879	1,187	200	"	The Canadian Northwest Steamship Co., Ltd., Port Arthur, Ont. (+) F. S. Wiley.
95,225	Nevada	Leith	Leith	1890	"	230·0	34·1	19·5	1,276	794	99	"	The Canadian Lake Transportation Co., Ltd., Toronto, Ont.
109,701	Paliki	Sunderland	Sunderland	1889	"	240·0	36·0	17·1	1,578	993	119	"	The Algoma Central & Hudson Ry. Co., Sault Ste. Marie, Ont. (+) S. V. McLeod.
129,734	Port Colborne	Newcastle	Wallsend	1909	"	250·0	42 5	17·8	1,729	1,306	110	"	Forwarders, Ltd., Kingston, Ont.
123,965	Saskatoon	Sunderland	Sunderland	1910	"	250·2	42·8	16·4	1,798	1,148	122	"	Merchants Mutual Line, Ltd., Toronto, Ont. (+) J. W. Norcross.
105,718	Scottish Hero	Newcastle	Sunderland	1895	"	297·0	40·0	21·5	2,202	1,386	350	"	The Canadian Lake & Ocean Navigation Co., Ltd., Toronto, Ont. (+) J. W. Norcross.
88,739	Sindbad	Newcastle	Scottswood	1883	Iron	216·2	31·2	13·5	897	539	99	"	F. E. Hall, 14 Place Royal, Montreal, Que.
129,767	*Toiler*	Newcastle	Newcastle-on-Tyne.	1910	Steel	248·2	42·5	17·4	1,659	1,334	70	"	Richelieu & Ontario Navigation Co., Ltd., Montreal, Que.
106,605	Turret Chief	Newcastle	Sunderland	1886	"	253·0	44·0	19·7	1,881	1,197	250	"	The Canadian Lake & Ocean Navigation Co., Ltd., Montreal, Que. (+) J. W. Norcross.
104,279	Turret Crown	Newcastle	Sunderland	1895	"	253·0	44·0	19·4	1,827	1,142	250	"	Turret Crown, Ltd., Toronto, Ont.
87,342	Wexford	London	Sunderland	1883	"	250·0	40·1	23·7	2,104	1,340	200	"	Western Steamship Co., Ltd., 72 Bay St., Toronto, Ont.
132,060	Yorkton	Sunderland	Sunderland	1911	"	256·0	42·0	16·4	1,772	1,136	157	"	Mathews SS. Co., Ltd., Board of Trade Building, Toronto, Ont. (+) J. T. Mathews.

NOTE: Names of Motor Veasels are in *Italics*.

Total Numbers of Vessels 36
Gross Tonnage 66,668
Registered Tonnage 44,163

Above Boats were registered. These Boats do not come under the Canada Shipping Act as regards Masters and Mates—No Records.

PUBLIC—No. 260—64TH CONGRESS.

H. R. 15455.

An Act to establish a United States shipping board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States within its territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act:—

The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its districts, territories, or possessions and a foreign country, whether in the import or export trade: Provided, that a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce,"

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one state, territory, district or possession of the United States and any other state, territory, district, or possession of the United States, or between places in the same territory, district or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any state, territory, district, or possession thereof, or of any foreign country.

Section 2. That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a state, territory, district, or possession thereof.

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

Section 3. That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice-chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the president, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with the due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and to a fair representation of the geographical divisions of the country. Not more than three of the com-

missioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this Act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judiciously noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business.

Section 4. That each member of the board shall receive a salary of $7,500 per annum. The board shall appoint a secretary, at a salary of $5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law.

The expenses of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board.

Until otherwise provided by law the board may rent suitable offices for its use.

The auditor for the state or other departments shall receive and examine all accounts of the board.

Section 5. That the board with the approval of the president, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: Provided, that neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel:—

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag of a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

Section 6. That the President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of

peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business.

Section 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.

Section 8. That when any vessel purchased or constructed by or transferred to the board as herein provided, and owned by the United States, becomes, in the opinion of the board, unfit for the purposes of this Act, it shall be appraised and sold at public or private competitive sale after due advertisement free from the conditions and restrictions of this Act.

Section 9. That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanour and subject to a fine of not more than $5,000 or to imprisonment of not more than five years, or both such fine and imprisonment.

Section 10. That the President, upon giving to the person interested such reasonable notice in writing as in his judgment the circumstances permit, may take possession, absolutely or temporarily, for any naval or military purpose, of any vessel purchased, leased or chartered from the board: *Provided*, That if in the judgment of the President, an emergency exists requiring such action he may take possession of any such vessel without notice.

Thereafter, upon ascertainment by agreement or otherwise, the United States shall pay the person interested the fair actual value based upon normal conditions at the time of taking of the interest of such person in every vessel taken absolutely, or if taken for a limited period, the fair charter value under normal conditions for such period. In case of disagreement as to such fair value it shall be determined by

appraisers, one to be appointed by the board, one by the person interested, and a third by the two so appointed. The finding of such appraisers shall be final and binding upon both parties.

Section 11. That the board, if in its judgment such action is necessary, to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of such vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

Section 12. That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for

the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board.

Section 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama canal, to a total amount not to exceed $50,000,000: Provided, that any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other money received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Section 14. That no common carrier by water shall directly or indirectly—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (*a*) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (*b*) the loading and landing of freight in proper condition; or (*c*) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanour punishable by a fine of not more than $25,000 for each offense.

Section 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner for an exclusive, preferential, or co-operative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be lawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Section 16. That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favourable a rate of insurance on vessel or cargo, having due regard to the class of vessel, or cargo, as is granted to such carrier or other person subject to this Act.

Section 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Section 18. That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

Section 19. That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon the changed conditions other than the elimination of said competition.

Section 20. That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose or to permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it

shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any state, territory, district, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Section 21. That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.

Whoever wilfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or wilfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanour, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

Section 22. That any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act.

Section 23. Orders of the board relating to any violation of this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the board other than for the payment of money made under this Act shall continue in force for such time, not exceeding two years, as shall be prescribed therein by the board, unless suspended, modified, or set aside by the board or any court of competent jurisdiction.

Section 24. That the board shall enter of record a written report of every investigation made under this Act in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the states, territories, districts, and possessions thereof.

Section 25. That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the board, operate as a stay of such order.

Section 26. The board shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign Government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign Government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the board to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges then the President shall advise Congress as to the facts and his conclusions by special message, if deemed important in the public interest, in order that proper action may be taken thereon.

Section 27. That for the purpose of investigating alleged violations of this Act, the board may by subpœna compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpœnas may be signed by any commissioner, and oaths or affirmations may be administered, witnesses examined, and evidence received by any commissioner or examiner, or, under the direction of the board, by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the board and witnesses shall, unless employees of the board, be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpœna shall, on application by the board, be enforced as are orders of the board other than for the payment of money.

Section 28. That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpœna of the board or of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Section 29. That in case of violation of any order of the board, other than an order for the payment of money, the board, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

Section 30. That in case of violation of any order of the board for the payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any

point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the board in the premises.

In the district court the findings and order of the board shall be prima facia evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

All parties in whose favour the board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favour of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from the date of the order.

Section 31. That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

Section 32. That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed $5,000.

Section 33. That this Act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this Act be construed to apply to interstate commerce.

Section 34. That if any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

Section 35. *That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of $100,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the board, including the payment of salaries herein authorized.*

Section 36. *The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.*

Approved, September 7, 1916.

The following documents were handed in by Mr. Francis King, and ordered to be printed in the record:

KINGSTON, Ont., May 21, 1917.

FRANCIS KING,
Chateau Laurier,
Ottawa.

Marine Committee Kingston Board of Trade protests against marine rates being controlled by Railway Commission on grounds that competition is necessary in best interests of Dominion.

R. EASTON BURNS,
Chairman.

LA CHAMBRE DE COMMERCE DES TROIS-RIVIÈRES
(THREE RIVERS BOARD OF TRADE).

TO WHOM IT MAY CONCERN:—

This is to certify that at a special meeting of The Three Rivers Board of Trade, held May 18, 1917, Mr. J. T. Tebbutt, was appointed to act as delegate of this Board and to co-operate with delegates of other boards in opposing the proposed amendment to the Railway Act to the effect that the Water Lines should come under the control of the Board of Railway Commissioners.
THREE RIVERS, Que., May 19, 1917.

HENRI BISSON,
Secretary.
Three Rivers Board of Trade.

QUEBEC, Que., May 21, 1917.

GEO. HADRILL, Sec. Montreal Board of Trade, Montreal.

Council of Quebec Board of Trade strongly against any Federal Legislation which would have for object to put all our inland Steamship Companies under jurisdiction of the Board of Railway Commissioners, because our shippers would lose advantage of competition during season of navigation.

(Sgd.) T. LEVASSEUR.

11.55 A.M.

SARNIA BOARD OF TRADE,
SARNIA, Ont., May 19, 1917.

To Board of Trade of Kingston, Ont.

At a general meeting of our board held here on Thursday, May 17, the question of clause No. 358 of the Bill entitled "Traffic by Water," which reads:—

> "The provisions of this Act shall, so far as deemed applicable by the board, extend and apply to the traffic carried by any railway company, by sea or by inland water, between any ports or places in Canada, if the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by sea or inland water between any such ports or places, and the provisions of this Act in respect of tolls, tariffs and joint tariffs shall, so far as deemed applicable by the board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada."

and which is suggested to be included in the consolidation of the Railway Act, was considered, and the following resolution was submitted to the meeting and unanimously carrier:—

"That, in the opinion of this board, it is inadvisable and undesirable that the 'Traffic by water' clause, No. 358, should be adopted.

"That it would impose restrictions that would injure the development of shipbuilding and individual ship owning, and cause undue and undesirable restrictions on the freedom of trade and competition on the waterways, which should remain free to everyone, and that the president of the board be authorized to so advise by wire the Dominion Government of such conclusion."

The telegram which was dispatched, read as follows:—

SARNIA, Ont., May 18, 1917.

Mr. ROBIDOUX, Clerk of the Railway Committee,
House of Commons, Ottawa.

"Mr. Armstrong, member for East Lambton, under date May twelfth, wrote our board regarding clause No. 358, Traffic by Water being included in Bill for consolidation of Railway Act, and requested if our body intended to support the clause, you should be communicated with, and we beg to advise that the clause was discussed in general meeting last night and resolution unanimously passed that you would be communicated with and advised that, in the opinion of our board, it would not be to the best interests of Canada or of this community to pass any legislation which would stifle ship-building or owning, or interfere, hamper, or cause any change in any conditions that have heretofore existed in the free and unmolested traffic, carried by ships on the inland waterways of Canada or the high seas, which are nature's highways, open and free for any one to use.

"Sarnia Board of Trade,

"J. L. BUCHAN,
"President."

If your board have, or intend considering this matter, and can consistently support the decision we have arrived at, we will be pleased to have you take similar action and communicate by wire to that effect to Mr. Robidoux, Clerk of the Railway Committee, House of Commons, Ottawa, as the question will be before the Dominion Government on Tuesday next, May 22.

J. L. BUCHAN,
President.

BAIRD & BOTTERELL,
STOCK, BOND AND GRAIN BROKER,
WINNIPEG, May 17, 1917.

Mr. ROY WOLVIN,
Montreal Transportation Co.,
Montreal, Que.

DEAR SIR,—We have learned the Private Bills' Commission at Ottawa are considering putting under the dictation of the Railway Commission all Canadian tonnage on the upper lakes, such as are carrying freight between lower and upper lake ports.

Any such action, we believe, would have a very decided tendency towards the curtailment of the building of additional tonnage.

We have learned that considerable tonnage has been taken from the upper lakes, and has been put into the sea trade for war purposes. Possibly a lot of this tonnage will not return. The more tonnage we have on the upper lakes the more favourable rates would exist, by reason of increasing Canadian tonnage forcing American competition to meet fair and equitable rates.

A great deal of money has been spent by our Government in the building up and expanding of Canadian channels, and providing the facilities for Canadian grain especially going through Canadian channels.

The Canadian West to-day, in my opinion, is, and will continue for some time, to increase rapidly in its grain producing. The more Canadian tonnage we can have on the lakes, the more advantageous it will be in the movement of grain from this country. I fear the Canadian West is going to develop in grain producing much faster than the Canadian channels will develop, therefore, anything that could be construed as against encouraging capital towards providing new tonnage, I think would be against the common good, and I trust this Bill now getting consideration at Ottawa will do nothing that would interfere with the progress of growing tonnage on the upper lakes.

Yours very truly,

BAIRD & BOTTRELL,

per H. N. BAIRD.

E. R. WAYLAND & Co.,

GRAIN,

WINNIPEG, Man., May 17, 1917.

Mr. R. M. WOLVIN,

C/o. The Montreal Transportation Co.,

Montreal, Que.

DEAR SIR,—We understand that the Private Bills Commissioners in Ottawa are considering a Bill which provides for vessels in Canada to be put under the control of the Railway Commission.

We have been considering this matter and really do not think that such a step would be of interest to the country. In a young country like this, in order to facilitate its development, conditions must be made attractive for the investment of capital. Under present conditions our lake tonnage is being continually added to by the construction of new vessels; all of which are certainly needed, but if any new Bill is passed providing for the control of lake vessels by the Railway Commission, it is our opinion that private capital will not consider it advisable to invest further in the construction of new vessels. Further, we think that it is necessary that the lake fleet should be continually added to, because there is no doubt that as time goes on, the crops in the western part of this country are going to increase in volume very considerably, and this being the case, we will certainly require an increased number of lake vessels. It would seem to us therefore, that the passage of any such bill, as is now proposed, would have a detrimental effect on the country in general.

Yours truly,

E. R. WAYLAND & Co.

PARRISH & HEIMBECKER,
GRAIN SHIPPERS AND EXPORTERS,
WINNIPEG, Canada, May 17, 1917.

R. M. WOLVIN, Esq.,
C/o. Montreal Transportation Co.,
Montreal, Que.

DEAR ROY,—We learn that the Private Bills Committee at Ottawa is considering a Bill which provides for all vessels in Canada be put under the Railway Commission. As a shipper, I do not think this would be to the interest of the country, on account of the American boats being able to take away business from this side. I am enclosing you herewith a copy of a letter written to Mr. Robb to-day, and you might explain to him the numerous other reasons why it would not be well for any change to be made.

Yours truly,

NORMAN HEIMBECKER.

NH/M.

May 17, 1917.

JAS. A. ROBB, Esq.,
Valleyfield, Que.

DEAR MR. ROBB,—We are informed that the Private Bills Committee at Ottawa is considering Bill 358, which provides for all vessels in Canada to be put under the Railway Commission, and covering vessels carrying cargoes between Canadian ports. Now, the American freight carriers have not been under the Interstate Commerce Commission, and are not now. By having the Canadian boats under the Railway Commission it would restrict competition on the lakes, and it would also make the owners hesitate about furnishing additional tonnage. We are quite aware of the fact that there are very few boats left in the lake trade, and no one would be inclined to invest any money in a boat if he would have no control over it. If the Canadian boats were put under the Railway Commission, the Railway Commission would no doubt establish rates from time to time, and the American boats would be taking the business. You are aware that rates fluctuate, the same as the market, as it is a case of supply and demand. We have written to Mr. Wolvin, who is now in the east, and he can explain many other reasons to you why such a change would be a mistake. We might further state that we are not interested in any vessels.

Yours truly,

PARRISH & HEIMBECKER,
per W. P.

GOODERHAM, MELADY & COMPANY, LIMITED,
GRAIN AND COMMISSION MERCHANTS,
WINNIPEG, Man., May 17, 1917.

R. M. WOLVIN, Esq.,
Care Montreal Transportation Company,
Montreal, Que.

DEAR SIR,—We understand that the Private Bill Commission is considering Bill No. 358, which provides for all vessels in Canada to be put under the Railway Commission, which we understand to mean the Railway Commission will have authority to deal with freights covering vessels between Canadian ports.

We have taken this matter into our most serious consideration and are of the opinion that such a step would not be to the advantage of the grain trade or the country at large, as it might mean distinction to the disadvantage of the Canadian vessels in competition with American vessels from Canadian ports to American ports.

We would, therefore, protest strongly against the Railway Commission having anything to do with the rates on Canadian vessels, and would ask you to enter our protest accordingly.

Yours very truly,

GOODERHAM, MELADY & COMPANY, LTD.,
per H. E. SEVERS.

WINNIPEG, May 17, 1917.

Mr. R. M. WOLVIN,
C/o Montreal Transportation Co.,
No. 14 Place Royale,
Montreal, P.Q.

DEAR SIR,—We have been advised that the Private Bills Committee at Ottawa are considering Bill No. 358, which provides for all vessels in Canada to be put under the Railway Commission that that Committee deems advisable and covering vessels carrying freights between Canadian ports.

In our opinion, this would be a great mistake and we deem it imperative that a concerted action be taken by all varieties of business affected, which includes the grain shipping business, to prevent the passage of this Act.

Such an Act would practically eliminate competition on the lakes in so far as the movement of grain by water between Canadian Lakeports is concerned. In view of the fact that the bulk freighters on the American side have never been under the Interstate Commerce Commission control, it would place the American freighters at a tremendous advantage over the Canadian lake vessels. Undoubtedly, if the Canadian vessels were placed under the control of the Railway Commission of Canada, that Commission would establish definite and set tariffs.

This would enable the American vessels to reduce their rates to capture all the business because it takes only a fraction of a cent per bushel to divert grain shipments in any large volume from one avenue of transportation to another and if the American route offered half a cent cheaper than the Canadian route, the traffic would go via American ports.

There is indeed a grave injustice in this to the Canadian vessel owner. The Commission would establish fixed rates and whilst it would be impossible for the Canadian steamers to reduce their rates to meet competition, it would also be equally impossible for them to increase their rates to take advantage of a situation where higher rates would be gladly paid by the grain shippers.

Therefore, the American vessels could command the traffic when rates were low and obtain every advantage when rates advanced. Such a situation must eventually discourage the enterprise of ship building and the registration of steamers under the Canadian ensign.

We hope sincerely that this Act will not be passed as it will be greatly detrimental to Canadian shipping interests and there is no evidence that any advantage could be gained by its passage. We believe that every legitimate effort should be made by those interested to prevent its passage.

Yours truly,

CANADA ATLANTIC GRAIN CO., LTD.

MOSES COHEN,
President.

CHATHAM, Ont., May 21, 1917.

Mr. J. E. WALSH, Chateau Laurier, Ottawa, Ont.

DEAR SIR,—We wish to call your attention to the proposed amendment to the Railway Act, Clause No. 358, Traffic by Water.

The Dominion Sugar Co., who transact a very heavy shipping tonnage both by rail and by water, are opposed to this consolidation. Our principal reasons are as follows:—

To place Canadian vessels under commission control would standardize water freight rates and would indicate a differential under the rail rates according to classification, thus eliminating previous competition; for instance, the rate of freight all rail from Chatham to Winnipeg is similar to that from Montreal to Winnipeg although Chatham is 500 miles nearer Winnipeg than Montreal. When steamers are in a position to come to Chatham we should be favoured with a rate of freight at least 15 cents per hundred less by water to Port Arthur thence rail to Winnipeg. If, however, the freight tariffs of the steamship companies are placed under jurisdiction of the Board of Railway Commission, the Montreal rate of freight by water will be the same as applies to Chatham, although you can see at a glance just how much farther the steamers will have to travel from Montreal to reach Port Arthur than they will when carrying commodities from this vicinity. This condition would apply not only to commodities manufactured by us but also to all others.

While the Canadian freight rates would be set by the Railway Commission as far as it affects Canadian vessels, the United States boats would not be so controlled. This, we believe, would eventually have the effect of transferring a great deal of business now plying by Canadian steamers to the United States steamers, as they would be in a position when competition becomes keen to cut rates, whereas this would be a criminal offence if under the control of the Canadian Railway Commission.

It also appears to us, providing the above objections could be overcome, that it would be impossible to make freight rates for all steamers, in view of the difference in the class of boats, both as to size and also as to facilities for carrying traffic. A small boat would come to Chatham and Wallaceburg, if promised a full tonnage, to better advantage than a large boat, and, in some cases where some steamers, for various reasons, could carry a cargo at a fair price, other steamers would show a loss under similar conditions.

MOSES COHEN, *President.*

Altogether we consider it would not be to the best interests of Canada or of this community to pass any legislation placing steamships under Government control.

Yours truly,

DOMINION SUGAR CO., LIMITED,

C. H. HUVNSIR,

CHH/B. *Sec'y-Treas.*

KINGSTON, Ont., May 21, 1917.

Clerk of the Railway Commission,
Ottawa, Ont.

DEAR SIR,—Our attention has been called to Bill 358 and after careful consideration we are of the opinion that the Bill would discourage the investment of private capital in the construction of new lake vessels and in addition to injuring the shipbuilding business we feel that it would be a detriment to Canada.

We trust, however, that the proposal as outlined will not be carried out.

Yours very truly,

KINGSTON SHIPBUILDING CO., LIMITED,

per J. F. MCMILLAN.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 18—MAY 23, 1917

(Containing representations, etc., from the Mechanical Staff of Railway Companies and from the Brotherhood of Railway Employees. Proposed new section.)

OTTAWA
PRINTED BY J. DE L. TACHÉ,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY.
1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
Committee Room,
Wednesday, May 23, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Bradbury, Carvell, Cochrane, Green, Macdonald, Macdonell, Maclean (York), Nesbitt, Oliver, Sinclair, and Weichel.

The Committee resumed consideration of the Bill, and proceeded to the consideration of sections 284, 289, 302, and 311, dealing with the operation and equipment of cars and locomotives, etc.

The superintendent of motive power and the general superintendent of eastern lines of the Grand Trunk Railway Co., and others were heard, as well as the representatives of the Brotherhood of the Railway Employees.

At one o'clock the Committee adjourned until Friday at 11 o'clock a.m.

Notice of Proposed New Sections.

By the Brotherhood of Railway Employees:

EXHIBIT 'B.'

HOURS OF WORK.

1. In this section, unless the context otherwise requires,—

(*a*) "railway" includes all bridges and ferries used or operated in connection with any railway and all the line or lines in use by any railway company operating a railway, whether owned or operated under a contract, agreement or lease;

(*b*) "employee" means any person or persons actually engaged in or connected with the movement of any train;

(*c*) "on duty" shall include the entire period of service or responsibility therefore.

2. This section shall apply to any railway company under the jurisdiction of the Parliament of Canada, and to all the officers, agents and employees thereof engaged in the transportation of passengers or property by rail in Canada, or from any place in Canada to any place outside of Canada, or from any place in Canada through a foreign country to any other place in Canada.

3. No railway company, its officers or agents, shall require or permit any employee, subject to the provisions of this section, to be or to remain on duty for a longer period than fourteen consecutive hours; and whenever any such employee has been continuously on duty for fourteen hours he shall be relieved and not required or permitted again to go on duty until he had been at least ten consecutive hours off duty; and no such employee who has been on duty fourteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on

duty without having been at least eight consecutive hours off duty: Provided that the foregoing provisions shall not apply in cases of excess service arising solely and wholly because of grave and unforseen casualties or exigencies against the occurrence of which the exercise of the highest degree of care and diligence on the part of such railway company, its officers or managing agents, could not have provided; but delays occasioned by overloading engines with excess tonnage, engine failures, defective drawbars, hot journals, or bursted air-hose, shall not be held to suspend the operation of the law under the foregoing proviso, and the excess service permitted by the provisions of this proviso shall in no case continue longer than the period of actual delay caused by such unforseen casualty or exigency.

4. In all prosecutions under this section the railway company in the case shall be deemed to have knowledge of all the acts of its officers and agents and to have authorized such acts.

5. Every railway company subject to the provisions of this section, shall report to the Board of Railway Commissioners for Canada, under oath, within thirty days after the end of each month, every instance in which its employees have been on duty for a longer period than is prescribed by this section. The officers of the said Board shall, from time to time, inspect the register books of the railway companies and make such other inquiry as is necessary for the proper observance of the provisions of this section.

6. Every railway company which requires or permits any of its employees to be or to remain on duty in violation of the provisions of clause 3 of this section shall be guilty of an offence and liable to a penalty of two hundred dollars for each such violation, to be recovered in a civil suit to be brought on information filed by the said Board with the Attorney General of the Province wherein such violation has been committed, with instructions to take such proceedings as are necessary in the case. But no such suit shall be brought after the expiration of one year from the date of such violation.

(2) The said Board shall file with the Attorney General of the province wherein any violation of the said provisions takes place the necessary information as soon as the fact of such violation comes to the knowledge of the said Board.

7. The execution and enforcement of the provisions of this section shall be under the jurisdiction of the said Board and all powers heretofore possessed by the said Board by virtue of any Act of Parliament are extended to the execution and enforcement of the provisions of this section.

8. Nothing contained in this section shall be construed to make it obligatory upon any railway company to require service of fourteen hours in any twenty-four-hour period of any employee, or to make unlawful any agreement between any such railway company and any such employee for a period of service of less than fourteen hours in any twenty-four-hour period.

9. This section shall come into force six months after it receives the assent of the Governor General.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
OTTAWA, May 23, 1917.

The Committee met at 11 a.m.

Mr. J. A. RITCHIE, K.C., appeared for the All Canada Fire Insurance Federation.

Mr. W. H. CURLE appeared for the Canadian Pacific Railway.

Mr. F. H. CHRYSLER, K.C., and Mr. W. C. CHISHOLM for the Grand Trunk.

The CHAIRMAN: The railway experts are here this morning and we will commence with clause 302. We have set aside to day for the railway men. Whom do you wish to call first, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I will ask Mr. W. D. Robb, superintendent of the Motive Power of the Grand Trunk to make a statement.

The CHAIRMAN: We are dealing with Section 302.

Mr. CHRYSLER, K.C.: This section was proposed by the brotherhood, I understand.

Mr. JOHNSTON, K.C.: It is proposed by the brotherhoods that there should be added to Section 302 the following words:

> That every locomotive engine shall be equipped and maintained with an ashpan that can be dumped or emptied without the necessity of any employee going under such locomotive.

It is proposed to add that section to 302, although it might be added in another place more conveniently.

Mr. CHRYSLER, K.C.: It is printed in part 5 of our proceedings. To save time, Mr. Robb need not be examined about this. We have very little to say in regard to it, but Mr. Robb is here and can give any information the Committee desire upon this particular proposal. The companies say that rule is in force today, that every locomotive shall be equipped with an ashpan that can be dumped or emptied without the necessity of any employee going under such locomotive. The Board made an order some years ago, and Mr. Robb says it is in force and it is observed, and they have no objection to it. Our only objection to it is that it is adding a section to the Railway Act that is already covered by the general power given to the Board to make regulations with regard to equipment. I will ask Mr. Robb a few questions. As to this rule being observed by your company, what do you say?

Mr. ROBB: Well, we are observing the rule, and if at any time there should be any departure from it in any way, and the appliances get out of order, the railway inspectors take the matter up with the inspectors at the terminals, and the matter is taken up with the Board.

Mr. CHRYSLER, K.C.: Is there any engine that is not equipped?

Mr. ROBB: No, none, there is some kind of device in the large engines that can be dumped, and in the smaller engines they are equipped with a blower, which serves the same purpose, and can be worked without the men going under the engine.

Mr. CHRYSLER, K.C.: I propose to put this statement on the evidence, and leave the Committee to decide the matter. We have no objection to the enactment but we say it is there already. Then there is a proposal about the inspection which is not in the Bill, a proposal of the employees, which appears in No. 5 of the Committee's proceedings, page 72, with regard to locomotive inspection. Of course the men have

not asked strictly that that be made a part of this bill. I scarcely think the Government would undertake to make it part of the bill without considering it, but in effect the system is in force already under the regulations as to the equipment of locomotives. Will you tell us, Mr. Robb, what is the practice now with regard to inspection of locomotives?

Mr. ROBB: Well, the locomotives are being inspected by the engineers and also by the shop staff, and in addition to that the Railway Commission have their inspector to inspect these engines, and while the boiler shop rules, which were introduced some years ago by the Railway Board, covered the inspection of the boilers, they have extended their inspection, and while I understand there is no order given, at the same time they inspect the whole of the locomotive, just as called for there, when they get down to these different terminals. They do not confine themselves to boilers. They inspect all the engine, and any irregularity or anything that has come to their notice has been attended to, just the same as if they had an order. It is the rule to inspect all these engines.

Mr. CHRYSLER, K.C.: At page 72 of the proceedings of the committee there is a draft bill with regard to inspection.

Mr. MACDONELL: Are you referring to section 302-B?

Mr. JOHNSTON, K.C.: Yes, page 72 of No. 5 report.

Mr. CHRYSLER, K.C.: It is marked 302-B there. Mr. Robb will answer any questions the committee desire to ask when I get through with my examination, but our position with regard to that section simply is that it is entirely unnecessary. The Board have power under the general section, which I will come to in a moment, No. 289, to make orders which will cover the inspection of locomotives, but I will ask you, Mr. Robb, as to the inspection of the locomotives by the companies?

Mr. ROBB: Well, the locomotive inspection by the companies is that the engineers inspect their own engines at the different terminals along the right of way, along the railroad, when they have time, and when they come to the terminal they deliver their engine. Before leaving the engine they make a general inspection of it—that is the part which they can see. The other parts of the locomotives—if it is a modern locomotive—cannot be possibly handled by the engineer, unless they are over a pit, and they are not over a pit at all times; but the engineer just inspects—and it is an agreement between the engineers and the company that they shall inspect—the engine on the outside, make a general inspection, and after that the under part of the engine is inspected by the company inspector after it comes into the terminal, before it is allowed to go out into the service again.

Mr. CHRYSLER, K.C.: What is the character of the inspection made by the Board? How is it carried out?

Mr. ROBB: Well, the Board have their inspector who has certain districts, and they visit our terminals from time to time. They do not have an inspector who stays there all the time, and they come to visit the terminals unexpectedly, and the inspector goes over all the engine at the terminal. He inspects any and every part he likes, and where he finds defects he takes them immediatly to the man in charge to have rectified, which would have been reported by the engineer or our inspector, and, in addition to that, he makes a report to the Board, and the Board sends that report, showing the number of matters that the inspector has found to the company, send it direct to me, and then I take it up with the master mechanic, to have these remedies made right, if they have not been attended to.

Mr. MACDONELL: Does this inspection by the Board take place at any terminal point in Canada?

Mr. ROBB: Yes, any terminal point at all.

Mr. JOHNSTON, K.C.: The Inspectors come without notice?

Mr. ROBB: Yes.

Mr. MACDONELL: What is the objection to making it a regulation?

Mr. GREEN: What is the objection to making it part of the statute?

Mr. ROBB: It would necessitate considerable additional expenditure on the part of the Company, because in addition to appointing inspectors the drawing up of a lot of reports, and so on, will be necessary that we do not have to at the present time.

The CHAIRMAN: You mean reports to the Board?

Mr. ROBB: Yes, reports to the Board and reports that we have to make out ourselves, forms that we have to make out, and so on.

Mr. GREEN: Would not the inspection be much more thorough?

Mr. ROBB: There would certainly be much more of it, that is true. There would be much more of it, and probably to watch the matter more carefully would necessitate the appointment of additional inspectors on the part of the Railway Company.

Mr. NESBITT: When the Board's Inspector goes to your roundhouses, does he inspect all the engines that are there?

Mr. ROBB: Yes, as a rule. He inspects the engines inside and outside, he goes over them all.

The CHAIRMAN: There is no particular objection then to the amendment being added?

Mr. CHRYSLER, K.C.: Our objection to things of this class is not that you are giving more power to the Board, we do not object to that, but to the double-barrelled supervision provided by Act of Parliament and the Board. For example, if the Board does not do something you pass an amendment saying that the Board must do it. Where a matter is already in the hands of the Board we think there should not be additional legislation covering the same machinery and the same powers. As it is at present, if the Board finds out there are mistakes in regulations, they can correct them. If Parliament makes a mistake in its enactments that mistake is not so easily corrected; it takes some time at all events, to find it out. That is an objection on principle. It is not made with respect to this particular feature because we think it is already covered, or already in the hands of the Board.

Mr. NESBITT: Mr. Robb says that the engineer on coming in with his locomotive has the right to inspect it. Suppose he finds there is something wrong, what course is then followed?

Mr. ROBB: Then the engineer goes to the office, where he enters the matter in a report book kept for that purpose.

Mr. CHRYSLER, K.C.: It is the engineer's duty to do that?

Mr. NESBITT: Is it absolutely necessary, then, for the Company to repair the defect found before they send some one else out with that engine?

Mr. ROBB: Yes, the engineer making the discovery, books the repair work which has to be done. The Company is supposed to do that work, and it is attended to before the engine goes out again.

Mr. NESBITT: If the Company do no make repairs has the engineer a right to refuse to go out again with that engine?

Mr. ROBB: No, he has not the right to refuse, it all depends upon the work that needs to be done. If he came in and reported one of the driving wheels was gone he would have the right to refuse to take the engine out, and he would not be asked to take it out. But if he came in and stated that he wanted the right driving box examined because of knocking, and it was examined, and found that there was only a very slight knock, the engine would go out just the same, because to do that work

we would have to bring the engine in and take out the wheels, whereas the engine might be capable of running two or three weeks before it would be necessary to do that work, there being only a slight knock in the wheel. There are different kinds of work on locomotives. There might be something to the tender wheels rising to a sharp flange. Well, the foreman looks at it. He is a competent man, and he says "That wheel is all right, we will run another trip or two. Go ahead and run her". In that case the engineer would not think of refusing to take that engine out.

Mr. NESBITT: Then it depends on the nature of the defect?

Mr. ROBB: Absolutely on the nature of the defect on the locomotive.

Mr. NESBITT: As to whether he is supposed to take out his engine or not.

Mr. Robb: Yes. Another man may come in and say "My crosshead requires lining up". The foreman looks at it and says, "That is very little, it is only one sixteenth of an inch. We will allow that engine to run until it gets to one-eighth of an inch. You can run another two trips with that engine". In that case also the engineer would be perfectly satisfied to take the engine out and would not think of hesitating in so doing.

Mr. CARVELL: Suppose the proposed amendment becomes law, wherein will it alter the conditions from what you have described?

Mr. ROBB: It would simply mean the imposition of additional expense on the Company by compelling them to appoint additional inspectors.

Mr. CARVELL: That is not the point. Take the illustration you gave of the lining up of the crosshead. What you have said is not applicable to that.

Mr. ROBB: But the Board's inspectors have to look after the work on all these engines, as well as the inspectors of the Railway Company, and they make their reports from time to time.

Mr. SINCLAIR: This proposed appointment of official inspectors is a new proposition, is it not?

Mr. ROBB: Yes, it is a new proposition in Canada. It is outside inspection, and everything else, of the locomotive, although I may say it is being enforced to-day by the Railway Board.

Mr. SINCLAIR: Do the Board's inspectors make this inspection?

Mr. ROBB: Yes, they form part of the staff of the Railway Board, and their inspection is not limited to any single part of the engine.

Mr. SINCLAIR: Have the Railway Board got a regular staff of inspectors?

Mr. ROBB: Yes, a regular staff of inspectors.

Mr. SINCLAIR: What is proposed here provides for 30 different inspectors. What is the number they now have?

Mr. ROBB: I do not know how many they have, but there are inspectors who take in certain districts on all the railways.

Mr. SINCLAIR: How are those inspectors paid?

Mr. ROBB: They are paid by the Board, they are on the regular staff, and, as I said before, they are not limited to the boiler or any single part of a locomotive. They inspect and report on every part of the locomotive and bring its condition to the attention of the Board or to the attention of the railway company.

Mr. MACDONELL: Do the Board's inspectors inspect the rolling stock as well as the locomotives?

Mr. ROBB: All rolling stock is inspected.

Mr. MACDONELL: What I have in mind is this: We are asked here to make a very important amendment to the Railway Act and which apparently has much to commend it, but it seems to me that if we are going to establish a new branch of the

Railway Board it should have a usefulness in addition to and beyond the inspection of locomotives only. If an inspection is desirable in the case of locomotives it is equally desirable with regard to all other equipment and rolling stock. We may be called upon from year to year to provide for inspection of other rolling stock, and I really think if we are dealing with the matter now we might as well deal with it on the basis of a thorough inspection of all rolling stock by the Board.

Mr. CHRYSLER, K.C.: It is all being done at present.

Mr. MACDONELL: That is what I am trying to get at.

The CHAIRMAN: Do you think, Mr. Robb, that this inspection is already covered?

Mr. ROBB: Yes, sir, it is already covered.

Mr. CHRYSLER, K.C.: The inspection of rolling stock is part of the duty of the officers of the Board. Under paragraph (*g*) of section 289, the Board has power to make orders and regulations, "with respect to the rolling stock, apparatus, cattle guard-appliances, signals, methods, devices, structures and works."

Mr. MACDONELL: This section we are considering deals exclusively with the inspection of locomotives.

The CHAIRMAN: Mr. Blair, the legal representative of the Board of Railway Commissioners, should be able to explain whether the inspection work that is called for is now covered completely. Would it not be wise to get an expression of opinion from him?

Mr. CHRYSLER, K.C. (to Mr. Robb): Do I understand that when an engineer comes in he makes an inspection of his engine?

Mr. ROBB: Yes, sir.

Mr. CHRYSLER, K.C.: If he finds anything wrong, is his recommendation carried out?

Mr. ROBB: Yes, sir.

Mr. CHRYSLER, K.C.: Always?

Mr. ROBB: No, I would not say always.

Mr. CHRYSLER, K.C.: Who should be the better judge as to that?

Mr. ROBB: The foreman in charge of the terminal.

Mr. CHRYSLER, K.C.: He does not have to go out on the engine?

Mr. ROBB: That is true, but he knows what work should be done.

Mr. CHRYSLER, K.C.: It may sometimes be only a slight defect, but the engineer may report something more serious.

Mr. ROBB: We have 1,500 engineers who have an intimate knowledge of the locomotives they are operating. If it was thought that the company were sending out engines in a defective condition, would you not think I would have received a complaint from those men?

Mr. CHRYSLER, K.C.: I would think so.

Mr. ROBB: I have yet to receive a personal complaint from these engineers that the work reported on has not been attended to. If the engineer knows his business he is just as well aware of the condition of the engine as the foreman is, and he knows whether the engine should or should not go out. It is not always the same engineer who reports a defect in a locomotive, who goes out again with that locomotive, it may be another man. However, that man would also know the work required to be done and when he goes to the engine he sees as quickly as that (illustrating by gesture) whether he should or should not go out. If he feels he should not go out, he reports to the foreman and if the foreman agrees with the engineer the needed work is done. Then, if he fancies he is all right the engine goes out.

Mr. CHRYSLER, K.C.: Does the same engineer who made the report in the first place go out again with the engine?

Mr. ROBB: He may not see her at all before she goes out on her next trip, he may be home asleep.

Mr. CHRYSLER, K.C.: And another man may go out with the engine.

Mr. ROBB: Yes. He sees what work has been booked to be done. He jumps on the engine and quickly determines if there are any defects, what they amount to and whether the engine can go out again or not.

Mr. MACDONELL: You say that the inspection of the engine includes inspection of the boiler.

Mr. ROBB: Yes, for any parts that are visible.

Mr. MACDONELL: Then supposing we pass the legislation asked for here, inspection by the Board will include the boiler of the engine.

Mr. ROBB: The inspection of the boiler is already covered.

Mr. MACDONELL: Do you say that the provision asked for here, if passed, includes the inspection of the boiler.

Mr. ROBB: As I understand, it includes inspection of the engine. Inspection of the boiler is already covered by the Board.

Mr. NESBITT: As a matter of practice, while inspection of the boiler is covered by the Board, it also extends to examination of every part of the engine.

Mr. ROBB: No doubt in the world. If the order asked for here were to go into force, and you put on inspectors to inspect the locomotives, undoubtedly they would report on the boiler as well as the engine, notwithstanding the fact that inspection of the boiler is already taken care of by them. In inspecting an engine they would direct their attention to the boiler just as much as they would to any other detail of the engine.

Mr. CARVELL: Under present conditions, if one of these inspectors should report that there was some defect in an engine, would you take the engine out and remedy that defect?

Mr. ROBB: Yes, in some cases. The inspectors to-day have the power to stop locomotives from running, and they do stop them. They have the power to go into a terminal and say "This engine is defective". The foreman may say "I think she will run another trip". The inspector then can say "No, that engine cannot go out". In that case we cannot send that engine out and we would not do so.

Mr. CARVELL: How much further does the proposed legislation go than the present law?

Mr. ROBB: It does not go any further in the present law, except that you would put more inspectors on. That is the only new thing I see about it. As far as I am able to judge, the new inspectors would not have any more power than the present inspectors enjoy.

The CHAIRMAN: Is it necessary to put on more inspectors?

Mr. ROBB: I do not think so.

The CHAIRMAN: Do you think that the present inspectors cover the work?

Mr. ROBB: Yes, sir, I do.

Mr. CARVELL: Do you say that is true of other railroads?

Mr. ROBB: I would say the same is true of all railroads.

Mr. SINCLAIR: Are you not able to tell us what increase in the staff of inspectors would be involved?

Mr. ROBB: I could not do that in the case of all the other railroads, but I can tell you what it would mean to our company.

Mr. SINCLAIR: What would it mean to you?

Mr. ROBB: It would represent an additional expenditure of about $70,000 a year by the Grand Trunk Company to meet the situation.

Mr. SINCLAIR: But these inspectors are paid by the Board.

Mr. ROBB: The Company would have to put on additional inspectors as well. It would also involve the preparation of a new lot of forms.

Mr. SINCLAIR: You say that if the Board were to appoint additional inspectors you would have to increase your inspectors also?

Mr. ROBB: Yes, sir, and it would mean an additional expenditure of $70,000. The Board would need a lot more inspectors, and they would visit our terminals far more frequently. There would be all these new forms to make out and we would have to have additional inspectors as well.

Mr. CARVELL: Would it occur to you that you would save $70,000 in repairs?

Mr. ROBB: I cannot see where we would save it. I do not know whether we would do any more than we are doing to-day. We have to move the business that offers.

The CHAIRMAN: What is the next section you wish to consider, Mr. Chrysler?

Mr. CHRYSLER, K.C.: Section 311, to be found on page 119. That is a proposal of the Railway Associations and we agree with the representations, except as to the wording of the language. What do you say as to that, Mr. Robb?

Mr. ROBB: I do not feel that a man is necessary on the back of the tender any more than he would be standing on the pilot of the locomotive. The engineer and fireman can look back and see the rear end of the tender and find out if there is any obstruction on the track, the same as if they were on the front end of the engine.

Mr. CHISHOLM, K.C.: My suggestion is to strike out the words in the second line of section 311, "moving forward in the ordinary manner." The uncontradicted evidence of all the railway men is that an engine moving forward reversely is just as useful, so far as the purpose of seeing anything in front is concerned, as going in the ordinary way. So that, in addition to striking out the words they proposed, "or of the tender, if that is in front", if you strike out in the third line after the word "engine" the words "moving forward in the ordinary manner" it would meet the case. So that it would mean when any train was not headed by an engine somebody would have to be in front of it.

Mr. JOHNSTON, K.C.: That seems reasonable.

Section, as amended, adopted.

Mr. CHRYSLER, K.C.: I will ask Mr. Bowker a question. What is your position?

Mr. C. G. BOWKER: General superintendent, eastern lines of the Grand Trunk.

Mr. CHRYSLER, K.C.: If the committee will look at section 284, subsection 5, we will dispose of that.

Mr. JOHNSTON, K.C.: That is the packing?

Mr. CHRYSLER, K.C.: Yes. Mr. Pope and the railways agree that that is not necessary. Mr. Bowker will say, if the committee desires any information about it, that there are only very rare cases in which the company would desire to leave out the packing in winter time. It would only be owing to the track being destroyed, or some accident of that kind, and they are quite satisfied if the committee agree that subsection 5 should be struck out.

Mr. JOHNSTON, K.C.: That was the suggestion of the brotherhood.

The CHAIRMAN: That was your suggestion Mr. Peltier?

Mr. PELTIER: Yes.

Mr. SCOTT, K.C.: Mr. Payne, of the New York Central, tells me that on his road they consider it necessary to take out the movable frog in switches, or movable filling in switches, during the winter months. I have asked him two or three times about that and he seems positive about it.

Mr. CHRYSLER, K.C.: I daresay Mr. Bowker can give information about that.

The WITNESS: Is it the frog or the switch point?

Mr. SCOTT, K.C.: The switch point.

The WITNESS: We have never had to do it with the switch point. I cannot remember any case where we have had to do it. I think our climatic conditions, so far as snow and ice are concerned, in Montréal are probably worse than anything the New York Central ever experienced.

Mr. SCOTT, K.C.: The New York Central runs around the Adirondacks, and they say they take out those points because if they didn't they could not keep the place clean in which they have to move, and it might mean the switch would not work, or there might be a derailment. If the Canadian Pacific Railway does not find that difficulty on their line, it seems odd the New York Central should, but certainly that is the position of the New York Central.

Mr. LAWRENCE: This section does not apply to the switch point at all. It has nothing to do with the switch point.

Mr. CARVELL: It is designed to prevent an animal or a man catching his heel in the frog.

Mr. SCOTT, K.C.: There is a point that runs in that is movable, that fills up the space between the rails and the switch, and that is movable, and what they tell me is that they have to take that point out in winer on the New York Central.

Mr. LAWRENCE: That has nothing to do with this subsection.

Mr. NESBITT: Do they have packing in that switch point?

Mr. SCOTT, K.C.: That point forms a packing between the rails, where the rails run together in this switch. I think the section applies.

Mr. PELTIER: It is like an old bootjack. You simply put enough in there to prevent a man's foot being caught, and the guard rail is somewhat of a similar arrangement; it forms somewhat of a bootjack and enough of it is filled to prevent a man's foot getting in there.

Mr. SCOTT, K.C.: It seems to me it would come within this section, and if it is necessary to take that point out in winter, as I am told it is on our line, then subsection 5 is necessary to give the Board power to make the order.

Mr. PELTIER: If that is struck out, and they find that it would be in the public interest to order the refilling of the frog, they could do it. We are simply asking that that be struck out, and not that frogs be left open. The railway Board will have all the authority in that respect which they have now.

Mr. SCOTT, K.C.: Would they?

Mr. PELTIER: Yes.

Mr. SCOTT, K.C.: Subsection 5 gives them power to suspend it. If subsection 5 is struck out, surely the section cannot be suspended by the Board.

Mr. PELTIER: Under the other clause the Board has the right to order anything in the public safety or for the safety of the employees.

Subsection struck out, and Section adopted.

On Section 289, paragraphs H, I and J, Operation and Equipment--orders and regulations of Board.

Mr. CHRYSLER, K.C.: I wish to say a word with respect to Paragraphs H, I and J, particularly H and J. Paragraph I is an old section designating the number of men to be employed on the train.

The CHAIRMAN: I have it marked as passed.

Mr. CHRYSLER, K.C.: We do not object so much to "I," except to the principle in "H" and "I," as to designating the number of men and the length of the section, and the number of employees that should be employed. We say that that in the first place is part of the general management of the company, for which the company itself is responsible, that it is not a matter that should be interfered with by the Board, and another very large reason, covering almost the whole ground, is that these matters are as a rule covered by the agreements with the employees, the trackmen, the locomotive engineers, the firemen, and trainmen.

Mr. MACDONELL: The Board could effect any arrangement of that kind.

Mr. CHRYSLER, K.C.: They could.

Mr. MACDONELL: This would apply to cases where they could not.

Mr. NESBITT: It is not likely the Board would interfere with any arrangement between the company and the employees as to the number of hours and number of persons, but if they did, I do not see any harm in leaving it in. Any Board would inquire into it very carefully, and I do not think would interfere in any arrangement.

Mr. CHRYSLER, K.C.: That is as to the number of men

Mr. NESBITT: Yes.

Mr. CHRYSLER, K.C.: That is true as to paragraph "I." There was no very great objection to that in the Act before, and we worked with it, and we will let it go if the Committee think it ought to stand, but we have that objection to the principle of the thing. With regard to "H" I want to ask Mr. Bowker a question.

Mr. CARVELL: Have you any objection to paragraph "I?"

Mr. CHRYSLER, K.C.: I do not think that alters the effect of it.

The CHAIRMAN: So far as the Committee is concerned you are willing to allow "I" to pass?

Mr. CHRYSLER, K.C.: Yes, but I do not want my acceptance of paragraph "I" to be used as an argument in regard to accepting paragraph "H."

The CHAIRMAN: Then paragraph "I" is carried.

By Mr. CHRYSLER, K.C.: With respect to the length of sections required to be kept in repair by employees of the company, what is the system with regard to the maintenance of track?

Mr. BOWKER: We have a limited number of men on every section, but we have no maximum number. The number of men to work on a section of track, whatever your section might be, say six miles in length, depends entirely on the condition of the track. It might be that on certain days in the year that section would require four or five men, and the other sections would not require more than two men. Therefore, we have a minimum number of men; that is two men on main lines and branch lines where we have a lot of traffic, and the foreman and one man in the winter.

Mr. SINCLAIR: What is a section?

Mr. BOWKER: Our main line, double track section, is four miles, except in large towns like Oshawa and Cornwall, and places of that kind, where there are lots of side tracks to look after, where the section is reduced. On our main line single track we have six mile sections, and I do not think that is a matter which can be regulated by anyone except the man who is on the ground. We have had, since the war was on, considerable trouble in keeping men on sections, especially sections adjacent to towns

where munition works were located and different industries were paying a high scale of wages, which the railway companies could not meet. The result is that those sections have been down below their minimum, but we have sent in extra gangs, probably fifteen or twenty or thirty, to go over that entire section, and in a few days put it in first-class condition. After that has been done in the spring time, you do not have very much work to do. It is a condition to be met on the ground, and the men on the ground can meet that condition. There is nobody as much interested in keeping the track in a safe condition as the railroad officials.

Mr. NESBITT: That seems to be absolutely true, but what harm does it do to allow the Railway Board to intervene, in case it is considered necessary? It is not likely that they would bother with your regular management of it without some complaint.

WITNESS: It is like employing a Thiel detective to watch a conductor. He has got to find something or lose his job. If they get that power they will interfere. I know positively that nobody can give that track the attention the railway officials can and will give it.

Mr. NESBITT: So far as my experience has gone I think the man in charge—I forget what you call the man who rides up and down——

Mr. BOWKER: Supervisor, some call him, and some call him roadmaster.

Mr. NESBITT: As far as my experience goes, I think the roadmasters are very capable men and look after the work carefully.

Mr. CHRYSLER, K.C.: There is a section foreman?

Mr. BOWKER: Yes, on each six-mile section, and he is responsible for that part of the track.

The CHAIRMAN: You think the Board might interfere with the operation?

Mr. BOWKER: I think they would at some time interfere. I think a case was brought up before the Board some couple of years ago in connection with some arrangement of the section in the west, I forget just what that was.

Mr. MACDONELL: Had there not been complaints from time to time—I have heard them and seen some of them in the press—about an insufficient number of men being on a section, or sections being too long for the number of men employed?

Mr. BOWKER: I have seen those things in the papers.

Mr. MACDONELL: From a railway point of view do you know of any complaint by the public or the railway employees at these points?

Mr. BOWKER: No, sir.

Mr. MACDONELL: I have seen a good deal of it in the press.

The CHAIRMAN: What has Mr. Lawrence to say?

Mr. LAWRENCE: It is largely on account of the maintenance of way employees that this matter came up. Of course it is in the interests of the trainmen that the safety of the roadbed should be looked after. What Mr. Bowker has said I think is true. I do not think he has said anything that is not true. There has not been a complaint against them, but there have been complaints against other roads. I have not the communications with me, but I have copies of communications, where there was a complaint about a frog. Two men had 15 miles of track to look after. That is an isolated case, but at the same time nobody can say that that is a safe practice.

The CHAIRMAN: But Mr. Bowker told us they sent in certain groups of men to assist them.

Mr. LAWRENCE: In this case there is no person to assist them, during the winter time particularly, to look after that same section. These section men were here the other day, but this matter was postponed, and the section men went away, but they had a number of cases like that. They made application to the Railway Board two or three years ago, but the Commission ruled at that time that they did not have any jurisdiction. It has been stated here that they wished the Board to look after some

things. They think it is proper for them to do so. Would this not be a good thing to leave to them, so that if there was a complaint it could be investigated, and the Board give a decision in the matter. That is all they ask for as I understand. I do not think it is an unreasonable request.

Mr. NESBITT: That is the way it struck me exactly.

Mr. MACDONELL: As you make operation and equipment the subject of the direction of the Railway Board, this seems to be an integral part of that, and the Board need not interfere except in cases where the matter is brought to their attention. I think it would be a good thing to give them the power, as called for in this draft.

Mr. NESBITT: Section 289 starts off with the words, "the Board may".

Mr. MACDONELL: Yes.

Mr. CARVELL: Is there not a possibility of our taking the entire management of these railroads out of the hands of the companies? Will the company not come back on the Government and say, "We want compensation because we cannot run our trains properly"?

Mr. NESBITT: There is a good deal in that argument.

Mr. CARVELL: I am afraid we are disposed to practically expropriate the railways.

Hon. Mr. COCHRANE: We have to trust to the Railway Commission to be just and fair in all things.

Mr. MACDONELL: They have been just and fair so far.

Mr. CARVELL: I have great faith in the Railway Board, and I feel like putting large powers in their hands, but this seems to me to be something that should be under the control of the railway company. It is only fair to assume the railway company is doing the best they can.

Hon. Mr. COCHRANE: The Board would not interfere if they were doing right.

Mr. CARVELL: You know there are railway companies and railway companies. Unfortunately, there are some of them that are not C. P. R.'s, and the Board might make orders that it would be impossible for them to carry out.

Mr. CHRYSLER, K.C.: While you were speaking, Mr. Bowker pointed out the responsibility of the company if anything went wrong with the track. They had to stand the consequences.

Hon. Mr. COCHRANE: I know, but the condition of the track involves more than merely considering the company. There is the risk of danger to life that ought to be safeguarded in every possible way.

Mr. CHRYSLER, K.C.: In practice that is all in the power of the Board now. If a track is out of repair the Board may order the company to repair it. We think the method of doing so is a matter we should have control of; but we are bound to keep the track in repair.

Mr. PELTIER: I would like to speak for three or four minutes on this subject.

The CHAIRMAN: Very well, proceed and let us know what you have got to say.

Mr. PELTIER: To begin with, more important than the condition of the rolling stock or the locomotives, or the manning of trains, is the necessity of having a roadbed capable of carrying everything that goes over the grade with reasonable safety. There is no complaint about some of the railways, and with those the Board will not interfere. Those railways that are complained of ought to be controlled, and I think every railroad man knows that one of the chief causes perhaps of negligence is the competition among officers on different sections for a reduction of expenses. I have seen a General Superintendent who had been appointed for a whole Division go over his line sitting at the rear end of his car, and when he landed up at his office

he cut expenses in two and left sections without a man, in order to make a record. This is the way these matters work out in practice. As I have said before, this is not a reflection against railway officers, they are human, like the rest of us, and they want to get along. As to the statement of one of the gentlemen who have been heard here, that there are times when there are a large number of men employed on a section. That is the case in the spring, but what we are concerned with here are the regular crews. The provision sought to be enacted would prevent any officer of the railway who desired to make a better showing to his management, from drastically cutting down the number of men employed in looking after the roadbed, the number considered necessary in the interests of safety, without the permission of the Board. The safe condition of the roadbed is the very foundation of all the requirements which the Board have to look after. That is all I have got to say.

Mr. BOWKER: I do not know Mr. Peltier, and I must say I am very much surprised to hear what he has said in regard to cutting down the expenses of railroads. I do not know of a General Superintendent in Eastern Canada today who is not continually urging the executive officer above him in order to get more money.

Mr. CARVELL: I think that is very common, I think you are right in that statement.

Mr. BOWKER: Furthermore, to-day I am spending $350,000 that I have not got an appropriation for. Mr. Peltier is doubtless referring to a period about 25 or 30 years ago when such things used to be done on railroads.

Mr. CHISHOLM, K.C.: He has not railroaded since.

Mr. PELTIER: They are doing it to-day.

Mr. BOWKER: As far as the extra going over of sections to put them in condition is concerned, every four or six miles is gone over and put in good condition in the spring, which should necessitate very little work on that section throughout the rest of the season.

Mr. CARVELL: It depends on the traffic.

Mr. BOWKER: No, not entirely on the traffic, it depends on the condition of the roadbed. The great improvements effected on railroads have vastly improved conditions compared with what they were twenty years ago. Heavier rails have been laid and additional security obtained by the adoption of rail anchors and tie plates.

The CHAIRMAN: If these amendments were passed, would it involve the railway companies in much additional expense, in your estimation?

Mr. BOWKER: It depends entirely on what action the Board is going to take.

Mr. BEST: I hope the committee will not consider cutting out paragraph (*h*). It is most important that some authority should regulate this matter.

Mr. MACLEAN: For whom do you speak?

Mr. BEST: I am speaking in the interest of the employees and of the travelling public. You must not forget the welfare of the travelling public because the motive power and the rolling stock have been increasing by leaps and bounds in the past ten years. During this period advances have been made out of all proportion to what we would have considered possible twenty-five years ago. Despite this great advance, the roadbed and the rails have not been kept as they should have been. Doubtless this is owing to motives of economy, but when it is a case of conservation of the human element, that should be the greatest consideration borne in mind. I regret to say that this has not always been the first object held in view. In saying so I am not reflecting on any person who may be addressing this committee on the behalf of a particular railway. I am merely pointing out to you the principle involved in the operation of every public utility, or of a company or of a corporation. What is the motive under-

lying the operation of these concerns, is it service to the public, or is it the payment of dividends? We have got to face these facts, and we are confronted with the fact right now that the tendency on the part of these corporations when traffic decreases is to cut down the number of men employed. If the committee were to read the verdict of a coroner's jury showing that the death of one of our railway employees was caused by the inefficient inspection of the railway track, owing to the company not employing enough men to properly inspect the track, would they not think it was time that someone, other than the railway companies, should require that there should be three or four, or a certain other number of men, to a certain number of miles of track? The tendency of railway companies is to reduce the number of men employed in track inspection below the point of safety. Take the case of men patrolling the track with a hand-car. Now it requires so many men to remove that car from the track, and if a locomotive is rapidly approaching, you will appreciate the nasty position in which these men are placed. Take the case of the poor fellow who was killed up the Gatineau the other day. His companions jumped, but he was killed in trying to get the hand-car off the track.

Mr. NESBITT: That was because the other fellows left him. You cannot control cowardice and excitement on the part of men at such times.

Mr. BEST: I use that case as an illustration of the fact that it takes so many men to move a hand-car off the track. If only two men are put to work on a section and one goes away, leaving the other perhaps to operate that hand-car alone, it is not very safe for the man who is left. Many cases of the kind have occurred on railways. I do not know whether as many such cases occur on the Grand Trunk as on other lines, but I will say this: I believe the Grand Trunk is as good as any other railroad in keeping up its equipment, and I have not had so many complaints with respect to the Grand Trunk as I have in the case of other roads based on improper flagging or improper protection of the trains that are being operated. I do hope the committee will allow the paragraph to pass in the manner proposed, in order that the Board of Railway Commissioners, when the complaints come in, will send their engineers out and ascertain by their investigations whether other men should be added to a section of 10 or 15 miles of road in addition to the one or two who are already there. I submit this argument on behalf of the maintenance of way employees that are not represented here to-day.

Mr. NESBITT: The Board have the power, have they not, to issue an order that the road shall be improved.

Mr. BEST: I presume they have, in connection with the matter of safety, but as to regulating the number of employees to be maintained by the company on a section of a certain number of miles, I do not suppose they would have any such right unless the paragraph we are asking for is inserted in the Bill. It was for that specific purpose we made our recommendations. We do not want to do any harm to railway companies who claim to be observing proper safeguards already, but the adoption of the provision will even up matters and protect both the travelling public and the employees.

The CHAIRMAN: Have you anything more to say, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I do not think I can add anything more to what has been already said.

Mr. MACLEAN: I wish to say a word or two in favour of the amendment as proposed in the Bill. I have watched rather carefully the maintenance of way on prominent railways, and I say there are occasions when the right should be vested in the Board to step in and order the railway companies to increase the number of their men on certain sections of track. I am quite sure that the Railway Commission will treat the railway companies fairly, but having this provision in the Act will make them more careful, and will afford to the public and to the railway employees that protec-

tion to which they are entitled. I do not think that any harm will be done to railway companies by retaining in the Bill this provision for which their employees have asked.

The CHAIRMAN: Shall paragraph (*h*) remain in this section?

Motion agreed to.

On paragraph (*j*)—Hours of duty.

Mr. CHRYSLER, K.C.: This paragraph is similar in its character to paragraph (l), only perhaps it constitutes more of an interference with the management of a railway by the Board. I will call the attention of the committee to the recommendation of the employees with respect to section 289, to be found about the middle of page 70 of the printed proceedings. (Reads):

> "Section 289 (page 115), paragraph (*j*): Certain of the railroad employees object to the inclusion of this language in the Act, and we would respectfully submit that paragraph (*j*) of section 289 may be found entirely unacceptable to the railway employees, and it is hoped that if the paragraph becomes effective that its adoption shall be regarded as without prejudice to any future contentions made by all or any of the railroad organizations."

So that is the attitude taken by the gentlemen who represent the railway employees, and it was not advocated by these gentlemen for the purpose of regulating the hours of duty for employees but for the purpose of introducing a feature which we have not anywhere in our legislation, limiting the number of hours a man may be employed without rest. I will ask Mr. Bowker what he has to say on the point.

Mr. NESBITT: Do you object to the paragraph in question?

Mr. CHRYSLER, K.C.: We object to paragraph (*j*) entirely.

Mr. JOHNSTON, K.C.: And some of the Brotherhoods object to it, not all, though.

Mr. CHRYSLER, K.C.: Will you kindly explain why you object to the paragraph in question?

Mr. BOWKER: We object to it on the same grounds as in the case of other proposed enactments, that gradually the power of operating railways is being taken out of the hands of railway officials. It is not our desire to keep men on duty an excessive number of hours, although it sometimes happens when emergencies, or something which we cannot foresee, occurs. The Sixteen Hour law in the United States makes provision for cases of that kind. In reading over the printed report of these proceedings I notice that Mr. Lawrence made some remark about an accident that he had at Port Credit, and he observed what a very serious accident it might have been. We realize that, but Mr. Lawrence did not bring out in his statement that it was really a fact that the men were on duty 20 hours, or thereabouts, which caused the accident; but he left you to draw your own conclusion that that was possibly the cause. He spoke about the engineer working round his own engine, which indicates that the man was not asleep. I may point out to you that on December 24 last we had a most serious accident in the State of Maine caused by the engine and train crews overlooking an order which required them to meet a train at a certain point, resulting in an accident which caused the death of five of our men and is going to cost us in the neighbourhood of $200,000. That accident was the result of five men who had been on duty less than five hours, forgetting a train. Now, even if these men at Port Credit were on duty 20 hours, it did not follow that it was through any want of sleep that they forgot the train.

Mr. CARVELL: Do you feel that any man should be allowed to run an engine more than 8 or 10 hours?

Mr. BOWKER: Oh yes. The limit in the United States is 16 hours.

Mr. CARVELL: Continuously?

Mr. BOWKER: Yes, sir. Now, the man working the engine from Fort Erie, I think that was where the train came from which was in the accident at Port Credit, was not working all the time, he was delayed many times. I do not know what he was doing sitting there in the cab, but the chances are that he was resting. I know they do rest at sidings. I have been a train man and I know that is what they do.

Mr. CARVELL: It may have been an express train, in which case the man would not be resting.

Mr. BOWKER: No, this was a freight train.

Mr. NESBITT: You mean in that particular case?

Mr. BOWKER: An express train will get over a very big railroad in less than 20 hours.

Mr. CARVELL: I appreciate what you say, but I have known men who have been ordered out and have been on an engine practically 20 hours continuously. I am pretty strong, but I would not like to stand up and take the responsibility of standing up and driving an engine for that length of time. I drive an automobile, and I know how I feel after spending 10 or 15 hours in it. I assume it must be the same with a locomotive.

Mr. BOWKER: No, it is entirely different.

Mr. MACDONELL: Evidence was given in the case you refer to that the man in question had been working for 20 hours.

Mr. BOWKER: He was on duty but it did not follow that he was working all that time.

Mr. MACDONELL: My recollection of the evidence given at that time is that he was working.

Mr. BOWKER: He was being paid for those 20 hours, but there was something delayed him, I do not know just what it was.

Mr. MACDONELL: We are not making any time limit here, directly or indirectly, but giving the Board jurisdiction to make proper regulations as they see fit, that is all.

Mr. BOWKER: Even so, I am of the opinion it is a further step towards taking the operation of railways out of the hands of the men who are on the ground.

Mr. ROBB: Engineers when they come in off a run book their rest and they book their previous rests from duty at the previous terminals. If a man wants a rest he is allowed to book a rest, and when he puts it on the book no one can send that engineer out on duty again until that rest is up.

Mr. CARVELL: We appreciate all that.

Mr. BOWKER: If the man does not want any rest he does not book one, although it is open to him to do so.

Mr. CARVELL: My point is the converse of that. There are many men working on railways who feel strong and do not take a rest, and if they are called upon will go out again. Now, should those men be allowed to go out again?

Mr. ROBB: No. That is what the rest book is provided for.

Mr. CARVELL: If a man goes and books his rest he cannot be sent out again for six or eight hours—I have forgotten exactly what your rules are—but should a man be allowed to go out after being on duty for ten or twelve hours on an engine.? I claim there is a great difference between a man driving the engine and the brakeman at the rear of the train. Human lives depend on the engineer being in good physical condition.

Mr. ROBB: That depends upon the man himself. You have men working as long as 24 hours and performing satisfactory work.

Mr. CARVELL: A man on an engine?

Mr. ROBB: Yes, sir.

Mr. MACDONELL: You see cases reported where an engineer needs rest after being on a locomotive for a certain number of hours, and wants it. But he says that when he reaches a certain station or place where he realizes that he needs to get off and take rest, there is probably no engineer there to relieve him. He doesn't want to get into the bad books of the company by tying up their service, so he goes on continuing to do his work without taking his rest.

Mr. CARVELL: And you might add to that that the rest of the train crew are willing to go on.

Mr. MACDONALD: Yes.

Mr. CARVELL: Yes, and if it is a freight train the conductor and brakeman can get an occasional sleep for a few minutes, but the engineer can't.

Mr. ROBB: There is none of our divisions that a man cannot get over without any trouble, unless there is an accident.

Mr. CARVELL: Or snow blockade.

Mr. ROBB: Yes, he can get over without any trouble.

The CHAIRMAN: If the representatives of the railway companies come to any united conclusion, we will consider their position in the matter.

Mr. LAWRENCE: No, we have not. Our submission is in there.

Mr. CARVELL: Will you give some reason for your submission?

Mr. LAWRENCE: We think the only feasible way of regulating the matter is by the statute. The locomotive men take the same objection to the Board handling this as they do to other matters. It is not official. They have no persecuting powers. They do not relieve the difficulty. Mr. Bowker mentioned what I said, and it is on the record, and I said nothing that is not a positive fact. Mr. Bowker did not tell you how many tons of coal those fellows shovelled between Fort Erie and the place of the accident, and the engineer had to shovel that, because there is a pit in the tender, and when that is emptied the coal must be shovelled down to get into the fire, and when the engineer is resting he is helping to do that, and when the firemen had not been in the service very long, he helped him clean out the fire. It was not 20 hours. It was 24 hours till the time the accident happened. No man on duty, awake, 24 hours is in a fit condition to handle a locomotive.

The CHAIRMAN: The men representing the different organizations of railways placed their statement before the Committee, and you were supposed to see if it was possible for you to come together and make some definite statement in regard to this paragraph.

Mr. LAWRENCE: I do not know, Mr. Chairman.

The CHAIRMAN: You are not united.

Mr. LAWRENCE: I do not know that we can say anything more on that just now. We are not united.

Mr. MACLEAN: In the public interest there should be a regulation of this kind. The Board was created for the very purpose of settling matters of this kind, and they will act, as in the preceding section, in the public intrest, and do justice to the railways. The representative of one of the brotherhoods who spoke this morning said that there was no enforcement. I think it is the intention that, before we are through with the Act, the duty of enforcing the provision will be placed upon someone. I brought it up the other day, and bring it up again to-day, and I say that while we are passing this Act and protecting the public, and giving powers to and protecting the railway, that there shall be provisions in the Act for the enforcement of it.

The CHAIRMAN: But the men who represent the organizations claim that they do not need protection and are not anxious to have it.

Mr. MACLEAN: Then I say that the public need it, and the men are not going to make the law, and the railways are not going to make the law, but Parliament is going to make the law in the public interest, and I think that is the object of the Department.

Mr. MACDONELL: Your idea is the Federal enforcement of Federal laws?

Mr. MACLEAN: I will come back to that—and it is the weakness of all the legislation of this Parliament. I think this provision is all right. It has been drafted by the Department, and the men have no objection to it, but they say they cannot agree to it.

The CHAIRMAN: They have no objection?

Mr. MACLEAN: It is a good clause to have inserted in the public interest, and by that I mean the railways and the people as well.

Mr. PELTIER: There is a misunderstanding here, as you will see if you read the proviso of the trainmen at page 70, signed by us all, which says:—

> "Certain of the railroad employees object to the inclusion of this language in the Act and would respectfully submit that paragraph "J" of 289 may be found entirely unacceptable."

In other words, if it were found acceptable in its administration, it would be accepted.

Mr. CARVELL: What is your objection to the Board controlling the number of hours men shall work?

Mr. PELTIER: I have not the least objection if they will control it; nor have the engineers any objection.

Mr. MACLEAN: That comes down to the enforcement?

Mr. PELTIER: Yes.

Mr. CARVELL: What do you want?

Mr. PELTIER: I think it was explained that the engineers wanted an Act of Parliament. The conductors and brakemen felt the peculiar position in which they were placed. For instance, an engineer changing every 125 miles, especially from here to the coast, westward, and the conductor running through all those divisions, the trainmen are working up pretty near to 14 hours, and they get in a storm and get tied up. We feel that before the Railway Commissioners would really take action and cover all the essentials, if they had the power to enforce the laws, it would be more satisfactory than an Act of Parliament.

Mr. MACLEAN: Is there a provision for the enforcement of the law?

Mr. PELTIER: Here is a copy of the Canadian Pacific Railway rules. There are two pages to cover up the conditions and anomalies growing up in regard to the 16 hour law, and to cover duties imposed upon the men owing to this law. If necessary I will read them into the minutes.

Mr. CHRYSLER: If you have any document to put in, better put it where we can all see it.

Mr. PELTIER: I will hand it in. Here are the pages. Here are the rules of the company to cover anomalies and abuses of the 16 hour law, and we feel if the same thing were enforced here, there would be no leeway, and similar abuses would creep up under it, and the engineers, if once the Board act and act properly, will feel like saying that it was better that it should be given to the Board than that it should be put in an Act of Parliament, because we cannot come to you every three or four months, but we can go to the Board.

Mr. CARVELL: Is that not what "J" provides for?

Mr. PELTIER: We have accepted "J" with that proviso, that if it is not administered properly we can come back to Parliament and say, "The Board is not doing right under this section. Give us an Act of Parliament."

Mr. LAWRENCE: The rules of the Canadian Pacific Railway which I referred to read as follows:—

"RULE 44."

(Applicable to service in United States only.)

(*a*) Employees in train service will not be tied up unless it is apparent the trip cannot be completed within the lawful time, and not then until after the expiration of fourteen hours on duty under the Federal law, or within two hours of the time limit provided by State laws, if State laws govern.

(*b*) If employees in train service are tied up in a less number of hours than provided in the preceding paragraph, they shall not be regarded as having been tied up under the law, and their service will be paid for under the provisions of this schedule.

(*c*) When employees in train service are tied up between terminals under the law, they shall again be considered on duty and under pay immediately upon the expiration of the minimum legal period off duty applicable to any member of the road crew, provided the longest period of rest required by any member of the crew, either eight or ten hours, shall be the period of rest for the entire crew.

(*d*) Continuous trip will cover the movement straight-away and turn-around, from initial point to the destination train is making when required to tie up. If any change is made in the destination after the crew is released for rest, a new trip will commence when the crew resumes duty.

(*e*) Employees in train service tied up under the law will be paid continuous time or mileage of their schedules from initial point to tie up point. When they resume duty on a continuous trip, they will be paid miles or hours, whichever is the greater, from the tie up point to the next tie up point or to the terminal. It is understood this article does not permit conductors and trainmen to run through terminals unless such practice is permitted under the schedule.

(*f*) Employees in train service tied up for rest under the law, and then towed or dead-headed into terminal, with or without engine or caboose, will be paid therefor as per section (3) the same as if they had run the train to such terminal.

(*g*) Employees in train service tied up in obedience to law will not be required to watch or care for engine or perform other duties during the time tied up.

(*h*) Yardmen required to work 16 hours will resume work when their rest period is up under the Federal law, and then be permitted to work 10 hours, or paid therefore.

"RULE 45."

The company will join in arrangements for and in representation at a conference with other railways in the territory to dispose of the doubleheader question."

The subsection adopted.

On section 350, carriage of mails, troops, equipment, etc.

Mr. JOHNSTON, K.C.: This strikes me as a convenient place to clean up the question Mr. Macdonell raised the other day. Under section 350 of the Act it is provided that His Majesty's naval or military forces, or militia, shall at all times when required by the Postmaster General of Canada, etc., be carried on the railway, and with the whole resources of the company if required on such terms and conditions and under such regulations as the Governor in Council makes. The mail clerks complain that they are not provided with suitable cars.

Mr. CARVELL: On what particular ground do they complain?

Mr. NESBITT: We amended that slightly for Brigadier-General Biggar.

Mr. MACDONELL: The railway mail clerks have this complaint: quite a number of them have been killed in accidents. They attribute the fatalities largely to the fact that on almost all the railways of Canada the railway mail clerks occupy a very small wooden car. It is an old car used for the mail and occasionally carrying some express parcels. That car is placed next the locomotive, which is steel, a big heavy locomotive, and on the other side are a number of steel pullmans. In case of collision or derailment, or any accident, that mail car is crushed like an egg shell between the heavy steel locomotive and the heavy steel cars that follow it. In most of the States they have made provision in the last year or two that those mail cars shall be steel cars, and that protects the life of the men and protects His Majesty's mail, and I ask that some consideration be given to that feature, and that, if possible, some provision should be made for steel cars, some proper car that will be safe, in which these men shall carry His Majesty's mail, and that their lives shall be better protected than they are at present.

The CHAIRMAN: Have you a proposed amendment?

Mr. MACDONELL: No.

Mr. JOHNSTON: I think paragraph (*g*) of section 289, covers the point, because it provides that:

> "The Board may make orders and regulations with respect to the rolling stock, apparatus, cattleguards, appliances, signals, methods, devices, structures and works, to be used upon the railway, so as to provide means for the due protection of property, the employees of the company, and the public."

I thought the words "and the public" were broad enough to cover clerks in the mail service. If they are not broad enough, it seems to me the point might easily be covered by adding after the word "public" the words "And all persons travelling on His Majesty's service."

Mr. CHRYSLER, K.C.: That is all right.

Amendment adopted.

The CHAIRMAN: Have you anything more to suggest, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I think that is all I have to ask the expert witnesses about. I wish to speak to other sections of the Bill.

Mr. NESBITT: There were some sections left over the other day.

Mr. CHRYSLER, K.C.: Yes. I have a list of them and can go on with them.

The CHAIRMAN: You may proceed with them. Mr. Blair is here.

Mr. CHRYSLER, K.C.: You have carried all the subsections that I objected to. I do not see that Mr. Blair can help us now.

Mr. NESBITT: There was something you brought up, not in 289, in regard to which we wanted Mr. Blair to be present.

Mr. CHRYSLER, K.C.: That was 302. The practice of the Board with respect to locomotives. That is the consideration of a proposed amendment. It is not before the committee just now. It is in the recommendation of the locomotive engineers. I thought that if the committee were taking that up we should get, instead of Mr. Blair, the technical man who inspects the locomotives, whoever it is, somebody from the department, to tell us what the Board are doing now with regard to inspection.

Mr. BLAIR: I can give you a general idea of what they are doing.

Mr. CHRYSLER, K.C.: Is it Mr. Ogilvie?

Mr. BLAIR: I suppose the Chief Operating Officer is the man you want.

Mr. CHRYSLER, K.C.: Who is that?

Mr. BLAIR: Mr. Spencer. I can give you a general idea.

The CHAIRMAN: Mr. Chrysler thinks we should have before us the man who is doing the inspection.

Mr. BLAIR: If the committee will allow Mr. Spencer the time, I will arrange for him to be here.

The CHAIRMAN: You can arrange when that clause comes up, and you can get Mr. Spencer here.

Mr. JOHNSTON: The committee have heard on two separate occasions the arguments of the Brotherhood regarding this proposed addition to the Bill. We might clean it up now.

The CHAIRMAN: That is the amendment to section 302.

Mr. JOHNSTON: Yes.

On section 302: Equipment of locomotive:—

The CHAIRMAN: What is the proposed amendment to this section?

Mr. JOHNSTON: It appears on page 72 of the proceedings of this committee and occupies four pages. The Brotherhoods propose that the Act should be amended by providing for the establishment of a new board, or a branch board, to be known as the Division of Locomotive Inspection of the Board of Railway Commissioners for Canada. It seems to me the point is this: is the inspection already provided for by the Board satisfactory or not?

Mr. MACDONELL: It seems to me that, if we are going to compel the creation of an Inspection Board, with all the paraphernalia and equipment, it should not be confined to locomotives. The functions of the Railway Board are to inspect the equipment and make it serviceable to the public, and if there is going to be a special board established to aid in that work, it should be applied to all the rolling stock of the railways, and not limited merely to the locomotives. We were told by one of the gentlemen who gave evidence here to-day that only in certain respects is the boiler considered a part of the locomotive. Now, when for certain purposes of inspection we just get down to the mere parts of a machine, it seems to me a very important matter for regulation. If you are going to create a special board of this kind, authority and jurisdiction should be given over all the rolling stock instead of confining that jurisdiction merely to the locomotives.

The CHAIRMAN: Mr. Blair, will you explain to the committee what you understand by inspection and what effect this legislation will have if it is enacted.

Mr. BLAIR: As I understand it, the work of the Board's inspectors takes in the inspection of boilers. Of course, the Board has a limited number of inspectors.

Hon. Mr. COCHRANE: Does the law limit them to any number?

Mr. BLAIR: No, Mr. Minister, the law does not, and as a matter of fact I know that the operating officer has asked for the appointment of additional inspectors.

Mr. BLAIN: How many inspectors have you now?

Mr. BLAIR: I think we have four employed on this boiler inspection work, at different points.

Mr. MACDONELL: Have they a corps of inspectors inspecting rolling stock?

Mr. BLAIR: They take in the inspection of equipment generally.

Hon. Mr. COCHRANE: The Board have the power to appoint more inspectors if they need them, and, as I say, I know the operating officials are recommending the appointment of more inspectors.

Mr. MACLEAN: First of all, have the Board that power?

Mr. JOHNSTON, K.C.: The Board have power to appoint inspectors.

Mr. BLAIR: They can recommend, and the Governor in Council can appoint on the Board's recommendation, any additional officials that may be necessary.

The CHAIRMAN: Have you a sufficient number of officials to meet the inspection requirements of these amendments?

Mr. BLAIR: The regulations adopted by the Board are in terms the regulations of the Interstate Commerce Commission. In the working out they do not go quite so far, but under the Act, as I read it, the Board have the power to take care of boiler inspection. It is for the committee to say whether an additional staff shall be appointed, but the Act is broad enough to enable the Board to work the matter out.

Mr. CHRYSLER, K.C.: As the law now stands?

The CHAIRMAN: Under the present organization.

Mr. SINCLAIR: Have you read exhibit "A" which has been laid before us as the proposals of the brotherhood to be incorporated in this Act?

Mr. BLAIR: Yes, I have read exhibit "A."

Mr. SINCLAIR: Does it differ from your present regulations? I have a copy of one of your regulations which deal very exhaustively with a lot of these questions.

Mr. JOHNSTON, K.C.: Under section 71 of the Bill.

Mr. SINCLAIR: Everything seems to be dealt with in a very careful and exhaustive manner in about eleven pages of rules. Now, we are asked to incorporate something in the Bill and we do not know whether the new propositions differ from the existing rules or whether it is advisable to add to the existing rules or not.

Mr. BLAIR: The new proposals of the Railway Brotherhood are fashioned after the Interstate Commerce Commission's provisions.

Mr. JOHNSTON, K.C.: Section 71 provides that inspecting engineers may be appointed by the minister or the Board, subject to the approval of the Governor in Council. Then the section sets out the duties of these inspectors.

Mr. BLAIR: And there is ample power to make provision with regard to these matters.

Mr. MACLEAN: What do the brotherhoods say about this?

Mr. BEST: We have not submitted anything further than is contained in our memorandum. We merely propose a draft bill, without any explanations, for the purpose of having an added inspection of locomotives. But we have not spoken to you upon this subject.

The CHAIRMAN: What answer have you to make to Mr. Blair, who says that the Board have absolute power to deal with this matter?

Mr. JOHNSTON, K.C.: Why don't you go to the Board? They have power to deal with this question.

Mr. MACDONELL: Have you gone to the Board and been refused?

Mr. BEST: The Board have made regulations for the inspection of locomotive steam boilers similar to those in effect in the United States. What we are asking for

is only what the Government of the United States found out and have in operation now. Without it the United Sates did not have adequate machinery, or did not have machinery to carry into effect regulations so as to provide for the adequate inspection of the 25,000 locomotives operating in the country. We have 5,000 locomotives in this country, but not a single Government boiler inspector.

Mr. JOHNSTON, K.C.: Why do you not go to the Board in reference to the matter?

Mr. BEST: Complaints which we have filed with the Board as to the condition of locomotive boilers, have been dealt with in a way, but the Board has not the machinery to adequately deal with the whole question of locomotives from the pilot to the rear tender.

Mr. JOHNSTON, K.C.: But the Board can create such machinery as it finds to be necessary.

Mr. BEST: Possibly they can do so, but we think the Act should contain a provision creating a branch of the Board of Railway Commissioners to be known as the Locomotive Inspection Branch, similar to that which exists in the United States, because our fear is that the Board could not carry out adequate inspection without such a branch.

Mr. CHRYSLER, K.C.: They could not, because they have not got in their Act the powers given the Inter-State Commerce Act.

Mr. SINCLAIR: You give us no details, we have no data to decide whether or not there should be 30 inspection districts created. We ought to be furnished with proper information before we are asked to deal with the matter. I think that if rigid rules are proposed they had better be made by the Board.

Mr. BEST: Our proposal is only to do what the United States have done. They established 50 locomotive districts by Act of Parliament instead of vesting that power in a board or court.

The CHAIRMAN: But over there they do not operate under an Act like this and under a board like we have.

Mr. CHRYSLER, K.C.: The Interstate Commerce Commission has no power over this matter at all.

Mr. BEST: In some respects they have more power than the Dominion Railway Board. In some respects they have not. If the Dominion Railway Board had the power in the matter I refer to, we would not be here to-day.

Mr. CARVELL: Have you any fault to find with section 289? This is practically an inspection of boilers.

Mr. BEST: Yes; there is not sufficient machinery to see it is carried out.

The CHAIRMAN: Mr. Blair says the Board are in a position to appoint sufficient inspectors to carry out your wishes, and are expecting to do more, and have the power to do it.

Mr. BEST: The Board may have the power to appoint a number of inspectors, but they have never been able to divide up the district and assign them to each district, so that some one particular person would be responsible for the locomotives in that district and would be responsible to some higher officer. There is another point probably overlooked entirely in what is proposed, and that is giving to the inspectors a certain power. Some one would have to see that the boiler is fit, or that the locomotive is in proper condition to go into service, and they should see, in the interests of all concerned, employees as well as the public, that if that locomotive is not in fit condition it should be taken out of the service, regardless of traffic conditions.

The CHAIRMAN: They are in that position to-day.

Mr. BEST: Pardon me, they do not do it, as a general practice. That is why we are here.

Mr. CARVELL: You would not expect the Government to inspect these locomotives more than three or four times a year. You say there should be some public power to see that a locomotive should be taken out of the service when not in fit condition, or put back into the service when put in proper condition. That would require a daily inspection. You would not expect any public body to take absolute control of all locomotives in Canada and inspect them daily and say "This one shall go out and run, and this one shall not."

Mr. BEST: Make regulations for the company to carry out, and inspectors to see that they are obeyed. A certain district would be placed in charge of a Government-appointed man, whose duty it would be to go round, not at any stated intervals, because an engine might be out on the road, but he might go at any time and inspect the engines in his own particular district.

The CHAIRMAN: Have you ever asked the Board to consider your proposition?

Mr. BEST: I have discussed the matter with the traffic officers of the Board, and I do not think they are opposed to it at all.

Mr. MACDONELL: Have they definitely refused to do it?

Mr. BEST: No, we never asked them to create the office, because it was considered by officers we discussed it with that it should be dealt with in the Railway Act.

The CHAIRMAN: If they have the power to do exactly what you are asking them to do, and you have placed before them your request, and it has not been refused, it is pretty hard, by adding a lot of additional clauses, to compel them to take action.

Mr. BEST: The Board has not the power as contemplated in this report. I fear the committee has not comprehended what is embodied in our report.

The CHAIRMAN: Mr. Blair says they have the power.

Mr. BEST: Pardon me, they have not the power we suggest, it is not given to them in the Act.

Mr. JHONSTON, K.C.: They can appoint any number of inspectors, and the railway men must furnish them any information they require.

Mr. BEST: They can do that.

The CHAIRMAN: What are you asking?

Mr. BEST: To give the Board power to see that when violations take place they will be reported, and the onus will not be placed on the employee to prosecute a railway company because they deliberately violate any order of the Board.

Mr. JOHNSTON, K.C.: The Board has power to appoint inspectors and impose duties on those inspectors.

Mr. BEST: The word "inspectors" has reference to right of way and everything.

Mr. JOHNSTON, K.C.: No, section 289 is in regard to making orders and regulations, and under 392 there is a penalty imposed for refusal to obey any order or regulation of the Board. It seems to me the whole story is there.

Mr. BEST: Who tells the fellow to prosecute? Our proposal contemplates, for the purpose of this Act, that the Board's power shall be extended to the execution and enforcement of the Act, and there is nothing in the Railway Act which contemplates that.

Mr. CARVELL: I want to follow up that point. You want to have control of the inspection district, and your inspector comes along and he finds engine 200 is all right and gives a certificate, and the engine goes out on the run next day. In all probability this inspector would not strike this same engine for a fortnight or a month, and something happens next day. Who is going to report to the authorities and lay the complaint, if it is not the man who is driving the engine? The inspector would not know anything about it. You are asking something that would be all right if it worked out, but the difficulty is to work it out.

Mr. BEST: The provisions of our proposal contemplate making the inspection branch so complete that it will receive all the reports of the railway company from time to time, as required by the regulations.

Mr. CARVELL: Would you not require a daily report on every locomotive on the system, in order to carry out your proposition?

Mr. BEST: Not daily.

Mr. CARVELL: Why?

Mr. BEST: The boiler reports would probably come in every thirty days, but there are certain inspections that should be made regularly and reports made to the district inspectors, as it were.

Mr. CARVELL: The Board has power to order that.

Mr. BEST: Yes, but they have not enough inspectors.

The CHAIRMAN: That is the great objection.

Mr. BEST: That is one of the objections, but my point is that the system is not complete without a branch for the inspection of the entire locomotive. At present they are only inspecting the boilers.

Mr. JOHNSTON, K.C.: The Board can supply that.

Mr. BEST: They can supply that and make the machinery just about the way it is done to-day, and the inspection will be about as inadequate as it is to-day and as it has been during the past year.

Mr. JOHNSTON, K.C.: Have you complained to the Board?

Mr. BEST: Yes. If I had my files here you would not have time to go through them. The largest factor in the congestion of traffic last year was due to the condition of the locomotives on the Canadian railways. I make that statement unqualifiedly, and I can bring men in charge of the engines to testify before you as to that.

Mr. JOHNSTON, K.C.: If you established that clearly to the Board, it is not conceivable that the Board would neglect to take action?

Mr. BEST: Yes, because they have not sufficient inspectors to go over the territory we have in the Dominion of Canada, which is equally as large as the United States, where they have recognized that it is necessary to have fifty locomotive inspection districts. Of course, we have not as much mileage.

Mr. JOHNSTON, K.C.: You say this Board is not doing its duty?

Mr. BEST: They cannot do their duty with the machinery they have got.

Mr. JOHNSTON, K.C.: They can increase the machinery.

Mr. BEST: They can increase their inspectors and machinery, as I understand it, but I do not believe——

The CHAIRMAN: They claim they have the power, and have under consideration the increasing of the number of inspectors.

Mr. BEST: I do not believe they have under consideration the question of dividing up the territory in the districts.

Hon. Mr. COCHRANE: You say one man could take care of ten or twelve miles of track. He could only inspect that about once a week or once a month.

Mr. CARVELL: And if something went wrong there is nothing to report.

The CHAIRMAN: Have you anything more, Mr. Best?

Mr. BEST: I have a good deal more in the way of evidence, but it appears to me that the view the committee takes is that the Board at the present time has the power to do everything we are contemplating. I hold—and I think Mr. Lawrence will agree with me—that the Board has not power to do all we are contemplating, and we feel, as I said to the minister some time ago, that it is a matter of national duty and a

matter of national importance that that portion of the inspection branch should be established a boiler inspection branch. I do not think the committee thoroughly appreciates the seriousness of the situation. I have in my possession letters that the committee would regard almost as socialistic in tone, written by men who fear what is going to happen in view of the present condition of the railway engines.

Mr. CARVELL: Are not railway companies as anxious to have their engines in as good conditions as we are?

Mr. BEST: In the policy the railway companies pursue they are actuated by motives of economy.

Mr. NESBITT: Is it economy to pay heavy damages for accidents that occur on railways? That does not work in with your theory of economy at all.

Mr. BEST: That may be, but the fact is that the railway company takes a chance with the locomotive, and they do not perform the necessary repair work on it before it goes out. I want to tell you there was a locomotive, after the condition was reported, went out of an Ottawa station, and the boiler split fifteen inches. The engineer had to reduce the pressure and bring the engine back again. These are the things that are happening all over Canada. This was an occurrence that happened right here in Ottawa.

Mr. NESBITT: Would not that man have the right to report the facts to the Board?

Mr. BEST: He reported it to me. He did not report it to the Board because he was afraid of losing his job.

Mr. NESBITT: Did you report the case to the Board.

Mr. BEST: Yes.

Mr. NESBITT: Did they attend to it?

Mr. BEST: Of course the Board's inspectors would attend to it, but the company took the engine away. They took the engine to the repair shops and corrected the defect, but it made another trip before that was done.

Mr. SINCLAIR: You say that in your opinion the Board have not the power to make the necessary regulations. Have you any suggestion to advance that would give the Board more power?

Mr. BEST: Yes, and it is set forth in our proposal.

Mr. SINCLAIR: I mean apart from this proposal, because my objection to it is that it goes too much into detail. For example, you divide the country into 30 districts, and I have no information before me as to whether that is the correct thing to do or not. The committee would require a lot of information to be sure that is the right number of districts to adopt. Otherwise, we should be obliged to accept your word for it, and you should not ask us to do that. There is a lot of detail involved in this proposal of yours, which I think would be better worked out by the Board. If you say the Board has not got the necessary authority, why not amend the Act so as to give the Board the necessary power.

Mr. BEST: I quite appreciate your argument, Mr. Sinclair, and I realize that it would have great force if we were proposing something as an experiment. But this whole scheme as contemplated in our proposal, has been tried out. Printed reports have been issued from year to year since 1911 by the Interstate Commerce Commission of the United States, compiled by the Chief Boiler Inspector and his assistants. These reports contain the number of locomotives that are reported to be in an unreasonable condition, the number of locomotives that have been taken out, and so on. This whole policy has been tried out in the United States, and we are not asking the Canadian Parliament to adopt anything that is experimental. I feel, Mr. Chairman, that the committee does not yet apprehend the seriousness of the situation.

The CHAIRMAN: Is it the wish of the committee that this amendment be embodied in the Bill?

Mr. MACLEAN: I want to take a minute to express my own view. I do believe in the Board being given full and strong powers to administer the railways of this country in the interests of all concerned. We have given the Board those powers and they can appoint these inspectors. If the Board does not appoint such inspectors as it is within their right to do, then they are delinquent and subject to somebody for that delinquency but until such time as it has been proved that the Board do not make the necessary inspection, or have not the power to enforce an inspection when they order one, then it is our duty to give effect to this Act. I want to keep the Act in the shape in which it is. If the Board have the power, and I know they have, to appoint all kinds of inspectors, and if they have failed in that duty they are blame-worthy. If the Board have not the power to enforce what they have ordered to be done, then we are to blame. However, I want to see the Act fairly tried out. If Mr. Best will come to this Parliament, or to the individual members of the House, and say that the Board are not enforcing the Act and not making sufficient provision for the inspection of locomotives, we may take it up. But I want to see the law tried out as it now is. If it is not effective it will be our duty to intervene. But we have given the Board wide powers which should be sufficient to cause the enforcement of their rules. If not, then it will be our duty to intervene.

The CHAIRMAN: Gentlemen, let me draw your attention to the fact that it is after one o'clock.

Mr. LAWRENCE: I respectfully suggest to the members of the committee that there be no undue curtailment of discussion in view of the importance of the question.

Mr. MACLEAN: It is a big issue.

Mr. LAWRENCE: I realize well that the great majority of men in this country, no matter what position they hold, do not understand the situation involved here. I also realize it is the understanding of the committee that the Board will have extensive powers when this Bill goes into effect, more extensive powers than they have enjoyed in the past. It is undoubtedly also the wish of the committee that the Board should carry out to the limit these powers vested in them, although it is not desired to subject railway companies or anybody else to undue hardships. Realizing all these things, I say to you gentlemen: I do not want to press the matter, I will leave it in your hands. But there is one thing further which must be said. It has been stated here this morning that the Board of Railway Commissioners at present have inspectors who inspect locomotive boilers. That is a mistake. They have inspectors who go out and inspect locomotive boilers in case of accident and they do not carry that out as a general policy. Now, I am not saying that in order to find fault.

Mr. NESBITT: Mr. Blair says the Board's inspectors do inspect locomotive boilers as a general thing.

Mr. LAWRENCE: I want to say that they do not.

Mr. BLAIR: I gave the committee the information that came to me from our chief operating officer. The Board have four inspectors. Two of them may be accident inspectors and two are mechanical engineers, and these four inspectors make the inspections referred to from time to time. Mr. Lawrence says they do not. I can only state that our chief operating officer says they do, and they make their reports to the Board from time to time.

Mr. MACLEAN: Appoint additional officers if that is deemed necessary.

The CHAIRMAN: Is it the wish of the committee that this amendment should be adopted to increase the number of inspectors? It has been discussed nearly the whole morning.

Mr. BEST: There is a gentleman here representing the International Association of Machinists and in our opinion it is important that he should be heard.

The CHAIRMAN: Very well, we will hear him for a few minutes.

Mr. LOGUE: I am here to take the place of Mr. McClelland, second vice-president of the International Association of Machinists, who unfortunately is unable to be present to-day. I wish to say that locomotive inspection is not covered at present on any railway I have worked on. I do not mean to suggest it is the fault of the Board, it is probably because they were not previously fully conversant with the conditions relating to motive power. Last fall, when the railroads fell down so badly in handling the traffic of the country, those conditions were brought more prominently before the attention of the public, and we deemed it to be an opportune time to arouse the public interest. These amendments have been brought forward by the railroad brotherhoods working with the knowledge of the machinists. We took the matter up separately, and I believe there were amendments suggested by the machinists, but under all the circumstances and in view of the course which matters have taken now, I would like to ask you, Mr. Chairman, if Mr. Blair would be willing to discuss the matter with the railroad brotherhoods and with the machinists. If the railroad brotherhood and the machinists can show the necessity for these amendments by evidence of a technical character, I believe we might come to some agreement which would achieve the desired end and would furnish a solution of the problem.

The CHAIRMAN: Then it is understood the amendments are not embodied in the Bill by the committee.

Mr. JOHNSTON, K.C.: The Bill stands as it is without them.

Committee adjourned until Friday.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 19--MAY 25, 1917

(Containing further representations from the Canadian Lumbermen's Association; also from the Railway Brotherhood re *Special Constables.)*

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

FRIDAY, May 25, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Carvell, Cochrane, Green, Macdonell, Nesbitt, and Sinclair.

The Committee resumed consideration of the Bill.

On motion of Mr. Cochrane, section 331, dealing with special freight tariffs, was reconsidered, and Mr. Frank Hawkins, secretary of the Canadian Lumbermen's Association, again heard thereon.

Further consideration postponed.

Section 442 being further considered, the representatives of the Railway Brotherhoods were again heard thereon, and on section 449 and others dealing with the appointment of railway constables. Further consideration postponed.

At one o'clock the Committee adjourned until Tuesday next at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
May 25, 1917.

The Committee met at 11 o'clock a.m.

The CHAIRMAN: Some days ago the lumbermen of Canada were heard through Mr. Hawkins, and I understand that a number of them are here this morning and are asking to be allowed to be again heard on section 331; they promise not to exceed twenty minutes in their statement. Is it the wish of the Committee that the consideration of section 331 be re-opened?

Carried.

Mr. FRANK HAWKINS: Mr. Chairman and gentlemen: When I appeared before your committee on the 10th instant it was to present the views of the lumbermen in regard to what they consider a very vital question. The point is this: At the present time the onus of proof in a railway tariff increase case before the Board of Railway Commissioners is on the people. We are asking for an addition to section 331, whereby when a railway files a tariff increasing its rates, and it is objected to by any body of people or by any association, the case shall be put down for hearing and the railway shall be called upon to justify that increase. The question of freight rates is one of great importance to the public, and when I say to you that the increases which have taken place in the tariffs on lumber are really becoming a burden to the community I am not exaggerating. A year ago last February the railways came forward with an application for increases in rates which practically amounted to one-half a cent per hundred pounds on all shipments east of Fort William, or, taking the volume of lumber shipments last year, an increase of $885,000. Before that tariff was put into effect, the railways came along with another application to the Railway Commissioners asking for an increase of 15 per cent in rates. We do not want to place the railways under any disability, but when I tell you that the jump of 15 per cent in freight rates in Canada represents an increase of some $39,000,000 a year, you will see that it is becoming a very serious question.

The CHAIRMAN: What portion of that sum would represent increased freight rates on lumber?

Mr. HAWKINS: Somewhere about $900,000 a year.

The CHAIRMAN: Have you an amendment prepared?

Mr. HAWKINS: The amendment we wish is to be found on page 29 of the Annual Report of the Canadian Lumbermen's Association for 1917.

The CHAIRMAN: That suggestion reads as follows:—(reads)

> "Any special freight tariff of any transportation company (subject to its jurisdiction) which may hereafter be filed with the Board of Railway Commissioners, to which exception is taken by any person, company or other party interested, making formal protest, either before or after the effective date mentioned therein, against the adoption of said tariff, shall at the discretion of the Board be disallowed, until after such time as the Board shall determine, after hearing evidence produced for or against the adoption of such tariff. The Board may of its own volition, without protest or complaint on the part of others, disallow any such tariff, or any portion thereof, with or without hearing evidence in support of, or against same.

In any special tariff the rates contained in which are increased, the burden of the proof,

(*a*) that old rates are inadequate, unsatisfactory and, or unworkable,

(*b*) that a larger freight revenue is requisite and necessary, and the reasons therefor:—

shall be on the transportation company or companies, or its or their representatives, filing such tariff."

Mr. HAWKINS: That is the point we want to cover.

Mr. NESBITT: You can cut it down by saying that the onus of proof shall lie on the railways to justify the increase.

The CHAIRMAN: That is the sum and substance of your argument, that the onus of proof should be placed on the railway instead of on the shipper?

Mr. MACDONELL: Why not leave it to the Railway Board, as you leave it to the Court?

Mr. HAWKINS: For the reason that we are always put in that position. I can illustrate it by using a homely illustration. Suppose I am coming up town and a man takes me by the throat. I am a peaceful, law-abiding citizen, and I do not thrash him, but have him arrested, and in the morning when I go to the police court, the magistrate says, "Now, prove why this man took you by the throat?" and I cannot prove it, and he says, "You have lost your case," and he makes me pay the costs. That is precisely what happens every time we go before the Board. The onus is placed upon us.

Hon. Mr. COCHRANE: But the law will not put the onus on anybody. Let the Board be the judges.

The CHAIRMAN: They are prepared to hear your case.

Mr. HAWKINS: There is no doubt about that.

The CHAIRMAN: You fully present your case before the Board and they decide against you.

Mr. HAWKINS: They do not decide against us, but decide in favour of the adoption of the tariff.

Mr. NESBITT: That is sometimes against you.

Mr. HAWKINS: When we have to pay the money, yes.

Mr. MACDONELL: In the criminal law, no statute says that the onus of proof shall lie on anybody. Leave that to the Board to determine, as the case proceeds, according to well known rules.

Mr. HAWKINS: If we could take this case into the criminal court we would win.

Hon Mr. COCHRANE: I do not think you would always, because the cost of the operation of railways has greatly increased in the last few years. For instance, you have to pay for an engine more than double the price which ruled three or four years ago, and similarly with cars, the price has increased.

The CHAIRMAN: Your criticism infers that the Railway Board is not dealing justly?

Mr. HAWKINS: No, we do not make that accusation at all, but we say that where the railway companies make an application for increase in rates they should be prepared to justify their application. That is our case.

Hon Mr. COCHRANE: I think we should leave it open, and not place the onus on anyone.

Mr. HAWKINS: But surely, in the public interest, where we have an instance——

Hon Mr. COCHRANE: I do not think it hurts you any to put up your case, and let the Railway put up theirs; that gives no one an advantage.

Mr. NESBITT: There seems to be a good deal of common sense in the view that, where the railways apply for an increase of rates to the Board, they should justify that increase. That seems to be reasonable. If an individual applied for a reduction of a rate, he certainly would have to justify his claim for a reduction.

The CHAIRMAN: Will the Board grant the companies a rate, unless they feel they are justified in doing so?

Mr. NESBITT: I should think the railway company would have to justify the increase before the Board would grant it.

Mr. HAWKINS: There is increase after increase, not only of rates, but in carload minimums and car service, and it is really becoming a burden.

The CHAIRMAN: Perhaps Mr. Booth would like to say something on this question.

Mr. HAWKINS: Mr. Booth and other gentlemen are here to support up anything we put before you. The resolution we have placed before the committee, I may say, has been passed since 1912 at each annual meeting. The announcement being made that it was in contemplation to revise the Railway Act, this very resolution which has been passed from year to year without any amendment, was unanimously adopted by the lumbermen at their annual meeting.

The CHAIRMAN: You are simply saying in that resolution that the Board of Railway Commissioners is not dealing with you fairly as a body.

Mr. HAWKINS: I do not say that. We say that if the railways make an application for an increase in rates, it surely is up to them to come to the Board and justify their position. We are going to help them to get the amount of money to which they are entitled. We do not want to take anything from the railways, and in asking for this, we are simply seeking protection on the public. The new provision proposed does not impose on the railways any disability or disadvantage. If the railways can prove their case, the Board decides in their favour absolutely.

Mr. SINCLAIR: You are quite right that the railways should justify the rate. Everybody agrees to that. The question is whether we should make it a law that they should do it, or leave it in the discretion of the Board. We would assume the Board would require them to justify the rate, just as they would require anyone coming before them to prove that everything they proposed is right, but if we go out of our way to make special regulations for the Government or the Board in this case, how about all the other cases we leave in their discretion?

Mr. HAWKINS: This is just a matter of public protection.

Mr. MACDONELL: Everything is a matter of public protection.

Mr. JOHNSTON, K.C.: You can always go to the Board and ask them, under subsection 4, to have the tariff suspended.

Mr. HAWKINS: Yes, we can do that, but once the rate goes in, we have never been able to do it.

Mr. CARVELL: Would it not be a reversal of the policy of Parliament for the last eighteen years if we adopted this suggestion? We have created the Railway Board, and have faith in the Railway Board, and if we had not, there would be no trouble in getting a Board in whom we had faith, but if we take the matter out of the hands of the Board, why have a Board at all? Are we not defeating the purpose of the Act?

Mr. HAWKINS: No, you are strengthening the hands of the Board, to carry out what the Board was appointed for—the protection of the public interest.

Mr. MACDONELL: Then when it comes to a reduction, the onus should be on you.

Mr. HAWKINS: I am quite agreeable to put that proviso in. We will justify any application for a reduction.

Mr. NESBITT: What do you say as to subsection 3, which reads:—

> "When any such special freight tariff advances any toll previously authorized to be charged under this Act, the Company shall in like manner file and publish such tariff 30 days previously to the date on which such tariff is intended to take effect."

Mr. HAWKINS: That is in line with the policy which has been adopted.

Mr. JOHNSTON, K.C.: You watch the tariffs.

Mr. HAWKINS: Yes.

Mr. JOHNSTON, K.C.: And when you find a tariff published, if you have any complaint you go to the Board?

Mr. HAWKINS: Yes.

Mr. JOHNSTON, K.C.: And the Board can deal with it.

Mr. HAWKINS: Yes.

Mr. CARVELL: Is it not fair to say that you are asking us to say beforehand what the Board shall do, and just make them the means of registering our decisions?

Mr. HAWKINS: No, not quite.

Mr. CARVELL: Not quite as strong as that?

Mr. HAWKINS: No, I would not follow you that length. I would say the simple clause that we ask you to insert in this Bill puts the machinery in the hands of the Board of Railway Commissioners, that when there is a case before them that is a matter of controversy between the shippers and the carriers, the one making application shall be there to justify that application. That is all we ask, and it does seem to us that it is a reasonable and fair thing. It is in the public interest, and it does not impose any disability on the railways in any way, shape or manner.

Mr. MACDONELL: If you do it in the case of the lumber dealer, you have to do it in all cases.

Mr. HAWKINS: We are dealing with the public, and dealing with every ton of freight shipped in the country. I will draw attention to the fact that the Canadian Manufacturers' Association passed a resolution which reads as follows:—

> "Be it resolved that the Honourable, the Minister of Railways and Canals be asked to amend the Railway Act so as to give authority to the Board of Railway Commissioners either upon complaint, or upon its own motion, to suspend the operation of any tariff or regulation for sufficient time to permit of a full hearing, and afterwards to make such order as would be proper in a proceeding initiated after the tariff became effective; the burden of the proof to be on the carrier to show that the increased tariff or regulation is just or reasonable."

That is the regulation. They ask the very thing we ask, namely that the burden of proof be on the railway.

Mr. JOHNSTON, K.C.: Do you know how many tariffs are filed with the Board per day?

Mr. HAWKINS: I understand there are probably thousands of tariffs filed.

Mr. JOHNSTON, K.C.: And a good many of these tariffs provide for increases?

Mr. HAWKINS: Yes.

Mr. JOHNSTON, K.C.: And people who have objections have thirty days within which to come to the Board and ask for a hearing. Suppose the Board had a hearing regarding every tariff, how would they ever do business? They could not do it.

Mr. HAWKINS: If the company is reasonable and the increases are fair, they will pay them.

Mr. CARVELL: I suppose one answer might be that the railways would not make so many tariffs.

Mr. HAWKINS: I do not know about that, but it does seem hard on the lumbermen, particularly because the lumber business has been hit so often, and will be hit more for increases in rates.

Mr. CARVELL: But these are all published 30 days before becoming effective?

Mr. HAWKINS: There is no doubt the railways comply with the Act.

Mr. CARVELL: Every man doing business has every reasonable facility for receiving notice of an intended change of tariff, I would think.

Mr. HAWKINS: The large shippers receive the tariffs direct from the Freight Traffic Association.

Mr. CARVELL: Then they are public. You have thirty days opportunity, under this Act, in which to apply to the Board to register your objection. Is that not reasonable?

Mr. HAWKINS: We are not quarreling with that. That is not the point. The point is that we simply ask for an addition to clause 331 putting the onus on the railways, when they make an application for an increase in rates, to prove the reasonableness of their application.

The CHAIRMAN: Perhaps some of the other gentlemen who are with you would like to be heard, Mr. Hawkins.

Senator EDWARDS: I do not know that it is a proper thing for me to express any opinion here,——

The CHAIRMAN: It will be quite right, I am sure.

Senator EDWARDS: Because this is a Bill which will come before the Senate Committee, and I would have to deal with it there on its merits. I do not know that I should take part in this discussion.

Mr. NESBITT: If the Bill is not clear that where the railways ask for an increase of rates they should have to justify that increase in their application, I think we should make it clear. That seems only reasonable to me.

Hon. Mr. COCHRANE: There is no objection to that. When the lumbermen ask for a reduction, they must justify it as well.

Mr. HAWKINS: We are quite agreeable to that. Any application made to the Board must be justified by the person or company making the application.

Hon. Mr. COCHRANE: I move to that effect.

Mr. NESBITT: On the contrary, if anybody applies for a reduction they must justify the reduction in their application. I think Mr. Johnston could draft an amendment.

Mr. BLAIR: That is in line practically, as I said the other day, with the practice now.

The CHAIRMAN: That is the present practice of the Board?

Mr. BLAIR: As I stated, all that the shipper is called upon to do is to make out a very slight prima facie case, and the onus is on the railways anyway. I do not know whether changing the Act is going to vary the practice to any extent.

Mr. NESBITT: Mr. Blair, if it would not vary the practice, might it not as well be made clear?

Mr. BLAIR: What is the proposal?

Mr. NESBITT: As I understand it, it is that where any railway asks for an increased rate, with the application they should justify the proposed increase. I do not know that the clause does not make that clear, but if it does not, I think it should.

The CHAIRMAN: It is moved that Mr. Johnston be asked to draft an amendment.

Hon. Mr. COCHRANE: To the effect that the onus of proof will be on the person making application for an increase or reduction in rates.

The CHAIRMAN: That persons making application before the Board for increase or decrease of rates must justify the application.

Mr. MACDONELL: On him shall rest the onus.

Mr. CARVELL: I would like to know just how this is going to work out. We know that in the operation of a railway they find it necessary to file special tariffs for one certain commodity, and that process is going on all the time. Now, upon whom will the Board serve notice if the railway company have got to justify? Of course they have to justify it before the Board, but somebody else ought to have notice and ought to show cause against their application.

Hon. Mr. COCHRANE: We are not interfering with that. They would get notice.

The CHAIRMAN: They would have thirty days' notice under the section as it stands.

Mr. NESBITT: The proposed amendment would not interfere with that at all. The regular notice would go on.

Mr. JOHNSTON, K.C.: It would interfere in this way: automatically a great many of these tariffs come into force every day without an application and without a formal hearing. If you are going to compel either the lumber companies——

Mr. NESBITT: Does the Board put them into force?

Mr. JOHNSTON, K.C.: They go into effect under this Bill after thirty days' notice has been given. Persons objecting to the tariff have ample opportunity to come to the Board and state their case in that time. If they do not do it the tariff goes into effect. If you are going to provide that in every case where a tariff is altered there must be a hearing, and the onus must be on one party or another, you are going to multiply the number of applications to the Board ad infinitum, and you are going to lay on the Board a burden that I do not see how any Board could bear.

Mr. CARVELL: That is the difficulty. A section of the Board would have to sit continually hearing railway officials.

Mr. HAWKINS: That would be only in cases where the tariff is objected to.

Mr. CARVELL: Oh, no, that is the law as provided under section 331.

Mr. HAWKINS: I am not legally trained, but the sense of our application is, that where a tariff filed by a railway company, or by the railway companies——

Mr. BLAIR: And there are hundreds and thousands of them.

Mr. HAWKINS: —is objected to, the case shall be put down for a hearing, and the railway making application for the increase shall justify the increase.

Mr. CARVELL: If it is objected to?

Mr. HAWKINS: Yes.

Mr. CARVELL: That is the law as provided under section 331.

Mr. HAWKINS: The onus to-day is on the people and not on the railway.

Mr. CARVELL: Would you go so far as to say that before any tariff can be put into force increasing a rate that the railway company must in some way justify the application?

Mr. HAWKINS: Not at all. The mere fact of filing that application with the Board is sufficient notification to the general public. We would not for a moment consent to burden a railway to that extent.

Mr. CARVELL: You would be satisfied if a clause were put in that these tariffs should come into force automatically at the end of thirty days unless objected to?

Mr. HAWKINS: Even before or after the effective date of the tariff.

Mr. CARVELL: You would only ask a hearing in those cases where there is an objection filed?

Mr. HAWKINS: Precisely.

Mr. NESBITT: You have that accorded you now.

Mr. HAWKINS: Coupled with that, the onus of proof must be on the one making the application. That is, an application for a reduction—which I have never heard of in my life on the part of the people—must be justified in the same way.

Mr. SINCLAIR: Have you ever known of a case where a tariff was put into force that was objected to without some proof?

Mr. HAWKINS: I did not get your point.

Mr. SINCLAIR: You say that the onus of proof is to be on the company when increases are to be made. Have you known of any case where the Railway Board have passed on a tariff approving of an increase where there was a contest, without proof being given to them by the railway to show that it is necessary?

Mr. HAWKINS: I have not. I think it is only fair to say that wherever the public enters a protest the Board puts it down for a hearing. We have no difficulty of that kind.

The CHAIRMAN: The Board have the hearing.

Mr. HAWKINS: Yes, sir.

The CHAIRMAN: And they hear the objections that are likely to be made to the rates, do they not?

Mr. HAWKINS: Yes. But we are in this position: it is physically impossible for shippers to demonstrate why the railways should not have an increase. That is the position we are put in every time.

Mr. SINCLAIR: You should not be asked to do it. I can hardly conceive of the Board acting in case of a dispute without some evidence to justify their action.

Mr. HAWKINS: Both sides are heard, there is no doubt of that. We are not complaining that we do not get a fair show from the Board of Railway Commissioners. But we do say that where a railway, or the Freight Traffic Association, which is a combination of all the railroads, and, in passing, I might say that there is no competition in rates to-day in Canada, although we frequently hear about the competition between the railways—when that association files a tariff increasing rates which tariff is objected to by the shippers, the railways should justify their application.

The CHAIRMAN: They surely do justify it or the Board would not pass the rate. Let us allow Mr. Blair a moment to explain

Mr. BLAIR: Mr. Chairman, as I understand it, the practice, and the invariable practice of the Board is, as I stated to this Committee before, that when a protest against a special tariff effective such and such a date is filed, the only onus, the only burden, the only thing the Board asks the applicant or the shipper or whoever it is, to do is to make out some kind of a case before the Board casts upon the company, or requires the company, to show cause why that particular rate should be increased, or why the increase should be allowed. As I have also stated to the committee the practice of the Board is very lenient in that respect. For example, if a shipper says that he has entered into a contract on the old rate basis, that is sufficient to satisfy the requirements of the Board, and the Board says to the railway: You have to justify or show cause for the increase you are asking for. That is the practice of the Board.

The CHAIRMAN: Will the powers of the shipper be increased to any extent if the amendment as suggested is placed in the Bill?

Mr. BLAIR: I do not think it would. I am going to ask the Committee, Mr. Chairman, if they will, before amending this clause, give to me a draft of the proposed amendment and let me discuss it with our traffic officer and with the Board, and speak to the commiteee before the section is finally passed.

Hon. Mr. COCHRANE: That will be satisfactory.

Mr. CARVELL: I may not be here when this clause comes up again. I would have no objection whatever to incorporating in this section a clause providing that in case a proposed rate is objected to, the burden shall be upon the railway company or the person making application to substantiate it. I do not think that changes the practice from what it has been. I can quite see the reasonableness of the attitude taken by Mr. Hawkins. A railway company asks to have a rate advanced, and they must advance some reason. If the person objecting were compelled beforehand to prove the absence of necessity for the change, I can see where he would be at a great disadvantage, whereas the party asking to have the rate advanced has all the information within his power and can easily furnish the evidence in support of the application if such evidence exists. I have no objection to that part of it, but would object very seriously to a clause being put in this Act, providing that in every case where the railway company applies for an advance in the rates there must be a hearing and an adjudication following on that application.

Mr. HAWKINS: What you have just stated covers our full request.

The CHAIRMAN: Very well, then, Mr. Hawkins, Mr. Johnston will draft an amendment to cover the points suggested.

Mr. HAWKINS: And may we see that amendment when it is drafted?

The CHAIRMAN: Certainly. We will now proceed with the non-contentious clauses, and pass as many of them as we can this morning. The Hon. Mr. Lemieux, who proposes another amendment, is not present.

On Section 392:—"Offences, penalties and other liability."

Mr. JOHNSTON, K.C.: This is a new clause, which is calculated to give the Board broader powers in imposing penalties, and to make them more effective.

Mr. CARVELL: This is a pretty serious proposition, and I would like the Committee to consider subsection 2 for a moment, wherein it provides that the superintendent of a company shall be guilty, the same as the president, vice-president, director and managing director, for disobedience to the orders of the Board. I can quite understand that the head of a company should be made amenable to any order of the Board and be liable to a penalty for neglecting or refusing to obey the order. The difficulty, however, is that in the operation of the railroad, the superintendent is merely a hired man, practically, of the railway company. I realize that the superintendent under this clause as it is drawn might obtain his immunity from penalties by saying "I did all I could to obey the order, but I was overruled by my superior officers." But that is putting the superintendent in a very difficult position, because if he throws back the responsibility upon his superior officers, it might be held up against him, and I would hesitate to vote for that clause, with the word "superintendent" in it.

Hon. Mr. COCHRANE: You think it should be struck out?

Mr. CARVELL: I think it goes too far down the line, because, after all, the superintendent has very little to say upon questions of policy; he has simply to carry out the instructions of the management. Section 3, I think, is all right.

Hon. Mr. COCHRANE: And your contention is to strike out the word "superintendent"?

Mr. CARVELL: I bring it before the Committee for consideration.

Hon. Mr. COCHRANE: I think there is something in what you say.

The CHAIRMAN: Mr. Blair, what have you to say about the proposal to strike out "superintendent"?

Mr. BLAIR: I have no special instructions with reference to it.

Hon. Mr. COCHRANE: It is not a question specially for the Board, we are as well qualified as the Board to determine it.

Mr. W. L. BEST: If you strike out "superintendent," why not strike out every one else in connection with the railroad, and say that you cannot prosecute anybody for the violation of the order of the Board? Now the general superintendent of, say, the C.P.R. out of Ottawa, has jurisdiction from Montreal to Chalk River on the main line and on a number of branch lines, and his orders go. He is the man who is responsible practically to the directors and to the president.

Hon. Mr. COCHRANE: Still he has to obey their orders.

Mr. BEST: He is also responsible, and he is the man who can determine what ought to be done and what ought not to be done, and if it is a case of the law saying that he must not do it he can say to the directors if they tell him to do it that it is against the law.

Mr. CARVELL: But what about the district or local superintendent?

Mr. BEST: The word "superintendent" might apply to the general superintendent or to the district superintendent and that is why I object to its being struck out, there may be perhaps three or four superintendents under the General Superintendent. I would not mind if there were some modification of the subsection, so that the underman, whether he be the divisional superintendent, or the trainmaster, would not be held responsible, because sometimes they call the trainmaster the assistant superintendent, and I have no objection to saying that that man should not be prosecuted, but the general superintendent should be liable to prosecution, because he has the power and he is the man who practically administers the law in the railway company in that jurisdiction.

Mr. CARVELL: You know more about railway practice than I do, but is it not a fact that the general superintendent practically carries out the orders of his president or the management?

Mr. BEST: But he is the man who proposes the appropriation, the amount of it, and the administration of the railway, and he has the power to enforce the orders of the Board.

Mr. L. L. PELTIER: Mr. Best is speaking for himself alone in this matter.

Mr. CARVELL: Then there is a division of opinion between the representatives of the brotherhoods on this question.

Mr. PELTIER: Not a division, but we are not entering into the discussion.

Mr. CARVELL: I know that when I go to the superintendent in order to get something done, I am invariably told that I shall have to go to the head office, that the superintendent has not the power to take action, but when I go to the head office action is taken at once. This should not include the divisional superintendent.

Mr. BEST: That is quite natural, but there have been many cases where, when our men complained to the superintendent, he replies: "I have to do that because it is the order of the Board." Sometimes he puts the blame there where it should not be.

Mr. JOHNSTON, K.C.: Mr. Fairweather suggests that the word "and" should be made "or" in the last line but one. As it stands now the superintendent can be acquitted if it is shown that he took all proper and necessary means to carry out such order, and also show that he was not at fault.

Mr. CARVELL: That does not cover the point.

Mr. JOHNSTON: If he shows that he had to carry out the instructions of the Managing Director, would not that satisfy the Board?

Mr. CARVELL: I do not know, the rules of the railroad are so strict that the divisional superintendent might not feel at liberty to say that he was carrying out instructions.

The CHAIRMAN: That would not be the case with the General Superintendent,

Mr. CARVELL: I would not object to the Chief Superintendent being specified.

Mr. NESBITT: Unless he says he took all necessary precautions.

Mr. CARVELL: That would still put the burden on him to accept the responsibility or else throw it back on the management.

Hon. Mr. COCHRANE: I think I would strike it out altogether.

Mr. JOHNSTON, K.C.: Strike out the words "and superintendent."

Mr. CARVELL: I move, seconded by the Minister of Railways, that the words "and superintendent" be struck out in the 15th line.

Mr. NESBITT: Before you strike that out, Mr. Minister, as far as my knowledge of railways goes, the effect will be to largely destroy the value of the clause. The superintendent, after all, is practically the boss, as far as he is allowed to be, by his superiors in his division. I do not believe it is practicable.

Hon. Mr. COCHRANE: You are making the responsible officers of the railway liable, and he is not a responsible officer, only with regard to carrying out the orders he receives.

Mr. NESBITT: Is it not a fact that one-half of the ordinary business carried on by the railway is within the jurisdiction of the superintendent without consulting his management.

Hon. Mr. COCHRANE: There is very little but what he has to carry out on certain lines, no doubt about it, but as far as the disobeying the orders of the Railway Board is concerned, I think it is a question where the railways ought to be punished, and not the official.

The CHAIRMAN: Is it the wish of the Committee that the words "and superintendent" be struck out—there is another suggestion, by Mr. Johnston, that the word "and" be inserted before the words "Managing Director" in the fifth line of Subsection 2.

Mr. JOHNSTON: It will then read "and every Director and Managing Director."

Section adopted as amended.

Mr. NESBITT: By subsection 3, of section 392, you are imposing a penalty upon the Mayor, Warden, Reeve or other head of a municipal corporation and every member of the council; what power have you to do that?

Mr. JOHNSTON, K.C.: This is railway legislation.

Mr. CARVELL: We are making it a quasi criminal act, under that subsection, and I think this Parliament has absolute jurisdiction in these matters.

Mr. NESBITT: Who would enforce it?

Mr. CARVELL: The Provincial authorities.

Mr. JOHNSTON, K.C.: They can do it.

Mr. CARVELL: Suppose you said you would bring a civil action against them. Then I think there would be very grave doubt of the jurisdiction of this Parliament to pass legislation of this kind.

Mr. NESBITT: You make responsible the mayor, warden, reeve, and every member of the council, of a corporation disobeying the orders of the Board.

Mr. CARVELL: If such mayor, warden, or other person votes against the thing against which the Board's order is directed, he is not responsible or in default. Just

the same as every other municipal officers he can say: "I did my best to prevent this offence being committed." I think such official is in a very different position altogether from the superintendent of a railway who is compelled to take orders from somebody higher up.

Section adopted.

On section 394—Stock and bond issues.

Mr. JOHNSTON, K.C.: You will have to strike out that section to be consistent with what you have already done in striking out section 146, regulating the issue of securities. Section 394 is manifestly to implement section 146. Having struck out 146, section 394 will have to be struck out also. You will remember, Mr. Carvell, it was upon this matter we heard Sir Henry Drayton, Chairman of the Board of Railway Commissioners.

Mr. CARVELL: I remember now. I was very much opposed to Sir Henry Drayton's ideas, but my views did not prevail.

The CHAIRMAN: At any rate it is necessary that this section be struck out.

Mr. JOHNSTON, K.C.: Yes, because it is only supplementary to section 146.

Section struck out.

On section 399—Removing industrial spurs.

Mr. JOHNSTON, K.C.: That is a new section.

Mr. CARVELL: I wish you would apply that to the Minister of Railways and bring him under its operation.

Mr. JOHNSTON, K.C.: If you turn to section 188 we have there a new clause which says: (Reads)

> "No branch line or spur constructed pursuant to either of the last two preceding sections shall be removed without the consent of the Board."

Section 399 is supplementary to that and provides a penalty for the removal of a spur.

Mr. CARVELL: That is all right.

Section adopted.

On section 402—Structures not in conformity with the Act.

Mr. JOHNSTON, K.C.: The section is exactly as it was before, but it seems to me there is something in the last paragraph which should be struck out. As it read now the proviso is: (Reads)

> "Provided that nothing in this section shall apply to any bridge, tunnel, erection or structure over, through or under which no trains except such as are, under the provisions of this Act, exempted by the Board from such requirements."

I confess I do not understand this language, I think the following words should be struck out: "Over, through or under which no trains except such as are, under the provisions of this Act." The proviso as amended would then read:

> "Provided that nothing in this section shall apply to any bridge, tunnel, erection or structure exempted by the Board from such requirements."

Section as amended adopted.

On Section 433:—company carrying dangerous goods.

Mr. GREEN: Why do you penalize the individual in $200 and the company in $500?

Mr. CARVELL: That first penalty is intended to discourage people taking explosives on the train. If a man takes a suitcase on the train full of explosives and the company know nothing about it, it is a serious offence. The other penalty is for carrying the goods.

Mr. NESBITT: Let it go.

Hon. Mr. COCHRANE: Both should be penalized very heavily.

Section adopted.

On Section 437: statistics and returns:

Failure to Furnish Returns to Minister.

The CHAIRMAN: This section merely asks for statistics and returns. It seems a reasonable clause.

Mr. JOHNSTON, K.C.: How about that section being considered with 358, which deals with carriage by water?

The CHAIRMAN: You can have statistics without control, but you cannot have control without statistics. Surely it is not asking too much that we should have statistics. I gave instances the other day where the representatives of the Marine Department, Customs Department and the Railway Department stated that it was impossible for them to furnish proper statistics, because they had not authority to get them.

Mr. JOHNSTON, K.C.: That is all very well, but I would like to have the Act workmanlike when we are through with it. If the latter words of section 358 were struck out, which we discussed the other day at great length, then it will follow that carriers by water will not be subject to the Act.

Mr. GREEN: This should stand until the other section is considered.

Section allowed to stand.

On section 395: purchase of railway securities:—

Company Not to Purchase.

Mr. JOHNSTON, K.C.: Mr. Fairweather suggests what he considers a necessary amendment to this Act. After the words in the first section "contrary to the provisions of this Act" insert the words "or the special Act."

Mr. CARVELL: Yes, it gives the authority.

Amendment adopted.

On section 442: railway constables failing in duty.

The CHAIRMAN: There is some correspondence as to section 442, and if the matter is contentious we might leave it over.

Mr. PELTIER: At page 299 of the proceedings of May 16, this correspondence has been printed. There is a memorandum signed by the four of us.

The CHAIRMAN: The correspondence covers 442, 449, 450 and 452.

Mr. CARVELL: I do not like subsection 3 and I suppose the reason is because I had a case in my own practice in regard to this question. It seems a hardship that a person can lay a charge against a man in Vancouver for an offence committed in Nova Scotia. As I construe this subsection, that may happen. It seems to me you should not go beyond the confines of the province anyway.

Hon. Mr. COCHRANE: If the trouble occurs in Nova Scotia, the complaint should be made there.

Mr. SINCLAIR: These words might be changed and made to read "where the offence was committed."

Mr. CARVELL: I can understand, on account of local feeling that often exists against railways, you might have difficulty in getting a fair trial in the municipality in which the offence was committed, but, if you had the right to take it to any municipality in the province you ought to be able to get round that difficulty.

Hon. Mr. COCHRANE: I do not see any objection to that.

Mr. JOHNSTON, K.C.: It would then read: "Any offence under this section may be prosecuted and adjudged," and strike out the words "county, city, district, or other local jurisdiction."

Mr. CARVELL: You might be more particular and say: "within any county, city, district, or other local jurisdiction in the province."

Mr. JOHNSTON: And add the words: "wherein the offence was committed."

Mr. PELTIER: What does that refer to?

Mr. CARVELL: To the venue or place where the trial may be held.

Mr. PELTIER: As to whom?

Mr. CARVELL: A railway constable.

Mr. JOHNSTON, K.C.: The words: "wherein the railway passes" will be struck out.

Mr. PELTIER: We have some objections to raise to this clause. I think there are other clauses relating to constables. Would it not be well to leave that amendment until we can discuss the clauses as a whole?

Mr. CARVELL: I am agreed.

The CHAIRMAN: You would have no objection to that amendment.

Mr. PELTIER: I do not know, but I hope there will be some revision of all of them, and that point might come up.

On section 443—Various offences.—Penalty.

Mr. CARVELL: Has the suggestion ever been made to increase that penalty?

Hon. Mr. COCHRANE: Is it not a pretty good one, $50?

Mr. CARVELL: I do not know. I know some places in Canada where many things happen on railways that ought not to.

Hon. Mr. COCHRANE: What would you suggest?

Mr. CARVELL: I would like to see the penalty made heavier.

Hon. Mr. COCHRANE: How much heavier? Would it have any better effect?

Mr. PELTIER: The heavier the penalty, the more likely the conductor is to be lenient with the offender.

Mr. CARVELL: All right, I won't press it.

On section 444—Penalties not otherwise provided.

Mr. JOHNSTON, K.C.: Is it not reasonable that contractors or any other person having to do with the railway should be made amenable to the Act?

Mr. NESBITT: Why, Mr. Johnston? What has a contractor to do with the running of trains?

Hon. Mr. COCHRANE: He has to see that the thing is fit to run if he is making alterations.

Mr. JOHNSTON, K.C.: The contractor is not hurt unless he does something contrary to the provisions of the Act.

Mr. SINCLAIR: Does this refer to construction work?

Hon. Mr. COCHRANE: There are often repairs or works which a contractor gets the right to do, and he ought to be penalized for failure to take precautions.

Mr. CARVELL: If he leaves gates open, tears down fences, and does not protect the railway property.

Mr. JOHNSTON, K.C.: Why should he not be amenable?

Mr. CARVELL: I think he should be.

Mr. JOHNSTON, K.C.: It has been suggested that the word "regulations" should be added after the word "orders" in the seventh line of this clause. It would read then "or to the orders, regulations or directions of the Governor in Council." I think that is proper, because in some places the word "regulation" is used.

Section adopted as amended.

On section 448—Procedure.

Mr. SINCLAIR: Subsection 4—leave of board required when penalty exceeds $100—is a pretty important subsection.

Hon. Mr. COCHRANE: I think it is all right.

Section carried.

On section 449—Appointment of railway constables.

Mr. JOHNSTON, K.C.: Mr. Peltier wants to speak on this and the succeeding cognate sections.

Mr. CARVELL: In case I should not be here when this section comes up again in the committee, I would like to say that I have some doubts about the propriety of allowing the parish court commissioners in New Brunswick to appoint a constable to act on a railway. You have to know the method by which our parish court commissioners are appointed. I can best explain that by telling the committee what happened a great many years ago when a man went to Fredericton to be sworn in as a justice of the peace. When he came down to be qualified, the clerk said: "I can swear him in but God Almighty cannot qualify him." These appointments are given because a man votes a certain way, and wants to have "J.P." after his name.

The CHAIRMAN: How would you have it amended?

Mr. CARVELL: By striking out the words, "or a commissioner of a parish court in the province of New Brunswick."

Mr. SINCLAIR: Cut it down to the county court, or two justices of the peace, or a stipendiary magistrate.

Mr. CARVELL: I do not think it would help by having two justices of the peace. I would not object to a stipendiary magistrate.

Sections 449, 450, 451, 452 and 453 stand.

On Section 456.

MR. BLAIR: One of the members of the committee spoke to me about this section, but he is not here now, and I think he would like to have an opportunity of being present before it is finally adopted by the committee. Might I ask that consideration be allowed to stand over until he is present.

THE CHAIRMAN: Who is the member?

Mr. BLAIR: Mr. Weichel.

THE CHAIRMAN: As Mr. Weichel would like to have the consideration of this section stand over until he is present, we will allow it to stand in the meantime.

On Section 461.

Mr. CARVELL: I suppose, Mr. Johnston, you have gone over this section and verified the references so that everything is included.

MR. JOHNSTON: I was just talking that over with Mr. Fairweather and we will have it checked up to see that nothing has been omitted.

MR. CARVELL: I think, Mr. Chairman, this section had better stand until it has been checked up as there have been several amendments made which might possibly necessitate a change in it.

Section stands.

On Section 442.

MR. L. L. PELTIER: Mr. Chairman, perhaps I might just remark in bringing this matter up before this Committee of Parliament, that we are not speaking only as representatives of Railway Brotherhoods, but as citizens of Canada. I have already put myself on record, as I pointed out to you, in the proceedings of May 16, No. 15, and I have nothing further to add, except that I may aid the committee to do something whereby they may arrive at some practical method of overcoming what we conceive to be a wrong mode of procedure in certain cases. In the letter submitted by myself, together with the memorandum which we presented, we have made an effort to point out that we desire to prevent the growth here in Canada of a system that has grown up in the United States during industrial troubles. Each one of you knows about that, you have all heard and read enough of "gunmen" supplied by organizations whose full duty appears to be, during a strike, to provide what they call gunmen for the purpose of protecting the company's property instead of the state itself looking after the duties that ought properly to devolve upon it.

Mr. CARVELL: You mean that the company applies to some local authority like a Justice of the Peace to get a lot of men sworn in as special constables?

MR. PELTIER: I can give you a concrete example of what I allude to in this letter which I wrote on May 3rd, to the Chairman of this committee in which I say:

> As example of this your attention will be drawn to the report and recommendations of the Deputy Minister of Labour, Mr. Ackland, concerning a strike of the C. P. R. freight handlers at Fort William, in 1909.

Because this is a personal matter, to the extent that it applies personally to myself, Mr. Best has agreed to place before you the explanation of that paragraph. Now, further down on the same page, the third paragraph, the letter says:

> "Your attention will be called to the fourth annual report of the Secretary of Labour, W. B. Wilson, Department of Labour, Washington, on this important question, and his recommendations to Congress for remedial legislation. This report emphasizes the deplorable industrial warfare, brought about by the failure of the civil authorities to assume their proper function, and we would sincerely deplore similar conditions obtaining as firm a foothold in our beloved Canada."

Mr. Lawrence will take that matter up. I am not going to delay you any more except that my name may be interjected into this subject when Mr. Best brings it up, and you may require information from me in connection with it which I shall be very pleased to give at that time. This being somewhat a matter of dispute, we would be glad if the committee would appoint a sub-committee to meet us, with Mr. Johnston, to see what we can do to remedy a difficulty of that kind and, if you decide to adopt this suggestion, we will be happy to do what we can in order to bring about a satisfactory settlement.

The CHAIRMAN: This memorandum and letter to which you refer, cover all your objections, do they not?

Mr. PELTIER: As far as I know—I am not a lawyer, and it is difficult for us to say just what clauses would have to be amended in order to give effect to the suggestion.

Mr. W. L. BEST: Mr. Chairman, and Gentlemen, as pointed out in the memorandum which we submitted, the suggestion has been made that the power to appoint special constables on the railway in cases of industrial disputes, should devolve entirely upon the civil authorities, and not upon the railway companies. That has been the suggestion. Mr. Peltier's characteristic modesty would not permit him to dwell upon the events which occurred at Fort William, in 1909, when he happened to be the mayor of that town. Those events are reported very fully in the Labor Gazette issue of September of that year. They are to be found on pages 343 and 344 of Volume 10. I am not going to read the whole statement, I will simply leave a copy of the proceedings.

VOLUME 10. LABOUR GAZETTE. (Pages 343 and 344).

SEPTEMBER, 1909.

EXTRACT OF REPORT OF DEPUTY MINISTER OF LABOUR.

PROGRESS OF THE DISPUTE.

"During the two or three days following immediately after the strike, more or less informal conferences took place between the representatives of the men and the officials of the Company. The Company is represented locally by Supt. J. Graham, but Mr. J. T. Arundel, General Superintendent of the Central Division of the Canadian Pacific Railway reached Fort William on Tuesday, August 10, and Assistant General Manager Bury came to the scene of the dispute a day later. The higher officials assumed the direction of affairs, so far as the Company was concerned, during their stay in Fort William. The demands of the men as formulated were briefly as follows:—

1. An increase of pay; 2. An abolition of the bonus system; 3. Better treatment from the foremen.

The strikers carefully picketed the approaches to the C.P.R. sheds from day to day, and it being reported that some of the strikers were carrying firearms, a search was made by the city police, one man, on whom was found a Colt's revolver being arrested. Mr. L. L. Peletier, Mayor of Fort William, received a deputation of the strikers on Tuesday morning, August 10, at the City Hall, several hundred men being present. Bosco Dominico, an Italian, acted as interpreter, and set forth the demands of the men, and the mayor in reply, as reported in the local press, promised to do all that lay in his power to promote an understanding. He strongly condemned the carrying of firearms and urged that the men go back to work and leave the dispute to be discussed by a conciliation committee of which he was quite willing to be one. If this committee failed, the Mayor recommended that the dispute should be referred for adjustment under the Industrial Disputes Investigation Act, the nature of which he explained.

The Mayor appears to have immediately commenced negotiations with the Company, and the differences were in a fair way to settlement without a reference to the Industrial Disputes Investigation Act, when, on Thursday morning, August 12, an unfortunate incident occurred. About 30 special constables had

been brought down from Winnipeg by the C.P.R. management for the purpose of protecting the property of the Company. The constables were sworn in on Thursday morning before Magistrate Palling of Fort William, and taken to the Company's boarding house near the freight sheds. The arrival of the special constables appears to have had an irritating effect on the strikers, some of whom believed or professed to believe that the new arrivals were strike breakers and not constables.

COLLISION BETWEEN STRIKERS AND CONSTABLES.

The Company seems to have followed the customary procedure in this matter, and it has not been seriously suggested that the powers conferred upon them under such conditions by the Provincial law were in any way exceeded. It would seem possible, however, that a less prominent display of force would have been dictated by prudence and might have helped to avert the calamity that followed, *and it is at least arguable whether the public interests do not demand such an amendment of the law* as would require that the consent of the public officers responsible for the peace of the community should be procured before so large a body of armed men is brought within the limits of the municipality concerned.

While the C.P.R. special constables were breakfasting, the strikers gathered around in considerable force and on the emergence of the constables an altercation ensued, which developed quickly into the active use of firearms with the result that many persons were severely injured. Eleven constables were wounded and taken to the hospital, and several of the strikers are believed also to have been wounded and taken away by their comrades; no wounded strikers were taken to the hospital. Mayor Peltier, when the news of the shooting reached him, was in the act of negotiating a settlement with the C.P.R. officials enabling men to return to work immediately on improved terms, with a reference to the Industrial Disputes Investigation Act in the event of further grievances developing. The mayor immediately proceeded to the scene of the outbreak and read the riot act and issued then the call for the militia, the magistrates signing the requisition with him being Messrs. Peter McKellar and G. W. Brown. A detachment 150 strong of the 96th regiment located in Fort William and Port Arthur were soon on duty and order was restored. Colonel Steele, D.O.C., who was in Port Arthur at the time of the affray, assumed command, and also brought down from Winnipeg seventy-five members of the Canadian Mounted Rifles."

It was the bringing in of thugs, or gun-men as they were proved to be, which, as a matter of fact, caused the bloodshed after the strike had occurred. That is to say, the proceedings were quiet until these outsiders were brought in. Had it been left to the Mayor and the local authorities to appoint special officers there would not have been any bloodshed on that occasion. That is evidenced, I think, by the report of the Deputy Minister of Labour, Mr. Ackland. What incited the strikers to rebellion was when they saw the strangers coming in. The disturbance was really against the bringing in of outsiders by the Railway Company. The civic authorities themselves pointed out that had additional local constables been appointed, if such were considered necessary, they would have acted with circumspection and no bloodshed would have occurred.

Hon. Mr. COCHRANE: Who would pay for the additional constables, the Railway Company?

Mr. PELTIER: Peace was being preserved by the strikers, and the city force was sufficient to deal with them. It would have cost the city authorities a great deal less

to have added the necessary number of constables than the expense they were put to by calling out the militia and bringing regular soldiers from Winnipeg at the instigation of the Railway Company. As it was, we were involved in an expenditure of thousands of dollars and forty men were shot, and as Mayor and a member of the Police Commission, I knew nothing until afterwards of the swearing in of special constables who had no local place or habitation. Our object is to put these facts before you, and then if we can have another meeting with you I am satisfied you will be prepared to meet us in that regard and to do what is in the public interest. We do not want anything but what is right.

Mr. SINCLAIR: Where were these strike-breakers sworn in?

Mr. PELTIER: At Fort William.

Mr. SINCLAIR: By the stipendary magistrate?

Mr. PELTIER: The law says that the Company may do so and so through their officers, and it runs right down to "their agent," which really means the agent of a detective company.

Mr. SINCLAIR: Your contention is they should have called the Council together?

Mr. PELTIER: My contention is they should have minded their own business. Under the law as it stands Railway Companies assume they must protect their own property and the officials, in this case, for fear something would happen had recourse to the procedure provided by law and brought these men in. I believe the Companies would be satisfied to be relieved of this reesponsibility and that the State should be responsible for protecting life and property through the regular medium.

The CHAIRMAN: What have you to say to that, Mr. Scott?

Mr. PELTIER: The provision would not apply to the regular police of its own which a company may have on its line.

Mr. W. L. SCOTT, K.C.: I am not prepared to deal with this matter at all. I understood Mr. Chrysler would be here.

The CHAIRMAN: Mr. Chrysler has not asked that the amendments should stand.

Mr. JOHNSTON, K.C.: Mr. Chrysler is content with the section as it stands.

Mr. SCOTT, K.C.: Now the brotherhood representatives are asking for changes which are of the utmost importance and I do not think I should speak offhand for the railway companies on those changes.

The CHAIRMAN: Messrs. Peltier and Best have made statements here, I should think the railways would be ready to answer them.

Mr. SCOTT, K.C.: I do not want to be regarded as having spoken at all. I could say a great deal that would be obvious to every member of the Committee as to the absolute necessity of the companies being permitted to be in a position, as they now are under the law, to protect not only their own property, but the lives and property of the travelling public. Surely if this power is put into the hands of the municipalities it would be virtually entrusting it to the strikers themselves, and the companies would have no recourse or remedy. Take the Fort William case; Mr. Peltier was Mayor of the city, and presumably in sympathy with the strikers.

Mr. PELTIER: I object to that statement.

Mr. SCOTT, K.C.: I am not casting any reflection on Mr. Peltier.

Mr. PELTIER: I object to any such statement as that going into the record.

Mr. SCOTT, K.C.: Mr. Peltier is here representing a union and it seems to me it follows from that, his sympathy would incline towards the strikers.

Mr. PELTIER: The strikers were not unionised.

Mr. LAWRENCE: I will detain you only a moment. Our organizations think that the onus for preserving the peace should naturally fall upon the municipalities. If

you take other industrial concerns, they do not hire detectives and swear them in as the railway companies do at the present time.

Hon. Mr. COCHRANE: They do, for the protection of their own property.

Mr. LAWRENCE: Yes, I know, but this is a serious question. There has been some disturbance already in Canada and we fear lest there be introduced into this country the methods which have grown up in the United States. Now, at the present time the oath which a constable, sworn in by a railway, has to take does not require him to swear that he is a British subject. We think that he should take such oath. Our opinion is that none but British subjects should hold such positions.

Mr. JOHNSTON, K.C.: There is no objection to that.

Section amended so as to require a constable appointed to act upon a railway to swear that he is a British subject.

Mr. CARVELL: Now you want to strike out the words "or Commissioner in a parish court of the Province of New Brunswick."

The CHAIRMAN: Then we strike out the words in the 5th line of this section "or a Commissioner in the parish court of the Province of New Brunswick."

Mr. CARVELL: What does the Committee think of giving power to two justices of the peace?

The CHAIRMAN: What is your objection?

Mr. CARVELL: The difficulty is that in Eastern Canada—and I presume it is true in many portions of Canada—justices of the peace are appointed for no qualification whatever, but simply because they happen to have a political pull.

The CHAIRMAN: Why would two not be better than one?

Mr. CARVELL: They are better than one.

Hon. Mr. COCHRANE: I think so.

Mr. CARVELL: The first objection I made was to the parish court commissioner.

Mr. NESBITT: I do not know anything about him.

The CHAIRMAN: Have you any other objection?

Mr. LAWRENCE: That is one principle—along that line. I have the annual report of the Secretary of Labour of the United States. He goes into this case quite fully, and he mentions a number of cases, and they are described as "private warfare and labour." A lot of people go round the country, to the railway companies and others, seeking to be hired, and these people are sworn in as constables. They are nothing less than common thugs, and care no more for human life than they do for the life of a brute, and in many cases not as much. We are afraid a condition like that will grow up in Canada.

Hon. Mr. COCHRANE: In Canada the constables must be British subjects.

Mr. LAWRENCE: If they take the oath that they are British subjects and they are not, we can take care of them afterwards.

The CHAIRMAN: What other objection have you?

Mr. JOHNSTON, K.C.: Mr. Lawrence objects that the persons named in Section 449 should have power to appoint constables during industrial disputes on application to the Minister.

Mr. LAWRENCE: Our principal objection is to their being hired wholesale, when other men can be secured in most cases to keep the peace without hiring such men as these.

Mr. CARVELL: Would you go so far as to say that a county court or superior court judge should swear in such constables?

Mr. LAWRENCE: We object to their being hired in any case. They are men who make a business of doing this.

Mr. NESBITT: You object to the railway hiring these men in the case of a strike, but not to the employment of these men in the ordinary course of business?

Mr. LAWRENCE: Yes, sir. I am not objecting to the regular railway constables, but to the bringing of constables in wholesale, by the hundreds.

Mr. SINCLAIR: It would be necessary to make application under your proposal?

Mr. LAWRENCE: We think the municipal authorities, or those who keep peace at regular times, are the proper authorities to keep peace in times of industrial disputes.

Mr. JOHNSTON, K.C.: The ordinary police force would not be sufficient to handle a serious strike.

Mr. LAWRENCE: Not in the majority of cases. Something might be drafted, as Mr. Peltier suggests, whereby the people would be protected, and the railway not allowed to hire constables wholesale. As some one said, maybe a county court judge would be a proper authority. I have not seriously considered that; I do not object to it; it might get over the difficulty.

Mr. SINCLAIR: Even if the railway made the application?

Mr. LAWRENCE: Yes. We are not objecting to order being kept. It is the proper way of doing it, that is all. I would like to make a further comment. In the departmental recommendations of the Secretary of Labour of the United States his report comments as follows:—

> In previous reports I have urged federal legislation against these private wars that have come to be almost invariable feature of disputes between large corporations, especially those that enjoy public privileges, and their employees. On this point, in my first annual report, I submitted the following considerations, to which I again earnestly ask the attention of Congress.

Then he goes on to cite typical instances, the Colorado coal strike, the Pere Marquette Railroad strike, and the Calumet Copper strike.

Mr. NESBITT: We have caught the drift of your objections, and I think they are sound in every way.

Mr. LAWRENCE: I have here a list of states which have laws prohibiting the bringing in of armed guards in industrial disputes. I will hand this list in.

Statement filed as follows:—

Prohibition of Armed Guards in Industrial Disputes.

With regard to the prohibition of armed guards in industrial disputes, it does not appear that Congress has yet passed legislation of this character. The following states, however, have laws relating to the prohibition of armed guards within the state, or the bringing of armed guards from outside a given state.

Massachusetts—Employers may arm regular employees only—non-residents.

Washington—All armed bodies forbidden.

Wisconsin—Forbidden unless authorized by laws of the State.

Arkansas, Colorado, Illinois, Missouri, Oklahoma, Tennessee—Bringing in armed guards from outside the State is forbidden.

I think you understand our objections. If something can be drafted that will cover them, we will appreciate it very much.

Mr. L. L. PELTIER: I would like to remark that a citizen of Canada may be a member of a labour organization and yet be a law-abiding and good citizen of the

country. I object to any one characterizing me, as a member of a labour organization, being in sympathy with—

The CHAIRMAN: Mr. Scott did not intend to reflect in any way.

Mr. PELTIER: In forty years, I have never known any matter suggested by our organizations that was not fought by the railways, whether these were for the benefit of the public or for the benefit of the railway employees. The records show it. And frequently they have fought against their own best interests. Now, we will revert to this—

The CHAIRMAN: We are discussing this clause.

Mr. PELTIER: I intend to discuss it now. On the heads of men who persist in continuing this situation will fall probably the responsibility for the slaughter of citizens of Canada. The next few years are going to be revolutionary years. A muncipality has not only a right to increase its police force, it has a right to call on the militia and the permanent force if necessary. Why should the Dominion of Canada farm out its authority to any corporation? Is that the way to gain the good-will of the workingmen of Canada? Let me refer to the case of the Fort William strike, where two, at least, were killed, and thirty or forty wounded, as you will see by Mr. Acland's report. The railway companies brought in their constables and planted them right in the foreign district. There was trouble immediately. There had been no trouble with the police in the previous ten days in which the strike had been going on. The peace had been kept. I was down there every night in that district among the men. We were on the point of settling the difficulty. The railroad companies brought these men in and planted them in the foreign district, and the trouble started. When the trouble started these men were surrounded. They were in a couple of box cars, and they were liable to be slaughtered there during the night. It was my duty to protect them and keep the peace, so I called out the militia. When I walked down there with Colonel Steele, who happened to be in command, the men in the foreign district took off their hats to the soldiers; there was no trouble at all. That is all I have to say.

The CHAIRMAN: What words in this clause do you wish struck out or added?

Mr. PELTIER: No railway company should have the authority to engage these men except upon application to, and with the consent of, the civic authorities. Surely the city of Fort William had the right to be consulted before they were put to an expense of nine or ten thousand dollars, and to have some say as to where these men, if brought in, were to be located. The Bill gives authority to the company and its constables to have jurisdiction within a quarter of a mile of the tracks. That would mean that if constables were at the central station here, they would have jurisdiction over the heads of the Ottawa police within a quarter of a mile of the station on Sparks street, for instance. This only tends to have the city avoid its own responsibility.

The CHAIRMAN: Have you looked into that clause to see where an amendment can be added or struck out?

Mr. PELTIER: I have not presumed to tell the committee what should be done. I am willing to go with any member of the committee, and be the most reasonable man you ever saw, if you can just put some remedial measures in there.

The CHAIRMAN: Would it not be possible for Mr. Johnston and Mr. Peltier to confer about this clause?

Mr. JOHNSTON, K.C.: I would like to get the idea of the committee. Is it desired that the right of the railway company to make recommendations should be struck out?

Mr. NESBITT: No, not to make recommendations.

Mr. JOHNSTON, K.C.: You see, Mr. Carvell, the clause reads that a superior or county court judge, or the other persons mentioned, "may, on the application of the

company or any clerk or agent of the company, appoint any persons who are British subjects recommended for that purpose by such company, clerk, or agent, to act as constables on and along such railway."

Mr. CARVELL: I think that is all right. I would like to express my opinion. I am not in harmony with the Brotherhood men who say that the railway company should not have any right to apply to somebody for the purpose of having special men appointed in case of difficulty.

Mr. LAWRENCE: You have misunderstood us.

Mr. CARVELL: I am not in harmony with that view.

Mr. LAWRENCE: We are not either.

Mr. CARVELL: Neither am I in harmony with the idea that this whole thing should be left to the municipal authorities. Sometimes they are very slow to act. I think the railway companies should have the right to apply to some authority to appoint men for this particular purpose, and I would like to see the list of authorities who have the right to make the appointment limited to men of such high standing that there would be no abuse of the powers intended to be granted by this section. With that view in mind, I asked to have one class of men in my own province struck out, who, in my opinion, would not be a proper class to make such appointments.

Mr. PELTIER: In this instance, at Fort William the judge of the district, under the laws of Ontario was a member of the Police Commission, the police magistrate, and the mayor were also members and we did not know anything about it; do you think that is right?

Mr. CAREVLL: I do not know about that, that is not the point to which I was referring.

Hon. Mr. COCHRANE: It is changed now, and the railway company have to go to the judge.

Mr. CARVELL: I think the railway company should have power to go to somebody and make application for the appointment of special constables, and that person should be a man of such importance and standing that he would not make the appointment without due inquiry and without being satisfied as to the necessity of doing so. The difficulty now is that the railway company goes to a magistrate or two magistrates, and those magistrates are susceptible to the flattery and influence of the railway company so that the company may prevail upon them to appoint the very men to whom Mr. Peltier objects. If that power is confined to a judge of the Superior Court, or to a stipendiary or Police Magistrate there would not be the same objection.

Mr. JOHNSTON, K.C.: What about the Clerk of the Peace?

Mr. CARVELL: I do not know about the other provision but in my province the Clerk of the Peace is a very unimportant official; he may be of more importance in some of the other provinces, I cannot say as to that, but in my own province I would like to see the power confined to a judge of the Superior Court, or to a stipendiary or Police Magistrate.

Mr. NESBITT: I would suggest that you deal with the strike problem separately, and in that case make the appointment of special constables subject to the consent of the community.

Mr. SCOTT, K.C.: I would like to point out that in many cases there will not be any Superior or County Court Judge, or Stipendiary or Police Magistrate available in the district.

Hon. Mr. COCHRANE: In that case there will not be very much of a strike there.

Mr. SCOTT, It is not a question of a strike alone, but supposing a train is going to be attacked or held up and it is necessary to swear special constables promptly.

There are many cases where it is necessary to have special constables, other than in the case of a strike, and if you strike out the provision that a Justice of the Peace may make the appointment we will not be able to get any special constables at all in some places.

Mr. NESBITT: Although the Justices of the Peace are appointed politically in my part of the country, they are all pretty decent chaps, and men of more or less substance, and I would not have any objection, under ordinary circumstances, to giving them the power.

Mr. BEST: I would suggest that the following subsection be added to section 449:—

> Provided that no such person shall be appointed to act as constable without the consent of the Mayor, Reeve, or other officer in the city, town or municipality, in which such appointment is to be made.

Mr. NESBITT: I think we had better leave it as it is.

The CHAIRMAN: Why not allow Mr. Johnston, Mr. Scott and Mr. Peltier to meet and draft an amendment which will be satisfactory, so that the Committee may have it before them in concise form.

Mr. PELTIER: That proposition will be quite satisfactory.

Suggestion by the Chairman agreed to.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 20--MAY 29, 1917

(Containing further representations re Toronto & Niagara Power Co., and from the Bell Telephone Co. and the Independent Telephone Co.)

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
Committee Room,
Tuesday, May 29, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Carvell, Cochrane, Cromwell, Hartt, Green, Lemieux, Macdonald, Macdonell, Maclean (York), McCurdy, Nesbitt, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

Section 373, "Putting lines or wires across or along highways, etc.," further considered. Mr. MacKelcan, for the National Trust Company; Mr. Anglin, K.C., for the British Empire Trust Company; Mr. George H. Kilver, for the city of Toronto; Mr. Pope for the Hydro-Electric Commission, and others were heard. Arguments closed. Section to be further considered by Committee.

Sectioin 375, "Provisions governing telegraphs and telephones," further considered.

Mr. MacKay, on behalf of the Independent Telephone Company, submitted certain amendments to the amendments submitted by them on May 16.

Mr. Aimé Geoffrion, K.C., on behalf of the Bell Telephone Company, and others heard thereon.

Arguments closed. Sections to be further considered by the Committee.

At one o'clock the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
May 29, 1917.

The Committee met at 11 o'clock a.m., the Chairman, Mr. Armstrong, presiding.

The CHAIRMAN: Section 373—I understand that the representatives from Ontario are here in connection with the question between the city of Toronto and the Niagara Power Company; Mr. McCarthy has already sent in his argument, the representatives of the Province have replied in writing, and I understand that Mr. Anglin, K.C. is here who wishes to be heard for a few minutes. I might also state that the representatives of the Trust Companies and the bondholders of the Niagara Power Company have also placed in writing statements before the Committee.

Mr. W. F. MACLEAN: Are we going to hear all the arguments over again.

The CHAIRMAN: No.

Hon. Mr. COCHRANE: I move that Mr. Anglin be heard.

Mr. ARTHUR ANGLIN, K.C.: Mr. Chairman, if I may make a request before speaking, which I will do very briefly, I would ask that you would listen for a moment, to Mr. MacKelcan, who is here representing the National Trust Company, Limited, mortgagee, and wants to say a word in support of the written communication he has filed. I had intended to follow him for the British Empire Trust Company, Limited, an English Trust Company, also trustees of debenture stock, the equivalent of bonds, and I will be very brief.

The CHAIRMAN: Is it the wish of the Committee that Mr. MacKelcan be heard.

Suggestion concurred in by the Committee.

The CHAIRMAN: Whom do you represent, Mr. MacKelcan?

Mr. FRANK R. MACKELCAN: I represent the National Trust Company, Limited, of Toronto, who are the trustees under bond mortgage securing the bonds, of the Electrical Development Company of Ontario, Limited. The total outstanding issue of these bonds, as stated in the letter I have handed to you, sir, is over $9,000,000. The bulk of these bonds are held in England. As security for these bonds there is deposited with the National Trust Company as trustee, the whole of the bonds of the Toronto and Niagara Power Company and the whole of its capital stock. The transmission line and the rights, powers and franchise of the Toronto and Niagara Power Company are therefore the central element in the security of these British investors who hold bonds of the Electrical Development Company. What we are here for to-day is not to presume to urge any consideration on this Committee as to what Dominion Legislation there should be but simply to ask that the Parliament of Canada keep faith with these British bondholders who have invested their money in this understanding on the faith of the rights and powers which were given by the special charter to the Toronto and Niagara Company. It is plain, sir, and hardly necessary for me to say so, that if the power of distribution is taken away from the Toronto and Niagara Power Company, all the millions of dollars which have been invested in the Development plant and in the transmission line, are practically lost

Mr. CARVELL: What section, or portion of a section, in this Bill, do you consider would take away your right of distribution?

Mr. MACKELCAN: Section 373, right down to the end. As the matter stands now—

The CHAIRMAN: What subsection of the section?

Mr. MACKELCAN: In particular subsection 2 of section 373. The Toronto and Niagara Power Company, as the matter stands now, have the right without the consent of anybody—it having obtained the necessary authority from the Parliament of Canada—to erect its poles and string its wires for the purpose of transmission and distribution. That right I can state to you, sir, as a matter of fact, was taken into consideration and deemed to be of very great importance at the time the bonds of the Electrical Development Company were issued, and it is a fact that those who invested in these securities relied on the existence of that clause.

Hon. Mr. COCHRANE: What evidence have you that the British investor put his faith in that clause?

Mr. MACKELCAN: I have only this evidence: that our general manager, before I came here, told me that I could state it as a matter of fact. It was before my connection with the Company, so that I cannot presume to state it of my own knowledge.

Mr. SINCLAIR: Do you object to giving power to the municipalities?

Mr. MACKELCAN: We object to your taking away the security which the bondholders now possess in respect of the right to deliver their power. If that right is taken away all the capital expenditure which has been made on this transmission line will be absolutely lost.

Hon. Mr. COCHRANE: Then you will only have Toronto as a customer in that loss.

Mr. MACKELCAN: I do not know what the result may be. As the matter stands to-day we are secure. Parliament has given the company the right to distribute this power, but if this right is taken away from us the bondholders will not know where they are.

Mr. MACDONELL: As I understand it, what you are asking for is power to enter municipalities and sell power without their consent.

Mr. MACKELCAN: We are only asking that you take away nothing which we now have.

Mr. MACDONELL: That is what you are contending for, the preservation of those rights.

Mr. MACKELCAN: The preservation of existing rights as long as our bonds are outstanding. We are not objecting on behalf of the company in any sense, to any legislation you may pass as long as the rights of the bondholders are preserved.

Mr. MACLEAN: You say that there is a public service, and in connection with that you get certain rights, that Parliament has given you those rights and they have no right to interfere in the public interest in the working out of a utility of that kind.

Mr. MACKELCAN: No doubt it is right to interfere, but we must be protected. As I said before, we are not objecting to any legislation on general grounds, but we are only asserting a right that these bondholders be protected.

Mr. SINCLAIR: Do you claim your franchise is perpetual?

Mr. MACKELCAN: No, we do not care whether it exists after the bonds are retired. That is what we are interested in.

Mr. MACDONELL: What do you suggest should be done in a general Act of Parliament to protect the bondholders?

Mr. MACKELCAN: I suggest that this legislation be qualified, and that it be not effectual with regard to this company so long as these bonds are outstanding.

Mr. MACLEAN: You think that should go into the Act?

Mr. MACKELCAN: That would be nothing more than the Parliament of Canada keeping faith with the British investor, and I submit when these people invested their money in a British undertaking in a country, part of the British Empire, and a country governed by constitutional principles, they surely were justified in feeling that their rights were sacred and would not be taken away by an Act of Parliament.

Mr. CARVELL: In what way does the proposed amendment to subsection 2 change the statute as it now stands?

Mr. MACKELCAN: It takes away the right to construct a transmission line and to distribute power.

Mr. MACDONELL: Without the consent of the municipality?

Mr. MACKELCAN: Yes.

Mr. CARVELL: There has been a decision of the Privy Council which provides that, as the law now stands, you have a right to go into any municipality without the consent of that municipality.

Mr. MACKELCAN: The company has that right.

Mr. CARVELL: But as subsection 2 has been drafted it takes away that right, and you must get the consent of the municipality.

Mr. JOHNSTON, K.C.: Hereafter.

Mr. CARVELL: Is that the real issue?

Mr. MACKELCAN: Yes.

Mr. CARVELL: The question comes up whether we should interfere with the section at all, or make a law that hereafter you must go to the municipality, or whether we make the provision retroactive. Is that right?

Mr. MACKELCAN: No, that is not the point. So far as this company is concerned, if you prohibit its right for future construction and distribution, it is very possible you will utterly destroy the security of the bondholders.

Mr. ARTHUR ANGLIN, K.C.: I do not propose to add more than a word to what Mr. MacKelcan has said. I represent the British Empire Trust Company, Limited, of London, England. The Company are trustees for the debenture stockholders of the Toronto Power Company, Limited, under a trust deed which is dated July 27, 1911. That debenture stock was put on the British market—not on the Canadian market. It is not repayable until 1941, and the amount at present outstanding considerably exceeds $15,000,000. I use the round figure as being easier to retain.

Mr. MACLEAN: What franchise does that cover?

Mr. ANGLIN, K.C.: I was just about to state that. A very important part of the security which is mortgaged to secure that $15,000,000 of debenture stock consists of bonds and shares in the capital stock of the Electrical Development Company, Limited, whose bond trustee is the National Trust Company, represented by Mr. MacKelcan. Those bonds and that stock of the Electrical Development Company, Limited, depend for their value very largely, if not altogether, upon the value of the stock and bonds of the Toronto and Niagara Power Company, Limited, all of which stock and bonds as Mr. MacKelcan told you, are owned by the Electrical Development Company, Limited.

Mr. MACLEAN: Some of those securities overlap the other.

Mr. ANGLIN, K.C.: I would not call it that, but I think probably it amounts to the same thing. The Toronto and Niagara Power Company, the company which will be affected by your legislation if it goes through as it stands, has a bond issue and has its capital stock of course. All of these bonds and capital stock are owned by the Electrical Development Company, Limited, and are pledged to secure the bonds of the Electrical Development Company, Limited. Then, in turn, the bonds and stock—not all, but a very large amount, $5,000,000 and more of stock, and $5,000,000

and more of bonds—of the Electrical Development Company, Limited, are pledged to my clients, the British Empire Trust Company, Limited, to secure the debenture stock of that company. So that when you get it worked out, you find that the debenture stockholders, whom I represent through the trustee, the British Debenture Stockholders of the Toronto Power Company, depend for the repayment in 1941 of their $15,000,000 of bonds, the reserved balance of the stock and bonds of the Toronto and Niagara Power Company. That is all that I want to make plain.

Mr. CARVELL: I think it is your duty to show us wherein this proposed legislation will affect the power of this industry or enterprise to repay these bonds and the stock.

Mr. ANGLIN, K.C.: I was about passing on to that, as soon as I made the position of those I represent as plain as I was able to do. The Toronto and Niagara Power Company, as Mr. MacKelcan explained, has a special charter granted by this Parliament years ago—I think it was in 1902, or thereabouts—and the matter has been settled, as was mentioned a moment ago, by the judgment of the Privy Council. That charter stated in plain terms the company's right to go upon the streets of municipalities throughout Canada, for the purpose of distributing the current which it brings to those municipalities by its transmission line which it also has ample power to erect. At the time the underlying bonds were issued, of course there were no transmission lines and there was no distribution. It was the proceeds of those underlying bonds which built those lines. But the right of the company to further build exists to-day, and the right to increase its distribution from the transmission lines in existence to-day also still exists. Mr. MacKelcan has referred to section 373, and some other amendments which I understand are not in print, but have been suggested here from other sources, and this proposed legislation would take away from any such company, whether incorporated by special Act or otherwise, and notwithstanding the provisions of its special Act, those powers which, in our case, unquestionably exists to go upon the streets of a municipality with its distributing lines, whether above or below the street, whether overhead or underground, unless certain consents be had or orders ultimately be obtained. Now, for the British Empire Trust Company and for the debenture stockholders, whom they are in duty bound, as far as they can, to protect, our submission is that, whether or not it was wise for the Parliament of Canada in 1902, if that was the year, to have given to this company the powers it gave, and whether or not it would now be in some measure desirable in the public interest that those powers should be curtailed or impaired, or injuriously affected, we submit that while these bonds and while this debenture stock is outstanding and unpaid, the rights which existed when the British public made its investment, and, as my friend said, which were to a large extent, although not solely, the basis of that investment, should not be curbed, impaired, curtailed, or taken away. That is our statement, and nothing more or less.

Mr. CARVELL: Just a minute, because I think you will pardon me for trying to get us back to the subject. Would your clients have any objection to allowing any question between the municipality and the company to be decided by the Railway Board of Canada?

Mr. ANGLIN, K.C.: My clients, as I understand my instructions, are simply trustees; they are not in a position to do what might be done by the company if it alone were concerned. They must preserve, as far as in them lies, the securities for their debenture stockholders intact. They say that anything which lessens that security, and which is brought about by action of the Canadian Parliament, is a thing which should not be done. I am instructed that to take away from this company this power and to inject into the situation the question of the consent of the municipality, or even the order of the Railway Board, would affect their security. And I want to say, so that there may be no misapprehension, that that effect would be a double effect. It is not merely a question whether in 1941 there will be enough left to pay these bonds, although that question is a serious one; there is the other question of the market value of these bonds in the meantime, that also may be affected, and those of the

bondholders who have to sell in the interval may be affected if this legislation goes through.

Mr. MACLEAN: The railways have made bond issues which have been secured, I suppose, by mortgages in trust companies, and the railways who have issued these bonds have come under the jurisdiction of the Railway Commissioners and our Railway Act, and their rights are constantly being affected. Do you say that there is a special sanctity pertaining to bond issues in connection with transmission lines of power companies that is greater than the sanctity pertaining to the bond issue of a railway company, because I suspect that their rights are constantly interfered with by the general legislation under this Act. I want to get at whether you think there is a special sanctity in connection with the bonds of power companies as compared with those of railway companies.

Mr. ANGLIN, K.C.: There is, Mr. Maclean, broadly this difference. The railways, most of them at all events,—I do not know that I am old enough to speak of all of them—were incorporated with reference to the general Railway Act as it stood from time to time.

Hon. Mr. COCHRANE: Not those incorporated before the Railway Board was established.

Mr. ANGLIN, K.C.: Well, Mr. Cochrane, those were incorporated with reference to the control which was previously exercised by the Railway Committee of the Privy Council, whose legitimate successor after all the Railway Board is; and even in my memory railways were constantly before the Railway Committee which dealt with various regulative provisions of the Railway Act. The Toronto and Niagara Power Company is not really of that class. It has some features, of course, of similarity to those of railway companies, but it is not founded in its origin on the same broad class. At all events, for the bondholders I merely submit that they made their advances in the way I have stated, and so far as they are concerned, and while these bonds exist, their security should not be impaired. I thank you, Mr. Chairman, and gentlemen, for this hearing.

Mr. MACDONALD: I would move that Mr. Kilmer be heard representing the province of Ontario, and any other interest that may be here.

Mr. CARVELL: We know the matters under contention. We know that the Hydro-Electric and the Toronto and Niagara Company are quarrelling, and they want us to settle the dispute.

Mr. GEO. H. KILMER, K.C.: This is not new legislation. Since 1903 the Railway Act has given to municipalities the right to control the distribution systems. It is only a question of making legislation which has existed for this number of years effective. That is all we ask. It is not new.

Mr. MACLEAN: And to make it more general?

Mr. KILMER, K.C.: It is to make effective the law which already exists. Now, these bondholders that Mr. Anglin has spoken of to-day did not know they had these rights, and never dreamed of these rights, until after judgment of the Privy Council in 1912, long after their money had been spent. They have not ever attempted, and they had not attempted at that time, to exercise any of those rights at all. The Court of Appeal thought that your legislation had been effective to protect the municipalities; the Privy Council thought it was not. All these power companies are restrained by special clauses, known as the standard clauses, and so far as we know the only company that has escaped through that net and got into the municipalities is the Toronto and Niagara Power Company. That is all I have to say.

Mr. CARVELL: Is it a fact that the Toronto and Niagara Power Company is in as favourable position to do business as the Hydro-Electric?

Mr. KILMER, K.C.: They are in a very much more favourable position.

Mr. MACLEAN: Even under this proposed legislation?

Mr. KILMER, K.C.: Even then they will be fairly even, but the Hydro-Electric will still have a little extra trouble to get into a municipality.

Mr. NESBITT: How?

Mr. KILMER, K.C. The Hydro-Electric has to have by-laws passed and more preliminary arrangements with the municipality.

Mr. CARVELL: Does not the Hydro have the right to construct its lines into a municipality without the consent of the people?

Mr. KILMER, K.C.: No, it has to go to the people. I am not speaking for the Hydro-Electric, but I know the Hydro-Electric have to secure by-laws.

Mr. NESBITT: Under this proposed legislation then, they would be practically even. The Toronto and Niagara Power Company would also have to get a by-law.

Mr. JOHNSTON, K.C.: Does not the Hydro-Electric Act provide the necessary authorization?

Mr. KILMER, K.C.: I do not think so. They have to have a by-law passed by the people.

The CHAIRMAN: The answer to Mr. McCarthy's arguments I understand has been submitted in writing.

Mr. KILMER, K.C.: Not on this point. This legislation is not new. We are asking you to make effective what already exists, and what the Court of Appeal thought was effective, but which the Privy Council thought was not effective.

Mr. NESBITT: You are asking us to make it retroactive?

Mr. KILMER, K.C.: For that reason, sir.

Mr. NESBITT: We have put these municipal clauses into the Railway Bills.

Mr. KILMER, K.C.: The Toronto and Niagara Power Company is the only company that has escaped the net.

Mr. NESBITT: You are asking to make it retroactive?

Mr. KILMER, K.C.: For this reason.

Mr. SINCLAIR: If we do so it will reverse the decision of the Privy Council.

Mr. KILMER, K.C.: No. That did not apply to distribution systems. We do not wish to interfere with the provisions as to transmission lines, but only to control the distribution systems. The provisions of the present law cover this principle, and we ask only to make that effective. Another thing, the Electrical Development Company own all the bonds and stock of the Toronto and Niagara Power Company; the Toronto Power Company own all the voting capital stock, and over 50 per cent of the Electrical Development Company. The Toronto Power Company own all the Toronto Electric Light Company bonds and stocks and the Toronto Railway Company own all the stocks of the Toronto and Niagara Power Company. I am speaking on behalf of Mr. Harris who does not wish to take up the time of the Committee, and the situation is that it is not the Toronto and Niagara Power Company, but the Toronto Railway Company that seeks to exercise the powers objected to.

Mr. MACLEAN: Would all the other companies who are now under the Act, if they were to get under the wings of this company for whom Mr. Anglin was speaking here to-day, all get away from the provisions of this Act.

Mr. KILMER, K.C.: Yes, they would have a perpetual franchise in every city and town in Canada.

The CHAIRMAN: Mr. Harris is here representing the city of Toronto; is it the pleasure of the Committee to hear Mr. Harris?

Mr. ROLAND HARRIS, Commissioner of Works, Toronto: Mr. Chairman and gentlemen, the Toronto Electric Light Company have a terminable franchise in the city

of Toronto which expires in 1919, and the city of Toronto have the right to buy them out at that time. The underground system is there by agreement, the poles, overhead, are there in greater part, the Privy Council has ruled, improperly the Toronto and Niagara Power Company and the Toronto Electric Light Company have come here, and, as has been stated at the last meeting of this Committee they seek to make perpetual the franchise of the Toronto Electric Light Co., which terminates in 1919, and which we have the right to acquire in that year. On the other hand, if the city of Toronto, in 1919, pay this money over to the Toronto Electric Light Co. for acquiring the assets of that company, the same day, or the next day, the Toronto and Niagara Power Company would, under their claim, have the right to come and absolutely parallel our lines and destroy the value of our investment. This company seeks to convert a terminable franchise which they now enjoy into a perpetual franchise enabling them to parallel our lines in the city of Toronto, and that applies not only to the city of Toronto, but to every other town and city in the Dominion of Canada, and in every municipality in which they may acquire, as they have the right to acquire, any company for the transmission of any form of power.

Mr. CARVELL: Have you any objection to the provisions of subsection 2, which leaves the whole matter to the Railway Board.

Mr. HARRIS: Insofar as the transmission line is concerned, we have not, but insofar as the distribution lines are concerned we think that the general practice should be followed, and it should be made entirely with the consent of the municipal powers.

The CHAIRMAN: Mr. Hannigan of Guelph, is here, and would like to be heard.

Mr. HANNIGAN: I represent the municipalities in the province of Ontario who are engaged in the distribution of power as a municipal undertaking, and they feel that it is not in their interests that this company should have the rights they claim have been granted under this charter. In 1902, as you know, this Act was passed and since that time the municipalities have gone into the distribution of power, and that has involved the investment of a capital liability of a great many million dollars. This liability has been incurred without the municipality believing that this company had the rights claimed by it. If the company is allowed to go ahead and parallel the lines erected by the Hydro Commission and the municipalities, it means that it will result in a very heavy loss to the people of the municipalities.

Mr. MACLEAN: Are the securities which represent the investment by the Hydro Commission and the municipalities interfered with by the exercise of the rights claimed by this company?

Mr. HANNIGAN: Most decidedly.

Mr. CARVELL: You want a monopoly, as I understand it.

Mr. HANNIGAN: We simply want the same protection for the municipalities, that the company asks for itself. Let me explain. Before a municipality can go into the Hydro proposition, a by-law has to be submitted to the electors, they must carry a by-law guaranteeing the amount of money necessary to put up their transmission lines, power stations, substations, and all works like that. Therefore, you will see, it must be by the consent of the electors of the muncipality, that the work is undertaken, and that is all we are asking in connection with this power company that they be placed on the same basis, and that they shall not be allowed to go into the municipality without the consent of the electors.

Mr. POPE: There seems to be a doubt as to the fact that the Hydro-Electric cannot go into a municipality without a by-law. That is absolutely the case. The Hydro Act provides that the request comes in the first place from the municipality, a by-law has to be submitted authorizing the municipality to enter into a contract, and a debenture by-law has to be submitted. The only exception to that is when some people in a township or a rural district, individually want to get a supply of power. They can do that by becoming responsible to the municipality, and the cost of supplying them can

be placed upon the collectors roll and collected the same as taxes; in that case it does not go to the people, because they are not interested, it is only the individual subscribers. There are two by-laws required in every case before the Hydro can come into a municipality.

Mr. MACLEAN: What is the total amount that the municipalities have invested in the Hydro?

Mr. POPE: As municipalities, they have incurred a total expenditure of about $15,000,000, and then the municipalities carry their own distribution lines.

Mr. MACLEAN: Is that a further investment in addition to the fifteen million dollars?

Mr. POPE: That is the municipal investment proper, that is the amount the municipalities have guaranteed the Hydro-Electric Commission, under contract, and that money has been expended in the construction of transmission lines.

Mr. MACLEAN: Is that a bond or debenture, or is it of the character of a bond?

Mr. POPE: Yes, and it is payable back to the Government in thirty years.

Mr. MACLEAN: What is the total of that additional investment by the municipalities for the local distribution line?

Mr. POPE: About thirty-two million dollars.

Mr. MACLEAN: Is that in addition to the 15 million?

Mr. POPE: In addition to the fifteen million.

Mr. SINCLAIR: But is the by-law not submitted to the people because they are going to incur a financial liability; is it not because they want to get the consent of the people to the establishment of the Hydro in that municipality.

Mr. POPE: It is because the Hydro Act requires it. The distribution is their own, and they are responsible for both their local distribution and for their transmission lines. The Commission are simply the trustees for the municipalities and two by-laws have to be passed before the Hydro can come into any municipality.

Mr. NESBITT: Because they have to pay for it all right.

Mr. POPE: The Commission are simply trustees for the municipality. There are two by-laws which have to be passed, a money by-law and an enabling by-law.

Mr. SINCLAIR: If some other company is ready to give cheaper power in that municipality, you do not want to allow them to do so?

Mr. POPE: It is not a question for us, it is a question for the municipalities. We cannot say anything unless the municipalities put themselves in motion.

Mr. SINCLAIR: You are not willing that the individual taker should have the right to accept power from any other Company.

Mr. POPE: Once he has entered into an agreement with the township his property is responsible for the expense they have gone to to serve him.

Mr. MACDONELL: Can Mr. Kilmer tell us what obligations the Ontario Government have entered into and what expense they are under with regard to the Hydro-Electric enterprise.

Mr. KILMER, K.C.: Yes, sir. They have guaranteed the bonds of the Hydro-Electric Commission—that is, the bonds for the transmission system, the stations and all that sort of thing. I do not know the extent of the liability.

Mr. MACDONELL: About how much would it be.

Mr. KILMER, K.C.: About $20,000,000.

Mr. MACDONELL: That is in addition to the municipal obligation?

Mr. KILMER, K.C.: Then each municipality has its own obligation for its own transmission lines. I should say that the Hydro have no exclusive rights; any other company can come in and get a by-law passed by the municipality.

Mr. SINCLAIR: Do you think you are entitled to as much protection for your securities as the other company?

Mr. KILMER, K.C.: I should think so.

Mr. NESBITT: The Ontario Government is interested in your enterprise?

Mr. KILMER, K.C.: Yes, sir.

Mr. NESBITT: But only as guarantors.

Mr. KILMER, K.C.: Only as guarantors.

Mr. NESBITT: So the Hydro-Electric are absolutely safe with the Government guarantee?

Mr. KILMER, K.C.: Yes, sir.

Mr. CARVELL: I realize that Mr. Johnston has gone very carefully into this matter, but it is hard for the average member, sitting down and taking a superficial view, to form a clear idea of the legal construction of the clause. As I view subsection 2, if it were passed as printed, it would give a municipality the right to interfere with the operation and maintenance of this Company's present system in any municipality.

Mr. JOHNSTON, K.C.: I do not think so.

Mr. CARVELL: You do not think that?

Mr. JOHNSTON, K.C.: I do not think so. It simply means that in all cases of future construction the Company must either obtain the consent of the municipality or the consent of the Government.

Mr. CARVELL: That might be the intention of the draftsman, but let us read the section. (Reads):

> Notwithstanding anything in any Act of the Parliament of Canada or of the Legislature of any Province, or any power or authority heretofore or hereafter conferred thereby or derived thereform—without reference to the legislation which the Privy Council says gives this Company the right to go into any municipality—

Mr. JOHNSTON, K.C.: Yes.

Mr. CARVELL: No. (Reads):

> "no telegraph or telephone line, or line for the conveyance of light, heat power or electricity, within the legislative authority of the Parliament of Canada, shall, except as hereinafter in this section provided, be constructed, operated or maintained by any company upon, along or across any highway, square or other public place, without the consent, expressed by by-law, of the municipality having jurisdiction over such highway, square or public place, nor without compliance with any terms stated or provided for in such by-law."

Mr. NESBITT: That is the usual clause.

Mr. JOHNSTON, K.C.: I think you have probably not read subsection 7, which says (Reads)

> "Except as provided in the last preceding subsection, nothing in this section shall affect the right of any company to operate, maintain, renew or reconstruct underground or overhead systems or lines, heretofore constructed."

Mr. CARVELL: No, I had not read that subsection. As far as I am concerned I feel like standing by that section.

The CHAIRMAN: Is it the wish of the Committee that the section should be disposed of to-day?

Mr. CARVELL: I realize that there is some difficulty. We all know by reading the newspapers that there is some contention between the Hydro-Electric and the Toronto and Niagara Power Company, but those of us who do not represent the Province of Ontario have no interest in that. I feel like leaving all these matters to the Railway Board and that seems to be the underlying principle of all these sections.

Mr. MACLEAN: Then do you interfere with the municipal rights?

Mr. CARVELL: Yes, I would go so far as to give the Railway Board the right to over-ride the position of the municipality when an Act for the general advantage of Canada is in question.

Mr. SINCLAIR: As in this section.

Mr. MACDONELL: The difficulty about that is you do not meet the present situation because, as has been explained by the representatives of the Government of Ontario, of the Hydro-Electric Commission and of the city of Toronto, unless we accept the amendments of which were submitted by Mr. Thompson, this Company will be absolutely at large, and a free lance, and will have escaped, owing to the judgment of the Privy Council, all public safeguards and the public safeguards that are contained in subsection 2 of section 373. They have acquired existing rights that will remain permanent and perpetual in Toronto, and every other place where they will acquire them, and be free from any possible municipal control.

Mr. CARVELL: Why should they not be?

Mr. MACLEAN: Why should not the municipalities have their rights preserved, that is the issue. There are two classes of rights to be borne in mind.

Mr. MACDONELL: I do not want to unduly delay the Committee, but when this Bill was originally passed in 1902 there were several amendments proposed. The Bill was referred to the House in the ordinary course. A discussion took place there and the motion was made to add substantially what is now known as the safeguarding clause municipally. An argument in answer to that was made by Mr. Pringle, who supported the Bill throughout, and who was familiar with all the details. At that time Mr. Pringle said (Reads)

> "I cannot see the necessity of that clause."

That is the clause we are practically now asked to add. (Reads)

> "Parliament is supreme in these matters and it can at any time pass a general Bill which will govern matters of this sort."

That is all we are doing now.

Mr. CARVELL: What objection have you to this going to the Railway Board in case of a disagreement in the locality.

Mr. MACDONELL: In case it was sought to run a line through the municipality and the municipality unreasonably refuses consent, the Railway Board has power to deal with the matter and there is no objection to be urged. But where a Company enters a municipality for the purpose of acting as a distributor and seller of power, then the provisions contained in the amendment proposed should apply, and the Company should get the consent of the municipality.

Mr. CARVELL: Let me put a question to you: Suppose you had invested a certain amount of money in this Company, or any other Hydro-Electric concern in Canada, in good faith, would you think you were being fairly dealt with if the Parliament of Canada should say "Notwithstanding the fact that you have invested your money in this manner, we will pass legislation absolutely putting you at the mercy of some competitor or some municipality who may probably want to get at you.

Mr. MACDONELL: Not in this case and for this reason: it was commonly supposed, and the Courts believed, that this particular company was bound by the provisions of the Railway Act. But everybody was more than surprised when it was found that the provisions of the general Railway Act did not apply to this particular Company. The result is that the Company are, as I have already said, absolutely at large, and all that is asked with respect to them is what was suggested by Mr. Pringle at the time of the passage of the Charter and admitted—a general Act regulating them.

There may be a general Act later on. The clause as now printed means that in the future this Company will be governed by the general section which gives the right to the municipality to decide things, but so far as they have gone up to the present time, they can still continue under their rightful legislation.

Mr. MACDONELL: Yes. The trouble is, as indicated by these gentlemen, that this Company before this Act is passed, could take over, unless the section is made retroactive, the Toronto Electric Light Company, their poles and lines, or they can take over any other company in Canada and operate it, without the consent of the municipality, and without the regulation of the rates by the Railway Board as to their coming and going in the municipality. They will be absolutely a law unto themselves, insofar as everything prior to this Act is concerned, and they will take over these existing companies, and they will have perpetual franchises to the extent that these companies are now operating.

Mr. CARVELL: Surely you do not object to competition in Ontario?

Mr. MACDONELL: I object to unfair competition. I want them to be equal.

Mr. MACLEAN: I heard a gentleman argue in this chamber the other night that the tariff law, which was the general law of Canada now, interfered with vested interests and investments.

The CHAIRMAN: Is it the intention of the committee to dispose of the clause this morning? We have a lot of representatives here from both independent telephone companies and the Bell. We were expected to hear them, but were urged to allow Mr. Anglin and others to take up five minutes. Let us decide whether we will dispose of the section this morning.

Mr. MACDONELL: Postpone the disposition of it.

Mr. NESBITT: We have to hear Mr. McCarthy.

The CHAIRMAN: He has submitted his argument and we have copies of it here; in addition to that we have the replies by the Hydro-Electric and the city of Toronto, and they will be distributed, and we will dispose of this matter some other day, if that is the wish of the committee.

Mr. MACLEAN: But we have closed the hearing and arguments in this matter.

The CHAIRMAN: I understand the committee has asked all the questions and heard all the arguments necessary in this matter.

Mr. MACDONELL: Arguments and evidence are closed.

Mr. MACLEAN: Yes, unless they have something new after reading this argument.

The CHAIRMAN: They might easily find something new.

Mr. NESBITT: You mean arguments from outside people.

The CHAIRMAN: Yes.

Mr. NESBITT: I have a word or two to say myself.

The CHAIRMAN: It is understood that we refer to Section 375, provisions governing telegraphs and telephones. I have a little correspondence here. Members will remember that when we heard these gentlemen the other day it was understood that a committee composed of the representatives of the Independent Telephones and representatives of the Bell should meet and try to settle their differences. I have a letter

from the Canadian Independent Telephone Association stating what happened at that meeting.

The letter reads as follows:

THE CANADIAN INDEPENDENT TELEPHONE ASSOCIATION.

TORONTO, May 22, 1917.

JOSEPH E. ARMSTRONG, M.P.,
Chairman Special Committee Amending Railway Act,
House of Commons,
Ottawa, Ont.

DEAR SIR,—I beg to advise you that acting upon the suggestion of your Committee some members of the Executive of this Association met with representatives of the Bell Telephone Company on the afternoon of the 16th inst., with a view to reaching an agreement in regard to the proposed amendments to Section 375 of Bill No. 13. I regret to say that no satisfactory results were obtained. The Bell Telephone Company representatives, while approving of the suggestion for a joint board to deal with local interchange of service, would not agree to any local connection for non-competing parts of competing systems, and insisted that the word "compensation" must be retained in the Railway Act.

After the conference this matter was given the most careful consideration by the members of the Executive of this Association and it was decided that it was of paramount importance in the public interest that the long distance service should be available to all telephone users upon equal terms, and further that the rural subscribers in districts not served by the Bell Telephone Company should not be deprived of local connection under any circumstances.

In accordance therefore with the understanding reached when before your Committee it will be necessary to avail ourselves of the opportunity so kindly afforded by your Committee of a further hearing in connection with our application on Tuesday, May 29, at Eleven o'clock a.m.

In advising you in regard to the above I beg to express on behalf of myself and the Executive of the Association our very keen appreciation of the courteous treatment accorded to us by yourself and the members of your Committee of the hearing on the 16th.

I beg to remain,
Yours respectfully,
F. W. MACKAY,
Chairman, Special Committee.

A communication was handed to Mr. Morphy, M.P., from Stratford, which reads as follows:

STRATFORD, R. R. No. 1, May 20, 1917.

Mr. MORPHY, M.P.,
Ottawa, Canada.

DEAR SIR,—We have been advised that final consideration to application of Canadian Independent Telephone Association regarding amendments to the Railway Act will be given this week. We ask you, as our representative in the House, to support the interests of the Rural Companies.

Yours truly,
The North Easthope Municipal Telephone System,
JAMES McGILLAWEE,
Secretary-Treasurer.

Since these communications have been handed in the Independent Telephone Companies have decided to ask to amend subsection 7. This is an amendment proposed since the interview with the Bell Telephone Company, practically accepting their proposition.

Mr. MACLEAN: That does not dispose of the issue as between the two companies.

The CHAIRMAN: Practically. It disposes of considerable of the issue. The proposed amendment is to be added to Section 375.

Mr. LUDWIG, K.C.: It is the addition of subsection "a" to 375. It is a qualification.

The CHAIRMAN: The proposed amendment reads as follows:—

> "No order made under the preceding subsection shall apply to the interchange of local conversations between persons using the telephone of two competing systems of lines where such systems or lines terminate upon switchboards located within the municipal limit of the same city, town or village, except in the case of rural party line telephones in non-competitive areas, and then only when the Board shall deem such interchange to be desirable and practicable."

Mr. MacKay handed these proposed amendments to me. He is director of the Independent Telephone Company in Ontario.

Mr. MACKAY: It is from the special committee which has the matter in hand.

Mr. LUDWIG, K.C.: They desire to add two subsections. The Independent Telephone Association is doing business in Ontario, but it has some systems outside of Ontario.

Mr. MACLEAN: You say you had a conference and failed to agree.

Mr. LUDWIG, K.C.: Yes, it is directly on this matter we had the conference.

The CHAIRMAN: I have another communication which I have just received from Mr. German, M.P., who asked to have it read to the Committee.

(Reads)

THE WELLAND COUNTY TELEPHONE COMPANY, LIMITED.

BRIDGEBURG, Ont., May 11, 1917.

To Wm. M. German, Esq., M.P.,
Welland County, Ottawa, Ont.

DEAR SIR,—The case of the Independent Telephone Companies will be heard before the Railway Committee on Wednesday, May 16, at eleven o'clock, in the chamber of the Parliament buildings.

Judging from the interview with Mr. Pettit and myself at your office in Welland last week, we think you have about the right view of the situation, and we would be glad if you could find it convenient to attend the hearing before the Committee on the 16th and lend your assistance to the cause of the Independent Telephone Association.

You will likely meet some of the gentlemen whose names are on the attached heading and probably many more, and I assure you they are all good heads.

The association has been struggling for many years for a long distance connection, have spent much money and labour, and we look on this as the battle of our life.

You are not a disinterested party in the matter, as the Welland County Telephone Company has over $80,000 invested in plant and has over 250 shareholders, every one of them residing in Welland County.

Your friendly assistance would be appreciated by us very much.

Yours, etc.,

GEO. TAIT,
Secretary-Treasurer.

You will find our case presented in the enclosed Plea, a copy of which you have already had sent you.

GEO. TAIT.

Mr. German is here, and possibly will ask, a little later on, to be given the privilege of being heard.

Mr. CARVELL: Let us see, Mr. Chairman, what they are asking. I am trying to boil these amendments down and see at what point we have arrived. In the first place, the local telephone companies wanted the right of a connection with the Bell Telephone Company both for long distance and local service without compensation, but by each one receiving a fair proportion of the toll. Now, by the proposed amendments they are willing that there shall be no interchange of local conversation in competing centres, but they would still want the long distance connection even where there is competition. Am I right in my conclusions of the general substance of the proposed amendments?

Mr. LUDWIG, K.C.: Yes.

The CHAIRMAN: We understand from the representatives of the Independent Companies that your interpretation is correct.

Mr. CARVELL: It means, then, that they abandon the right of local connections, but still maintain the right of long distance connections without compensation?

The CHAIRMAN: Is that correct, Mr. Mackay?

Mr. LUDWIG, K.C.: It means that we shall pay the regular toll rate, but no compensation, that is to say, there is to be no flat rate, that is an annual rate of whatever they are fixing now, and no surcharge. That is the position the Independent Companies take.

Mr. F. W. MACKAY: The Committee is going to lose time if it confuses these two clauses. Subsection 7 applies to local connections. That is one subject, as I told you the last time I was here. That is the proposal introduced here by the Ontario Government and the Ontario Railway Board, and not directly by the association. Subsection 7 deals with local connection. That should be kept in mind. That is what we had the discussion about with the Bell Company. I am speaking now of the conference. We parted in this way: the Bell Telephone Company are willing to accept compulsory local connection, that is, a rural company connecting into the market town, separate from long distance altogether. They say: we are prepared to accept that for all non-competing companies, but we will not allow that for any competing companies or the non-competing parts of any competing company. We said: We are willing to agree as to that, but the non-competing parts of local companies should get that local connection. There we parted; we could not agree. Now, we changed subsection 7 from what it was when we were here two weeks ago, so that it now reads that all non-competing companies shall have that local connection, which is fully agreed to, but in the cases of non-competing parts of competing companies the Bell Telephone Company shall not say what rights we shall have; we turn it over to the Board to decide the question. The Bell Company opposes that. I am sure their representatives will say that I am giving a correct account of what occurred.

They held that such an arrangement was not practicable, that it was impossible to keep track of calls on lines that were not competing, that it was impracticable to tell from where the call came, and from whom it originated. Our answer to that is: "All right; we will leave it with the Board; if it is impracticable the Board won't order it; if some plan cannot be devised by which it can be worked out it shall never come into existence. On that clause we have come together close enough for the purposes of the Committee.

Mr. CARVELL: That is purely local business.

Mr. MACKAY: If we can discuss that now, and then discuss the long distance connection, the Committee will work faster.

Mr. JOHNSTON, K.C.: Is not the only question this: whether or not in respect of long distance business you shall pay compensation without regard to the fact as to whether you are competing or not competing?

Mr. MACKAY: Quite so.

Mr. JOHNSTON, K.C.: You are not very much apart on local business?

Mr. MACKAY: I am trying to show you how close we are getting.

Mr. JOHNSTON, K.C.: Then, in regard to long distance, you want that privilege without any compensation except that you are willing to pay the ordinary Bell rate and the rate of the connecting company.

The CHAIRMAN: We expect to hear from the representatives of the Bell Telephone Company.

Mr. GEOFFRION, K.C.: We have just received the amendments and are looking them over for the first time. We would like to study them a little longer.

The CHAIRMAN: Mr. German, do you wish to be heard at this time?

Mr. GERMAN, M.P.: No, not at this stage.

The CHAIRMAN: Does any other gentleman wish to be heard?

Mr. GEOFFRION, K.C.: The elimination of compensation for long distance connection we cannot accept anyway. If our opponents wish to present their views on that question the Committee might hear them now.

Mr. JOHNSTON, K.C.: That is to say, where there is compensation you do not object, but where there is no compensation you do object.

Mr. GEOFFRION, K.C.: We object as regards long distance exchange without compensation when there is competition. I am simply saying that while we are studying the other amendment, because we have not yet mastered it, if there is anything to be said on the other side the Committee might hear it.

Mr. CARVELL: That is the whole question.

Mr. GEOFFRION, K.C.: Subsection 7 B is on the compensation question. We are sure now that we will have something to say on that point.

Hon. Mr. LEMIEUX: Where there is no compensation, you do not object?

Mr. NESBITT: I move that Colonel Mayberry be heard.

Col. T. R. MAYBERRY: I think I said all I could say on this subject the other day, and Mr. MacKay is here to represent the Committee. I do not think I have anything further to say to-day. Any questions that may be asked will be answered by some representative of our association.

Hon. Mr. COCHRANE: Is there any objection to independent lines not in competition getting the right to have connection?

Mr. JOHNSTON, K.C.: No, sir; the Bell Telephone Company accede to that.

Hon. Mr. COCHRANE: Then what is the objection to these competing companies having the right to appeal for an order of the Railway Board? I think we should leave it to the Board to decide.

Mr. CARVELL: Would you say a joint board, or the Dominion Railway Commissioners?

Hon. Mr. COCHRANE: The Board of Railway Commissioners.

Mr. CARVELL: Hear, hear.

Mr. SINCLAIR: To decide the question of compensation?

Hon. Mr. COCHRANE: To decide everything. If the Board think the Bell Telephone Company should get compensation, let the Board say what it should be.

Mr. GERMAN: Under the Act as it reads the Board must consider the question. The decision of the Supreme Court is that they must give compensation.

Mr. CARVELL: I do not think so. Are you sure of that?

Mr. JOHNSTON, K.C.: That is not the decision. In one case the Board did give compensation.

Mr. MACLEAN: You do not agree with Mr. German, then, Mr. Johnston?

Mr. GEOFFRION, K.C.: Subsection 7 A is satisfactory to us. Our only objection to that subsection is that we do not think a practical means can be devised, but if the Board can find any means we have no objection, so subsection 7 A is satisfactory to us. On the question of compensation, I would like to suggest that the hon. member (Mr. German) is mistaken. The Supreme Court judgment is available here. The Statute uses the word "may," giving the Board discretion, and the Supreme Court said that the Board "could" give compensation. Our claim is not for compensation from any other companies, but the companies competing, and compensation has never been allowed except in the case of competing companies. We do not want more than that.

Mr. JOHNSTON, K.C.: Has the board laid that down as a rule that it will not allow compensation unless they are competitors?

Mr. GEOFFRION, K.C.: There is no definite rule to that effect. We do not want anything more than that. The committee can put it in the Act or leave it to the board, it is immaterial to us. We do not want anything more than compensation when our own property is handed over to be used against us. We suggest that this matter be dealt with by the Federal Board. We think the principle of joint boards is a dangerous one.

Hon. Mr. LEMIEUX: Is not that the way suggested by Mr. Cochrane?

Mr. NESBITT: Supposing a company has a competing line in a town, and you carry long distance messages for them by charging them, say, ten cents additional for the service you give, do you want compensation over and above that?

Mr. GEOFFRION, K.C.: The amount of compensation will be a matter for the board. We cannot lay down a rule. The form of compensation is immaterial, it is for the board to say whether to charge it to the subscriber or to the telephone company itself. We are not asking you to say what will be the amount of the compensation.

The CHAIRMAN: You want us to decide that there will be compensation?

Mr. GEOFFRION, K.C.: That there "may" be compensation when it is a competitor in a local district who wants to use our long distance line, and therefore advertise to those they are canvassing that they can use our line.

Mr. GERMAN: What harm does it do your company if the word "compensation" is struck out? The section will read, "upon such terms as the board deems just and expedient." It shall be referred to the board on such terms as to the board shall be deemed just and reasonable. As the section reads now, the matter is referred to the board "on such terms as to compensation as the board deems just and expedient." That is where the Supreme Court has stepped in and ruled that the board must consider it from the standpoint of compensation. Strike out the word "compensation,"

and leave it to the board. If the board thinks that compensation shall be given, they will order compensation. But, according to the Act now the board considers, and the Supreme Court has said, that they must consider it from the standpoint of some sort of compensation.

Mr. NESBITT: And the Act takes it for granted that they shall get compensation.

Mr. GERMAN, M.P.: Yes. The board can decide to give compensation if they think it should be given.

Mr. NESBITT: Is not that the decision of the Privy Council?

Mr. GERMAN, M.P.: That is the decision of the Supreme Court, that they must consider it from the standpoint of compensation.

Mr. GEOFFRION, K.C.: Will you allow me to read the head note of the decision of the Supreme Court?

Mr. GERMAN, M.P.: You cannot always understand a decision from the head note.

Mr. GEOFFRION, K.C.: As a general proposition, you cannot, but I would not like to take up the time of the committee to read the whole judgment.

Mr. CARVELL: I would like to hear the head note.

Mr. GEOFFRION, K.C.: I might say that I have read the decision, and I am of the opinion that the Supreme Court hold that the Railway Board have the power, but they are not compelled to give compensation. The head note is as follows:

> Under the provisions of the "Railway Act" and its amendments by 7 and 8 Edw. VII., Chap. 61, the Railway Board has power to authorize a charge in addition to the established rates of the Bell Telephone Company as compensation for the use of its long distance lines. Iddington, J., contrary.
>
> By said Acts the board is authorized to provide compensation to the Bell Telephone Company for loss in its local exchange business occasioned by giving independent companies long distance connection. Davies and Iddington, J. J., contra.
>
> The board has power also to authorize payment of the special rate by companies competing with the Bell Company, who obtain the long-distance connection although non-competing companies are not subject thereto. Iddington, J., contra.

Mr. GERMAN: What harm would it do to strike out the word "compensation"?

Mr. GEOFFRION, K.C.: If that amendment is stricken out by Parliament, the court will say that Parliament did not amend that Act for nothing.

Mr. CARVELL: I guess you have your answer, Mr. German.

Mr. MACLEAN: You cannot drag into the decisions of the court the intentions of the people.

Mr. NESBITT: They should read the Act as it is.

Mr. JOHNSTON, K.C.: If the word "compensation" were struck out of the Act, neither the board nor the Supreme Court would allow compensation.

Hon. Mr. COCHRANE: If the Act said "on terms arranged by the board," surely they could arrange anything they liked.

Mr. JOHNSTON, K.C.: It would be held that Parliament would not strike out a word of that kind, without intention.

Mr. MACDONELL: They would look at the old Act and the new, and ask: Why did you take it out?

Mr. GEOFFRION, K.C.: Reference to anterior legislation is a proper means of construing an existing statute.

Hon. Mr. COCHRANE: If the board thought it would be proper, they could allow it.

Mr. JOHNSTON, K.C.: The board would not dare to allow compensation, and the Supreme Court would say it was struck out of the Act.

Mr. CARVELL: Suppose the wording of the section read: "On such terms as to compensation or otherwise?"

Mr. CARVELL: That will get away from the idea that there must be compensation.

The CHAIRMAN: Does that meet your objection, Mr. Mackay, or otherwise?

Mr. MACKAY: That does not carry it far enough. When this question was before the committee on a previous day, there were representatives of other companies here to be questioned upon the practical working out of this provision. The point is that the Welland Company, for instance, and other companies you have heard from, having their agreement with the Bell Company, are what we call non-competing companies, but who is to decide that a company is not non-competing? Not the board, not the courts, but the Bell Telephone Company. That is the question you must settle here. The Railway Board is not to define who is a competitor of the Bell Company, and I can quote you from the majority finding at the time in which they state that the board has no concern in the question of whether the company is or is not in competition with the Bell; if the companies are able to agree, that is the point. In other words, where the local company does not accept the terms laid down by the Bell Telephone Company, they must go to the Bell Company, or accept the order already issued. They have no other choice. That is my argument, the question of a competing or non-competing company cannot bear weight with you in considering the amendment to this clause, because the exact definition of that is another thing, and it is in the hands of the Bell Telephone Company.

The CHAIRMAN: You mean that the Bell Telephone Company has the power to decide whether you are a competing or non-competing telephone company?

Mr. MACKAY: Yes, the court said, "We will not deal with this question or determine it, the Bell Telephone Company only can do that."

MR. MACLEAN: How do you want to be protected under this Act?

MR. MACKAY: We do not want to be protected. Under that section the Railway Board said they were compelled to give compensation and made the order. Because of that order we waited for three years without connection. We took it up with the Supreme Court which, on a division of three to two, decided in favour of the Bell Company. Therefore we stand here to-day, not discussing findings of the Court, not discussing any more the point of whether the Board was correct or not but we are standing here, before you, the Parliament of Canada, asking you to so enact legislation that the Dominion Railway Board, the Supreme Court of Canada, or anybody can interpret into it that the Bell Telephone Company can so decide the compensation from these local telephone companies that are in business serving the people in their district, not because they want to be in it, not because they are ambitious to become telephone men, but because it was the only way they could get telephone service. Now we say to you: Make the Act read in accordance with 7 B, which deals with long distance connection. That means that we must be subject to the Railway Board as to the conditions of the connection, as to the amount of money it is going to cost for the Bell Company to bring our line from the border of the municipality to where their switchboard is. We will pay all that expense, and all we ask is that they give us the use of their long distance line on payment by us of the regular long distance rates. We want the same treatment that all other sections now get; we want no discrimination. We are imbued with the justice of our cause and even if we do not succeed we will continue along the path we have travelled. From the records of the past twelve years we have found the Bell Company to be a competitor that will stoop to any methods they knew would obstruct our progress. We have faced the Company all that time straight through until in Ontario we got the Ontario Railway Act, which

curtailed the Bell Company's ability to tie up the local companies, so that the Bell Company is to-day a much different institution from that which it was twelve years ago, as far as relations with these local companies is concerned. Knowing all this, and being imbued with the justice of our cause, we come here and ask you to give us the desired connection. If we do not get it this year we will take it up next year, and if we are not successful then we will bring the matter up the year following, because we are going to secure for the people's companies what we believe they are entitled to.

THE CHAIRMAN: What objection have you to offer to that section, Mr. Geoffrion.

MR. GEOFFRION, K.C.: Our position is this: We have a long distance service which we have built up and which has cost us money. It is an inducement to people to come to us as subscribers in our local exchanges, it is an inducement to those who are already subscribers to stay with us. Now, if a Company competing locally with us can to-morrow, without any surcharge, step in and say to the public of the same municipality where we are already operating, "We have invested no money in any long distance lines, therefore we can charge you less as subscribers, and we will give you the long distance service at the same rates as the Bell Company," how long could we resist competition of that sort? We fully appreciate that long distance lines should not be duplicated, and therefore that the long distance service should be open to all. Parliament has decided there shall be long distance connection open to everybody, even competitors. At the same time Parliament has already three times recognized the force of our argument: That if you entitle a Company that has only a local service and that is competing with us—I am not speaking of other companies that have done no harm but have only helped us—a company that is trying to get our subscribers from us, a company that has not been put to the expense of constructing a long distance line and that can go and say to the public, either to those who have not yet subscribed, or to those who are already subscribers, "We charge less and we give the same advantage because we are entitled on the same terms as the Bell Telephone Company's subscribers to the use of the long distance line," then where are we? You are asserting the principle that we are forced to allow the use of our property to people who want it for the purpose of competing with us and taking away our clients. That is the gist of the argument in a nutshell, and the force of which Parliament has already recognized three times. I know that our opponents are patient, they have come forward several times and they may come forward I do not know how often, but what argument have they advanced in support of their case? They have said they wanted this connection, that they were entitled to it, but have they suggested a single argument in justification of the application of this new principle that we should be compelled to loan our property, our investment, to rivals so that they can better compete against us. We are not asking for the denial of the loan, because we understand public interest is paramount, but we say, "Give us some protection in the shape of additional compensation that will prevent the fostering of new competitors." Otherwise the day will be inevitable when others can say, "We have only to organize a local company in any town where the Bell Telephone is already installed, and with much smaller capital and consequently much less expense, offer to new subscribers all the advantages which the Bell Telephone has to offer."

THE CHAIRMAN: Is it not a fact that there are 550 telephone companies in the province of Ontario who are tremendous feeders to your system, and should not some consideration be given them?

MR. GEOFFRION, K.C.: They have the consideration: When they are not competitors they have connection without surcharge. That is why I insisted that every company that is not a competitor is all right and should remain entitled to the use of our long distance line at the same rate as the Bell Telephone Company subscribers.

MR. BLAIN: Will you define what a competitor is? Your company has the power, and has exercised it, of saying what independent companies are. Have the Board at any time had that question before them, and have they decided that such and such a company is a competing line?

MR. GEOFFRION, K.C.: If you want my answer I will say that the Board of Railway Commissioners must have decided that, when they ordered compensation to some companies and not to others. The Supreme Court has decided that the Board is authorized to provide compensation to the Bell Telephone Company for loss in its local exchange business occasioned by giving independent companies long distance connection. (Davies & Iddington, J. J., contra.) The Supreme Court has decided: "The Board has power also to authorize payment of a special rate by companies competing with the Bell Company, who obtain the long distance connection, though non-competing companies are not subject thereto." (Iddington, J., contra.) The Supreme Court has pointed out that the Board has the power to order compensation when there is competition, while not ordering compensation when no competition exists. I suggest that as clear evidence, but you can take into consideration the question of whether there should be compensation or not.

Mr. BLAIN: Would you be willing to let the word "compensation" go out and trust to the Board?

Mr. GEOFFRION, K.C.: They won't have the power then. Let us see what we are fighting about, to see if it has any substance. Are we entitled to compensation when there is competition. We admit that where there is no competition we are not entitled to compensation. The question is whether or not we are entitled to compensation for long distance connection when it is a competitor of ours who asks for that connection. We say we want it and our opponent says no. If we are wrong, in the opinion of the committee, that is an end of it. If we are right, it is easy to draft an amendment. You have the decision of the Privy Council which shows that they make a distinction between competing and non-competing companies.

Hon. Mr. COCHRANE: With regard to the long distance telephones in competition, you propose that the competing companies come in on terms?

Mr. GEOFFRION, K. C.: I must seriously object to the elimination of the word "compensation" from the Act, because it is there already. We have no objection to providing there shall be no compensation for connection when it is a non-competing company. The amendment we propose reads as follows:

> "In all cases where such systems or lines are operating in competition, the compensation to be awarded shall be limited to fair remuneration for the services to be performed by the company or systems against which the order is applied for."

Mr. MACDONELL: Are you not in substance asking for what is equivalent to an insurance premium to perpetuate your line in a community where you have it? Let me draw the parallel of railways. Take Toronto and Montreal, to illustrate the telephone business. Passengers coming into Toronto by various lines of railways arrive at the station in Toronto. They may come on Grand Trunk or Canadian Pacific or Toronto, Hamilton & Buffalo, or various other lines. They all go to the station and have an equal right to buy a ticket on the Grand Trunk from Toronto to Montreal. What you are asking is equivalent to the proposition that the Grand Trunk could say that if a man came into Toronto on the Canadian Pacific Railway, the Canadian Northern Railway, or some other road and wanted to go to Montreal on the Grand Trunk, he would have to pay the Grand Trunk an extra charge.

Mr. MACLEAN: A surcharge?

Mr. MACDONELL: A surcharge in addition to the regular fare a man would pay who came into Toronto on the Grand Trunk.

Mr. GEOFFRION, K.C.: I do not think the analogy is a good one.

Mr. MACDONELL: What difference is there?

Mr. GEOFFRION, K.C.: There is no analogy in the telephone system, for one reason among others, that the growth of competing systems in railways is under the severe hand of Parliament. You do not allow paralleling. Railways are built where you have allowed them to be built, while telephone companies spring up like mushrooms, wherever they like. You do not say that because one telephone system is established in one municipality you will not allow another telephone company to do business there. But you do adopt that principle every day with regard to railways.

Mr. MACDONELL: If that principle were adopted with regard to railways, the Grand Trunk could ask anyone who came to one of their stations to buy a ticket to pay an additional charge because he had travelled to the city by another road.

Mr. GEOFFRION, K.C.: If you assume what I deny, the analogy, that might be so. I mentioned the reason why there was no analogy. It is a question of avoiding competition, and the question of railway competition is under the constant control of Parliament, while the Bell Telephone competition is a matter of free and unrestricted enterprise.

Mr. MACDONELL: They are under Parliament.

Mr. CARVELL: No.

Mr. GEOFFRION, K.C.: No. The creation of the railways is restricted, and the formation of telephone companies is not.

Mr. MACLEAN: There is a principle underlying the control of all common carriers, whether by wire or by rail.

Mr. BLAIN: What answer have you to this? The Independent Company and the people of Canada expect the Bell Telephone Companies to do something because they refuse to carry out the lines in the different municipalities and give the farmers connection.

Mr. GEOFFRION, K.C.: In the municipality where we refuse to go we are not competitors, and we can be ordered unrestrictedly, without any compensation, but it is not where we refuse to go; it is where we are. We were there from the first. We want to be guarded very clearly, and definitely, in the case where, being the first company, we have been a long time in operation, against a new company coming in, after we have occupied the ground, to compete with us and seeking connection for that purpose. We do not want in any way protection against a large number, or any number—I do not know that we have refused to go into certain districts, but if it be true that we did, let anybody organize a telephone system in that district, and they will be entitled to local connection with us, to long distance connection with us, to everything and without compensation at all—it is in the statutes there. Our contention is that under the new Act, if this section passes, it will be an attractive financial venture, and open to anyone to organize a small company and come to us saying: "We have a hundred subscribers, give us the same connection as the Bell Telephone Company has."

Mr. BLAIN: Is it not the case that you, being the premier company, have taken in all the profitable districts, and have supplied them with a telephone system, but you have left unsupplied those sections that are not so profitable, that require consideration?

Mr. GEOEFRION, K.C.: The places that are not being supplied are protected by this statute. There is no use our trying to defend the law to which we object.

Mr. BLAIN: Supposing you are in a town of 3,000 people, and you have your system in there, and in an adjoining municipality is an independent company, and that independent company puts 20 'phones in the town in which you are operating; does that make them a competing company?

Mr. GEOFFRION, K.C.: That is provided for in 7 (a), that will cover that point.

Mr. BLAIN: That would not be a competing company?

Mr. GEOFFRION, K.C.: It would not be a competing company under 7 (a). What we say is very simple; where we are in a town or district, and some company comes in, I am not speaking so much of those which are competing now—there are 24 companies, we have acted amicably with everybody except those 24 companies, in the whole country, and those 24 companies have not yet applied for connection. But what we fear is that companies will grow, or will alter their policy as a result of this legislation. You are, by the proposed legislation, inviting every locality to start rival companies; you have only to organize a company by letters patent and will have them competing with the existing companies who have invested large sums of money, without any control, any restriction. You are going to encourage the formation of new companies, and proper provision for the regulation of these companies is the best policy. It is not in the best interest to encourage the duplication of companies. It is unfair to say to the longer established companies: "You will be compelled to lend to these new rivals of yours all the advantages which you have obtained in the way of connections, etc., so that your rival will be in the position to cut your throat."

Mr. MACLEAN: But if it is in the public interest, you will have to stand for it, that is the risk which is run by all public corporations doing business.

Mr. GEOFFRION, K.C.: I am suggesting that it is not in the public interest that you should establish a system that will duplicate the telephones everywhere. The complaints which you have heard are very loud, but they are not numerous. What will happen in the future if there is not some control and regulation? What is to prevent a man from taking out letters patent for the organization of a new company on the basis of cheap rates? He can say to the people: "I am charging you only two-thirds of the Bell Telephone Company's rates, and I am giving you the same terms over the long distance service." Necessarily, if a company did that, we will be out of that district immediately, and there is no reason why a company promoter would not organize a company along those lines if encouraged to do so by legislation. The duplication of telephone systems is useless to the public, and the investment in duplicating systems is a waste of capital.

Mr. MORRIS: Do you think any man would put money into the organization of a telephone company unless there was a need for the company and a prospect of business for it?

Mr. GEOFFRION, K.C.: It is quite possible to organize a telephone company when there is really no necessity for it, and that company once established would be entitled to all the advantages of the Bell Telephone Company. It is only where we are established and giving service in a locality that we object to some other company duplicating our system and giving the public a cheaper service—we do not object to a new telephone company coming in where there is none and having the advantages of the long distance connection. There is no competition in that case.

The CHAIRMAN: Mr. Mackay wishes to answer your statement. Let us keep to that one point.

Mr. MACKAY: I am going to keep to it. As to the duplication of systems, that is something which the Ontario Railway Board has set its face against. I have here a copy of the Railway Act which distinctly says: "No company shall erect poles upon or on any portion of any highway upon or along which the pole leads of another company are already erected unless by consent of the Board." So you see the Ontario Municipal Board is against the duplication of lines. A local company can not duplicate the lines of another company in Ontario. That is as far as the Ontario Legislature could go, but they have shown they are against such duplication. Therefore my friend who has spoken need have no fear of the springing up of telephone

companies all over, except where there is none actually now and the service can not be secured in any other way. Duplication will not result from this enactment; in fact duplication is more liable to come without this enactment than with it. I will give you a concrete case so that you will see what I have in mind, and appreciate the attitude of the Bell Company towards competing and non-competing companies. The town of Coldwater is situated with several municipalities around it; the township of Tay, the township of Medonte and a number of others that I do not recall offhand. These townships have municipal systems, but Coldwater had only the Bell system, and it had to pay a toll to connect with the municipalities in the adjoining township. There were only a limited number of Bell telephones in Coldwater, probably 40 or 50, and when they wanted to get out to their neighbours—who had a free interchange by reason of their municipal systems—they were tied up. Therefore Coldwater decided they would establish a municipal telephone system under a municipal Act, and they took the necessary steps to organize such a system. The Bell Company then wrote to the Ontario Railway Board to this effect. "Here is a case where there is going to be a useless duplication. There is going to be injustice done us because we have a system in Coldwater and we are giving the people the service. There is no reason why they should duplicate our system." The Railway Board have not given their final approval, but they had O.K.'d the preliminaries. When the Bell Company made the representations to the Board, they sent a letter to the municipality of Coldwater saying, "Gentlemen, you must stop going on with your municipal system until we give you a hearing at such and such a date. We understand you are going to duplicate another system and we want to find out the facts." Before the date prescribed for the hearing arrived the municipality of Coldwater went down to Toronto and told the Railway Board the facts. And what were the facts? The municipality said, "We have a system in Coldwater of 40 or 50 subscribers, but the switchboard is in somebody's store. The man answers the switchboard when he is through wrapping a parcel, and our service is wretched. At night the store closes at seven or eight o'clock and there is no service. We can not get connection with the surrounding municipal systems, and under the Act we think the town of Coldwater is justified in getting a municipal system." The Board immediately said, "Go ahead and build your system," and the town to-day has a municipal system and their local subscribers are getting a free interchange with the surrounding township. What happened as far as the Bell Company was concerned? The latter immediately sold their existing plant to the municipal system and there was no duplication. The Bell Company's system is a business proposition, and if they do not live up to their obligations and their opportunities, it is not for you, gentlemen, to legislate so that somebody can not make them do so. The request we are making will put us in a place where we can not possibly be on equal terms because they have got legislation which you would not grant to us. But even if you do not grant us such legislation, put these local companies in the position that they will be treated the same as any other section of the community. If you give us what we are asking for you will be taking the only steps that I suppose you could adopt to-day in the direction of a nationalization of telephone lines. Duplication may or may not be a bad thing. There is no doubt, however, that in some cases duplication may be necessary in order to secure for the people the services they want. I need only point out to you the city of Toronto, where they have repeatedly refused the offer of the Bell Telephone Company of $100,000 cash for an exclusive franchise. We got that exclusive franchise feature removed from the legislation of Ontario because it was an injustice to the people. Now we have municipal control over rates and service and all the rest of it. The opposition to what we are asking for to-day does not arise from any serious fear on the Bell Company's part of a duplication of systems, or competition or anything of that kind; they are continuing the fight to hold their monopoly, so far as they can secure it, under present conditions. You

are not in favour of that monopoly, but I am satisfied they will be able to maintain it if 7 B. does not meet with you approval and is not enacted.

The CHAIRMAN: What is the wish of the Committee.

Mr. GEOFFRION, K.C.: There is an amendment to be proposed.

The CHAIRMAN: Have you any objection to the amendment which is proposed?

Mr. GEOFFRION, K.C.: We have no objection if, in the matter of compensation, you will add these words: "and in all cases, except where such systems or companies are operating in competition, the compensation to be awarded shall be limited to a fair remuneration for the services to be performed by the company or system against which the order is applied for." I would point out that if you fear the word "compensation" is imperative and not permissive, the company have no objection to inserting the words "compensation or otherwise." Let me remind you, however, that the Supreme Court having decided that the Board may order compensation for a competitor and may refuse it to a non-competitor, it shows clearly that the word "compensation" is permissive.

Mr. JOHNSTON, K.C.: There is no necessity for adding 7 (a) if subsection 7 is to stand.

Mr. GEOFFRION, K.C.: Our opponents are suggesting 7 (a).

Mr. JOHNSTON, K.C.: Quite so.

Mr. GEOFFRION, K.C.: 7 (a) is required if the words "long distance" are eliminated.

Mr. JOHNSTON, K.C.: Are you willing to eliminate the words "long distance" from 7 (a).

Mr. MCFARLANE: Without adding 7 (a) it would allow connection between two local exchanges, and the independent companies themselves do not agree with that principle. Section 7 should stand, striking out the words "long distance" and adding 7 (a) as suggested by the independent companies.

Mr. JOHNSTON, K.C.: Mr. McFarlane suggests that the words "long distance" should be struck out of subsection 7. The section reads:

> Whenever any company or any province, municipality or corporation having authority to construct and operate, or to operate, a telephone system or line and to charge telephone tolls, whether such authority is derived from the Parliament of Canada or otherwise, is desirous of using any long distance telephone system." etc.

Mr. LUDWIG, K.C.: You have to strike out other words.

Mr. MCFARLANE: Subsection 7 "A" would go in there as a supplement to that.

Mr. MACKAY: In this document we have distributed the lines underlined in red ink are the new words we have suggested in the section, and the eliminations are the words we ask to come out.

Mr. JOHNSTON, K.C.: Mr. McFarlane is conceding something. As subsection 7 is drawn it is confined to long distance. He is prepared to strike out the words "long distance."

Mr. MCFARLANE: Yes.

Mr. MACKAY: Yes, we are too.

Mr. JOHNSTON, K.C.: Strike out the words "long distance" wherever they appear in subsection 7. That would have the effect of entitling some rural company to insist on connection. At present they have not that right.

Mr. MCFARLANE: Yes, and they should have the right.

Mr. CARVELL: And 7 "A" regulates the condition under which they shall have the interchange.

Mr. MACLEAN: They have defined that, and you ask to make an addition.

Mr. MCFARLANE: If we add 7 "A" as suggested by the Independents, then to get over the question as to whether the word "may" now used in the section is permissive or imperative, I suggest after the word "compensation" we should add the words "or otherwise"—"upon such terms as the compensation or otherwise is ordered by the Board." Then we add paragraph 8 which deals with the terms of the connecting order,—

> "And in all cases where such systems or lines are operating in competition the compensation to be awarded shall be limited to fair remuneration for the services to be performed by the company or system against which the order is applied for."

Mr. MCFARLANE: That makes it clear that compensation is only to be ordered where competition exists.

The CHAIRMAN: It is for the committee to decide whether the word "compensation" remain in or go out.

Mr. CARVELL: Before the matter is decided, I would like to have an opportunity to present my view to the committee, because I have had a good deal of experience in these matters, and have been very much interested and amused by the discussion.

Mr. GEOFFRION, K.C.: The proviso for the joint Board should disappear.

The CHAIRMAN: Mr. Morrison has asked to be heard by the committee.

Mr. MORRISON: Regarding competing companies, I want to cite an instance right in my own district. We are supposed to be a competing company. There is a distance of eight or ten miles where the Bell Telephone Company had their lines already built. Bear in mind that there was not one local telephone in that section, but we came in and gave the farmers the benefit of the local telephone. We got absolutly no local service, which was absolutely refused until competition came in. As I understand, we come under the head of a competing company simply because the Bell Telephone Company's long distance lines were built through that district first. We should not legislate against competition. It is a dangerous precedent. What is asked by the Bell Telephone Company to-day is contrary to our modern methods of doing business, that is to pay compensation to any company simply because there is competition with them.,

The CHAIRMAN: If the statement made by Mr. Morris is the interpretation that would be placed on the Act, what is your view, Mr. Geoffrion?

Mr. GEOFFRION, K.C. Our view would be that local service is not a competitor with long distance service. A competitor is one who tries to get the same clients. If we are giving a local service, and somebody else establishes a local service in the same district, that is competition. That is the view we present to the board.

The CHAIRMAN: Simply because you have a long distance line, a local line in the same district would not be understood as a competitor?

Mr. GEOFFRION, K.C.: If they were consulting me as a lawyer, I would say not.

The CHAIRMAN: It is understood that so far as the telephone companies and the Toronto power matters are concerned the evidence is all in.

Committee adjourned until Wednesday, 30th instant.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 21--MAY 30, 1917

(Containing further representations re *Toronto & Niagara Power Co.—Telephone section 375 amended.)*

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

WEDNESDAY, May 30, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Carvell, Cochrane, Hartt, Green, Macdonell, Nesbitt, Sinclair, Turriff, and Weichel.

The Committee resumed consideration of the Bill.

Section 375, "Provisions governing telegraphs and telephones," further considered.

Moved by Mr. Nesbitt, that subsection 7 be amended by striking out "long distance" on lines 6 and 8 thereof; by striking out "as to compensation" on lines 20 and 21; by striking out all of the subsection after "maintained" on line 25; and by inserting a new subsection 7*a* as follows:—

7*a*. No order made under the preceding subsection shall apply to the interchange of local conversations between persons using the telephones of two competing systems or lines where such systems or lines terminate upon switchboards located within the municipal limits of the same city, town or village, except in the case of rural party line telephones in non-competitive areas and then only when the Board shall deem such interchange to be desirable and practicable.

The question being put on the amendment, it was resolved in the affirmative by a vote of seven against four.

The section as amended was adopted.

Section 373, "Putting lines or wires across or along highways, etc.," further considered. Mr. Geo. Kilmer again heard on the amendments proposed on behalf of the city of Toronto on the 18th instant.

At one o'clock, the committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

OTTAWA, May 30, 1917.

The Committee met at 11 a.m.

On section 375, Provisions Governing Telegraphs and Telephones.

The CHAIRMAN: I am going to ask the committee to be good enough to allow a communication from Mr. Jones, manager of the Port Hope Telephone Company, to be printed with the other material, and that it be incorporated in the proceedings.

The letter reads as follows:—

CLARKE, May 29, 1917.

J. E. ARMSTRONG, Esq., M.P.,
Chairman, Special Railway Committee,
Ottawa.

DEAR SIR,—I attended the meeting of the Special Railway Committee this morning on behalf of the Port Hope Telephone Co., Ltd., for the purpose of stating some of our difficulties we had with the Bell Company. Not having had an opportunity of addressing the committee, I take the liberty of writing this letter.

I have persued with a good deal of interest the memorandum submitted by the Bell Telephone Co. in answer to the memoranda of the Independant Telephone Association.

In that memorandum the Bell Telephone makes the following statements:—

> Prior to 1906 the company had made agreements for interchange of service with a number of smaller companies and systems and immediately following the adoption of this section (375) of the Act the company organized a contract department specially charged with the work of encouraging interchange of service with smaller systems. As a result of these efforts connecting agreements were made with a very large number of systems.

I have before me a proposed agreement submitted by the Bell Company to the Durham Union Company after the Bell Company's Contract Department was organized. The Durham Company operated in the villages of Newtonville, Kendall, Starkville, Pontypool, Kirby, Liskard, Tyrone and Newcastle in Durham county.

The following are three of the clauses in this agreement:—

> 5. That it (The Durham Company) will not extend its telephone system beyond the villages of Newcastle, Newtonville, Kendall, Starkville, Pontypool, Kirby, Liskard and Tyrone and Newcastle without the written consent of the Bell Company.
>
> 6. That it will not connect its telephone system with the system of any company, person or persons, other than the Bell Company, and that it will not accept messages or conversations from or transfer messages or conversations to the telephone line of any other company, person or persons, without the written consent of the Bell Company.
>
> 16. That the Bell Company shall have the first option of purchasing the plant and apparatus owned by the Durham Company.

This agreement is typical of the kind of document rural companies were obliged to operate under until the Ontario Telephone Act gave some measure of relief by providing that agreements providing for telephone interchange before having any binding effect must be approved of by the Ontario Railway Board. The Ontario Legislature found it necessary to pass such a measure owing to the harshness and unfairness of some of the clauses in the agreements which farmers not familiar with telephone problems were only too frequently pursuaded to sign.

It is quite evident I think from what I have stated above that the Bell Company's Contract Department was organized not to help rural districts requiring telephone service, but was organized to maintain and perpetuate its monopoly.

I desire to mention another matter; a majority of the members of the Dominion Railway Board held that any system competing with the Bell Company should pay that company an annual charge for long distance connections of $100, if the company had not more than 250 subscribers; $200 if the company had over 250 but not more than 600 subscribers; $300 if the company had more than 600 subscribers, and a surcharge of 10 cents for each call.

My own company, the Port Hope Telephone Company, Limited, which is a rural company operating between Port Hope and Bowmanville, and which in no way or shape competes with the Bell Company, having applied for connection with the Bell Company and having been refused that connection, applied to the Dominion Board for a ruling that it was not a competitor. The Board dismissed the application on two grounds, viz.:—

1. That it had no jurisdiction to make a declaratory order. That it had no power to determine the question whether the Port Hope Company or indeed any system competed or did not compete with the Bell Company, or any other system.

2. That the Port Hope Company being incorporated under the Ontario Act, the Dominion Board had no jurisdiction over the Port Hope Company.

The effect of all this was that the Port Hope Company, although as I have said, not being a competitor, was refused long distance connection with the Bell Company. It also settled the question that the Bell Company is the sole judge whether a system is a competitor or not.

So that the Bell line, which may be located at X, may declare, if it sees fit to do so, a rural line at Y, say five miles away, a competing line because William Jones, a farmer, residing midway between the two lines would patronize the Bell line at X if the rural line were not at Y. In short, as I have already said, as matters now stand, the Bell Company is the sole judge in deciding whether a rural line is a competitor or not.

Owing to this state of affairs, the Port Hope Company has never been able to get long distance connection with the Bell Company, and many rural companies are driven to accept the Bell terms or are not in a position to insist upon a new agreement giving them fairer terms because there is no jurisdiction anywhere to which they can apply for relief.

This, in my opinion, shows the necessity for the amendment asked for by the association, and for a joint board so that companies under either jurisdiction can be compelled to serve the public fairly.

I know the feeling of my people in Durham. I know they will not be satisfied with any legislation regarding long distance connections under which they will be compelled to pay more than a stranger who goes to a Bell phone in a store or booth.

The rural phones bring the business to the Bell office at no cost to them, whereas the Bell Company which is at the expense of building booths, toll slot

boxes and making collections, charge such stranger only the usual long distance charge. If the station is in a store the Bell Company pays the storekeeper a commission.

The above statement, it seems to me, shows how unfair the Bell Company, with its extraordinary powers and privileges deals with not only subscribers to rural systems, but also penalizes a Bell subscriber in a town who desires to call a subscriber on a rural phone.

Yours truly,

G. W. JONES, *Manager.*

PORT HOPE TELEPHONE COMPANY, LIMITED.

The CHAIRMAN: Are you ready for the question, gentlemen?

Mr. CARVELL: What is the amendment which you have prepared, Mr. Johnston?

Mr. JOHNSTON, K.C.: I have drawnup an amendment which I think meets with the approval of Mr. Jones, at any rate. If the members will take the Bill and compare what the Chairman will read, with subsection 7 of section 375, they will at once note the difference.

The CHAIRMAN: This is the amended subsection as prepared by Mr. Johnston (reads):—

"Section 375, subsection 7—Whenever any company or any province, municipality or corporation, having authority to construct and operate, or to operate, a telephone system or line, and to charge telephone tolls, whether such authority is derived from the Parliament of Canada or otherwise, is desirous of using any telephone system or line owned, controlled or operated by the company, in order to connect such telephone system or line with the telephone system or line operated or to be operated by such first-mentioned company, or by such province, municipality or corporation, for the purpose of obtaining direct connection or communication whenever required, between any telephones or telephone exchange on the one telephone system or line, and any telephone or telephone exchange on the other telephone system or line, and cannot agree with the company with respect to obtaining such use, connection or communication, such first-mentioned operating company, province, municipality or corporation may apply to the Board for relief, and the Board may order the company to provide for such use, connection or communication, upon such terms as to compensation, or otherwise, as the Board deems just and expedient, and may order and direct how, when, where, by whom and upon what terms and conditions, such use, connection, or communication shall be had, constructed, installed, operated and maintained, and in all cases, except where such systems or companies are in the opinion of the Board operating in competition the compensation to be awarded shall be limited to fair remuneration for the services to be performed by the company or system against which the order is applied for."

Now, subsection 7 (*a*) to be added:

"No order made under the preceding subsection shall apply to the interchange of local conversations between persons using the telephones of two competing systems or lines where such systems or lines terminate upon switchboards located within the municipal limits of the same city, town or village, except in the case of rural party line telephones in non-competitive areas, and then only when the Board shall deem such interchange to be desirable and practicable."

Mr. NESBITT: That is subsection 7 (*a*) as drawn by the independents.

Mr. JOHNSTON, K.C.: Yes, the exact language has been adopted without any alteration whatever. Now, if you will compare that with section 7 you will notice the

words "long distance" have been struck out. The effect of that is that the rural users of telephones can now get connection.

Mr. CARVELL: And you have struck out the joint board, too.

Mr. JOHNSTON, K.C.: We have struck out the joint board too, and we have added as part of section 7 these words:—

> "and in all cases, except where such systems or companies are, in the opinion of the Board, operating in competition, the compensation to be awarded shall be limited to fair remuneration for the services being performed by the company or system against which the order is applied for."

So that it is only in case of competing companies that the Board will have any authority to award any compensation in addition to the services rendered.

Mr. TURRIFF: On what ground do you propose to give the right to a company who are taking business from an independent company, to receive compensation when they receive the absolutely full charge that any of us would pay if we went into a booth to telephone. An independant company gathers the business and gives it to the Bell Telephone Company, on which the latter charges absolutely the same full rate that they exact from the general public. Now, this provision pre-supposes that the Bell Company would be entitled to compensation on the volume of business on which they already charge the full rate of toll.

Mr. CARVELL: I will try to answer that question if I can. There have been a good many different experts heard here, but the Bell Telephone Company and the local companies seem now to have got so far together that the only point of dispute is the question raised by Mr. Turriff, as to whether or not there should be compensation in case the competing system comes to the Bell for long distance connection. It seems to be admitted, if I correctly understand the provisions of the new subsection 7 of the independent companies, that even a competing company can have connection with the Bell system in local conversations and there is no question whatever about the non-competing local company having connection with the Bell for both long distance and local conversations. The question, therefore, seems to be narrowed to the one point, as to whether the local company should pay compensation to the Bell for the interchange of long distance business.

Mr. JOHNSTON, K.C.: When it is in competition with the Bell.

Mr. CARVELL: When it is in competition. I have had some experience in telephone companies, although my interests are not large enough to affect my judgment at all, in fact they are very small. I have had something like ten years' experience of telephone systems, and in my constituency every possible phase of the subject that has been discussed here during the last fortnight, has been worked out, or partly worked out, and partly exists there to-day; we have had all these conditions to which allusion has been made to contend with. We are too apt to consider a telephone company as we would any ordinary manufacturing or industrial concern in the country. Before the Railroad Board of Canada or the utility boards or the provinces, took charge, that was true. The man who put his money into a telephone system went on and did the best he could; he charged the people as much as he could and made as much money as he could. But nowadays in all parts of Canada you have boards—I believe I am right in saying that in every province of Canada there is a utility board of some kind, and then there is the Railway Board of Canada as a whole—which have the power to say to a telephone company, "You shall give such and such a service and you shall not charge more than such and such a rate for that service". Therefore, you take away any necessity for competition. In fact, you make competition unfair and undesirable, because from the moment the boards to which I have alluded take control both of service and rates, then competition is eliminated Now, I do not know of any greater nuisance than to have two telephone systems in any town or village or within a city,

and I think that every man—no matter whether he be a supporter of the Bell Company or of independant lines—must admit he would like to see all such things as duplication eliminated. A man may say that he wants duplication for the purposes of competition, but when the telephone rates are controlled by a public board there is no necessity for competition, in fact you have the very reverse. What I have always contended is that public boards should direct their attention both to service and to rates and to the elimination of competition. If you pass the amendment for which the independent telephone companies are asking, you are not encouraging competition but a duplication of systems. I am speaking now in the presence of representatives of all the independent companies in Ontario, and I am speaking with the knowledge of the independent companies of my own province, when I say that the cases in nearly every instance are the result of lack of appreciation of its duty by the Bell Company or the big company in the district, whatever it may be. We do not have the Bell Company in the Maritime Provinces, and therefore I am able to speak without any feeling or influence whatever; but the big company, as a rule, in the past has not done its duty; it has not extended its system as far as it should have done in the beginning. I can quite understand that the managers of that company doubtless said, "We must pay dividends to our stockholders"—which is quite true—"and if we go out into unremunerative territory we are going to spend a large amount of money in construction and suffer depreciation. We will not get remunerative rates and we will not be able to pay dividends". So people were compelled to form these independent companies, and personally I have not only sympathy, I have every consideration for the farmers of any county who have put their money into a telephone system. But in nearly every instance those who organized the independent companies said, "We can build a line of telephone for $125 or $150, put up iron wire and small poles, a fairly cheap construction, and our overhead expenses will be nil" They never figured on depreciation, they did not realize that at least 10 per cent is allowed in the big systems for depreciation. For some five or six years after their system is installed there is no depreciation and they say, "We can give a telephone service for 25 or 35 per cent less than the Bell Telephone Company is giving", and they do so; and I have found invariably that while nine-tenths of the people, interested in the independent company are purely putting up their money for necessary services, there are usually one or two persons a little brighter than the rest of them, who think they see possibilities in the future and they want to extend, and they get into the Bell Company's territory. Now there is no reason why they should get into the Bell Company's territory, the Board has the power to make the Bell Company develop that territory; so my contention is that instead of encouraging these local companies to enter into a Bell territory the Bell Company should be compelled to develop that territory themselves.

Mr. TURRIFF: What would be the objection to an independent company going into unoccupied territory?

Mr. CARVELL: None whatever. That is competitive business and there is no objection to that. If an independent company goes into unoccupied territory they are not competitors, but the trouble is that after developing that territory they go into the Bell territory and say they want all sorts of connections. An independent company can start in the city of Ottawa, and you can depend upon it their construction will be very much below the standard of the Bell. Now, as I said already, the overhead expenses of the independent companies are very small at the beginning, and it is not very long until they see the necessity of being able to serve the community at large, and then they say, "we want connection with the Bell Company, in order to give our subscribers the benefit of this service" After five or six years, depreciation commences to show up, and the independent companies find they have got to have an increase in rates. But with long distance connections they will go to the ordinary man in the town and say, "we will give you a rate of $5 or $10 less per year than the Bell", and they get subscribers in that way. If the independent company get long distance con-

nections with any compensation, they have secured an additional lever enabling them to go around and solicit business. In all my life I have never seen this thing fail to happen: If an independent line was constructed, after a certain number of years up went the rates because they must provide for depreciation, and their overhead expenses become greater.

The CHAIRMAN: You are speaking about a city, would the same argument apply to a small municipality?

Mr. CARVELL: I think so. I think the more you give a small company the right to extend their business, the more they go to the ordinary subscriber and say, "if they give us connection with the Bell Company we can give you exactly the same service that the Bell Company will give"; but after a little while they find that their rates are too low and they have to raise them. Then it usually results in the small company selling out to the Bell or to the other big company, at least that has been our experience in the Maritime Provinces. In my own constituency there have been three mergers and a fourth is fairly well under way. In every case the rates have gone up and it really means putting into capital an immense amount of what practically amounts to water.

Mr. BLAIN: The systems to which you refer are privately owned.

Mr. CARVELL: Yes, they are all privately owned.

Mr. BLAIN: None are owned by municipalities?

Mr. CARVELL: No, we have no municipally owned telephone system in the province of New Brunswick. They are all privately owned and the operation of them all works out the same way.

The CHAIRMAN: Would the territory have been developed had it not been for these private companies?

Mr. CARVELL: Yes, in any case it is a matter of absolute competition.

Mr. WEICHEL: You said in all cases these telephone companies had to increase their rates. Was that after the Bell Company absorbed the smaller concern?

Mr. CARVELL: The Bell Company has not increased its rates.

Mr. WEICHEL: I refer to the other companies.

Mr. CARVELL: They had to increase their rates, and when those rates reached the level of the Bell Company's charges the independent companies had to sell out. That has been our experience and therefore I do not think it right to encourage the duplication of lines. I think if you compel the Bell Company to give long distance connection without some sort of compensation you are simply encouraging the duplication of telephone lines. Eventually it must come to a merger and the people pay in the end. I would prefer doing everything possible to restrict duplication, or competition if you like to call it so. I do not care how strong you make the law as to the power of the Board to compel the Company to give both service and reduction of rates.

The CHAIRMAN: What is your view of the amendment as drawn by Mr. Johnston?

Mr. CARVELL: It suits me perfectly, except that it is almost unfair to the Bell Telephone Company. I understand that yesterday the Bell Company were willing to accept the amendment and, as far as I am concerned, I am willing to accept it also. I will point out one thing, I think the local companies are getting a wonderful advantage through this amendment. I do so because perhaps the independent companies do not know what they are getting. I think they do, though.

Mr. MACKAY: I imagine they do.

Mr. CARVELL: Subsection 7 (a) provides practically that no order shall be made except in the case of rural party telephones in non-competitive areas, and then only when the Board shall deem such interchange to be desirable and practicable. I know

how that works out. You have got a local company who are competitors with the Bell and they extend out over different parts of the municipality. There may be one road which is not competitive, on which there are not lines belonging to both companies. That would be non-competitive area, and yet I do not see how in the world you could work out the distinction between the telephones on that road and the telephones on roads which are competitive. Therefore it seems to me that practically it would mean that the local telephone companies get the right to go into the Bell system no matter where they are.

Hon. Mr. COCHRANE: How would it do to leave it to the Board to decide what a competing company, as well as the Bell Company shall sell phones for? Take a Company that enters and wants connection with the Bell Company. How would it do to leave it to the Board to say what they shall sell phones for?

Mr. CARVELL: I think, Mr. Minister, the only logical thing is to leave it to the Board in every case. That in my contention.

Hon. Mr. COCHRANE: What is complained of, for example, is a local company establishing itself say in the city of Ottawa, where it gets two or three hundred telephones and then wants connection with Montreal, Toronto, or other outside points. Leave it to the Board to say what telephones should be sold for in local competition. That would be fair.

Mr. CARVELL: What do you mean?

Hon. Mr. COCHRANE: For instance, you want a telephone. Well, leave it to the Board to say what you will pay for it, no matter whether it is a local company or the Bell Company that is interested.

Mr. CARVELL: Then you take away from the local company their entire lever, because they always go round saying, "we are going to give you cheaper rates than the Bell Company give." If you do that the local company ceases to exist.

Mr. NESBITT: Why not meet the case in this way: if they started without the consent of the Board, then you would have the right to punish them when they would ask for connection with the Bell. It would be better for them in the first instance to get permission from the Board to start in the locality.

Hon. Mr. COCHRANE: A good deal of the argument which has been advanced is to the effect that the Bell Company has refused to go into certain sections and the local companies have gone in and served those sections.

Mr. NESBITT: I am speaking of cities. As to the country the Bell Company doubtless has refused to go into certain country districts.

Hon. Mr. COCHRANE: What I suggest is to help out those that are in the country districts.

Mr. NESBITT: What you mean is that they shall get the permission of the Board as to what they shall charge.

Hon. Mr. COCHRANE: Yes. both the independent companies and the Bell.

Mr. NESBITT: That is what I want to get at.

Mr. BLAIN: Mr. Carvell, what is your answer to this point: An individual takes a message to the Telephone Office to be sent to Montreal. Now, the charge for that is a fixed charge, as everybody understands. The next hour a local company telephones in a message in exactly the same way and asks just the very same privilege?

Mr. CARVELL: That is a fair presentation of the case and it is entitled to a fair answer. So far as the individual message is concerned there is no difference whatever, not a particle; and if the local company never increased their subscribers, if they never went any further than they are to-day, there could be no objection whatever to passing an order that they must have connection without compensation. But the very moment you concede this right to the local companies you put a lever in their hands to go

round and solicit business away from the Bell Company on the ground that, so far as long distance business is concerned, their telephone is worth just as much to the subscriber as the Bell Company's telephone.

Mr. BLAIN: And the message is worth just as much to the Bell Telephone Company?

Mr. CARVELL: So far as that individual message is concerned it is worth just as much to the Bell Telephone Company, but the local company, with their lower rates, are given the right to take away business from the Bell Company—that is, take away their present subscribers or get new ones.

Mr. BLAIN: Do you think there is much of that done?

Mr. CARVELL: Yes, I do, and I will tell you why. The local company invariably underestimates the cost of running a telephone system and of providing for its maintenance. The New Brunswick Utilities Board has found this out after a very painstaking and long-drawn-out investigation. The local company at last reaches the point where depreciation takes 8 per cent of their capitalization. Invariably these companies find they cannot give a service at the price they said they could, and therefore, by what is proposed here you are simply increasing or encouraging duplication.

Hon. Mr. COCHRANE: I would like to ask Mr. MacKay if that has been his experience.

Mr. MACKAY: I have only to point to the record of the Companies that I represent that have been in existence for several years. It is true possibly that when these companies first went into the telephone business, of which they knew nothing, their rates were too low but there has been no increase that I know of, in independent rates out of all reasonable proportion to capital. To-day no company can organize without the consent of the Railway Board. No company, either in the city or in a rural district, can issue stock or bonds without the approval of the Railway Board. That Board will say whether the proposed stock or bonds is legitimate. They will not allow anything to enter into the organization of the company that will unnecessarily increase rates to the subscriber. That is all safeguarded in every possible way at the present time; and with all due respect to Mr. Carvell, the system to which he has alluded does not apply in any sense to present day conditions in Ontario. In this province we are operating companies with an equipment that is the equal of the Bell Company, and I will undertake to satisfy the Committee if I am given the time and opportunity, that the construction of the rural systems of Ontario is superior to the construction of the rural systems of the Bell Company in any province in Canada. The Bell Company is not known as such in New Brunswick, but there is an association between it and the other company. I am fairly familiar with the conditions in New Brunswick as regards local companies and I know there have been mergers which have wiped out the little concerns. I have had many letters from subscribers of these local companies who said they were compelled to reorganize in order to get reasonable rates and a proper service. The same condition exists in Nova Scotia. As far as the amendment is concerned it gives us absolutely no relief. If you want to give us relief you must remove the word "compensation" and put on record the straight opinion of this Committee as to whether or not the local company is to pay compensation. That is our request. If you leave the word "compensation" in you will have us exactly where we were. The small company cannot travel to the Dominion Railway Board, and what is more, the inclination would be against it. The Bell agent will come along and he will get his contract just the same as before, because he still has the lever on the small company. Mr. Carvell says the small company will have the lever on the Bell Company. Gentlemen, I do not think you need worry about any lever which the small company will have on the Bell Company under present conditions.

Mr. CARVELL: You did not answer the question asked you by the Minister of Railways. What has been your experience in regard to depreciation?

Mr. MacKay: In Ontario, under the Ontario Telephone Act, there has been set aside five per cent for depreciation, which is ample. I am satisfied that when the construction has been built according to specifications laid down by the Board, five per cent is ample. Now, that is what must be done under the law.

Mr. Sinclair: If you propose to strike out the word "compensation" the subsection would read:

"upon such terms as the Board deems just and expedient".

Would that be satisfactory?

Mr. MacKay: That would be an improvement upon the present law, but the reason we are asking for the change which states distinctly that there shall be no compensation is that it will place the question beyond all doubt, and the merely local company will know it is not necessary for them to go down with a lawyer before the Dominion Board and undertake a fight with the Bell Company and all its exeperts in order to secure connection without compensation. If our suggestion is adopted they will know that they will have to have their equipment up to standard, they will have to bear the expense of the connection and, as I have already said, under the Ontario Act they must provide for depreciation, etc.

Mr Carvell: In other words you want it stated positively that there shall be no compensation. We may as well face the issue.

Mr. MacKay: That is the issue itself.

Mr. Carvell: We are up against this issue now; you say you want the right to connection at any time without compensation of any kind.

Mr. MacKay: As long as our equipment is up to standard. The Railway Board has stated that it cannot make any declaration as to what is a competing and what is a non-competing company. That is a point you must keep in mind.

The Chairman: If the whole question is to be re-opened we shall have to allow the Bell Company the right to make a reply.

Mr. MacKay: I apologize, Mr. Chairman, if I have detained you unduly, but really, I am full of the subject.

Mr. Nesbitt: I would like to say a word or two, Mr. Chairman. I agree with the subsection as amended by Mr. Johnston, except that I do not agree that the words, "as to compensation or otherwise" should be left in. However, the subsection is in better shape than it was before. During the arguments advanced yesterday it was contended that the Supreme Court had decided that compensation was necessary because it was provided for in the Act. I take it for granted that the Legislature in framing the Act meant that there should be compensation, and I do not see how the Court could decide anything else.

Mr. Macdonell: Let me interject something that may be helpful. I have just read the amendment and beg to suggest that after the word "compensation" be inserted the words "if any," which leaves the matter wholly in the discretion of the Board.

Mr. Nesbitt: The subsection in its amended form provides that the Board may order the Company to provide for such use, connection or communication upon such terms, as to compensation and otherwise, the Board deems just and expedient. What is to hinder the Court from taking into consideration whether it is necessary in that case to have compensation. I cannot see why, there is nothing in the Act to prevent it. Now, as to the further question of competing lines, competing lines or persons trying to form such, should be compelled to go to the Board to get the privilege of doing so. I am opposed to the so-called competing lines being organized against the Bell Company in cities, or in the country, so far as that is concerned if the Bell Company can give the necessary service. I cannot agree with my friend Mr. MacKay that the Bell Company, in constructing rural lines, has an inferior equipment to the

Rural companies, because in my experience of the Bell Company, they do excellent work wherever they are, and so far as my experience goes they give excellent service. Neither can I agree with Mr. Carvell that rural lines are built in a shoddy manner. In our section of the country rural lines are built in a very excellent manner indeed.

Mr. CARVELL: I did not use the word "shoddy."

Mr. NESBITT: But you said the lines were built cheaply. I remember formerly that two or three telephone lines were put up in a very cheap way, with small board and small poles. I remember distinctly we were glad to get the hemlock line as it was called which was put up in a very inferior way indeed. It was absolutely impossible to get messages through the line, but the company afterwards went, and then the Bell people took the system and put it in a first class condition. Now, as to the question of compensation I think both the rural and the Bell should be allowed to charge something extra for long distance messages. In the lines I have to do with, I pay a small amount extra for the service. I have not the slightest objection to it, and I have not heard any grumbling from the people on the lines. I have had connection with two lines, and I have heard no grumbling on account of the extra charge.

Mr. BLAIN: Do you pay so much for each message?

Mr. NESBITT: Yes, over and above the long distance charge, a slight charge, I think that charge is divided between the two companies, and I do not want to see any interference at all. It is a pure matter of arrangement between the two systems as to what they shall charge the customer on the rural system, and if they want to give it free, well and good; if they do not, well and good. So far as I am concerned, I have no complaint to make; but I certainly think the word "compensation" should be struck out, and I think we should leave it absolutely to the Board to say whether there should be any compensation or not.

Mr. MACDONELL: All that I have heard here has convinced me of the wisdom of my original idea, namely that the Railway Commission was the proper person to deal with the matter. We have heard statements from both sources almost *ad infinitum* and they have been contradicted. We are not a court to try the question as to whether there should be any additional compensation or payment, call it what you like, for any service, whether it is the case of competing companies or not. We could never try it out here; we have not the means or the opportunities, and it seems to me that the amendment which Mr. Johnston has read would be proper and safe for us to pass, and that, where the word "compensation" occurs—that is referring the matter to the Board, to award compensation—we should add the words "if any"; so that the Board may be fully informed that the Parliament of Canada has not directed, or made any provision equivalent to direction, that there should be compensation.

Mr. CARVELL: That simply emphasizes the words I suggested "or otherwise."

Mr. MACDONELL: From a laymen's point of view, Mr. Nesbitt's argument is irresistible, but the present Act has the word "compensation" in it. I am simply taking the middle course in this matter as far as I can see it. The word "compensation" is in the Act now, and if we strike it out any Court interpreting that amendment would say we intended to remove absolutely any compensation whatever. The word "terms" would mean physical conditions. So that if we retain the word "compensation" and add the words "if any," we make it plain to the Board and everybody that we do not intend there shall be compensation unless in the opinion of the Board it is justifiable to allow it. It seems to me we will refer the whole matter to the Board in a fair open way.

Mr. BLAIN: The point between the contending parties is as to whether the word "compensation" should remain in the section or not.

Mr. CARVELL: It is founded on that.

Mr. BLAIN: You may take it out and put some words in its place, and there would still be a contention, and the small corporations would have to go to the Board to find out whether or not, in the judgment of the Board, there should be compensation. For my part, I think the word "compensation" should be absolutely removed, and then it would be simple. It would be left to the Board to say. Mr. Macdonell says to strike out the word "compensation" would be held to mean that we do not think compensation should be allowed in any case. I think we might as well face the issue, and say that the smaller companies do not want the word "compensation" to appear in the section.

Mr. CARVELL: Have you directed your attention to the frank statement made by Mr. MacKay a few moments ago, that there is something beyond this; not only do the independent companies want the word "compensation" taken out, but they want a positive assertion that no compensation shall be allowed.

Mr. BLAIN: That is what they want, and in my opinion that is what they should have.

Mr. NESBITT: In my opinion that is not what they should have. It should be left to the Board.

Mr. GREEN: I have listened very carefully to the argument on both sides, and I must say I have not seen any reason to change the idea I had to commence with, that it should be left entirely to the Board. Why competing lines should utilize the lines of the existing companies without compensation I do not know, nor have I been given any information that would lead me to that conclusion since I have sat on the committee. True, it is in a sense a question of public carriage; at the same time, on the other hand, is it not on all fours with two grocerymen, one of whom wants free delivery on the other man's wagon? If they are not competing companies, naturally as the public interest demands, they should have compensation. On the other hand, if you are going to put competing companies in a position to undersell a man whose money is invested in the lines I want to hear some stronger arguments than I have heard for placing them in that position. As a layman, I do not know anything about the effect expunging the word "compensation" would have in influencing the courts, as we are told by the legal fraternity here, but I am quite prepared to accept their reason for it, because it is their business to tell us what the legal status would be, and, therefore, if you are going to give compensation, or if the Board is going to have any powers to give compensation, why not leave it as it is in the Act now, and let the Board decide whether there shall be compensation, and if so how much.

Mr. MACDONELL: Compensation, if any.

Mr. SINCLAIR: Are we delivering judgment?

The CHAIRMAN: We are going to decide on this section.

Mr. SINCLAIR: I am inclined to go as far as I can consistently and properly to relieve the small companies. The experience of my own province has been that the small companies have given us the rural telephones, and that it was refused in many cases by the larger companies, and it is only when they were forced to do it that they gave us any accommodation. As far as compensation is concerned, I am not altogether convinced that it is absolutely right that we should give compensation in these cases to the large companies.

Mr. CARVELL: I only say leave it to the Board.

Mr. SINCLAIR: We all agree, I think, it ought to be left to the Board. I am inclined to favour the proposal of Mr. Nesbitt, who wishes to strike out the word "compensation" and leave the terms to be fixed by the Board. It will then be for the Board to decide whether compensation could be given or not. I do not see why the court should take it for granted that we are opposed to all compensation from the fact that we strike out the word "compensation"; I do not agree with that argument.

I think the argument would be put up by the legal fraternity if that were the meaning of the subsection; but it would still be for the court to decide whether that was the intention of Parliament or not. However, I am inclined to vote for Mr. Nesbitt's amendment that the word be struck out.

Mr. CARVELL: As a personal matter I would like to say, in reply to Mr. MacKay's statement of a few minutes ago that there is some connection between the Bell Telephone Company and the New Brunswick Company. If that were the case I would not feel I had the right to vote on this question, but I want it distinctly understood by this committee that there is none whatever. Twenty odd years ago the father of the gentleman who happens to be seated on my left (Mr. Blair), and some other gentlemen, started a telephone company in New Brunswick. The Bell had made some little investment in the province, and it was agreed that the Bell should withdraw, and that the New Brunswick Telephone Company, composed of gentlemen on both sides of politics, should be formed. The Bell simply took a small portion of stock for the investment which they had made at that time, and they hold that stock to-day. With that exception they are in absolutely no different position from any other stockholder of the New Brunswick Telephone Company. Therefore there is no connection whatever between the two companies.

Mr. NESBITT: Before proceeding further I would like to get the suggestion of the minister as to the starting of competing lines in a city. Something was said with reference to that, and I think it is quite contrary to the interests of the public.

Mr. JOHNSTON, K.C.: How is this Parliament going to control provincial companies.

Hon. Mr. COCHRANE: If a local company makes application that it is competing with the Bell, leave it to the Board to say what rate per telephone shall be charged by both companies.

The CHAIRMAN: As I understand it now, any company before attempting to organize must come before the Provincial Government to get a charter.

Mr. JOHNSTON, K.C.: Mr. Minister, subsection 3 of section 375 provides for the filing of tariffs and getting the approval of the Board.

Hon. Mr. COCHRANE: In the case of provincial companies making the request dealt with here, they would have to come to the Dominion Board.

Mr. CARVELL: The clause under consideration provides for the giving of power subject to such terms and conditions as the Board think proper. That is broad enough to cover the case of local companies wanting long distance connection. They can say to the local company, "You want connection now with the Bell Company. We will pass an order giving you that connection." The Board might even say a certain rate must be charged. They might hesitate to do such a thing, but I think they have the power under this Bill. You must remember, Mr. Minister, that it is not the duty of Parliament to provide for all the contingencies that may arise. All we can do is to pass a general law to be administered by the proper authorities.

Mr. BLAIN: What is your motion Mr. Nesbitt?

Mr. NESBITT: It is very simple. I move that the words "as to compensation" be struck out of the subsection.

Mr. SINCLAIR: The words to be struck out should be "as to compensation or otherwise." I second the motion.

Mr. JOHNSTON, K.C.: If you are going to strike out those words you will also have to strike out the last sentence of subsection 7, because that reads "and in all cases, except where such systems or companies are in the opinion of the Board, operating in competition, the compensation to be awarded shall be limited to fair remuneration for the services to be performed by the company or system against which the

order is applied for. If you strike out the word "compensation" where it appears earlier in the clause, the last sentence is of no avail and had better be struck out too.

The CHAIRMAN: Do you move to strike it all out?

Mr. NESBITT: Yes.

Subsection as proposed to be amended by Mr. Nesbitt read by Mr. Johnston.

The CHAIRMAN: Shall the amendment read by Mr. Johnston be adopted?

Section as amended adopted.

On Section 373—Lines and wires on highways and public places:

The CHAIRMAN: Shall this section be adopted?

Mr. MACDONELL: This section is identified with sections 374 and 375. They are all affected by the amendments which were handed to the committee on the occasion when there appeared before you Mr. Thomson, representing the city of Toronto; Mr. Pope, the Hydro-Electric Commission; Mr. Lighthall, the municipalities of Canada, and Mr. Kilmer, the Ontario Government. The last-named gentleman handed in a resolution, a copy of which I now hold. First of all this involves the striking out of certain words in section 373. This was asked for by the Government of Ontario, the city of Toronto, the municipalities represented by Mr. Lighthall, the Hydro-Electric Commission of Ontario and other interests. The argument was a legal one, and I do not desire to take up the time of the committee in repeating it. Mr. Kilmer, the Ontario Government representative, is here, and if the committee would hear from him a brief explanation of the proposed amendments, it would greatly tend to shorten the discussion.

The CHAIRMAN: Would that not involve re-opening the whole question?

Mr. NESBITT: Why do you not give us the argument yourself?

Mr. GREEN: Mr. Kilmer represents one side in this matter, and if we hear him why should we not give a hearing to the gentlemen on the other side?

Mr. NESBITT: You have a perfect right to repeat the arguments, Mr. Macdonell, but I object to any outsiders coming in again this morning to re-open the matter.

Mr. MACDONELL: First of all I propose to move this amendment to section 373, which is in the hands of the committee, and then give such explanation as I am able to afterwards. Strike out the words "or line for the conveyance of light, heat, power or electricity," where they occur in the first, second and sixth subsections. In subsection 7 insert after the word "any" in the second line the words "telegraph or telephone." Strike out subsection 9.

Mr. NESBITT: Would you, Mr. Chairman, allow Mr. Johnston, who is familiar with the argument on both sides, to explain exactly what is intended?

Mr. MACDONELL: I have no objection. I am only too glad to get the fullest explanation. The request I made was a reasonable one, and I see no good ground why it should not have been agreed to.

Mr. JOHNSTON, K.C.: As I understand it, under the Railway Act as it exists to-day, the Toronto & Niagara Power Company—we will take that as an example—could enter upon the streets of any municipality without its consent. Subsection 2 of section 373 in the proposed Bill provides that hereafter no company shall have that right. The committee has heard the Power Company. They object to the clause in the Bill as drawn, because they say they have vested rights under the law as it now stands, and that those rights should not be curtailed. The city of Toronto is not content with the Bill, because it says it does not go far enough. The city of Toronto proposes that a new section entirely should be enacted dealing with power companies, that section 373, as the draftsman has prepared it, should be limited to telegraph and telephone companies, that a new section, which Mr. Macdonell has in his hands, should be passed, and that it should be retroactive, and go back as far as 1906.

Mr. GREEN: Why not as far as 1806?

Mr. JOHNSTON, K.C.: I am just stating the contentions of the two parties. As the Bill is drawn, not even the Toronto & Niagara Power Company could erect poles in the city of Toronto without getting either the consent of the municipality or the order of the Board.

Mr. NESBITT: In the future.

Mr. JOHNSTON, K.C.: In the future.

Mr. MACDONELL: One reason I asked that Mr. Kilmer be heard is this: The Toronto & Niagara Power Company is the only company that may be said, using the slang term, to be at large to-day. Every other power company has been harnessed through the medium of the safeguards contained in the public rights clauses. These companies came at one time or another to the Parliament of Canada to get amendments to their charters, and they have been uniformly saddled one and all with the public safeguarding clauses. The Toronto & Niagara Power Company is still at large and has not been brought under the operation of these safeguards to which I alluded. Under their charter they can go where they please and enter any municipality, without the consent of that municipality, of the Railway Commission or anybody else, and ply their trade and business.

Mr. NESBITT: Would this clause prohibit that for the future in regard to the company you speak of?

Mr. MACDONELL: It is intended to.

Mr. NESBITT: Yes, but does it?

Mr. MACDONELL: I think it does. Let me read subsection 2 as proposed (reads):

> "Notwithstanding anything contained in any special or other Act or authority of the Parliament of Canada, or of the legislature of any province, the company shall not, except as in this section provided, acquire, construct, maintain, or operate any works, machinery, plant, line, pole, tunnel, conduit, or other device upon, along, across or under any highway, square or other public place within the limits of any city, town or village without the consent of the municipality.
>
> 3. If the company cannot obtain the consent of the municipality or cannot obtain such consent otherwise than subject to conditions not acceptable to the company, the company may apply to the Board for leave to exercise its powers upon such highway, square or public place, and all the provisions of section 373 of this Act with respect to the powers and rights of any company covered by that section and with respect to proceedings where the company cannot obtain the consent of the municipality shall, subject to the provisions of this section apply to the company and to any application to the Board and to all proceedings thereon and to the powers of the Board in the premises.
>
> 4. Nothing contained in this section shall be deemed to authorize the company, nor shall the company have any right to acquire, construct, maintain or operate any distribution system or to distribute light, heat, power or electricity in any city, town or village; or to erect, put or place in, over, along or under any highway or public place in any city, town or village any works, machinery, plant, pole, tunnel, conduits, or other device for the purpose of such distribution without the company first obtaining consent therefor by a by-law of the municipality; provided that this subsection shall not prevent the company from delivering or supplying such power by any means now existing or under the provisions of any contract now in force for use in the operation of any railway or for use by any other company lawfully engaged in the distribution of such power within any such city, town or village.

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 & 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

when the Bill was going through the House in Committee of the Whole, just prior to the third reading, Mr. Clarke, of Toronto, moved to add certain safeguarding sections. The sponsors of the Bill said "No need for it, because it will be subject to any future legislation if conditions should arise which you, Mr. Clarke, apprehend." And Mr. Pringle, in support of the Bill, said that "they would be subject, of course, from time to time to such legislation as was needed in the public interest." That time has now arrived, and I am only asking that the terms on which they got their charter—because it was accepted in that way at the time the Bill was passed—should be carried out; and that is accentuated by the matters I have pointed out in regard to the Privy Council decision .

Mr. SINCLAIR: You do not pretend to say that the Privy Council would give the same decision under this amended Act?

Mr. MACDONELL: I do not know what they would do, and I do not think any one would be bold enough to guess what the Privy Council would do. For the future they would be governed by the Railway Act, but in the meantime this company have acquired a status and have acquired interests, and they will be at large with regard to all that. All I ask is that they be put upon the same basis as other companies.

Mr. NESBITT: From the passing of this Act?

Mr. MACDONELL: No, from the beginning. Perhaps Mr. Nesbitt heard the arguments of Mr. Kilmer and the other gentlemen on that point.

Mr. NESBITT: I did, but I want to know if you think this Act is strong enough now to hinder them from going at large from the present time forward. I want to do away with the retroactive idea.

Mr. MACDONELL. I want to make another appeal, and I do so as of right. I do not come here as counsel with a brief for Toronto, or anybody else. This is an intricate matter that has arisen on account of the Privy Council decision, and I ask that the committee be given direct information and that the questions be answered by one who has come here briefed in the matter and prepared to give the answers to the questions. Mr. Kilmer appears for the province of Ontario. I have no objection to hearing other gentlemen as well.

The CHAIRMAN: I have a memorandum which I have asked counsel to prepare, to cover the case, in as short a manner as possible.

Mr. MACDONELL: I would like to have Mr. Kilmer answer these questions now.

Mr. NESBITT: I have no objection, but it is only fair the other side should be heard.

Mr. KILMER: The difficulty is that section 373, as drawn probably, does not cover the point at all of the Toronto and Niagara Power Company as to the future, and it certainly is not retroactive. Section 373 is what you call a lineal descendant of section 90 of the Railway Act. In the special Act of Incorporation of the Toronto and Niagara Power Company, section 90, and its lineal descendant, including, if you please, the whole of section 373, are only applicable to the Toronto and Niagara Power Company, in so far as they are not inconsistent with the special Act itself. The Privy Council have decided that if section 90, or its descendant is inconsistent with the special Act, it does not govern the Toronto and Niagara Power Company, but all their powers are unimpaired by it.

Mr. CARVELL: You do not mean section 90 of the revision of 1906?

Mr. KILMER: No, the old Act. It is section 247, and the Privy Council decided that 247 should be read into the special Act, instead of section 90 in the repealed Act. Now then, going exactly the same distance with the new section 373, no matter what it says it is plainly inconsistent with the powers granted by the special Act to the Toronto and Niagara Power Company; and, at all events, it is a fair argument for the

Toronto and Niagara Power Company to say, and they will necessarily fight in the Privy Council, that section 373 of the new Act, being inconsistent with the special Act itself, does not apply, and therefore their powers are unimpaired the same as they were under section 247.

Mr. NESBITT: For the future?

Mr. KILMER: For the future.

Mr. MACDONELL: You have them up to date.

Mr. KILMER: And what is further, the old section 247 did apply to companies incorporated by special Act, and notwithstanding that, the Privy Council decided that it did govern the Toronto & Niagara Power Company, which was incorporated by special Act, does section 373 go one step further? It may be that the language is stronger, the interpretation clause has been somewhat changed, and it may accomplish the result as regards the Toronto & Niagara Power Company as this committee intend that it shall. But they did intend in 1906 to accomplish that very result in section 247 that they are trying to accomplish here, and they failed there. In my opinion it is gravely open to question if this won't fail in exactly the same way. Now, we ask to have that situation met beyond all question, and let us have a new section embodying the same principals, but do not have it a lineal descendant of the old section 280.

Mr. NESBITT: Is your new section retroactive?

Mr. KILMER: Yes, for this reason, in the proposal. It was intended in 1906 to put this very curb on these very companies including the Toronto and Niagara Power Company, and Parliament thought it had accomplished it, and the Court of Appeal thought that Parliament had accomplished it, and so decided. But the Privy Council decided that Parliament had not. We only ask this to be retroactive to the date when this Parliament passed what they thought was legislation restricting these powers, and the reason of that comes particularly from an example in the city of Toronto. There the existing system of the Toronto Electric Light Company is with an expiring franchise, and their rights on the streets remain. Now, they have threatened publicly, and may have done so by this time, to transfer all their poles, wires, underground conduits, and so on, to the Toronto and Niagara Power Company, which is under the same management and owned by the same people; and the Toronto and Niagara Power Company will exercise in perpetuity the very rights which the Toronto Electric Light Company are now giving up under their contract, and against their covenant to do so. That is a concrete example, and it is actually being threatened publicly by the manager of that company.

Mr. CARVELL: What rights have you as to the franchise of the Toronto and Niagara Power Company?

Mr. KILMER: None.

Mr. CARVELL: What about that of the Toronto Street Railway?

Mr. KILMER: It expires in 1921.

Hon. Mr. COCHRANE: As I understand it, you think that the Toronto Electric Light Company have made a transfer now?

Mr. KILMER: Yes.

Hon. Mr. COCHRANE: And it is your wish to shut them off?

Mr. KILMER: To shut them off.

Hon. Mr. COCHRANE: I think the city of Toronto has an agreement with the Toronto Electric Light Company to the effect that they have a chance to sell to the city?

Mr. KILMER: Yes, sir, that is the position. That has been publicly stated by the department. The three clauses of this Bill then do not change the old principal at

all. The first clause in the proposed amendment deals with this special case. In the second clause we do not want to interfere at all with the through transmission lines nor any existing contracts of this Toronto and Niagara Power Company for serving railway companies or companies having power to distribute in municipalities. The last clause is the retroactive one, and the province approves of the recommendation submitted by the city of Toronto and asks that it be passed by this committee.

Mr. NESBITT: May I ask Mr. Johnston to give us his version of the legal contention that our Bill as drawn does not bind this Company for the future.

Mr. JOHNSTON, K.C.: Mr. Kilmer contends that sub-section 2 of section 373 as drawn would not prevent the Toronto and Niagara Power Company from constructing hereafter lines upon any highway without the consent of the municipality. I do not agree with Mr. Kilmer, because it seems to me the language is perfectly plain. The subsection says: (Reads.)

> "Notwithstanding anything in any Act of the Parliament of Canada or the Legislature of any Province, or any power or authority heretofore or hereafter conferred thereby or derived therefrom, no telegraph or telephone line, or line for the conveyance of light, heat, power or electricity, within the legislative authority of the Parliament of Canada shall except as hereinafter provided, be constructed, operated or maintained by any Company upon, along or across any highway, square or other public place without the consent, expressed by by-law, of the municipality having jurisdiction over such highway, square or public place, nor without compliance with any terms stated or provided for in such by-law.

Mr. MACDONELL: That only applies to the future.

Mr. JOHNSTON, K.C.: Undoubtedly. Mr. Kilmer says he does not think that clause would protect a municipality because of the decision of the Privy Council in the case of the Toronto & Niagara Power Company, and because of their special Act. But it must be remembered that we have made other amendments in the Railway Act. When the Privy Council gave its decision in the case referred to, it held that the word "Company" in section 247 of the present Railway Act could only apply to Railway Companies. Now, however, by subsection 4 of section 2, we have provided that "Company" includes a person, and where not otherwise stated or implied, means "Railway Company", unless immediately preceded by "any", "people", "all", in which case it means the kind of Company which the context will permit of. Then referring to subsection 2 of section 373 as drawn, you will see that it expressly means telegraph, telephone and power companies. Moreover, in clause 3, relating to construing with special Acts, it is provided, "except as in this Act otherwise provided (b) where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act shall, insofar as is necessary to give effect to such Special Act, be taken to over-ride the provisions of this Act." Subsection 2 of Section 3 as drawn, clearly otherwise provides. Moreover, Paragraph (c) of Section 3 provides that "provisions incorporated with any Special Act from any General Railway Act, by reference shall be taken to be superseded by the provisions of this Act relating to the same subject-matter." If it were necessary to make our intention still more clear, I would propose to add as subsection 10 of section 373, these words: (Reads.)

> "The powers conferred on any company by special Act, or other authority of the Parliament of Canada, to construct and operate telegraph or telephone lines, or lines for the transmission or distribution of light, heat, power or electricity, across, under, or over any highway, square or other public place, shall, notwithstanding anything contained in the special Act, be subject to the terms, conditions, and prohibitions in this section contained."

I think that will completely cover Mr. Kilmer's views on that point. I am not now touching on the question of the retroactive effect of the clause.

Mr. MACDONELL: Do you not think there are almost as many arguments, as you have recited now, in favour of the Ontario Court of Appeal's decision, which the Privy Council reversed, on the old Act.

Mr. JOHNSTON, K.C.: The cases are not analagous at all. The old Act was not like the present Bill.

Mr. CARVELL: Does not that bring us to the real question whether Parliament wishes to make the general Railway Act retroactive to meet the special case of the province of Ontario. It seems to me that is the position we have reached and that is the principle we should discuss.

Hon. Mr. COCHRANE: The only thing is that Parliament in 1906 thought it had given power to municipalities to control their streets which they are responsible for, and have to pay for. The Privy Council says they have not that control.

Mr. CARVELL: Does the minister think that this Parliament in 1906 intended to pass legislation especially providing that a power company which, under the authority of its Act of Incorporation, had spent hundreds of thousands of dollars in building lines for the distribution of power in Canadian municipalities, should be deprived of that right.

Hon. Mr. COCHRANE: That has not been done so far.

Mr. CARVELL: I understand that the Toronto Electric Light Company have a distribution system in the city of Toronto.

Hon. Mr. COCHRANE: They have but that is not the Toronto and Niagara Power Company.

Mr. CARVELL: No, but they are subsidiary, as I understand it, or connected in some way and they might as well take this thing over. There is no doubt about what this is. It is a fight between the Toronto and Niagara interests and three or four companies on the one side, and the Hydro Electric on the other.

Mr. MACDONELL: No, this company has the right to go anywhere in Canada, so that it is not confined to Ontario.

Mr. CARVELL: But the proposal of the proposed Bill certainly is intended to limit that right in so far as the future is concerned; there is no question whatever about that. It seems to me that the amendment just proposed by Mr. Johnston settles that once and for all; that for the future they must get the consent of the municipalities or go to the Railway Board. I can quite understand that in many cases there should be an appeal from the municipalities to the Railway Board. But let us go back; the proposal is that no matter how much money the company has invested in their plant, the municipalities should have power to interfere and compel them to remove their plant.

Hon. Mr. COCHRANE: The Toronto Electric Light Company has an agreement with the city that they got the franchise from that the city will have the first opportunity of buying them out, and the company is not living up to that agreement; they propose to sell out to the other company.

Mr. CARVELL: We have not much evidence of that. But if that be so treat them fairly and bring down an amendment to the Toronto and Niagara Power Company's Act or something like that. I do not think we should burden the general Railway Act with legislation of a special character, which might be detrimental to other interests in other parts of the country in order to meet the requirements of the city of Toronto and I have, I am glad to say, had an opportunity of discussing the whole question with the representatives of the city of Toronto. I can quite understand that I would feel very strongly if they came here by special Act that they should have a great deal of consideration, but I object very strongly to burdening the Railway Act of Canada with a clause that might be detrimental in other places simply for the purpose

of meeting a local condition in one portion of Canada, and it looks to me that the clause as drafted with the amendment proposed by Mr. Johnston would meet the conditions, because we do not interfere with vested rights. We do not say to the city of Toronto or any municipality, "You can tear down the poles."

Hon. Mr. COCHRANE: But a municipality has vested rights.

Mr. CARVELL: Certainly, but if I am correct in my information, there is a distribution system in the city of Toronto. What right would the city of Toronto have to go and tear down the poles?

Hon. Mr. COCHRANE: Simply because the franchise expires in 1919, and now they are making a fight. They are selling out to the parent company, and are not living up to the agreement with the city.

Mr. NESBITT: Suppose they do, what difference does that make to the city of Toronto in regard to taking over the plant.

Hon. Mr. COCHRANE: But they got from Parliament what they could not get to-day. When a company from Montreal came here to get a charter it was amended, and amended with their consent.

Mr. CARVELL: I am quite prepared to say that if any company came to Parliament to-day and wanted the right that Parliament gave to the Toronto-Niagara Power Company, they would not get them; but we should not shut our eyes to the fact that on the strength of that legislation people have invested their money.

Hon. Mr. COCHRANE: But their charter expires in 1919.

Mr. CARVELL: Does the city of Toronto object to competition?

Hon. Mr. COCHRANE: No.

Mr. MACDONELL: They object to people going on their streets and establishing a distribution power system without leave and license.

Mr. CARVELL: This Bill is drafted so that they shall not do it in the future.

Mr. MACDONELL: That permits them to continue operations.

Mr. CARVELL: Perhaps, coming from a part of Canada where we do not have to deal with the question, I may not be well versed in it, but if I invest my money in an electric light company, and am barely making dividends, I would feel pretty ugly about it if the municipality could step in, take my property away and confiscate it.

Hon. Mr. COCHRANE: The courts of Ontario said they had not the right to do this.

Mr. CARVELL: But the section as drafted now meets the decision of the Privy Council and says that in future they shall not have the right to extend these lines without the consent of the municipality. The city of Toronto is not satisfied with the amendment to the Act which provides that they shall not do these things in the future, but they say we should be allowed to go back ten or eleven years, and should have the rights to take up the poles and plants which they have placed there by virtue of their Act of Incorporation.

Hon. Mr. COCHRANE: No.

Mr. MACDONELL: You are quite wrong.

Hon. Mr. COCHRANE: The electric light company did have a franchise from the city of Toronto and they are trying to avoid it by selling out to the other company.

Mr. JOHNSTON, K.C.: I think probably you have not read subsection 4 of the proposed amendment.

The CHAIRMAN: I would like to place this memorandum on the record.

Hon. Mr. COCHRANE: Who is it from?

The CHAIRMAN: Prepared for me by representatives of the local Government of the province. There is material in this memorandum that the Committee have not been advised of, and, judging by the arguments that are being used, are not conversant with. The memorandum reads as follows:

"The only Dominion Charter Company in connection with the Syndicate Company that composes and covers the interests opposing this amendment is The Toronto & Niagara Power Company incorporated by the Dominion in 1902. In that Act of Incorporation section 21 was a provision intended to make the standard clause of The Railway Act applicable, giving municiaplities control over the use of their streets.

It appears there was a joker in that clause stating that it was only applicable when not inconsistent with a special Act. The Court of Appeal of Ontario in 1911 held the provision of the Railway Act referred to was not inconsistent and therefore applied. The Privy Council in 1912 held the opposite view and that the clause was inconsistent and therefore did not apply, thus leaving the Company unrestricted and without regulation as to Provincial, Municipal or Dominion control over the streets.

In 1903 a syndicate composed of now Sir Wm. McKenzie, Sir Henry Pellatt and Senator Sir Frederick Nichol entered into an agreement with the Niagara Falls Parks Commission for a right to take water from the Welland and Niagara River, build a work within the park and generate electricity and further that they should incorporate themselves into a company which they did under the Provincial Act known as the Electrical Development Company. They, about this time, purchased all the interest of the Dominion Chartered Company, the Toronto & Niagara Power. A transmission line was built under the charter of the Toronto and Niagara from Niagara Falls to Toronto and power supplied over it from the Electrical Development Company to the Toronto Street Railway and the Toronto Electric Light Company. About 1906 or 1907 a new Company was formed called the Holding Company under the Ontario Statutes, this Toronto Power Company issued their bonds and mortgaged the interests of the Electric Development and the Toronto & Niagara Power to the English Trust Company which was represented here yesterday. This was in 1908. In 1911 a further loan was obtained from the same Company in which the Toronto Street Railway joined, they having guaranteed the bonds of the Holding Company and the interests of the Toronto Electric Light were purchased. (These are the bonds represented by Mr. Anglin.) Therefore you will see that the Toronto Power Company, Dominion Charter, purchased by the Electrical Development in 1903, the Electrical Development controlled by the Holding Company in 1907 or 1908, these guaranteed by the Toronto Street Railway Company and in 1911 the Toronto Electric Light was purchased and all these companies and interests were practically the same merging all in the one syndicate under one management, and when they failed in being able to carry out their wishes under the Provincial Chartered Company under Provincial and Municipal control they resorted to powers under the Dominion Act that the syndicate of companies had acquired control of. This company can go anywhere in the Dominion and do what they are seeking to do in Toronto.

As to the bonds issued. The bonds mentioned by Mr. McKelcan yesterday issued in 1908 was after the passing in 1907 of the Hydro-Electric Power Commission Act. It was passed in 1907 and all the power companies had been asked their price for power, and up to that time no question had been raised as to the application of the Railway Act to the Dominion Chartered Company.

As to the bonds represented by Mr. Anglin. They were issued in 1911. The Hydro had been in operation for twelve months. The decision of the Court

of Appeal in Ontario holding that the Railway Act did not apply to the Dominion Chartered Company had been rendered and was then binding, and must have been well known to purchasers of the bonds, therefore the question of the interference of the security is disposed of as they were familiar with all conditions that now exist when making the purchase.

The Privy Council later on upset the judgment of the Court of Appeal. Then for the first time it became known that the Railway clause did not apply to this company. This Act is intended to make the Act as it was supposed to be prior to the judgment of the Privy Council. They can convert a temporary limited franchise into a perpetual one in any city, town or hamlet in the Dominion.

Mr. CARVELL: Who wrote that statement?

The CHAIRMAN: It was prepared by the representatives of the attorney general of the province of Ontario. It places before you their views in regard to the case.

Mr. NESBITT: So far as I am personally concerned, I was not in Parliament in 1906, but I think that their suggestion that the Parliament of Canada or the Railway Committee at that time did not know what they were doing is an insult to the committee. I do not see anything of the kind. I do not see why we should suppose that the Railway Committee at that time did not know what they were doing. I do not believe anything of the kind. I believe they did know what they were doing just as we know to-day what we are doing.

Hon. Mr. COCHRANE: The Privy Council said that.

Mr. MACDONELL: They did not do what they thought they were doing.

Mr. NESBITT: What proof have we of that?

Hon. Mr. COCHRANE: Would not the section be futile? Does it throw dust in ones eyes?

Mr. NESBITT: It would not be futile for future companies. Mr. Johnston has just explained to us that according to our Act it did not apply because they were not a railway company. Now, as far as I am concerned I am perfectly willing that the city of Toronto should protect itself in any way it possibly can, but I am not willing to pass retroactive legislation to take away certain established rights. I do not think that is fair; it is practically confiscation.

Hon. Mr. COCHRANE: They have not taken advantage of it as yet except as to buying out another company.

Mr. NESBITT: Mr. McCarthy absolutely denied anything of the kind, and we have as much right to take his word as we have to take the word of other people; they are only guessing. We do not know that this other company have transferred their rights and even if they have, as far as I can see, it does not hinder the city of Toronto from taking over this company and the whole outfit in 1919.

Mr. JOHNSTON, K.C.: They have no right to take over the Toronto and Niagara Power Company.

Hon. Mr. COCHRANE: If they have sold out to the other company they cannot take it over.

Mr. NESBITT: Surely they can, it must be a poor sort of agreement if they cannot.

Mr. MACDONELL: I would move the adoption of the amendment suggested by the Government of Ontario.

Mr. CARVELL: At this late hour of the morning, why try to force anything like that through?

Mr. MACDONELL: I do not want to force it through.

Mr. CARVELL: It seems to me that in the adoption of these amendments you establish the most vicious principle I have ever heard of in my pretty long experience in Parliament. If there is any difficulty in the city of Toronto over this question, let them come here and introduce a special Bill providing that the Toronto and Niagara Power Company shall not buy out this company.

Mr. MACDONELL: That cannot be done. There is no way of introducing a private Bill of that kind

Mr. CARVELL: It can be done, and why should we put in the Railway Act of Canada a confiscation clause?

Hon. Mr. COCHRANE: By what right does this company seek to force the municipalities of Ontario and every other province, to give up what they own?

Mr. MACDONELL: Yes, give up the control of their streets.

Hon. Mr. COCHRANE: That is the point. When Parliament enacted this legislation, they did wrong, and I do not believe they knew what they were doing at the time.

Mr. CARVELL: We will admit they did it.

Hon. Mr. COCHRANE: The municipalities have some rights as well as this company.

Mr. CARVELL: For the sake of argument I am going to admit that Parliament did as you say, although I do not believe it, and I am going to admit that Parliament gave them a charter, which it ought not to have given. But these men went on and invested their money and they have given the city of Toronto a pretty good service, although we are told that before the Hydro-Electric Commission came in they were charging an excessive price for the service. However, they gave a good service and a cheap service, and they have spent a good deal of money. Now you are asking this Parliament to take away from these people the rights on the strength of which they invested their money and through which they expected to earn dividends.

Mr. MACDONELL: It is not true that the company has given a good service or a cheap service.

Mr. CARVELL: Not given a good service?

Mr. MACDONELL: No.

Mr. CARVELL: Do you mean to tell me that any man is going to patronize the Toronto Electric Light Company if they are not giving as good and cheap a service as their competitors?

Hon. Mr. COCHRANE: To whom are you referring.

Mr. CARVELL: To the Hydro-Electric Commission. I say this company must give as good and cheap service as their competitors if they want to get any business. Then you come along and say, "Notwithstanding that you are giving as good and cheap a service as your competitors, notwithstanding that you are pioneers in this business"—

Hon. Mr. COCHRANE: They are not the pioneers, there were companies developing power before the Toronto & Niagara Company commenced operations.

Mr. CARVELL: They were practically the pioneers in bringing electrical power to Toronto. Nevertheless you want to take away its vested right and put them at the mercy of competitors.

Hon. Mr. COCHRANE: I want to give the municipalities the right to control their own streets.

Mr. CARVELL: I say so too, and the sections in the Railway Act which have been quoted here, and the amendments suggested by Mr. Johnston, give municipalities the power to control their own streets.

Mr. JOHNSTON, K.C.: It is the Toronto Electric Light Company which distributes power in the city of Toronto. But we are not dealing with that company now, it is not the creature of this Parliament.

Mr. CARVELL: I understand we are dealing with the Toronto and Niagara Power Company, because they are the company incorporated by this Parliament. Anyway, I think the principle is vicious and I should hate awfully to see it obtain in this Bill. If the condition exists that the city of Toronto requires a remedy, they had better come here and let the Parliament of Canada face the situation just as they did in the case of the Toronto and Hamilton Railway.

Mr. MACDONELL: My honourable friend knows that cannot be done. A special Act that would deal with this company cannot be brought in here unless the company comes and asks for it.

Mr. CARVELL: The Parliament of Canada has power over the Toronto and Niagara Power Company.

Mr. NESBITT: As a matter of fact what the Toronto people want to-day is to shut off the supply of electricity from the Toronto Electric Light Company in order that they can buy them out on their own terms.

The CHAIRMAN: Are you ready for the question, Gentlemen?

Mr. NESBITT: No, we are not.

Mr. BLAIR: Reverting to the telephone section which has been amended by striking out the word "compensation", it is quite within the range of probability that I may one day be asked to construe that section as amended and to advise the Board whether under the amended section the Board has power to allow compensation under the terms of the Act, and I would like the Committee to inform me whether it is the intention in striking out the word "compensation" to take away from the Board the power to allow compensation in cases where in the discretion of the Board it should be allowed?

Mr. NESBITT: As mover of the amendment I may say it was not by any means my intention to take away from the Board the power to order compensation if in their discretion they thought it ought to be allowed.

The CHAIRMAN: Is the Committee ready for the question on the amendment we have been discussing this morning?

Mr. CARVELL: Here is a long amendment, Mr. Chairman, which the Committee should carefully consider before taking action. I do not think you should press it to a decision to-day.

The CHAIRMAN: Shall we take it up again to-morrow?

Mr. CARVELL: I think that will be the better way.

The CHAIRMAN: The following letter and memorandum from representatives of Ontario municipalities now using or desiring to use Hydro-Electric Power has been received and will be placed on the record for the information of the Committee.

To the Members of the
Special Committee
House of Commons.

GENTLEMEN:—

This memorial or petition of representatives of Ontario Muncipalities now using or desiring to use Hydro-Electric Power which together constitute a majority of the municipalities of the province of Ontario and which have an investment and capital liability of nearly forty millions of dollars, beg leave to present the attached resolutions as representative of the wishes and the best interest of the people of the province and desire to say further that the municipalities appended are prepared to send a

large deputation to still further urge our contention that the Toronto and Niagara Power Co. and all other companies should be placed on the same basis as our municipally owned system and compelled to secure the approval of the electors before operating any distribution system or constructing any works for such purposes.

Yours truly,

T. J. HANNIGAN.

Cities.	*Towns.*	*Villages.*
Chatham,	Bothwell,	Acton W.,
Galt,	Dresden,	Ayr,
Guelph,	Dundas,	Bolton,
Hamilton,	Dunnville,	Burford,
Kitchener,	Forest,	Elmira,
London,	Goderich,	Elora,
Niagara Falls,	Hespeler,	Exeter,
St. Catharines,	Milton W.,	Fergus,
St. Thomas,	Paris,	Hensall,
Windsor,	Petrolea,	Lucan,
Woodstock,	Ridgetown,	Mimico,
	Sandwich,	New Hamburg,
	Seaforth,	Point Edward,
Hydro Commissions.	Strathroy,	Port Credit,
	Tilbury,	Port Stanley,
	Tillsonburg,	Rockwood,
	Walkerville,	Springfield,
	Wallaceburg,	Tavistock,
	Waterloo,	Thamesville,
	Weston,	Waterdown,
	Welland.	Waterford,
		West Lorne.

Moved by Mayor W. B. Burgoyne, St. Catharines; seconded by Mayor J. W. Bowlby, Brantford:

Whereas over 100 municipalities of the province of Ontario have a large amount of money invested in their several public utilities including the distribution of Hydro-Electric power and energy, all of which utilities are operated for the benefit of the people in the said municipalities;

And whereas the streets and highways within the said municipalities are built and maintained by the municipalities at the expense and for the benefit of the people as a whole, and not for the special use or benefit of any private corporation, and no such corporation should be allowed to make use of the same for its own private undertakings without the consent of the municipality interested;

And whereas the Toronto and Niagara Power Company, in the year 1902, obtained an Act from the Parliament of Canada, being 2 Edward VII, chapter 107, by which it was granted extraordinary rights on, over, along and across the public highways of the municipalities of Canada, which legislation was passed without the knowledge of the said municipalities; and was also granted other extraordinary powers for the production, sale, and distribution of electricity, which powers if exercised now, would be in direct opposition to the rights of the people within any of the Hydro-Electric zones.

And whereas, although fifteen years have elapsed since the granting of the said charter, nothing has been done by the said company towards carrying out the powers and privileges so granted to it, and in the meantime large sums have been spent and a vast amount of liability incurred by many of the municipalities of the province of Ontario in the installation of Hydro-Electric power:

Be it therefore resolved, that the Ontario Municipal Electric Association, composed of representatives duly appointed upon the boards of management of the municipal utilities, petition the Parliament of Canada to either repeal the said Act or to so amend it as to provided that none of the rights, powers or privileges granted by the said Act shall be exercised within any municipality in the province of Ontario without the consent, expressed by by-law of the council of such municipality.

And that copies of this resolution be transmitted to the Honourable the Prime Minister of Ontario, and the Hydro-Electric Power Commission of Ontario, with a request that they strongly urge the Federal Government to make the necessary changes in this Act as it is an infringement on the rights of the municipalities of this province. —Carried.

ST. THOMAS, February 6, 1917.

Moved by....., seconded by .....

Whereas the city of St. Thomas owns and operates all of its public utilities including Hydro-Electric power and energy, and has a large amount of money invested in the same, all of which utilities are operated for the benefit of the people of the municipality;

And whereas the streets and highways, within the city, are built and maintained by the municipality at the expense and for the benefit of the people as a whole and not for the special use or benefit of any private corporation, and no such corporation ought to be allowed to make use of the same for its own private undertakings without the consent of the council of the municipality;

And whereas "The Toronto and Niagara Power Company" in the year 1902 obtained an Act from the Parliament of Canada being 2 Edward VII, chapter 107, by which it was granted extraordinay rights on, over and along and across the public highways of the municipalities of Canada, which legislation was passed without the knowledge or consent of the said municipalities; and was also granted other extraordinary powers for the production, sale and distribution of electricity, which powers, if exercised now, would be in direct opposition to the rights of the people within any of the Hydro-Electric zones.

And whereas although fifteen years have elapsed since the granting of the said charter, nothing has been done by the said company towards carrying out the powers and privileges so granted to it, and in the meantime large sums have been spent and a vast amount of liability incurred by many of the municipalities of the province of Ontario, in the installation of Hydro-Electric power:

Be it therefore resolved that the municipal council of the city of St. Thomas petition the Parliament of Canada to either repeal the said Act or to so amend it, as to provide that none of the rights, powers or privileges granted by the said Act shall be exercised within any municipality in the province of Ontario without the consent expressed by by-law of the council of such municipality.

And that copies of this resolution be transmitted to the Federal and Provincial members for this county and to the Hydro-Electric Commission of Ontario.

The committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No 22-- MAY 31, 1817

(Section 373—City of Toronto's proposed amendments adopted. Sections 6, 152, 252, 256, 369 and 375. Mr. Chrysler, K.C., heard thereon.)

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

COMMITTEE ROOM,

Thursday, May 31, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock, a.m.

PRESENT: Messieurs Armstrong (Lambton) in the Chair, Bennett (Calgary), Blain, Bradbury, Carvell, Cochrane, Donaldson, Hartt, Green, Macdonald, Macdonell, Maclean (York), McCurdy, Nesbitt, Sinclair, and Weichel.

The Committee resumed consideration of the Bill, and proceeded to the further consideration of Section 373, "Putting lines or wires across or along Highways, etc."

Mr. Macdonell moved that the said section be amended as follows:—

"Strike out the words 'or line for the conveyance of light, heat, power or electricity' where they occur in the first, second and sixth subsections. In subsection 7 insert after the word 'any' in the second line the words 'telegraph or telephone'. Strike out subsection 9."

And also, that the following be inserted as a new Section 373A: *(For this new Section 373A see Proceedings of the Committee, Part 16, page 332.)*

The question being put on the proposed amendments, the Committee divided, and the names being called for, they were taken down as follows:

YEAS: Messieurs Bennett (Calgary), Blain, Bradbury, Cochrane, Donaldson, Hartt, Macdonell, Maclean (York), and Weichel.—9.

NAYS: Messieurs Carvell, Nesbitt, and Sinclair.—3.

So it was resolved in the affirmative.

Section 373, as amended, was then adopted.

At one o'clock, the Committee adjourned until to-morrow at 11 o'clock, a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS, OTTAWA,
Thursday, May 31, 1917.

The Committee met at 11 o'clock, a.m.

Mr. MACLEAN: While we are waiting for the Minister Mr. Chairman, I would like to ask counsel for the Committee whether there is provision in the Act to secure what the people of the city of Toronto would like to get, and that is equality of treatment in the delivery of packages by the express companies. They do not treat the city of Montreal, for instance, in just the same way in which they treat the city of Toronto. In other words, while they give a free delivery over the whole of the city of Montreal, they do not extend that privilege to the whole of the city of Toronto. I think it is only just that there should be a provision that in handling goods the express company should give equality of treatment to all parties and to all cities, and I would like to know if the Act provides for that equality of treatment, and if not, how we can give power to the Commission to compel the express companies to give that equality of treatment.

Mr. JOHNSTON, K.C.: Section 360 gives the Board complete power; in the first place it says that "all express tolls shall be subject to the approval of the Board". Subsection 2 provides:—

> "The Board may disallow any express tariff or any portion thereof which it considers unjust or unreasonable, and shall have and may exercise all such powers with respect to express tolls and such tariffs as it has or may exercise under this Act with respect to freight tolls and freight tariffs;" so that it seems to me that the Board has just as complete jurisdiction with regard to express tolls as it has with regard to railway tariffs.

Mr. MACLEAN: Does the word "equality of treatment" occur in the Act?

Mr. JOHNSTON, K.C.: Yes.

Mr. MACLEAN: Where?

Mr. JOHNSTON, K.C.: "No discrimination."

Mr. MACLEAN: I would like the words "no discrimination" put in this clause if it is not there now. That is the very word I want put in there if it can be put in.

Mr. JOHNSTON, K.C.: We have to look at section 319 (reads) "Whenever it is shown that any railway company charges one person, company or class of persons, or the person from any district, lower tolls for the same or similar goods, or lower tolls for the same or similar services . . . "

Mr. MACLEAN: And "tolls" covers express charges does it?

Mr. JOHNSTON, K.C.: Quite so, that section 319 is incorporated in this section as to express rates.

Mr. MACLEAN: Can you work those words "no discrimination" in that clause?

Mr. JOHNSTON, K.C.: I can, probably, but it is certainly not necessary, as you will see if you consider these two clauses together.

The CHAIRMAN: We will now resume consideration of section 373 an amendment to which has been moved by Mr. Macdonell.

Mr. MACDONELL: The amendment I moved yesterday was not dealt with before the Committee rose. I do not want to argue the matter any further. We have, I think

all that will be useful in assisting us to arrive at a conclusion. The amendment which I propose is the amendment which was introduced to the Committee by Mr. D. E. Thompson, K.C., of Toronto, representing the city of Toronto. It was supported by Mr. Kilmer, K.C., representing the Government of the Province of Ontario, by Mr. Lighthall, representing all the municipalities of Canada, and other gentlemen who are here, so that really, it is Canadian-wide in its significance and in its operation. It is not confined to Toronto or Ontario, or any other city or province. I think Mr. Johnston has read the amendment, and if it is found to be correct in language, and not infringing any other part of the Act, it is a correct principle for the committee to adopt. Section 373, as at present drawn, applies to telegraph and telephone companies and companies for the conveyance of light, heat, power or electricity. The idea in this amendment is to take out of section 373 any reference to the light, heat, power or electricity, and to make a separate section dealing with electric power and with the condition that was referred to by the various speakers, which condition has arisen largely because of the Privy Council's decision.

Mr. MACLEAN: What words do you strike out?

Mr. MACDONELL: Strike out the words, "or line for the conveyance of light, heat, power or electricity" where they occur in the 1st, 2nd and 6th subsections of section 373, and to insert after the word "any" in the 7th subsection the words "telegraph or telephone." So that subsection 7 of section 373 will refer in no way to electric companies, they being dealt with in the amendment I have proposed. You will find them at pages 331 and 332 of the proceedings of this committee, No. 16. The amendment also proposes to add a new subsection, 373 A, as follows:—

> (*a*) "Company" means any person or company having legislative authority form the Parliament of Canada to acquire, construct, operate or maintain works, machinery, plant, lines, poles, tunnels, conduits, or other means for receiving, generating, storing, transmitting, distributing or supplying electricity or other power or energy, but does not include a railway company, or a telegraph company or telephone company."

This simply defines the word "company" as a power company and restricts it to that.

Then paragraph (*b*) defines "municipality." The definition is the same as in other sections of the Act. Subsection 2 declares:—

> "Notwithstanding anything contained in any special or other Act or authority of the Parliament of Canada, or of the Legislature of any province, the company shall not, except as in this section provided, acquire, construct, maintain or operate any works, machinery, plant, line, pole, tunnel, conduit or other device upon, along, across or under any highway, square or other public place within the limits of any city, town or village, without the consent of the municipality."

Mr. NESBITT: Why confine the provision to a city, town or village? Are not townships municipalities?

Mr. MACDONELL: Yes, they are.

Mr. NESBITT: Have they not control of their highway?

Mr. MACDONELL: I do not know what the reason is for not including townships also, but these are the usual terms employed. Then, subsection 3:—

> "If the Company cannot obtain the consent of the municipality or cannot obtain such consent otherwise than subject to conditions not acceptable to the company, the company may apply to the Board for leave to exercise its powers upon such highway, square or public place; and all the provisions of section 373

of this Act with respect to the powers and rights of any company covered by that section and with respect to proceedings where the company cannot obtain the consent of the municipality shall, subject to the provisions of this section, apply to the company and to any application to the Board and to all proceedings thereon, and to the powers of the Board in the premises."

Then subsection 4:

"Nothing contained in this section shall be deemed to authorize the company, nor shall the company have any right to acquire, construct, maintain or operate any distribution system or to distribute light, heat, power or electricity in any city, town or village; or to erect, put or place in, over, along or under any highway or public place in any city, town or village, any works, machinery, plant, pole, tunnel, conduits, or other device for the purpose of such distribution from the company first obtaining consent therefor by a by-law of the municipality."

That is the usual clause, that they shall not operate their works.

Mr. MACLEAN: Is this the standard clause in the Railway Act?

Mr. MACDONELL: Yes, and it is perfectly fair and a proper safeguard. Then this proviso is added:

"provided that this subsection shall not prevent the company from delivering or supplying such power by any means now existing or under the provisions of any contract now in force for use in the operation of any railway or for use by any other company lawfully engaged in the distribution of such power within any such city, town or village."

That provides for maintaining any existing system or contract which the company may have.

Mr. NESBITT: Does it?

Mr. MACDONELL: I think so. Mr. Johnston can answer that perhaps better than I can.

Mr. CARVELL: How can they extend their business if the municipality will not allow them to?

Mr. MACDONELL: That is a general law now applying to all companies; but this proviso maintains any right that is existing, or any existing contract.

Mr. CARVELL: They would be in pretty hard shape to compete under present conditions.

Mr. MACDONELL: That is the existing law to-day.

Mr. JOHNSTON, K.C.: It means that the present poles and wires may be maintained, but the company cannot add to its system.

Mr. CARVELL: It cannot go any further.

Mr. JOHNSTON, K.C.: No.

Mr. CARVELL: That means the end of the company.

Mr. MACDONELL: It applies to all companies.

Mr. JOHNSTON, K.C.: We are dealing with the Toronto and Niagara Power Company. This company may maintain such poles as it has now, but it cannot add to them.

Mr. NESBITT: It has not got any at present.

Mr. JOHNSTON, K.C.: Yes, it has. The company runs along Eglinton Avenue and up Bathurst Street.

Mr. MACDONELL: And they have conduit lines from Niagara Falls. These are all preserved. Then, subsection 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 January, 1907."

The necessity for this subsection has been argued and dwelt upon here already, and I need not labour the point. It is not a noxious clause. It is only intended to meet the case of this particular company acquiring the Toronto Electric Light Company. I think Mr. McCarthy when he was here representing the Toronto and Niagara Power Company, denied that they had purchased the Toronto Electric Light Company. If that sale has not taken place then this provision can work injury to nobody and it will not affect the Toronto and Niagara Power Company.

Mr. MACLEAN: But it does protect the other parties.

Mr. MACDONELL: Yes, it protects the other parties. The committee will bear in mind that the Toronto Electric Light Company has bargained to sell to the city of Toronto in 1919 its whole undertaking and system.

Mr. JOHNSTON, K.C.: It also has bargained that it will not sell to anybody else.

Hon. Mr. COCHRANE: They got their franchise on the strength of that agreement.

Mr. MACDONELL: It is apprehended that the Toronto Electric Light Company will sell to the Toronto and Niagara Power Company. If they do not sell, then the language of this provision can do no harm to anybody. If they do sell, it simply prevents the sale going through or being consummated in a legal manner. The language proposed here takes advantage of nobody but simply insures the existing contracts and rights to the people of that district. Although it is not usual to insert the provision in a general Bill for retroactive legislation, it is essential in this case, and it is the only way to meet the existing conditions; because the Privy Council has decided that this company is not bound by the general provisions of the Railway Act, although we have always believed that those provisions did apply to all these companies. Mr. Carvell made a very sensible proposition yesterday when he suggested bringing in a special bill to amend the Toronto and Niagara Power Company's charter, and not deal with the matter by general legislation. If that could be done it would be all right, but this company has studiously avoided coming to the parliament of Canada for any amendment to its charter. Its present charter enables it to walk all over Canada and to enter any municipality and carry on its business without the leave or license of that municipality.

Mr. NESBITT: Mr. Johnston's section as drawn stops all that.

Mr. JOHNSTON, K.C.: Not mine, Mr. Thomson's section.

Mr. NESBITT: I would like to get some information. Mr. Macdonell will probably know as he comes from the locality most interested. As a matter of fact if this Committee passes his suggested amendments it practically stops the Toronto and Niagara Power Company from doing any business in Toronto except what they are now doing.

Mr. MACDONELL: No, we only ask them to do the same as any other power company or public service corporation must do, that is get the consent of the municipality, or if they cannot get that consent, go to the Railway Board.

Mr. NESBITT: There is a clause in the Bill which over-rides the Railway Board.

Mr. MACDONELL: No power company in Canada to-day has any power to distribute in a city, town, village or territory without the consent of the municipality by by-law.

Mr. NESBITT: The Toronto and Niagara Power Company have got established to a certain extent.

Mr. MACDONELL: That is maintained.

Mr. NESBITT: They have got established through the Toronto Electric Light Company.

Mr. MACDONELL: No, they are established by themselves, by their own undertakings.

Mr. NESBITT: The Toronto and Niagara Power Company is not established by itself.

Mr. MACDONELL: Yes, they have lights there and wires.

Mr. NESBITT: Where to?

Mr. MACDONELL: To Niagara Falls.

Mr. NESBITT: Whom do they supply now?

Mr. MACDONELL: They are not doing any retail distribution, but they are supplying power in a wholesale manner so to speak to the Toronto Electric Light Company and the Toronto Street Railway Company. I speak subject to correction, but that is the general belief and it is not contradicted.

Mr. NESBITT: They supply power to the Toronto Electric Light Company, and the municipality has power to buy out that company in 1919, which is quite near. If you exercise that power it cuts them off.

Mr. MACDONELL: Not if they sold first.

Mr. NESBITT: Supposing the city exercises its power and takes over the Electric Light Company. They will get their supply of power from some other source.

Mr. MACDONELL: Suppose the Toronto Electric Light Company should anticipate the City of Toronto by selling out. What position is the city in then?

Mr. NESBITT: They can take it over.

Mr. MACDONELL: No.

Mr. NESBITT: Why not?

Mr. MACDONELL: Any lawyer I think would give this opinion—I speak subject to correction also: All the city would have is damages against the Toronto Electric Light Company, or such as remained of that company if anything remained, for breach of its contract with the city to sell to the city. That is all it would have. What is wanted is to anticipate the sale by the Electric Light Company to the Power Company and to prevent its being done. If they do not intend to do that, or do not do it, this legislation hurts nobody.

Mr. JOHNSTON, K.C.: Or if it has been done, to nullify the sale.

Mr. NESBITT: If the city took over the Electric Light Company and the Street Railway Company, then the poles and wires of the Toronto and Niagara Power Company are simply feeding the air?

Hon. Mr. COCHRANE: No, the city has to take them over at a valuation.

Mr. NESBITT: They do not have to take over the Toronto and Niagara Power Company?

Hon. Mr. COCHRANE: They have to take over the Toronto Street Railway Company.

Mr. MACLEAN: And the Toronto and Niagara Power Company is left there.

Mr. NESBITT: That means that they are left in the air.

Mr. MACDONELL: They are in the same position then as all other power companies in Canada. That is not a hardship.

Mr. NESBITT: Isn't it?

Mr. MACDONELL: I do not think so.

Mr. NESBITT: You would not like to have any stock in it then.

Mr. MACDONELL: They will be in the same position as any other power company in Canada.

Mr. CARVELL: Oh, no.

Mr. MACDONELL: We are not making favourites. We are trying to make a perfect equality. The people have a right to their own streets. That is all this amendment is designed to do. I move the amendment, seconded by Mr. Blain.

On the motion—shall the amendment carry:

Mr. NESBITT: I would like to point out that subsection 2 of the Act, particularly lines 37 and 38, with reference to municipalities, reads as follows:—

> "no telegraph or telephone line . . . shall, except as hereinafter in this section provided, be constructed, operated or maintained by any company upon, along or across any highway, square or other public place, without the consent, expressed by by-law of the municipality having jurisdiction over such highway, square or public place, etc."

I do not see why my hon. friend confined the wording in his amendment to "villages, towns and cities?"

Mr. MACDONELL: I did not draft the clause. I will ask Mr. Johnston if that is not the usual language.

Mr. NESBITT: It is the usual language that is now in the Bill.

Hon. Mr. COCHRANE: There is no objection to adding the words "or other municipalities."

Mr. MACDONELL: I have no objection. Let the amendment read that way.

Mr. JOHNSTON, K.C.: Mr. Nesbitt proposes simply to add the words "or township."

Mr. NESBITT: I would suggest the words "or the municipality having jurisdiction." Do not define municipality at all.

Mr. JOHNSTON, K.C.: Mr. Nesbitt is content with subsection 2 of section 373, but he considers that in Mr. Thompson's amendment, moved by Mr. Macdonell, that municipality is defined as "city, town or village," and he thinks it should not be so restricted. I would suggest that Mr. Thompson's amendment, paragraph (*b*) of subsection 1, should have the word "or" struck out and the words "or township" added. It will then read:—

> (b) "Municipality"—means the municipal council or other authority having jurisdiction over the highways, squares or public places of a city, town, village or township.

And so on.

Mr. MACDONELL: I accept the amendment.

Mr. CARVELL: Mr. Chairman, I want to vote against this amendment, and I desire, in as concise a manner as possible, to give my reasons for doing so. In the first place, I have no interest whatever in the subject matter of this dispute. I do not even know who are the stockholders or the directors of the companies excepting that I have some clients, as I suppose lawyers have all over Canada, who have been unfortunate enough to have some stock in this enterprise, and for the last few years I have consistently advised my clients to sell out at any price they can get and pocket their

loss, because I could see what was going on in Toronto, and I would certainly not advise any person to invest money in any enterprise in Toronto which will come into competition with the Hydro-Electric. This comes down to the question whether the Hydro-Electric should have a monopoly in the city of Toronto.

Hon. Mr. COCHRANE: You advocated yesterday that regulation and not competition in the case of the telephone companies was right.

Mr. CARVELL: No doubt whatever about that, not a particle, and if you will only follow it out you will come to the same conclusion, that the telephone and the electric light and power business are as far apart as the North Pole is from the South. Every man can use a telephone line, and only one can use the light line going into his house; You can regulate the light line, but you cannot the telephone, by competition. I will only say this that I know places in Canada where they would not put up with the service the people are getting from the Hydro-Electric for ten minutes.

Mr. BLAIN: I think there is no general complaint against it.

Mr. CARVELL: No, perhaps not, but I do not care about that. I want to point out to the Minister that the best regulation with regard to electric light and power is competition.

Mr NESBITT: Or for any other business.

Mr. CARVELL: Excepting the telephone, because with regard to the telephones, a man does not want to be compelled to keep two telephones in his office in order to do business, and that is what it amounts to in a great many cases. It simply means that if you pass this amendment the city of Toronto has $6,000,000 invested in the Hydro-Electric, and the city of Toronto will not allow this company any further extensions, and there is no public Utility Corporation in the world can exist unless they have the right to make extensions. If you compel the company to do business just as they are to-day, without extension you will drive them out of business in a few years. The result will be the handling of the business in the city of Toronto over to the Hydro-Electric. If the city of Toronto wants that, I have no objection to it, but I object to a clause being tacked on to the General Railway Bill applying only to the city of Toronto. I am unalterably opposed to this legislation taking away from men the value of money they have invested in good faith in this corporation.

Mr. MACDONELL: Is there any way to meet the case? I did not quite conclude the statement I intended to make when I was on my feet, but as to the point that you have raised, how can that be done? You cannot adopt safeguards, except in this way.

Mr. CARVELL: I have not given that matter very much consideration, I am only dealing with the Railway Act, and if people who have a grouch in any part of Canada have the right to come to Parliament when the general Railway Act is under consideration and have it amended to cover their particular case, what kind of a railway Act will you have in the course of a few years? I am not much of a monopolist, my views on that point are well known, but I do protest against taking away from any man a fair return on the money which he has invested on the strength of legislation passed by this Government. I believe in regulation. I believe it is fair that these people should go to the Railway Board, and I have absolute faith in the Railway Board, and I believe that the people of the city of Toronto will get better satisfaction if they will only leave this section as it is drafted by the draftsmen who have been charged with that duty. Let them go to the Railway Board. I only want again to say that if you pass this amendment and I judge from the attitude of the Minister that he intends to pass it, you are simply legislating these people out of existence, and giving the Hydro-Electric an absolute monopoly in that part of the province of Ontario.

Mr. MACLEAN: In answer to the argument of the honourable gentleman from New Brunswick, who says that we are interfering and confiscating the rights of individuals who have made investments—and he says the city of Toronto is doing that—I say that

the whole province of Ontario is supporting this amendment. This amendment is asked in the interests of the investment which has been made by the municipalities.

Mr. CARVELL: After the other investment had been made by this company, and in face of that investment.

Mr. MACLEAN: Granting that, they have made their investments, and while you say you are maintaining your rights you are putting your company in a position to confiscate all the rights of others who happen to be interested, and these people happen to be municipalities of Ontario.

Mr. NESBITT: Where?

Mr. MACLEAN: All over Ontario.

Mr. SINCLAIR: The objection by some members of the Committee is to the retroactive feature of the section which affects only the city of Toronto.

Mr. MACLEAN: If it is not made clear, as it is made clear in the amendment, that the rights of everybody are respected, a lot of rights will be confiscated.

Mr. NESBITT: Mr. Johnston's resolution covers that effectively.

Mr. MACLEAN: Mr. Carvell, while he says he is protecting the investment of some individuals, is invading the rights of the municipality; why put them in a false position?

Mr. SINCLAIR: I have no clients who are interested in this matter to the extent of one cent, and I have no prejudices against the Hydro-Electric Company. All I know about that company is that it is a useful institution, and I would like to have one in my province. I believe in municipal control, but I do not believe in the right of any company to go into the streets of any town or municipality and put up wires or poles without the consent of the municipality. I will vote in accordance with that principle on every occasion, but I do not like the retroactive feature of this measure and that is the reason why I am going to record my vote against it.

Hon. Mr. COCHRANE: My justification for taking the position I do is that I think the Parliament of Canada did wrong in giving the company these powers. They did an injustice to the different municipalities in the provinces of Canada, and I think it is the duty of this Parliament to mend that wrong.

Mr. NESBITT: So far as I am personally concerned, I have nothing but the strongest feeling of friendship towards the Hydro-Electric. They operate splendidly, so far as I know, throughout the length and breadth of Ontario, but the Act as drawn protects the municipalities without any additional sections.

Hon. Mr. COCHRANE: It does, except in regard to this company. It will not protect the municipalities from this company.

Mr. NESBITT: Pardon me, I think it does. I could not agree with you in that statement.

Hon. Mr. COCHRANE: I am so advised.

Mr. NESBITT: It absolutely protects all the municipalities for the future from this or any other company.

Mr. MACLEAN: The Ontario Government, which is supposed to be the guardian of provincial rights, says the municipalities are not protected, and Ontario has been represented before this Committee for that reason.

Mr. NESBITT: The Ontario Government say they were not protected previously, but they cannot say they are not now protected, because it is distinctly shown by Mr. Johnston, the adviser of the Committee, that they are protected both in the interpretation section, and in the section in question.

Mr. JOHNSTON, K.C.: As to the future.

Mr. NESBITT: I am talking of the future, and these people have no right in any place except Toronto at the present time. There is no question about that.

Hon. Mr. COCHRANE: And they should not have any rights there. They are only by reason of the bad faith of the company that got its charter from the people of Toronto selling out to them and giving them their power.

Mr. NESBITT: I cannot agree that the Parliament of Canada did not know what they were doing when they gave them the right.

Hon. Mr. COCHRANE: They certainly were doing it to the advantage of the different municipalities in the province.

Mr. NESBITT: That may be true, but that will be prevented in the future. Subsection 4 of the amendment proposed by Mr. Macdonell says:—

> "Nothing contained in this section shall be deemed to authorize the company, nor shall the company have any rights to acquire, construct, maintain or operate any distribution system or to distribute light, heat, power or electricity in any city, town or village, or to erect, put or place in, over, along or under any highway or public place in any city, town or village any works, machinery, plant, pole, etc."

That absolutely prevents this company increasing their output in any shape, manner or form.

Hon. Mr. COCHRANE: If they do not make an agreement with the city.

Mr. NESBITT: I doubt if they can make an agreement. There is no doubt about the fact that there is a local prejudice in Toronto against this corporation. Even our friend Mr. Macdonell, who is generally absolutely fair, seems to be prejudiced against this company.

Mr. MACDONELL: I am trying to protect the rights of the people.

Mr. NESBITT: He imagines they are going to do this, that and the other thing, and that they are going to destroy the interests of the city. No corporation can be successful without having the good wishes of its patrons, and the only way these people can have the good wishes of their patrons, is to deal fairly with them. There is no question about that. Anybody with business experience knows it is absolutely impossible to build up any business in this country without the good wishes of its patrons. The reason I am not supporting the clause is simply because I can see very readily that the city of Toronto means to confiscate the property of these people, and there is English money invested in this corporation.

Hon. Mr. COCHRANE: Confiscation is not proposed here. The matter must be left to arbitration, and that is not confiscation.

Mr. NESBITT: There is no reference to arbitration here. The company is supposed to go to the Board, and Section 4 takes away the power of the Board to deal with it.

Mr. JOHNSTON, K.C.: That is only as to the distribution.

Mr. NESBITT: They take away the power from the Board to deal with it, and I am willing to leave it to the Board.

Mr. MACDONELL: There is no power company in Canada which has the right to distribute power in a community or municipality without the consent of the municipality. There are two separate things involved. There is the transmission line, and the municipality has the power to say it shall not be constructed. If the municipality refuses permission to construct, the company has the right to go to the Railway Board, but when it comes to distribution no company has the right to go to the Railway Board, if the municipality says "No, we do not want you here as vendors and distributors of power in this community." This company will be treated identically the same as all other companies are treated, and there is not a shadow of anything in the nature of confiscation.

Mr. CARVELL: There is one point which has not been discussed, and I think I might as well point it out. It is well known that the city of Toronto has the right to purchase this company two years hence, and the Minister says he wants to prevent this company selling out their property, so that when 1919 arrives there will be something there for the city to buy. The logical result of this legislation will be that two years hence the property will not be worth fifty per cent. of its present value.

Hon. Mr. COCHRANE: It will be worth just as much, if the city has the right to take it. If the Niagara Power Company has not the right to take it it will be worth just as much. The Toronto Electric Company only have the franchise for so many years, and it expires in 1919. What good will it be, if they cannot continue?

Mr. CARVELL: Under present conditions they have a growing business, and a business which has a right to expand. When it comes to arbitrate, the city will be paying them for a business that has a right to grow and develop and they will not be paying them for so many poles, copper wire and so on. They will not be able to say to them, "We only have to pay you for so many pounds of copper wire and so many poles". That is the real object behind the Bill.

Hon. Mr. COCHRANE: It does not make a particle of difference.

The Committee divided on the amendment which was declared carried.

Mr. CARVELL: We want the yeas and nays.

The CHAIRMAN: I call for the yeas and nays.

Hon. Mr. COCHRANE: We want the names recorded.

A vote being taken, the amendment was carried on the following division:—

YEAS: Hon. Messrs. Cochrane, Maclean, Blain, Macdonell, Weichel, Hartt, Donaldson, Bradbury, and Bennett (Calgary).

NAYS: Hon. Messrs. Carvell, Nesbitt and Sinclair.

The CHAIRMAN: I understand Mr. Nesbitt wishes to refer to a number of clauses this morning.

Mr. NESBITT: Before taking up those clauses I desire to make an explanation. In moving my resolution yesterday on the telephone section, I moved that the word "compensation" be struck out, for the purpose of leaving it absolutely with the Board whether there should be compensation or what allowance should be arranged between the united companies and that was recorded. There appears to be a doubt as to whether the Court would not construe that clause as meaning that the Board had not jurisdiction over the whole thing. I understood it had jurisdiction, and I would not like to mislead any person as to my intention. My intention was absolutely clear, that I desired the Board to have absolute control and be able to say what the payment should be in case any of these companies were united. If there is any doubt about it, and if any gentleman who voted for my motion were voting under a misapprehension, I will be perfectly willing to have the section reconsidered, as far as I am concerned.

The CHAIRMAN: I do not think it is the wish of the Committee that it should be opened up again. Your statement will be recorded, and I presume that will be sufficient.

Mr. NESBITT: I am in the hands of the Committee.

Mr. CARVELL: But this statement cannot go to the Supreme Court. What Mr. Nesbitt says here cannot be used in court.

The CHAIRMAN: None of the statements of members here will be used in the courts.

Mr. JOHNSTON, K.C.: I think there is no doubt about the effect of Mr. Nesbitt's amendment. The striking out of the word "compensation" defeats the purpose he had in view. I do not think it would be possible for the Board to award compensation, the word "compensation" having been struck out, and the court would so interpret it.

The CHAIRMAN: Is it understood that Sections 373, 374 and 375 are carried?

Mr. CHRYSLER, K.C.: I have a suggestion to make, not affecting what you have done but relating to the railways, with respect to section 373.

The CHAIRMAN: Shall section 374 be adopted?

Section adopted.

On Section 375—Provisions governing telegraphs and telephones.

Mr. CHRYSLER, K.C.: The word "leasing" appears in subsection 2, and it also occurs in section 369. The point is this; As it stands there the section provides that:

> Notwithstanding anything in any Act heretofore passed, all telegraph and telephone tolls to be charged by the company and all charges for leasing or using the telegraphs or telephones of the Company, shall be subject to the approval of the Board, and may be revised by the Board from time to time.

Now in subsection 2 of section 369, the word also occurs:

> No toll or charge shall be demanded or taken for the transmission of any message or for leasing or using the telegraphs or telephones of such Company except in accordance with section 375 of this Act, and the said Company and its said business and works shall in all respects be subject to the provisions of the said section.

The Telegraph Companies object to "leasing" being included in these two sections, for the reason that the leasing of a line—that is to say, what they call a private wire privilege—is wholly a matter of bargaining. It is not the sending of a message by the public at all, but a wire is leased or it is not leased. The man wants a private wire and is willing to pay for it. If he does pay he gets it, if he does not pay he does not get it. it is a matter of contract.

Hon. Mr. COCHRANE: It is optional with the telegraph Company whether they will lease the wire or not?

Mr. CHRYLSER, K.C: Yes, or whether they will lease any wires or not.

Hon. Mr. COCHRANE.: If the lessor and the lessee cannot agree there ought to be some tribunal to arrange the matter.

Mr. CHRYSLER, K.C.: I have stated the contention of the Company. This matter has never been under the control of the Board and I do not see how the Board could control it. It is not a matter of public tariff at all.

Mr. MACLEAN: Suppose there is discrimination in the leasing of wires, and one man gets a better rate than another. That is where this Act should apply.

Mr. CHRYSLER. K.C.: How do you know it is discrimination?

Mr. MACLEAN: You say this is a matter of private bargaining. Private bargains are the very things we do not want.

Mr. CHRYSLER, K.C.: Wires are from different places and under different conditions. I suppose in the case of wires from Toronto the same rate is charged to all persons.

Mr. JOHNSTON, K.C.: Take a broker's wire to New York.

Mr. MACLEAN: There are brokers and newspapers in Toronto who have leased wires from public companies. Public companies that lease wires should have their rates subject to regulation, and there should be no discrimination. There would be discrimination if you were to take away the protection afforded in these sections. I do not think, Mr. Chrysler, you should object to that.

Mr. CHRYSLER, K.C.: I do object.

Mr. MACDONELL: What is the reason for your objection?

Mr. CHRYSLER, K.C.: Because it is not a proper subject for regulation by the Board.

Mr. MACDONELL: The provision does not hurt you if it remains in the Act.

Mr. CHRYSLER, K.C.: If we are not satisfied with the prices we are getting for leased wires we do not lease them.

Mr. MACLEAN: That is not the point. The point is whether you are to be authorized to discriminate.

Mr. CHRYSLER, K.C.: That is not the point at all.

Mr. MACLEAN: That is what we think.

Mr. CHRYSLER, K.C.: Mr. Maclean's point, I submit, does not meet the case at all. The general clause which Mr. Johnston read a little while ago during the discussion on another matter relates to leasing, or any other privileges granted by the Company, but it is not a case here of a public tariff or of including leasing in either of these sections.

Mr. SINCLAIR: Your proposition is to strike out the word "leasing".

Mr. CHRYSLER, K.C.: Our proposition is to strike out the word "leasing" where is occurs in sections 369 and 375.

Mr. SINCLAIR: The sections will then apply to charges for using telegraph and telephone ?

Mr. CHRYSLER, K.C.: Yes.

The CHAIRMAN: Shall the word "leasing" be struck out?

Mr. CARVELL: I for one, confess I have not had very much experience in this kind of business, but I can see a great difference between the leasing of telephone or telegraph wires and the ordinary use of a railway company. We want the Board to have absolute power to prevent undue discrimination, but there are very few people who can avail themselves of the privilege of leasing a telegraph or telephone line. It seems to me it is getting down to very small business to ask the Board to step in and say that one newspaper should have the right to lease a telegraph line and another newspaper shall not, or that one broker shall have the right to lease a wire and another broker shall not. It seems to me that there is a great deal in what Mr. Chrysler has said. It is so small and narrow a thing, that it ought to be a matter of contract between the company and the party using the wire. I imagine there would be very few people in a community who would be influenced or affected by it.

Mr. MACLEAN: You are establishing the principle of private bargain in connection with the public franchise and the public service. Now, it is a public service when a telegraph or telephone line is used by an individual or a newspaper as a special wire. All we say is that inasmuch as the companies do under the franchise lease private-wires, there must be equality of treatment, and therefore that lease should be subject to the revision of the Board.

Mr. CARVELL: You have had experience in this matter, and I would like to have your opinion on a case such as this: We will say that a railway company has a dozen wires running between Toronto and Montreal, and three-fourths of them are taken up. Would it be proper that the Railway Board should have the right to come in and say who shall get the other three wires?

Mr. CHRYSLER, K.C.: Or order the company to provide 50 more wires?

Mr. JOHNSTON, K.C.: Should a newspaper pay the same rate for a wire from New York to Toronto as a broker pays?

Mr. MACLEAN: I do not know.

Mr. CARVELL: It is a question of principle, Mr. Maclean.

Mr. MACLEAN: I want the newspaper to come under the general application of our practice where a public franchise is involved, whether it is a case of dealing with individuals or with communities. There must be no discrimination, but these private bargains allow discrimination.

Mr. CHRYSLER, K.C.: We look upon it in this light—I do not know whether it will add anything to the discussion or not. Leasing a wire is like leasing part of a company's property. You might as well say when there are offices to spare in the C.P.R. building here or in Montreal, or in the Grand Trunk offices, that the Railway Board are to regulate the rate at which we shall lease those premises. We may be wrong and Mr. Maclean may be right, but that is our view. In the case of a private wire it is the same thing. It is something we do not need to have at all, but we do have it as incidental to the business of transmitting messages to the public. It is possible for us to have private wires which we can lease, and there is no question of discrimination. It is not so much the question of the rate, as being ordered by the Board to provide additional wires, to put in wires where we do not use them at all. We think that is something we should not be compelled to give to the public under regulations of this kind.

Mr. MACDONELL: This section refers only to the toll that the company shall charge.

Mr. CHRYSLER, K.C.: Look at the other section. You have to take the two together.

Mr. JOHNSTON, K.C.: Sub-section 2 of section 369 reads: "or for leasing."

Mr. CHRYSLER, K.C.: As far as the press is concerned you can regulate it by the order of the Board now.

Mr. MACLEAN: Where would an injustice be done if the Bill remains as it is? Give us a specific case.

Mr. CHRYSLER, K.C.: Supposing ten people in Toronto have private wires, and some more come and say: "We want more private wires." Supposing the company said: "Our poles are full, we cannot take any more." Why should we be ordered to? We might be ordered to take all the messages that come to us.

Hon. Mr. COCHRANE: You must get paid in that case. The Board would give you fair compensation.

Mr. CHRYSLER, K.C.: We cannot send a wire to New York. It is done by arrangement with other companies. The Board has no control over that.

Mr. MACLEAN: Then you cannot be compelled to give it.

Mr. SINCLAIR: Is it clear that the public could not be interested in any way in leasing? It is not very clear in my mind. Circumstances might arise in which it would be to the interest of the community to have leasing of the wire controlled, where duplication would be prevented, or something of that kind. I do not think this should interfere with the question of private wires. I do not see my way clear to let the Board decide the question of dealing with a private wire. Do you, Mr. Maclean?

Mr. MACLEAN: I see why the Board should have jurisdiction over the exercising of any franchise that Parliament gives to a company. A leased wire is a service as much as any other service, and therefore within the jurisdiction of the Board, and I wish to keep the full jurisdiction of the Board.

Mr. CARVELL: Would you carry that to the extreme that Mr. Chrysler mentioned a few moments ago, to the renting of an office in a building?

Mr. MACLEAN: That is not part of its franchise.

Mr. CARVELL: They have the right to purchase real estate.

Mr. MACLEAN: That is altogether different. The object of the company, underlying its franchise, is a public service, and this is a public service. Leasing a building I do not think is a public service.

Mr. MACDONELL: Mr. Blair might give us reasons that there may be for this legislation.

Mr. BLAIR: I am sorry to say, Mr. Macdonell, that I cannot give you the views of the Board or any of the Commissioners. Any views I may have, of course, I do not know that the Committee would be interested in.

Mr. SINCLAIR: This section is new, Mr. Blair, why was it put in the Bill?

Mr. JOHNSTON, K.C.: The draftsman said that this section is adopted from what are known as the standard clauses.

Mr. CHRYSLER, K.C.: The word "leasing" is put in here for the first time.

Mr. MACLEAN: This is a progressive Bill, that is why.

Mr. MACDONELL: There should be some regulation. You may have thousands of lines in future years.

Mr. MACLEAN: The Board will not do you the injustice of compelling you to give an unprofitable service.

Mr. NESBITT: The Bill refers these matters to the Board, and no disputes are likely to arise. If any person leased a private wire from a telegraph company, and any dispute should arise, the Board would take everything into consideration.

The CHAIRMAN: Section 375 stands.

Mr. JOHNSTON, K.C.: We are dealing with sections 369 and 375. These clauses are passed, as I understand.

Mr. CALVIN LAWRENCE: Do I understand that the Committee has finished with the clauses in connection with telephone or telegraph wires. We have already objected to section 372.

Mr. JOHNSTON, K.C.: We have not come to that section:.

On Section 6. Railways controlled or operated by Dominion companies.

Mr. CHRYSLER, K.C.: Paragraph (c) of this section is new, and is to be taken along with section 152, subsection 6. I do not appear for the provincial authorities, and have no concern with them; but I want to bring one case before the Committee. Paragraph (c), section 6 reads:

> (c) Every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased or operated by a company, wholly or partly within the legislative authority of the Parliament of Canada, or by a company operating a railway wholly or partly within the legislative authority of the Parliament of Canada, whether such ownership, control, or first-mentioned operation is acquired or exercised by purchase, lease, agreement or other means whatsoever, and whether acquired or exercised under authority of the Parliament of Canada or of the legislature of any province, or otherwise howsoever; and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada.

Section 152, subsection 6 reads:

> (6) Every railway and undertaking, or part thereof, in respect of which such an agreement is made, upon such agreement being sanctioned by the Governor in Council, shall be deemed and is hereby declared to be a work for the general advantage of Canada, and such railway and undertaking, or such part thereof, and, so far as concerns the same, every company which is a party to the agreement, shall be subject to the provisions of this Act.

Now I will make plain to the Committee the only thing we are interested in here. The Parliament of Canada has taken jurisdiction over the railways which cross or join

Dominion railways. In the legislation of 1903, I think, they changed that in some respects, but in 1908 or 1909 they enlarged it in this way; that the Parliament of Canada takes jurisdiction wherever a Dominion railway acquires property which is under the jurisdiction of a provincial legislature by purchasing its stock or the control of its securities, or in any other way of that kind. That we have nothing to say about. The only case we want to bring before the Committee is the simple case of leasing and the point is raised by the Canadian Pacific Railway in connection with a particular railroad which they say is the only railway to which this new section will apply, and they ask the favourable consideration of the Minister and the Committee to that case. The railway is the Quebec Central Railway which is not now under the jurisdiction of the Parliament of Canada, and is not by any existing section of the Railway Act covered, because the Canadian Pacific Railway does not own its stock or its securities. It has its own organization and its own officers; it is operated by itself except that for a rental it is leased to the Canadian Pacific Railway, and the following is an extract from a letter from Mr. Beatty, the General Counsel of the C. P. R.

Mr. SINCLAIR: You are not passing now under the Board? Does this railway not go to the border?

Mr. CHRYSLER, K.C.: No.

Mr. SINCLAIR: Is it the only railway that is not under the Board?

Mr. CHRYSLER, K.C.: The only railway of the class, it is only a provincial railway; other railways have been acquired and taken by control of the stock and bonds, but in this company the shareholders hold the stock and the bonds are held by the creditors.

Mr. SINCLAIR: There is a railway in the province of Nova Scotia that is not under the Board.

Mr. CHRYSLER, K.C.: I do not say it is the only case of the kind, but it is the only case in which the C. P. R. is interested.

Mr. SINCLAIR: The one in the province of Nova Scotia is owned by the coal company, and has never been brought under the jurisdiction of the Board.

Mr. CARVELL: The Minto and Grand Lake Company I think has not been brought under the Board.

Mr. MACLEAN: Would an injustice be done in that case, if that road should pass under control of the Railway Commission?

Mr. CARVELL: An injustice?

Mr. MACLEAN: Yes.

Mr. CARVELL: No, on the contrary if you go along one of these roads where the road is under the local Board and is operated by one of the great railroads, you will see what injustice is done to the traffic on that railway; it ought to go under the Board.

Mr. CHRYSLER, K.C.: I have no instructions about the case of which Mr. Carvell speaks, but this section, it seems to me, is one in regard to which Parliament should withhold its hand for the reasons I am going to read from this letter written by Mr. Beattie, Vice-President of the C. P. R., who says:

> We are not affected except in one instance—the Quebec Central,—a provincial company which is leased to this company for financial reasons but operated as a separate property with its own management and staff. It is not in any sense a work for the general advantage of Canada, or operated as such, it is not even operated as part of the C. P. R. system. The advantages of this arrangement, from local standpoint, are many.

Now this is the point which may offset the proposed advantages of which you spoke:

> The railway was fostered by the Provincial Government, an extension of it from time to time has been made to open up local territory. It has therefore

a strong local atmosphere, and is supported by the provincial and local sentiment of the counties through which it runs. This, you know, is a valuable asset to any railway company. I do not think there is any small road in which the people of Quebec have a greater pride than in the Quebec Central. They have watched it grow and assisted it in its growth. Its local status is a distinct advantage in dealing with labour and other matters connected with its operation. These advantages would be lost if it became in fact a part of the C. P. R. system and subject to Federal instead of Provincial control. I mention this to you now because—this is a letter to me, and he wrote a similar letter to Mr. Johnston.

Because, while I understand subsection (c) of section 6 was passed, the discussion will undoubtedly be resumed when section 152 is resumed.

I have nothing to say as to the question of policy, or as to its application to other roads, but the C. P. R. thinks that it would be prejudicial to that railway if this section passes and becomes effective, making the Quebec Central a Dominion railway instead of a Provincial road.

Mr. MACLEAN: Does it go to the border?

Hon. Mr. COCHRANE: It goes to Sherbrooke.

Mr. CARVELL: I might say I was on that road, with Mr. F. N. McCrea, the Member for Sherbrooke, who is possibly one of the largest shippers on that road, he is largely interested in the pulp and paper industry, and I overheard a conversation between him and other gentlemen, in which they were bitterly complaining of the fact that they had to pay two freight rates, because the Dominion Railway Board had no jurisdiction over that railway.

Hon. Mr. COCHRANE: I have had complaints too.

Mr. CARVELL: They were complaining very bitterly, and they gave a number of illustrations justifying their complaints.

Mr. CHRYSLER, K.C.: It is largely a matter for the Quebec authorities, and the Quebec people, but that is the way we feel about it.

Mr. SINCLAIR: If this road has never received assistance from any Government in any way, can we bring a railway of that kind under the Dominion Board.

Mr. JOHNSTON, K.C.: I think that we can; the question has been raised whether Parliament has the power to declare such a road for the general good of Canada, but the point has never been definitely decided; my opinion is that we have such power.

Mr. CARVELL: There will be no question that where a railway is leased by one of the big railways which is under the jurisdiction of the Board, Parliament would have the right to bring it within the purview of this clause, for the general advantage of Canada.

Hon. Mr. COCHRANE: And Mr. Beattie does not question our right?

Mr. MACLEAN: He questions the advisability. We would like to hear from Mr. McCrea.

Mr. MCCREA: The Quebec Central is operating under a Quebec charter, leased and controlled by the C. P. R. When we want rates they give us local rates. They claim that they are operating themselves and are not subject to the control of the Railway Commission, consequently we have no redress by going to the Railway Commission. When it is a question of routing the goods through, for instance, shipping material a long distance, we sometimes route our shipments by the way that suits us best; but the railway undertakes to route by such routes as will give them and their connections the longest haul, and they claim they have a right to do so. I think they have had the ruling of the Quebec Railway Board on this question, and they decided that a road had a right to route its freight by the longest haul. In one case they took

that a road had a right to route its freight by the route which gave its own line and connections the longest haul. In one case they took the ground that, operating under a Quebec Charter, they were not subject to the rulings of the Dominion Railway Board. On the other hand, when it suits their purpose for the routeing of their freight, they say, "we are part and parcel of the C. P. R. and consequently we have a right to route our freight against the will of the shipper by the route that gives the longest haul." They should come under the one ruling or the other. They cannot simply take the position that suits them best.

The CHAIRMAN: You believe they should come under the Railway Board?

Mr. MCCREA: Either that or give the shipper the right to ship his goods by the route he desires them to go. I know cases where they have changed the route. The shipper billed his freight to be carried by a certain route, and the Quebec Central agents undertook to change that and said they had a right to do so because the ruling of the Board gave them the right to do it.

Mr. NESBITT: The Quebec Board?

Mr. MCCREA: Yes.

Mr. CARVELL: It must have been the Dominion Railway Board.

Section allowed to stand.

On section 171, sanction of Board.

Mr. CHRYSLER, K.C.: This section is a little complicated. The committee will remember that, when section 168 was under consideration, it was stated that the Bill made a change in the existing legislation. Down to the present time the general plan or general location of the railway is to be approved by the Minister, and this Act proposes to submit the location plan to the Board. In the Act from which these sections are drawn, provision was made in Section 171 for the filing of a detailed plan of the railway with the Board, and also with the Railway Department, but it was filed with the Board for approval, and they were to consider it. Section 171 was taken in conjunction with Section 159. Section 171 provided for a right to deviate from the general location plan to a limited extent. If the Committee will bear with me for a moment, I should like to say something of the history of that because the state the legislation with regard to deviation has got into is rather peculiar. Originally the deviation provided for by the Railway Act was a very limited amount. I think it was not to exceed a quarter of a mile or two or three hundred yards.

Hon. Mr. COCHRANE: Half a mile from the central line.

Mr. CHRYSLER, K.C.: The intention, I suppose, was to provide for unexpected difficulties in carrying out the line as indicated by the general location plan, and probably some provision for making a deviation was necessary. In 1903 I think it was made, as it stands here, a deviation of one mile but in providing that leeway for the railway companies, I have no doubt everybody will agree that the object of that section providing that leeway for the railway companies was to make it permissive. A big twist has been given to the section by the decision of the Supreme Court of Canada on the section with regard to the authority of the Board which says in 33, subsection 21,

> The Board may order and require any company or person to do forthwith, or within or at any specified time, any act, matter or thing which such company or person is or may be required or authorized to do under this Act.

I am leaving out the connecting words but that is the substance of the provision. That has been applied in a decision of the Supreme Court to the ordering of a new station. In the case of the Grand Trunk between Hamilton and St. Catharines, the Board ordered them to build an additional station, and the company objected on the ground that they had already a sufficient supply of stations, and did not need a new

one, and pointed to the Act which said they were to furnish stations at the stopping-places provided, meaning the stations provided in the original plan. The Board ordered the station to be built. The Supreme Court said that whether or not the Act meant that additional stations should be ordered, the Board had power, under Section 26 as it then stood, now Section 33, to order the Company to build a station because the company had permission, under the Act, to build a new station, if they wanted to. That applies to Section 171, because under this section, if some alteration is not made in it, the Board will have right to order an existing completed railway to move its tracks, and place it down somewhere else. That is to say, within the limits of a mile. I think that was the intention.

Hon. Mr. COCHRANE: That was not the intention.

Mr. CHRYSLER, K.C.: I am merely pointing it out, because I think it was not the intention. There is another section further on which gives the Board an enlarged power in the future to move its tracks.

Mr. JOHNSTON, K.C.: You mean where there is duplication?.

Mr. CHRYSLER, K.C.: Yes.

Mr. JOHNSTON, K.C.: That is section 194, subsections 4 and 5.

Mr. CHRYSLER, K.C.: Those sections give the power for special reasons to order the removal of tracks. This section is all right, if it is carefully drawn, but I submit it is not drawn now in a way that will provide for the objection that I make.

The CHAIRMAN: What is your suggested amendment?.

Mr. CHRYSLER, K.C.: In the first place it should be made clear that section 171 does not apply to a completed railway. It should apply to deviations that are made between the time of filing the general location plan and the detailed plan which is provided for in section 169. Look at subsection 3, which says, "in granting any such sanction the Board shall be bound by the general location as already approved by the Board, and shall not, without the filing of an amended map of the general location with the Department of Railways and Canals, sanction a deviation of more than one mile from any one point on the general location so approved." The suggestion is that the Board will not allow any deviation at all. There is no permission to make a deviation there. You have to refile a part of the general location plan with the Board in order to make a deviation. If it were to be filed with the Minister we could understand what was intended, but you have to file a plan with the same Board of the deviation which you intend to make. Then there is another thing which should be guarded against. It should not be allowed to be done twice: that is to say, the railway may be moved a mile by filing an amended plan of the general location with the Department of Railways and Canals. It should not afterwards be open to the possibility of being moved another mile by filing another plan.

It is just in that language.

The CHAIRMAN: Would you give us, Mr. Chrysler, an idea of what amendment you would propose?

Mr. CHRYSLER, K.C.: I find difficulty in doing that, because I do not know whether the Committee have decided to leave the control of the general locations with the Board.

Hon. Mr. COCHRANE: I think it is all right.

Mr. CHRYSLER, K.C.: Then we will leave it so. This can be much simplified. There are two points to be provided for, but I will arrange the wording with Mr. Johnston.

Mr. MACLEAN: You can agree upon something and submit it to us.

Mr. JOHNSTON, K.C.: Can you draw what you propose as an amendment this afternoon, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I will do so.

Hon. Mr. COCHRANE: I think what you have said is all right.

Mr. CHRYSLER, K.C.: Subsection 4 of section 194 we have no objection to. That covers the case of new railways.

Now as to subsection 6 of section 252: I do not know whether there was any discussion before the Committee as to this, but it is the subsection which provides that upon the application of municipalities the Board may, where it deems reasonable and proper, "Require the company to construct under, or alongside of its track upon any bridge being constructed, reconstructed or materially altered by the company, a passageway for the use of the public either as general highway or as a footway, the additional cost to the company of constructing, maintaining and renewing which, as fixed by or under the direction of the Board, shall be paid by the municipality or municipalities, as the Board may direct, and the Board may impose any terms or conditions as to the use of such passageway or otherwise which it deems proper."

Hon. Mr. COCHRANE: The Railway Committee of the House were very strong for that a year ago.

Mr. CHRYSLER, K.C.: Do you mean in the general Act, Mr. Minister?

Hon. Mr. COCHRANE: Yes.

Mr. MACLEAN: Do you want that struck out? I would not stand for it for a minute. First of all I will speak on behalf of the West. There are a great many railway bridges in the West where there are no public roads, and these municipalities say that it is a very expensive proposition to make a public bridge across a long gully. They want it provided that hereafter if a railway company is building a new bridge or materially reconstructing an existing bridge, the municipality should have the right to come to the Board and ask to have a public way attached to that bridge. By that co-operation the public will be served and the railway will not be damaged. If there is damage, compensation will be paid as in the judgment of the Board. All over Ontario the same situation exists. I have had members come to me in the Railway Committee, in my experience of many years, and say that was the thing they wanted, that when another bridge was being built, or reconstructed, if the two could co-operate it should be done jointly. The physical characteristics of York Township in my own constituency are deep gullies and ravines, which the railway companies have bridged. Bridges are being reconstructed in the city of Toronto to-day, and the railway company has expressed a willingness to join in that reconstruction. My own experience in the local case to which I have referred, and from the views of members from all over the Dominion, have convinced me that this provision should be adopted. I see no reason why the railway companies should object to it, because compensation is provided for.

The CHAIRMAN: Would you also tell us why Mr. Chrysler, when the subsection says the additional cost to the company shall be paid by the municipality, the railways should object?

Mr. CHRYSLER, K.C.: I am just going to tell you.

Mr. MACLEAN: That is what we want.

Mr. CHRYSLER, K.C.: In the first place there may be special cases. There is for example, no less an outstanding case than that of the Victoria Bridge at Montreal.

Mr. MACLEAN: That is the big case in point.

Mr. CHRYSLER, K.C.: The Victoria Bridge at Montreal has road approaches and accommodation for foot passengers and street cars as well as for the railway. So has the Alexandra Bridge at Ottawa. These are special cases. A great many cases relate to smaller bridges in small municipalities where the bridge connects the railway at one end with the railway at the other end, and there is no street approach or connection with the highway of the municipality at the end of the bridge. The principle is

wrong. It is all right where co-operation is entered into between the municipality and the railway, as it has been in the case mentioned, or where bonuses have been given. The Alexandra Bridge was bonused to a large amount of money by the City of Ottawa upon condition that a highway bridge was provided and accommodation for foot passengers. The provision of this Bill says that not co-operation, not joint cost in any proportion, simply the additional cost shall be paid. That is to say, you take a railway bridge anywhere, constructed for railway purposes only, and the municipality may come along and construct a footpath along each side of it, paying only the additional cost of the footpath, and thus making use of the structure which the railway has provided, without providing any contribution to its cost at all.

Mr. MACLEAN: The Board can order what compensation is reasonable and proper.

Mr. CHRYSLER, K.C.: The Board can order a municipality to pay the additional cost of constructing, maintaining and renewing a footpath or a roadway. But that leaves out the whole structure which the railway company has built without providing any contribution to the original cost. That is only an objection to the form of the Bill, the section should be amended. The objection we make is that, knowing the size of the population who are to use it and the conditions surrounding it, we say our railway bridge should not be used as part of the public highway; without our consent. it is a source of danger and trouble to the people operating that railway to have particularly foot passengers, and in a minor degree, the use by teams and vehicles. There is the difficulty about safeguarding it. The railway is not built at a point where a highway crossed the river, yet you concentrate traffic from perhaps a considerable district and bring it just to the place where they are moving trains.

Hon. Mr. COCHRANE: If there was no road there, they would have to arrange for a road.

Mr. CARVELL: Would there not be more danger to the traffic than to the railway?

Mr. CHRYSLER, K.C.: The railway would be responsible in the end, they would have to pay damages.

Hon. Mr. COCHRANE: Not when the Parliament of Canada insist on it.

Mr. CHRYSLER, K.C.: According to my recollection of the bridge which crosses the river at Winnipeg, which was partly a public highway and partly a railroad bridge, the road crosses on each side on the outside of the tracks, and traffic on the highway, has to find its way away from the railway in each direction. There is always the danger of part of the railway being used near the terminus of the bridge for a cross-over by people who are on the wrong side, which concentrates traffic crossing the tracks, which brings it to the place near the tracks, and unless great skill is used—as there was, I admit, in the construction of the Alexandra Bridge so that the traffic does not encounter the steam railway except at one point as members of the Committee will remember, there is a certain amount of foot passenger traffic which crosses from the west side of that bridge at the level to get to the east side at this end of the bridge.

The CHAIRMAN: Just here a moment, Mr. Chrysler, if you will read the last three lines you will see that this all comes under the control of the Board, and the Board may impose any terms or conditions as to the use of such passageway or otherwise which are deemed proper.

Mr. CHRYSLER, K.C.: It won't protect us, Mr. Chairman. In the second place, I submit there is no reason why the municipality or the people who make use of it should have the use of our bridge as a structure to hang a public highway on without contributing in part at least to the cost of that bridge. The principle is wrong.

Mr. MACLEAN: The public has subsidized these railways—

Mr. CHRYSLER, K.C.: They have and they have not.

Mr. SCOTT, K.C.: I want to add this to what Mr. Chrysler has said, I have not the figures here, but taking the number of people killed on railways during one year—I

have the figures compiled for the Canadian Pacific Railway for, I think it was, 1915, and, I think, there were about ten times the number of trespassers killed along that line than there were of other persons who were properly on the grounds of the railway company.

Mr. CARVELL: But if you had a sidewalk running alongside the track you will eliminate altogether that danger.

Mr. SCOTT, K.C.: That may be the case in some instances, but you have not sufficient traffic in the country districts to have walks constructed on each side of the railway; and even where there are walks, if a man wants to cross from one walk to another he will cut across the railway tracks. The railways are making a special effort to keep people away from the railway tracks; in Ottawa and other places, the company is spending large sums of money to prevent people trespassing on their lines, with a view to avoiding accidents. The proposed legislation will have the effect of attracting a large number of people to the railway tracks who would not otherwise be there, and it is better to leave it to the municipalities and the railway companies to make amicable arrangements where the necessity arises.

Mr. MACLEAN: There is one aspect of the case that both counsel for the railways have not submitted to us. They have given us their side of the case, but they do not deal with the particular principle that the municipalities are not able, in many cases, to build bridges where it is far too big a proposition for them to handle, because of the amount of money involved. These municipalities would like to have the right to co-operate with the railways in the erection of a new bridge, or in the reconstruction of an old bridge. I see no objection to that contention, in fact I may say that I am an advocate of their rights in that respect. In cases of this kind there ought to be co-operation and not a waste of money in erecting independent bridges where there is no necessity for them; the railway company should in such cases be compelled to co-operate with the municipalities to prevent this waste of money. While there is this danger of people trying to cross the tracks under present conditions, where there is co-operation between the railways and the municipalities, there should be imposed upon the municipality, by the board, that a foot path, or a subway, which costs very little, should be provided for the people to cross the tracks, so that the danger of accidents would be removed in cases where the Board thinks it is wise to make that order. In that case the railway company can always come to the Board and say, "If you impose this provision for a foot path on the main bridge, you must make it safe by providing a subway," and the cost of that will be imposed upon the municipality.

Mr. CARVELL: One thing struck me about Mr. Chrysler's argument with regard to the hanging of a foot path on a bridge. The Bill only provides that the municipality shall pay for the extra cost of hanging. I think there is something in his argument, but after all the main superstructure has to be built by the company and that is the chief cost.

Hon. Mr. COCHRANE: They are not doing that in Toronto. They are doing it for themselves. They have to do it.

Mr. CARVELL: Mr. Chrysler suggests that they should pay something on the capital cost of the main superstructure as well.

The CHAIRMAN: In addition to the original cost.

Mr. MACLEAN: They have been largely bonused and give great franchises and privileges, and while they accommodate the public, the public are their main clients and the source of all their revenue. If I were in business, I would like to have roads leading to my front door.

Mr. NESBITT: That is not applicable to this case. People would like to see the bridges joined on terms. I have confidence in the Dominion Board doing justice to the railways, and when we find them doing injustice, we will change the Board.

I agree as to the right of the Board, but perhaps the clause does not allow the Board enough power or discretion as to the cost.

Mr. MACLEAN: If Mr. Chrysler can suggest something that he thinks is fair, I won't object, but I want the general principle admitted in the Act.

Mr. NESBITT: I agree with Mr. Maclean but there is a possibility that this clause does not allow the Board enough leeway.

Hon. Mr. COCHRANE: But the municipality has to pay the extra expense. It does not cost them anything. They also have to pay the expense for the upkeep.,

Mr. CHRYSLER, K.C.: If you take the wider view, if it is a foot path, it may cost nothing additional. If it is a carriage way, does the whole structure not require to be built with additional strength?

The CHAIRMAN: Does the municipality not pay the additional cost?

Mr. MACLEAN: Yes.

Mr. NESBITT: If it is a carriageway they would have to build it stronger. Probably for a foot path it would require to be built stronger. Have the Board the right to make any order as to the cost?

Mr. MACDONELL: Only as to the additional cost.

Mr. NESBITT: Would that be part of the additional cost?

Hon. Mr. COCHRANE: They might have to strengthen the bridge to carry the additional weight.

Mr. CARVELL: Suppose the railway company could show the Board there was not a sufficient factor of safety to admit of the new structure being applied to the old, the Board would not authorize the construction of the highway bridge.

Mr. SINCLAIR: If it were absolutely new, would they make the municipality pay the additional cost?

Hon. Mr. COCHRANE: If they had to build the bridge stronger in order to carry it, the municipality would have to pay the extra cost.

Mr. MACLEAN: And Toronto has entered into negotiations with the Canadian Pacific, to double-track the bridges leading into Toronto, and the city clearly admits it would have to pay for the increased cost by strengthening the piers and the size of the steel and everything else, and that is provided for in this Bill.

Mr. NESBITT: That is the only thing I am contending for, and we have Mr. Johnston's view as to that.

Hon. Mr. COCHRANE: We will leave it to Mr. Johnston and Mr. Chrysler.

Mr. NESBITT: I am perfectly willing to do that. It is understood Mr. Johnston and Mr. Chrysler will look at subsection 6 and see if it provides for what we want in regard to the additional cost of strengthening the bridges.

Mr. CHRYSLER, K.C.: It should be wide enough to cover all the cases. In the case of the Victoria Bridge the committee will remember probably there was 60 feet of pier and 60 feet of abutments supporting it, to carry the railway. You add to that 30 feet more on each side to carry the highway. That means not merely 30 feet of structure on the level of the travelled roadway, but it means 30 feet more of abutment from the base up—30 feet more strength in the construction of the bridge.

Mr. NESBITT: That is all we want to get at. Was there any subsidy given to them?

Mr. MACLEAN: Yes, a very big subsidy.

The CHAIRMAN: You do not believe, with the section as it stands, that you are protected in regard to the foundations of the bridge.

Mr. CHRYSLER, K.C.: No, sir, not now, as this clause is drawn.

Mr. MACLEAN: If you can prove your case we will try and meet your views.

Mr. CARVELL: Have there not been hundreds of instances where a sidewalk has been constructed alongside a railway bridge and the structure strengthened without costing the railway company one cent?

Mr. CHRYSLER, K.C.: That may be so. I think that is what the man who drafted this section had in his mind.

Section allowed to stand to permit of the drafting of a suitable amendment.

The CHAIRMAN: What is your next objection.

Mr. CHRYSLER, K.C.: It relates to section 256 as amended. According to my notes, "The railway of the company may, if leave therefor is first obtained from the Board as hereinafter authorized, but shall not, without such leave, be carried upon, along or across any existing highway: Provided that the company shall make such compensation to adjacent or abutting landowners as the Board deems proper." I understood the four lines at the end reading "and provided that where leave is obtained to carry any railway along the highway, the Board may require the company to make such compensation to the municipality as the Board deems proper," were to be struck out. Is that correct, Mr. Johnston?

Mr. JOHNSTON, K.C.: We have not passed this clause.

The CHAIRMAN: Section 256 was allowed to stand pending some remarks from you.

Mr. JOHNSTON, K.C.: I have a note that Sir Henry Drayton thought the last sentence should be struck out.

Mr. MACLEAN: Do you want it struck out?

Mr. CHRYSLER, K.C.: I was under the impression that the last provision of section 256 was struck out.

Mr. MACDONELL: Where is the harm in that?

Mr. CHRYSLER, K.C.: There should be no compensation to the municipality in such a case as this.

Mr. MACDONELL: This is the case of using the highway as a roadway.

Mr. CHRYSLER, K.C.: The same as everybody does.

Hon. Mr. COCHRANE: A while ago you were complaining about the matter of bridges. It seems to me this is a more dangerous thing still.

MR. CHRYSLER, K.C.: A highway is a highway.

Hon. Mr. COCHRANE: Not a railway.

Mr. CHRYSLER, K.C.: Yes. It does not belong to the municipality except as a trustee for the public. It is not property which the municipality can sell unless it closes it. I do not know how that is in the provinces.

Mr. CARVELL: I think so.

Mr. CHRYSLER, K.C.: It obtains an order from some authority and closes a highway, and then it is simply so much land that the municipality can sell. But where a railway uses part of a highway—take the case of crossing it, it either crosses above or below, and does not touch it. If it crosses on the level it comes under regulations which require it to preserve the right of passage to the public as it was before. There is nothing to pay for.

Mr. MACDONELL: The language of this section only has reference to a railway being constructed along the highway. It does not refer to crossing at all.

Mr. CHRYSLER, K.C.: Now, as to going along a highway, the case is no different, You have to make in the previous part of this section, under a law which is comparatively recent, compensation to the abutting landowners for damage done to them.

You have to comply with the orders of the Board as to the manner in which you construct that railway, you have to make the rails so that the public can use the roadway, even where the rails are just as they did before, except when these rails are occupied by a moving train. Therefore the municipality still owns it. The company has acquired no property in it except a right of passage and there is no compensation that should be paid to the municipality beyond the proper terms that the Board may impose.

Hon. Mr. COCHRANE: It is not a proper thing to do to put a railway on the highway.

Mr. CARVELL: Sometimes you have to do it.

Hon. Mr. COCHRANE: You should not encourage it.

Mr. CARVELL: I know that.

Mr. SINCLAIR: The Intercolonial has done it.

Mr. CARVELL: I think Mr. Chrysler is right.

MR. MACLEAN: Where a city would apply for compensation—

Mr. CHRYSLER, K.C.: When they sell the street? So long as it is a public highway why should we pay for it?

Mr. MACDONELL: Supposing you carry a railway two miles or more along a public highway, don't you think you should pay something?

Mr. CHRYSLER, K.C.: This is done under the direction of the Board for some good purpose, I can understand.

Mr. MACLEAN: For a good purpose of protecting somebody's rights.

Mr. CHRYSLER, K.C.: Nobody's rights, except the rights of the municipality, in order that you do not destroy another section of the city.

Mr. NESBITT: Anyway, they have given their consent.

Mr. MACLEAN: No, if they get some compensation.

Mr. CARVELL: No. I think there is a misunderstanding. I had a case in the last four or five years where the Canadian Pacific Railway occupied at least a mile of the highway. They did it, of course, by the order of the Board; they had to get the authority of the Board before they could do so. They simply had to provide another highway as good as the one they took away from the public.

Mr. MACDONELL: That is compensation.

Mr. CARVELL: Hold on now. They had to settle with the landowners; they expropriated—no we did not expropriate. I think we finally settled without expropriation. However, they settled it by paying the landowner for all the additional land they took, and for all the damage he sustained. At least, he got compensation under the Railway Act. Now, what was taken away from the municipality? What right had the municipality as such to compensation, when they gave the public as good a highway as they had before, and they paid the landowners all the damage to which they were entitled? Surely the railway company had absolved themselves from any claims the public had upon them.

Hon. Mr. COCHRANE: If that was carried out, I would have no objection at all.

The CHAIRMAN: I think the Committee should know that Sir Henry Drayton has suggested that the last four lines of this subsection be struck out.

Mr. L. P. PELTIER: I want to instance a case at Fort William, a case which went to the Privy Council——

Mr. CHRYSLER, K.C.: The railroads are running all over the streets in Fort William.

Mr. PELTIER: I want to have my say. The experience we had may be worth while. We allowed the Grand Trunk Pacific to come down a street by a municipal by-law by agreement with the company. The street was about a mile and a quarter long, and was

called Empire Avenue. The city never closed the street, the railroad company came down the street without the city closing it as a public highway, and the Railway Board said they had no jurisdiction over the city to close it as a public highway. The street was destroyed as a public highway practically. The Board would not even order them to put the railway in such a condition as to enable vehicle traffic to travel over the whole length of the street. The Grand Trunk Pacific built lines of wire, for instance, for protection purposes, and erected their block system along one side on concrete pillars, four feet high, across land that I own, and which cost me $40,000, which shut me off from access to this land. What protection have property owners under this Act?

The CHAIRMAN: They are protected in the first part of this Bill. It is amended to cover your case.

Mr. MACLEAN: That is only the rights of the municipalities.

Mr. PELTIER: The municipality has sewers and waterworks and other works of construction under the streets, and they spend a lot of money on those and should be protected.

Mr. NESBITT: Did not the municipality give the railway company the right to go down that street?

Mr. PELTIER: They did, but they did not close it up as a highway.

Mr. NESBITT: But the municipality gave them the right to go down the street?

Mr. PELTIER: Yes.

Mr. NESBITT: Then the municipality should, at that time, have arranged with the company for what they wanted them to do. Now the first part of this section gives the municipalities protection.

The CHAIRMAN: What is the proposal of the Committee with regard to this section?

Mr. CHRYSLER, K.C.: I ask that the four lines at the end be struck out.

Mr. SINCLAIR: If it is necessary for the municipality to get a new road to take the place of the one that was taken by the railway the railway should pay for it, but it does not seem to me that is provided for.

Mr. JOHNSTON, K.C.: The municipality may have to go to considerable expense itself, either to widen the street or in other ways to protect its citizens. If the railway is to go down or along a street why should not the railway pay compensation for it?

Mr. CARVELL: I think the section should be amended in some way to make it positive that the railway company must furnish a new highway equally as good as the one they take away.

Mr. MACLEAN: Is it not the better principle to leave the protection of the public to the Railway Board?

Mr. CARVELL: I have not read this section as closely as I should like to, but I think there is not sufficient in the section to compel the railway company to provide a new highway wherever necessary.

Hon. Mr. COCHRANE: I think we will leave it to the good judgment of the Board.

Mr. NESBITT: I would rather have Mr. Johnston and Mr. Chrysler meet and see if they cannot come to some agreement.

Mr. CARVELL: I would like to strike out the words "providing for compensation to the municipality" because the railway companies have to make compensation to the landowners, and to provide another highway, that is all the railway company should be asked to do. I am not sure whether there is ample provision made in the Act for a new highway; I presume there must be; we all want that.

The CHAIRMAN: I think it is here in section 164.

Clause allowed to stand for conference between counsel.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 23--JUNE 1, 1917

(Semi-monthly pay for railway employees, etc.)

OTTAWA
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1917

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MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

Committee Room,

Friday, June 1, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Bradbury, Blain, Carvell, Cochrane, Cromwell, Macdonell, Nesbitt, Oliver, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

At one o'clock the Committee adjourned until Tuesday next at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,

OTTAWA, June 1, 1917.

The Committee met at eleven o'clock a.m.

On Section 256, Highway crossings.

The CHAIRMAN: Mr. Chrysler was to have some amendments ready to submit this morning.

Mr. CHRYSLER, K.C.: I have a word to say with reference to section 256. I have been speaking to Mr. Carvell about it and I will state the point as briefly as possible. The first four lines of that section are all that concern the operation of steam railways on highways, except the last four lines. The first four lines read as follows:—

> "The railway of the company, may, if leave therefor is first obtained from the Board as hereinafter authorized, but shall not without such leave be carried upon, along or across any existing highway."

Mr. SINCLAIR: Did we not pass that section?

The CHAIRMAN: No, it is open for discussion.

Mr. CHRYSLER, K.C.: That section gives the power, subject to the approval of the Board, to authorize the carrying of the railway, upon, across or along a highway. Then the next four lines do not concern us. They apply to the case of adjacent or abutting land owners, and that provision was inserted because in the Fort William case the Railway Board granted an order, but that order was set aside in the Privy Council, because they said, "you have no power to order compensation to be paid the abutting land owners." There was no question about there being compensation to the city. I submit that that power is already in the Act. The next seven or eight lines only relate to the carrying of street railways or terminals along that highway, and the last four lines read as follows:—

> "Provided that where leave is obtained to carry any railway along a highway the Board may require the company to make such compensation to the municipality as the Board deems proper."

I stated yesterday—and I believe my statement was supported by the recommendation of the Chairman of the Railway Board as stated by Mr. Blair at a former meeting—that these words are not necessary. At the time the matter was under discussion yesterday I could not meet the objection of Mr. Carvell who said he thought there should be something here providing that the Company should be ordered, in the proper case, to widen the roadway or to provide another roadway. That is all covered by the general section 40, which is intended to apply to all these cases, in which the approval of the Board is necessary. Section 40 says:

> Whenever this Act requires or directs that before the doing of any work by the Company the approval of the Board must be first obtained, and whenever any such work has been done before the thirty-first day of December, one thousand nine hundred and nine, without such approval, the Board shall nevertheless have power to approve of the same and to impose any terms and conditions upon such company that may be thought proper in the premises.

Mr. JOHNSTON, K.C.: We have amended that section.

Mr. CHRYSLER, K.C.: I do not know how you have amended it.

Section in its amended form read by Mr. Johnston, K.C., who observed: That does not cover this case at all.

Mr. CHRYSLER, K.C.: There is a section in which it is provided that the Board may make any terms they like when they issue an order.

Mr. JOHNSTON, K.C.: What Mr. Carvell is thinking of is section 164, which says: "The Company shall restore as nearly as possible, to its former state, any river, stream, water-course, highway". That does not cover the point either.

Mr. CHRYSLER, K.C.: That is not my point. My point is that the Board already have the power.

Mr. MACDONELL: What are you asking for?

Mr. CHRYSLER, K.C.: I want the last four lines to be struck out, which provide for compensation to be paid to the municipality. The Board has the right to do that under its general powers in making an order. It does not need to make an order unless it chooses, but when it does so it must make the order upon such conditions as it deems proper.

Hon. Mr. COCHRANE: The lawyers argued in the telephone matter that if the word "compensation" was not in the Act, compensation could not be paid.

Mr. CARVELL: Mr. Chrysler is going on to argue the same thing now.

Mr. CHRYSLER, K.C.: I am arguing that the matter of compensation should be left to the board, depending on the circumstances of the case.

Hon. Mr. COCHRANE: Leave the section as it is.

Mr. CHRYSLER, K.C.: If that is done you order compensation in every case, which is a different thing altogether. This is a direction to the board to order compensation.

Mr. JOHNSTON, K.C.: Would it satisfy you to have an amendment that the board may require the company to make such compensation, if any, to the municipality as the board deems proper.

Mr. CHRYSLER, K.C.: I would not object to that.

The CHAIRMAN: Is that satisfactory?

Mr. CHRYSLER, K.C.: Yes.

Mr. SINCLAIR: Does the provision make it clear the company must provide a new road-bed?

Mr. JOHNSTON, K.C.: No, Sir.

Mr. SINCLAIR: And pay the expense of doing it?

Mr. JOHNSTON, K.C.: No, it does not, but section 164 says that the company shall restore as nearly as possible to its former estate any river, stream, water-course or highway.

The CHAIRMAN: Shall the section as amended by the addition of the words "if any" on the second-last line, be adopted?

Section as amended adopted.

Mr. CHRYSLER, K.C.: We have a somewhat similar point in connection with section 171. That was under discussion yesterday, and we were asked to bring in an amendment to be substituted for subsection 3 of section 171. What we propose, subject to the approval of the committee, is to strike out subsection 3—providing that the board may sanction deviation of one mile—as it stands, and substitute therefor the following: (Reads)—

> "In granting any such sanction, the board, upon the application of the company, may sanction a deviation of not more than one-half mile from any one point as shown on the general location approved by the board, and any such

deviation shall be shown upon the general location plan filed with the Department of Railways and Canals, and upon the duplicate thereof filed with the board."

Mr. CARVELL: You are suggesting that the deviation be cut down from a mile to half a mile?

Mr. CHRYSLER, K.C.: Yes, Sir, that is the old distance, and I think it is ample.

The CHAIRMAN: Mr. Johnston assures me that this amendment would not interfere with the subject matter of the other clauses referring to the location of the line.

Mr. JOHNSTON, K.C.: Mr. Chrysler's amendment was settled between us yesterday.

Mr. CARVELL: I do not know whether this is the section in question, but there was some discussion yesterday on the point that as the Act was drafted it required an entirely new plan that seemed to be unnecessary. Does this amendment overcome that?

Mr. CHRYSLER, K.C.: Yes. What is proposed is that the board may direct how the change is to be made by simply amending the plan.

Mr. NESBITT: Would the chairman read that clause as it is propsed to amend it.

Amendment read by the chairman.

Mr. JOHNSTON, K.C.: Why not strike out the words "in granting such sanction" at the beginning?

Mr. NESBITT: Would it always be on the application of the company this change would be made, or would there be any case in which the public might apply for a change of location.

Mr. CHRYSLER: That is covered by another section, which is now, for the first time, placed in the Act, which provides that where railways are contiguous to another line, or for some other reason it is undesirable in the public interest to have two separate rights of way, etc.—that is covered by subsections 4 and 5 of section 194.

Mr. NESBITT: What I have in mind is the location at Saskatoon where the Grand Trunk Pacific Railway is two miles out of town; it is a most infernal condition of affairs.

Mr. CHRYSLER: That is intended to be covered by these subsections, 4 and 5, compelling railways to use a common track if necessary.

Mr. NESBITT: Subsection 4 applies to other railways where there is a duplication of tracks in the neighbourhood, that does not cover the case I am alluding to.

Mr. CHRYSLER, K.C.: I do not know what the Saskatoon case is.

Mr. NESBITT: The Grand Trunk Pacific is situated about two miles out of town.

Mr. CHRYSLER, K.C.: That is the location of the station.

Mr. NESBITT: No, the general line.

Mr. CHRYSLER, K.C.: That is covered by this section, the location must now be approved by the Board, that is 168.

Mr. JOHNSTON, K.C.: Mr. Blair says there is no objection to this amendment.

Mr. Johnston's suggestion striking out the words: "in granting any such sanction" concurred in and subsection 3, as amended, adopted.

Mr. CHRYSLER, K.C.: The next section we were asked to prepare an amendment for was section 252 with reference to bridges, the sixth subsection. After the word "footway" in the twenty-fifth line—

Mr. NESBITT: You leave the subsection as it is down to the word "footway" in the twenty-fifth line?

Mr. CHRYSLER, K.C.: Yes, and then we strike out the words:

> "The additional cost to the company of constructing, maintaining and renewing which, as fixed by or under the direction of the Board, shall be paid by the municipality or municipalities as the Board shall direct."

and substitute therefor:—

"And the municipality or municipalities shall pay to the company such sum or sums as the Board may direct as the share of such municipality or municipalities of the cost of constructing, maintaining and renewing such bridge, and for the use thereof."

And the remainder of the clause remains as it is.

The CHAIRMAN: The subsection as it is proposed to amend it will read as follows:

6. "Upon the application of any municipality or municipalities interested, the Board may, where it deems it reasonable and proper, require the company to construct under or along-side of its track upon any bridge being constructed, reconstructed or materially altered by the company a passageway for the use of the public either as a general highway or as a footway, and the municipality or municipalities shall pay to the company such sum or sums as the Board may direct as the share of such a municipality or municipalities of the cost of constructing, maintaining and renewing such bridge, and for the use thereof, and the Board may impose any terms or conditions as to the use of such passageway or otherwise which it deems proper."

Hon. Mr. COCHRANE: Don't you think there ought to be some limit as to the amount the municipality shall pay on the construction? It is only in a case where the building of a bridge is going to cost them more to build that they want to carry it on the railway bridge.

Mr. CHRYSLER, K.C.: Of course, they need not take advantage of it unless they wish to do so.

Mr. BLAIN: What about the existing bridge?

Mr. CHRYSLER, K.C.: This, as framed, is intended to apply to a new bridge or any bridge which is under reconstruction, or which is being materially altered. It would apply to an existing bridge if it were being rebuilt.

Mr. BLAIN: Why should the company not pay a part?

Mr. CHRYSLER, K.C.: It is intended that they shall. This is only so that the Board may fix the part the municipality should pay by way of contribution.

Mr. CARVELL: I must say that at first blush I do not like the amendment. It comes back to the principle we were discussing both with respect to telephones and to the use of streets. This amendment intimates in the beginning that the municipality should pay something for the right of fastening its highway or footpath alongside a railway bridge, and for the use of it; and I do not like to adopt that principle. I would not probably go as far as Mr. Maclean did yesterady, but practically it is a fact that almost every railway in Canada has received very large assistance from the public. Without public assistance none of the railways in Canada to-day would exist; and if a convenience can be given the municipality or the public by attaching a footway to a railway bridge, or by giving a highway alongside a railway bridge, it does seem to me that the municipality should only pay the additional cost of putting the footway or highway on the structure.

Mr. SINCLAIR: Or of strengthening the bridge where necessary.

Mr. CARVELL: That would necessarily follow in. If strengthening is required it is part of the cost of giving the accommodation to the public.

Mr. BRADBURY: They should not be asked to pay for the right to use it.

Mr. CARVELL: This rather intimates to the Board beforehand that they should grant the railway company something for the use of their portion of the structure.

The CHAIRMAN: Shall this amendment be adopted.

Some Hon. MEMBERS: No.

Mr. NESBITT: I would suggest that the words "cost of constructing" be left in and the words "maintaining and renewing" be struck out.

Mr. CARVELL: I think the words "and for the use thereof" are the most significant.

Mr. CHRYSLER, K.C.: I do not care about the words "and for the use thereof". Strike them out and I will be satisfied. We do not want any pay for the use.

The CHAIRMAN: What is the difference between the subsection as it now stands and the proposed amendment?

Mr. JOHNSTON, K.C.: I do not think there is much difference, if you strike out the words "and for the use thereof". The sting is in the tail.

Mr. CARVELL: I think so.

Mr. CHRYSLER, K.C.: I do not attach any importance to those words. I say there is no difference between our property and the property of any other private individual. You talk about subsidies: it is our property; it is dedicated to railway use, and you say: We want to make use of that also for the purposes of the municipality. Very well, then pay what is just and fair as a contribution to what you are taking. You are taking part of our property. When you say we will pay the additional cost, you whittle that down to the actual sum expended for making the improvement. It is just the case we have been talking about, which is a small matter and not the whole case by any means—the case of hanging a footway on the side of the bridge. This would be quite proper for that case. If you put a highway on your bridge the bridge would have to be strengthened. Take the case of Ottawa, where the highway is carried over the bridge at New Edinburgh; the bridge may have to be renewed in half the time that it would if you did not have the strain of the highway traffic on the bridge.

Mr. NESBITT: I do not care about the subsidies. We have given subsidies for the purpose of getting railway connection, and we have given bonuses for that very object. I would suggest that you strike out the words "the use thereof."

Mr. CARVELL: The public have some rights even beyond that. It is true we give this as a subsidy to get the railway company to come in, but in addition to that the Board has the right and does grant to the railway company such tariffs as will make its venture remunerative, and so long as the railway company is protected by tariffs and by the Board and is not in the position of mercantile firms, I think it owes some duty to the public. If the public could get some accommodation from the railway without doing damage to it, I think we are entitled to it.

Mr. JOHNSTON, K.C.: You like the section as drawn?

Mr. CARVELL: Yes.

Mr. MACDONELL: I think the section as drawn protects everybody. It calls upon the municipality to pay the additional cost to the company of constructing, maintaining and renewing.

MR. CHRYSLER, K.C.: Would you reverse the operation and insert a clause saying that the railway should be carried over a municipal bridge on terms of paying the additional cost?

MR. MACDONELL: No.

MR. CARVELL: I do not think that is a fair comparison.

MR. CHRYSLER, K.C.: If they are a public body, we are also.

MR. SINCLAIR: Tramways are carried over municipal bridges frequently.

Mr. CHRYSLER, K.C.: We think bringing the municipalities to the bridge is not wise legislation.

MR. JOHNSTON, K.C.: You think if a municipality wants a bridge they should build it?

MR. CARVELL: I have in my own mind cases where bridges are built within a short distance of each other. There is a big railway bridge and a highway bridge within five or six rods of each other, crossing the St. John river.

MR. NESBITT: Let us leave it to the Board.

MR. BLAIN: In that case you say that one bridge would have done?

MR. CARVELL: Yes, at a very great reduction in cost.

Mr. NESBITT: We propose to leave it to the Board, and we limit the Board to the additional cost of construction.

Hon. Mr. COCHRANE: That would include the cost, if the bridge had to be built stronger.

Mr. MACDONELL: Constructing, maintaining and renewing—that is all that is necessary.

Mr. CARVELL: If it is desired to have the word "strengthening" put in there, I would agree to it, but I do not think it makes it any stronger.

Section adopted.

On Section 161, Sale of subsidized railways not kept in repair.

Mr. CHRYSLER, K.C.: Without desiring to have any discussion about it, I have been asked to bring to the attention of the minister and the committee the provisions of Section 161. Mr. Phippen, of the Canadian Northern Railway, says that he thinks that is not wise legislation.

Mr. NESBITT: The whole section?

Mr. CHRYSLER, K.C.: Yes. I do not know that the committee will adopt my view, but I think it is my duty to mention it.

Mr. JOHNSTON, K.C.: It is I and II George V. and is not amended very much.

Mr. CHRYSLER, K.C.: Slightly.

The CHAIRMAN: After the word "secured" the committee have amended the section by inserting the words "by mortgage or otherwise upon such railway." That is the only amendment they have made.

Mr. CHRYSLER, K.C.: My objection to it will be very brief. Mr. Phippen says in his letters to me that he does not think the punishment will fit the crime, and that is a short statement of it. It is proposed to give to the minister the right to apply to the Board for an order that a railway company, which has been aided by a subsidy from the Government of Canada, and which can not be safely operated by reason of the condition of the railway, shall be put in a safe and efficient condition, which order the Board is authorized to make after notice to the president and manager of the company and the trustees and bondholders, etc. Now on failure of the company to comply with the order, a lien is created by this subsection, which prevails over the lien of the bondholders. The effect of that is to give to the Government, for its money expended in this way, the first lien and charge upon the roadway.

Mr. JOHNSTON, K.C.: That is just like the practice in a receiver application.

Mr. CHRYSLER, K.C.: A receiver's certificate.

Mr. JOHNSTON, K.C.: It is salvage money and protects the property for the bondholders.

The CHAIRMAN: I understand this legislation has been in force for many years.

Mr. CARVELL: I would like to see an amendment passed that when such condition as this exists in connection with a Government railway, the Government would be compelled to take it over.

Mr. CHRYSLER, K.C.: That would be different. In this case they virtually take it over and do not pay anything.

Section adopted.

On section 287—Notice of accidents to be sent to Board.

Mr. CHRYSLER, K.C.: I have had some communication with the officers of the companies, and I suggest that the amendments proposed by the representatives of the railway are unnecessary and should not be adopted, but I can see one change in this that would perhaps meet their objection. Section 287 reads:

> Every company shall, as soon as possible and immediately after the head officers of the company have received information of the occurrence upon the railway belonging to such company, of any accident attended with personal injury to any person using the railway, or to any employee of the company, or whereby any bridge, culvert, viaduct, or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof, with full particulars, to the Board.

As I understood, the objection to this in practice was that there was some delay before the Board got notice, due to the fact that the notice sent by the official in charge of the work had to filter through a number of intermediate offices before it reached the head office, and that the notice to the Board was given only by the head office. I do not know how that is in the matter of practice, but it seems to me that the word "head" in the second line is unnecessary and should be omitted. I do not think the notice is given in that way. I think the superintendents give the notice. As to the proposed amendments requiring the man on the work, whoever he is—engineer, conductor, track foreman, whoever he may be—to immediately telegraph to the Board, we submit that it is entirely unnecessary. The whole thing as it stands is under the jurisdiction of the Board, who may make regulations, if you look at subsection 2, declaring the manner and form in which information and notice shall be given, and the class of actions to which this section shall apply. As it stands it applies to every action, even the most insignificant, and that is what the Board are supposed to regulate. I ask that the section be not amended except by omitting the word " head " in the second line.

The CHARIMAN: I will read the amendment as proposed by the representatives of the Brotherhoods of Railwaymen, who were present on the occasion when this matter was formerly taken up. It was proposed to add these words on the last line of the first section. (Reads).

> Any conductor, or other employee, making a report to the Company of the occurrence of any such action shall at the same time transmit to the Board a copy of such report, and as soon as possible after such action notify the Board of the same by telegram.

I may say that this section has been very fully discussed.

Mr. CHRYSLER, K.C.: Except by me.

The CHAIRMAN: Except by Mr. Chrysler. It was generally conceded that the amedment was a fair and reasonable one. Now Mr. Chrysler has asked us to strike out the word "head" on the second line, and to reject the amendment I have just read. What is the wish of the Committee?

Mr. CARVELL: Does not the adoption of the amendment referred to mean that in nine cases out of ten the report will be made possible by the man who may be responsible to some extent for the action, and I would be afraid that the report that would reach the Board would not be absolutely accurate. I do not want to cast any reflection on railway officials, because I have a very high regard for them, but they are

all human beings, and we all know this, that the big Railway Companies—I do not include the Government, let them do as they have a mind to—hold their officials absolutely accountable for any accident. If a train goes off the track somebody pays the penalty, and naturally there would be a feeling on the part of the railway men to protect themselves as far as possible. I would have some doubt as to the wisdom of the Board being compelled to accept the very first report sent out by the men who are operating the road. I would not mind if you say the superintendent or some such official, but to ask a conductor, engineer or trackman or men similarly circumstanced to send a report, I would have some difficulty in accepting it.

Mr. NESBITT: They simply send the report and the Board investigates it.

The CHAIRMAN: The amendment requires that a report of the accident be transmitted to the Board and followed up with a telegram.

Hon. Mr. COCHRANE: Would it not have the same effect if they telegraphed it to the head?

Mr. CARVELL: No, because as a matter of fact the divisional superintendent makes an investigation on his own account.

Mr. BEST: I would like to offer one word in reply to what Mr. Carvell has said. One of the strongest reasons why the railway employees are advocating this amendment is that the evidences of a railway accident are often removed, and neither the Board nor any person outside of the railway company or its officers has an opportunity to investigate them. It is true, as Mr. Carvell points out, that it may be necessary for the employee himself to report the accident; a conductor, if he is in charge of a train, and if an engineer, if he is in charge of a light engine, or if the accident happens in the shop, the locomotive foreman or other officer. In such case he will be the employee referred to in the subsection. But the important point is that at present the evidences of the accident are removed and the Board, which should investigate the accident, have not an opportunity of determining what brought it about.

The CHAIRMAN: What objection have you to the word "head" being struck out?

Mr. BEST: It would not serve the purpose at all, simply because the same opportunity would exist for removing the evidences of the accident, and for the Board not having an opportunity to deputize an officer to go to the scene and investigate how the accident happened.

Mr. CARVELL: But would not the physical evidences of the cause of the accident be removed whether the report was sent in by the official or by the head office? What is the difference? The physical evidence of the accident would have to be removed in many cases in order to permit the track to be repaired.

Mr. BEST: In some cases it would be necessary to remove the causes of the accident in order to get the main line clear, but in many cases it is not necessary to do that, providing everything in connection with the train is clear of the track. Then it is only necessary to investigate the causes of the action by inspecting all the rolling stock itself which is in the ditch as to whether there was a broken wheel, or broken draft rigging, or broken brake rigging. As things now are, the evidences may be entirely removed before the Board's officer ever gets to the scene, and, as a matter of practice, they often are.

Mr. MACDONELL: If we are going to require that a duplicate of the report sent to the company by the officer shall be forwarded to the Board, do you need, in addition to that, that there shall be a wire to the Board as well?

Mr. BEST: We think it is essential to have telegraphic communication sent to the Board immediately an accident occurs, not merely from the viewpoint of the men alone, but it is a question of the public interest, and the public interest demands that it should be done.

Mr. SCOTT, K.C.: If I rightly understood Mr. Best's remarks, I must protest against the implication that he makes that the railway companies are prepared to knowingly and intentionally conceal from the Board cases of accident. I think enquiry of the Board will not substantiate that implication, and no responsible person should come here and make such charges, which have no foundation. The practice of the railway companies is immediately after an accident to institute a most thorough and searching investigation, which will result in the determination of the cause of the accident, and where the responsibility lies.

Mr. BRADBURY: Why should not a representative of the Board of Railway Commissioners be present at that investigation?

Mr. SCOTT: The railway companies do, and are prepared to facilitate in every way the work of the Board's representative in such cases.

Hon. Mr. COCHRANE: Do the railways contribute any information when any one proposes to take action, supposing a person is killed? I have had a little experience along that line, and I do not think the company is giving any information.

Mr. SCOTT, K.C.: The railway companies are more interested, notwithstanding what has been said here—the claims for damages are a small matter compared with the other feature of the question—they are more interested than anybody else in finding out the cause of accidents and in placing the responsibility for them.

Hon. Mr. COCHRANE: But they do not make that information which comes into their possession public.

Mr. SCOTT, K.C.: All the information they have is available to the board; when the Board sends a man to investigate an accident, every facility is accorded him to conduct his investigation, and, in the absence of any statement or complaint on the part of the Board that the railway companies were not giving full information, I do not think it right that such an implication as has been made here this morning should weigh with the committee.

Mr. JOHNSTON, K.C.: This clause as drawn provides two things, first, that the conductor or officer of the company shall transmit to the Board a copy of the report he sends to the railway company, and also that he shall telegraph to the Board information of the accident. I have been discussing the matter with Mr. Best, and he will be content if the conductor or officer is not called upon to transfer a copy of the report he makes to the company, but merely telegraphs the fact of the accident to the Board.

Mr. CHRYSLER, K.C.: I think there is a good deal of objection to that. Twenty thousand accidents, to which this section applies, may in the course of a year occur, and in each of those cases the telegram is to be sent. Perhaps only 15 or 20 per cent of them are cases in which really an investigation should take place. It is using a club to kill a mouse.

Mr. CARVELL: If notice is sent to the Board that an accident has happened, that puts upon the Board the burden of responsibility, they can consult the railway company as to whether is is necessary to send a man to investigate or not.

Mr. CHRYSLER, K.C.: The accident may be only a minor one, and there may be no necessity for the Board to investigate, then why, in such cases, should telegraph notice be sent, inasmuch as the accident must be reported by the company as soon as it occurs?

Mr. JOHNSTON, K.C.: I do not think that is exactly what the section provides. It says there the company shall "immediately after the head officers of the company have received information of the occurrence," so that it would not be until after the officers of the company have received information that there would be any obligation to report such accident.

Mr. CHRYSLER, K.C.: It applies to all the officers of the company. There is no objection to notifying the board, but the notification should be by the company or by its officers, not from the man on the track.

Mr. BEST: It is necessary that the notice should be sent by the officer or employee of the company to the company; that is the officer who has to first report to the company, and it is upon the report of that officer or employee that the company works. Now, in reply to what Mr. Scott says, because he has challenged the statement I have made, I have no desire to mislead the committee, or make any statements that are not capable of proof. I will just cite one case, this is not the only one, there are others, but I will cite one case which will plainly show that the board was not receiving reports of an accident which can be corroborated by Mr. Spencer, the chief operator of the Board, to whom I had to go in connection with a number of cases. A collision occurred in Fort William, I happened to be in Fort William and because of my personal friendship for the engineer who was not expected to live, I was not allowed to see him because of his condition, and I came to Ottawa and, four days afterwards, I went into the chief operating officer's office, to make enquiries in connection with the case, and found that no report had, at that time, been received by the Board of the accident. They did not get a report of that accident until they wrote for it. That was the case of a head-on collision, where the man was supposed to be at the point of death. Mr. Lawrence had another case just recently, within the last three months, where a boiler had exploded and he went down to the Board of Railway Commissioners and found they had received no report of the accident. It is absolutely necessary to have a telegraphic report—I do not care by whom it is sent, but the man in charge of the train who knows all the circumstances would be the proper person.

Mr. SINCLAIR: Would it suit you better that it should be the duty of the company to send notice to the Board as soon as they receive it themselves?

Mr. BEST: I think it is far better to put it the other way in view of the information I have just given to the committee as to what actually happened.

Mr. CARVELL: Do you think it is fair to the employee to tell him that he must send a copy of his report to the company to the Board, it might implicate him—

Mr. PELTIER: We are not here to protect the employee, remember that. If we argued as the representatives of the company have argued it would arouse in your mind the feeling that the employees feared if they had to make a report they would get into trouble, but that is not the case. Our whole object is that the causes of accidents may be ascertained quickly and removed, in the interests of the public. If one of the employees is responsible for the accident, it may be that he should be disciplined, we are not trying to prevent that. Let me suggest again, that what we ask is that when the conductor, we will say it is the conductor, makes his report to the company on the accident he shall simply put in a carbon sheet, and send to the Railway Board a copy of the report which he makes to the superintendent. Can there be any reasonable objection on the part of the railway company, if they have nothing to conceal to having a duplicate of the report which they receive sent to the Board?

Mr. CHRYSLER, K.C.: Did you make these representations to Sir Henry Drayton before you came here, to ask the Committee to enact these provisions?

Mr. PELTIER: No, we did not ask anybody for permission to make suggestions to the honourable gentlemen of this Committee.

Mr. CHRYSLER, K.C.: Has not the Board power to order the companies to do just what you are asking for here?

Mr. PELTIER: That is the point, if they have that power they have not exercised it and, in the interests of our fellow-workmen, and the public, we believe that the amendment is proper and is in the interests of the railway company, of the company's employees and of the public. The railway employees have nothing they desire to have

hidden, and the company has nothing that it should hide from the public, and the Board, and we say "throw everything open, and let the Commission have everything the first thing." Now, when an accident happens, the conductor or other officer or employee of the company who is responsible has to send to the superintendent as soon as possible a report of the accident giving full information and, as far as he can ascertain, the cause; that information may be wrong, but it is his opinion and, as Mr. Carvell says, it may implicate him, but it is only a copy of his report to the superintendent that we ask should be sent to the Board.

Mr. CARVELL: What I suggested was that I am afraid that there might be times when, for that reason, the report would not be of any great value.

Mr. PELTIER: It might not be, but it would be the same report as that which goes to the superintendent.

Mr. CARVELL: I think it will cover everything if a telegraphic report is sent to the Board.

Mr. LAWRENCE: I may as well state what our position on this question is. The proposition we have put in is satisfactory to the representatives of the train-service men. In discussing this matter they wanted the same thing as this committee adopted, but the engine men wanted something different, as they did not think any person in their position should be saddled with the duty of sending a report to the Board. You take the engine men, the section men and section foremen, they do not want to be saddled with that duty, and that is why we said, "conductor or an officer of the company," but as far as the suggestions made by the representatives of the railway companies are concerned, that is not our feeling at all. I want to say, on my word of honour as a gentleman, that Mr. Best made no assertions here that were not correct, and, if I wanted to take up the time of the committee, I could show Mr. Scott that the position he has taken is wrong, in that respect; and I can prove beyond controversy that Mr. Best's statements are correct. I object to these gentlemen casting aspersions upon the representatives of the railway employees.

Mr. SCOTT, K.C.: I say that the railway employees' representatives are making very serious charges which ought not to be made unless they are susceptible of proof.

Mr. JOHNSTON, K. C.: "Every company shall, as soon as possible, after such accident notify the Board by telegraph."

Mr. BEST: Why not say "conductor or officer."

The CHAIRMAN: "Or other employee" do you say?

Mr. BEST: No, "or an officer."

The CHAIRMAN: Then it will read: "Any conductor or other employee or an officer."

Mr. BEST: Leave the word "employee" out.

Mr. LAWRENCE: "Or an officer of the company"—an officer may hear of an accident before a conductor does.

The CHAIRMAN: You want the word "employee" struck out and the words, "officer of the company" put in its place.

Mr. JOHNSTON, K.C.: As a matter of fact, it is an employee, the conductor, who does make the report in the first place.

Mr. LAWRENCE: Yes.

Mr. JOHNSTON, K.C.: Why not leave it as it is: "any conductor or other employee."

Mr. PELTIER: The conductor probably has nine-tenths of all the accidents to report.

Mr. JOHNSTON, K.C.: Let us have that language again.

The CHAIRMAN: (Reads):

> Any conductor or other employee making a report to the company of the occurrence of any such accident shall, as soon as possible after such accident, notify the Board of the same by telegraph.

Mr. CARVELL: That satisfies me. He simply notifies the Board of the fact of an accident. The Board then has knowledge, and they can investigate it if they want to. He has notified the Board that there is an accident, and the Board can make such enquiries as it likes.

Mr. MACDONELL: This Committee cannot do more than that. It is up to the Railway Board then.

The CHAIRMAN: What is the next point, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I have here a good deal of correspondence with reference to the question of bi-weekly payments that I need not trouble the Committee with. It pertains to a proposed new section, 290 A. In the first place, of course, this applies to all companies, but the companies principally affected are the transcontinental railways.

The CHAIRMAN: The clause that Mr. Chrysler is dealing with at present is 290 A—Orders and regulations of the Board. The amendment submitted to this Committee is as follows:

> 290 A. The wages of all persons employed in the operation, maintenance or equipment of any railway to which the Parliament of Canada has granted aid by way of subsidy or otherwise or which has been declared to be a work for the general advantage of Canada shall be paid at least semi-monthly.

Section 290 was passed by the Committee.

Mr. CHRYSLER, K.C.: Of course, the words "railway to which the Parliament of Canada has granted aid by way of subsidy or otherwise" as introduced there, do not limit the railways to which it applies, because the proposed amendment goes on to say that it applies to every railway "which has been declared to be a work for the general advantage of Canada." Therefore it applies to all railways which are under the jurisdiction of this Parliament.

The CHAIRMAN: I am sorry to interrupt you, Mr. Chrysler, but I think I should read some correspondence regarding this subject at this time. A letter has been received from Mr. Charles Dickie, Secretary, Federated Trades, enclosing a resolution from the Federated Trades of the Mechanical and Car Departments of the Canadian Pacific Railway. The letter is as follows: (Reads).

SYSTEM FEDERATION OF RAILROAD EMPLOYEES.

CANADIAN PACIFIC RAILWAY LINES,
OFFICE OF SECRETARY-TREASURER, 26 Addington Ave.,
Montreal, Que., May 23, 1917.

Mr. J. ARMSTRONG.
Chairman Special Committee on Railway Bill,
House of Commons. Ottawa, Ont.

DEAR SIR,—The attached resolution was adopted by a unanimous vote of the Representatives of the Federated Trades in the Mechanical and Car Departments of the Canadian Pacific Railway, now in session at the city of Montreal.

It is not necessary to enter into details of the matter at this time, as the resolution speaks for itself, further than to say that we feel assured that your

committee will give this resolution the earnest and serious consideration which it warrants, as this is a matter of vital importance to all railroad employees, and particularly so to those employed in the shops.

I am, yours respectfully,

CHAS. DICKIE,

Secretary Federated Trades.

The resolution which was enclosed is as follows (reads):

Whereas, we are informed that it is the intention of the Government to amend the Dominion Railway Act during this present session, and,

Whereas, representatives of public bodies have appeared before the Railway Commission and presented certain proposed amendments in the interest of their respective constituents, and,

Whereas, the representatives of the railroad brotherhoods appeared and requested an amendment calling for the "Semi-monthly" payment of wages on all railroads, and,

Whereas, the "Semi-monthly" payment of wages has been made the subject of demand by railroad employees throughout the Dominion for a number of years, both through legislation, and the medium of agreements made with the officials of the different railroad companies, but without material result, and,

Whereas, the necessity of such reform and the justice of the demand was conceded by the members of the House of Commons in the year 1909, when the desired legislation was adopted, but which was rejected by the Senate, and,

Whereas, the reason given at that time by the members of the Senate were in effect that the railroad employees were not unanimous on the question, and,

Whereas, it is obvious that these reasons however valid at that time are not now extant, in view of the attitude of the representatives of the railroad brotherhoods at the present time.

Therefore be it resolved: That we the members of the System Federation of Railway Employees representing approximately 15,000 workers in the Mechanical and Car Departments of the Canadian Pacific Railway, do most emphatically urge upon the members of the Railway Commission the advisability of suggesting such amendments to the Railway Act of the Dominion as will make it compulsory for all railroads in Canada to pay their employees at least twice every month.

I have also a joint communication submitted by Mr. Peltier from Mr. W. G. Chester, Chairman, General Committee O.R.C., Canadian Pacific System and Mr. A. McGovern, Chairman, General Committee B.R.T., Canadian Pacific Eastern Lines.

Hon. Mr. COCHRANE: This communication will refer to practically the same matter.

The CHAIRMAN: It is all in support of the same resolution and I will file it. It has already been printed in our proceedings at page 192. Then I have a communication which has been forwarded by Sir George Foster from Mr. L. L. Peltier, Deputy President, Dominion Legislative Representative of the Order of Railway Conductors, and which has been printed in our proceedings at pages 189-190.

Mr. MACDONELL: I received a similar communication from Mr. Peltier.

Mr. CHRYSLER, K.C.: With regard to the resolution of the Federated Trades in the Mechanical and Car Departments of the Canadian Pacific Railway, I think that that is not covered by the proposed amendment as I heard it read just now.

The CHAIRMAN: It reads:—

> Therefore be it resolved: That we the members of the System Federation of Railway Employees representing approximately 15,000 workers in the Mechanical and Car Departments of the Canadian Pacific Railway, do most emphatically urge upon the members of the Railway Commission the advisability of suggest-

ing such amendments to the Railway Act of the Dominion as will make it compulsory for all railroads in Canada to pay their employees at least twice per month.

Mr. CHRYSLER, K.C.: I am not talking about that, I am talking about the amendment we are now considering.

Mr. JOHNSTON, K.C.: The amendment as drawn reads this way:—

290A. The wages of all persons employed in the operation, maintenance or equipment of any railway to which the Parliament of Canada has granted aid by way of subsidy or otherwise or which has been declared to be a work for the general advantage of Canada shall be paid at least semi-monthly.

Mr. CHRYSLER, K.C.: I do not want to criticise the language of the amendment, because that is not important for my purpose. I understand, as it read, that it refers to the persons employed in the operation of the road, meaning the gentlemen who are represented by their legislative representatives here. The shopmen who are mentioned in that resolution do not appear to come under it. I have not heard of their making any request until they came before you with that resolution which has just been read. I speak on behalf of the three large railways, and I say that in their business, with their ramifications, it is impracticable in the first place—that two payments a month cannot be made and kept up. It has been stated here—I am not sure whether it was the representatives of the trainmen or not—that the excuse as to its being impracticable would not apply if there were more subdivisions. As far as the C. P. R. is concerned I am instructed that there are three or four cities in which the pay sheets are prepared and sent out, namely, Montreal, Winnipeg, Vancouver and I am not sure which is the fourth—perhaps Calgary. The reports are not all brought to Montreal, but they are all brought into these four points—that is the report from each person who has to report. I do not know what the channels are through which they come, but the reports as to the hours of labour, days of labour of each employee come in and a pay sheet is made out and has to be checked. I do not know whether it has to be returned for that purpose or not. Probably it has, but at all events the operation consumes a considerable part of the time, even making monthly payments, and monthly payments, I understand, are promptly made. The Grand Trunk add to that a statement that the mere expenses on their system of providing the additional staff required would be a very considerable sum, I think something like $70,000 per annum. Mr. Ogden, the auditor of one of the roads states that whatever might be said as to the proposal in years past it would be quite impracticable now to get the additional staff that would be required to carry out the change, because of the difficulty of getting labour during war time. The staffs in that railway and all railways are depleted more or less by men who have gone to the front, and it is out of the question now to make such a change. So much for the difficulties. Now for the merits of the proposal: these men come here, and I have no doubt they are duly accredited; I do not cast any doubt upon that, or upon the authenticity of the resolution which you have heard read, but in the correspondence you will see that these are matters of negotiations between the railway companies and these employees. They are all members of the organized brotherhoods. They make their agreements more or less frequently, and they are all agreed at the present time. That is to say, there are existing agreements in force. I understand from the newspapers—and I do not know it from my instructions—an agreement was entered into, covering a number of these employees this spring, after negotiations lasting some time and recently concluded. What do the agreements cover? They cover a good many things. I do not know that I ever saw one, but I have a general idea what they pertain to. They cover the rate of wages and the hours of labour. In the case of trainmen, the mileage allowance which counts as a day and all those things. Is this question of wages not a matter that should be settled in this agreement? Is it not part of it and is it not one of the terms? Is it proper for these

gentlemen to come here and say: "We make our agreement, we provide for our payment and our hours of labour and all the other conditions of our employment by agreement, and then we come to Parliament and ask for an additional term which is to our advantage and the disadvantage of the railway company." I say this is unfair.

Mr. CARVELL: Do you contend that this should be part of the agreement?

Mr. CHYRSLER, K.C.: It is a term which should be arranged in the negotiations and which should not be added to the agreement by an Act of Parliament. It seems to me that if this was a matter of so much importance the men would have had it inserted in their agreement. Why have they not?

The CHAIRMAN: Did they not ask for it?

Mr. CHRYSLER, K.C.: I do not know.

Mr. MACDONELL: They ask for it now, and they have asked for it a hundred times to my knowledge.

Mr. CHRYSLER, K.C.: They made their agreement.

Mr. CARVELL: I suppose they will say they could not help themselves.

Mr. CHRYSLER, K.C.: I am sure it will not be said by members of this committee that the men made an agreement because they cannot help themselves. It is a free agreement. That is my objection, and the other is that it cannot be done.

Mr. MACDONELL: How about American railways?

Mr. CHRYSLER, K.C.: They do not compare with ours.

Mr. MACDONELL: How about the practice?

Mr. CHRYSLER, K.C.: I am told that out of the 50 odd states 28 have a state law for semi-monthly payment.

Mr. BEST: How are you getting along at Brownsville, where you pay once a week?

Mr. CHRYSLER, K.C.: I do not know where it is.

Mr. BEST: It is in the state of Maine.

Mr. CHRYSLER, K.C.: Well, they might pay daily.

Mr. BEST: They did it for over two years.

Mr. CHRYSLER, K.C.: This, I submit, is not a proper thing for legislation here, at any rate. It is a domestic matter to be settled between the companies and these men, and they do settle it, and settle it in the best spirit. There is no complaint at present, these gentlemen themselves who speak for the employees have said so here in this room.

The CHAIRMAN: Have they not presented their case?

Mr. CHRYSLER, K.C.: They have presented their case, but that is the general case, that they are in agreement with the railways and that there is no dispute between them.

Mr. PELTIER: The Canadian Pacific controls the Sault line, does it not?

Mr. CHRYSLER, K.C.: I do not think that has anything to do with the matter.

Mr. PELTIER: What are their pay-days on the Sault line?

Mr. CHRYSLER, K.C.: I do not think that has anything to do with the matter, it simply means they are operating in the United States and have to conform to the laws there. That is a fact which may be interesting, but is of no great relevance here. I did not fully answer Mr. Macdonell's question about the railways in the United States. Circumstances there are different. There is no railway which operates from the Atlantic to the Pacific; the railways break at Chicago, they break again at St. Paul, or Minneapolis, or some other point out of which the railways are split into three systems.

Mr. MACDONELL: I was not asking the reason, but merely what the practice is in the United States with regard to railways. If you cannot give the information, do not bother.

Mr. CHRYSLER, K.C.: I have told you. I understand there is a law in 28 states or so which requires payment to be made semi-monthly.

Mr. PELTIER: May I ask Mr. Chrysler another question? He said a moment ago that the Canadian Pacific is divided into four divisions for payment.

Mr. CHRYSLER, K.C.: I did not say that.

Mr. PELTIER: How many did you say?

Mr. CHRYSLER, K.C.: I said there were four offices.

Mr. PELTIER: Exactly, and they are divided into four offices for the payment of their employees. That is four railways, so far as the question of payment is concerned, is it not?

Mr. CHRYSLER, K.C.: That may be so.

Mr. PELTIER: It is not a transcontinental railway so far as payment of men is concerned.

Mr. CHRYSLER, K.C.: What I have said is that there are four offices in which these payments are made. I pointed that out for the purpose of showing that the company has done all it could to subdivide payments, but still the whole time is required, that is now actually taken.

The CHAIRMAN: Before you take your seat, would you briefly state your objection?

Mr. CHRYSLER, K.C.: In the first place it is an interference with the domestic concerns of the company, which it is not part the duty of this Parliament to do. It is a matter of contract between the company and its men. Secondly, it is not practicable to make payment twice a month on these railways. Thirdly, the men are free agents. They act through very powerful confederations of labour, and the conditions, as I understand, have for a number of years past been entirely satisfactory. If they are not satisfactory the question of semi-monthly payment is one of the terms which can be dealt with by agreement between the companies and the men, and should be dealt with in such manner.

Mr. LAWRENCE: I submit Mr. Chrysler has made out no case at all in his reference to the companies and the men. Take for instance the correspondence you have just read signed by Mr. Chester and Mr. McGovern. The former is the Chairman of the General Committee of Adjustment of the Order of Railway Conductors on the C.P.R. The latter is the Chairman of the General Committee of the Trainmen's Organization. They wrote and requested this legislation, because so far it has been impossible to get the consent of the company wherever it has been taken up. Now, I received a letter from the Chairman of the General Committee of the Brotherhood of Locomotive Engineers. It is true, as Mr. Chrysler has said, that they have a close agreement with the company, but I received a letter—I am sorry I have not got it with me to-day—stating that their committee assembled in Montreal, had endorsed my action in trying to get a semi-monthly Bill enacted by the Dominion Parliament. Mr. Chrysler laid stress upon the fact, as he said, our organization is strong enough to demand these things from the railway company. That may be so if they go about it in that way, but would not help the other fellow who has not got any organization at all, or help the other organization that is not strong enough to get these advantages?

Mr. CHRYSLER, K.C.: I did not say anything about their being strong enough.

Mr. LAWRENCE: That is what you insinuated and what you suggested should be done. We are not in favour of class legislation in any shape or form. We think what is good enough for us is good enough for the other fellow whether he can go and demand it from the company or not. I do not know whether I stated the fact the other day, but the state of Michigan two or three years ago enacted a law which requires railway companies to pay their employees semi-monthly. The Canada Southern Railway, where I have done my railroading, is operated by the Michigan Central.

The Canadian employees of the company, when they started semi-monthly payments in Michigan, asked them to do the same thing in Canada. They agreed to do so and are doing it at the present time. Now, if it is going to cost the railway companies so much to bring the scheme into operation, why was this company so ready to do something that was not absolutely necessary.

Mr. CHRYSLER, K.C.: How many miles has that company in Canada?

Mr. LAWRENCE: It is not a matter of mileage, but of the number of employees. The Michigan Central has got a greater number of employees to the mile than any other railway in Canada. Mr. Chrysler says semi-monthly payments are not practicable. If that is the case, why is the C.P.R. doing it in the state of Maine? There are a number of states of the American Union that require railways to pay their employees twice a month, for instance the following: Arizona, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, (South Carolina laws apply to shop employees only), Texas and Virginia (Virginia law applies to shop employees only. In the following states the statutes require the payment of wages by railway companies at least weekly: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. The Grand Trunk Railway is paying its employees who are employed and live in the state of Vermont weekly. The Canadian Pacific is paying its employees weekly who live in the state of Maine. Brownsville is a large junction point in that state, and the employees there are in all cases paid weekly. If the C.P.R. can do that in the state of Maine, why cannot it do the same here. All the extra work that will be required is a duplication. The pay sheets are now made out once a month; if this provision were adopted pay sheets would have to be made out twice a month, and the operation will only take half as long as in the case of the pay sheet for the full month.

Hon. Mr. COCHRANE: How would it work in the case of employees at Vancouver. Would not the pay sheets have to be made out and then sent to Montreal and back? Would not that involve considerable loss of time?

Mr. LAWRENCE: The pay sheets from there do not have to be sent to Montreal. I understand the Western Division is controlled from Winnipeg and the Eastern Division from Montreal. Cheques are made out in Winnipeg for the Western Division and in Montreal for the Eastern Division. According to my understanding at present the C.P.R. employees east of Fort William get pay cheques on the 15th of the month for the month previous. I made inquiries and, as far as I can find out, they receive it on the 15th, so that the company are really doing it now.

Mr. SINCLAIR: What do you say about the objection Mr. Chrysler made, with regard to the difficulty of getting men to do the work on account of the war?

Mr. LAWRENCE: We will guarantee to furnish the men all returned soldiers. I am one of the executive officers of the Returned Soldiers Association at Ottawa, and I can guarantee that we can furnish them with just as capable men as they can get anywhere, and all returned soldiers. In this connection I would like some of the employers of labour, business men, when they require men to let us know, and then the question of taking care of the returned soldier would be greatly facilitated in this district as well as in other districts of Canada. I want to say, Mr. Chairman and gentlemen, that I would like you to remember the fact that a number of members of Parliament in 1911, favoured this measure and the Bill was put through the House, Mr. Martin of Montreal at that time introduced the Bill; the Bill had been introduced and sent to the Railway Committee where it was defeated, but it was introduced again at the same session—I am speaking of the Bill with reference to semi-monthly payments to railway employees, and it was taken up as a Government measure, and the Premier, in 1911, put it through the House. Some members wanted it referred to the Railway Committee again, but that proposition was opposed, and the Bill was put

through the House unanimously—there was not a member of the Dominion Parliament voted against it. It went through and was sent to the Senate. It went before the Railway Committee of the Senate, and, as you know at that time, there was an acute division between the railway employees and on that ground some of the senators were opposed to the Bill. After the Bill had been defeated in the committee in the Senate the representatives of the men took it up again and got it reintroduced at the same session—I think it was the first time a Bill was ever reintroduced, after it had been defeated, at the same session, but before the measure was finally disposed of by the Senate, that body adjourned on the 7th August, and before it met again, Parliament was dissolved, and therefore that Bill was not disposed of in 1911, although the House of Commons unanimously approved of it. If there were good reason for the enactment of this measure by the Canadian Parliament at that date, the reason to-day why it should be put through is doubly strong. It is in the interests of every person that it should pass, the high cost of living, and everything else render it more necessary now than it was then, and there is not a person in the country who will not say that the adoption of this provision will have a tendency to give the railway employees money on hand and, every one knows, that if a person has cash in hand to pay for everything as they purchase it they can deal a great deal more satisfactorily than they can by running a monthly bill. That is what we want, we want to get away from this detriment of employees having to run monthly accounts and, in view of the fact that the House of Commons, in 1911 unanimously voted in favour of this principle, I would ask this committee to consider our request favourably.

Mr. CHRYSLER, K.C.: I have found a letter written by Mr. Ogden, Vice-president of the C. P. R. to Mr. Beatty, dated May 28, 1917, which I will read to the Committee. (Reads):

E. W. BEATTY, Esq., MONTREAL, May 28, 1917.
Vice-President and General Counsel,
Montreal.

DEAR SIR,—Referring to the proposed arrangement for bi-monthly pay-rolls to employees of railways.

This works all well enough where the railway only extends within 24 hours distance, but with a system like the Canadian Pacific or even the Grand Trunk, or either of the transcontinental railways, it will be almost if not quite, impossible to keep pay-rolls up to prompt payment if they are made bi-monthly.

The great trouble is not in the preparation of the pay-cheques by the Paymasters, but in preparing the original pay-rolls. The Canadian Pacific Railway has at the present time Paymasters at Montreal, Winnipeg, Calgary and Vancouver, and these are sufficient to cover the system. Time-keepers' books from all sections of the road are obliged to be sent to certain divisional quarters, calculated and entered on the pay-rolls, and it is this preparation that I hardly think possible to be done more than once a month. It takes from a week to ten days at most of the quarters to prepare the pay-rolls, and therefore it is obvious that to double the work will certainly cause serious delays at times in payment.

The men are paid promptly as it is, and in cases of emergency where there is illness in the family, or anything serious, we have a system of time checks which is a relief in all such cases. To disturb the present system will add but little good, and may do a great deal of harm.

All officers of the railways, as well as all other corporations, are paid monthly in the same way as the other employees are paid, and any such change at the present when we are very much crowded for staff, owing to the war, would cause only trouble.

Yours truly,
(Sgd.) T. G. OGDEN,
Vice-President.

Mr. PELTIER: Just one minute, if that letter is going into the record, I would like the Committee to bear in mind that from Winnipeg to the Atlantic, every state abutting on the C.P.R. is paying either semi-monthly or weekly. It is a long run from Winnipeg to the Atlantic and the states of Illinois, Michigan, Ohio, New York, Maine and Vermont, all have legislation requiring the payment of wages semi-monthly or weekly and when these laws were brought before the legislatures of the various states my memory is that neither our own railways or the railways on the other side entered any protest against them.

Mr. NESBITT: What about New York state?

Mr. PELTIER: New York state pays semi-monthly. From Winnipeg to the Atlantic, railway employees are paid either semi-monthly or weekly; the Grand Trunk themselves, running through Illinois, Michigan, and other states comply with this law, and, when this law was put through in these various states, the records show that the Canadian railways did not oppose the measure. Then why do they oppose this law here? The Company now claims that they will experience difficulty in preparing pay-sheets and pay-cheques, but, I may say, these difficulties are not unsurmountable. This amendment does not say the date upon which these men shall be paid. It leaves that to the railway companies and they can adjust themselves to the conditions. Another thing, we are quite prepared to give them, I have not consulted the other representatives here, but I am sure they will agree with me, we are quite prepared to give them a couple of months, or three months, after the measure passes before the law comes into effect, in order to give them an opportunity to put themselves in a position to meet the requirements of the law. We are willing to do everything possible to assist them along that line. Now in reference to the question of expenditure necessary to pay semi-monthly instead of monthly, that objection has been met very happily by Mr. Lawrence, but, let me say this,—I know what I am talking about—they can do the same as they did before, concentrate their forces, call in the clerks from other offices for two or three days to help prepare the pay-sheets. That has been the practice, and that, we know has been done.

Mr. SINCLAIR: We had this all thrashed out before, and if the Minister thinks we should make any change, I do not think it is worth while arguing further.

Mr. PELTIER: I do not know why the responsibility should be placed upon the Minister.

The CHAIRMAN: Section 290 (a) reads as follows:

> The wages of all persons employed in the operation, maintenance or equipment of any railway to which the Parliament of Canada has granted aid by way of subsidy or otherwise or which has been declared to be a work for the general advantage of Canada shall be paid at least semi-monthly.

Shall the amendment be adopted—Carried.

The CHAIRMAN: Have you anything more, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I do not know that it is much use pursuing this any further, but it is my duty to the companies to do so.

The CHAIRMAN: My attention has been called to the fact that section 290 has not been adopted. Shall it be adopted as amended.—Carried.

Mr. CHRYSLER, K.C.: Section 292 is the next; this section was wrongly struck out under the misapprehension, in which I shared, for the moment, that it was covered by section 414.

The CHAIRMAN: You asked, I think that it be struck out?

Mr. BEST: I asked that it be struck out, and Mr. Chrysler concurred.

Mr. CHRYSLER, K.C.: Section 414 provides:

> That no such person shall be convicted of any such offence, unless at the time of the commission thereof, a printed copy of such by-law, rule or regulation was openly affixed to a conspicuous part of the station at which the offender entered the train, or at or near which the offence was committed.

It was assumed that that covered all the classes of things as to which the company had the right to make by-laws under Section 291. It does not; and I may explain better what I have to say perhaps by stating the practice. It is not very clear as these sections are drawn. Certain things in Section 291 relate to employees of the company and certain other things relate to the public. Now, Section 414 applies to the enforcement of penalties for breaches of the by-law by the public, because it relates to the cases in which the rule or by-law is posted up in the station for the information of the public. Now, the employee of a company is not notified by that sort of by-law or that sort of publication. He has all the regulations of the company in a book which he carries, and he knows the things that apply to himself. Section 414 would not apply to him at all. Section 292 is intended to provide for the enforcement of those things which are violations by the employee of anything contained in the by-laws, some of them which may apply to him and some of which may not. Section 292 is based on Section 291.

Mr. CARVELL: Do you not construe Section 291 as applying both to employees and to the public?

Mr. CHRYSLER, K.C.: Yes, that is what I say. It is badly drawn. The two classes should have been separate.

Mr. CARVELL: Without a doubt.

Mr. CHRYSLER, K.C.: The provision in Section 291 as to the speed at which rolling stock is to be moved applies to employees; the provision regarding hours of arrival and departure of trains applies to employees; also the provision regarding the loading and unloading of cars, and the provision regarding the receipt and delivery of traffic. Then you come down to paragraph (*e*) regarding smoking and the commission of a nuisance on the train or railway premises, which applies to the public, and that is the sort of violation which it is intended that notice must be given of by posting copies of the by-laws in the station and other premises of the company. In regard to the matters referred to in the first part of Section 291, the by-laws would not be given in that way; they would be given directly to the employee.

Mr. NESBITT: Does Mr. Chrysler want to strike out Section 292?

The CHAIRMAN: Yes.

Mr. NESBITT: I do not think that it should be struck out.

Mr. BEST: Before the Committee decide to keep Section 292 in, I would like to say perhaps what I have said before, that because the company has had a right to fine employees, that is no just reason why in the twentieth century any corporation should be permitted to impose penalties or make a law to that effect. I have always argued that a railroad company has a right to maintain a certain discipline; they have a right to do that; in order to get good service, it is sometimes necessary. We recognize the necessity of that principle, and we have no right to do anything that will eliminate any system that is fair. But to say that they have the right to enact criminal law—

Mr. NESBITT: How would you enforce the rules?

Mr. BEST: By the discipline of the railroad company itself. They will determine that, and if the employee thinks that it is too severe he will talk afterwards. They sometimes do. But to say that in the twentieth century a corporation should be given the privilege of doing something which is the duty of the state—that is to enact criminal

law—is so far removed from anything modern that I cannot conceive of allowing it to remain in the Railway Act.

Mr. NESBITT: Doesn't the provision in this section, "on summary conviction," mean that they have to be tried?

Mr. CARVELL: Yes.

Mr. BEST: The practice has been that the company has fined its employees and deducted the amount of the fines out of their wages. Now, it has been held by some of the courts that they have not a right to do that. But they have done it.

Mr. NESBITT: They have to bring the case before some civil authority, have they not?

Mr. BEST: That has not been the practice. The companies have kept thousands of dollars, I am safe in saying, back from the employees which has never been repaid.

Mr. CARVELL: The section provides that the employee must go before a police magistrate. Do you think that a man is going to be convicted and fined unless the charge is proven?

Mr. BEST: We contend that a railroad company should not have any more privileges than any other corporation or person.

Mr. CARVELL: This is a very important matter. All of our lives and property are dependent upon the proper management of our railways, and while I realize that in one view it may seem hard to impose penalties upon a railway employee that you do not impose on others—

Mr. NESBITT: They are only human after all.

Mr. CARVELL: I would like to see Section 292 left in

Mr. BEST: In reply to that, I may say that the employees in connection with the operation of trains must pass the required examination under operating rules which are approved by the Board of Railway Commissioners under the authority vested in them by the provisions of the Railway Act.

Mr. NESBITT: Why should they not?

Mr. BEST: We are not opposing that. The violation of those rules is covered in another section of the Act.

Mr. NESBITT: Is it, Mr. Johnston?

Mr. JOHNSTON, K.C.: I think Mr. Chrysler's point is well taken. I think Section 414 refers not to employees of the company but to the public.

Mr. BEST: It applies to "every person."

Mr. JOHNSTON, K.C.: If you read the whole section, you will find that it does not. The proviso reads: "Provided that no such person shall be convicted of any such offence, unless at the time of the commission thereof a printed copy of such by-law, rule or regulation was openly affixed to a conspicuous part of the station at which the offender entered the train, or at or near which the offence was committed."

Mr. NESBITT: I would agree that the penalty be the same under section 292 as it is under section 414, that is not exceeding $20.

Mr. CARVELL: Supposing an employee exceeds the speed limit. You cannot have a by-law posted up saying he shall not exceed a certain limit.

Mr. LAWRENCE: I do not think that there should be much objection to that. We think that section 414 covers it, and it certainly does. The members of the Committee will understand that all by-laws in connection with the operation of a train that the employee does not have in his book are posted up at the office where he takes the train.

Mr. NESBITT: He has a lot of regulations in his book.

Mr. LAWRENCE: We cannot carry all the regulations. I would need a steamer trunk to carry all the bulletins.

Mr. CARVELL: Bulletins and by-laws are not the same.

Mr. LAWRENCE: We understand, of course, that the section would apply to either. The bulletins have the same force as the by-laws. So far as that is concerned, if section 414 does not apply, we do not want to evade our responsibility. Still, at the same time, section 292 does not apply to the making of by-laws, which we object to, it applies to the enforcement of them. If you say that it is necessary to have section 292, why penalize the employee any more than you would the public? We say, reduce the fine.

Mr. JOHNSTON, K.C.: Reduce the fine to $20 instead of $40.

Mr. W. L. SCOTT, K.C.: Before doing that, it would be well to remember that a violation by an employee may be a very much more serious thing than any violation of a by-law that applies to the public. The violation by an employee might endanger the lives of thousands of people.

Mr. LAWRENCE: Mr. Scott, if it is such a serious thing why doesn't the Criminal Code apply?

Mr. BEST: The Criminal Code covers it.

Mr. CARVELL: The penalty of $40 is only permissive; that is the maximum fine. In practice, it might be one dollar.

Mr. PELTIER: The companies have the merit system of punishment—giving merit and demerit marks. They can suspend an employee or dismiss him. The position of a railway employee is very different from the position of employees in other services, and if an employee forgets to do a certain thing it is a neglect of duty and he is punishable. If you have all these penalties it will be difficult to get men to go into the railway service.

Mr. NESBITT: I move that the penalty be reduced to $20 and the section reinstated.

Mr. SINCLAIR: I would not support that.

Mr. CARVELL: Nor would I. I move in amendment that section 292 be reinstated.

Mr. SINCLAIR: I second the motion.

Motion agreed to and section adopted.

On section 313, Traffic tolls and tariff—Accommodation for traffic.

Mr. CHRYSLER, K.C.: Mr. McMaster proposed an amendment to section 313 which I want to oppose. It is a new paragraph.

Mr. JOHNSTON, K.C.: Mr. McMaster proposed to add the following as paragraph (e) to section 313:

> (e) Furnish such other service as may be customary or usual in connection with the business of a carrier as the Board may from time to time order and shall maintain and continue all such services as are now established unless discontinued by order of the Board.

Mr. CHRYSLER, K.C.: If the Committee do not desire to adopt the amendment, I have nothing to say.

Mr. CARVELL: I do not know the meaning of that term "as may be customary or usual in connection with the business of a carrier".

Mr. JOHNSTON, K.C.: That is not my draft. It was introduced by Mr. McMaster, representing the Toronto Board of Trade, and he said that, incidental to the business of a carrier, the railways were performing certain services. I think he mentioned milling in transit as one.

Mr. CARVELL: It might be made to apply to anything. You might say it is customary for the railway companies to keep a group of motor trucks in order to deliver goods around the city.

The CHAIRMAN: Mr. McMaster made a pretty full statement in support of the amendment.

Mr. NESBITT: I should not like to see that clause pass, because I know that the railway companies do certain services, such as milling in transit and stopping at stations for the unloading of cars.

Mr. CARVELL: The difficulty is the words, "such other service as may be customary or usual," are so awfully indefinite. There is no limit to what a railway company might be asked to do. They might be asked to do things that never were thought of, on the ground that they were customary.

Mr. NESBITT: In addition to furnishing "such other service as may be customary or usual in connection with the business of a carrier," the company under the amendment is required "to maintain and continue all such services as are now established unless discontinued by the Board."

Mr. CARVELL: The latter provision is not so serious.

Mr. NESBITT: The company does milling in transit and also permits of half a car to be unloaded at one station and the balance at another station.

Mr. CHRYSLER, K.C.: Everything which Mr. McMaster mentions is provided for already. That is to say, milling in transit and the icing of perishable goods. Then privileges are granted in connection with the shipping of fruit from the Pacific coast and unloading a car at two or more stations, with a charge for stoppage and switching. All these things are now covered by the Act.

Mr. NESBITT: It is not covered under section 313.

Mr. CHRYSLER, K.C.: It is covered by the regulations which the Board are allowed to make as to conditions of carriage. Conditions of carriage cover almost everything you can think of.

Mr. MACDONELL: There is no reference to the Board of this specific matter in the Act.

Mr. JOHNSTON, K.C.: It is read into section 313. (Reads):

> "The Company shall, according to its powers,—
>
> (*a*) furnish, at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway;
>
> (*b*) furnish adequate and suitable accommodation for the carrying, unloading and delivering of all such traffic;
>
> (*c*) without delay, and with due care and diligence, receive, carry, and deliver all such traffic; and,
>
> (*d*) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering such traffic."

Mr. McMaster in his memorandum says with respect to the proposed amendment. (Reads):

> "The Toronto Board of Trade feel that there are services now accorded to the public incidental and customary, which are not expressly covered by any provisions of the statute."

Hon. Mr. COCHRANE: But this section does not permit a stop-over charge.

Mr. JOHNSTON, K.C.: It is calculated to do it.

Mr. CHRYSLER, K.C.: Isn't it in existence to-day under the orders of the Board?

Mr. MACDONELL: And it may be discontinued to-morrow.

Mr. CHRYSLER, K.C.: Not without the consent of the Board.

Mr. BLAIR: I do not think so. I would like to ask Mr. Chrysler to show me the express provision under which the Board could direct a railway company to provide for and allow this privilege of milling in transit. The Board has, if I am not mistaken, already passed upon that and determined that it was a privilege and not a right. It was a privilege which the shipper might demand but which the railway company was free to grant or not.

Mr. CHRYSLER, K.C.: I, myself, am not clear about all the conditions.

Mr. BLAIR: Quite so. The railway company may for a while extend its privilege, but they may also stop or cancel it and it was to meet that possibility that the Toronto Board of Trade asked that provision be made.

Mr. CHRYSLER, K.C.: If Mr. McMaster wanted to introduce an amendment to provide that the milling in transit should continue, why not say that in this section, it covers the ground.

Mr. JOHNSTON, K.C.: I think Mr. McMaster made it plain that he was not confining himself to the milling in transit.

Mr. MACDONELL: After hearing Mr. Blair, I move that this be added to subsection (*c*).

Mr. JOHNSTON, K.C.: After Mr. McMaster had read the clause, there was some discussion, and a substitute clause was prepared which was satisfactory to him, that the company should "furnish such other service incidental to transportation or to the business of a carrier as is customary or usual in connection with the business of a carrier, and that such Board might make an order that the company shall maintain and continue all such services as are now established, unless discontinued by order of the Board."

Mr. CHRYSLER, K.C.: Then you have that clause "incidental to transportation."

Mr. JOHNSTON, K.C.: Or to the business of a carrier.

Mr. CHRYSLER, K.C.: That is the part I object to, there is no definition as to what is incidental to the business of a carrier. What is incidental to the business of a common carrier, and what is incidental to the business of a railway is something quite different. The railway is carrying under the conditions of the Railway Act and I should most emphatically object to a clause which will say that in addition to complying with the obligations of a railway as set out in the Act, we are to have superadded the obligations which are applicable to common carriers.

Mr. SCOTT, K.C.: This will apply to a great many other things than the ordinary business of a railway; there is one question in particular, that of cartage; at certain points, the railway companies because of local conditions, cart freight to and from the consignor or consignee. That is not a part of the business of a railway company and, in most places, they do not do it at all, but, in some cases, they are doing it. The proposed amendment applies to that. The law compels them at present if they do it for one man they must do it for another, but they are not compelled to continue to do so, and conditions might change, so that the railway company might say, "We are going out of the cartage business."

Mr. NESBITT, K.C.: They do not do the carting without getting extra pay for it.

Mr. SCOTT, K.C.: No, the company makes an extra charge but it might become inconvenient, or inadvisable for them to continue to do it. In many places they do not do it, and why should there be an obligation on them to do it at all. This question was gone into very fully before the Board last year, in a matter in which I was very deeply interested; the question was argued out and the Board gave judgment in accord-

ance with my submissions. In most cases, the cartage is done by a cartage company and in other cases, the railway company does it, for local reasons, and it would not be fair to compel them to continue in this business, which is not part of the railway business proper, and while they may do it now in some places, as long as they do not discriminate as between individuals——

Hon. Mr. COCHRANE: It is discrimination if they do it in some cases and they will not do it in others.

Mr. SCOTT, K.C.: I quite agree with the Minister, but if they do it at one place, and do not do it at another, that is a condition in which possibly there is a certain amount of discrimination. If there is any question of discrimination that can be determined, but surely it should be open to the railway company not to be compelled to continue in the cartage business if they do not desire to do so, or that they should be compelled to go somewhere else and there take up the business of cartage, which is not their proper business. That, I think is forcing the railway companies out of their proper sphere.

Mr. CARVELL: The proposition is to put in these words: "as may be customary or usual in connection with the business of a carrier." We know that it is customary and usual in connection with the express companies both to deliver and to collect packages, therefore you would be giving power to the Board to say to the railway company: "You must collect and deliver freight." I do not think you can do that, it is not a part of their business.

Hon. Mr. COCHRANE: They have done it.

Mr. MACDONELL: They are doing that in Toronto, and there is discrimination.

Mr. CARVELL: Why should the Railway Board, or why should I have the right, living in the little town of Woodstock to go to the Board and ask them to compel the railway company to put on trucks and deliver freight in that town.

Mr. MACDONELL: They do that with the express companies.

Mr. CARVELL: But it is not the business of the railway companies.

Mr. NESBITT: I do not believe an express company can be included as a common carrier.

Mr. SINCLAIR: It has never been customary for a railway company to deliver packages as a railway company, consequently it does not apply.

Mr. CARVELL: As the clause is drawn, the Board can compel the railway company to collect and deliver freight.

Mr. MACDONELL: The clause drawn by Mr. Johnston does not read that way.

Mr. NESBITT: I would like to see some different provision inserted than is now covered by Section 313. I would suggest, as it is nearly time for adjournment, that Mr. Johnston should draft a clause that will be satisfactory.

Mr. JOHNSTON, K.C.: Suppose we put the clause in this shape: add the following paragraph to Sub-section 1:

> (*e*) furnish such other service incidental to transportation as is customary or usual in connection with the business of a railway company.

Use the words "railway company" instead of "carrier."

Hon. Mr. COCHRANE: That will cover just what we are driving at.

Mr. CARVELL: That satisfies me.

Mr. NESBITT: That is acceptable to me.

Hon. Mr. COCHRANE: They would have to do it again.

Mr. CARVELL: I will leave that to the Board.

The CHAIRMAN: You have heard the amendment, shall it be adopted?

Amendment adopted.

Mr. CARVELL: I suppose the Committee will meet again on Tuesday, as we cannot get through with the Bill to-day, and I am afraid I will not be able to be here. In case the Bill should be completed and ready to be reported, I hope the Minister will give serious consideration to the proposal made at the beginning of the sessions of this Committee that the Government Railways be brought under the jurisdiction of the Board.

Hon. Mr. COCHRANE: We are agreed on it.

Mr. NESBITT: I was going to ask about that.

Hon. Mr. COCHRANE: It can be done any time that the wording of the clause is settled. I think there should be some time limit in reference to these bi-weekly payments, I think there should be two or three months given to the railway companies in which to get ready.

Mr. CARVELL: That is quite right.

The CHAIRMAN: That is understood.

Mr. NESBITT: I think they should get at least four months.

Mr. W. L. BEST: Will September 1 be satisfactory to the railways?

Mr. NESBITT: I would suggest that you allow them until October 1 instead of September 1.

Hon. Mr. COCHRANE: All right.

Mr. SINCLAIR: It was proposed to strike out the words "other than Government railways" in Section 5. Shall these be left in?

Mr. CARVELL: That will accomplish the purpose.

Mr. JOHNSTON, K.C.: Do you propose, Mr. Minister, to bring Government railways under the Act for all purposes, such as the acquisition of lands, for instance. Would they have to arbitrate, or would it still be necessary to go to the Exchequer Court?

Mr. CARVELL: It would not be of much use to us unless it did provide for arbitration.

Mr. NESBITT: It would not do any harm.

Hon. Mr. COCHRANE: I could not say as to that. The Exchequer Court was established for that purpose.

Mr. JOHNSTON, K.C.: I will discuss the matter with the Minister.

The CHAIRMAN: This matter will stand until next Tuesday, when we will try to finish the Bill.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 24--JUNE 5, 1917

(Interchangeable Tickets; Government Railways under Railway Board, etc.)

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1917

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MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
Committeee Room,
Tuesday, June 5, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Cochrane, Hartt, Macdonell, Maclean (York), Nesbitt, Oliver, Reid, Sinclair, Turiff, and Weichel.

The Committee resumed consideration of the Bill, and took up some of the deferred sections.

Section 5 being read, on motion of Mr. Reid, it was

Resolved that the necessary amendments be made in the Bill under consideration with the object of making the provisions of the said Bill apply to the Government Railways with the exception of those sections thereof dealing with expropriation.

At one o'clock the Committee adjourned until to-morrow at 11 o'clock a.m.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
Room 301,
June 5, 1917.

The Committee met at 11 o'clock a.m.

Hon. Mr. REID: I would like to bring to the notice of the Committee a question which I raised in the House some years ago, namely, the advisability of requiring railway companies to grant interchangeable tickets between union terminal stations. When I formerly spoke of the matter I instanced the case of passengers taking a ticket in Toronto, for Montreal and getting on the wrong train, and after going a certain distance being sent back and having to start once more for their destination. It occurred to me that if the Board of Railway Commissioners had power to order the issue of interchangeable tickets between points where there were union stations, it would provide for such cases and be a great convenience to the public. At present there is a certain amount of interchanging done, for instance, on the Grand Trunk to Ottawa, via Brockville; but it is the interchange of tickets between terminal points which I am now advocating and would like to see carried out.

The CHAIRMAN: There has been some correspondence in support of the proposition made by the Minister of Customs. I have here a letter from Mr. W. D. Gregory, of Gregory, Gooderham, Campbell & Coleman, Barristers, Toronto, the last clause of which says: (Reads)

> What we would like to have done, is to have the Railway Act amended so that the right of the Railway Commissioners to make an order for interchangeable tickets, if they see fit to do so, should be clear beyond question. I wrote about the matter to Mr Strachan Johnston, who, I think, appears for you, and he writes me that he is bringing the matter to your attention.

Mr. SINCLAIR: Is there any existing legislation with respect to this question?

Hon. Mr. REID: I do not think there is.

The CHAIRMAN: What is the wish of the Committee in regard to the proposition?

Mr. NESBITT: My view is very easily expressed. I would not do it at all.

The CHAIRMAN: Have you, Mr. Chrysler, anything to say in regard to the subject of interchangeable tickets?

Mr. CHRYSLER, K.C.: No. I never heard of it before.

Hon. Mr. REID: The question was up some time ago.

Mr. MACLEAN: I am given to understand that the Board of Railway Commissioners has compelled the C.P.R. to stop at Oakville and to accept Grand Trunk tickets.

Mr. JAMESON: I remember the discussion in the House to which the Minister of Customs has alluded. If a person makes a mistake and gets on the wrong train, I think the Railway Board should make some provision for an interchange of tickets, but I do not think I would go beyond that.

Hon. Mr. REID: It is only where a mistake occurred that an interchange of tickets would be necessary, in 99 cases out of 100.

Mr. JAMESON: My opinion is that there is a provision in some European country permitting the interchange of tickets under certain conditions.

Mr. MACLEAN: It occurs to me that some provision was adopted in Great Britain when the Government took over the railways.

Mr. MACDONELL: I think that where there are trains operating between Toronto Union Station, for example, and Montreal, the Board of Railway Commissioners should have some kind of general authority to provide for such cases as the Minister of Customs has spoken of. At the same time, the Board might spread the service of trains operating between these points over a larger period of time and so effect a better service.

Mr. MACLEAN: If it is true that the Board of Railway Commissioners require C.P.R. trains to stop at Oakville and to accept Grand Trunk tickets, the principle for which the Minister of Customs is contending has already been adopted.

Hon. Mr. REID: I would like to see an amendment adopted requiring Railway Companies to interchange tickets if a mistake has been made. At the present time, I understand, the Board has not even power to require them to do that.

Mr. MACLEAN: What about that point, Mr. Johnston?

Mr. JOHNSTON, K.C.: No, they have not the power at present.

Mr. MACLEAN: Can you frame an amendment whereby the Board would have that power?

Mr. JOHNSTON, K.C.: That is not a thing that can be done in a few minutes. Is it desirable that the railways should be compelled to give these interchangeable tickets? That is the starting point.

Mr. SINCLAIR: Who is to get the proceeds?

Hon. Mr. REID: If a man purchases a ticket for Montreal on the C.P.R., makes a mistake and goes all the way by the Grand Trunk, the C.P.R. refunds the passage money to the Grand Trunk. The same procedure obtains on the Toronto to Ottawa line via Brockville.

Mr. NESBITT: That arrangement was made between themselves.

Hon. Mr. REID: Mistakes are occurring every day in the Union Station, where people get on the wrong train or the wrong road, and they have to get off and go back, because they have not the money to pay their fare. It is generally some poor person who is caught in that way.

The CHAIRMAN: Have you anything to say as to that, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I have no instructions about that. As I said a short time ago, I never heard of it before.

Hon. Mr. COCHRANE: You had not concluded your remarks, Mr. Chrysler, on the occasion of our last meeting.

Mr. CHRYSLER, K.C.: No.

The CHAIRMAN: Had we not better dispose of this?

Hon. Mr. COCHRANE: It is not on the programme.

Hon. Mr. REID: Does that mean it will not be considered at all?

Hon. Mr. COCHRANE: Let it stand till to-morrow.

Mr. CHRYSLER, K.C.: I understand it is suggested that the matter be postponed till to-morrow. In the meantime, perhaps I can get instructions.

The CHAIRMAN: I was going to ask the Committee if it was their wish that Mr. Johnston should frame a clause to cover it?

Hon. Mr. COCHRANE: No.

Mr. MACLEAN: It stands till to-morrow.

Section allowed to stand.

On section 355—Seizure and sale of goods subject to tolls.

Mr. CHRYSLER, K.C.: This is merely a formal matter, I think. Section 355 deals with collection of tolls. Under section 354 provision is made that the railway company, in case of neglect of payment or demand of any lawful tolls, may recover the tolls in any court. Section 355 gives the remedy against the goods. Subsection I reads:—

> The Company may, instead of proceeding, as aforesaid for the recovery of such tolls, seize the goods for or in respect whereof such tolls are payable, and may detain the same until payment thereof, and in the meantime the goods shall be at the risk of the owners thereof.

Subsection 2 provides:—

> If the tolls are not paid within six weeks, and, where the goods are perishable goods, if the tolls are not paid upon demand, or such goods are liable to perish while in the possession of the company by reason of delay in payment or taking delivery by the consignee, the company may advertise and sell the whole or any part of such goods, and out of the money arising from such sale, retain the tolls payable and all reasonable charges and expenses of such seizure, detention and sale.

We are asking for a provision which is not there. Subsection 3 provides that the company shall pay or deliver the surplus, if any, of such of the goods as remain unsold to the person entitled thereto. Should we not have the right to recover the deficiency, if the goods do not realize the amount of the tolls? If we do not require to sell all the goods for the tolls, we return them, but suppose the amount realized is not sufficient to pay the tolls? That may and does occur sometimes, particularly in the case of household furniture and things of small intrinsic value, and they travel a long distance. The company having the custody of the goods at the point of destination may be the third or fourth road that has handled the goods. I propose that the following subsection be added:—

> If the amount realized from such sale is not sufficient to pay the amount of such tolls, and the reasonable charges and expenses of such seizure, detention and sale, the company may recover the amount due to it, after giving credit for the amount so realized from any person who is liable therefor.

In some cases this provision would not be of any use, but in other cases it might be.

Mr. MACLEAN: They come back on the owner of the goods.

Mr. SINCLAIR: For the amount of the freight.

Mr. CHRYSLER, K.C.: I have put it "From any person who is liable therefor." The consignee may not be liable. It may be that the consignor sent them without sufficient authorization from the consignee?

Hon. Mr. REID: Would the remedy be through the other railroad, or direct?

Mr. CHRYSLER, K.C.: In the case of goods going over two or three roads, if the charges are not collected, I think the way it would work out would be that the railway last handling the goods would sell and claim the balance of the tolls from the road which handed over the goods.

Hon. Mr. REID: Suppose it went over two or three roads, and the second road had to pay the charges and could not collect from the shipper?

Mr. CHRYSLER, K.C.: Well, it would be their loss, taking it from an irresponsible shipper.

Mr. MACLEAN: How much would you collect? The full charges, or just the tolls over your own road?

Mr. CHRYSLER, K.C.: The balance due for tolls, whatever it might be. If you sell the goods under 355, your right under 354 is gone, as this is worded.

Mr. MACLEAN: Why?

Mr. CHRYSLER, K.C.: Because it says:

> "The company may, instead of proceeding, as aforesaid for the recovery of such tolls, seize the goods," etc.

Mr. JOHNSTON, K.C.: The company has two options. It is pretty well off. They have the goods, or they can sue.

Mr. CHRYSLER, K.C.: If the company sells the goods, in the case of perishable freight, it loses its right to recover from the shipper.

Mr. JOHNSTON, K.C.: That is right.

Mr. CHRYSLER, K.C.: If that is the right principle, that is an end of it. It is for the committee to say.

Mr. NESBITT: If they are perishable goods, they may not be of much value.

Mr. CHRYSLER, K.C.: No value in some cases.

Mr. NESBITT: And in that case you want to recover from the consignee.

Hon. Mr. COCHRANE: Suppose the goods are delayed and damaged through the fault of the railway—

Mr. CHRYSLER, K.C.: Of course, the shipper would not be liable, if it was through our fault.

Mr. NESBITT: If it were the fault of the railway he would have a defence in common law.

The CHAIRMAN: This section has been in operation for several years.

Mr. CHRYSLER, K.C.: Apparently, it is not new.

The CHAIRMAN: I think it would be a hardship in some cases.

Mr. JOHNSTON, K.C.: The power of sale only refers to perishable goods. You can seize any goods under section 355.

Mr. MACLEAN: I think it is subject to the approval of the Board.

Mr. CHRYSLER, K.C.: Subsection 2 says "If the tolls are not paid within six weeks"—and there is no other alternative—"And where the goods are perishable goods, if the tolls are not paid upon demand, or such goods are liable to perish in the possession of the company by reason of the delay in payment, or taking delivery by the consignee, the company may advertise and sell the whole or any part of such goods."

Mr. MACDONELL: You will have to put in a safeguarding clause in regard to the shipper, giving him the right to raise any proper defence, as to carelessness of the company and delay in shipping.

Mr. CHRYSLER, K.C.: I do not think so.

Mr. SINCLAIR: I think if they get everything that is realized from the sale of the goods, they had better be satisfied.

Mr. NESBITT: I do not agree with that.

Section adopted without amendment.

On section—Public wires crossing railways, or other wires.

Mr. CHRYSLER, K.C.: I can dispose of this with a word. If this section has not been amended, I have nothing to say.

Mr. JOHNSTON, K.C.: The section has not been passed.

Mr. CHRYSLER, K.C.: The railway representatives asked that the words "Or along" be inserted, and I object to that.

Mr. PELTIER: It was held over on account of Mr. Chrysler not being advised.

The CHAIRMAN: The word "along" has not been inserted in my copy.

Mr. LAWRENCE: It was my proposition to amend this section by inserting after the word "across" in the fourth line the words "Or along". Our proposition was that they should get leave from the Railway Board before doing it.

Mr. JOHNSTON, K.C.: It reads "across the railway", and the railway men say they should not be allowed to string wires along the railway.

Hon. Mr. COCHRANE: You do not object to leave it to the Railway Board.

Mr. CHRYSLER, K.C.: We object to being obliged to get the consent of the Board for a wire that is carried alongside the railway and does not cross any part of the railway work.

Hon. Mr. COCHRANE: Why do you object?

Mr. CHRYSLER, K.C.: Because it is unnecessary.

Hon. Mr. COCHRANE: It is a dangerous thing and should not be permitted without the consent of the Board.

Hon. Mr. ROBERTSON: The telegraphers employed on the railways are responsible for the request, because of the fact that one of the employees lost his life by reason of a high power voltage wire being carried along on the railway telegraph poles from the public crossing at the railway station. He was electrocuted. If this provision is to be inserted in regard to high voltage wires crossing the company's wires, then it should also be inserted in reference to high voltage wires being carried along the railway.

Mr. NESBITT: It is not telephone or high power wires.

Hon. Mr. ROBERTSON: We submit that high power voltage wires should not be carried on telegraph wires.

Mr. CHRYSLER, K.C.: This section includes telegraph and telephone wires.

Mr. NESBITT: I do not see that we should give the power to erect telegraph wires.

Mr. CHRYSLER, K.C.: If the right is confined to heat, power and electricity it is quite satisfactory.

Mr. LAWRENCE: If you do not include them all, a company may get permission of the Board to put up a high voltage wire and afterwards string telephone or telegraph wires alongside of it, which would cause just as much danger.

The CHAIRMAN: Shall section 372 be amended by adding after the word "contain" on the fourth line, the words "along or"?

Section as amended adopted.

The CHAIRMAN: Now we have to consider sections 368, 369 and 370.

Mr. JOHNSTON, K.C.: The draftsman points out that these are now the standard clauses. They are intended to avoid the necessity of having these details repeated in every special Act.

Sections adopted.

On section 391—Limitation and Defences.

Mr. CHRYSLER, K.C.: The only thing involved in this section is the one point as to whether the time limitation should be one year or two years. The request made by the Brotherhood representatives was that the time limit should be extended for two years.

The CHAIRMAN: We have passed that. Mr. Chrysler.

Mr. CHRYSLER, K.C.: I understood I would be heard before the Committee adopted the section.

Resolved on the motion of Mr. Nesbitt, seconded by Mr. Sinclair, that Mr. Chrysler be heard.

Mr. CHRYSLER, K.C.: The point lies within a very narrow compass. In the first place twelve months has been the period of limitation since the beginning of the General Railway Act. This provision is about 60 years old, and it is the invariable limitation which has prevailed. Even in the old Act of Upper Canada before Confederation, one year was the period of limitation. Now, what does it extend to? It extends to all kinds of suits for indemnity in case of injury. When the words "construction and operation" were inserted in the Act in 1903, the meaning given to them was that they applied to all actions, first in the construction, afterwards in the operation of the road, apart from the carriage of goods and passengers. In other words, anything relating to a contract is outside of this section and governed by another section, and another period of limitation applies which, I believe, in the province of Ontario would be six years. This section applies to cases where persons are killed on the track, or a passenger slips on the icy surface of a platform and breaks his leg. Now, as to the period within which such actions may be brought, we say one year is reasonable. As to employees, there are Acts in force in every province, and I have a summary of them here, in which the invariable period of limitation is twelve months. In Ontario the limitation, in case of injury not resulting in death, is six months. Where death occurs the limitation is twelve months. In Nova Scotia action under the Employer's Liability Act must be brought within twelve months if the accident is fatal. In Manitoba the period of limitation is two years, but if the accident is fatal it must be brought within twelve months. In Saskatchewan the limitation is twelve months, and in the Northwest Territory, Alberta, twelve months. In British Columbia the limitation in case of fatal accident is twelve months, and in New Brunswick the same.

Mr. SINCLAIR: Suppose a fire took place and burnt down a person's house, and if there was a cause of action, do you want the limitation of one year?

Mr. CHRYSLER, K.C.: Certainly, it is a very proper case in which the commencement of an action should be limited to one year. The reason for all these limitations is the difficulty of securing evidence.

Mr. SINCLAIR: I understand that in the case of an accident you may be liable for damages for injuring goods in transit. Now, in my own province, I can be prosecuted for the liability within six years.

Mr. CHRYSLER, K.C.: That does not come under this section.

Mr. SINCLAIR: I understand that, but I understood you to argue the limitation of one year should apply to everything.

Mr. CHRYSLER, K.C.: You understood me? I said everything that falls under this section.

Mr. SINCLAIR: What does fall under this section?

Mr. CHRYSLER, K.C.: All tort trespassers but not contracts. Claims for damages for illegal acts but not contracts.

Mr. MACLEAN: What about injuries to workmen?

Mr. CHRSYLER, K.C.: In all cases that comes either under the Workman's Compensation Act or the Employers' Liability Act.

Hon. Mr. COCHRANE: Does the Workmen's Compensation Act apply to railways in the province of Ontario?

Mr. CHRYSLER, K.C.: I would suppose that the Ontario Workmen's Compensation Act applied to actions brought against the Dominion Railways.

Mr. PELLETIER: What harm will it do if the Provincial law applies to a railway company?

Mr. CHRYSLER, K.C.: I am pointing out it is not usual, it would really affect the case of the men who were not employees.

Mr. PELTIER: How are you going to arrange that we shall be in a proper position in the case of an action against the Company.

Mr. CHRYSLER, K.C.: You will be in the same position you are now. The provinces have much the same legislation, excepting the province of Quebec.

Mr. LAWRENCE: The law of the province of Quebec is bad enough to make up for all the good ones. In that Act the yearly wage of the workman must exceed $600. What good is that provision?

Mr. CHRYSLER, K.C.: The point is, what is the period of limitation in the province of Quebec?

Mr. LAWRENCE: In Quebec the yearly wage must be $600 before action can be taken in the Courts. In Ontario the Workmen's Compensation Board settles the matter, but Quebec has no such law. If a railway employee gets injured he does not know, probably, until after a year, whether he will be able to resume his occupation. If he does not, he has lost his action against the Company. Now, I know of the case of a switchman who was standing alongside the railway track when a passenger train came along and the brake shoe flew off and injured his leg. The accident laid him up but he expected to resume his former occupation and did not take action against the Company. He was not able to consult a lawyer because he had not a cent of money, and so he spoke to me about it. Well, I looked into the circumstances for him, but the limitation of one year during which he could bring action had expired. This poor fellow lost his job, did not get a cent for his injury, and in a few months lost his life.

Mr. BEST: There are still four provinces where they may resort to the Common Law, namely Quebec, New Brunswick, Saskatchewan and Alberta.

Mr. CHRYSLER, K.C.: Those are all the matters I wished to mention.

On section 2, subsection 15—Interpretation section.

Mr. JOHNSTON, K.C.: The definition of the word "Lands" was left open. Lands are defined as follows:—

> "Lands" means the lands, the acquiring, taking or using of which is authorized by this or the Special Act, and includes real property, messuages, lands, tenements and hereditaments of any tenure and any easement, servitude, right, privilege or interest in, to upon, over or in respect of the same.

Mr. MACDONELL: These words "And any easement," etc., are new. I pointed out before the committee on one occasion that the company could deal with a man's lands and easement in any form. They can mutilate his land by taking an easement over it, making it a servitude easement under some right or power. I can imagine numerous cases where easements could be taken from lands, and leaving the lands practically worthless in the hands of the owner. I do not think a case has been made out that the company should have the right to take an easement of that kind. Every member of this committee knows of cases in which easements may be acquired which practically destroy the value of a man's land and of trifling value to the railway at the time but the owner only gets nominal damages. The measure of damages a man suffers is really the value of the land; the actual damage paid for is very small.

Mr. NESBITT: In case of dispute as to what is an easement, would it not be referred to the Board?

Mr. JOHNSTON, K.C.: No, it is well understood in law. The same words occur in the Government Railways Act. They have the same power now. It seems to me the answer to Mr. Macdonell's point is that if a man were damaged he would be compensated. There is ample provision for full compensation to anybody who is hurt in any shape or form. How could a railway company tunnel underneath the ground unless it took an easement? Are you going to compel them to take the whole of the land when is does not need it and it is not necessary for their purpose?

Mr. SINCLAIR: Suppose you tunnel under my house for a railway and destroy the house?

Mr. JOHNSTON, K.C.: You would be amply compensated.

Mr. SINCLAIR: The Board would have power to give the full value of the land.

Mr. JOHNSTON, K.C.: It would not be the Board. It would be the judge.

Section adopted.

On subsection 29 (Section 2)—Telegraph Toll.

Mr. JOHNSTON, K.C.: At the suggestion of Mr. Bennett that has been amended to read "Telegraph includes Cable and wireless Telegraph"

When you consider section 376 that is not an appropriate amendment, because 376 provides—

> After this section is brought into effect section 375 of this Act shall extend and apply to marine electric telegraphs or cables.

And also provides that this section shall come into force upon similar provision being made by the proper authority in the United Kingdom and upon proclamation of the Governor in Council. Once 376 is brought into force, telegraph includes cable, and until that time it is not proper to so provide. So that I submit the words "and cable" which were added the first day the committee met should be struck out and the clause restored.

Mr. MACDONELL: That is correct.

Section adopted as amended.

On section 5—Application of Act.

Mr. JOHNSTON, K.C.: That was left over for the Minister to see whether it would apply to Government railways. I have considered the matter since Friday, and I think it would be a tremendously long affair to make it apply to Government Railways, and you would have to amend half the sections. If it is desired to make this amendment, I submit the Government Railways Act should be amended. the Government Railways Act provides, in respect of traffic over the Grand Trunk and Canada Atlantic, that the Minister shall file tariffs, and that the Board shall have the like jurisdiction over these tolls and tariffs as it has with reference to tolls under this Act. It would be a much simpler matter to amend the Government Railways Act.

Hon. Mr. COCHRANE: I only want it to apply to the tariff, but I think the expropriation provision should be left in, and then they would not be subject to every judge in the country.

Mr. NESBITT: I agree with the Minister, except that I would like to see the other provision in.

Mr. SINCLAIR: I think this is a very important proposal. I know there is a strong feeling in favour of having it done in the Maritime Provinces, where the railway is operated.

The CHAIRMAN: Would it not be sufficient for the committee to express its views in support of the section and allow the Bill to be submitted in that way, or what would you suggest Mr. Minister?

Hon. Mr. COCHRANE: I think we should amend the Act.

Mr. JOHNSTON, K.C.: How about the Government Railways Act?

Hon. Mr. COCHRANE: It could be repealed.

The CHAIRMAN: Mr. Johnston pointed out that you could amend the Government Railways Act by adding a few clauses, but you could not do so with this Bill.

Hon. Mr. COCHRANE: He ought to know.

Mr. JOHNSTON, K.C.: I think you would require a hundred or more amendments to this Act. It was suggested by Mr. Carvell that you could amend section 5 by striking out the words "Other than Government Railways", but then you go back and say that "Railway means any railway which the company has authority to construct", and it would not apply to a Government railway, and all these sections refer to the company. Why not amend the Government railways Act by setting out that sections so and so shall apply to Government railways?

Hon. Mr. COCHRANE: When you are amending the Railway Act, why not insert it in that Act?

Mr. SINCLAIR: It is only a question of clerical work.

Mr. JOHNSTON, K.C.: I do not altogether agree with that. I certainly would not like to tackle it, unless I had a week to do it.

Mr. SINCLAIR: We will give you a week.

The CHAIRMAN: They are anxious to have this Bill in the House as soon as possible and have it sent up to the Senate.

Mr. JOHNSTON, K.C.: I have tried it by drawing clauses to provide that when the word "Railway" is used it shall apply to Government railways, but it will not work out.

Mr. MACLEAN: Could you not accomplish the object by a provision that certain sections in this Act shall apply to Government railways?

Mr. JOHNSTON, K.C.: I tried that too, but I found a great many difficulties. If anybody will go through this Act with me, I will point out how difficult it is to do that.

Mr. MACLEAN: You say you would have to re-write the Act?

Mr. JOHNSTON, K.C.: No doubt of it.

The CHAIRMAN: I think I ought to read a letter from Mr. Gisbourne on procedure regarding this section.

Hon. Mr. COCHRANE: Who asked him for a letter?

The CHAIRMAN: I asked him for it. I think I should know something about this matter being Chairman.

Hon. Mr. COCHRANE: It is a matter of procedure, not of Government policy.

The CHAIRMAN: I do not know anything about that part of it, but I am going to do my duty while I am Chairman of the Committee.

Mr. NESBITT: I am very firm in my view, with the Minister, that it should be in this Act, but at the same time I am not anxious to press any views that are not—

Mr. JOHNSTON, K.C.: Just allow me to say how easy I think it would be to adopt the other plan, and gain the same effect. Section 13 of the Government Railways Act now provides that the Minister shall submit all tariffs and tolls to be charged for the traffic on the tracks to which such running powers extend to the Board of Railway Commissioners of Canada, and so on. It would be quite easy, by an amendment to that section, to bring the matter of tariffs under the Board.

Hon. Mr. COCHRANE: But there is more than the tariffs.

Mr. JOHNSTON, K.C.: Then there is the question of the operation, maintenance and equipment. It seems to me we might bring these clauses under the Railway Act.

Mr. LAWRENCE: With the permission of the Committee, I would like to submit our recommendation, as follows:—

> We respectfully submit that, if consistent, the Railway Act and its provisions respecting equipment, maintenance and operation, as well as orders of the Board in this respect, should, in the interests of safety apply to lines of railway operated by the Canadian Government as it applies to Company operated railways.

The CHAIRMAN: As long as it is done, you do not need to worry.

Mr. MACLEAN: He wants it amended to carry out his views. Does that clause do it? We would have to instruct our draughtsman to go through the Act and frame it to suit the case.

Mr. JOHNSTON, K.C.: Mr. Blair, who is familiar with the Act, agrees with me that to amend this Act, would probably be a week's work.

Mr. SINCLAIR: I think you had better do it.

Mr. MACDONELL: If it can be done in a week, do it.

Hon. Mr. REID: I move that the sections dealing with the Government Railway system be revised and re-written, with the exception of those regarding expropriation.

Motion seconded by Mr. Sinclair and concurred in.

On Section 52—subsection 2, Appeal to Supreme Court as to jurisdiction by leave of Judge.

Mr. JOHNSTON, K.C.: The amendment agreed upon was to this effect: "An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, upon leave therefor being obtained from the Judge of the said Court upon application made within one month. I have a suggestion to make with regard to section 169, paragraph (e), "plan, profile and book of reference." Paragraph (e) says:

> The areas and length and width of land proposed to be taken, in figures, stating every change in width.

It strikes me, and Mr. Chrysler agrees, that in some cases it is not possible to comply with that and we might add the words after "width" "or other accurate description thereof" in the 45th line.

Suggestion concurred in and paragraph amended accordingly.

Mr. JOHNSTON, K.C.: The question has been brought to my attention in reference to section 186, which deals with "Industrial spurs" that there has been some correspondence between Sir Henry Drayton and Mr. Mallon Cowan, K.C. regarding that clause. Mr. Cowan has pointed out to the Chief Commissioner that as subsection 5 reads the result is when the owner of an industry requires a spur he deposits the cost of the spur with the Company and then he is repaid by a rebate on tolls. Subsection 5 provides that upon repayment by the Company of all payments made by the applicant upon such construction, the said spur or branch line, right of way and equipment shall become the absolute property of the company free from any such lien. Mr. Cowan thought that railway company having repaid the cost of the spur and equipment should have the right to operate, but that they should not own the fee simple of the right of way which they had never paid for.

Mr. MACDONELL: They have paid for it in the rebate on the tolls.

Mr. JOHNSTON, K.C.: That is not the case. Subsection 3 provides that the aggregate amount so paid by the applicant in the construction or completion of the said spur or branch line shall be repaid or refunded to the applicant by the company by way of rebate.

Hon. Mr. COCHRANE: They pay for it in the rate or toll charge.

Mr. JOHNSTON, K.C.: They ought to have the right to operate but not the fee simple of the right of way.

Mr. NESBITT: They should not own the right of way, it may belong to us.

Mr. JOHNSTON, K.C.: The Chief Commissioner thinks it goes too far and this amendment which Mr. Blair has handed to me is to this effect that it shall be amended to read as follows:—

> (3) The aggregate amount so paid by the applicant to defray the cost of the necessary grading, ties, and rail construction on the said spur or branch line, shall be repaid or refunded to the applicant, by the company, by way of rebate, to be determined and fixed by the Board, out of, or in proportion to the tolls charged by the company in respect of the carriage of traffic for the applicant over the said spur or branch line.

And in subsection 5, the words "right of way" be struck out in the 3rd line, and that the following be added at the end of the clause:

> With the right to operate over it during the time the said spur, or branch line, is required for the purpose of the industry or business it is constructed to serve.

so that the railway can still continue to operate.

Mr. MACDONELL: That does not meet the objection.

Mr. CHRYSLER, K.C.: It does not cover all the points.

Hon. Mr. REID: I would like to ask Mr. Johnston this question: Suppose I wanted an industrial siding built into a manufacturing industry, and there was no way of getting into that industry with the right of way because the man who owned the intervening property refused to sell the right of way. The Railway Company could expropriate that land and by so doing get a right of way into the manufactory, and the owner of the industry would have to repay the company for what they paid for the land.

Mr. JOHNSTON, K.C.: The railway that does the expropriation owns the land.

Hon. Mr. REID: I know, but they might not be able to buy the land for a right of way to an industry four or five miles away.

Mr. CHRYSLER, K.C.: I think the Hon. Mr. Reid is perfectly right because the owner of the industry does not own, of course, the land required for the right of way. Where he does it seems to cover everything, but if there is intervening land the railway company would probably ask the owner of that industry to advance the money to pay for that right of way.

Hon. Mr. REID: I know personally of a case where the spur line had to cover a long distance and the railway company said: "If you will purchase the right of way, we will lay it." If this Act were changed the railway company might expropriate the land, but, as it stands now, it would prevent them paying for the land.

Mr. MACDONELL: I know of a number of cases in Toronto where an industrial spur would be the salvation of a large industrial area, but one man who has the initial part of the spur will stop the people who are begging the railway company to give them accommodation from getting it. This clause is drawn with a special view of giving relief to people in cases of that kind.

Mr. JOHNSTON, K.C.: Perhaps Mr. Chrysler and I should talk this over with Mr. Blair after adjournment

Mr. CHRYSLER, K.C.: We are all agreed as to the principle, but it should be made flexible.

Mr. NESBITT: It is absolutely correct that in the case of the ordinary siding the company does not pay us for the right of way if they run the siding over our land.

Mr. MACDONELL: The change that Mr. Cowan says is very material.

Mr. CHRYSLER, K.C.: The word "equipment" might cover it.

The CHAIRMAN: Mr. Johnston, Mr. Chrysler and Mr. Blair will get together and discuss this section.

Mr. JOHNSTON, K.C.: With regard to section 233 "Appeal from award" the word "the" should be inserted between the words "from" and "opposite", in the second line, so that the section will read:

> Within one month from receiving from the arbitrator, or from the opposite party, etc.

The CHAIRMAN: In subsection 3 the word "five" should be substituted for "ten" in the third line.

Mr. JOHNSTON, K.C.: Then the reference to the section of the former Railway Act should be 209 instead of 290.

Section 233 carried as amended.

The CHAIRMAN: Section 219 stands for reconsideration also. Have you any suggestions to make, Mr. Johnston?

Mr. JOHNSTON, K.C.: I have none. You remember that Mr. McCarthy suggested an amendment. Mr. McCarthy pointed out that sometimes an arbitration was necessary and that the railway company may have found out that it had given notice to take more land than it really required. In the particular case cited, it happened to be an easement. The suggested amendment, however, is of general application. Mr. McCarthy suggested that if the railway finds it has given notice that it desired to take more land than it needs, why should it not simply say that instead of taking so much it will take so much less, and proceed in the court of arbitration and have the matter disposed of. His suggested amendment is this: (Reads)

Sub-sec. (3) Where the amount of compensation payable under the notice has been referred to arbitration, the Company may, in lieu of abandoning the notice pursuant to Sub-sec. (1) hereof, give to the opposite party and to the arbitrator, a notice varying the description of the lands or materials to be taken or the powers intended to be exercised by the Company; which subsequent notice shall also contain:

(*a*) A declaration of readiness to pay a certain sum or rent as the case may be, as compensation for such lands or for damages for such materials or powers, and damages suffered and costs incurred by such opposite party in consequence of the former notice.

(*b*) A notification that if within eight days after the service of such notice the party to whom the notice is addressed, does not give notice to the Company that he accepts the sum offered by the Company, the arbitrator may proceed to fix the compensation for the lands, materials or powers described in such subsequent notice.

Sub-sec. (4) In the event of the arbitration proceeding pursuant to such subsequent notice, all evidence taken and proceedings had under the former notice, shall, in so far as they are applicable, be used in the arbitration upon the subsequent notice and the proceedings on both sides shall be deemed one arbitration, but the Company shall be liable to pay all damages suffered and costs incurred by the opposite party by reason of the Company having failed to demand by the original notice, the lands, materials or powers as described in the subsequent notice.

Mr. NESBITT: It looks reasonable.

Mr. JOHNSTON, K.C.: I thought it was reasonable.

Hon. Mr. REID: Do you change the whole section?

Mr. JOHNSTON, K.C.: No, you simply add some subsections. The clause already provides that where the notice already given improperly describes the land, the notice and all proceedings may be abandoned. What Mr. McCarthy says is: Why should we not cut down the description to what is wanted, and go on in the same arbitration?

Mr. NESBITT: It ought to save costs.

Mr. JOHNSTON, K.C.: I think Mr. Macdonell was of the opinion that it would give the companies special powers as to easements, but if you read the section you will find it does not.

Mr. MACDONELL: It is harmless if not drawn to meet a special case, but there is no objection.

The CHAIRMAN: Shall this amendment be inserted in Section 219.

Mr. NESBITT: I move that it shall be inserted.

The CHAIRMAN: Mr. Nesbitt moves, seconded by Mr. Sinclair, that the amendment be inserted in Section 219.

Mr. SINCLAIR: I am not going to second it, although it may be all right.

Mr. MACDONELL: You objected to it when it was first brought up.

Hon. Mr. COCHRANE: I will second it.

The CHAIRMAN: It is moved and seconded that subsections 3 and 4 as read by Mr. Johnston be added to Section 219. Shall this clause as amended be adopted?

Carried.

The CHAIRMAN: Section 220, dealing with the appointment of an arbitrator has not been passed. The retention of the word "opposite," was discussed after the word "the" on the first line on p. 83.

Mr. JOHNSTON, K.C.: It was simply held over until we should determine whether to leave the word "opposite" in.

Mr. NESBITT: How will it read then?

Mr. JOHNSTON, K.C.: Exactly as it is drawn.

The CHAIRMAN: Shall this clause be adopted?

Carried.

Mr. JOHNSTON, K.C.: The next section which stands is Section 254. That is the provision regarding connections with intersecting railway lines, and it provides for a joint board. It stood because Mr. Lighthall, for some reason or other, asked that it should be left, but he never came back.

Hon. Mr. COCHRANE: What objection did he take to it?

Mr. JOHNSTON, K.C.: I have no idea, sir. As a matter of fact, it is only the law as it stood before, with a few alterations of words to make it clearer.

The CHAIRMAN: Shall this clause be adopted?

Carried.

Mr. MACLEAN: I would like to direct the attention of the Committee to what seems to be a condition for which there ought to be a cure. The railways do not make provision for joining up with other roads. For instance, coming out of Toronto the other night there was an accident, and a lot of trains were delayed. If there had been

a connection between the Canadian Northern and the Canadian Pacific where they are close together, delay would have been avoided to the travelling public. I think there ought to be such a connection.

Hon. Mr. COCHRANE: It would depend upon where a connection was made.

Mr. MACLEAN: Where roads are running together, they should join up. especially coming out of cities. The whole of the freight and passenger traffic, certainly the passenger, was delayed for more than half a day. If the two lines had a connection a little further east, they could use one another's lines. They do not use one another's lines to relieve such situations. I have no suggestion to make just now, but I would like to state the problem here so that the Board may propose something, or that power may be given to the Board to have such connections made.

Hon. Mr. COCHRANE: It would be hard to make the connection because you do not know where you are going to have an accident.

Mr. MACLEAN: Take this case: three railroads are coming out of the city of Toronto, there is a block on one road; and there is no provision for serving the public for the time being by giving running rights over the road that is not blocked.

Mr. NESBITT: They certainly could run back to Toronto.

Mr. MACLEAN: They did not do it. Perhaps there is a better cure coming. If it is possible to make arrangements between railways, to facilitate traffic, they ought to do it.

On section 263—Appropriation for safety of public at highway crossings at rail level.

Mr. JOHNSTON, K.C.: That is the section providing for a railway grade crossings fund. How long is it proposed to continue the Act?

Hon. Mr. COCHRANE: No particular time.

Mr. JOHNSTON, K.C.: So that if the Act read "$200,000 a year for ten years from the first day of April 1910," that would carry it to 1920.

Mr. MACLEAN: Bring it up to date.

Hon. Mr. REID:—Would it not be better to make it a shorter date than 1910?

Mr. JOHNSTON, K.C.: You could start 1st April 1916 if you like.

Hon. Mr. COCHRANE: Yes.

Mr. JOHNSTON, K.C.: Make it ten years from the 1st April 1917.

Mr. NESBITT: I would think five years would be better.

Mr. MACLEAN: Has the fund been exhausted each year?

Hon. Mr. COCHRANE: No.

Mr. MACLEAN: Much of it?

Hon. Mr. COCHRANE: I do not konw how much, but not all.

Mr. MACLEAN: As this is to be a far-reaching Act, why should it not be the date of this year?

Mr. JOHNSTON, K.C.: All right, that is agreed on. It will read "The sum of $200,000 each year for ten consecutive years from the first day of April, 1917."

Section adopted as amended.

On section 302—Running of trains.

Mr. JOHNSTON, K.C.: It is proposed by the Brotherhood to add a subsection to 301, which would be 301 (a) "Every locomotive engine shall be equipped and maintained with an ashpan that can be dumped or emptied without the necessity of any employee going under such locomotive."

I think Mr. Chrysler said that, to a very large extent, that had been done. The only objection to it is the form. We thought it was covered by the power given to the Railway Board to order proper equipment and they have done it. I think there is no doubt the Board has power to order that, and, strictly speaking, it is not necessary for that reason.

Mr. BEST: I might say, in reference to the Board's power, they have issued an order. It is only fair to say that to the committee. Our complaint was that the order had not been carried out by the railway companies, and we thought that if a provision were placed in the Act, they might regard it as more sacred than an order of the Board.

Mr. JOHNSTON, K.C.: It is not desirable to encumber the Act with provisions like that.

Mr. MACLEAN: When the question of the enforcement of the Act comes up, I want to have something to say about it. I am going to put the responsibility upon somebody for the enforcement of this Act, and I will object to enforcement being placed in the hands of the Commission.

Mr. NESBITT: How would it do to put it in the hands of the Chairman.

Mr. MACLEAN: No, I intend to move that the responsibility be imposed upon the Attorney General of each province.

Section 302 adopted as it stood.

Mr. JOHNSTON, K.C.: Section 309, subsection 2, reads as follows:

> "Where a municipal by-law of a city or town prohibits such sounding of the whistle or such ringing of the bell in respect of any such crossing or crossings within the limits of such city or town, such by-law shall, to the extent of such prohibition, relieve the company and its employees from the duty imposed by this section."

The Brotherhoods were in favour of this clause as it stands but there was opposition from some members as to the power conferred upon the municipality.

Mr. NESBITT: I have a memorandum here to the effect that Mr. Johnston was to draw up a section.

Mr. JOHNSTON, K.C.: The Committee, however, did not express its opinion as a whole as to whether the section should stand or be struck out. I thought that if it was intended that the by-law of the Municipal Council should be subject to the Board it would be simple enough to provide, after the word "shall" in the second line on page 119, these words "if approved by an order of the Board.

Mr. CHRYSLER, K.C.: I think we wanted that provision too. We did not think that merely because an order was passed by a municipality that we should stop whistling, but if there is a by-law passed on it, application could be made to the Board for an order dispensing with the whistling. Then we will be very glad to accept it and very glad to have it.

Section adopted as amended.

The CHAIRMAN: Section 310 was allowed to stand pending the discussion of section 309. The former section may as well be adopted.

Section 310 adopted.

Mr. JOHNSTON, K.C.: I think it is now in order to take up section 345, reduced rates and free transportation.

Mr. BEST: Before you do that, I wish to ask a question in regard to section 305—position of passenger cars. I submitted an amendment to that some time ago, in

connection with the placing of a flanger on the rear end of a passenger car, but withdrew it. Since then, I have received a number of complaints from train employees that the practice was carried on to a very great extent last year. I am prepared to take these cases up with the Board of Railway Commissioners and have them dealt with, but I would like to have an expression of opinion from the Committee as to the interpretation of section 305. Does it contemplate that a railway company shall operate a flanger on the rear end of a passenger train the same as on a freight, merchandise or lumber car? We say that to do so is against the law.

Mr. MACLEAN: You say that the flanger would have to be worked by an independent train?

Mr. BEST: The apparatus for bending the tracks, the flanger, is operated by air, and it is most annoying to the successful handling of the train when the air is supplied from the train pipe. The machine is operated by air which is taken from the reservoir which also operates the automatic airbrakes. The whole principle of the airbrake is automatic, and any reduction in the pressure in the train pipe interferes more or less with the operation of the brake. I would like to ask this Committee to give its opinion whether the clause does cover cases of this kind.

Mr. JOHNSTON, K.C.: A flanger is not a freight, merchandise or lumber car.

Hon. Mr. REID: Our interpretation of the section does not apply, that would be a question of law.

The CHAIRMAN: That will come up again if it is found that it does not apply.

Mr. PELTIER: If it is a dangerous thing has not the Board the power to apply it?

Mr. JOHNSTON, K.C.: The Board has complete power.

Section 305 adopted as it stood.

On section 345.—Reduced rates and free transportation.

Mr. BLAIN: I desire to move an amendment to section 345, that is the clause we had up, if you remember, some time ago, and I think it was pretty fully discussed by the Committee. I move that the following subsection be added:—

> "Provided, further, that where the company issues mileage or commutation passenger rates or tickets between a central point within a district and any outside point or points on its railway, such mileage, commutation rates or tickets shall not be withdrawn or discontinued without the consent of the Board, and the Board may, when it sees fit, require the company to grant similar rates or tickets between any such central point, and any other point on its railway."

As I explained before in the town where I live we had, some years ago, commutation tickets and those tickets were cut off by the Grand Trunk Railway Company. The same railway company issued commutation tickets to another point, Oakville, which is the same distance from the city of Toronto as Brampton is, and I contend that the action of the railway in that case is contrary to the spirit of the Act and contrary to the Act itself, so that I want it to be made perfectly clear that the Board has the power to deal with such cases, and this amendment, I think provides for that.

Mr. MACLEAN: I would like to ask Mr. Blain if that amendment applies to any other railway besides the Grand Trunk?

Mr. BLAIN: Yes it does.

Mr. MACLEAN: If the Grand Trunk Railway gives commutation tickets for a point 25 miles out of the city of Toronto, does it follow that the C.P.R. must give the same to other points within the 25 miles radius?

Mr. BLAIN: If the Board says so.

Mr. MACLEAN: Is there provision that if one company gives commutation rates other companies must do so?

Mr. BLAIN: Yes.

Hon. Mr. REID: I was asking if that clause as it reads gives the Board power to compel the railway companies to issue mileage or commutation rates, or is it only when the company themselves issue it that it cannot be withdrawn?

Mr. CHRYSLER, K.C.: Both are covered. As this section is drawn, it covers both.

Mr. BLAIN: The idea was to cover both. I may say that it was understood by some members of the Board, when this matter was before it, that the Board had power, but Chairman Mabee rather decided that they had not power. This is intended, Mr. Chairman, to make it perfectly clear that the Board has power.

Hon. Mr. REID: The clause reads: "Provided further, that where the company issues mileage or commutation passenger rates or tickets between a central point within a district and any outside point or points on its railway, such mileage or commutation rates or tickets shall not be withdrawn or discontinued without the consent of the Board." As I understand it, if the railways do issue them they cannot withdraw them without the consent of the Board. Then there is a new sentence: "And the Board may require the company to grant similar rates or tickets between such central point and any other point on its railway, within an equal or less radius from the farthest point to which such mileage or commutation tickets were issued." Now what I want to get at is: supposing from the city of Ottawa the railways were issuing no mileage or commutation tickets at all, but that the people in a certain locality, say, at Rideau Lakes where the Canadian Northern are running now, wanted week-end tickets, has the Board power under this clause to say: "Now, here is a summer resort; you must issue commutation tickets,"—although such tickets have never been issued before? Is the clause wide enough to cover that? If they have not the power, they should have it.

Mr. MACLEAN: My contention on the whole matter, as I tried to argue it before, was that if the railway system out of the city of Montreal has a broad service of commutation tickets, the same companies should give an equally large city other than Montreal the same broad service. The Board should have power to insist on an equality of treatment.

Hon. Mr. COCHRANE: The only point is that if the Canadian Pacific Railway gave it to Montreal they would have to give it to Toronto if the Board said so.

Mr. MACLEAN: That is not in the Act yet. It is in the general principle underlying the Act that there should be equality of treatment.

Hon. Mr. REID: I am in favour of that. There may be no commutation tickets issued out of the city of Ottawa at all. What I want to get at is——

Hon. Mr. COCHRANE: The Canadian Northern may not have given commutation tickets, but if it had they would have to apply to any place where the Board ordered.

Mr. MACLEAN: That is not set out in the Act.

Hon. Mr. REID: Supposing there were none issued out of Ottawa to the Rideau Lakes, has the Board power under this section to say that commutation tickets shall be issued, the same as are being issued from Montreal to the resorts in that vicinity?

Mr. BLAIN: If not, we could ask Mr. Johnston to correct the section.

Mr. MACLEAN: That is the very point. The section secures what Mr. Blain wants for his town, but I want what Mr. Blain gets for his town to apply to all towns in the vicinity.

Mr. BLAIN: The section was not drawn explicitly to meet the case of my own town. That would not be fair. If it does not cover the point which the other mem-

bers of the committee call attention to, for my part I would like to have it done. Therefore I would suggest that Mr. Johnston draft a section that would meet the case.

Mr. JOHNSTON, K.C.: Excuse me, the wording might be re-drafted as follows:—

"and the Board may, when it sees fit, require the company to grant similar rates or tickets between any such central point and any other point on its railway."

Would that cover the point, Mr. Chrysler?

Mr. CHRYSLER, K.C.: I would rather wait till you get your section drawn.

Hon. Mr. REID: Will that give them power such as I am suggesting?

Mr. BLAIN: The minister was particularly anxious when this was submitted to him that it should not be a case applicable to one town, but should be a broad case applicable to all towns.

Mr. CHRYSLER, K.C.: This, in its origin, is a provision giving the railway companies power to make the reduced rates under certain circumstances and allowing these excursion and commutation rates. That is a violation of the principle of the Act, and that is the reason permission is given. The provision is that fares should be charged equally for the same service everywhere, and without regard to the class of passengers. There is no reason why a passenger travelling twenty miles should travel at a lower rate than one going sixty miles.

Mr. MACDONELL: That may be true in certain cases, yes, but undoubtedly 500 can be carried at a cheaper rate than a few.

Mr. CHRYSLER, K.C.: That is the reason of the amendment.

Mr. MACDONELL: That is the basis of the amendment.

Mr. CHRYSLER, K.C.: It is the basis of section 345: it is permissive. The railway companies are the judges of that, because if you come to apply the principle quite correctly, it may pay the company to put on special trains for special conditions. Excursion trains are of that character. It is an enlarged excursion system. But when you put it as a principle, you take away all right to apply it according to the circumstances. You compel companies to put on excursion trains, or commutation trains, which are the same in principle, whether it pays or not. If it does not pay, you compel passengers and other persons who contribute to the revenues of the railway, to make up the deficiency which the company incurs in operating these trains.

Mr. MACDONELL: The Board will consider that.

Mr. CHRYSLER, K.C.: The Board has no right to consider it. The Board considers our tariffs, and these reductions are made under tariffs properly filed, but these tariffs do not allow us to make excursion and commutation rates and there is no reason why we should make them.

Mr. MACLEAN: We are going to establish that principle.

Hon. Mr. COCHRANE: The Board will decide what is fair and reasonable.

Hon. Mr. REID: And whether the companies should give such rates at all or not.

Mr. CHRYSLER, K.C.: When you speak of Montreal and Toronto the circumstances are entirely different.

Mr. MACLEAN: The Board will judge.

Mr. CHRYSLER, K.C.: Reference was also made to Oakville and Brampton. The circumstances are entirely different there also. Each centre has to stand upon its own merits, and the same must be said of each railway. What may be said of the Canadian Northern running out of Toronto may not be said of the C.P.R. or Grand Trunk at all.

Mr. MACLEAN: That is what the Board is for, to look into and decide those cases.

Mr. CHRYSLER, K.C.: As to commutation rates they are only granted during the summer months usually.

Mr. BLAIN: In the case of Oakville, the commutation rates are operative every day. It was the same too at Brampton before the privilege was withdrawn.

Mr. CHRYSLER, K.C.: You know and I know, Mr. Blain, that some of these privileges were granted a long time ago. People have built their houses and settled in particular localities on the faith of these concessions, and the railway company does not find it very easy to put an end to them.

Mr. MACLEAN: We are going to compel you in certain cases to give these rates.

Mr. CHRYSLER, K.C.: You cannot do that any more than you can compel us to run a $5 excursion rate to New York or between Toronto and Montreal.

Mr. BLAIN: Speaking for Brampton, there was no suggestion at any time that the company should be compelled to put on a special train. It was simply that there should be commutation tickets on regular trains, especially in view of what has happened at Oakville.

Mr. JOHNSTON, K.C.: Here is the amendment which has been drafted:—

> "Provided, further, that where the company issues mileage or commutation passenger rates or tickets between a central point within a district and any outside point or points on its railway, such mileage, or commutation rates or tickets, shall not be withdrawn or discontinued without the consent of the Board; and the Board may, when it sees fit, require the company to grant similar rates or tickets between any such central point and any other point on this railway."

Mr. NESBITT: I am perfectly agreeable to making provision for cases where the company already grant commutation rates for a certain district, but I do not see how you could require a company to grant commutation rates from a central point where it is not done now.

Mr. MACLEAN: We do not say they shall do so, but the Board has power to secure substantial equality of treatment if a case can be made out.

Mr. CHRYSLER, K.C.: On the ground of discrimination I would not object, I think that is right, but to put in a new service for anybody where none existed before is an altogether different matter.

Hon. Mr. COCHRANE: I think you can safely leave it to the judgment of the Board.

Section as amended adopted.

Committee adjourned.

PROCEEDINGS

OF THE

SPECIAL COMMITTEE

OF THE

HOUSE OF COMMONS

ON

Bill No. 13, An Act to consolidate and amend the Railway Act

No. 25—JUNE 6, 1917

(Section re Commutation tickets; Water-borne traffic, etc.)

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1917

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,
Committee Room,
Wednesday, June 6, 1917.

The Special Committee to whom was referred Bill No. 13, An Act to consolidate and amend the Railway Act, met at 11 o'clock a.m.

Present: Messieurs Armstrong (Lambton) in the chair, Blain, Cochrane, Cromwell, Macdonald, Macdonell, Oliver, Sinclair, and Weichel.

The Committee resumed consideration of the Bill.

On motion by Mr. Bradbury, section 353, "Passengers refusing to pay fare," was reconsidered and amended by striking out "or near any dwelling house, as the conductor elect," on line 6 thereof.

Section 358, "Traffic by water," further considered and amended, on motion of Mr. Macdonell, by striking out all the words after "places" on line 8 thereof.

All the deferred sections being disposed of, it was

Ordered, to report the bill as amended to the House and to have the same reprinted as amended by the Committee, with a recommendation that the proceedings and evidence be printed in blue book form and as an appendix to the Journals of the House

The Committee then adjourned *sine die*.

MINUTES OF PROCEEDINGS AND EVIDENCE.

HOUSE OF COMMONS,
ROOM 301,
June 6, 1917.

The Committee met at 11 o'clock a.m.

Section 345.—Reduced Rates and Free Tansportation Clause.

The CHAIRMAN: This clause was left over for the purpose of allowing Mr. Johnston to prepare an amendment.

Mr. BLAIN: Since adopting the clause yesterday there has been some suggestion that possibly it went too far along this line that if a railway company granted commutation tickets for, say, a golf club, for three months, the company under the provision would not have the right to cut off those tickets without consulting the Board. I understand the railway companies think this is going a little too far. I promised I would bring it up, because I am anxious, as the Committee is anxious, that whatever we do will have reason in it for everybody concerned.

Mr. BRADBURY: You mean to say that the railway companies would be forced to grant those commutation tickets?

Mr. BLAIN: No, not forced; it is left to the Board; the Board has power, under the amendment that was adopted unanimously by the Committee yesterday morning. In conversation with Mr. Macdonell this morning, however, after consulting Mr. Johnston, he points out that if a golf club made application to a railway company for a commutation ticket for three months, say, that that should be and would be an agreement between the golf club and the railway company themselves, and would never have to come before the Board, either when it was introduced or when it ended; it was simply an agreement between the railway company itself and the golf club, and would not require either sanction to go into effect or sanction to be discontinued from the Board.

Mr. MACDONELL: I am not sure as to that. I speak subject to correction by Mr. Johnston, who is more familiar with the Act.

Mr. BLAIN: If it is that way I do not see so much objection as I did at the outset. I do not think that it would be right that every agreement of that kind should have to receive the assent of the Board. There ought to be some freedom. In other words, I do not think it would be wise for the Committee to place a clause in the Act that would take away from the railway company the management of their own affairs, their business management, which is a domestic matter with the company. I think they should have that power and that right. But where the public comes in, and a concession is granted to the public, and the public appreciate it, I do not think the company then should have the power under the Act to strike it off; that a case of that kind should have to be submitted to the Board and receive their sanction before the railway company could take away the right they had already granted to the public.

Mr. MACDONELL: What is the exact point of difference?

Mr. JOHNSTON, K.C.: As I understand it, it is this: the section proposed yesterday provided that once commutation tickets were issued they should not be withdrawn. Now, it has been said that the railways issued tickets for a certain time, two or three months, season tickets, so to speak, and the railway company ought to have the right to withdraw them when the season for issuing them has expired.

Mr. BLAIN: What do you think on that point, Mr. Chrysler?

Mr. CHRYSLER, K.C.: It is broader than that. They may grant commutation tickets to a town or community as an experiment, and drop them if it does not pay. They have that right.

Mr. BRADBURY: It should not be withdrawn without the consent of the community.

Mr. BLAIN: In case of that kind, don't you think the Board, on an application made to the railway company, could cut them off? Don't you think the Board would say, "The public is not patronizing these, therefore they should not insist on the service being given"?

Mr. CHRYSLER, K.C.: I do not think there is much difference between us. We thought, and I still think, that the matter is covered by the proviso at the end of the section. We have only the right to issue commutation tickets as an extension of the general rule which requires us to have a tariff and charge the same all over. Now, the proviso in the Act says:

> "Provided that the carriage of traffic by the company under this section may, in any particular case, or by general regulation, be extended, restricted, limited or qualified by the Board."

That was intended to give control over this very question, both reasonable excursion tickets and reasonable commutation tickets, and put an end to them if unreasonable. I think it is all there. If Mr. Blain's suggestion is adopted, the right to withdraw the commutation is not taken away. The rest of the section would not be objectionable.

Mr. JOHNSTON, K.C.: How would this meet your views, Mr. Chrysler? It seems to me there is some question as to whether the Board has power to——

Mr. CHRYSLER, K.C.: No; in the Brampton case it was said the Board had the power to make an order, if the community alleged they were being exposed to discrimination by the giving of commutation tickets to another community; but the Board in that case said they did not find there was any evidence of discrimination.

Mr. BLAIN: I rather think the Board said, at least the Chairman said finally, that Brampton did not make out a good case for commutation tickets, and therefore the Board would not grant them.

Mr. JOHNSTON, K.C.: Mr. Chrysler, suppose a clause like this were put in:—

> "Whenever the Board sees fit it may require the company to grant and issue commutation tickets on such terms as the Board may order."

That makes it perfectly clear that the Board has broad powers.

Mr. BRADBURY: That leaves it in the hands of the Board?

Mr. JOHNSTON, K.C.: Absolutely.

Mr. MACDONELL: What was the other section we passed?

Mr. JOHNSTON, K.C.: It was this: (reads),

> "Provided, further, that where the company issues mileage or commutation passenger rates or tickets between a central point within a district and any outside point or points on its railway, such mileage commutation rates or tickets shall not be withdrawn or discontinued without the consent of the Board, and the Board may, when it sees fit, require the company to grant similar rates or tickets between any such central point, and any other point on its railway."

That all seems to me to be conditioned on the fact that the Company has already issued commutation tickets.

Mr. BRADBURY: What is the amendment proposed?

Mr. JOHNSTON, K.C.: The section I have in my hand now is what I first read.

Mr. SINCLAIR: You propose passing them both?

Mr. JOHNSTON, K.C.: No, I propose substituting.

Mr. BRADBURY: Does that substituting cover every item in the other?

Mr. JOHNSTON, K.C.: It seems to me broader, and as far as the Company is concerned it is not objectionable, for the reason that the Railway Companies are not bound perpetually to maintain commutation rates that they have given.

Mr. BRADBURY: I don't think that they ought; I think it ought to be left in the hands of the Railway Board. I have a case in point in Manitoba; from Winnipeg to Winnipeg Beach the C.P.R. grants commutation tickets to the city of Winnipeg. The town of Selkirk is 22 miles nearer to the Beach than the city of Winnipeg, but the C.P.R. have refused to give the former even the same privileges that they give the latter although Selkirk is 22 miles nearer; full fare is exacted. There should be something to compel the railway company to issue the same rate pro rata per mile. That would cover the point, would it not, Mr. Johnston?

Mr. JOHNSTON, K.C.: The Board would have absolute power under that clause.

Mr. BRADBURY: That would be satisfactory to me.

Mr. BLAIN: Mr. Minister, would that be satisfactory to you?

Hon. Mr. COCHRANE: I have not been listening to the discussion.

Mr. BLAIN: Perhaps the Chairman would read the proposed amendment.

The CHAIRMAN: The proposed amendment to Clause 345 reads as follows:

> "Whenever the Board sees fit it may require the Company to grant and issue commutation tickets on such terms as the Board may order."

Mr. MACDONELL: I think you should put in, "such rates and terms".

Mr. BRADBURY: I think so.

Mr. BLAIN: As to our case at Brampton, we never felt that the Railway Companies were very severe upon the town, notwithstanding what has been said. The C.P.R. made an effort to put a commutation train on, a short train, granting commutation tickets experimentally. The distance by the C.P.R. to Brampton is much further than by the Grand Trunk. That was found to be unprofitable, and therefore it was removed. The town of Brampton—I want to present the other side of the question now—was somewhat responsible for the cutting off of the commutation tickets itself. Originally the privilege was granted at the request of the merchants of the town. Subsequently it broadened out, and many of the people of the town procured a commutation ticket in the same way. Then finally the merchants decided that there were too many commutation tickets, and petitioned the Grand Trunk Company to cut them off, and at their request they were cut off. For my part, I always took the ground that the merchants of Brampton were rather responsible, because they lost their commutation tickets. I want to be fair to the Companies, because I think the Grand Trunk and the C.P.R. have treated Brampton very fairly, have given a good service, and they are always willing to listen to any request that is made.

Amendment adopted.

Mr. JOHNSTON, K.C.: Section 353 was allowed to stand on a previous occasion. That entitles a conductor to expel a passenger who refuses to pay his fare. My recollection is that Mr. Lemieux said he wished to have something more to say: I do not know what it is.

Mr. MACDONELL: I do not know why a conductor should be allowed to put off a passenger (who does not pay his fare) "at or near a dwelling house". The man should be put off at a station. As the section is now worded a passenger without a ticket could be dropped off in the middle of a prairie.

Mr. JOHNSTON, K.C.: To adopt your suggestion would mean that people could get a ride between stations.

Mr. MACDONELL: People don't do that.

Mr. CHRYSLER, K.C.: Yes, they do, and when the man gets to the next station he gets another free ride.

Mr. BRADBURY: In the western country it would be a serious matter if the conductor were to put a passenger off in the prairie because he saw a shack there.

Mr. CHRYSLER, K.C.: Such a thing is never done. There have been actions against the railway companies for putting men off under unreasonable conditions in cold weather, or in conditions in cold weather, or on the prairie where there is no house near, and the men have come to harm.

Mr. BRADBURY: I object even where there is a house near.

Mr. CHRYSLER, KC.: It is merely sought to have this power in reserve. A man could be put off, say 5 miles from Ottawa, instead of carrying him to the next station, then he is not imposing upon the Railway Company.

Mr. BRADBURY: Railway Companies do a little bit of imposition themselves.

Mr. MACDONELL: Nine times out of ten it is due to a mistake. See what an unfortunate position this section would place a woman in.

Mr. CHRYSLER, K.C.: Conductors never put a woman off.

Mr. MACDONELL: The woman might be so unfortunately circumstanced as to have no money. Think of their unfortunate plight under these circumstances.

Mr. W. L. SCOTT, K.C.: Some protection is needed against men who make a regular business of riding without tickets.

Mr. BRADBURY: I want to enter my emphatic protest against this section. As far as the West is concerned I do not believe a man should be put off the train simply because there is a dwelling house near. That place may be a mere shack, occupied by a bachelor, and would provide no accommodation at all for people (perhaps women and children) forced to seek refuge there on a cold winter's day. Moreover some conductors are very arbitrary. Surely the stations are close enough to enable passengers to be put off there rather than be compelled to dismount in sparsely settled districts.

Mr. SCOTT, K.C.: The result would be to carry a man wherever he wanted to go.

Mr. BRADBURY: Very well, punish him.

Mr. SCOTT, K.C.: There is no punishment provided.

Mr. BRADBURY: Put the man in gaol.

Mr. JOHNSTON, K.C.: The conductor cannot stop, he passes clean through with his train.

Mr. MACDONELL: I moved that consideration of section 353 be re-opened.

Motion agreed to.

Mr. BRADBURY: Now, I move to strike out of the section the words, "at or near any dwelling house" and "as the conductor elects."

Mr. SINCLAIR: I second the motion.

Mr. PELTIER: I have no disposition to impose on the good nature of the Committee, but, so far as the conductor is concerned, we would like to see the law carried out. The conductor is the only authority on the train from the time it leaves the terminal until it gets to its destination, commissioned to look after the protection and comfort of the passengers.

Mr. MACDONELL: We understand that.

Mr. PELTIER: If there is any arbitrary or disorderly conduct on the part of anyone, the conductor is the man who has to intervene, and the question is whether the amendment proposed is going to in any way restrict the conductor's authority. In the case of a city police officer even when he makes an error you do not deprive him of his authority. I would ask the Committee to pause before they do anything to weaken the power of a conductor in charge of a train.

Mr. MACDONELL: There is no reflection on the conductor intended by the amendment.

Mr. PELTIER: Take the position of passenger conductors between here and Toronto. If this law were changed as proposed, they would be badly handicapped in the discharge of their duty, and outside of that the public would probably be made to suffer. Furthermore, in regard to handling men who were trying to beat their way over to the police, there are a great many stations where there are no police officers to be found. The law has been enforced a great many years and I have yet to learn that it has been abused to any extent. When a train is passing over the prairie and the physical conditions are inclement, no conductor would be so inhumane as to put a passenger off the train at a place where he is likely to endure suffering. I would also remind the Committee that the question of squatters is one to be considered.

Several MEMBERS: Question.

The CHAIRMAN: Shall Mr. Bradbury's amendment be concurred in?

Amendment concurred in.

Section as amended adopted.

Mr. JOHNSTON, K.C.: Section 357, "Refund of Tolls" was allowed to stand.

The CHAIRMAN: Shall the Section be adopted?

Carried.

Mr. JOHNSTON, K.C.: Section 358, "Traffic by Water." You will recollect that you heard representations on both sides, particularly regarding the last five lines which are calculated to apply to all carriers by water, freight traffic carried by any carrier by water.

The CHAIRMAN: The Hon. Mr. Oliver wishes to speak on this, and I might, for his information, read the words that it is proposed to strike out:

> "And the provisions of this Act in respect of tolls, tariffs and joint tariffs, shall, so far as deemed applicable by the Board extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada."

Perhaps before Mr. Oliver speaks I might read communications which I have here. Since the Committee discussed this matter, I sent a telegram to Mr. William Denman, Chairman of the United States Shipping Board, Washington, D.C., U.S.A., as follows:

> "Has your Board control over all shipping on Inland Waters of the United States? Does that control include rates, tolls, regulations, governing ship carrying grain, coal, cement, sugar, iron ore, etc., in bulk, whether they run on regular routes or not?
>
> (Sgd.) "J. E. ARMSTRONG,
> *"Chairman, Railway Committee,*
> *"House of Comons, Ottawa, Ont."*

In answer to that telegram, I received the following:

WASHINGTON, D.C., May 24.

"J. E. ARMSTRONG, M.P.,
"Chairman, Railway Committee,
"House of Commons,
"Ottawa, Ont.

"Board has control of shipping on Great Lakes, and High Seas, but not on Rivers or other inland waters. Control includes rates, regulations of ships, running regular routes from port to port.

(Sgd.) "R. B. STEVENS,
"Commissioner."

Mr. SINCLAIR: "Running regualr routes" not tramps?

The CHAIRMAN: That is apparently what that term means, all the boats running on regular routes from port to port. I have received a telegram from the Manager of the Lambton Production Association as follows:

SARNIA, ONT., May 26, 1917.

"J. E. ARMSTRONG, M.P.,
"Ottawa.

"For years officials Northern Navigation Company have encouraged Lambton Producers to expand on production of tender fruits and vegetables promising us rates and service to protect the industry, now when our country has over half million trees coming in bearing they cut us off from one of our largest nearby markets by refusing service entirely. In addition rates issued effective nineteen seventeen show increases in some cases of fifty per cent advance over last year on behalf of largest vegetable co-operative association in province Ontario, we strongly request legislation regulating steampship lines as laid down in clause.

"GEORGE FRENCH, *Manager,*
"Lambton Growers Co-operative Ass'n."

I have also a communication here from Mr. J. T. Horne, of Fort William, which reads as follows:—

June 1, 1917.

J. E. ARMSTRONG, Esq.,
Chairman, Bill No. 13, Ry. Act,
House of Parliament.

DEAR SIR,—My reason for writing you is that as a Canadian I feel that no one class should be allowed to make abnormal profits during this war.

At the instigation of the Canada Steamships Co. Section 358 of the proposed amendment to the Railway Act placing Canadian vessels under the control of the Railway Commission was placed before the Council of the Board of Trade of the City of Fort William, and they decided by a vote of 4 to 2, with the shipping interests, voting for the resolution, to oppose placing Canadian shipping under the control of the Railway Commission.

As a matter of fact, all the information the Council of the Board had, came through the Canada Steamship Co., and it was meagre. A fair freight rate and one that any vessel owner, even at the present high cost of operating vessels would be glad to be assessed of would be 2½ cents a bushel from Fort William to lower Lake Ports, when this rate of 2½ cents is advanced to 5 cents a bushel at the opening of navigation.

It made the ordinary citizen sit up and ask himself if these gentlemen who controlled the shipping interests on the Lakes were not taking a war advantage of the rest of the citizens of Canada and more particularly of the Overseas Allies and when the rate advanced to 7½ cents a bushel it would seem that there should be some control placed on these vessel owners.

Take a 300,000 bushel vessel and giving her a 7½ cent freight rate, allowing her only 20 trips, one way loaded, she would gross $455,000, placing her expenses for the season at $115,000, and this is ample. She would, say on a capital investment made during normal times of $340,000, nett for one season $340,000.

Surely during these strenuous war times these rates should be controlled by some one.

Yours truly,

(Sgd.) J. T. HORNE.

Then Mr. J. G. Scott, President of the Quebec Board of Trade interviewed me in regard to the matter, and told me I could use his name in support of the clause in the strongest way possible, also Mr. Hardy of the Quebec Board of Trade.

Mr. SINCLAIR: He supports the clause in the shape in which it now is in the Bill?

The CHAIRMAN: In the shape in which it now is.

Mr. SINCLAIR: That includes tramp steamers as well as the liners?

The CHAIRMAN: Tramps as well as liners. I am also in receipt of the following communications from the officer in charge of the fruit transportation of the Department of Agriculture in support of the clause, as follows:

"G. E. MCINTOSH,
i/c Fruit Transportation,
Fruit Commission Office,
Dept. of Agriculture, Ottawa.

Referring your letter twenty-sixth ultimo in my opinion control of water shipping according to amendment necessary for best interests of fruit industry.

(Sgd.) WM. E. SCOTT,
Deputy Minister of Agriculture, British Columbia.

UNITED FRUIT COMPANIES OF NOVA SCOTIA, LIMITED,
BERWICK, N.S., May 26, 1917.

Mr. C. E. MCINTOSH,
Ottawa, Canada.

DEAR SIR,—Replying to yours of May 22 we have carefully read over the proposed clause No. 358 for the new Railway Act and we believe that it would be an advantage for the Board of Railway Commissioners to have control of the Water shipping in Canadian Inland Waters.

Yours truly,

THE UNITED FRUIT COY.'S OF N.S., LIMITED.

(Sgd.) JOHN N. CHUTE, *Secy.*

I might also call the attention of the Committee to the fact that since we last met, the vessel owners have increased their rates to 7 cents or more, and are demanding those rates from the shippers. They started out at the beginning of the season with a rate of 4½ cents a bushel from Fort William to Montreal, and that rate has since been increased to 7 and even 7½ cents, I understand.

Hon. Mr. OLIVER: I am sorry I have not been giving that attention to the meetings of the Committee that I should have given, and I am particularly sorry I was not present when this clause was previously under discussion. I do not think anything I could say to you would make a better argument than the facts as disclosed by the correspondence that the chairman has read. Lake transportation is the channel through which the great bulk of the products of the West must reach its ultimate market, and, when those in control of that channel see fit to exercise their rights to advance rates, such exercise is very greatly against the public interest. Particularly is it against the interests of the western producers because if the buyer of the western grain knows that he is going to be held up on the transportation rates during the summer, and it is upon the lake transportation rate he must depend, he is going to insure himself against that next season by taking a percentage off the price of the grain. We have a direct interest in that matter: I maintain that every dollar that is spent for the purchase of grain in the West is the busiest dollar and goes further to bettering the general business of the country than any other dollar spent in the Dominion of Canada by any authority; and that which takes from the expenditure of the money for western grain takes from the welfare of the Dominion in exactly the same proportion. Every man who gets a dollar for his bushel of wheat spends that dollar in such a way that it touches every line of production and trade throughout the Dominion before it finally comes to rest—in fact it never finally comes to rest, it keeps going on for ever. But when that dollar goes into the pocket of the lake carrier I maintain it does not do the same amount of good to the general public. I am not aware whether the clause as drafted would meet the case, or what is or is not possible in the matter, but I take it for granted that when that clause was drafted it was recognized that a condition existed which it was very desirable should be cured. Since the clause was drafted the need for it has been accentuated enormously; no one expected at the time it was drafted, to see a 7-cent rate on the lakes, and now that we are considering the clause, what I would wish to do is to establish the principle that this country of Canada has the right to protect itself against any organization of its citizens who are using their power and authority to the detriment of the public. This is a case, it seems to me, a most evident case, where a special condition is being taken advantage of to the special detriment of the people I represent, and to the detriment of the whole Canadian people, and I desire to support the clause as it is in the hope that it will achieve the purpose in view, but more especially as a declaration of principle that this Parliament has authority, and that the duty rests upon it to take action under such circumstances wherever and whenever they may occur.

Mr. BRADBURY: I would like to agree with what my honourable friend has said because he speaks with regard to the West, and we are all interested in the West and in wheat carrying, if I could make myself believe, as the honourable gentleman evidently does, that this Act is detrimental to the West. I will read a portion of the section:

> The provisions of this Act shall, so far as deemed applicable by the Board, extend and apply to the traffic carried by any railway company by sea or by inland water, between any ports or places in Canada, if the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by sea or by inland water between any such ports or places.

I contend that this part of the clause covers the great wheat carrying of the West.

The CHAIRMAN: Only so far as the ships owned by railways are concerned. The vessels which are covered by that portion of the clause are now under the control of the Board.

Mr. BRADBURY: The only vessels that are not under the control of the Board are what we call the tramps.

The CHAIRMAN: No. The portion of the clause that you read merely refers to the small number of vessels that are now under the Railway Commission, and which are owned by the railways.

Mr. BRADBURY: Permit me, please—I am satisfied that the part of the clause I have just read will protect the grain shippers of the West as far as the railway companies are concerned, and they carry 90 per cent of the grain we ship out of the West through the lakes.

The CHAIRMAN: Nothing to do with it at all.

Mr. BRADBURY: I beg your pardon. If I did not think I was right, I would feel as Mr. Oliver does. Our wheat is, of course, very important to the West, and when the rates are raised as you say from four to seven cents a bushel, there must be a good reason given.

The CHAIRMAN: The clause that you read has been in the Railway Act for years.

Mr. BRADBURY: The Railway Act has control of the rates up to that point and of the shipping in conjunction with the railway companies; and there is not a railway company operating in the West that has not a connection with the large steamship companies on the lakes.

The CHAIRMAN: Very little connection. Why were the vesselmen here opposing this proposal? The railway companies are not opposing this clause.

Mr. BRADBURY: How is it that every Board of Trade in Canada sent representations against the clause?

The CHAIRMAN: It was an organized opposition to this clause engineered by the vesselmen.

Mr. MACDONELL: We all agree that if this discussion is going to continue, we will be here until the leaves fall next autumn or until the snow comes. There has been an immense tonnage of evidence given here——

Mr. JOHNSTON, K.C.: Tonnage of talk.

The CHAIRMAN: Organized talk.

Mr. MACDONELL: Every public body in Canada, roughly speaking, has gone on record as opposed to the new part of the section. I will not extend my remarks, but relying on the evidence that has been given, I now move that the following words in the last four lines of the section be struck out:

> And the provisions of this Act in respect of tolls, tariffs, and joint tariffs shall, so far as deemed applicable by the Board, extend and apply to all freight traffic carried by any carrier by water from any port or place in Canada to any other port or place in Canada.

This is commonly called the tramp ship inclusion, which is entirely new, and which is put in the Act for the first time. I move that it be struck out.

The CHAIRMAN: Can't you make your amendment refer only to the tramp ships?

Mr. MACDONELL: I am moving my own amendment in the form I desire it. I will not take any dictation from the chair, to be candid.

Mr. OLIVER: Would Mr. Macdonell be good enough to give in a few words the reasons for his stand?

Mr. MACDONELL: I am sorry. Mr. Oliver had the best of reasons which were sufficient to keep him away from the meetings of this Committee. We have heard evidence here day after day; the record is full of the arguments and evidence given here. I could not shortly recapitulate that evidence unless I stood on my feet for five

or six hours. At the last hearing on this matter,—I took the chair in order that the Chairman might be free to argue his side of the case and I think there was no member that took the view which he then maintained and maintains now. I have nothing more to say other than to move that the words be struck out.

The CHAIRMAN: Is there a seconder?

Mr. MACDONELL: Mr. Bradbury seconds the motion. I move it subject to the minister's approval.

Hon. Mr. COCHRANE: I will support it.

The CHAIRMAN: It is moved that the words in the last four lines of section 358, as read by Mr. Macdonell, be struck out.

Amendment adopted.

The CHAIRMAN: Shall clause 358 as amended be adopted?

Section 358 adopted as amended.

The CHAIRMAN: We shall have something to say about this matter in the House, so far as I am concerned.

Mr. BRADBURY: That is a fine place to say it.

The CHAIRMAN: The time is coming when you will see the need of the regulation of the rates of all ships, I am sure. How are you going to appoint a food controller to deal with these ships? We cannot ever gather statistics about them.

On section 367—Telegraphs and Telephones on railways for railway purposes.

Mr. JOHNSTON, K.C.: This clause stood, but I understand that Mr. Chrysler has no objections to offer to it.

Section 367 carried.

On section 364—Board may define carriage by express—previously allowed to stand.

The CHAIRMAN: Shall this clause be adopted?

Carried.

On section 387—Fires from locomotives.

The CHAIRMAN: Mr. Smith has been here for some days waiting to be heard on the insurance phase of this section. Is it the wish of the Committee that Mr. Smith be heard.

Carried.

Mr. Wm. SMITH, M.P.: I propose to take but a moment. I cannot add a great deal to what was said here a week or two ago. I should like it distinctly understood that there should be no very great difference of opinion between the railway companies and the insurance companies. Perhaps in looking over the clause in the first place we might have come to the conclusion that the railway company was getting a little the better of the deal, but I am bound to say that, speaking for myself, the more I look into the clause, the more it seems fairly reasonable. It is true that perhaps great difficulties will continue to exist, if it is passed in its present shape, to prove negligence on the part of the railway company, and it might be urged against it as well that the employees of the company might, if it were passed, be a little more careless. But, viewing it from all angles, I would scarcely be disposed to offer any very great objection to the clause passing in its present form. Subsection 2 of the old Bill seems to me a good deal like a curl on a pig's tail—no great amount of good.

If that was struck out I think it would meet the views of most of the companies. I may say that perhaps in some ways they have been a little inactive over this proposition, but taking it all around I could not make any great suggestion as to how it could be improved.

The CHAIRMAN: Is it the wish of the committee that Mr. Ritchie be heard? (Carried.)

Mr. RITCHIE, K.C.: I represent the All-Canada Fire Insurance Federation. We wish subsection 2 cut out. If I understand the meaning of the section it is that where property has been insured and loss occurs and the insurance company has to pay that loss, the insurance company would have no right to bring an action; the insured would have to bring an action against the insurance company, although the railway company might be guilty of gross negligence. How can we establish whether the railway company is guilty of gross negligence or not, if they dispute negligence, without an action, the issue of a writ, and decision by a judge or a judge and jury? Who is to determine whether there is to be any negligence? By this section we would be precluded absolutely from bringing any action whatsoever, it seems to me. This subsection comes under the old section, where the situation was somewhat different from what it is now under the clause as drafted. I cannot see any purpose for subsection 2.

Mr. JOHNSTON, K.C.: There is no alteration in subsection 2 except the word "such."

Mr. RITCHIE, K.C.: No, but there is an alteration in the whole section.

Mr. JOHNSTON, K.C.: Quite so, in subsection 1.

Mr. RITCHIE, K.C.: Relieving the railway company when not guilty of negligence; but that question has to be determined, whether they are negligent or not, and we are shut out of the courts.

Hon. Mr. COCHRANE: Will not the courts decide?

Mr. RITCHIE, K.C.: But you are taking away our right to go to the courts and have it decided, it seems to me, by subsection 2.

Hon. Mr. COCHRANE: I do not think so, because they have gone to the court.

The CHAIRMAN: Is subsection 2 not in the old Act?

Mr. RITCHIE, K.C.: Yes, but there was not this provision about relieving the railway company if they were not guilty of negligence. That issue of negligence or no negligence can be raised at any moment; and who is to determine it if not the courts?

Mr. JOHNSTON, K.C.: The company is not relieved entirely where it is not guilty of negligence. The section as amended says that where the company has used modern and efficient appliances, and has not otherwise been guilty of any negligence, the total amount of compensation recoverable from the company under this section in respect of claims for damage from fires shall not exceed $5,000.

Mr. RITCHIE, K.C.: And then it proceeds, "no such action shall be brought on any policy." That, I take it, would mean—"such policy"—really means where there has been insurance, and where the company has these appliances, and has not been guilty of negligence.

Mr. JOHNSTON, K.C.: What you say is that if an insurance company pays a loss, and the railway company has been guilty of positive negligence, then your right of subrogation should be retained.

Mr. RITCHIE, K.C.: Yes; and it seems to me that it is taken away by subsection 2.

Mr. JOHNSTON, K.C.: I do not think it takes it away.

Mr. RITCHIE, K.C.: We have no action; we cannot bring our action.

Mr. JOHNSTON, K.C.: When you sue for subrogation I do not think you are suing on the policy at all.

Mr. RITCHIE, K.C.: It says, "by reason of payment of any moneys thereunder." Suppose we paid to our insured the loss which he suffered, which loss was caused, as we allege, by the negligence of the company, the company says, "We have modern appliances, we have everything." Perhaps they have. Perhaps they can establish that; but we say, "You have been guilty of negligence in the use of those appliances." The company say, "No." Who is to decide? You do not let us go to the courts. Who is to decide whether we can go to the courts?

Hon. Mr. COCHRANE: Do we shut them out, Mr. Johnston?

Mr. JOHNSTON, K.C.: There is something to be said for Mr. Ritchie's contention. How would this do, Mr. Ritchie, if subsection 2 were amended in this way:—

> No action shall lie against the company by reason of anything in any such policy of insurance or by reason of any payments thereunder unless the company has been guilty of negligence.

Mr. RITCHIE, K.C.: I think that would do. Then the question of negligence is raised in the action; but then who is to determine?

Mr. JOHNSTON, K.C.: The courts.

Mr. CHRYSLER, K.C.: May I ask Mr. Ritchie, what do you collect the premium for? You collect the premium for the risk of fire, don't you?

Mr. RITCHIE, K.C.: Yes.

Mr. CHRYSLER, K.C.: Are you not supposed to charge for the extra risk of your property being insured in the neighbourhood of the railway?

Mr. RITCHIE, K.C.: Possibly we do, or possibly we do not; but that does not give you the right——

Mr. CHRYSLER, K.C.: When you have collected the premium, and your loss occurs, and you have paid the loss, why should you sue anybody? What claim have you got against the railway company? It is the owner of the property that has the claim against the railway company.

Mr. MACDONELL: The railway company caused the fire. Surely somebody has a right to look to them.

Mr. RITCHIE, K.C.: Then even if we have the premium, why should we pay?

Mr. CHRYSLER, K.C.: Because you have the premium in your pocket.

Mr. RITCHIE, K.C.: But the premium would not meet the loss.

Mr. CHRYSLER, K.C.: No, but it insures the risk of the loss. You take 10,000 people, and the premium covers the loss.

Mr. JOHNSTON, K.C.: Under sub-section 1 the railway company is liable not only where it is negligent; it is liable in some cases where it is not negligent. Where it is not negligent through the use of proper appliances the amount recoverable from the railway company is reduced. The owner of the property can therefore recover against the railway, and Mr. Chrysler is not contending that it is not liable to the owner of the property whose property is destroyed. What Mr. Chrysler does say, however, is this; that the insurance company that pays any loss, if the insurance company does pay—and I suppose Mr. Chrysler would say, "Why should the insurance company pay, because the owner can make the railway company pay?—But if the insurance company does pay, Mr. Chrysler objects to the insurance company reverting back against the railway.

Mr. MACDONELL: Why should'nt it, if the railway company is wrong?

Hon. Mr. COCHRANE: Why should the company insure? I do not believe that two of them should have a whack at the railway company.

Mr. SINCLAIR: How would it do to eliminate your railway risk out of your policy It seems to me if you have a railway risk and a loss occurs you have a right to pay; but if you would adjust your policy so that you would eliminate the danger from the railway risk in cases adjacent to the railway, then the whole question would be settled, you would not be liable for a railway risk where the railway was to blame. Would that not settle the matter.

Mr. RITCHIE, K.C.: I do not know whether we would be satisfied. The insured want full protection, and if we did not give them full protection against railway risk they would not take our policy at all, possibly.

Mr. SINCLAIR: He is protected now up to $5,000 in any case.

Mr. RITCHIE, K.C.: Once we paid the loss we stand in the shoes of the person we insured, whose property had been destroyed. Now, if somebody went and destroyed that property through gross negligence— the railway company or anybody else— why should not the loss fall on the person who has really caused the loss?

Mr. JOHNSTON, K.C.: Will it not fall on the railway company? Will not the person whose property is destroyed sue the railway company and recover? Because he can sue the railway company, and he can recover, if the company is negligent, up to the full amount of his loss, and if the company is not negligent, to a limited extent.

Mr. RITCHIE, K.C.: Instead of going to the railway company he comes to us and we pay up.

Hon. Mr. COCHRANE: You only pay what you contract to pay.

Mr. RITCHIE, K.C.: That is true.

Hon. Mr. COCHRANE: Why should you try to get out of your contract?

Mr. RITCHIE, K.C.: We are not trying to get out of our contract.

Hon. Mr. COCHRANE: Yes, you are, you want to get the premium and be paid for your losses too.

Mr. RITCHIE, K.C.: Perhaps the Committee would hear Mr. Morrissey, who is more familiar with the question than I am.

Mr. MORRISSEY: It has been said here that because an insurance company receives a premium, it should pay the loss from fire even though that loss may be caused by a railway company. I think that is a highly improper and highly immoral doctrine. There is no reason in the world why the railway company, or any other company, should get benefit for which it has not paid. An individual pays a premium to the insurance company and the company accepts it. The company assumes that risk; but this Act implies that a railway company may set a fire and the insurance company be liable and have no redress against the railway company.

Hon. Mr. COCHRANE: They are not entitled to any. If you want to take a risk of that kind, you ought to stand by it and not seek to go after anybody for indemnification.

Mr. MORRISSEY: We do stand by it.

Hon. Mr. COCHRANE: You do not want to stand by it, you want to get back at the railway companies.

Mr. MORRISSEY: That is usual in every form of insurance. An individual will take out a policy with the understanding that in case of loss he will have recourse against somebody. If that loss occurs the company indemnifies him the same as under any other form of insurance. We do not want to saddle the railway company with any responsibility that belongs to us, neither do we want the railway company to saddle us with responsibility that properly belongs to them. Yet that has been the law of Canada, although I do not believe it has been the law of any other country, and now we are asking to have that handicap removed. With respect to subsection 2, that was put there when the law made it clear that insurance companies were responsible for

all losses, and it was quite proper to say that no action should lie under such circumstances. But when the law is proposed to be amended and to create a certain condition under which the railway company would be responsible, then to shut the insurance companies out from taking proper legal action to assert their rights would be to do them a gross injustice. If a man is insured with us and his property is destroyed by negligence, the negligent party is primarily responsible. The party who holds the policy proceeds against the insurance company, who pays for the loss, in which case they should not be denied the right of proceeding against the person who is responsible for causing the loss.

Mr. JOHNSTON, K.C.: Why not, in your policies, exclude railway risks?

Mr. MORRISSEY: One reason is because the public do not want them excluded. Now we want to be put in a position that if we have a good case against the railway company we shall be paid for the loss. If we have not a good case we do not want to be paid. If the railway company is liable for damage from fire, place the insurance company in a position to proceed against it. So far as regards making any changes in the insurance policy, the conditions are enacted by the Provincial Legislature, and we cannot make any change in that relation, which might not be accepted as reasonable by the courts.

Mr. JOHNSTON, K.C.: You do not suppose this will not be a reasonable claim?

Mr. MORRISSEY: I do not know. Some claims we have considered were reasonable have been considered unreasonable because there is a very strong prejudice against insurance companies.

Hon. Mr. COCHRANE: Is there no prejudice against railway companies?

Mr. MORRISSEY: I do not know as to that.

Mr. BRADBURY: Why should there be any reasonable objection to allowing the insurance company to take the case to court?

Hon. Mr. COCHRANE: The insurance company is virtually getting these premiums for nothing.

Mr. BRADBURY: Suppose I ship a carload of horses from Winnipeg to Brandon. I know that the railway company is responsible for its own neglect, but what if a fire occurs in that car which is not due to the company's neglect, and the horses are destroyed? That is why I go to an insurance company, to cover me against something that the railway companies will not be responsible for. A careless man may drop a match in the straw, causing a fire, in which my horses are destroyed. The railway company says, "We are not responsible, we did not start that fire." Therefore I go to an insurance company and make an arrangement with them. Why should not the provision for which the insurance companies are asking be adopted? If the railway company is not responsible there is no action; but if the railway company is responsible the insurance company should have the right of action in order to protect itself.

Hon. Mr. COCHRANE: Your own man who is in charge of the horses may start the fire.

Mr. BRADBURY: In that case the courts would decide that the railway company was not liable.

Hon. Mr. COCHRANE: If an insurance company makes an agreement with a man it ought to carry it out.

Mr. SINCLAIR: Would you suggest an amendment, Mr. Johnston, that where there was negligence on the part of the railway company, the insurance company would escape to the amount of $5,000?

Mr. JOHNSTON, K.C.: I was just trying to put to the committee what I thought was Mr. Ritchie's point.

Mr. CHRYSLER, K.C.: The company under this section, as I read it, have nothing to do with the insurance.

The CHAIRMAN: Mr. Johnston has pointed out that if subsection 2 of section 387 were amended by adding after the word "thereunder," the words "unless the company is guilty of negligence"——

Mr. JOHNSTON, K.C.: That might give effect to Mr. Ritchie's contention.

Mr. BRADBURY: I would accept that.

Mr. MACDONELL: That would meet my views.

Mr. JOHNSTON, K.C.: Does it not occur to the insurance company that it is getting a premium and running no risks.

Mr. RITCHIE, K.C.: In what way is it running no risk?

Mr. JOHNSTON, K.C.: If the railway company is liable for negligence, the owner of the property, who is injured, can proceed against the railway company and can collect for the damage. Now, the railway companies are solvent, why should there be insurance against that particular kind of risk?

Mr. MORRISSEY: There may be 99 out of 100 other causes for the property being destroyed.

Mr. JOHNSTON, K.C.: Then adopt Mr. Sinclair's suggestion and eliminate this kind of risk, there is no escape from that position. To a certain extent the premium represents the risk run from damage from railways, and the insurance company is giving no value whatever for that part of the premium.

Hon. Mr. COCHRANE: The insurance companies are putting the premium into their pockets and are not suffering any risk.

Mr. RITCHIE, K.C.: Of course it is quite true that premiums are arranged to meet the risk, that is based on the law of average, as I understand it, and on the conditions which are existing in the country, but it is perfectly obvious that under exceptional conditions the premiums which the Insurance Companies charge, are not sufficient to meet exceptional conditions, and the insurance companies might go bankrupt as they have sometimes in the case of a great conflagration. If the premium really and absolutely met the probability of loss, that would be true.

Hon .Mr. COCHRANE: They do do it, do they not?

Mr. RITCHIE: They do it now, and they are always trying to better conditions so as to avoid loss. My point is that if loss has occurred and we have to pay it, and if it is due to gross negligence on someone's part, why should that loss not finally fall upon the person who caused it.

Hon. Mr. COCHRANE: Who has made a contract to pay the loss? Why should they be let out of the fulfilment of their contract?

Mr. RITCHIE: Because we have made our contract, and have had to pay, is, it seems to me, no good reason why, if the railway company has caused a loss it should not make that loss good to us.

Mr. JOHNSTON, K.C.: What you want to do is to provide so that the farmer will not have to sue the railway company, but that the insurance company shall pay the loss and sue the railway company in the farmer's name.

Section adopted without amendment.

Mr. JOHNSTON, K.C.: We shall have to make an amendment to section 420. In order to be consistent with the previous amendment which has been made we have to put in after the words "such by-law" in the fourth line of subsection 3, the words "if approved by order of the Board."

Subsection 3 amended as suggested by Mr. Johnston, and section adopted.

Mr. JOHNSTON, K.C.: Then on the next page, in paragraph (g) of section 422, there is another amendment we must make in order to make it accord with section

311, the words " moving forward in the ordinary manner " should be struck out in the second and third lines, and the words " or of the tender, if the tender is in front," in the 3rd and 4th line on page 175, should be also struck out.

Amendments agreed to and sections as amended adopted.

Mr. JOHNSTON, K.C.: Sections 437, and 438, "Statistics and returns". It seems to me manifest that as we have struck out the provisions with reference to carriers by water that we should amend these sections accordingly.

The CHAIRMAN: These sections are only in regard to statistics, and surely you would not relieve them from the duty of supplying statistics.

Mr. JOHNSTON, K.C.: Suppose I own a little boat, carrying provisions around the Rideau lakes; would I have to furnish statistics? Surely anybody running a huckstering boat should not be required to make returns.

Mr. MACDONELL: There are thousands of these little boats operating between summer resorts on the lakes.

The CHAIRMAN: What do you want struck out?

Mr. JOHNSTON, K.C.: Strike out the words "and every carrier by water" wherever they appear.

Mr. BRADBURY: Is there no provision whereby we shall get statistics regarding the freight carried?

Mr. JOHNSTON, K.C.: It is provided that any railway company owning steamships must give statistics as to the tonnage carried on their boats. In the second line of section 437, the words "every carrier by water" should be struck out.

The CHAIRMAN: Shall this clause as amended be adopted?

Section adopted, as amended.

On section 438:—Returns to minister.

Mr. JOHNSTON, K.C.: In the second line of section 438 the words "and any carrier by water," and in paragraph (*a*) the words "or carrier" contained in the fourth and fifth lines, and in paragraph (*b*) the words "or carrier" in the second and fourth lines should be struck out.

The CHAIRMAN: Shall the section as amended be adopted?

Section adopted as amended.

On section 442—Railway constables failing in duty.

Mr. MACDONELL: That is the old Act re-enacted.

The CHAIRMAN: It is suggested that in the last line of the clause after the word "jurisdiction" the words "of the province wherein the offence is committed" be added.

Mr. SINCLAIR: In place of the words "wherein the railway passes."

Mr. JOHNSTON, K.C.: I thought we passed that clause with those words added.

The CHAIRMAN: Shall this clause as amended be adopted?

Section 442 adopted as amended.

On section 444—Penalties not otherwise provided.

Mr. JOHNSTON, K.C.: The word "employee" in the third line of this section should read "employed."

Section adopted as amended.

On section 449—Railway constables—appointment.

Mr. JOHNSTON, K.C.: An amendment was agreed upon the other day in the form of oath, namely that any constable must swear that he is a British subject.

The CHAIRMAN: It is suggested that after the word "I" in the third line of the form of oath, the words "am a British subject" be added. Shall this clause as amended be adopted?

Mr. SINCLAIR: What was done with reference to the parish court commissioners: was that part of the section struck out?

Mr. JOHNSTON, K.C.: The words "or a commission or of a parish court in the province of New Brunswick" were struck out.

The CHAIRMAN: There was a suggestion that the word "magistrate" in the second line of subsection 1 be struck out, and the word "judge" substituted.

Mr. MACDONELL: The word "magistrate" should not be struck out.

Mr. L. L. PELTIER: I would suggest,—and I understand that there will be no opposition to this from the railways,—that as we have a request before the Committee for some extensive amendments in regard to this section, and as we are willing to let our representations go on the record, we will not press them provided the Committee will agree that after the words "British subjects" in subsection 1 the words "recommended for that purpose by such company, clerk, or agent" be struck out. Mr. Chrysler says he has no objection to that.

Mr. JOHNSTON, K.C.: It seems reasonable.

Mr. CHRYSLER, K.C.: I think that is reasonable. I think the judge or magistrate should have the discretion to appoint proper persons. They probably would appoint persons recommended by the company, or they might prefer to appoint others. It is for them to say.

The CHAIRMAN: Is it the wish of the committee that the section be adopted as amended?

Section adopted as amended.

The CHAIRMAN: The representatives of the Railway Brotherhoods asked me to place before the committee the representations contained in the memorandum which I hold.

Mr. PELTIER: We simply ask that it go in the record. In view of this amendment, we won't press it.

On sections 450, 451, 452 and 453.

The CHAIRMAN: Sections 450, 451, 452 and 453 were allowed to stand. Shall these sections be adopted?

Sections 450, 451, 452 and 453 adopted.

On section 456—Sunday observance.

The CHAIRMAN: Shall this clause be adopted?

Mr. WEICHEL: I wish to confer with Mr. Johnston regarding this section, Mr. Chairman. I have a matter to bring to the attention of the committee. Is it the wish of the committee to finish the Bill at this sitting?

The CHAIRMAN: We are trying to finish to-day if we can.

Mr. WEICHEL: I have sent a wire to my constituents with regard to a certain matter, and I have not received a reply. Possibly the committee might let this section stand until one o'clock, and I can bring it up then.

Mr. MACDONELL: What is the point?

Mr. WEICHEL: I have a case in point in my constituency where we have a line running from Lake Erie to Kitchener. The Lake Erie and Northern Railway Company are operating an electric line on Sunday which leaves Port Dover, passes through the town of Simcoe and smaller villages, and through the city of Brantford and the town of Paris, and when it strikes the boundary line at the city of Galt, the company is not allowed to run the car containing passengers through the city on Sunday. The passengers have to transfer from the street railway, whether it is raining or snowing, about three quarters of a mile from the centre of the city, and they have to walk into the town, while the car afterwards proceeds empty to the waiting-room in the city. My contention is that something should be done to remedy this matter, because our people living in the city of Kitchener, which is not on the main line of the Canadian Pacific railway, have no chance whatever to make Sunday connections for points east and west, while the people of the city of Galt have that privilege. I appealed to Sir Henry Drayton, the chairman of the Dominion Railway Board, and he sent a representative to Galt to size up the situation and if it is the wish of the committee I will read what he has to say with regard to it. (Reads):—

POSTAL STATION "F,"

TORONTO, April 16, 1917.

File No. 27744.

DEAR SIR,—I am in receipt of your letters of March 22 and 28, *re* complaint of W. G. Weichel, M.P., Waterloo, Ontario, *re* failure on the part of the Lake Erie and Northern Electric Railway, and the Galt, Preston and Hespeler Electric Railway, to make proper connections with the Canadian Pacific Railway Company's through trains on Sunday at Galt.

In this connection I beg to advise that I went to Galt on Saturday afternoon the 14th instant, and spent a portion of Sunday, the 15th instant at Galt, looking over the situation in a general way and meeting different people in Galt in connection with the above complaint.

After having an interview with Mr. Todd, General Manager of the above-mentioned lines, I engaged a taxi and drove to Kitchener and Waterloo, and called upon Mr. Weichel, M.P., at his home at Waterloo, where I met a large delegation from Hespeler, Preston, Kitchener and Waterloo.

Upon hearing their complaints and talking the matter over in a general way, and from my own observation while en route between Galt, Hespeler, Preston, Kitchener and Waterloo, I have been thoroughly convinced that there is very strong ground for this complaint.

The situation at the above-mentioned points is, what I would call, a missing link which should be, beyond any doubt coupled up.

This is the situation as I find it:—

The L. E. & N. Railway runs their trains daily between Port Dover and Galt, taking in Paris, Brantford and many local towns between Port Dover and Galt. Their terminus on Sundays ends about one half mile inside of the Corporation limits of the city of Galt, a distance of about one mile from the C.P.R. station. Passengers coming from any point south of Galt going to the C.P.R. station, or any point of the western side of the city of Galt, are obliged to get off the L. E. & N. car at the above-mentioned point, at the east end of Galt and walk, notwithstanding the fact that the L. E. & N. car proceeds light through the city of Galt to their terminus or car barns.

I find the situation north of Galt, that is between Galt and Kitchener, lacking Sunday car service between the south end of Kitchener and Galt. The G. H. & P. Electric Railway runs their cars daily, except Sunday, between

Waterloo and Galt, which takes in Kitchener, Preston, Hespeler and other local points. The Sunday service on the G. H. & P. is from Waterloo to the southern boundary line of Kitchener, and there is no service on Sundays between Kitchener and Galt.

The delegation whom I met at Mr. Weichel's house on Sunday included the secretary of the Board of Trade of Kitchener and many other prominent business men of that city, all of whom are greatly interested in this question.

The country lying between the cities of Kitchener and Galt, a distance of about 12 miles, is a wealthy and thickly populated farming section, and the people of this community are particularly anxious that their request for a Sunday car service between Kitchener and Galt be arranged for as early as possible.

Under the present conditions or arrangements there is no way for the people living north of Galt to get to the C.P.R. station on Sunday.

The traffic at the present time to the C.P.R. station from the north is quite heavy, notwithstanding the fact that automobiles and livery rigs are very much in evidence.

I would also like to point out for your information that, the Sunday automobile and livery charge between Waterloo, Kitchener and Galt is $5; a livery rig charge is $4.50.

You will see attached to my expense account a receipt for $5 from W. Baslow, of Galt. This is apparently, the standard rate for taxi or livery hire between the points in question. The electric street fares are, I think, 35 cents. This will give you some idea as to what the people of this section have to contend with on Sundays, and furthermore the traffic is heavy.

After going over the ground and making a careful inspection and inquiries at Galt, Kitchener and Waterloo, I have no hesitation whatever, in recommending that the L. E. & N. cars should run daily between Port Dover and the C.P.R. station at Galt.

Also that the G. H. & P. electric cars should run daily between Waterloo and Galt, taking in the Cities of Kitchener, Preston, Hespeler and other local points.

As above stated, after my trip of inspection I have been thoroughly convinced that the traffic and business between the points in question warrant a Sunday care service, which I think should be arranged for, with the least possible delay.

Yours truly,

INSPECTOR.

Mr. GEO. SPENCER,

Chief Operating Officer, B.R.C.,

Ottawa, Ont.

That is the situation. The people of that section, particularly those between Kitchener and Preston, have intimated to me by deputation and by letter that they would like to have this Sunday car service. I readily understand that the situation is local. I have also a reply from Sir Henry Drayton in which he states that there seems to be nothing that the railway Board can do to relieve the situation; that the real difficulty is in connection with the local line—the Galt, Preston and Hespeler—over which the Board has no jurisdiction. My idea in bringing this matter here is to find out from the Committee if there is any relief for the people in that section. It seems to me ridiculous that people have to make connection with a local line west from Kitchener and have to pay $5 for automobile or local livery hire, when the citizens of Galt have the privilege of taking the street railway with no expense to them whatever. I think the people of Kitchener and Waterloo should be allowed the same privileges

that are afforded to the others at the present time, when the charge would be 40 cents against $5.

Mr. SINCLAIR: Does the street railway run in Galt on Sundays?

Mr. WEICHEL: It does not.

Mr. JOHNSTON, K.C.: Would those railways be glad to run?

Mr. WEICHEL: Most assuredly they would.

Mr. JOHNSTON, K.C.: There is provision that the Governor in Council may declare any railway to be exempt from this section.

Mr. WEICHEL: Can it be done if the company has not such a charter?

Mr. JOHNSTON, K.C.: Not unless it is declared that the company is for the general advantage of Canada.

Mr. BLAIN: Will you read Sir Henry Drayton's letter?

Mr. WEICHEL: The letter is as follows:—

OTTAWA, May 28, 1917.

File 27744

Re L. E. & N. Ry. Co. & G. P. & Hespeler Ry. Co. Connection

DEAR Mr. WEICHEL:—As you know I arranged for the inspection that you required.

There seems to be nothing that this Board can do in case of this situation. The real difficulty is in connection with the local line, the Galt, Preston & Hespeler, over which we have no jurisdiction.

I enclose herewith a copy of the Inspector's report, which says that in his view in the public interest, the service is required.

Yours faithfully,

H. L. DRAYTON,
Chief Commissioner.

W. G. WEICHEL, Esq., M.P.,
HOUSE OF COMMONS, Ottawa, Can.

Mr. JOHNSTON, K.C.: Would you go so far as to make a local tramway that was not connected up with any railway, a work for the general advantage of Canada?

Mr. WEICHEL: I would, because it goes through a very prosperous district, and the farmers are all clamouring for the connection, because they want such a carline to go to church on Sunday. Others wish to use it to go to Galt. The poor man has not a chance at all there, if he wants to go east or west on the C.P.R. on Sunday.

Mr JOHNSTON, K.C.: Why does not that particular railway company that wants to give the service come here and ask to be declared to be a work for the general advantage of Canada.

Mr. WEICHEL: They simply put it in my hands to bring before this Committee, because as a member of the Committee I might be able to put the matter through without bringing down a great big deputation.

Mr. SINCLAIR: Is there a municipal regulation of Galt forbidding the running of the cars on Sunday?

Mr. WEICHEL: Yes.

Mr. JOHNSTON, K.C.: What would be the attitude of the local government?

Mr. WEICHEL: It would be favourable to the proposition, so I have been told.

Mr. JOHNSTON, K.C.: The solution would be for the company to ask that the work be declared to be for the general advantage of Canada.

Mr. WEICHEL: I believe if a vote were taken in Galt the people would vote for Sunday service. I make that assertion for the reason that I have spoken to some very prominent gentlemen in Galt, and they told me that the sentiment regarding Sunday car service has changed. It is a ridiculous thing to think that Galt should be the missing link in the whole connection.

Mr. BLAIN: How long has that been going on?

Mr. WEICHEL: I could not tell you.

Mr. SINCLAIR: Is there not a Railway Board in Ontario?

Mr. WEICHEL: Yes.

Mr. SINCLAIR: Would not this be under their jurisdiction?

Mr. WEICHEL: I would like to ask Mr. Johnston if this would be under the jurisdiction of the Ontario Board?

Mr. JOHNSTON, K.C.: Undoubtedly.

Mr. WEICHEL: I have brought the matter before the attention of this Committee in the hope that they would afford us some relief, and if the Committee can make any suggestions at all looking to that result I will be very much obliged.

Mr. JOHNSTON, K.C.: What is the objection to following the course I suggest—that that railway should come and ask to be declared a work for the general advantage of Canada?

Mr. WEICHEL: All right, I can have them here to-morrow if you say so.

Mr. JOHNSTON, K.C.: We cannot make such provision in this Act. With all respect to the Minister, I would say it would not do to single out one particular company.

Mr. WEICHEL: Would it not apply to all other companies as well?

Mr. JOHNSTON, K.C.: Then you are getting into a big question. Are you going to say that every tramway should be for the general advantage of Canada?

The CHAIRMAN: Suppose you bring the matter to the attention of the general Railway Committee of the House.

Mr. WEICHEL: I will do it if that will be the best thing to do.

Hon. Mr. COCHRANE: I do not see how they can help it. How could the general Railway Committee do that? The Railway Company is not coming here for legislation or anything.

Mr. WEICHEL: The situation is a serious one as far as we are concerned, and I had the idea that possibly this Committee might, in some shape or form, help us out of our difficulty.

Mr. JOHNSTON, K.C.: You thought they might single out that tramway.

Mr. WEICHEL: There is a lot of narrow-minded prejudice against Sunday cars at present; I understand all that; but when these trains leave Port Dover—up to date, fully equipped trains—and go through cities like Brantford and Paris and run to the end of the line in the city of Galt, and then the passengers must vacate the cars simply on account of prejudice, and walk a mile into town in all kinds of weather, and then the car proceeds empty to the waiting room, certainly it seems a ridiculous proposition, and according to the statement of the inspector who looked into it, the matter should be remedied with the least possible delay.

Mr. JOHNSTON, K.C.: Your Company is subject to the Ontario Act. What chance is there of your getting relief in Ontario?

Mr. WEICHEL: I believe we have a chance of getting relief in Ontario from what I have heard, but I was under the impression that I had better sound this Committee first and see what they thought about it.

Hon. Mr. COCHRANE: If this Committee had the power to come to your relief it would be a different matter, but we have not.

Mr. MACDONELL: Have we such power under the Act, Mr. Johnston?

Mr. JOHNSTON, K.C.: I do not think so.

Mr. MACDONELL: The Departmental Counsel says the same.

The CHAIRMAN: If Mr. Weichel understands that the Committee have not the power to act in regard to this matter, as explained by Mr. Johnston and Mr. Fairweather, possibly that is as far as he can go in the matter.

Section adopted as it stood.

On Section 107, Subsection 3,—Majority of Directors British Subjects.

Mr. SCOTT, K.C.: I would suggest an amendment to this subsection to the effect that where a line is owned by a foreign railway system and operated as part of that system, this provision should not apply. The reasons for the amendment are these. The New York & Ottawa, and the St. Lawrence & Adirondack railways are today owned by the New York Central. The St. Lawrence & Adirondack railway, which only runs for a short distance into Canada, was incorporated some years ago, before its acquisition by the New York Central, in both Canada and New York State. There was concurrent legislation in both countries with respect to the Company, so that it really is an international organization. It would seem only fair under the circumstances that it should be exempt from the terms of the subsection.

The CHAIRMAN: The whole section was pretty fully discussed some time ago, and adopted.

Mr. SCOTT, K.C.: My understanding at the time was that subsection 3 was referred to Messrs Bennett, Carvell and Johnston, to consider and report to the Committee.

Mr. JOHNSTON, K.C.: The section left in that way was section 152. Would it meet your case to add these words: "The majority of Directors shall be British subjects, except in the case of any line owned by a foreign Company."

Mr. MACDONELL: I would not be in favour of that, I do not think we should have foreign Directors running a railroad into Canada.

Mr. SCOTT, K.C.: When this is applied to a line operated as part of a foreign Railway system it brings it within very narrow limits.

The CHAIRMAN: The Committee seem to be in favour of the Section remaining with the amendment as already passed.

Mr. JOHNSTON, K.C.: Mr. Macdonell has something to say about Section 187. Use of spur for another industry.

Mr. MACDONELL: Section 186, dealing with industrial spur lines was considered yesterday. Section 187 provides that notwithstanding any agreement or arrangement made under the last preceding section, the Board may permit any owner of another industry or business intending to establish another industry or business within six miles of the railway, to have traffic carried over any spur or branch line or any part thereof constructed pursuant to the said section. Now, I think that if a proper case is made out, the Board of Railway Commissioners should be given proper jurisdiction to order a spur line to be extended to other industries either alongside the existing industry or in the same industrial area, that need a spur line and cannot start operations without the necessary accommodation. At present there is no provision in the Act under which the existing spur can be made use of by anybody except the first person for whose benefit it has been extended, nor is there provision by which spur lines can be extended to other industries so as to permit of further industrial activities in that industrial area. Now in the suburbs of Toronto there is a

great deal of property that is available for industrial sites if railroad connections could be got.

Hon. Mr. COCHRANE: You want to amend the section so as to be able to extend the spur to another property?

The CHAIRMAN: I understand this section has been amended.

Mr. JOHNSTON, K.C.: It has been amended, but there is nothing in the amendment to cover Mr. Macdonell's objection.

Mr. MACDONELL: This section, 186, relates to spur lines put in by order of the Board; there are a great many spur lines put in not by order of the Board but by agreement between the parties and the railway company; I suppose the great majority of them are put in under an agreement. Section 187 provides for the use of a spur by another industry, but it confines the use of a spur by another industry to a spur constructed pursuant to the last preceding section, that is section 186. By that provision you confine and limit the use of the spur by other industries, because you confine it to spurs constructed in the future under section 186; there is no provision for the extension of a spur already existing, not even in section 187. What I propose is to strike out the words on lines 44 and 45 of section 187: "constructed pursuant to the said section" because that limits and restricts the use of the spur by anybody else other than the original person who had it put in. What I ask the Committee to consider favourably is that provision should be made whereby the Railway Board may, if it is in the opinion of the Board desirable, permit other industries than the person who had the spur put in under section 186 to have the use of it.

Mr. BLAIN: That is, you want the Board to have power to say that the spur should be continued to another industry?

Mr. MACDONELL: Yes, and I propose to add the words "and to have such spur line or branch line extended" because there is no provision in the Act, anywhere, now, for the extension of a spur that is in already, and it is desirable that such provision should be made. Then to safeguard the clause, it would be very unfair to disturb the man who got the spur first in the use of his spur, the concluding part of the paragraph should read as follows: "Provided that any terms or conditions which the Board deems reasonable shall be imposed, and regard shall be had to the interests of the owner or person having the senior right to the use of such spur line." I have consulted Mr. Johnston as to this, and I think his ideas are as I have stated them. I have also consulted Mr. Blair of the Railway Board, and he thinks, as I understand it, that is a reasonable provision.

The CHAIRMAN: Your amendment is to strike out the words; "Constructed pursuant to the said section" in the 44th line?

Mr. MACDONELL: Yes, because that limits the use of the spurs to spurs constructed under this section, and the Board should have the right to consider whether any existing spur should be used by other persons, always having regard to the prior rights of the person who got it first.

Hon. Mr. COCHRANE: I do not know about giving the use of the spur put in by one person to anybody who wanted to use it because if that were done it might be eternally blocked.

Mr. MACDONELL: The rights of the original party are preserved under the proposed amendment.

Hon. Mr. COCHRANE: I know that, but take the case of a short spur, the man if he were doing any business at all would need it all the time, and if other people were using it to unload their cars he could not do business at all. I agree to the extension of the spur to another property, that is all right, but I do not think there should be a provision for the use of it by everybody wanting it.

Mr. SINCLAIR: Are there any spurs that are used by private parties exclusively?

Hon. Mr. COCHRANE: Lots of them, they pay a certain amount of rental by the year.

Mr. MACDONELL: You would not, Mr. Minister, object to the extension?

Hon. Mr. COCHRANE: Not a bit.

Mr. MACDONELL: I ask if these words "and to have such spur or branch line extended" be inserted after the word "thereof" in the 44th line.

Mr. SCOTT, K.C.: I am not familiar with the particular cases to which Mr. Macdonell has referred, but I am familiar with two cases which came up in the Supreme Court Blackwood's v. C.N.R., 44, S.C.R., 92; and Cloverbar Coal Co. v. Humberstone, 45, S.C.R., 346, and I want to point out to the Committee just what the effect of this would be. There are two methods by which a spur running into an industry may be provided, one is to invoke the Railway Act, which can be done either by the owner of the industry, or by the railway company, and the other is by means of a private agreement between the railway company and the individual. If the railway company and the owner of the industry are satisfied to make a private agreement, why should they be obliged or forced afterwards to come under the jurisdiction of the Board? If an extension of the spur is required it can be obtained in this way that the rights of the owners of the industry can be expropriated, and that is the fair way, I submit, to do it. It has happened in one of the cases to which I have made reference that a man constructed a branch line on his own land, as he had a right to do, and he laid it out in such a way that it suited his industry. In the case of Blackwood v. C.N.R. at Winnipeg there was a siding that was always covered by cars and it was desired to extend that spur without remuneration for the benefit of others. The contention in that case was that if the extension were desirable the railway company should expropriate, and then the original owner would get compensation for what he was giving up, and that because by a private agreement they had allowed the railway company to construct a branch up to that particular industry, they should not be asked to suffer the inconvenience and disarrangement of their business which would result from the extension without compensation. The other case of the Cloverbar Coal Co. v. Humberstone, was very similar. That was a case of two coal mines and the one company said: "We constructed this branch line in such a way that it would carry our traffic, but if it is extended to the Humberstone mine, one mine will fall in", and that is actually what happened, because between the time that the Board gave the order, and the Supreme Court gave a decision, the mine actually fell in and was spoiled, but there was no compensation. It seems to me unfair to force the party who has built a siding for his own private purpose, just because he is connected with the railway company, in any case, to provide that spur for the use of owners further on.

Mr. MACDONELL: That is in the Act already. Section 187 only applies to spurs constructed under 186.

Mr. SCOTT, K.C.: Section 187 applies to a case where there is an agreement, or where a person has invoked the Railway Act, but when another party does that why should the man who constructed the spur for his own use be subject to force in the interests of another party.

Mr. MACDONELL: I am asking that they be allowed to extend the spur.

Mr. SCOTT, K.C.: The section is all right as it is, but it is a question whether you can, where a private party has built a spur upon his own land, as he had a right to do, and has not invoked the provisions of the Railway Act, compel that private party by force to come within the jurisdiction of the Board.

Mr. MACDONELL: You cannot do that.

Mr. SCOTT, K.C.: The railway companies prefer to have the right to deal privately with private owners, where both parties agree, without invoking the Act. It seems to me that an injustice will be done to the owners of industries to proceed in that way, if they are forced to do so under the Act.

The CHAIRMAN: Is the Committee ready for the question?

Mr. MACDONELL: Just wait, while we consider the amendment.

Mr. CHRYSLER, K.C.: I agree with what Mr. Scott has said. Where the branch is constructed under section 186, it is virtually dedicated to the uses of the Act. That is what happens and it is proper enough that it should be subject to extension.

Mr. MACDONELL: I will be glad to accept section 186. The difficulty is that section 187 confines the section to spurs that are "constructed pursuant to the said section."

Mr. CHRYSLER, K.C.: This is the case: Suppose I am an adjoining owner, as Mr. Scott put it, of a piece of ground for factory purposes. My ground is sufficient for my purpose. At present I can put in a siding and run cars in, and as the Minister says, for a great part of the time, the cars might be just standing there and the siding be used as a storage track.

Mr. MACDONELL: Could we add the word "compensation" after the word "reasonable?"

Mr. CHRYSLER, K.C.: Compensation won't do in many cases. You may spoil my whole business by turning that spur into a main track.

Mr. MACDONELL: Are the public to have no rights?

Mr. JOHNSTON, K.C.: Mr. Chrysler is raising this point: He has land adjoining the railway; he has a private spur put in on his own land. Is it reasonable that that spur be extended?

Mr. CHRYSLER, K.C.: Not at his expense.

Mr. JOHNSTON, K.C.: The result will be, if this is generally known, that these men will not put in these sidings, because they run the risk then of having them converted into branch railways.

Mr. MACDONELL: I will leave in the words "pursuant to the said section," and after the word "section" add the words, "and to have such spur or branch line extended." That merely permits the extension.

Mr. CHRYSLER, K.C.: I think that is all right, Mr. Macdonell.

Mr. MACDONELL: I am not desiring to take any short cut.

Mr. JOHNSTON, K.C.: I would suggest that you use the word "or" instead of "and."

The CHAIRMAN: Is the Committee ready to adopt this section? It is difficult to follow Mr. Macdonell's argument.

Mr. MACDONELL: I will leave section 187 as it is, except by adding after the word "section" the words "or to have such spur or branch line extended."

Mr. JOHNSTON, K.C.: Mr. Chrysler has no objection to that.

The CHAIRMAN: Shall the clause as amended be adopted?

Section adopted as amended.

On section 461—Repeal.

The CHAIRMAN: The last section, No. 461, is not passed.

Mr. JOHNSTON, K.C.: Regarding the repeal we must add two Acts which were passed since this Bill was drawn, Chapter 50 of 4-5 George V and Chapter 2 of 6-7 George V.

The CHAIRMAN: Shall section 461, as amended, be adopted?

Carried.

On section 5—Application of Act.

Mr. JOHNSTON, K.C.: Some debate took place yesterday regarding this clause, and I have discussed it with the Minister who now agrees that we shall have to amend the Government Railways Act to bring Government railways under this Act, instead of trying to do it in connection with this Bill.

The CHAIRMAN: Shall this clause be adopted?

Hon. Mr. COCHRANE: It is said we cannot legally do it under this.

Mr. JOHNSTON, K.C.: This Committee has no power to do it.

The CHAIRMAN: Shall section 186 be adopted? (Carried.) Shall the preamble of the Bill be adopted? (Carried.) Shall I report the Bill as amended? (Carried.) There is just one point here; it has been explained by the Law Clerk that it would entail a great deal of time to have this Bill reprinted before it goes into the House. It is suggested that it would be more expeditious to add the amendments to existing copies of the Bill to the number of twenty-five and hand them to the members of the House who are interested.

Hon. Mr. COCHRANE: Twenty-five copies would not be sufficient.

The CHAIRMAN: Well increase the number.

Hon. Mr. COCHRANE: There are about 200 members, and they have all a right to copies.

Mr. JOHNSTON, K.C.: In section 387 there is a reference to any proceeding under this section, (reading)

> 3. In any action or proceeding under this section the limitation of one year prescribed by section 391 of this Act, etc.

Under this section that should be made "two years."

The CHAIRMAN: Is it the wish of the Committee that in section 387 the words "one year" be changed to "two years" in sub-section 3?

Amendment agreed to and section, as amended, adopted.

Bill ordered to be reported with amendments.

Committee adjourned.

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