

"2. I have further pointed out that the Beauharnois Light, Heat and Power Company was incorporated by act of the Province of Quebec in 1902, and that it has contracted to deliver power at the boundary between Ontario and Quebec.

"3. I have further pointed out that the James Maclaren Company, Limited, has contracted to deliver power to the Province of Ontario at the interprovincial boundary, there connecting with the lines of the Hydro-Electric Power Commission.

"It is thus to be observed," the Attorney-General continued, "that all three companies with whom the Commission now have agreements have contracted to deliver: one ten feet within the Provincial boundary, and the other two at the Provincial boundary. And I may further add that the Hydro-Electric Power Commission is also a body corporate, the creation of the Legislature of the Province of Ontario.

Company Powers Limited.

"My first general proposition is that these companies, created and brought into being by the Provincial authority, cannot do what the Legislatures themselves cannot do. That needs little argument. A Legislature cannot confer power which it does not itself possess.

"Now, let us turn to the British North America Act. Section 91 of the British North America Act assigns to the Dominion Parliament legislative jurisdiction over all matters not assigned exclusively to the Legislatures of the Provinces, and over those classes of subjects expressly exempted in the enumeration of subjects assigned exclusively to the Provinces.

"Now in Section 92 of the British North America Act, legislative jurisdiction is assigned to the Provincial Legislatures over local works and undertakings, other than such as are of the following classes: (a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the Provinces, or extending beyond the limits of the Province."

Mr. Roebuck prepared to deliver his climax. "I submit to this House," he said, "that all three of these contracts are not only outrageous and inequitable, but illegal and unenforceable."

They involved, he held, the construction of the works and undertakings connecting one Province with another, or extending beyond the limits of a Province. He was supported in his opinion by a man whom he described as one of Ontario's best constitutional lawyers, Major Lewis Duncan, K.C.

"Nor is my proposition unsupported by decisions in the courts," said Mr. Roebuck. The Through Traffic Case (1912), A.C. 333, and the case re Alberta Railway (1915) A.C. 363, were cited.

"The decisions in these cases," said Mr. Roebuck, "are that the effect of the section of the B.N.A. Act which I have quoted is to transfer jurisdiction over the subject matter mentioned to the Dominion Parliament and to expressly except it from Provincial jurisdiction."

Wide Interpretation.

The courts, he said, had given a wide interpretation to the clauses in question of the B.N.A. Act. Telegraphs were mentioned, but it had been held that telephone companies are as much within the express exception as a telegraph company. Mr. Roebuck referred to Toronto v. Bell Telephone Company (1905), A.C. 52, page 57.

"I would direct the attention of the House to the judgment of the Privy Council in re Regulation and Control of Radio Communication in Canada (1932), A.C. 304, at pp. 315-316. Radio broadcasting has been held to be an undertaking connecting one Province with another Province and extending beyond the limits of the Province.

"In that case Viscount Dunedin made use of these words: 'Now a message to be transmitted must have a recipient as well as a transmitter. The message may fall on deaf ears, but at least it falls on ears.'"

Getting down to the meat of the matter, the Attorney-General referred to a power line case.

"The power of a Local Legislature to incorporate a company with power to connect its power lines with those of a company in another Province was discussed in Hewson v. Ontario Power Company (1905), 36 S.C.R. 596,

at pp. 606-7, in which it was held that such power resided in the Dominion Parliament. Mr. Justice Davies made use of these words: "The jurisdiction of the Legislature of Ontario is limited to the incorporation of companies with Provincial objects only, and such legislation could not confer on a company incorporated by them such extensive powers as are conferred on this respondent company. . . . The undertaking of the company is not simply to generate power, but to supply such power "to manufacturers, companies and persons for use in manufacturing or any other business or purpose. . . . "The objects of the company contemplate possible extension beyond the limits of our Province, and it is, therefore, as much within the express exception of British North America Act as a telegraph or telephone company with like powers of extension.

"A Provincial charter will be construed as having a Provincial limitation, and the Legislature will not be presumed to assume jurisdiction beyond the limits of the Province.

"It seems clear to me that the Legislature could not grant a local company power to connect its wires with those of a local company in any of the other Provinces. If it could, each company would cease to be one of a "local or private nature" and become interprovincial and general.

"Provincial charters are defined by the British North America Act, as matters of a local or a private nature not connecting the Province with any other or others of the Provinces, and "not extending beyond the limits of the Province."

"Beyond Legislative Jurisdiction.

"It's beyond the legislative jurisdiction of the two Provinces," Mr. Roebuck maintained. That was true if Gatineau delivered power ten feet inside of Ontario. Even if it was delivered on a theoretical centre line on the boundary, "they are within Dominion jurisdiction and not within the capacity of Legislative agreements."

The Commission is under still further disability, the Attorney-General held, saying: "It is limited by the wording of its own act of incorporation. The authority under which the Commission acted is contained — if authority it be—in Section 8 (d) of the Power Commission, which follows: "The Lieutenant-Governor-in-Council upon the report of the Commission recommending the same, may authorize the Commission to contract with any person generating, transmitting or distributing electrical power or energy, or proposing to do so, to supply electrical power or energy to the Commission."

"In view of the general limitations of Provincial authority," he said, "I am of the opinion that that clause conferred power on the Commission to purchase power delivered within the Province and not from without.

This, I suggest to you, was what was in the mind of Mr. Osler when he advised Mr. Graustein to change the agreement so as to bring Gatineau power ten feet within the interprovincial boundary."

The companies, and in particular the Gatineau Company, were, in his opinion, under still greater disability.

Roebuck Cites Act.

"According to the returns of the Gatineau Company, filed in the office of the Provincial Secretary, and from the Ottawa telephone directory, this company has an office or place of business in Ontario, and it has not taken out an extraprovincial corporations license.

"Let me read you Section 6 (1) of the Extraprovincial Corporations Act, R.S.O. (1927), c. 219, as amended (1933), c. 59, s. 22 (3): 'No extraprovincial corporation coming within class 8 or 9 shall carry on within Ontario any of its business unless and until a license under this act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent or other person shall, as the representative or agent of, or acting in any other capacity for any such extraprovincial corporation, carry on any of its business in Ontario unless and until such corporation has received such license and unless such license is in force.

"In my opinion, the transmission and delivery of power in Ontario is carrying on business within Ontario, and if so, while it remains unlicensed by Sections 15 and 17 of the act, it shall not be capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said Section 6."

Roebuck Reviews Contracts.

The Attorney-General continued his review of the contracts yesterday before he delivered his decision.

The first power purchase, he recapitulated, had been made for thirty years with no right of renewal. Mr. Roebuck stressed the words — "no right of renewal."

"The second purchase," the Attorney-General said, "was also from the Gatineau Power Company of 60,000 horsepower, with an option on a further 40,000 horsepower of 60-cycle energy, obtained for the Eastern system at an annual cost of \$1,500,000, and entered into in December, 1927, for forty years—renewable for a further forty years at an approximate price of \$14.50 per horsepower.

Then followed the Aird-O'Brien purchase of the Caletta and Calabogie plants and the undeveloped power on the Madawaska and the Mississippi Rivers, with a developed capacity of 7,400 horsepower and 85,000 horsepower, undeveloped, at a purchase price of \$1,850,000—the \$50,000 being for John Aird Jr. This was entered into on May 31, 1929."

In June, 1929, there was the first evidence of a slowing up of "the increase in power sales."

"These things," said the Attorney-General, "are indications of coming trouble—the cloud on the horizon." October had brought the great stock market crash. "Thereafter no sane and cautious business man went into serious commitments."

"On Nov. 29, 1929, in the very face of these danger signals, the Hydro-Electric Power Commission of Ontario entered into an agreement with the Beauharnois Light, Heat and Power Company for the purchase of 250,000 horsepower at \$15 per horsepower, or \$3,750,000 per annum, for a period of forty years. The power to be delivered at the interprovincial boundary, and to be transmitted thence, at a cost estimated in 1928 at \$18,000,000."

No Renewal Secured.

"There was no right of renewal," Mr. Roebuck noted again. The Quebec lease to Beauharnois was for seventy-five years, when said power and lands were to be returned to the lessor.

"The period of the lease is seventy-five years, so that at the end of that period, if the Commission is still