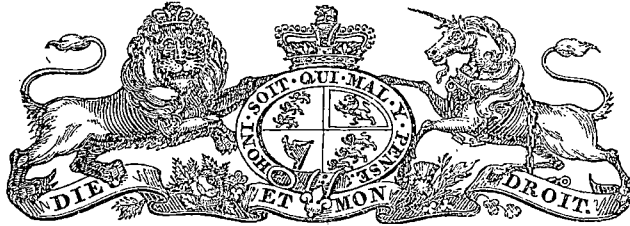


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1897.

SESSION II.

PARLIAMENT OF TASMANIA.

V.D.L. COMPANY'S WARATAH AND ZEEHAN
RAILWAY ACT, (PRIVATE):

OPINION OF ATTORNEY-GENERAL AS TO THE INTERPRETATION
OF "BRANCH LINES OF RAILWAY" USED IN THE SAID ACT.

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OPINION *RE* PART 3 OF "THE VAN DIEMEN'S LAND COMPANY'S WARATAH AND ZEEHAN RAILWAY ACT."

In any attempt that may be made to arrive at the proper interpretation to be put upon the expression "*Branch Lines of Railway*" as used in Section 8, Part 3, of "The Van Diemen's Land Company's Waratah and Zeehan Railway Act," it will be found very difficult, if not impossible, to separate the political from the strictly legal aspects of the subject, because the right of the Company to construct such lines of railway depends upon the consent of the Governor in Council, and the consequent question to be decided is, what power and authority Parliament intended to confer upon the Governor in Council in this matter.

It cannot be reasonably contended that Parliament intended to confer upon the Governor in Council the power to grant to the V.D.L. Co. or its assignees the right to construct railways of any length and in any direction from either of the termini of the line of railway mentioned in the 4th Section of the Act, or from any point on that railway between the termini. It therefore follows that Parliament intended that the Governor in Council should recognise some limit to their power and discretion in granting leases to the Company for the construction of branch lines of railway; and the immediate question to be considered is, what is the reasonable limitation to be placed upon the power and discretion of the Governor in Council in the matter?

If we look into other Acts of Parliament which authorise the construction of similar railways for guidance as to what Parliament intended to be understood by branch lines of railway, we find that by "The Waratah and Zeehan Railway Act," 55 Vict. No. 15, which was a public Act of Parliament passed in the year 1891, and by "The Derwent Valley and Zeehan Railway Act," 55 Vict. No. 16, which was also a public Act passed in the same year, Parliament limited any branch lines to be constructed under either of those Acts to a length of ten miles. These are the only Acts of the Tasmanian Parliament in which, so far as I know, anything like a definition of the expression "*Branch Lines of Railway*" can be found; and it has been contended that the absence of any similar restriction upon the length of any branch line to be constructed under "The V.D.L. Company's Waratah and Zeehan Railway Act" implies that the Governor in Council was to be at liberty to grant leases to the V.D.L. Company for the construction of branch lines of railway without limitation as to length. But the validity of that contention depends upon the general purposes and particular contents of each Act. As I have before noted, "The Waratah and Zeehan Railway Act," 55 Vict. No. 15, is a public Act, and it was placed upon the Statute Book by Parliament under the guidance and advice of the Ministry of the day as a part of the public policy of Parliament for the development of the resources of the Colony. The only right and privilege conferred by it upon the persons mentioned in the 3rd Section was the right to construct a railway from the town of Waratah to the town of Zeehan, for the purpose of working the railway for hire as carriers of passengers and goods. But "The V.D.L. Company's Waratah and Zeehan Railway Act" is a private Act, which, in addition to conferring upon the Company the right to construct the railway mentioned in Section 4 for the carriage of passengers and merchandise, confers also upon the Company the right to acquire grants of a number of blocks of mineral land to be worked by the Company, and declares that all such grants shall be forfeited simultaneously with any forfeiture of the primary lease under which the railway is to be constructed. This difference in the purport and contents of the two Acts cannot be disregarded in any comparison which is made of them for the purpose of assisting in the interpretation of the particular provisions of either of them.

It does not require any argument to establish the proposition that, under Part 3 of the V.D.L. Co's Act, the right to construct branch lines of railway, with the consent of the Governor in Council, is available to the Company for the purpose of carrying to their main line of railway ores and metals obtained from any of the blocks of mineral land granted to the Company under Part

13 of the Act; and if Part 3 of the Act is incontestably available to the Company for that purpose, the immediately pertinent question for consideration is, whether or not that is the particular purpose to which Parliament intended Part 3 of the Act to apply. If in pursuit of an answer to this question we look again into other Acts of Parliament of a similar character to ascertain for what purpose Parliament intended branch lines of railway to be constructed under the authority of the Governor in Council by promoters of other private railways, we have before us "The Great Western Railway and Electrical Ore-reduction Co.'s Act," 60 Vict., a private Act passed in the year 1896, that is, the year after the V.D.L. Co.'s Act, and which, therefore, contains a later expression of the mind and intention of Parliament on the matter, and in Part 3, Section 8, of that Act, we find that the branch lines of railway which can be constructed under that Act with the consent of the Governor in Council are to run from the main line of railway *to termini within the boundaries of any land leased by the Promoters under Part 13 of the Act.* But no limitation is placed upon the length of such branch lines, and it might happen in the case of a branch railway constructed under that Act, as well as in the case of a branch line constructed under the V.D.L. Co.'s Act, that it would require a length of more than ten miles to reach a block of mineral land not more than half that distance from the main line of railway in a direct line.

The absence of a definitely expressed limitation in a particular case may sometimes imply an authority to exceed the limitations expressly defined in other cases; but such an implication of enlarged authority in a particular case requires to be supported by something which is clearly included in the general scope and purport of the whole Act, and which could not be fully effectuated without the exercise of such enlarged authority. In the present case I cannot find anything in "The V.D.L. Co.'s Waratah and Zeehan Railway Act" which necessarily implies that the Governor and his Ministers have a larger authority under that Act in the matter of granting leases for the construction of branch lines of railway than the authority which is conferred upon them for the same purpose by the other Acts which I have mentioned.

If we consult English legislation for further light on the question, we shall find that the only lines of railway which are described or mentioned as branch railways in Acts of the Imperial Parliament relating to the construction of railways by companies are lines of railway built for private purposes upon private properties which adjoin the main line of railway with which the branches are to connect. This use of the expression "branch railway" in English legislation clearly supports the contention that the use of the same expression in our local legislation in reference to the V. D. L. Company and the Great Western Railway Company was intended to refer to the establishment of communication between the Main Line of Railway which the Act authorises to be constructed and any blocks of mineral land within the vicinity of its route; and we find that when special statutory authority is conferred by the Imperial Parliament upon any railway company to construct for its own purposes an additional length of railway which, in common parlance and in the language of railway traffic managers, would be called a branch railway, it is described in the enabling Act as an "extension" or "deviation." These are the words used in the Act 18 and 19 Vict., CLXXV., which authorised the Cromford and High Peak Railway Company to construct what would be colloquially described as a branch railway to connect with the Disley and Whaley Bridge Railway; and the practice of railway traffic managers to describe certain lines of railway as "branches" cannot obliterate the essential distinction recognised by Acts of the Imperial Parliament, in the character and use of a line of railway which may be truly described as a "branch" within the statutory meaning of the word, and one which in statutory language is described as an "extension" or a "deviation" of a previously existing line of railway.

The expression "branch line of railway" implies in itself a line of railway which is secondary and ancillary in its purpose and use in relation to the original line with which it connects. It is to lines of railway which are indisputably of such a character that the expression is applied in the Acts of the Imperial Parliament to which I have referred, as also in "The Great Western Railway and Electrical Ore-reduction Company's Act;" and, in view of its use in those Acts and in the several other Acts which I have mentioned, I am of opinion that the same expression as used in "The V.D.L. Company's Waratah and Zeehan Railway Act" was intended to apply to lines of railway that would be constructed to establish communication between the original line of railway which the Company is authorised by that Act to construct, and any blocks of mineral land granted to the Company under Part 13 of the Act, or any other blocks situate within an equal distance from the original line of railway.

A. INGLIS CLARK.

Attorney-General's Chambers, 19th October, 1897.