

Memorandum as to Laws of Minnesota affecting purchase by Great Northern Railway Co. of stock in successor to Northern Pacific Co., and guaranteeing bonds of latter company.

The policy of the territory and state has always been favorable to the consolidation of connecting lines so as to form through lines of transportation.

This is manifest from the provisions of many of the territorial charters, and the provisions of the general railroad law passed at the first session of the state legislature.

Laws 1858, c. 70, §§ 21-24, which appear in subsequent revisions and compilations as follows:

Gen. St. 1866, c. 34, §§ 36-9.

Gen. St. 1878, c. 34, §§ 66-9.

Kelly's Statutes, § 2535. Kelly does not give §§ 36, 37, 38.

(See Vol. 1, p. 682, note to § 2537.)

Gen. St. 1894, Vol. 1, c. 34, §§ 2718-2721.

Further broad powers as to purchase of stock, consolidation, etc., are given by,

Laws 1881, c. 94, which appears in

1 Kelly's Stat. §§ 2537-8.

Gen. St. 1894, <sup>vol 1,</sup> c. 34, §§ 2716-7.

The third and last section of this act of 1881 contains a stringent prohibition of any consolidation, purchase, etc., of roads or stock by one company when the other owns or controls a parallel or competing line.

1 Kelly's Stat. § 2538.

Gen. St. 1894, Vol. 1, c. 34, § 2716.

A like prohibition was imposed by a general law of 1874, entitled "An act relating to railroad corporations and common carriers."

Gen. St. 1878, c. 34, § 65.

Gen. St. 1894, Vol. , c. 34, § 2717.

1 Kelly's Stat. § 2583, note.

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When the prohibitory statutes are not involved, the statutes, (whether general laws or special charters) authorizing consolidation, purchase of stock, etc., may well be liberally construed.

And within a liberal construction, as a purchase of the stock of one railway company may be a step toward a consolidation, and because the greater power includes the less, it has been held in several cases that a power to consolidate includes a power to purchase stock. And so far as a purchase of part of the stock of one company by another may be regarded as a step towards the purchase of the whole and a consolidation, or so far as the purchase of a part may be considered as within the power to purchase all, such purchases, whether of the whole or a part, in a case not open to question as obnoxious to the prohibition, is within the following cases:

Marbury v. Kentucky Land Co., 57 Fed. Rep. 47.

S. C. on appeal, 62 Fed. Rep. 335; 10 C.C.A. 393.

Hill v. Nisbet, 100 Ind. 341.

Ryan v. Leavenworth, etc. Ry. Co., 21 Kansas, 365.

Branch v. Atlantic & Gulf. R. Co., 3 Woods, 481, 485.

Branch v. Jesup, 106 U. S. 468, 478-9.

And see

Venner v. Atchinson, etc, R. Co., 28 Fed. Rep. 581.

Besides the powers given by the above sections of the general laws, the original charter of the Great Northern Co., and the amending act of February 8, 1865, give special powers as follows:

Section 6 of the original charter empowers the company to connect its road with that of any other railroad company, "or to become part-owner or lessee of any railroad in said territory."

Section 13 authorizes the company to contract for connection with and joint use of another road.

Section 8 of the amending act authorizes the company "to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of the road or branch road of any

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other railroad corporation or company having the same general direction or location, or to become merged therein by way of substitution, upon such terms or conditions as the two companies may agree, by the consent of a majority of the stockholders of each company."

Section 12 of the same act authorizes the company to "consolidate the whole or any portion of its main lines or branch railroads and all the property, rights, powers, franchises, grants and effects pertaining to such roads with the rights, powers, franchises, grants and effects of any other railroad company, either within or without this state," etc.

Section 3 of the same act amends section 12 of the charter so as to empower to the company to connect with or adopt as its own other roads running in the same general direction with either of its main or any of its branch lines.

Under the rule of construction adopted in the cases already cited, these charter provisions though not expressly authorizing the purchase of stock in other companies, might by fair implication be deemed to warrant such purchase.

If, however, the successor company shall be one "owning or having under its control a parallel or competing line", the question necessarily arises upon the effect of the prohibitory legislation above referred to.

In such a case, the Great Northern Co. could claim no right to make such a purchase under the general statutes already cited. It must stand on its charter.

And here two questions arise: 1. Are the prohibitory acts to be construed as applying to roads with special charters, or only to roads organized under the general laws? 2. Are they effectual to prevent a purchase by the Great Northern Co. of stock in a company owning or controlling a parallel or competing line?

The first is a question of legislative intent. In many cases a general law will not be deemed to affect a prior charter, unless such intention is expressed. But it would seem that the courts would

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be pretty sure to decide that the legislature meant to include all specially chartered roads within the prohibition so far as it could constitutionally be done.

There remains the second question- that of legislative power. And here two questions arise,

1. Is the right to purchase stock in a company having a parallel or competing line so clearly given that the legislature, in the absence of a reservation of the right to amend or repeal, cannot, before it has been exercised, impose upon the ~~xxxxx~~ exercise of it the restriction in question?

If the right is given, then in the absence of a reservation of a right to amend, etc., the legislature could not impose the restriction in question. And in determining this question, can the company have the benefit of the liberal construction adopted in the cases cited? Or would the charter be construed as in Holyoke Co. v. Lyman, 15 Wall. 500, 512; Fertilizing Co. v. Hyde Park, 97 U.S. 659, and other cases, strictly against the company, so that to maintain its right to purchase and hold stock in a company having a parallel or competing line, as against the prohibitory act, the company must show a grant of such right made in express terms or by necessary implication? In the latter case the company must show that the power to purchase stock in another company is <sup>granted by</sup> the charter or the amending act, or is necessarily implied in the grants of power already cited, before it can claim exemption from the prohibitory act, even if the charter did not reserve a power of amendment sufficient to sustain the prohibitory act as against the charter.

But if the right claimed is clearly given in express terms or by necessary implication, and so protected against any restriction by the legislature not justified by a reserved power of amendment, etc., the question arises is the reservation in the charter broad enough to uphold the prohibitory act as against the charter?

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The reservation is as follows:

"Sec. 17. This act is hereby declared to be a public act and  
"may be amended by any subsequent legislative assembly in any manner  
"not destroying or impairing the vested rights of said corporation."

What is the meaning of "vested rights of said corporation" in  
this section?

Does it mean every franchise, right and power granted by the  
original and amended charter? If so, the reservation of the right  
to amend would seem to be without any subject to operate on.

If not all of the powers granted are such that the company's  
right to hold and exercise them is a "vested right", within the  
saving clause, on what ground is the right to consolidate with or  
hold stock in another company to be deemed, before its exercise, a  
"vested right" so that it cannot be restricted, before its exercise  
in a given instance, to cases where there is no parallelism or com-

*Not all the powers granted stand on the same footing. Thus one  
power might be held protected from legislative impairment because a "vested  
right" (as the power to take land) while another might be subject to change by the legislature, if a sub-*

Does the term "vested right" in this charter have the same

meaning which in several cases the courts have given to the term  
when considering the legislative power under unrestricted reserva-  
tions of the right to amend or repeal, in which cases they hold that,  
under such unrestricted reservation, and even without an express  
saving of vested rights, the power to legislate "cannot be exercised  
to take away or destroy rights acquired by virtue of such a charter,  
and which, by a legitimate use of the powers granted, have become  
vested in the corporation."

Miller v. State, 15 Wall. 478, 598.

Holyoke Co. v. Lyman, Id. 500, 522.

Com. v. Essex Company, 13 Gray, 239, 253.

And see Close v. Greenwood Cemetery, 107 U.S. 466, 476.

Gibbs v. Baltimore Gas. Co., 130 U.S. 396, 408.

If the term "vested rights" means in this charter rights which  
have become vested by exercise of the powers granted by the char-  
ter, then while a consolidation or purchase already effected under

*intended equivalent was given - as for instance, the power  
in respect to procedure in taking land.*

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sufficient charter power could not be reached by legislation, yet the legislature might restrict such power before its exercise, unless such restriction "defeat or substantially impair the objects of the grant", for this the legislature is precluded from doing even under an unrestricted reservation of power to amend, etc.

Does a restriction of the power to buy stock in or consolidate with other companies ~~apply~~ to cases of companies not having parallel or competing lines "defeat or substantially impair the objects of the grant"?

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In answering this question it is to be considered that so far as the right in question is based on the act of 1865, stock purchases or consolidations were not among the objects of the original grant in the original charter of 1856; and that while the power was granted in 1865, the company does not seem to have needed to use it for some 30 years. And further that such restriction is found in the constitution or laws of several states, and that it does not defeat the objects of railroad franchises in general. This being so, would it not be difficult to bring a court to hold that the objects for which the Great Northern Co. was incorporated are different enough from those of railroad companies in general that a provision deemed salutary in respect to such companies in general substantially impairs the object for which this was incorporated?

If the last suggested definition of "vested rights" be adopted, it is evident that the restriction is as broad as if the words were not in it. And this is doubtless to be considered in determining their true meaning and effect, for if possible effect should be given to every word in a law.

Should it be concluded that the Great Northern Co. is subject to the prohibition in question, it would remain to be determined whether the successor to the Northern Pacific Co. will be a company owning or controlling a parallel or competing line. This is a question of fact, which, by the act of 1874, is made triable by a jury if requested by either party, and the words are to be given their

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ordinary meaning. The following are ~~xxx~~ cases, arising under constitutional or statutory provisions not unlike that in Minnesota, in which the courts have held purchases or leases within the prohibition,

State v. Atchinson & Nebraska R. Co., 24 Neb. 143. (38 N.W.Rep., 43)

Penn. R. R. Co. v. Commonwealth, 7 Atl. Rep. 368.

Same v. Same, Id. 374.

And see State v. Vanderbilt, 37 Ohio St. 590, 640-5.

It is believed that the foregoing covers all important questions affecting the power of the Great Northern Co. to purchase and hold stock in the successor to the Northern Pacific Co.

James J. Hill Papers  
Minnesota Historical Society

Memorandum

as to

laws of Minnesota

Railway Construction,

Stock Purchases, &c.

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