

all damage by them sustained by reason of the location of the said railway along any street in" Fort William, the location "be and the same is hereby approved." The true question in this case is whether it was within the powers of the Board of Railway Commissioners to impose the "condition" that the company should make full compensation to all persons interested for all damages sustained by reason of the location of the railway. On the one hand the railway company maintains that it was *ultra vires* of the Board to impose the condition, and presents the argument that the condition should be deleted and that the order *quoad ultra* should stand. While, upon the other hand, the respondents in the appeal maintain that it was within the power of the Board to make a condition of compensation of the kind in question; but they plead that if this was not so, then the order—never having been, or been intended to be, an unconditional order—should fall, if the condition fails.

These respondents are frontagers, that is to say, owners of properties in the streets named, and it is not difficult to understand how they are, and possibly also how the municipality itself is, seriously affected by the location of the railway as proposed and sanctioned. It appears, however, that many of the properties in question are neither taken nor injuriously affected in the sense of the English railway law as interpreted by *The Hammersmith and City R. Co. v. Brand* (1869), L. R. 4 H. L. 171, a decision which has been followed in Canada in *Re Devlin and Hamilton & Lake Erie R. Co.* (1876), 40 U. C. R. 160. It is in no way surprising to find that the Board, giving a sanction for the construction of a railway through the municipality, should make the condition that the compensation to be paid for that privilege should fully equate with the injury done "to all persons interested;" that is to say, that the compensation should be recoverable in respect not only of the construction of the railway as settled by *Brand's Case* (1869), L. R. 4 H. L. 171, but also for all damage sustained in respect of its "location."

The real question, however, is whether, under the 47th section of the Railway Act of 1906, the Board was vested with a power of widening the scope of the compensation provided for in the statute itself. The language of s. 47 gives power to the Board to direct that its order shall come into force, *inter alia*, upon the performance "of any terms which the Board may impose upon any party interested." This