

for it says, ". . . shall construct . . . according to the best modern practice from time to time in general use," etc. Such language, confined to original construction only, would be, I think, quite inappropriate.

But the matter does not entirely rest upon the obligations contained in the agreements between the parties. The railway is a street railway within sec. 2(21) of the Ontario Railway Act, 1909; and sec. 164, which provides for the case of a railway becoming dangerous from lack of repairs or renewals, expressly applies to street railways. The Board, after the present proceedings began, as appears in the judgment of the Chairman, directed its own engineer to make an inspection and report as required by that section; and upon that, as well as upon the evidence adduced on the subsequent hearing, the order was based. Power to deal with such a situation, that is, of danger to the public using the railway, is not necessarily based upon an agreement between the municipality and the railway company, but is clearly intended to be invoked for the protection of the public, any member of which may be the complainant. And, in addition, it is not, I think, beyond question that the Ontario Railway and Municipal Board Amendment Act, 1910, passed while the proceedings were pending, but before the hearing, under which the powers of the Board were considerably enlarged, does not apply. By sec. 7, secs. 2, 3, 5, and 6 are made applicable to street railways. And by sec. 2 the Board is empowered to act after hearing, either upon a complaint, or upon its own motion. The effect seems to be to modify the general rule that pending proceedings are not to be affected by new legislation unless that intention clearly appears. And, as significant of such an intention, in addition to the new power given to act upon its own motion, sec. 65 of the Ontario and Municipal Board Act, 1906, which declared that the Act should not affect any action or other proceeding pending when the Act came into force, is, by sec. 8, repealed.

Upon the whole, I am clearly of the opinion that the Board had power and jurisdiction to make the order, and that this appeal should be dismissed with costs.