

ed in sec. 238 it may. That section confers upon the Board authority to order that part of a highway be closed, or at least to require the proper municipal authority to close it.

Corporation of Parkdale v. West does not apply: it was by reason, and by reason only, of the provisions of the Railway Act which were applied having been made applicable by sec. 4 of 46 Vict. ch. 24 that the conclusion of the Judicial Committee was reached.

The order of the Board does not require that the railway "be carried across or along a highway," nor does it require the "railway to be diverted;" it in effect blots out the highway between the points mentioned in the city by-law closing part of Albany avenue, and vests that part in the railway company.

The acts of which the respondent complained were lawfully done in the execution of the order of the Board, unless the contention of the respondent that the Board had no jurisdiction ought to prevail. That contention, the Chief Justice said, was not, in his opinion, well-founded. The Board, in making the order, was acting under sec. 238, and upon its own motion.

Upon the appellants undertaking to proceed without delay to determine the compensation to be paid to the respondent in respect of the injurious affection of his property by the closing up of part of the highway and for any injury he may have sustained by the elevation of the tracks, so far as that is a matter for which, under the Railway Act, he is entitled to be compensated, the appeal should be allowed and the action be dismissed, and the parties should be left to bear their own costs of the action and appeal

FIRST DIVISIONAL COURT.

APRIL 19TH, 1916.

*RE GEFRASSO.

*Infant—Custody—Illegitimate Child—Rights of Mother—Interest of
Infant—Foster-parents—Discretion of Judge in Chambers—
Appeal—Infants Act, R.S.O. 1914 ch. 153, sec. 2.*

Appeal by Millicent Ratcliffe from the order of SUTHERLAND, J., ante 65.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

T. C. Robinette, K.C., for the appellant.

W. A. Henderson, for William and Jennie Warwood, the respondents.