

And by sec. 6, sub-secs. 20, 21, 22, 23, and 24 of sec. 9 of the Railway Act of Ontario, as amended by 53 Vict. ch. 45, were also declared to be incorporated in and to form part of the Act.

Section 10 provides that where the railway is operated by electricity along a street, highway, or public place, that shall only be done subject to such agreement as may be made between the company and the municipality and under and subject to any by-law or by-laws of the council of the municipality passed in pursuance thereof.

By an agreement dated the 27th May, 1891, validated by by-law of the town, the railway company were (in advance of the last mentioned statute) authorised by the town to adopt electricity as the motive power upon certain conditions which in detail seem to be of no consequence on this appeal. And the railway is now and has been since the year 1891 operated by electricity.

No by-law or agreement authorising the company to use the streets and highways in the town of Sandwich at the time of the original construction of the railway was produced, but secondary evidence was given which, as held by the Board, justifies the inference that such a by-law was actually passed in the year 1872. There is nothing, however, to shew its exact terms, or whether it conferred a limited or a perpetual right. Under these circumstances, the Board held that the plaintiffs had not granted and had not power to grant a perpetual right to occupy the streets, and that what the company had was a mere license. The Board further held that the railway is a street railway, that when the company was incorporated as the Sandwich Windsor and Amherstburg Railway Company, in 1887, the Street Railway Act, 46 Vict. ch. 16, having been in force, sec. 18 of that Act, prohibiting a municipal council from granting to a street railway company a privilege for a longer period than twenty years, applied, and that, therefore, the company's right or franchise expires at the end of twenty years from the date of the by-law validating the agreement of the 27th May, 1891—that is, on the 15th December, 1912; and that in the meantime such agreement was binding on both parties. The Board also held that the statute before referred to, 56 Vict. ch. 97, which, by sec. 11, declared this to be a railway under the Ontario Railway Act, did not affect the town's rights, because the town were not parties to that legislation. And, as this question seems to stand at the threshold, I may as well say what I have to say about it at once.

When the first statute (35 Vict. ch. 64) in the series was passed, this province had no general Railway Act, and the reference in sec. 4 is, therefore, to the general Act of the late province of