

Street Railway Company, dated the 11th November, 1899, and validated and confirmed by 63 Viet. ch. 103, schedule B; and to the agreement between the Corporation of the Town of Toronto Junction, the Toronto Railway Company, and the Toronto Suburban Railway Company, dated the 8th October, 1899, and validated and confirmed by the same statute, schedule D.]

The track is old and worn and is out of repair and has become unsafe and dangerous. . . . The appellants admit that the track is unsafe, but say that they are under no obligation to repair. . . .

One of the appellants' main contentions was, that there was no jurisdiction or power to make the order in the absence from the record of the Toronto Suburban Street Railway Company; but, while in some respects it would have been more satisfactory to have had that company also served and represented upon the application, the failure to do so is not, in my opinion, fatal. The appellants, it is reasonably clear from a perusal of the agreement, were intended to be substituted for and to assume the obligations of the Toronto Suburban Street Railway Company in respect of that portion of the latter's line of railway covered by the agreements; indeed, it is only to the appellants that the extended franchise was granted by the corporation, and not to both companies. And if, as between themselves, the appellants are entitled to any relief over against the other company, the right to such relief will not be prejudiced by the order.

The duty to maintain and repair the track or line of railway is unfortunately not clearly expressed in the agreement, although there can be no reasonable doubt, reading the whole, where such duty was intended to lie . . . upon the operating company, and certainly in no sense upon the corporation.

Clause 12 of the first agreement, chiefly relied on by the respondents, is somewhat halting. "Construct" is a proper word to use when a line of railway is to be built; but, once it is built, as this was when the agreement was made, it is not easy to give it at least its primary meaning. And yet it clearly must have been intended to mean something important in furtherance of the purposes of the agreement. And, after much consideration, the only reasonable meaning I can conceive of, as applied to the circumstances, is "construct from time to time," or, in other words, "construct and maintain," which construction, if I am right, is sufficient for the respondents' purposes, and does, I believe, no violence to either the intention or the language which the parties have used. The clause even seems, by its terms, to anticipate not merely original construction, but necessary reconstruction,