

7 GEORGE V, A. 1917

You have to comply with the orders of the Board as to the manner in which you construct that railway, you have to make the rails so that the public can use the roadway, even where the rails are just as they did before, except when these rails are occupied by a moving train. Therefore the municipality still owns it. The company has acquired no property in it except a right of passage and there is no compensation that should be paid to the municipality beyond the proper terms that the Board may impose.

HON. MR. COCHRANE: It is not a proper thing to do to put a railway on the highway.

MR. CARVELL: Sometimes you have to do it.

HON. MR. COCHRANE: You should not encourage it.

MR. CARVELL: I know that.

MR. SINCLAIR: The Intercolonial has done it.

MR. CARVELL: I think Mr. Chrysler is right.

MR. MACLEAN: Where a city would apply for compensation—

MR. CHRYSLER, K.C.: When they sell the street? So long as it is a public highway why should we pay for it?

MR. MACDONELL: Supposing you carry a railway two miles or more along a public highway, don't you think you should pay something?

MR. CHRYSLER, K.C.: This is done under the direction of the Board for some good purpose, I can understand.

MR. MACLEAN: For a good purpose of protecting somebody's rights.

MR. CHRYSLER, K.C.: Nobody's rights, except the rights of the municipality, in order that you do not destroy another section of the city.

MR. NESBITT: Anyway, they have given their consent.

MR. MACLEAN: No, if they get some compensation.

MR. CARVELL: No. I think there is a misunderstanding. I had a case in the last four or five years where the Canadian Pacific Railway occupied at least a mile of the highway. They did it, of course, by the order of the Board; they had to get the authority of the Board before they could do so. They simply had to provide another highway as good as the one they took away from the public.

MR. MACDONELL: That is compensation.

MR. CARVELL: Hold on now. They had to settle with the landowners; they expropriated—no we did not expropriate. I think we finally settled without expropriation. However, they settled it by paying the landowner for all the additional land they took, and for all the damage he sustained. At least, he got compensation under the Railway Act. Now, what was taken away from the municipality? What right had the municipality as such to compensation, when they gave the public as good a highway as they had before, and they paid the landowners all the damage to which they were entitled? Surely the railway company had absolved themselves from any claims the public had upon them.

HON. MR. COCHRANE: If that was carried out, I would have no objection at all.

THE CHAIRMAN: I think the Committee should know that Sir Henry Drayton has suggested that the last four lines of this subsection be struck out.

MR. L. P. PELTIER: I want to instance a case at Fort William, a case which went to the Privy Council—

MR. CHRYSLER, K.C.: The railroads are running all over the streets in Fort William.

MR. PELTIER: I want to have my say. The experience we had may be worth while. We allowed the Grand Trunk Pacific to come down a street by a municipal by-law by agreement with the company. The street was about a mile and a quarter long, and was