

Vict. ch. 34; the agreement between the city and the Grand Trunk Co. of 15th May, 1866.]

It appears then, upon a general review of the agreements to which the city has been a party, that it has granted to the Grand Trunk Co., or to the companies to whose rights the Grand Trunk Co. have succeeded, the following as the only rights which come in question here:—

1st. A right of way 40 feet wide along the whole south front of the Esplanade for railway purposes, but without any guarantee beyond that of title.

2nd. A right of way 12 feet 6 inches wide for railway purposes along the southerly limit of Esplanade street, east of York street.

3rd. The right, west of the east side of York street, to carry as many tracks as might be necessary for themselves or any other company using the Union Station upon, along, or across Esplanade street.

The evidence and the plans shew a number of tracks used by the Grand Trunk crossing York street under the present bridge, which are not upon any part of the Esplanade, and are therefore not specifically, nor, so far as I can discover, generally, authorized by any of the agreements with the city.

The claims of the Grand Trunk Co., as set out in the 8th paragraph of the agreement of 26th July, 1892, and relied on as a defence in the present action, are as follows:—

1st. That the city has agreed not to require the Grand Trunk Co. to build any bridges over their tracks on the Esplanade, but, on the contrary, has agreed to provide all such, when required, at its own expense.

This claim is apparently founded upon the agreement to that effect contained in the 17th paragraph of the agreement of 21st January, 1856, but, . . . that agreement referred to a proposed forty foot track at the top of the bank, and was expressly cancelled by the agreement of 30th August, 1856, which contained no such stipulation.

2nd. That, by certain existing agreements, the city guaranteed and indemnified the Grand Trunk Co. against all claims and demands whatsoever for or by reason of the railway of the Grand Trunk Co. being placed on the tracks in the said agreement mentioned.