

1914, of the plan for the removal of the station, was an approval as well of the location of the tracks, switches, etc., upon and adjoining Queen street. But what was before the Board was solely the removal of the station; the application before the Board had no reference to the location or disposal of the tracks or switches at Queen street. If there was an approval at all, it was an approval of a switch, not upon Queen street, but outside of it. Approval of the existence of the switch upon the street was not obtained; there was no positive evidence as to when it was first placed upon the street; but, assuming that it was there before the present sec. 238 of the Railway Act was enacted by 8 & 9 Edw. VII. ch. 32, sec. 5 (D.), the defendants were not relieved from liability or otherwise assisted by the provisions of that section, merely because no complaint or application had been made to the Board under that section, or because the Board had not made the order contemplated by that section.

Upon the evidence, Queen street must be regarded as a public highway; and it was used as such, to the knowledge of the defendants; who, therefore, should have protected the crossing as a highway crossing.

The "split-switch" was described by witnesses as a standard "split-switch" in use on different railways—in fairly general use, it might readily be inferred—but that does not imply that it was such a structure as might be placed or used upon a highway without danger to the public.

There was evidence for the jury of the defendants' negligence; and, in basing their conclusion on a consideration of that evidence, the jury were not usurping the jurisdiction of the Board. The finding was not in the nature of a direction as to what the protection to the public should be, but a finding that, from the kind and manner of construction of the switch, it was dangerous to persons using the highway, and that those responsible for its presence on the highway were negligent if it was the cause of injury.

In respect of the obligation of persons exercising rights conferred by statutory authority, the grantee of such powers is not in general responsible for injury resulting from that which the Legislature has authorised, provided it is done in the manner authorised and without negligence; but an obligation rests upon persons exercising such powers, not only to exercise them with reasonable care, but in such manner as to avoid unnecessary harm to others.

Reference to *Southwark and Vauxhall Water Co. v. Wandsworth District Board of Works*, [1898] 2 Ch. 603, 611; *Roberts v. Charing Cross Euston and Hampstead R. W. Co.* (1903), 87 L.T.R. 732, 733, 734; *Moore v. Lambeth Waterworks Co.* (1886), 17 Q.B.D. 462, 465.