

acquire such an interest in it, and such control over it, as the legislation I have referred to conferred upon them; that amount became and still is to a very considerable extent a charge upon the whole county. . . .

I can come to no other conclusion than that the city have quite failed to shew that the order of the Board vesting part of the county road in the city was at all within the power of the Board; I hold it to have been *ultra vires*.

It was urged that the order must be valid, because under an enactment passed in the year 1906, 6 Edw. VII. ch. 34, sec. 1, sub-sec. (2), it was provided that the terms and conditions contained in a proclamation of annexation should have the same force and effect and be as binding as if embodied in legislation; but legislation may be *ultra vires*, and it is for the Courts to determine whether it is or is not, when the question is duly raised in litigation. In respect of all terms and conditions within the powers conferred upon the Board by legislation, the Board's proclamation has the force and effect ascribed to it; but in all things without its jurisdiction neither proclamation, order, nor other act has any force or effect; and it is for this Court now to determine whether the order vesting the county road in the city had any force or effect; and, in my opinion, and as I have said, it had not. . . .

Nearly all the other points involved in the case hang upon the one just dealt with and fall with it . . . It will probably be found that, whether they ought to or not, the parties (the county and the railway company) had the power to enter into the agreement, and having had the power and made the bargain, no change from a railway under provincial jurisdiction to one under federal jurisdiction, if there were any such, would annul that bargain: see R.S.O. 1914 ch. 185, sec. 231 (i), and *Hamilton Street R.W. Co. v. City of Hamilton*, 38 S.C.R. 106.

Estoppel too was much relied upon for the city; and it is quite true that the county went a long way in acquiescing in the order of the Board; but municipalities cannot transfer their rights or obligations, generally speaking, in regard to public ways at their will, and so it is plain that they cannot get rid of them by estoppel as if they were private rights; so, without considering whether all that took place would or would not create an estoppel between private owners, this point also fails.

That which is immediately in question in this action is the annual sum which the railway company agreed to pay to the