

APPENDIX No. 2

Mr. MACLEAN: If you can prove your case we will try and meet your views.

Mr. CARVELL: Have there not been hundreds of instances where a sidewalk has been constructed alongside a railway bridge and the structure strengthened without costing the railway company one cent?

Mr. CHRYSLER, K.C.: That may be so. I think that is what the man who drafted this section had in his mind.

Section allowed to stand to permit of the drafting of a suitable amendment.

The CHAIRMAN: What is your next objection.

Mr. CHRYSLER, K.C.: It relates to section 256 as amended. According to my notes, "The railway of the company may, if leave therefor is first obtained from the Board as hereinafter authorized, but shall not, without such leave, be carried upon, along or across any existing highway: Provided that the company shall make such compensation to adjacent or abutting landowners as the Board deems proper." I understood the four lines at the end reading "and provided that where leave is obtained to carry any railway along the highway, the Board may require the company to make such compensation to the municipality as the Board deems proper," were to be struck out. Is that correct, Mr. Johnston?

Mr. JOHNSTON, K.C.: We have not passed this clause.

The CHAIRMAN: Section 256 was allowed to stand pending some remarks from you.

Mr. JOHNSTON, K.C.: I have a note that Sir Henry Drayton thought the last sentence should be struck out.

Mr. MACLEAN: Do you want it struck out?

Mr. CHRYSLER, K.C.: I was under the impression that the last provision of section 256 was struck out.

Mr. MACDONELL: Where is the harm in that?

Mr. CHRYSLER, K.C.: There should be no compensation to the municipality in such a case as this.

Mr. MACDONELL: This is the case of using the highway as a roadway.

Mr. CHRYSLER, K.C.: The same as everybody does.

Hon. Mr. COCHRANE: A while ago you were complaining about the matter of bridges. It seems to me this is a more dangerous thing still.

Mr. CHRYSLER, K.C.: A highway is a highway.

Hon. Mr. COCHRANE: Not a railway.

Mr. CHRYSLER, K.C.: Yes. It does not belong to the municipality except as a trustee for the public. It is not property which the municipality can sell unless it closes it. I do not know how that is in the provinces.

Mr. CARVELL: I think so.

Mr. CHRYSLER, K.C.: It obtains an order from some authority and closes a highway, and then it is simply so much land that the municipality can sell. But where a railway uses part of a highway—take the case of crossing it, it either crosses above or below, and does not touch it. If it crosses on the level it comes under regulations which require it to preserve the right of passage to the public as it was before. There is nothing to pay for.

Mr. MACDONELL: The language of this section only has reference to a railway being constructed along the highway. It does not refer to crossing at all.

Mr. CHRYSLER, K.C.: Now, as to going along a highway, the case is no different. You have to make in the previous part of this section, under a law which is comparatively recent, compensation to the abutting landowners for damage done to them.