

KALADAR DRAINAGE SCHEME.

Kaladar is a siding on the Toronto-Montreal Division of the C.P.R., and for several years the C.P.R. tried to adopt a comprehensive drainage scheme. One of the land owners for some time blocked the scheme, and the judgment of the Railway Board in this matter is of general interest because of the points decided.

The facts are fully set forth in the judgment of the Chief Commissioner.

The Canadian Pacific Railway Company applied to the Board for an order authorizing the company to construct a ditch upon and across certain specified lands according to a plan submitted with the application.

The lands in question consisted of certain lots in concessions three and four of the township of Kaladar, and in concession two of the township of Sheffield, owned by different private individuals, only one of whom, James Murphy, has made objection to the construction of the drain through his land or the granting of the order.

The railway actually intersects all the lots except Murphy's, the nearest portion of which is distant several hundred feet from the line of the railway, and is separated from the railway company's property by the lands of other private owners which actually adjoin the railway.

The applicant company relies upon the powers given by subsections (m), (p), and (q) of section 118 of the Railway Act, 1903:—

"(m) makes drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;

"(p) from time to time to alter, repair or discontinue the before-mentioned works of any of them, and substitute others in their stead;

"(q) do all other acts necessary for the construction, maintenance and operation of the railway."

On behalf of Murphy it has been argued that section 196 makes it the duty of the company to make and maintain sufficient ditches and drains along each side of the railway for the purposes of any necessary drainage; that this method is the only one that can be used after the railway has been completed; that this railway has been completed and in operation for many years, and any powers of expropriation of land, or of the use of adjoining lands for purposes of drainage, have been exhausted and cannot now be resorted to; that drainage by means of ditches along the railway has been found to be sufficient for the maintenance of the railway, as evidenced by its use for so many years; and that Murphy lands were not "lands adjoining the railway" within the meaning of subsection (m) of section 118.

Section 196 provides that "the company shall in constructing the railway make and maintain suitable ditches and drains along each side of, and across and under the railway, to connect with ditches, drains, drainage works and water courses upon the lands through which the railway runs, so as to afford sufficient outlet to drain and carry off the water, and so that the then natural, artificial or existing drainage of the said lands shall not be obstructed or impeded by the railway."

This clause is evidently inserted for the purpose of imposing upon the company the duty of instituting such a system of drainage along its tracks as will prevent the interference of its works with the drainage of the lands of others. It is not intended to indicate the powers which the company may exercise for the proper construction and maintenance of its railway. These powers are found in section 118, and among them are powers from time to time to alter, repair or discontinue the works previously referred to and to substitute others in their stead, and to do all other acts necessary for the construction, maintenance and operation of the railway.

Under these powers it appears to me that, when a system of drainage established upon the construction of the railway is subsequently found to be insufficient, improvements may be made therein and such further drainage works executed as will assist in keeping the railway in an efficient condition and relieve it from the danger of injury by water. And I think

that, for this purpose, the company may avail itself of the power contained in subsection (m) to make drains into or through lands adjoining the railway.

We have been referred to the case of Kingston and Pembroke Railway Co. v. Murphy, 17 S.C.R. 582. In that case it was considered that a railway completed according to its charter could not be farther extended and lands compulsorily taken for the purpose. It should be noted, however, that that case was decided under the Railway Act of 1879, 42 Vic., c. 9, which did not contain the provisions of subsection (p) and (q) before-mentioned, and that what the company there sought to do was to construct an extension of its railway, not to alter or repair the works of its existing railway.

The natural meaning of the word "adjoining" is lying next to or in contact with; contiguous. Such is the sense usually ascribed to it by the courts. See *I. Bouv. L.*

The general principle is best stated in the language in Maxwell on Statutes, 4th ed., p. 78. "The words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained." See also Beal on Cardinal Rules of Interpretation, p. 34; *The Dunelm*, 5 P.D. 171 and *Wakefield Local Board v. Lee*, 1 Ex. D., at p. 343.

The statute authorizes the construction of drains into adjoining lands. It is obvious that it must be necessary in many instances to find outlets for the drains or ditches along the sides of the railway tracks, and for this purpose to carry drainage works out of and beyond the land used for the railway right of way according to the natural configuration of the ground. In authorizing the carrying of drains through or under adjoining lands the legislature must have contemplated that the drains should leave the boundary line between the company's lands and those of other owners; and it must have contemplated that the distances to which they would be carried would differ according to circumstances. And it appears to me that the legislature could not have had in view the ownership of the particular parcels or strips of land through which it would be necessary to carry such works. Having once adopted the view—which, as it appears to me, is the necessary view—that under subsection (m) the railway company was authorized to carry drains away from the point of contact and into lands of others, I think that it necessarily follows that the power to carry the drains as far as might be reasonably necessary to effect the purpose for which they were to be constructed was included. Naturally such drainage works must be adapted to the formation of the land. It would be unreasonable to suppose that they were to stop at the boundary of the owner of the land next adjoining the railway, leaving the water to run as it would thereafter. In my opinion, ownership should not be treated as an element in determining whether or not the lands are "lands adjoining the railway" for the purposes of a case such as that with which we are now dealing.

After consideration of the report of one of the assistant engineers of the Board and the evidence taken upon the hearing, the chief engineer of the Board has reported that he is "of opinion that the sooner the water is taken away from the railway at this point the safer it will be for the railway embankment, and that this is necessary for the proper maintenance and operation of the railway."

Under the amending Act passed at the last session of Parliament, the Board is empowered to make an order giving its sanction or approval to any matter, act or thing sanctioned by the general Railway Act. It does not appear to me that the company needs any sanction or approval from the Board to enable it to exercise the power contained in subsection (m) of section 118; but it is convenient that it should submit to the Board proposals for the construction of any such works in order that the Board may exercise some control as to the nature of the works and for the protection of other parties.