

be constructed, and the powers and duties under the Municipal Act of municipal corporations as to highways, I am of opinion that the covenant of the appellants contained in paragraph 6 should be construed as the Court of Appeals of the State of New York, in a recent case, construed a similar obligation imposed upon railway companies by an Act of the Legislature of that State.

I refer to Mayor, etc., of New York v. Harlem Bridge, etc., Co. (1906), 186 N.Y. 304, in which the Court of Appeals had to consider the nature and extent of the duty which, by a law of the State, was imposed upon railway companies to keep "the surface of the street inside the rails and for one foot outside thereof in good and proper order and repair, and conform the tracks to the grades of the streets and avenues as they now are or may hereafter be changed by the authorities of the aforesaid towns;" and the conclusion reached was, that, "when the proper authorities, in view of the condition of the street as shewn to exist, decided that a granite block pavement should be laid . . . the requirement for repairing and keeping in good order compelled the defendant to co-operate with the city and put the space between its rails in the same condition as the rest of the street, even though that necessitated the laying of a new pavement." . . .

[Reference to Leek Improvement Commissioners v. Justices of the County of Stafford (1888), 20 Q.B.D. 794, and Scott v. Brown (1903), 68 J.P. 181.]

I am also of opinion that, even if the appellants are not under any contractual obligation to do that which the Board has ordered them to do, the Board had, under sec. 3 of the Ontario Railway and Municipal Board Amendment Act, 1910, jurisdiction to require them to do it. . . .

It was argued by Mr. Hellmuth that the word "tracks," as used in the section, means only the "rails," and that it does not extend to the space between the rails or the 18 inches on each side of them; and that there is nothing in the section which confers jurisdiction on the Board to require the appellants to do that which it has ordered them to do.

One of the purposes of the section, and probably its main purpose, was, as its language shews, to promote the security of the public and of the employees of railway companies; and, in my opinion, to carry out that intention "tracks" should be given its widest and not its narrowest meaning, and therefore as meaning, as applied to a railway laid on a highway, that part of it which is occupied by the railway.