

4-5 EDWARD VII., A. 1905

If it be said that the Bell Company has a monopoly, the question may be fairly asked, 'What does its monopoly consist of?' Certainly not of the telephone business. There is nothing to prevent telephone companies from being established in any locality where a company having means sufficient for the purpose may choose to locate. The extent of the monopoly, so far as affects the present application, is the right to have its 'phone in the railway station on railway premises.

The only difference between the Bell Company and any other company is that the railway company's agent may be reached directly by subscribers' 'phone, other companies not having a 'phone in the station may reach him indirectly by their agent most conveniently located. There is, therefore, no monopoly of the business of telephony; there is no monopoly of the information which the railway officials have to furnish for the general public; there will be no material difference in the expense of maintaining the telephone company's agent outside the railway station and maintaining him, so that, so far as I can discover, the general interests of the public are not prejudicially affected.

Looking at the clause in question in the light of the authorities I have above quoted, there is only one construction which can be put upon its language, and that is that the order, if made, must take account of any and all lawful rights and interests which will be injuriously affected by such order, and award compensation to the party or parties whose interests are affected upon such terms.

If the clause had made provision for the award of compensation limited to the construction, operation and maintenance of the new service, I doubt if the board could have properly made an order in this case at all. The omission to provide protection by the statute for all persons having existing rights which would be injured or destroyed by acting on the clause had there been such omission would, I incline to believe, have warranted the inference that the statute was intended to apply only when the parties interested were confined to the railway and the applicants.

We are relieved, happily, from any such difficulty by the plain language of the Act itself, which seems to contemplate and provide for two distinct kinds of compensation, in terms which appear to me to be free from doubt. 'The board,' the section reads, 'may order the company to provide for such connection upon terms as to compensation, &c.,' and then immediately following it deals with a class of claims for compensation, namely, such as might or would arise from the construction, operation and maintenance of the connection.

I read the Act as imposing upon the board the duty of granting an order in the case before us, although I do not say that the word 'may,' in the eighth line of the section, must in all cases be read as if the word 'shall' had been used. We believe the board is invested with a discretion to be exercised in each case, with due regard to the object and purpose of the Act on the one hand, and the conditions and circumstances surrounding the application on the other. Instances may not infrequently occur when neither the public interests nor convenience would be served by granting an order.

Coming now to the question of compensation: While I do not think the board should name a sum or definitely determine the principles which will govern it in arriving at the amount of compensation, without giving all parties an opportunity of being heard, it will be convenient and desirable, perhaps, for parties to be informed as to the way in which the minds of the commission are tending on this phase of the subject.

Speaking for myself, I think we should preserve an open mind until we have again heard the parties who may desire to be heard, but I incline to the view that this is not an instance which will call for the imposition of onerous terms. I hold the opinion that the Bell agreement is what is known to the courts as an entire and indivisible contract. The exclusive privilege granted the Bell Company is the essential consideration upon which the contract, on the part of the Bell Company, is founded. I believe there would not have been the same inducement to the Bell Company to make the expenditures and render the service it has done if this element in their contract had been wanting. I think, also, that a failure to maintain intact the exclusive feature of the