

architect between the owner and the contractor under familiar provisions of building contracts. For the protection of the company the agreement makes the recommendation or the determination of the city engineer a pre-requisite to anything being demanded of the company. In the case of new lines and extensions defendants are further protected by the provision that a by-law passed by a vote of two-thirds of all the members of the council shall fix the period within which the company will be required to carry out such recommendation.

Under clause 14, which governs the matters covered by the first question, it is the city council approving, and, by by-law passed by a vote of two-thirds of its members, fixing the time for compliance by the company with, a recommendation of the city engineer, which may "determine, decide upon, and direct what new lines shall be established and laid down and tracks and service extended thereon by the company, whether on streets in the city as existing at the date of the agreement or as afterwards extended."

Question 2 relates to time tables and routes. It is impossible to answer this question categorically. In respect to matters covered by clauses 26, 27, and 28 of the conditions, neither the city nor the company is entitled to "determine, decide upon, and direct." It is the city engineer who has this right and duty; but his determination, before the company can be required to recognize or act upon it, must be approved by the city council.

Reading clauses 26, 27, and 28 of the conditions together, and having regard to the tenor of the whole agreement, I think . . . that both time tables and routes are within their purview. The city engineer cannot satisfactorily or efficiently exercise his right to determine speed, service, and intervals between cars, unless he also possesses power to decide upon and fix routes. His right to determine, with the approval of the city council, the "service" necessary upon all lines is unrestricted, and is quite wide enough to include the power to specify the routes to be established and maintained. Given the routes and the condition (No. 27) fixing the hours of starting and finishing the daily runs, the making of time tables is nothing more than a convenient method of exercising the right to determine speed and intervals. . . . These powers should not be used in an arbitrary or unreasonable manner. Some sound discretion as to what is proper and reasonable may naturally be expected. . . . Upon the fair exercise of that discretion those who were in charge