

APPENDIX No. 1

ture of a considerable amount by their company, and take away their rights without awarding compensation in the usual manner? Such legislation, I am assured, would be contrary to the genius and spirit of British legislation, and in violation of the most elementary principles of right and justice. While the power of parliament is supreme, and in the exercise of the right of eminent domain, it may, and not infrequently does, authorize the compulsory taking of private property for public purposes, it has never been known to do so without making, what it deemed, due provision for recouping the owner his loss in respect of the property taken.

It is not too much to say that the Canadian Parliament has not done so in this instance.

So careful have the courts of the land been to safeguard private rights and property that the most stringent rules have been laid down for the interpretation of statutes which may affect such interests.

In 1893, in the *London and N.W.R. vs. Evans*, it was determined that rights, whether public or private, are not to be hampered, interfered with or taken away by mere implication.

'The Legislature must clearly and distinctly authorize it.'—1893, I Ch. 16.

In 1889, *in re Cuno*: 43 Ch. D. 17, Bowan, L.J., said: 'In the construction of statutes you must not construe words so as to take away rights which already existed before the statute was passed, unless you have plain words indicating that such was the intention of the legislature.'

In *Wells vs. London and Tilbury Railway Co.*, 1877, 5 Ch. D., p. 130, Lord Bramwell, L.J., lays down the rule:—

'The legislature never takes away the slightest private rights without providing compensation for it, and a general recital in an Act providing for the execution of public works that it is expedient that the works should be done, is never supposed to mean that in order to carry them out a man is to be deprived of his private rights without compensation.'

In *Morris vs. Mellin* (1827), 6 B. and C. 446, Bayley, J.:—

'In order to avoid any written instrument by positive enactment, the words of that enactment ought to be so clear and express as to leave no doubt of the intention of the legislature.'

In the United States, in which country British legislatures are not inferior in their solicitude for maintaining the sacredness of personal and private rights, it is part of the organic law which declares that private property shall not be taken for public use without just compensation. Nor do I believe that there is any country in the world, which has emerged from savagery, where this great principle is unrecognized.

If it were necessary to pursue the subject further in this direction, it might be remarked that the object of the applicants being to secure access to the railway station, so that subscribers to their company may be able to make inquiries about train arrivals, freight and kindred matters, the company could easily secure this concession by locating an office convenient to the railway station, and its office agent could easily and promptly obtain the information desired and communicate with the subscribers seeking it. The applicant company will need, it is presumed, to employ a person to attend the 'phone in the railway station if a connection with the station is made, or else pay the Canadian Pacific Railway Company for employing some one to do so, which would mean precisely the same thing. The expense would be much the same; therefore (if that is an element to be weighed in the case), whether the company had its office convenient to the station or used the station agent's office.

It will seem to follow that no serious question of monopoly can arise where the sole question is shall the telephone company's agent cross the street and make the inquiries of the station officials, or be so located inside the building of the railway company that he may put his question from the inside. There is nothing to prevent as many telephone companies as may be in operation in any locality having easy, quick and quite convenient access to the railway station in the same manner.