

tory evidence of its contents be obtained. There ought, one would think, to be members or officials of the municipal council of the year 1872 still alive and able to testify usefully on the subject. Moreover, I doubt very much if the question of franchise is properly involved in the present application. The agreement, and the only agreement, proved is that of March, 1891, which both parties admit, and which the Board has found is valid and still in force, and binding upon the parties, and the application must, under the circumstances, I think, be regarded as based upon that agreement, which is equally valid and equally binding whether the franchise is perpetual or expires in December, 1912, or is merely a yearly license, at least until the license is properly determined.

The Board, it must be remembered, is not a Court, but an administrative body having, in connection with its primary duty, power to construe the agreements which it is called on to enforce, but no general power such as the superior Courts possess of adjudicating upon questions of construction in the abstract.

For these reasons, I think the appeal should be allowed with costs, and the matter be remitted to the Board for further hearing upon the matters which the Board reserved to itself when disposing of the question of construction.

Since the foregoing judgment was prepared, a copy of the missing by-law, passed 24th July, 1873, was found in the vault of one of the solicitors who had acted for some of the parties interested. According to its terms the location of the railway, as made by the company, was authorised, unconditionally as to time, or otherwise, except that the company should undertake a run cars at least every hour upon every day, and at least from sunrise to sunset of each day, and should observe the rules and regulations prescribed by its charter, and by any by-laws of the council.

The copy of the by-law so found was, by direction of the Court, brought to the attention of the Railway Board, with a view to enabling that Board, if it deemed it advisable, to reconsider the matter in the light of the new evidence. Subsequently the Board intimated that it remained of the same opinion, notwithstanding the terms of the by-law.

Moss, C.J.O., and MACLAREN, J.A., concurred.

OSLER, J.A., retired from the Bench before judgment was given.