

it was whilst that state of affairs existed that the ruling in favour of the right of removal was made; but, later on in the proceedings, the appellants appear to have got more light upon the subject; at all events, they more than once objected to the change of situation, and referred to the real cause for the desire to make it.

The case might be very different if the appellants were the owners of the highway, but that is not so; the public have the highest rights in it, the respondents being in the character of conservators of it for the use of the public.

I can, as I have said, find nothing, in any of the enactments to which we have been referred, giving the right to take the railway from Yonge street and place it elsewhere, as the respondents are substantially seeking leave to do. Such a right, if intended, should, and doubtless would, have been given in reasonably plain language. To the contrary, the whole legislation, up to that of the year 1911, seems to me to point to a railway upon Yonge street only, at the place in question. Giving some power to expropriate lands for the purposes of this railway, and indeed of any street railway, is not at all inconsistent with this view of the legislation in question: roads which run solely upon highways must have land elsewhere for car sheds and other purposes, and so a need for power to expropriate.

In regard to the Act of 1911, if the respondents come within its provisions, then the consent of the municipality is required, and has not been obtained; if, on the other hand, because the intention is merely to cross, not to run along, highways, the Act is not applicable, the right to cross is not conferred by it, but must be found elsewhere, and is not.

The Board was of opinion that the enactments in question conferred the right to change now the situation of the railway, apparently in whole or in part; and relied for that opinion upon (1) the Act of 1893. But that Act relates to a railway north of the then northern terminus; and, as I understand it, the place in question was then and is now the southern terminus; and, whether that be so or not, the respondents exercised their right of selection of the place of their line of railway; and I can find nothing in the enactment permitting them to change, when and how they might choose, a line so laid down; it can hardly be possible that any one ever had such an intention. It was also contended for the appellants that the proposed new line would "be constructed upon or along a street or highway," and so, under the plain words of the Act, requires the consent of the municipality; but in that I am unable to agree; I cannot