

could have adopted either of two other courses open. These were: (1) of either declining to sanction the location applied for, or (2) of intimating that they would only sanction the location if steps were taken to make a deviation or detour, sec. 159 (3) providing for the case of sanction of a deviation of not more than one mile. To put the Board, which had these options before it, in the position of having unconditionally approved of the location of the railway along the streets named, and to do so by writing out the condition which appears upon the face of the order, appear in their Lordships' judgment, to be neither fair to the Board itself, nor to the municipality, nor to the streets concerned. The order itself, and not the mere condition, must fall, and the parties will be left to come to a fresh arrangement under a new application and according to the circumstances, legislative and otherwise at this date.

Their Lordships will humbly advise His Majesty that the judgment appealed from be reversed, and that the order of the Board dated October 6th, 1909, be rescinded, the decisions as to costs in the courts below to stand, but there being no order as to costs in the present appeal.

Batten, Proffitt & Scott, solicitors for appellants.

Blake & Redden, solicitors for the respondents.

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