

effect was the 1st November, 1909, and it apparently had been acted upon ever since by the city and township municipalities. So far as the mere words used in clause 5 are concerned, the contention of counsel for the appellants that they are mere surplusage and add nothing to the general provision annexing the territory to the city, which ipso facto transferred the jurisdiction over the highway from the county to the city, is correct.

That, however, does not go quite to the bottom of the objection of the plaintiffs, which is, that they were entitled to notice and to an adjudication by the Board upon any claim they had in respect of the road. The only notice required by the statute in force when the order was made—see 8 Edw. VII. ch. 48, sec. 1—was notice to the adjacent township; and that notice was duly given. By the Municipal Act, R.S.O. 1914 ch. 192, sec. 21, notice to the county must also now be given. The proceedings are purely statutory; and, the statutory notice having been duly given, there is an end to any question going to the jurisdiction of the Board to make the order. It is not like the case of private rights or private litigation. The Board stands in many respects, in such a matter, in the place of the Legislature; and the consequences of the order are to be considered very much as if a statute had been passed making the annexation which the order authorised.

And, if the Board had jurisdiction to make the order, omitting the words objected to, the judgment below cannot be supported. Jurisdiction over a highway locally situated in another municipality cannot be and is not claimed. All that can be claimed is, that the plaintiffs were entitled to some compensation in respect of the portion of the highway in the annexed territory, especially in respect of the money payable under the agreement with the railway company upon which the action is based. That agreement, however, is entirely based upon a mileage rate. The effect of the annexation is to shorten the mileage in the county upon which the railway company agreed to pay; and, unless the annexation itself, which transfers the road from the county to the city, is to be overturned, the plaintiffs cannot recover.

Whatever the nature of the plaintiffs' claim may be, it must be asserted elsewhere. Relief may perhaps be found in the provisions respecting arbitration contained in the Municipal Act: see sec. 58 of the Act of 1903.

The appeal should be allowed with costs and the action dis-