

highway therein according to the plans to be approved by the council. The Act further provided that the several clauses of the Manitoba Railway Act, R.S.M. 1902, c. 145, should be incorporated with and deemed part of the Company's Act of incorporation.

By the plan of the roadway approved by the council, the centre line of the Company's Railway was to be twenty feet from the boundary of the highway in front of the plaintiffs' land.

Defendants cut down some of the trees there and were proceeding to cut down and remove the remainder when the injunction was obtained; claiming that, under their Act of incorporation and their agreement with the municipality which had been ratified by the Legislature, they had an absolute right to cut the trees down and build their tracks according to the said plan without making any compensation to the plaintiffs.

Sec. 688 of The Municipal Act, R.S.M. 1902, c. 116, provides as follows:—"Every shade tree, shrub and sapling now growing on either side of any highway or road in this Province shall be deemed to be the property of the owner of the land adjacent to such highway or road opposite which such tree, shrub or sapling is; and the owner of such land shall be allowed to fence in such trees for a space not exceeding eight feet from his boundary line." Under this section the plaintiff claimed the trees in question and the right to fence in eight feet of the highway adjoining their land, and notified the Company of their intention to fence in the eight feet accordingly.

*Held*, following *Douglas v. Fox*, 31 U.C.C.P. 140, that the plaintiffs had such an interest in the trees in question and in the eight feet of the highway as would entitle them to maintain an action to prevent destruction of the trees and encroachment upon the eight feet strip by any unauthorized person; and that the Legislature, in conferring upon the Company its powers as to the construction and working of its railway, had not deprived the plaintiffs of their right to compensation under s. 7 and other provisions of the Railway Act.

Where a statutory right has been conferred, the Legislature will not be deemed to have taken away that right by a later statute unless the plain language of the statute shews an intention to do so: *Re Cuno*, 43 Ch.D. 12.

While permitting to the Railway Company the full exercise of the special powers granted to it, the Legislature has protected the plaintiffs' rights by providing that compensation shall be made not only for land taken but also for lands injuriously affected by the construction and operation of the railway: *Parkdale v. West*, 12 A.C. 602; *North Shore Railway Co. v. Peon*, 14 A.C. 612; and other cases.