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No. 9.

5th Session, 8th Parliament, 63 Victoria, 1900

BILL.

An Act respecting Drainage on and across
the property of Railway Companies.

First reading, February 7, 1900.

Mr. CASEY.

OTTAWA

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1900

An Act respecting Drainage on and across the property of Railway Companies.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. This Act may be cited as *The Railway Drainage Act*, Short title.
5 1900.
2. The words "drains" and "drainage" in this Act shall include respectively all kinds of drains or sewers, open or covered, or constructed of tiles, and the removal of surplus water through natural watercourses or by drains. Interpretation.
"Drains."
"Drainage."
- 10 3. Subject to the provisions of this Act, municipalities and landowners shall have the right of drainage on and across the property of any railway company, to the same extent as they have by law on and across the property of any other landholder. Right of drainage across railways.
- 15 4. Every railway company shall permit the opening and construction of all necessary drains and outlets for drains, and the opening, widening and deepening of outlets for natural watercourses, which are required for the drainage of lands adjacent to the property of such railway company, or which
20 are constructed or opened under the authority of any municipality. Railway company to permit drainage.
5. Every existing ditch, drain, creek or watercourse, situate on the property of a railway company, and running along or under its railway, may be deepened, widened or extended,
25 and any existing bridge or culvert in the road-bed of such railway may be deepened or widened, or a new bridge or culvert may be constructed, when it is found and reported upon by the engineer of any municipality adjacent to the railway, as required by this Act, or agreed and reported upon as hereinafter provided, that such works are necessary as an outlet for any
30 creek or watercourse, or of any ditch or drain that has been or is to be constructed under the authority of such municipality, and that such works can be done without detriment to the safety of the railway : Provided that such works shall be done
35 in such a manner as not to injure the bridges, culverts or road-bed of the railway, or in any way interfere with the traffic thereof. Existing drains on company's land may be enlarged.
Culverts.
Railway not to be injured.
6. Any owner of land adjacent to the property of a railway company, or of land, the natural drainage of which passes
40 through such property, and who wishes to secure drainage Adjoining land owners may obtain surveyor's re-

port for proposed drainage work.

along or across such property, may procure a land-surveyor, duly qualified according to the law of the province in which such land is situate, to report upon the proposed drainage work; and such landowner and land surveyor shall have respectively the same rights and duties as are conferred upon and assigned to a municipality and the engineer of such municipality by this Act, and such land-surveyor is hereinafter referred to as the engineer of such landowner. 5

Engineer to report,

7. The engineer of a municipality or land owner, making a report under this Act, shall report whether the drainage works desired by the municipality or landowner are necessary for the proper drainage of the lands affected thereby, or in order to afford an outlet for such drainage, and shall prepare a plan showing such proposed works in so far as they affect the property of the railway company, and also a plan and profile of the enlargement of any bridge or culvert, but only to show the extent, depth and width of the required enlargement of such bridge or culvert, or of any new bridge or culvert, as the case may be, together with a statement of the estimated cost of the work to be done upon the lands of the company, including the costs of any excavation required to be made in enlarging or constructing any bridge or culvert, and a statement of what proportion, if any, of the cost of such drainage work should in his opinion be borne by the railway company. 10 15 20

Make plan of work,

Statement of case, and apportionment.

Report, plans, etc., to be sent to company.

8. The clerk of the municipality, or the engineer of the landowner desiring to have such drainage works constructed, shall send to the manager of the railway company, by registered letter, a copy of the report, plans, profiles and estimates made by the engineer in accordance with the next preceding section. 25 30

Company to notify parties interested.

Approval of report by company.

2. The manager of the company, or some one acting on his behalf, shall, within fifteen days after receiving such report forward to the clerk of the municipality interested, or to the landowner, by registered letter, a notice stating whether he approves or disapproves of the said report. If he approves of it, his letter of approval, together with the said report, and the plans, profiles and estimates, shall be filed in the office of the clerk of the municipality in which the said drainage work is situated, or, if it extends into two or more municipalities, with the clerk of each municipality; and the said letter and report shall constitute a bargain binding on all parties concerned and liable for the performance of the work, or the cost thereof, upon the lands of the railway company, and shall not be subject to appeal. 35 40

Disapproval of report by company.

3. If the manager of the railway company objects to the said report, in whole or in part, he shall, in such notice, state his objections, and shall also fix a day, not later than twenty, nor earlier than fifteen days from the mailing of such notice, upon which the engineer of the railway, or some one acting on his behalf, will meet the engineer of the municipality, or of the landowner, at the place where the work is proposed to be done, for the purpose of arriving at an amicable agreement as to the work objected to by the manager of the railway, or as to the cost thereof. 45 50

4. If the engineer of the railway company and the engineer of the municipality or of the landowner agree upon any portion of, or the whole of, the said work objected to by the manager of the company, then such report, amended, if need be, as agreed upon, shall be made out in duplicate and signed by both engineers, one copy to be retained by the engineer of the railway company and one by the engineer of the municipality or landowner; and the said report shall be binding upon all parties concerned, as set forth in subsection two of this section, and shall be filed as provided in the said sub-section.
5. If the engineer of the railway company and the engineer of the municipality or land owner fail to agree upon the matters in dispute, as mentioned in subsection three of this section, then the said matters in dispute shall be referred to the decision of an engineer to be appointed by the Minister of Railways and Canals, whose report and decision shall be final and binding upon all parties interested, as set forth in subsection two of this section, and shall be filed as provided in the said subsection.
6. When the said disagreement takes place, the engineer of either of the parties represented may, within four days thereafter, by registered letter, request the Minister of Railways and Canals to appoint an engineer as provided in the next preceding subsection, and shall in such letter give the name and post-office address of the engineer representing the other party, and also his own post-office address, and state the locality where the proposed work is to be done.
7. The Minister of Railways and Canals shall, within six days after receiving the said request, appoint a competent engineer to settle the matters in dispute. The engineer so appointed shall, within six days after his appointment, notify, by registered letter, the engineer of the railway company and the engineer of the municipality or landowner, of the day on which he will attend at the place of the proposed work, which day shall not be earlier than ten, nor later than twenty days from the date of such notification; and the said engineers shall attend at the time and place mentioned in such notice, and shall give all necessary information to the engineer appointed by the Minister of Railways and Canals, and the said last-named engineer shall carefully inquire and examine into all the objections made, and differences of opinion existing between the engineer of the railway company and the engineer of the municipality or landowner, with reference to the proposed work upon the lands of the railway company, and the cost thereof.
8. Or the engineers of the parties interested may, after the said disagreement takes place, agree upon a third engineer to act in the place of the engineer directed to be appointed by the Minister of Railways and Canals in the next preceding subsection, and such third engineer shall proceed in all respects as provided in this Act with regard to notice, attendance, inquiry and report as in the case of an engineer appointed by the Minister of Railways and Canals.
9. If the engineer of either of the parties interested fails to attend, or to act as provided by this Act, the Minister of Railways and Canals may appoint a competent engineer to act in place of such engineer, who shall have the same powers and

When engineers agree, report to be binding

When engineers disagree, dispute to be referred to engineer appointed by Minister.

Minister may be requested to appoint engineer as a referee.

Minister to appoint engineer who shall inquire into matters in dispute.

Engineers may agree upon third engineer.

Where engineer fails to act.

duties as if he had been appointed by the party interested, on whose behalf he is so appointed to act.

Adjournments.

10. The engineers may adjourn their meetings from time to time for periods not exceeding one week.

Third engineer to make report.

11. The engineer appointed by the Minister of Railways and Canals, or agreed upon as umpire by the other engineers, shall, within ten days after such meeting as provided for in subsection seven, make out a report in duplicate, one to be sent, by registered letter, to the manager of the railway company, and one to be sent, by registered letter, to the engineer of the municipality or landowner, which copy shall be filed as provided in subsection two of this section; and such report shall be final and binding, as set forth in that subsection. 5 10

Notice to company of commencement of work.

12. The engineer of the municipality or landowner shall, within four days after the final decision with regard to such drainage works, given in any of the ways hereinbefore provided, send to the manager of the railway company, by registered letter, a notice stating the place and day upon which he intends to commence the said works, which day shall not be sooner than twenty, nor later than thirty days, from the day of notice, and in such notice he shall ask the manager of the railway which of the following modes of doing the work he will select on behalf of the railway company: 15 20

Work may be done by company's employees.

(a) First, the railway company shall do the work by its own employees for such amount as is finally agreed or decided upon; or 25

Or by parties interested.

(b) Second, the work shall be done by the parties liable for the cost thereof, and under the supervision of the railway engineer, or of some one acting in his behalf, and subject to the provisions of section five of this Act. 30

Company to notify parties which mode selected.

2. The manager of the railway, or some one acting in his behalf, shall, within ten days after receiving the said notice, inform the engineer of the municipality or of the landowner, by registered letter, which of the said modes of doing the work he will select on behalf of the railway company. 35

If work done under (b) company to be asked to inspect work.

3. If the work is done under paragraph (b) of subsection one of this section, the parties who have done the work shall, within four days after the completion thereof, request the engineer of the railway company, by registered letter, to inspect the said work. 40

When work satisfactorily completed, company's engineer to notify other engineer.

4. When the work has been completed, the engineer of the railway company shall send to the engineer of the municipality or landowner, by registered letter, a certificate that the work has been completed in accordance with the plans and profiles as finally agreed or decided upon, and furnished to the railway company. 45

Cost of enlarging culverts.

10. Where any existing bridge or culvert in the road-bed of a railway has to be enlarged, under the provisions of this Act, by the deepening or widening thereof, such deepening or widening shall be done by the railway company, but at the cost of the municipality or landowner. 50

11. If the railway company neglects or refuses to proceed with the work within the time specified in the report for the completion thereof, then in such case the parties liable for the payment of the costs of the work, may proceed with and complete the said work upon the lands of the railway company, except the enlarging of bridges or culverts and the excavation in connection therewith.

If company does not proceed with work, parties interested may do work.

Exception.

12. If the railway company neglects or refuses to enlarge or construct a bridge or culvert within the time specified in the award or the report for the completion thereof, the railway company shall be held liable to pay to the parties interested the sum of ten dollars, as fixed and liquidated damages, for each day from the date mentioned for the commencement of the work, during which the company so neglects or refuses to proceed with the work.

Damages where company does not enlarge culverts.