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*May 3.
*June 15.

THE GRAND TRUNK PACIFIC RAILWAY COMPANY AND THE CANADIAN PACIFIC RAILWAY COMPANY..... APPELLANTS;

AND

THE CITY OF FORT WILLIAM, CERTAIN LANDOWNERS IN THE CITY OF FORT WILLIAM, AND THE FORT WILLIAM LAND INVESTMENT COMPANY ..... RESPONDENTS.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS OF CANADA.

Board of Railway Commissioners—Jurisdiction—Municipal streets—Railway upon or along highway—Leave to construct—Approval of location—Condition imposed—Payment of damages to abutting landowners—Construction of statute—R.S.C. (1906) *c.* 37, *ss.* 47, 155, 159, 235, 237.

Having obtained the consent of the municipality to use certain public streets for that purpose, the G. T. P. Ry. Co. applied to the Board of Railway Commissioners for Canada for leave to construct and approval of the location of the line of their railway upon and along the highways in question. None of the lands abutting on these highways were to be appropriated for the purposes of the railway, nor were the rights or facilities of access thereto to be interfered with except in so far as might result from inconvenience caused by the construction and operation of the railway upon and along the streets. In granting the application the Board made the order complained of subject to the condition that the company should "make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street." On appeal to the Supreme Court of Canada,

*PRESENT:—Girouard, Davies, Idington, Duff and Anglin JJ.

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Held, Davies and Duff JJ. dissenting, that, under the provisions of section 47 of the "Railway Act," R.S.C. (1906) ch. 37, the Board had, on such application, the power to impose the condition directing that compensation should be made by the company in respect of the damages which might be suffered by the proprietors of the lands abutting on the highways of the municipality upon and along which the line of railway so located was to be constructed.

APPEAL from an order of the Board of Railway Commissioners for Canada granting leave to the Grand Trunk Pacific Railway Co. to locate the line of their railway upon and along certain streets in the City of Fort William, in Ontario, subject to conditions imposed by the Board in respect of the payment of damages to the owners of lands abutting on the said streets.

Leave to appeal from the order in question was granted by order of the Chief Commissioner upon all questions of law arising thereunder.

The order appealed from, dated 6th October, 1909, was as follows:

"IN THE MATTER OF the application of the Grand Trunk Pacific Railway Company, hereinafter called the 'applicant company' under section 159 of the 'Railway Act,' for approval of the location of its line of railway through the Town of Fort William, in the Province of Ontario, as shown on the plan, profile and book of reference on file with the Board under file No. 1519.

"UPON the hearing of counsel for the applicant company and the Canadian Pacific Railway Company; and upon the consent of the City of Fort William by agreement dated the 29th March, 1905, and of the Canadian Pacific Railway Company by agreement dated December 1st, 1908, copies of which are on file

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with the Board; and upon the report of the chief engineer of the Board: —

"IT IS ORDERED that, subject to the terms and conditions contained in the said agreements, and subject to the condition that the applicant company shall do as little damage as possible, and make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street in the said City of Fort William, as provided in the said agreement of 29th March, 1905, the location of the applicant company's line of railway through the City of Fort William, as shown upon the plan filed with the Board on the 4th day of June, 1906, be and the same is hereby approved.

"PROVIDED that this order shall not prejudice the rights if any, for the reimbursement of the amount of the said damages, if any, which the applicant company may have against the City of Fort William under the said agreement of 29th March, 1905, nor shall it prejudice the right, if any, which the Canadian Pacific Railway Company may have under the said agreement between that company and the applicant company, to be relieved of the payment of any portion of the compensation required to be paid persons interested for damages sustained by reason of the location of the said railway along the said streets, in the City of Fort William as hereinbefore provided.

"AND IT IS FURTHER ORDERED that the orders of the Board Nos. 7620 and 8231, dated respectively July 15th and October 6th, 1909, be and the same are hereby rescinded.

"J. P. MABEE, *Chief Commissioner,*
"Board of Railway Commissioners
for Canada."

Part of the location sanctioned is along certain streets in Fort William where the city gave the Grand Trunk Pacific Railway Company authority to construct its line at grade. The appellants seek to be relieved from this condition on two grounds: first, that the Board, in directing the Grand Trunk Pacific Railway Company to make compensation to the abutting landowners, exceeded their jurisdiction and invaded the province of Parliament by attempting to extend the liability of the railway company beyond what is contemplated by section 155 of the "Railway Act"; and secondly, that the said condition is contrary to law as where a company is constructing a railway along a street at grade the abutting property-owners are not entitled to compensation.

The questions in issue on this appeal are stated in the judgments now reported.

D'Arcy Tate and *W. L. Scott* for the appellants.

Chrysler K.C. for the respondent, the City of Fort William.

Sinclair K.C. for certain landowners, in Fort William, respondents.

G. F. Henderson K.C. for the Fort William Land Investment Company, respondents.

GIROUARD J.—The appeal should be dismissed with costs. Section 47 of the "Railway Act" empowers the Railway Board to authorize the construction of a railway on a public street upon such terms as may be determined. The condition of compensation to the riparian proprietors comes under this section and I am not prepared to limit the scope of its provisions beyond its plain terms and meaning.

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DAVIES J. (dissenting).—I find it extremely difficult to determine the meaning of the order here in question.

It professes to approve of the location of the Grand Trunk Pacific Railway Company's line through the Town of Fort William in accordance with the plan filed

> subject to a condition that the applicant company shall do as little damage as possible, and make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street in the said city.

If this means that while approving of the location of the line as submitted to them for approval, they are making such approval subject to an imposition upon the company of greater obligations as to making compensation than those which are imposed by the "Railway Act," then, I think, the order to that extent is erroneous and beyond the jurisdiction of the Board.

I have said that I am unable to determine what the language of the order means. But the case was argued before us on the assumption that it did mean to impose such additional obligations, and I incline to think that may be its meaning as I understand that was its purpose. The difficulty of determining just what the condition means may make its enforcement, even if held *intra vires*, to be very great and the extent of the obligation it seeks to impose on the company is something which no one could now estimate. With that, however, we have nothing to do now.

Accepting the construction placed upon the order I think the condition referred to is *ultra vires*.

The statute has expressed in the 155th section the extent of the company's obligations with regard to

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compensation payable by them by reason of the exercise of their powers.

I think the attempt to add to those obligations others which Parliament did not impose, but on the contrary excluded, is an attempt to legislate on the part of the Board and beyond its powers.

I cannot think that Parliament, in vesting in the Board the great and extensive powers it did, intended to vest in them powers without any limitation.

My construction of the sections now before us is that the conditions which the Board may legally make their order subject to must be such conditions as are not inconsistent with the provisions of the statute.

This order purports to be made under section 159, which requires the plan, profile and book of reference of the railway generally to be submitted to the Board which, if satisfactory, "may sanction the same." But the same section places specific limitations upon the Board's powers in giving such sanction, and in addition expressly declares that such sanction shall not "relieve the company from otherwise complying with the Act." It would seem to me a reasonable interpretation of the section and one logically following from such declaration that the Board cannot in giving its sanction attach any condition

relieving the company from otherwise complying with the Act;

that it cannot attach a condition imposing an obligation on the company *inconsistent with the Act.* In other words the Board cannot legislate so as to amend or change the Act itself while it may attach conditions to its sanction of the location not inconsistent with any of the provisions of the Act.

Much reliance is naturally placed upon section 47

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of the Act which it is contended confers absolutely arbitrary and uncontrolled powers upon the Board.

My construction of that section is that when it is invoked it must be read in conjunction with the special section or sections of the Act under which the Board for the time being is asked to make or on its own initiation makes an order.

The order now before us is one in point. It professes to be made on an application of the Grand Trunk Pacific Railway Company, under section 159 of the "Railway Act" (to which I have already referred)

> for approval of the location of its line of railway through the Town of Fort William, as shewn on the plan, profile and book of reference on file.

But clearly in construing the order and determining the bounds, if any, of the Board's jurisdiction in making it, reference must be had to section 237 which deals with the specific subject-matter of

> granting leave to construct the railway upon, along or across an existing highway

as well as to section 155, which deals with the compensation payable by the company in the exercise of its powers under the Act.

Construing the three sections together so far as this or analogous applications to the Board are concerned I would read section 47 as being controlled and limited by sections 155 and 237, so far as orders sanctioning the location and construction of railways upon, along or across existing highways are concerned.

The former section, 155, defines and limits the obligations of the company with respect to the compensation payable by them in the exercise of the powers granted to them

> to all persons interested for all damage by them sustained by reason of the exercise of such powers.

It would on the one hand clearly, to my mind, be *ultra vires* for the Board in any way or by any condition of the order it might make to limit the extent of the company's obligations under this section, or to attempt to defeat the right of any one entitled under the Act to such compensation. It would, in my judgment, be equally *ultra vires* for the Board in its order by any condition to extend or add to the statutory obligations of the company respecting compensation.

The case before us was argued on the assumption that the condition to which the order was made expressly subject, imposed upon the company accepting it an obligation to pay to the property owners fronting on Empire Avenue and Hardisty Street, along which the railway was located, compensation for all damage by them sustained by reason of the location of the railway along such streets. It was hardly questioned at the argument and could not, I think, be successfully questioned that such property owners not having had, as admitted, any of their lands taken or their rights of access interfered with, or sustained any structural damages are not under the statute, as construed by the authorities, entitled to recover any damages. The condition of the order of the Board, if it means anything at all, means to impose an obligation upon the company greater and larger than that imposed by the statute. In my opinion that cannot be done under the guise of a condition because the conditions the Board are authorized to make in granting their order must not be inconsistent with the Act, and this condition unless treated as surplusage must be held to be so.

Then, as to section 237, it seems to me that the general character and nature of the conditions which

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the Board may lawfully impose as a part of its order sanctioning the construction of a railway "upon, along or across a highway" are limited to those which relate to the "protection, safety and convenience of the public." The section expressly so declares. It says:

> The Board may by order *grant such application* upon such terms or conditions as to protection, safety and convenience of the public as it may deem expedient.

As to the kind and character of such terms, they are entirely for the Board. Whether any additional condition not inconsistent with the other provisions of the Act might be imposed I need not stop to inquire. What, in my opinion, is *ultra vires* in this case is the imposition of an obligation upon the company inconsistent with section 155 of the Act. This construction of the Act makes any reference to the fact that the applicants had the authority of a by-law of the municipality duly ratified by its ratepayers and confirmed by the legislature of the province for the location of its line along those streets unnecessary.

The Board in approving of the location acted within its powers, and to that extent of course its order is good. In making its order subject to a condition inconsistent with the statute it acted *ultra vires*, and such condition is bad and void.

I would therefore allow the appeal.

IDINGTON J.—This is an appeal from an order of the Board of Railway Commissioners for Canada approving of the location of the appellants' line of railway along streets in Fort William on the conditions specified in the order. One of these conditions is that compensation be made to all persons interested for all

damage by them sustained by reason of the said location along any street in said town.

It is against this condition the appeal is made. We are asked to declare it *ultra vires* the Board and that the order thus deleted of this condition be maintained.

Listening to the argument for appellants and hearing it urged that this condition is "in violation of the Act" and "in violation of the judicial construction of the Act" and "a contravention of the provisions of the Act in respect of compensation," one wonders when the Act was so amended as to prohibit or by what organic law anything had been enacted prohibiting owners of lands and houses fronting on a street from being legally compensated for such injuries.

These notions of the Act and this appeal it turns out spring from a strange misconception of the true import of the decisions in such cases as *Hammersmith and City Railway Co.* v. *Brand*(1), and in *Re Devlin and The Hamilton and Lake Erie Railway Co.*(2), and the principles of law upon which they properly proceeded.

When a person or corporation is given by Act of Parliament the power to take possession of another's land or invade his rights therein or depreciate its value by the execution of some work thereby authorized to be done he has no legal right to damages or compensation for anything arising from the due execution of such work and the due carrying on of the business so authorized unless Parliament has seen fit to provide for his being compensated.

That is all these cases mean. The owners may have suffered, but Parliament had given no remedy therefor.

(1) L.R. 4 H.L. 171.

(2) 40 U.C.Q.B. 160.

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The appellants have not yet acquired any such right over the streets in question and hence the cases have no application.

Parliament has delegated its authority in that regard to the Board and given it by section 47 ample power to see that the exercise of such authority shall be so guarded that injustice shall not be done.

It is the bounden duty of the Board to see that the iniquity of transferring to any one another's property or destroying its value merely to enrich the other at his expense is not done by means of the great powers Parliament has given.

It was to obviate wrong and injustice in the execution of the powers given by railway legislation and the abuse thereof that Parliament mindful of its own weaknesses committed to the Board the high trusts and wide powers it enjoys.

It is urged that the municipal council has agreed to the use of the streets. It was quite right and proper the council's consent should be got.

It may be quite right and proper the council should get the power if it has it not to levy upon the ratepayers the compensation necessary to equalize the condition of things a few are expected to suffer for the benefit of all.

If this had been provided for the consent of the council might have carried more weight with the Board.

Counsel seemed unwilling to say that a school might not have been an object of the Board's protection.

If the school, the church, the hospital, why may not the dweller in the narrow street ? It is all a question of degree. Society is just as much interested in seeing

that no section or class of people suffer injustice at its hands as in keeping these institutions free from harm.

Of course when the best that is practicable has been done there will accrue to some more than others incidental suffering arising from the growth of the social and commercial structure.

Where to draw the line is the duty and within the power of the Board.

I think the appeal should be dismissed with costs.

DUFF J. (dissenting).—Upon an application to the Board for leave to construct a railway upon, along or across a highway under the provisions of sections 235 *et seq.*, the Board has power to refuse the application and it has power to grant the application. It has also unquestionably the power to impose terms and conditions touching the "protection, safety and convenience of the public." With respect to any order of the Board falling within any of these three classes, the parties are without any redress in this court. The authority of this court is limited to considering such questions of jurisdiction as are brought before it under the provisions of the Act and such questions of law as may be referred to it by the Board. The Board further has power under section 47 to suspend the operation of its orders; but it is not material to consider that section because the order now under consideration is very obviously not an order made under a suspensive condition or one to which section 47 can have any application. The order embodies a presently operative leave to the appellant company to construct its railway in certain streets and superadds certain terms, the validity of which is now in question.

The meaning of all these terms is on their face not

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very clear. But counsel on all sides agreed that the intention was that the railway company should be obliged to compensate a certain class of persons who might be injuriously affected by the construction of the railway, but who under the provisions of the "Railway Act" itself apart from any order of the Board would have no right to such compensation. It has been held that where a railway is constructed in a street the grade of which is not altered the owners of land and buildings abutting on the street have no right of compensation, as not being persons within the purview of the compensation clauses of the "Railway Act." In *Re Devlin and Hamilton and Lake Erie Railway Co.*(1); *Powell* v. *Toronto, Hamilton and Buffalo Railway Co.*(2). The soundness of these decisions was not impeached by the respondents, and I think that having regard to the circumstance that the provisions of the "Railway Act" in question have been repeatedly re-enacted without relevant alteration since these cases were decided it is too late now to question them.

It was to give such persons not otherwise entitled to compensation a right to compensation that the provision in question was inserted in the order of the Board. The point to be decided is: Was it within the power of the Board to impose such a term when granting the leave asked for? The contention of the respondents appears to rest upon the proposition that since the Board has power to grant or to refuse leave the whole field between these opposite poles is open to them. Whether that is so or not is, of course, purely a question of the intention of the legislature as disclosed by the language of the enactment. Comparison of the language

(1) 40 U.C.Q.B. 160. (2) 25 Ont. App. R. 209.

found in the sections with which we are more immediately concerned and that used in other parts of the Act convinces me that the contention of the respondents cannot be sustained. There are many sections of the Act in which the power to impose terms and conditions where an application is made to the discretion of the Board is expressly given without any limitation. Section 233, sub-section 3(*a*), is one example; section 253, sub-section 20 another. Section 250, sub-section 3 is a third. In other cases the power to provide for payment of compensation in the discretion of the Board is conferred; (see section 249, sub-section 3). In other cases the discretion of the Board with regard to terms and conditions is limited to a particular subject-matter such as public protection and safety; see section 227, sub-section 3(*a*). The Board again in the exercise of some of its most important functions acts under sections which make no reference whatever to terms or conditions; see sections 158 and 159, and sections 222 and 223. I have great difficulty in understanding why we should find this diversity of language on the point of the power of the Board to impose terms and conditions if the principle of the respondent's argument — that the authority to grant or refuse involves an authority to impose an unlimited range of conditions and terms — be a principle of construction safely or properly applicable to the "Railway Act." I think it cannot be so. I think we are justified in assuming in view of the provisions I have mentioned that when, for example, in section 159 the Board is empowered to sanction the plan, profile and book of reference mentioned in the preceding section and in section 168 the company is forbidden to commence the construction of the railway

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or any part of it until such sanction has been obtained — I think we are justified in assuming that the legislature did not intend to confer upon the Board the authority to impose as a term of its sanction a condition (let us say) that the compensation to be paid to persons entitled to it should be estimated as from a date earlier or later than that provided for in the Act. The same observation may be made upon sections 222 and 223, which relate to the construction of branch lines.

It is not necessary to consider whether or not in applications such as those last mentioned the Board have some implied power to impose terms. I do not say they have not. It is sufficient for the purposes of this case to say, and my opinion is, that the company's obligations in respect of compensation have been specially dealt with in the other provisions of the Act, and those obligations the Board have no authority to add to except in cases in respect of which such authority is given by Parliament, either expressly or by necessary implication, and, moreover, that no such implication arises from the authority given *simpliciter* to grant or refuse leave.

Coming to the sections immediately under consideration we find the Board expressly authorized in section 237 to impose terms in respect of one subject-matter. But we find a further provision, subsection 3 of that section. That provision was not discussed in the course of the argument, and I should not desire to express an opinion as to the precise meaning of it; but it shews that the subject of compensation was before the legislature when dealing with the subject of highway crossings and while leaving to the Board expressly a discretion to exact

conditions in relation to another subject-matter no such discretion is in terms confided to them in respect of the subject of compensation. As regards section 159, it is true the order purports to be made under that section. But it was treated at the argument as, in substance, an order made under section 237; and the reasons given above, with the exception of the observation just made on the special provisions of section 237, apply in their full force to section 159.

All these reasons convince me that in professing to exercise the discretion it did the Board exceeded its authority. I think it is really not much to the purpose to say that the company need not act upon the order. The effect of the order is to give the sanction of the Board to the line provided for. The company may, of course, abandon the construction of its line. But it cannot construct its line except upon a route sanctioned by the Minister and the Board. The order of the Board may, of course, be changed and the route altered; but in the meantime the only lawful route is that prescribed by the order.

ANGLIN J.—As a condition of approving the location of the appellant's railway ("Railway Act," sec. 159) upon and along Empire Avenue and Hardisty Street in the City of Fort William, the Board of Railway Commissioners has imposed the term that the company shall

> make full compensation to all persons interested for all damages by them sustained by reason of the location of the railway along any street in the said City of Fort William.

The argument of this appeal proceeded on the assumption that the Board has by its order also given the company leave to construct its line of railway upon

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these highways pursuant to sections 235-243 of the "Railway Act." It should be noted, however, that the order in appeal does not purport to be made under, or in the exercise of the powers conferred by these sections.

At bar counsel agreed that the purpose and effect of the term which I have quoted from the order is to require the company to compensate owners of lands abutting on the two highways for depreciation in the value of their properties owing to interference with access thereto and with the use of the streets as a means of ingress and egress and for any other loss which the construction and operation of a railway in such streets may entail.

The appellants maintain that the imposition of such a term as a condition either of approving of the location of a railway or of granting leave to construct it upon highways is *ultra vires* of the Board. They allege that the Board has required the company to make compensation for injuries from liability for which it is exempt under the "Railway Act," and also that the Ontario legislature has, by confirming an agreement made by the company with the City of Fort William, in effect, declared the landowners not entitled to the compensation which the company is required to allow them.

The statute confers upon the Board extensive powers and wide discretion in dealing with applications for sanction of the proposed location of railways or for leave to construct them upon highways. By subsection 3 of section 159, unless the Minister of Railways otherwise specifically directs (and in this case he has not given any such direction), the Board is empowered to sanction a deviation of not more than one

mile from the general location approved by him under section 157. By section 237 the Board is expressly authorized to impose certain terms — including the providing of a substitutional highway — as a condition of granting leave to construct a railway upon an existing highway. Under section 28 it may of its own motion determine any matter which under the Act it may determine upon application; and under section 26(2) it may order that which it may authorize the company to do. By section 47 the Board is empowered to direct in any order that it shall come into force only upon the performance of any terms which the Board may see fit to impose.

In considering whether a proposed location of a railway along a highway should or should not be approved, the Board, in the exercise of its discretion, must necessarily take into account all the surrounding circumstances, including the effect of the construction and operation of the railway upon the interests of the owners of lands abutting on the highway. Having power to grant or to refuse its approval or to direct a deviation in the location of the railway, the Board must determine whether, having regard to all the interests involved and affected, it should sanction the proposed location, unconditionally, conditionally, or not at all. If it is satisfied that neither the exigencies of the railway company nor the interests of the public warrant the practical destruction of the highway and the cutting off of abutting properties without compensation, yet that the interests concerned taken as a whole will be best served and justice effectually done by permitting the railway company to use the highway with compensation to the property owners, rather than by refusing its application or ordering a deviation, I see no

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reason why the Board may not, having regard to the discretion which it must necessarily possess in giving or withholding its approval, exercise the power conferred by section 47 and impose upon the railway company the making of such compensation as a term of the order granting its application for approval or leave.

The Board has in fact determined in the present case that neither the interest of the public in the construction of the appellants' railway nor the necessities of the railway company itself warrant its sanctioning, without providing for compensation, a scheme entailing the injury which the private property owners must sustain as a result of the construction and operation of a steam railway along Empire Avenue and Hardisty Street. It has, therefore, in effect decided that the application of the company should be refused unless it is prepared to accept the conditional approval which has been given. Though in form an approval of the location upon terms, those terms being in the nature of a condition precedent, the order is in substance tantamount to a refusal of approval unless the company should accept the terms prescribed. Instead of ordering a deviation the Board has allowed the company an opportunity to avail itself of the highways upon these terms. It would perhaps have been better had the order taken the form of a refusal to approve the location unless the company should assent to the terms which the Board thought it proper to impose. But that, in my opinion, is in substance, though not in form, what the Board has done; and I think that in so doing it has neither erred in law nor exceeded its discretionary powers.

A railway company has not the right or power to locate and construct its line upon a highway without

the sanction and leave of the Board. It may be that when that leave or sanction has been obtained the obligation of the company to make compensation for damages caused by the exercise of the powers thus conferred is, under section 155 of the "Railway Act," as judicially interpreted, so restricted that it excludes liability for injuries sustained by owners of land adjoining a highway along which the railway is carried at grade. But it does not follow that the tribunal in which is vested the authority to determine whether the company shall or shall not be granted this power may not impose the making of such compensation as a condition of granting it. In my opinion section 155 of the "Railway Act" has no application at this stage of the matter, and the order of the Board, whether it should be regarded as confined to a sanction of location under section 159, or should be deemed also to include leave to construct under sections 235 *et seq.*, is within the powers conferred by section 47, and is not inconsistent with or in contravention of section 155 or any other provision of the statute to which our attention has been directed.

Having regard to the terms of section 237, the Board may possess a wider discretion when acting under section 159 than in cases to which sections 235 *et seq.* alone are applicable. But as the present order is certainly made under section 159, it is unnecessary to consider this question.

It is true that the municipality of Fort William has undertaken by agreement with the appellants to grant them "free of all costs and liability" the right to build and operate in perpetuity a double track line of railway on Empire Avenue and Hardisty Street. This agreement was ratified by a by-law submitted to the

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ratepayers of the city and the by-law was subsequently confirmed by the legislature. 5 Edw. VII. (Ont.), ch. 48. The words "free from all costs and liability" in the agreement *primâ facie* relate to rights of the municipality to be affected by the construction of the railway. They do not purport, and should not be taken to have been intended to affect the interests or claims of others not parties to the agreement. As I understand that document, the municipality thereby undertook to relieve the railway company from all claim on its part and all liability to it in respect of the actual right of way which the company should acquire upon and over the highway named. The private property owners were not parties to the instrument and their rights could not be affected by it. If it should be deemed to manifest an intention that the municipality shall save the railway company harmless in respect of all rights or claims which these property owners might have by reason of its occupation and use of the streets in question, the agreement might perhaps be construed as meaning that the municipality will indemnify the company against payment of such compensation as that now in question. But such an undertaking by the municipality would in nowise destroy or diminish any claims of the property owners against the railway company, whatever right over it might have against the municipality. The confirmation of the agreement by by-law and by legislation has not altered its meaning or effect. It remains a private agreement between the municipality and the company. All that the legislature has done is to put beyond question the power of the municipality to make the agreement. The rights of the respondents, other than the municipality itself, remain entirely unaffected by it.

For these reasons I am of opinion that the appeal fails and should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: *D'Arcy Tate.*

Solicitors for the Canadian Pacific Railway Co., appellants: *Curle & Bond.*

Solicitors for the City of Fort William, respondents: *Morris & Babe.*

Solicitor for certain landowners, respondents: *R. V. Sinclair.*

Solicitors for the Fort William Land Investment Company, respondents: *Hunter & Hunter.*