

33, 1933

In the Privy Council.

No. 21 of 1932.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

THE OTTAWA ELECTRIC RAILWAY COMPANY - *Appellant*

AND

CANADIAN NATIONAL RAILWAYS

AND

THE CANADIAN PACIFIC RAILWAY COMPANY - *Respondents.*

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RECORD OF PROCEEDINGS.

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INDEX OF REFERENCE.

No.	Description.	Date.	Page.
	THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.		
1	Application of the City of Ottawa for an order requiring the bridge at Somerset Street to be replaced by a new bridge - - - - -	14th July 1927 - -	1
2	Answer of Ottawa Electric Railway Company -	12th July 1927 - -	2
3	Answer of Canadian Pacific Railway Company -	22nd July 1927 - -	5
4	Answer of Canadian National Railways - -	5th August 1927 - -	5

No.	Description.	Date.	Page.
	<i>Evidence.</i>		
5	Opening of trial - - - - -	7th-8th September 1927	7
	<i>Applicant's Evidence :</i>		
6	Norman B. MacCrostie—		
	Examination - - - - -	- - - - -	22
	Cross Examination - - - - -	- - - - -	27
	Re-examination - - - - -	- - - - -	28
7	Andrew F. MacCallum—		
	Examination - - - - -	- - - - -	34
	Cross-examination - - - - -	- - - - -	47
	<i>Evidence for Ottawa Electric Railway Company :</i>		
8	F. D. Burpee—		
	Examination - - - - -	- - - - -	53
	Cross Examination by counsel for applicant -	- - - - -	58
	<i>Applicant's Evidence in Reply :</i>		
9	Frank C. Askwith—		
	Examination - - - - -	- - - - -	59
	Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners :—		
10	(a) S. J. McLean, Assistant Chief Commissioner, concurred in by Thomas Vien, K.C., Deputy Chief Commissioner - - -	23rd February 1928 -	60
11	(b) Frank Oliver, Commissioner (dissenting) -	29th February 1928 -	73
12	Judgment (Order No. 40417) granting application of City of Ottawa to replace the bridge at Somerset Street with a new bridge - - -	5th March 1928 -	85
13	Material parts of specifications approved under Order No. 40417 - - - - -	- - - - -	86
14	Drawings Nos. 1 to 5 of Specifications ( <i>not printed</i> , copies supplied) - - - - -	- - - - -	95
15	Application of Ottawa Electric Railway Company for leave to appeal to the Supreme Court of Canada - - - - -	12th April 1928 -	96
16	Order granting extension of time to apply for leave to appeal to the Supreme Court of Canada (No. 44462) ( <i>not printed</i> ) - - - - -	8th May 1928 -	97
17	Reasons for Order granting leave to appeal to the Supreme Court of Canada - - - - -	8th June 1928 -	97
18	Order No. 44058 of the Board of Railway Commissioners granting leave to appeal to the Supreme Court of Canada - - - - -	17th December 1929 -	101
	<i>Schedules to Order No. 44058 :—</i>		
19	1 (a) Letter from executors estate of Nicholas Sparks to St. Lawrence and Ottawa Railway Company - - - - -	9th November 1870 -	108
20	(b) Letter from St. Lawrence and Ottawa Railway Company to executors of estate Nicholas Sparks - - - - -	24th November 1870 -	108
21	2 Extract from deed from Esther Slater and others to the St. Lawrence and Ottawa Railway Company - - - - -	1st June 1883 -	109

No.	Description.	Date.	Page.
22	3 Agreement between the Ottawa Electric Railway Company and the City of Ottawa	8th April 1895 - -	115
23	4 Agreement between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company and the City of Ottawa - - - -	28th June 1893 - -	118
24	5 Agreement between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company - - - -	8th August 1896 - -	123
25	6 Agreement between the Ottawa Electric Railway Company and the Canada Atlantic Railway Company - - - -	21st August 1896 - -	125
26	7 Application of the City of Ottawa to the Board of Railway Commissioners to widen Somerset Street Bridge - - - -	16th November 1906 - -	127
27	8 Reasons for Judgment (Order No. 3684) of Board of Railway Commissioners - - - -	13th March 1907 - -	128
28	9 Judgment (Order No. 3684) providing for widening of bridge - - - -	13th March 1907 - -	132
	10 Application of the City of Ottawa for an order requiring the bridge at Somerset Street to be replaced by a new bridge (Document No. 1) - - - -	14th July 1927 - -	1
	11 Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners— (a) Majority judgment (Document No. 10) - - - -	23rd February 1928 - -	60
	(b) Dissenting judgment (Document No. 11) - - - -	29th February 1928 - -	73
	12 Judgment (Order No. 40417) granting application of City of Ottawa to replace the bridge at Somerset Street (Document No. 12) - - - -	5th March 1928 - -	85
	13 Material part of specifications approved under Order No. 40417 (Document No. 13) - - - -	- - - - -	86
	14 Relevant plans drawings Nos. 1 to 5 of specifications (Document No. 14, <i>not printed</i> , copies supplied) - - - -	- - - - -	-
	15 Reasons for Order granting leave to appeal to the Supreme Court of Canada (Document No. 17) - - - -	8th June 1928 - -	97
29	16 Agreement between the Ottawa Electric Railway Company and the City of Ottawa	25th June 1924 - -	133
IN THE SUPREME COURT OF CANADA.			
30	Certificate that security has been supplied ( <i>not printed</i> ) - - - -	14th February 1930 - -	137
31	Notice of setting down of appeal to the Supreme Court of Canada ( <i>not printed</i> ) - - - -	14th February 1930 - -	137

No.	Description.	Date.	Page.
32	Certificate of Secretary of Board of Railway Commissioners as to Contents of Case - - -	4th September 1930 -	137
33	Order of Supreme Court of Canada dispensing with printing of certain documents - - -	10th September 1930 -	138
24	Factum of the Appellant - - - - -	16th January 1931 -	140
35	Factum of the Respondent Canadian National Railways - - - - -	- - - - -	163
36	Factum of the Respondent Canadian Pacific Railway Company - - - - -	- - - - -	168
37	Formal Judgment - - - - -	18th May 1931 -	173
38	Reasons for Judgment— Anglin, C.J.C. (concurring in by Newcombe, Rinfret, Lamont, and Cannon JJ.) - - -	- - - - -	175
IN THE PRIVY COUNCIL.			
39	Order in Council granting special leave to appeal to His Majesty in Council - - - - -	17th March 1932 -	176

# In the Supreme Court of Canada

ON APPEAL FROM THE BOARD OF RAILWAY  
COMMISSIONERS FOR CANADA

**BETWEEN:**

THE OTTAWA ELECTRIC RAILWAY COMPANY  
*Appellant.*

and

CANADIAN NATIONAL RAILWAYS

and

THE CANADIAN PACIFIC RAILWAY COMPANY  
*Respondents.*

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**CASE**

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## STATEMENT OF FACTS

This is an appeal from a Judgment of the Board of Railway Commissioners for Canada on questions of law, which are set forth in Order No. 44058 of the Board which is Document No. 18 of this case and which grants leave to appeal to the Supreme Court of Canada from Judgment or Order No. 40417 of the Board, dated 5th March, 1928.

# In the Supreme Court of Canada

ON APPEAL FROM THE BOARD OF RAILWAY  
COMMISSIONERS FOR CANADA

BETWEEN:

THE OTTAWA ELECTRIC RAILWAY COMPANY

*Appellant.*

and

CANADIAN NATIONAL RAILWAYS

and

10 THE CANADIAN PACIFIC RAILWAY COMPANY

*Respondents.*

## RECORD OF PROCEEDINGS

No. 1

Application of the City of Ottawa for an order requiring the bridge at  
Somerset Street to be replaced by a new bridge.

THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA

*Board of  
Railway  
Commissioners*

No. 1

Application No.....

Application of  
the City of  
Ottawa for an  
order requiring  
the bridge at  
Somerset Street  
to be replaced  
by a new  
bridge.  
14th July 1927

20 The Municipal Corporation of the City of Ottawa applies to  
the Board of Railway Commissioners for Canada for an Order under  
Sections 257 and 264 of the Railway Act 1919, requiring the  
Ottawa Electric Railway Company, the Canadian National Railways  
and the Canadian Pacific Railway Company, or some one or more of  
the said Companies, to replace the existing Somerset Street Bridge or  
viaduct in the City of Ottawa, which carries Somerset Street and  
the tracks and right-of-way of the Ottawa Electric Railway Com-  
pany over the tracks of the Canadian National Railways and the  
Canadian Pacific Railway Company with a bridge of sufficient  
breadth and of such construction as will afford safe and adequate  
30 facilities for all traffic on the said street, and for an Order appor-

*Board of  
Railway  
Commissioners*

No. 1

Application of  
the City of  
Ottawa for an  
order requiring  
the bridge at  
Somerset Street  
to be replaced  
by a new  
bridge.  
14th July 1927  
—Continued

tioning the cost of such new bridge between the said Railways, or between some one or more of them, and the said Corporation, as the Board may direct.

The applicant Corporation represents that the existing bridge over the tracks of the said Railway Companies and whereby the Ottawa Electric Railway Company's tracks and right-of-way is carried over the said railways, was originally constructed at the cost of the Ottawa Electric Railway Company, and was thereafter enlarged at the joint cost of the said Company and of the applicant Corporation under Order Number 3684 of the Board, dated March 13th, 10 1907.

The applicant Corporation further represents that the said bridge has fallen into a state of disrepair, and is dangerous to traffic, and of insufficient breadth, and that it will be necessary to remove the same and to have it replaced by a more modern structure of greater breadth.

The applicant Corporation submits herewith a plan and profile of a bridge which it desires to have constructed in substitution for the existing bridge.

Dated at the City of Ottawa this 14th day of July, 1927. 20

**FRANK B. PROCTOR,**

Solicitor for the Applicant Corporation.

No. 2

Answer of Ottawa Electric Railway Company.

No. 2

Answer of  
Ottawa Electric  
Railway Com-  
pany.  
12th July 1927.

**THE BOARD OF RAILWAY COMMISSIONERS  
FOR CANADA**

**IN THE MATTER OF AN APPLICATION BY THE MUNICIPAL CORPORA-  
TION OF THE CITY OF OTTAWA FOR AN ORDER RESPECTING THE  
SOMERSET STREET BRIDGE IN THE CITY OF OTTAWA.**

**ANSWER OF OTTAWA ELECTRIC RAILWAY COMPANY 30**

1. The said bridge consists of a bridge built in 1907 which is a roadway for vehicular traffic other than street car traffic, and adjoining that on the north a bridge built about 1896 for street railway traffic, upon which other vehicular traffic, as well as foot traffic, was permitted.

2. The said south bridge was built in order that the public, other than the Electric company's passengers, should not drive or walk on the company's north bridge which was said to be dangerous for such traffic, and to supply a roadway equivalent to the laneway which existed prior to the Electric company buying the said wooden bridge.

*Board of  
Railway  
Commissioners*

No. 2

Answer of  
Ottawa Electric  
Railway Com-  
pany

12th July 1927.

—Continued.

3. The Electric company declares that it is the absolute owner of the North Bridge and the approaches thereto and is not there solely as licensee or by permission and that such North bridge and approaches belong to it absolutely subject to any right which the public other  
10 than the tramway using public may have acquired through its constant use thereof over a long period of years.

4. The present application is occasioned by the increase in vehicular and pedestrian traffic, the Electric company's vehicles now comprising less than 16% of such vehicular traffic.

5. The effect of the Electric Company's franchise agreement with the present applicant is that the car-riding public are burdened with such extra expenditures as may be imposed on the Electric Company inasmuch as the Electric Company is entitled to have its fares varied from time to time so that it shall receive a just and reasonable  
20 return on the value of its capital assets.

5A The said passengers and the Electric Company will receive no benefit from the proposed new bridge inasmuch as the present north bridge is adequate and safe for street railway traffic.

6. The Ottawa Electric Railway has an investment of \$31,918 in the said bridges, which investment is a capital asset upon which the company has borrowed money, and issued bonds, and upon which investment its revenue from fares must by law provide a reasonable return, and which investment the present application proposes to destroy.

30 7. The company's sole obligations with respect to any bridge are set forth in section 20 of an agreement between the city and the said company, dated June 28th, 1893, whereby the company agreed to provide the stringers on the underbeams of the bridges traversed by the company's railway and in section 20(a) which provides that should any such bridge require strengthening because of the operation of the said company's railway thereon, the company and the city shall bear the cost of such strengthening in equal proportions.

40 8. All obligations and expenses relating to the construction, repair or maintenance of any bridge other than the obligations set forth in said section 20 and 20(a) are obligations and expenses to be



*Board of  
Railway  
Commissioners*

No. 2

Answer of  
Ottawa Electric  
Railway Com-  
pany.

12th July 1927

—Continued

borne by the city of Ottawa or by such other parties exclusive of this company as this Board may deem fit.

9. If, as alleged, the company originally constructed at its own cost the said bridges, then no principle was involved in such construction nor was any precedent established thereby, the sole reason therefore being that the city of Ottawa had no funds to assist in the said construction and it was a matter of urgent public necessity for the company to extend its transportation system forthwith westward along the said street and the company made such expenditure voluntarily and without prejudice. 10

10. The Order of this Board dated March 13th, 1907, was made at a time when the volume and nature of traffic was radically different from that now prevailing and such Order was based upon conditions which do not now exist and upon a misapprehension of the effect of certain agreements between the city and the company which were not referred to in the evidence or argument at such time, or in ignorance thereof, and the company should not have been ordered to pay any part of the cost of widening the said bridge.

11. There is nothing contained in the agreement between the city of Ottawa and this company dated the 8th of April, 1895, 20 releasing the present applicant from liability it might have had or may now have respecting the construction, repair or maintenance of the said bridges, or any bridge or bridges that might be constructed in its place, the said Agreement simply stating that the agreement shall not be construed as imposing any such liability, and this company declares that the City of Ottawa or others, and not the company, always did have and still have the sole obligation for the said construction, repair and maintenance and that such obligation does not depend upon the said agreement and is not imposed thereby.

12. The grade of the said bridge is unnecessarily steep and 30 could be reduced with safety.

Dated 12 July, 1927.

REDMOND QUAIN,

Solicitor for the O.E.R. Company

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**No. 3**  
**Answer of Canadian Pacific Railway Co.**

**CANADIAN PACIFIC RAILWAY COMPANY**

C 780                      Montreal, 22nd July, 1927.

A. D. Cartwright, Esq.,  
Secretary Board of Railway Commissioners,  
Ottawa.

*Board of  
Railway  
Commissioners*

No. 3

*Answer of  
Canadian  
Pacific  
Railway Co.  
22nd July, 1927*

Dear Sir:—File 396—Somerset Street Bridge, Ottawa.

I have received from Mr. Frank Proctor, City Solicitor, Ottawa,  
10 a copy of his application to the Board dated 14th instant for an  
Order directing the construction of a new bridge at Somerset Street,  
to replace the existing structure.

Our officials have no objection to offer to Mr. Proctor's ap-  
plication, provided no part of the cost of constructing and main-  
taining the new bridge is imposed on this company, which is senior  
to the street at that point.

I am sending a copy of this letter to Mr. Proctor.

Yours truly,

**E. P. FLINTOFT,**  
Assistant General Solicitor.

20

**No. 4**  
**Answer of Canadian National Railways.**

**THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA**

Application No.

**APPLICATION** of the City of Ottawa for the construction  
of a new bridge to replace the existing Somerset Street Bridge in  
said city, carrying that street and the tracks and right-of-way of the  
Electric Railway Company over the tracks and right-of-way of the  
30 Canadian Pacific Railway Company and the Canadian National  
Railway Company.

In answer to the above application, the Canadian National Rail-  
way Company states—

(1) That the condition of the existing Somerset St. Bridge  
or viaduct carrying Somerset Street in the City of Ottawa, and the  
tracks of the Ottawa Electric Railway over the tracks of the Can-  
adian Pacific Railway Company and the Canadian National Rail-  
ways which is claimed by the applicants to have fallen into a state  
of disrepair and is dangerous to traffic, cannot be attributed in any  
40 way to the Canadian National Railway Company.

No. 4

*Answer of  
Canadian  
National  
Railways.  
5th Aug. 1927.*

Board of  
Railway  
Commissioners

No. 4

Answer of  
Canadian  
National  
Railways  
5th Aug. 1927.  
—Continued.

(2) If it is considered that a new and wider bridge requires to be constructed in lieu of the said existing Somerset Bridge, the Canadian National Railway Company should not be required to bear or pay any part of the cost thereof, or any work in connection therewith, or the maintenance thereof, but the same should be wholly borne and paid by the applicants and the Ottawa Electric Railway Company, or one of them. The necessity for building a wider bridge is to accommodate the highway traffic passing thereover.

(3) That under a certain agreement, dated 31st August 1896, between the Ottawa Electric Railway Company and the Canada Atlantic Railway Company, the predecessor of the Canadian National Railway Company, copy of which is on file with the Board, the Ottawa Electric Railway Company agreed to indemnify and save harmless the Canada Atlantic Railway Company from and against all liability to maintain, repair, alter or reconstruct the said bridge or the approaches thereto.

(4) The plan and profile submitted by the City on this application has not sufficient detail to show what type of bridge the City desires to have constructed; but from the profile it would appear that the City contemplates lowering the Canadian National Railway Company's tracks approximately 4 feet and 2 feet respectively and to reduce the overhead clearance to 20 feet, although there is nothing on the plan to show what side clearances are to be provided.

(5) There does not appear to be any advantage in altering the grade of the roadway, as shown on the said profile submitted by the City and it is considered that a proper reduction in the vertical curve between the original approach grades would give a better view of traffic approaching in either direction on the bridge, and with this arrangement it would only be necessary to lower 2½ feet one of the Canadian National Railway sidings serving the Argue and McCall Coal Company's plant.

(6) The Canadian National Railway Company respectfully refers the Board to the Judgment delivered by the Honourable the Chief Commissioner of the Board in the matter of the said Somerset Street Bridge, dated 13th March, 1907, and to Order No. 3684 of the Board of the same date.

DATED at Montreal this 5th day of August, 1927.

T. WATERSTON

General Solicitor,

Canadian National Railway Company. 40

No. 5  
Opening of Trial.

THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.

Ottawa, Ont., Wednesday 7th September, 1927.

HON. H. A. McKEOWN, K.C.,  
Chief Commissioner.

S. J. McLEAN, LL.B.,  
Assistant Chief Commissioner.

10 THOMAS VIEN, K.C.,  
Deputy Chief Commissioner.

A. C. BOYCE, K.C.,  
Commissioner.

CALVIN LAWRENCE,  
Commissioner.

HON. FRANK OLIVER,  
Commissioner.

20 T. L. Simmons,  
Chief Engineer.

R. Richardson,  
Assistant Secretary  
*and Registrar.*  
(Nelson R. Butcher & Company,  
Official Reporters,  
per J.A.)

Case  
396

2.

Application of the City of Ottawa, Ont., for  
an Order directing the construction of a new  
bridge at Somerset Street, Ottawa.

F. B. PROCTOR, K.C., for the City of Ottawa.

30 REDMOND QUAIN  
and  
MAJOR BURPEE  
(General Manager) } for the Ottawa Electric Railway.

ALISTAIR FRASER, K.C.  
(Commission Counsel) for the Canadian National  
Railways.

E. P. FLINTOT, for the Canadian Pacific Railway  
Company.

40 THE CHIEF COMMISSIONER: The City of Ottawa has  
an application in the matter of the Somerset Street Bridge.  
We will hear you now, Mr. Proctor.

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.

—Continued.

**MR. PROCTOR:** Mr. Chairman and gentlemen: This is not entirely a continuance of the earlier hearing, but at the hearing in the first week in July the facts were I think pretty well placed before the Board in respect of the conditions existing at the Somerset Street Bridge in the westerly section of the city. That, the Board will recollect was an application to remove the bridge and substitute a level crossing. That application was refused.

On the situation as to the condition of the bridge, I do not think there was any controversy. I think Mr. Chase Thompson, who appeared for the Electric Railway Company, gave the bridge just as bad a name as the City gave it; and failing in our application for a level crossing, it was necessary that someone should apply for a new bridge. The evidence is before the Board on the record that no reconstruction of the existing bridge would serve any useful purpose but would be money wasted. So, since the earlier application was dismissed, we have applied for a new bridge. A plan of that bridge has been before the Board for upwards of a month now, and I understand has been passed upon by the Board's engineer. It has also been in the hands of the different companies interested. They have had a full opportunity to examine it, and I suppose today if they have any criticism to offer they will offer it.

**COMMISSIONER LAWRENCE:** You do not know yet whether they approve of those plans or not?

**MR. PROCTOR:** Perhaps I had better stop at this point and ask them? Perhaps they may say. I do not personally whether they approve of the plans proposed or not.

**THE CHIEF COMMISSIONER:** We have here representatives of the Canadian National and the Canadian Pacific Railways.

**MR. FRASER:** Mr. Chairman, the situation as far as we are concerned is this: if, as we hope, the Board will hold that no portion of the cost of construction or maintenance is to be borne by the Canadian National Railways, it is a matter of no concern to us what construction is used. But if we have to pay part of the cost, we would like to see a reinforced concrete structure there rather than a steel structure.

**THE DEPUTY CHIEF:** Are you on record as to that?

**MR. FRASER:** No, I am making the statement for the first time. We think that the maintenance of a reinforced concrete structure is considerably less than the other especially where there is a railway passing under. Smoke does a great deal of damage to the steel structure. If it is found that the Canadian National must pay part of the cost, we would like to discuss that with the Board's Chief Engineer. I do not think it would be useful to fill

the record with a lot of objections which may never come to pass; I would like to reserve our right in that case to submit to the Board what we have to say as to the type of structure.

**THE ASSISTANT CHIEF:** Have the plans been considered by your engineers?

**MR. FRASER:** We do not think the plans are sufficiently complete to give us all the necessary information. We want further details of the plans.

**THE ASSISTANT CHIEF:** Has information of that  
10 fact been given to the City?

**MR. FRASER:** We have made an official reply to the Secretary of the Board. My friend has assured us that the plans were sufficient.

**THE DEPUTY CHIEF:** On what ground do you submit that the Canadian National should not be called upon to bear any part of the cost?

**MR. FRASER:** This case, as the Board knows, has been up on a good many occasions before. It has been frequently held by the Board that the Canadian National, and the successors to the  
20 Canada Atlantic, should not pay any proportion of the cost. The same contention has been urged before this Board on one or two other occasions.

**THE CHIEF COMMISSIONER:** Is that under some contractual relationship?

**MR. FRASER:** Partially, yes sir. I think the record is so abundantly clear that I simply rest on that. We have an agreement with the Ottawa Electric Railway Company, the last improvement which was made to the bridge being made for them—that we will be indemnified and held harmless by them against any cost in connection with this bridge.  
30

**THE CHIEF COMMISSIONER:** That is quite another matter, if it comes back to indemnification.

**MR. FRASER:** Quite so. Now those parties are before this Board. We consented at that time to certain changes being made in the bridge upon those conditions, and with knowledge of that and referring to that fact, in the judgment of the Chief Commissioner of this Board, he held that we should not be called upon to pay any proportion of the cost.

**THE DEPUTY CHIEF:** Have you put this information  
40 on record in this case?

**MR. FRASER:** No sir. I have not heard anything of my friend's case yet.

**THE DEPUTY CHIEF:** You have no written submission of this case on file.

Board of  
Railway  
Commissioners  
—  
No. 5  
—  
Opening of  
Trial  
—Continued.

**MR. FRASER:** No, not covering what I am now saying. We merely state that all we did was that we objected to paying. I may be going at it from the wrong end. I do not know whether my friend Mr. Proctor is saying that we should pay.

**THE CHIEF COMMISSIONER:** He may not ask you to pay?

**MR. FRASER:** Precisely.

**COMMISSIONER OLIVER:** Is there any contract or agreement between the city and the railways in regard to crossing the street by the railways? 10

**MR. FRASER:** No sir. This crossing was in existence long before the Board, as it is an old Canada Atlantic crossing. It was in existence before the Board came into existence.

**COMMISSIONER OLIVER:** Before the city had control.

**MR. FRASER:** No, before the Board had control. There is some obscurity as to the original crossing, but the Board held in its former judgment that there was a lane there, that the C.P.R. carried the lane over their tracks. The C.P.R. were there before the Canada Atlantic. They carried the lane over the railway with a highway crossing and it became used as a highway. 20

**MR. FLINTOFT:** We carried the lane over originally and afterwards this developed.

**COMMISSIONER OLIVER:** There is then no agreement or understanding or contract between the city as the owner of the highway and the railway which crosses that highway?

**MR. FRASER:** Not so far as I know.

**MR. FLINTOFT:** You understand as to that, sir, that there could not very well be a contract between the city and the railways because there was no highway there when the railway was built.

**MR. PROCTOR:** Which railway? 30

**MR. FLINTOFT:** The Canadian Pacific.

**MR. PROCTOR:** We do not know about that.

**MR. FLINTOFT:** We have right of way deeds and that is admitted.

**COMMISSIONER OLIVER:** That would be shown in the grant from the railway allowing the city to cross the railway with tis street would it not?

**MR. FLINTOFT:** No. What happened was this: it was farm land when this railway was built. The railway was built somewhere about 1865. There was a lane, an ordinary farm crossing, 40 and that was carried over by a bridge over the railway.

**COMMISSIONER OLIVER:** That would be an extraordinary farm crossing, if carried over by a bridge.

MR. FLINTOFT: Oh no; it is frequently done. We had an experience of one just outside Montreal recently. And we have had a number of similar ones, but that was the situation in the first place. Then as the lands on each side of the railway became subdivided, and Somerset Street as it afterwards became, was opened up, the public began using this bridge which was originally a farm crossing bridge, as virtually a highway bridge. But there never was any grant; the railways never granted any deed of the land so as to open up a highway. Really the bridge was widened out under

10 the Order of 1907, of the Board.

MR. PROCTOR: Oh no.

THE CHIEF COMMISSIONER: For your railway, do you accept any liability?

MR. FLINTOFT: We say that there was not a highway there when we built; it was merely a trespass highway. And then in addition we have an indemnification as far as the street railway is concerned; we have an agreement of indemnity. As far as the City is concerned, as distinct from the street railway, we say that there can be no liability on the railway company to contribute, for

20 the reason that this highway or the highway bridge is junior to the railway.

THE DEPUTY CHIEF: What is the attitude of the city as to the apportionment of the cost?

MR. PROCTOR: I thought these facts were so plainly on the record that they need not be repeated.

THE DEPUTY CHIEF: That is taking too much for granted in so far as I am concerned.

MR. PROCTOR: Then, Mr. Deputy Chief Commissioner, perhaps I had better review very briefly what occurred at the last

30 hearing, because Mr. Flintoft and Mr. Fraser certainly have a very wrong conception of the situation.

The C.P.R. took over the rights of the St. Lawrence and Ottawa Railway. That railway was constructed somewhere prior to 1870, and that railway was prior to the street. So that they are prior to the street. The bearing of that will be argued, but that fact is admitted. Then in 1875, on the 28th October 1875, the C.P.R. or the Ottawa and St. Lawrence as it then was, and the landowner, commonly called the Sherwood Estate, subdivided this property and created a highway which was then named Cedar Street. That was

40 exempted and provision was made for that highway when the Ottawa and St. Lawrence crossed.

THE ASSISTANT CHIEF: Will you repeat that please?

MR. PROCTOR: I think provision was made. Mr. MacCrostie's evidence is there and I think he said at the previous hearing



Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial  
—Continued.

that at the time the Ottawa and St. Lawrence crossed, provision was made for that highway, by a reservation; some understanding between the railway and the property owner.

MR. FLINTOFT: I am not agreeing to that.

MR. PROCTOR: I am not stating it as an actual fact, but as my recollection.

THE DEPUTY CHIEF: I am afraid it will be confusing for us if we refer too much to the evidence in previous hearings, unless the previous hearings were upon this very application. Otherwise if you will be kind enough to quote the page of the record, or the documentary evidence, so that we may check it up if the statement is challenged. 10

MR. PROCTOR: Then, Mr. Deputy Chief Commissioner, at page 9959 will be found Mr. MacCrostie's evidence. I am referring to the hearing of the application for a level crossing. It is called Case 396 and I think this case has the same number. It is Volume 517, Part 2, and page 9959. Mr. MacCrostie is a civil engineer and produced plans. Now what happened in 1875 was this.

THE DEPUTY CHIEF: Mr. Proctor, was this on the present application? 20

MR. PROCTOR: Yes.

THE CHIEF COMMISSIONER: No, it was on the application for a level crossing.

MR. PROCTOR: It carries I think the same number. It is an independent application, Mr. Chairman, that is quite true, but I have gone on the assumption that the evidence then given was to be taken as part of this present application. If it is not, I do not know that I can get very far.

THE CHIEF COMMISSIONER: You are asking for a plan to be approved. There was another application, for a level crossing which was refused, and that record was closed at that time. That case was finished, and this is a new case. 30

MR. PROCTOR: If the Board insists on the evidence going in again, I must repeat it.

THE DEPUTY CHIEF: We do not say that at all, but we do not want to be confused. You are now dealing with an application of the City of Ottawa for an Order directing the construction of a new bridge at Somerset Street. It is Case Number 396. You can refer to evidence already taken, provided you give us the date and the volume and page of the record. 40

MR. PROCTOR: It is Case Number 396 that I am referring to. It carries the same number as this application. Now if the file is before the Board, the Exhibits are there, and Mr. MacCrostie in

his evidence proved on that occasion that the plan of Cedar Street was laid down or Cedar Street was laid down on the registered plan on the 28th October 1875. That is a fact that no-one can gainsay. There is no argument about that. There is not any question about any highway by trespass or anything of that kind, as Mr. Flintoft suggests. We have a registered highway from the 28th October, 1875.

*Board of  
Railway  
Commissioners*

*No. 5*

*Opening of  
Trial*

*—Continued.*

**THE DEPUTY CHIEF:** Was the city incorporated at that time, or was this locality included within the city corporation?

10 **MR. PROCTOR:** No sir, at that time the highway was outside the limits of the city, but subsequently became city territory. It was in the township of Nepean.

**THE DEPUTY CHIEF:** Was the registration under the Ontario law by the owner of the land, of the plan giving the lots and street allowances, enough to dedicate the street to the public?

**MR. PROCTOR:** With sales of lots; either the sale of lots from the plan or with roadwork on the street.

**THE DEPUTY CHIEF:** Was there any municipal procedure by way of bylaw or resolution?

20 **MR. PROCTOR:** It does not require it under our law, sir. It does not require a bylaw accepting.

**COMMISSIONER OLIVER:** There was an effective dedication?

**MR. PROCTOR:** Yes, there was an effective dedication and the street came into existence, and as soon as the city's territory was extended, its name was extended but its name was changed; it was hitherto Cedar Street but its name now became Somerset Street.

**THE DEPUTY CHIEF:** It was dedicated to the public and used by the public without any protest from anyone?

30 **MR. PROCTOR:** Yes; and in addition to that, the St. Lawrence and Ottawa recognized it to the extent that they built a bridge to carry traffic across their right of way.

**THE DEPUTY CHIEF:** They rebuilt the farm crossing?

**MR. PROCTOR:** No, I would not say they rebuilt it. They built it more than once, but it was there and they carried traffic by means of it and they maintained it until they came to this agreement with the Ottawa Electric Railway Company in 1896.

**THE DEPUTY CHIEF:** Until then, had they always maintained this at their own expense?

40 **MR. FLINTOFT:** As a farm crossing.

**MR. PROCTOR:** My learned friend says it was a farm crossing.

Board of  
Railway  
Commissioners  
No. 5  
Opening of  
Trial.  
—Continued.

**THE DEPUTY CHIEF:** At any rate the passage, whatever it was, whether a highway or a private road, was maintained by the railway.

**MR. PROCTOR:** Yes, maintained by the railway.

**THE DEPUTY CHIEF:** Until 1896, when an agreement was entered into between the Ottawa and St. Lawrence Railway?

**MR. PROCTOR:** Yes, the Ottawa and St. Lawrence Railway, or perhaps the Canadian Pacific Railway as it then was, and the Ottawa Electric Railway Company.

**THE DEPUTY CHIEF:** Is this agreement on record? 10

**MR. PROCTOR:** Yes, this agreement is on record, and the material parts are cited in the hearing of July.

**THE DEPUTY CHIEF:** In Mr. MacCrostie's evidence.

**MR. PROCTOR:** No, in my introductory statement, sir, at page 9945. And I might add at this point that a full history of this street is set out in an earlier judgment of the Board: that is the judgment of 1907. The facts are there found by the late Mr. Justice Killam, Chief Commissioner of the Board at that time; and it occurred to me that at this stage there is no controversy whatsoever as to what the situation was. I assume the Board will if it needs, 20 refer to the record.

**THE CHIEF COMMISSIONER:** Did he deal with the title as between the railways and the street at that time?

**MR. PROCTOR:** Certainly, Mr. Chairman, and he cites the agreement indemnifying the Canadian Pacific Railway Company.

**THE CHIEF COMMISSIONER:** And does he give a considered opinion?

**MR. PROCTOR:** Yes, Mr. Chairman. Then there came on our street in 1875, some ten years later, the Canada Atlantic Railway. The Canada Atlantic Company acquired a right of way up to 30 but not across Cedar Street. It purchased land north and south from the landowner, and it crossed Cedar Street. There is no record of an application to cross the street. There was a location plan filed and it crossed the street. Now it was junior to the street. There was a street then ten years prior to the Canada Atlantic, now the Canadian National.

**THE DEPUTY CHIEF:** Where have we that on record or is that admitted?

**MR. FRASER:** A plan was filed at the July hearing.

**MR. PROCTOR:** Certainly. A plan showing the right of 40 way.

**MR. FRASER:** No, a subdivision plan as part of the evidence of your city, showing the street?

**MR. PROCTOR:** Certainly.

MR. FRASER: I would like to see that plan.

THE DEPUTY CHIEF: I would like first to proceed step by step, and that we should have a reference to the statements that are made. Otherwise we shall be confused. You said that the Canada Atlantic, now the Canadian National Railways, came after the street's dedication to the public, and therefore were junior to it.

Board of  
Railway  
Commissioners  
No. 5  
Opening of  
Trial.  
—Continued.

MR. PROCTOR: Absolutely.

THE DEPUTY CHIEF: What have we to establish that fact?

10 MR. PROCTOR: You have Exhibit Number 1, filed on July 7th, in the evidence of Mr. MacCrostie. Now Exhibit Number 1 is a copy of the registered plan and shows the street and the crossing.

THE CHIEF COMMISSIONER: Does it show when the plan was registered?

MR. PROCTOR: No, sir, his evidence is oral testimony.

THE CHIEF COMMISSIONER: Is it not on the plan?

MR. PROCTOR: No sir, because it is a compiled plan.

20 THE DEPUTY CHIEF: How can we get the date of the registration? You say the plan was filed and registered by the owner ten years prior to the construction of the Canada Atlantic? Well, what have we to establish the date of such registration?

MR. PROCTOR: I will read from Mr. MacCrostie's evidence at page 9959. I am sorry my learned friends have confused this issue by debating a subject that is not at all debatable.

"Q. Will you tell me when Cedar Street was established?

A. The first record that I find of Cedar Street being established as a street is that it was first shown on a plan dated 28th October, 1875.

Q. It is laid down on a registered plan, of what number?

30 A. Number 58 and Number 73."

Those are the numbers in the City Registry Office. Cedar Street happens to be on two plans. One portion of it we are not concerned with,—it was beyond where the bridge lay.

"Q. Which is of record in the Registry Office.

A. In the Registry Office of the City of Ottawa.

Q. The 28th October, is that right?

A. The 28th October, 1875."

THE DEPUTY CHIEF: This is the date of the plan. The Chief Commissioner continues:—

40 "That is the date of the plan, Mr. Proctor. Are you suggesting that that is the date the street was opened?

MR. PROCTOR: Yes sir."

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.  
—Continued.

Then you go on, but it seems to me if a plan is registered in the Registry Office, it should be easy to determine the date of the registration.

MR. PROCTOR: Yes sir.

THE DEPUTY CHIEF: Have we the date of the registration?

MR. PROCTOR: No I do not think we have the date here.

THE DEPUTY CHIEF: That is very important.

MR. PROCTOR: Then I will have to supply that.

THE CHIEF COMMISSIONER: It is very important 10  
if it is denied.

THE DEPUTY CHIEF: I asked if it was admitted, but it is not admitted.

MR. FRASER: I am also anxious to know from Mr. Proctor if at that time the witness whose evidence he is reading filed a copy of that plan, which was on file in the Registry Office, dated a great many years ago.

MR. PROCTOR: He did not file a copy of that plan because that was a work supposed to be entirely unnecessary. It would take a great deal of money and time to prepare that. He came here and told you that there was a plan and you can see it in the Registry Office.

THE DEPUTY CHIEF: You do not expect me to go to the Registry Office?

MR. PROCTOR: No, I do not; but I do expect Mr. Fraser or his assistant, if he has any doubt, to check it up.

MR. FRASER: There may well be a plan of a Cedar Street and some are curious to know whether that plan of Cedar Street is opened across the line or right of way of the Canadian National Railways. I have a plan of 1882 which shows that it is not. 30

THE DEPUTY CHIEF: What I find that I need is this: I would need a plan showing that street dedication, and I would need a certificate of the registration of that plan, so that I might come to some conclusion as to whether the street or the railway is senior.

MR. PROCTOR: We will have to supply the Board with that and if necessary we will ask for time to do it. I thought that this registered plan was quite ample evidence for my learned friend.

THE DEPUTY CHIEF: Certainly a registered plan is quite ample, but we have no registered plan and no certificate of 40  
registration.

MR. PROCTOR: We have the surveyor here.

**THE CHIEF COMMISSIONER:** On the other application it was not as important as on this one. The other was a different application altogether, which was refused.

**MR. PROCTOR:** Subject to my producing this plan,—which everyone in the City of Ottawa knows all about, and my learned friends probably know all about.

**THE CHIEF COMMISSIONER:** But Mr. Fraser says the plan shows the contrary.

**MR. PROCTOR:** Oh no.

10 **MR. FLINTOFT:** We certainly do not know anything of any plan dedicating part of our right of way for a street.

**MR. PROCTOR:** I am not suggesting that.

**THE DEPUTY CHIEF:** And Mr. Fraser states that in 1882 they have a plan which shows their right of way and there is no street dedication indicated.

**MR. FRASER:** No, I say that I have a plan dated in 1882 that shows that Cedar Street does not cross the right of way of the Canadian National.

**MR. PROCTOR:** Is it a registered plan?

20 **MR. FRASER:** Yes.

**MR. PROCTOR:** But it is not a land titles plan at all.

**THE DEPUTY CHIEF:** Then you have to establish the seniority there of the railway or the street.

**MR. PROCTOR:** That is my mistake probably. I thought that was established and admitted. I am wrong as to that apparently.

Now going ahead; in 1896 the Ottawa Electric Railway Company desired to cross—and perhaps now I am a little ahead of my story. I did bring, I think, the Canada Atlantic in, in 1885 or thereabouts. In 1896 the Ottawa Electric Railway desired to cross  
30 the rights of way of these two railways, and it was a railway of course, under Federal jurisdiction. It had an agreement with the city whereby the city was not to afford it any facilities for crossing; it had to find its crossing as best it could. It made two agreements then, one with either railway; one with the Canada Atlantic and the other with the Canadian Pacific, which agreements are filed in this record, or at least the substance of them is in the record.

**THE DEPUTY CHIEF:** Were extracts read into the record by the witness or are copies of the agreements on file?

40 **MR. PROCTOR:** Copies of the agreements were put in, in the 1907 application.

**THE DEPUTY CHIEF:** I think you had better put in another copy, so that it will be of easier reference.

**MR. PROCTOR:** The substance of the agreements was read into the record in July. I can supply the board with copies of the two agreements.

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.  
—Continued.

**THE DEPUTY CHIEF:** Your statement is to the effect that the Electric Railway Company undertook to indemnify the steam railways from all maintenance and reconstruction of this bridge.

**MR. PROCTOR:** And of any subsequent bridge. That is the substance of the agreement.

**MR. QUAIN:** Which agreement is that sir?

**MR. PROCTOR:** The agreement of 1896.

**MR. QUAIN:** No, that agreement is the agreement in which this statement is made:—

“Nothing in this agreement shall be deemed to impose any liability on the City of Ottawa.” 10

Which is quite a different statement. I am talking of the agreement with the City of Ottawa.

**THE DEPUTY CHIEF:** Mr. Proctor, I think we have on the file the agreements referred to in 1907.

**MR. PROCTOR:** The agreements are on file in 1907?

**THE DEPUTY CHIEF:** I think it will be all right; it is on the same file.

**THE CHIEF COMMISSIONER:** We cannot finish this case tonight, Mr. Proctor. We will adjourn now until tomorrow morning at half past ten. 20

(Adjourned at 5.15 p.m. on Wednesday 7th September, until 10.30 a.m. on Thursday 8th September, 1927.)

No. 5

Opening of  
Trial.  
—Continued.

**THE BOARD OF RAILWAY COMMISSIONERS OF  
CANADA**

Ottawa, Ont., Thursday 8th September, 1927.

**S. J. McLEAN, LL.B.,**  
Assistant Chief Commissioner.

**THOMAS VIEN, K.C.,**  
Deputy Chief Commissioner. 30

**HON. FRANK OLIVER,**  
Commissioner.

**T. L. SIMMONS,**  
Chief Engineer.

**R. RICHARDSON,**  
Assistant Secretary  
and Registrar.

(NELSON R. BUTCHER & COMPANY,  
Official Reporters,  
per J.A.)

Case  
396

2.

40

Application of the City of Ottawa, Ont., for  
an Order directing the construction of a new bridge  
at Somerset Street, Ottawa.

(For Appearances, see page 10285)

(Hearing Continued)

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.  
—Continued.

**THE ASSISTANT CHIEF:** Let me see if I have the case in mind, Mr. Proctor, and for the benefit of the other gentlemen concerned; I want to summarize and see if there is any mistake in my understanding.

10 It is contended that the bridge, as it at present exists, is an unsafe structure, subject to an exception taken by the Ottawa Electric Railway Company respecting the portion that its cars travel on, which is alleged not to be in an unsafe condition. I understand, the parties agree on that.

As to the question of seniority, that of course directs itself to the matter of participation in cost. Subject to the conditions to be developed, it seems to me that in view of the discussion that took place in connection with the hearing in 1907, and the various agreements filed, it would be well for the parties to direct our attention  
20 to what had been held and to show in what respect, if any, conditions are now so changed as to justify a different conclusion. You understand, that is not expressing any decision; that what has been done by the Board in the past does not necessarily bind it now, but that is a point of departure.

Then the only other point is the question of plans. There are certain exceptions filed by the Canadian National, that corporation being more vitally interested in the exceptions, as it says it is a question of costs; there are one or two points there that might probably be of interest here; but as to the technical detail of the plans,  
30 subject to what may be developed, that will be a question to be taken up by the engineer of the Board and the engineers of the parties.

**MR. FLINTOFT:** That will include the width of the opening and the clearance?

**THE ASSISTANT CHIEF:** In regard to clearance, and reduction of vertical clearance; and there is a question in regard to certain tracks of the Canadian National being lowered, it being alleged that one track might be lowered. Then the Canadian National has raised, as I understand, some question of the type of construction. Those are matters we can discuss here on the general issue, but the  
40 details will have to be worked out.

**MR. FLINTOFT:** Our engineers say that the plans that are submitted are not sufficient; they do not give sufficient information.



Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.  
—Continued.

**THE ASSISTANT CHIEF:** We might leave that until we come to the question of the plans. Meantime Mr. Proctor might discuss the features bearing upon the participation in costs.

**MR. FLINTOFT:** There is something behind that question, Mr. Chairman. The Order of 1907 awarded against the City one quarter of the costs of the widening of the existing bridge. That would not be one quarter of the cost of the bridge. The City had contributed nothing towards the bridge as it existed prior to its widening. I am just pointing that out. If the Board is starting with the assumption that the Order then made was one quarter of 10 the whole cost, it was not. It was a much smaller fraction.

**THE ASSISTANT CHIEF:** Mention any point which you consider as some feature of differentiation. As the Deputy Chief Commissioner pointed out yesterday, please tie that up to specific references, the page and so on. You will understand that none of us who are sitting today participated in that case.

**MR. PROCTOR:** No, and I think perhaps the matter is of sufficient importance to have a little detail furnished to the Board as if it were a matter from the beginning, because the members sitting at present, unless they search the various records, would not have any 20 very exact knowledge of what happened in the past.

Now the other point is as to the burden put upon the Ottawa Electric Railway. This is merely introductory and before I speak of that I want to say that the 25 per cent. of the cost that was awarded against the City in 1907, as the agreement clearly discloses, proceeded upon the agreement of the City to bear that portion of the cost. It was a consent on the part of the City to assume that much.

**THE ASSISTANT CHIEF:** This was recited in the Judgment.

**MR. PROCTOR:** Yes; and it is also recited in the Judgment 30 very clearly that the amount fixed against the Ottawa Electric Railway Company was fixed against them by reason of these two agreements to indemnify.

**THE ASSISTANT CHIEF:** Those are the agreements of what date?

**MR. PROCTOR:** I am going to refer to them in detail.

**THE ASSISTANT CHIEF:** Just the date of the agreement at present.

**MR. PROCTOR:** Yes, but I want to read from the judgment of Mr. Justice Killam on that point. I do not know the page; I have 40 not got it paged.

**THE ASSISTANT CHIEF:** There is a copy on the file.

**MR. PROCTOR:** "The City through its Counsel, has offered to bear one-fourth of the expense. The Canadian Pacific Railway Company and the Canada Atlantic Railway contend

that, in view of their agreements with the Electric Railway Company, and of the fact that the necessity for the widening of bridge arises wholly from its use by the Electric Railway Company, the latter company should bear the remaining portion of the expense; and in this view, as between the three railway companies, I think the contention of the former two companies is correct."

*Board of  
Railway  
Commissioners*  
—  
No. 5  
—  
Opening of  
Trial.  
—Continued

I will have more to say about the effect of those agreements later on, but I am merely pointing out that when Mr. Fraser said yesterday  
10 that his company paid no proportion of the cost of the widening under the Order of 1907, that is a very ambiguous and deceptive statement. His company did not bear any proportion of the cost because it had an indemnifying agreement, which this Board at that time gave effect to, and placed over upon the shoulders of the Ottawa Electric Railway Company the proportion of cost which that company would otherwise have borne. Those are the only two points.

**THE ASSISTANT CHIEF:** That is to say that the Board made an Order which was shifted later by the Canada Atlantic on the Ottawa Electric.

20 **MR. PROCTOR:** The Board would never have made an Order that the Ottawa Electric Railway Company should bear 75 per cent of the cost of this widening, except by reason of the fact that it entered into two agreements, one with the Canada Atlantic Railway Company and the other with the Canadian Pacific Railway Company, whereby it agreed to indemnify those companies against all costs and charges of the future reconstruction or rebuilding of this bridge.

**THE ASSISTANT CHIEF:** You might give a reference to the fact that the reason for the widening was mainly due to the user by the Electric Company.

30 **MR. PROCTOR:** Yes, that fact was considered too of course I will now call Mr. MacCrostie and proceed with the evidence as to the widening of the street.

**MR. FRASER:** Mr. Proctor, if you will allow me to interrupt, I wonder if I can save you time by accepting this plan and saying that I have no doubt that in 1875 it was registered in the Registry Office; a plan of subdivision of this property, the south part of Bayswater, which showed a street called Cedar-Somerset Street, opened for some considerable distance on both sides of the right of way of the St. Lawrence and Ottawa.

40 **MR. PROCTOR:** Is that coupled with an admission that the Canada Atlantic Railway subsequently crossed a portion of this street?

**MR. FRASER:** I don't think there is any doubt about that.

**MR. PROCTOR:** Then I suppose that clears that matter up. That establishes our priority as to the Canada Atlantic.

Board of  
Railway  
Commissioners

No. 5

Opening of  
Trial.

—Continued.

**THE ASSISTANT CHIEF:** This plan shows the street up to either side of the right of way?

**MR. PROCTOR:** Yes. May I show it to you?

**THE ASSISTANT CHIEF:** Yes, if you will, please.

**MR. PROCTOR:** That plan subdivides the property on both sides of the railway. The subdivision crosses the right of way of the Ottawa and St. Lawrence. Going west on Cedar Street the right of way of the Canada Atlantic Railway Company is immediately to the east of the right of way of the Ottawa and St. Lawrence Railway Company, and is placed upon part of this subdivided property, and across Cedar or Somerset. The two are adjacent; the easterly boundary of the St. Lawrence and Ottawa is the westerly boundary at that point of the Canada Atlantic. 10

**THE ASSISTANT CHIEF:** This is the plan of October 28th, 1875. Somerset Street is shown on the plan, simply up to the railway line and not across.

**MR. PROCTOR:** Well, the dotted line there shows it across the Ottawa and St. Lawrence. We propose to show another plan. The St. Lawrence and Ottawa Railway Company had title by agreement of purchase. They had their location prior to the filing of the 1875 plan. The Ottawa and St. Lawrence was constructed some time prior to this. They were located there. They had not paid for that land and did not get their deed until 1884. 20

**THE ASSISTANT CHIEF:** Anyway they were there in fact.

**MR. PROCTOR:** Yes, they were there in fact. This, Mr. MacCrostie tells me, is your location plan, Mr. Flintoft.

No. 6

**Applicant's evidence. Norman B. MacCrostie examined.**

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
examined.

**NORMAN B. MacCROSTIE,** Called. Examined by **MR. PROCTOR.** 30

**Q.** Mr. MacCrostie, this is the location plan of the St. Lawrence and Ottawa Railway?

**A.** Yes.

**Q.** I suppose we could have copies of these plans made for the Board, of the parts that are material and necessary?

**A.** Yes, one of my assistants will make copies.

**MR. PROCTOR:** Perhaps then we had better file now these two plans with the understanding that they will be replaced by copies?

**THE ASSISTANT CHIEF:** This is the location plan of the St. Lawrence and Ottawa? 40

**MR. PROCTOR:** Yes. I will call that Number 2, because I put in first the Bayswater plan of 1875 in so far as it affects Somerset Street. We do not need to copy a great deal of the detail on these plans which has no application to the point in issue.

EXHIBIT NO. 1: Filed by  
Mr. Proctor  
8 Sept. 1927

Copy of part of Bayswater  
plan of 1875.

*Board of  
Railway  
Commissioners*

No. 6

EXHIBIT NO. 2: do.

Copy of part of location plan of  
St. Lawrence and Ottawa Rail-  
way at Somerset Street.

Applicant's  
evidence  
Norman B.  
MacCrostie  
examined.

Q. Now Mr. MacCrostie, if the members of the Board will look at this plan, what is this on the other side down here?

A. That is what I assume is Bayview Road. It looks like it.

10 Q. What is the breadth of this road as shown?

A. It is about the same width as the others, about 60 feet.

Q. Is there no scale to it?

A. Yes, there is a scale to the plan, 100 feet to the inch.

MR. FLINTOFT: As a matter of fact that was not a high-  
way; it was a road from the farm buildings over to Richmond Road.  
According to the correspondence at the time, the railway company  
agreed to put a bridge there. There is a cutting between the farm  
buildings and Richmond Road, and the railway company agreed to  
put a bridge over that cutting, to give egress from the farm buildings  
20 to the road.

MR. QUAIN: Is that in a formal agreement?

MR. FLINTOFT: No, that is in the correspondence at the  
time.

MR. PROCTOR: That is the location plan and that is what  
it shows.

MR. FLINTOFT: As a matter of fact we got a deed of the  
right of way direct. There was no public highway there.

MR. PROCTOR: That is a matter of argument.

MR. FLINTOFT: It is a matter of evidence.

30 MR. PROCTOR: It is an admission there on the plan I should  
think.

MR. FLINTOFT: No, it is not an admission. There is no  
public highway shown there at all, or provided for. You can see the  
highway does not reach anywhere.

MR. PROCTOR: The highway has a terminus. That is the  
plan of 1870 and that was filed with the Department of Railways  
and Canals. That is the location plan of the St. Lawrence and Ot-  
tawa Railway. The railway filed that plan.

40 COMMISSIONER OLIVER: Does the plan mean the ac-  
ceptance of the facts stated on the plan?

MR. PROCTOR: It would look like a very strong admission  
of a public right of user over the right of way, I would say.

THE DEPUTY CHIEF: Is that the Canada Atlantic?

MR. PROCTOR: No sir, that is the St. Lawrence and Ot-

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
examined.  
—Continued.

tawa. There is no question about the Canada Atlantic; our plan is plainly prior to that railway.

Q. I was going to ask Mr. MacCrostie what was the breadth of what was then Cedar Street, where these two rights of way cross?

A. It is one chain wide.

Q. That is the street there is 66 feet?

A. Yes.

Q. That is as surveyed on the plan of 1875 of course?

A. Yes.

COMMISSIONER OLIVER: Mr. Proctor, this plan shows 10 not only the road you speak about, but it also shows a connected crossing.

MR. PROCTOR: Yes, almost connected, if not connected, and marked "road".

COMMISSIONER OLIVER: What is the effect of that?

MR. PROCTOR: I am arguing, when it comes to that point, that that is a plain admission on the part of the Canadian Pacific Railway Company, that the public had a right at that point, by an established road, to cross their right of way.

COMMISSIONER OLIVER: At both places? There are 20 two crossings marked on the plan. Do you claim that both crossings are proper crossings?

MR. PROCTOR: I do not know whether the other is now a street.

Q. Is it or not, Mr. MacCrostie?

A. I could not say.

Q. Is there a street where this road is marked?

A. No, there is not.

Q. Then we say nothing as to this piece here at the present time, because that was a road which apparently ceased to exist since. 30

THE ASSISTANT CHIEF: How does this coincide with the present right of way?

MR. PROCTOR: How does this coincide with the width of Somerset Street on the 1875 plan?

A. I have never compared them, sir. This came into my possession this morning.

THE ASSISTANT CHIEF: The reason I am asking is this: my understanding is that there used to be a farm crossing somewhere there, but my impression is that that would be west of the bridge would it not? I do not remember whose property it was. I have not 40 seen it myself, but I was told there used to be a farm crossing there.

MR. PROCTOR: In the 1907 Judgment, the first placed there by the Ottawa and St. Lawrence was probably I think a farm bridge. That is the term they use.

THE ASSISTANT CHIEF: I remember hearing of it even further back than that, that there was some farm crossing.

**THE WITNESS:** There is something shown here which might be taken as a farm entrance, just to the northeast of that.

**MR. FLINTOFT:** I cannot hear you, Mr. MacCrostie.

**THE WITNESS:** There is another opening which might be taken for a farm crossing—there is nothing marked on it at all—on this same plan, which might be taken for the farm crossing referred to.

**MR. FLINTOFT:** My instructions and the correspondence indicate that there was a farm crossing there at the time the railway was constructed. The railway agreed to put three bridges over this  
 10 cut altogether, and one of them happened to be or was in line with Cedar Street as it was afterwards opened up, but the lane with which it was connected did not coincide with Cedar Street at all; it went in a different direction, and we have a deed of the right of way without any reservation for highway at all. There was no highway. That was all the Sparks estate there. It was a farm and there was no highway.

**MR. PROCTOR:** That is a matter of argument.

**MR. FLINTOFT:** It is not a matter of argument, it is a matter of fact. You are arguing it from some lines on the plans.

**MR. PROCTOR:** I am arguing it as a plain admission on the  
 20 plan.

**THE ASSISTANT CHIEF:** That is what he said in summary he is going to argue. Now he is stating his facts.

**MR. PROCTOR:** Yes. Now as to the other point, I simply say you could not get a deed from the Sparks Estate or from anyone else of what was public property, if in fact the road existed.

**Q.** Then I think you found the location plan of the St. Lawrence and Ottawa Railway Mr. MacCrostie?

**A.** Yes.

**Q.** When did the St. Lawrence and Ottawa Railway acquire  
 30 title, do you know the number and date of that deed?

**A.** The 1st June, 1883.

**Q.** On that date a deed registered as Number 9452—is this correct, Mr. MacCrostie—was given by Esther Slater to the St. Lawrence and Ottawa Railway Company of the property within the limits of their right of way.

**A.** Yes a description by metes and bounds.

**Q.** Is the description based upon Plan 58?

**A.** It follows the outline of the right of way as shown on  
 plan 58.

**THE DEPUTY CHIEF:** Is that the plan Number 2 of  
 40 1875?

**A.** The plan of 1875.

**Q.** The plan filed as Exhibit Number 1?

*Board of  
 Railway  
 Commissioners*

No. 6

Applicant's  
 evidence

Norman B.  
 MacCrostie  
 Examination  
 —Continued.

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence

Norman B.  
MacCrostie  
Examination  
—Continued.

A. The description in Deed Number 9452 June 1st, 1883, coincides with the outline of the St. Lawrence and Ottawa shown on plan Number 58 registered in 1875.

MR. PROCTOR: Now when did the Canada Atlantic acquire title to their right of way?

A. January 2nd, 1902, deed of release Number 69836. J. R. Booth assigned to the Canada Atlantic Railway his interest in the right of way of the Ottawa and Parry Sound Railway as constructed by him.

Q. And the date of the deed to Booth is what? 10

A. It is in various parcels.

THE DEPUTY CHIEF: We are not interested in any other section than the one here.

A. Well, I will give you the adjacent one: August 9th, 1894; deed number 42631.

THE ASSISTANT CHIEF: Does that involve the right of way at all?

A. No, it does not. The Slater Estate conveyed to J. R. Booth, among other properties, part of Lot J., lying immediately adjacent to Somerset Street. There are a lot of other properties involved in the transaction but I am giving you the one immediately adjacent to Somerset Street. 20

THE DEPUTY CHIEF: Was at that time the Ottawa and Parry Sound built?

A. In 1883.

Q. No, in 1902.

A. Yes, in 1902.

Q. When was it built? I mean in the immediate vicinity of Somerset Street?

A. All I can tell you regarding that sir, is that on June 13th, 1883, plans were filed for expropriation purposes and approved on July 28th, 1883. Their expropriation plans were filed and approved on those dates. 30

Q. Was there any indication at that time of a street?

A. Oh yes.

Q. What have you to establish that?

A. The plan of 1875 was on at that time.

Q. Would the plan of 1875 refer to the Ottawa and Parry Sound Railway?

A. No sir. The Ottawa and Parry Sound Railway did not come on to the ground there until 1883. That is when their expropriation plans were filed.

MR. PROCTOR: You have searched the records of this Board have you, as to any Order for crossing by the Canada Atlantic of Somerset Street?

A. Yes, I went over and I was unable to find any. The members of the Department were unable to give me any information regarding it.

MR. FLINTOFT: May I see the plan of 1875, sir.

THE ASSISTANT CHIEF: Any questions?

MR. QUAIN: Yes, Mr. Chairman.

BY MR. QUAIN:

Q. Mr. MacCrostie in your search of the Registry Office, you did not find any bylaw of the City of Ottawa filed accepting the  
10 dedication of this street made by the plan of 1875 of Cedar Street?

A. No, that was outside of the City of Ottawa at that time.

Q. Did you search the records of any other municipality to see if there were any other expropriation bylaws or any accepting by-law-

A. None beyond the Registry Office.

Q. You understand that such a thing as an acceptance of a dedication indicated by a plan, you understand that something of that sort must be done, you had that in mind?

A. Well, either that or performing work on the street.

Q. You did not find anything of the sort?  
20

A. No, I found no record of any bylaws being registered against it.

Q. Did you search the Registry Office to see if any plans were filed after 1875 in which Cedar Street was not included?

A. No, I know of no plans covering that property.

Q. You did not look to see?

A. I don't know of any.

Q. The question was whether you looked to see, and you say No, I suppose?  
30

A. Yes, I looked to see, if there were any plans in the vicinity of Somerset Street which do not show Somerset Street but show that area, that is my answer.

Q. And you did not find any not showing Cedar Street?

A. No.

Q. You will notice that on that plan of 1875 there are quite a few streets which never actually became streets and used by the public?

A. A number that had not been used by the public.

Q. Evidently the plan's dedication was not accepted by the City, that would indicate that?  
40

A. Well I would not say that.

Q. I suppose it is pretty clear that that plan of 1875 was a dedication by the township and not the city, of Cedar Street?

A. It was outside of the city limits at that time.

Q. When you say no Order was found for the Parry Sound Railway, I do not suppose you intend to mean that no Order may

*Board of  
Railway  
Commissioners*

No. 6

Applicant's  
evidence

Norman B.  
MacCrostie  
Examination  
—Continued.

No. 6

Applicant's  
evidence

Norman B.  
MacCrostie  
Cross-  
examination



Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
Cross-examina-  
tion.  
—Continued.

have been made? The reason I suggest that is that in 1896 an Order was made by the Railway Committee of the Privy Council which I have not been able to find any trace of. That was an Order authorizing the Ottawa Electric Railway to cross the right of way of the two railways which were then there.

MR. FLINTOFT: That was about the time of that agreement?

MR. QUAIN: Yes. I cannot find any record of that Order although it might be very important. It would indicate what the parties thought at that time their rights were. 10

THE DEPUTY CHIEF: Did you inquire from the Registrar of the Board?

MR. QUAIN: Yes. He could not find it. It is one of the Privy Council records.

THE DEPUTY CHIEF: We have them.

THE REGISTRAR: Not all of them.

THE DEPUTY CHIEF: You could not find this one?

THE REGISTRAR: No.

COMMISSIONER OLIVER: On what authority would such an event take place? 20

MR. QUAIN: I think that was found in the reference that I found in the evidence of 1907. I will see if I have that reference. The only place I could have found it would have been in that evidence of 1907, but I cannot find the reference that I got it from. We must have got that from some authority.

COMMISSIONER OLIVER: It is one thing to say there must have been and another to say there was, an Order issued.

MR. QUAIN: It is not because there must have been one that I say there was one. I cannot remember where I got it, but I had in my notes that on a certain date an Order issued. It is among 30 the notes I took from the evidence.

COMMISSIONER OLIVER: You will naturally agree that your mere statement that there was such an Order is not acceptable as evidence in this case.

MR. QUAIN: I do not know that it helps me or injures me me whether or not there was an Order.

#### RE-EXAMINED BY MR. PROCTOR:

Q. Have lots been sold off this plan of 1875, Mr. MacCrostie?

A. Yes. I made a search and the first record which I find of any transfers under plan '75 was on the 16th December, 1875, Deed 40 Number 4181. It was a partition deed.

Q. Never mind the details of it. The only point is that under our Surveys Act, when a plan is registered and a sale made in respect of it, all streets shown on the plan by that Act become common and public highways.

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
Re-examination

**THE DEPUTY CHIEF:** In virtue of what legislation?

**MR. PROCTOR:** The Surveys Act of Ontario. It is not necessary, as my friend suggested, that the corporation should assume the street or do work upon it.

**THE DEPUTY CHIEF:** Have you the section?

**MR. PROCTOR:** Yes, I will give you that section.

**THE ASSISTANT CHIEF:** Is that all from Mr. MacCrostie? Any further questions? The next witness, then.

**MR. PROCTOR:** I would like to introduce at this stage a  
10 little of the agreement evidence. I would like to follow it chronologically. Everybody agrees that there were two bridges, of a kind; one constructed by the Ottawa and St. Lawrence, and one by the Canada Atlantic, on the line of what is now Cedar Street or Somerset Street.

**MR. FLINTOFT:** Mr. Proctor, it is very difficult to hear you. I did not get that last remark.

**MR. PROCTOR:** I said there were two bridges, one constructed by your company about the time you established your right of way; and another constructed by the Canada Atlantic about the  
20 time they established their right of way, and on the line of what is now Somerset Street.

**MR. FLINTOFT:** We do not admit that.

**MR. PROCTOR:** There were bridges there anyway.

**MR. FLINTOFT:** There were bridges, but not on the line of Somerset Street.

**MR. PROCTOR:** Then in 1895 the City of Ottawa and the Ottawa Electric Railway Company entered into a written agreement whereby the Ottawa Electric Railway Company was granted the right to make certain extensions, and the company agreed to make those  
30 extensions, and one of the extensions was along Cedar Street to the westerly city limit; and then the company obligated themselves to carry that extension along what is now Wellington Street to the Experimental Farm. That agreement is dated 8th April, 1895. I am not sure whether copies were filed in the earlier applications but I will file copies now as Exhibit Number 3. I have only two spare copies.

**EXHIBIT NO. 3:** Filed by  
Mr. Proctor } Copy of agreement date 8th  
8 Sept., 1927 } April, 1895.

40 I gave the general purport of the agreement, and I want to refer to one or two clauses of it. In section 2 the agreement says:—

“The company be granted permission to lay tracks on the Richmond Road from Broad Street to Preston and on Preston from the Richmond Road to Cedar Street, and on Cedar Street from Preston Street westerly to the city limits.”

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
re-examination.  
—Continued.

That is on page 2 of the copy.

**THE DEPUTY CHIEF:** How does that affect Somerset Street?

**MR. PROCTOR:** That is Somerset Street. Cedar Street is a portion of Somerset Street.

**MR. QUAIN:** Where does it say that we were granted permission, what clause is that?

**MR. PROCTOR:** My copy is not like yours. It is numbered 1. That the company be granted permission. It sets out a resolution in the agreement. Then on page 3 of the copy that is before the Court:— 10

“Now this agreement witnesseth that in consideration of the covenant and agreement on the part of the said company in these presents contained as well as the covenants and agreements mentioned in the said original agreement, the consent permission and authority of the corporation is hereby given and granted to the company to construct, complete, maintain and operate during the balance of the term of thirty years mentioned in the said original agreement, a double and single iron street railway.”

and so on, going down a space, 20

“upon and along Cedar Street from Preston Street westerly to the city limits.”

And then by a subsequent clause the company agreed to construct equip and operate that railway to the Experimental Farm.

Now a clause that is quite material is contained at the top of page 7 of the copies before the Board.

“Provided always and it is hereby expressly understood and agreed that nothing contained herein or in the said original agreement or in the bylaw of this Council ratifying the said original agreement, or in the bylaw ratifying this agreement, shall be construed to impose any liability on the corporation for the construction repair or maintenance of the bridges on Cedar Street crossing the Canada Atlantic Railway lands or the Canadian Pacific Railway lands, or any bridge or bridges constructed in the place of them; or shall be construed as an assuming by the corporation of the said bridges or any or either of them.” 30

That was the situation, sir, between the company and the city. Then the company made agreements with the two railway companies. When I say “The Company” I mean the Ottawa Electric Railway Company. They are of record with the Board in the 1907 application, but I have copies of one of them here. It is a short agreement and if I may I will read it. It is an agreement between the Ottawa Electric Railway Company and the Canada Atlantic Railway Company, dated the 21st of August, 1896. I do not know whether this needs to be made an Exhibit, but if so I will file it. 40

EXHIBIT NO. 4: Filed by } Agreement dated 21st Aug.  
 Mr. Proctor } 1896.  
 8 Sept., 1927.

Board of  
 Railway  
 Commissioners  
 No. 6

Reading from Exhibit 4, then:—

“Memorandum of an agreement made and entered into induplicate this 21st day of August, 1896, between the Ottawa Electric Railway Company, hereinafter called “The Electric Railway Company” and the Canada Atlantic Railway Company hereinafter called “The Railway Company”.

Applicant's  
 evidence  
 Norman B.  
 MacCrostie  
 re-examination.  
 —Continued.

10 “Whereas the public highway in the City of Ottawa, formerly known as Cedar Street, and now known as Somerset Street, is and has been carried over the Canada Atlantic Railway Company's line by means of an overhead bridge:”

I am going to dwell on that when I come to argue it. It is a plain admission of the street.

“And whereas the Electric Company have been authorized by the Corporation of the City of Ottawa to construct a line of street railway upon Somerset or Cedar Street to the westerly limit of the city;

20 And whereas the Electric Company in consideration of the premises and of the money payment hereinafter set forth, have agreed with the railway company to assume and take over the liability, if any, of the railway company for the maintenance and repair of the said bridge and the approaches thereto, and to indemnify the said railway company against all liability therefor;

30 Now therefore this Indenture witnesseth that, in consideration of the premises and of the sum of \$500 now paid by the railway company to the Electric Company, the receipt whereof is hereby acknowledged, the parties for themselves, their successors and assigns, mutually covenant, promising and agree to and with each other in manner and form following:

1. The Electric Company shall and will, from time to time and at all times hereafter, indemnify and save harmless the railway company from and against all liability to maintain repair alter or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind whatsoever, or for any penalty imposed upon the said railway company, by reason of any defect or default in the said bridge or crossing or the approaches thereto.

40 2. The Electric Company further agree that, if it should at any time become necessary to reconstruct the present bridge, or to alter same, plans of such alteration, or of the new bridge to be constructed, shall first be submitted to and approved of by the railway company.

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
re-examination.  
—Continued.

3. The railway company hereby assign and set over to the Electric Company all the rights of the railway company in or connected with the said bridge and the approaches thereto.

Provided, that nothing herein contained shall be construed as divesting the railway company of the fee simple in the railway right of way under the said bridges and approaches.

Provided further, that in the event of the railway company's requiring at any time to widen the span of the said bridge they shall be entitled to do so at their own proper costs, charges and expenses.

10

In witness whereof the said parties hereto" and so on. There is a corresponding agreement with the Canadian Pacific Railway Company which is on the file of the Board. Perhaps Mr. Richardson will assist me? I have not got a copy of it, but I think it is in exactly the same terminology except that the consideration is different.

MR. FLINTOFT: The terms of the agreement are the same.

MR. PROCTOR: Yes, the terms of the agreement are the same. Those two agreements and the agreement with the City having been executed, the Ottawa Electric Railway Company I think without an Order—I have no exact information—Mr. Quain thinks differently—but I think then constructed their tracks across the right of way, across both railways, at their own cost, providing their own bridge, and taking the bridges that they had secured from the two railways and I suppose reconstructing them or doing what they thought proper, but at all events they went across and I am not sure that there was any Order; I have never seen any; but I do not think this Board or any prior Board would ask for an Order in respect to that crossing. Then that bridge was a narrow bridge; I think it was 23 feet in breadth.

20

THE ASSISTANT CHIEF: 24 feet.

30

MR. PROCTOR: 24 ft. It was much too narrow for vehicular traffic, and it became totally unsuited as the City developed, so in 1906 or 1907 the City applied to the Board for an Order requiring the widening of the bridge, and an Order was made which is Order Number 3684 dated the 13th day of March, 1907. The Order proceeds upon a Judgment of the Board written by the late Mr. Justice Killam. Probably the Board have copies of it.

THE DEPUTY CHIEF: Have you the reference to the Judgments and Orders, where the judgment of Chief Commissioner Killam will be found?

40

MR. PROCTOR: I think it is on your own file.

THE DEPUTY CHIEF: No, it is reported I am sure.

MR. FLINTOFT: It is reported in MacMurchy.

THE CHIEF COMMISSIONER: I shall get from the file.

MR. PROCTOR: I have copies of the judgment available here.

THE DEPUTY CHIEF: If you have it, that will be so much the better.

MR. PROCTOR: I will not trespass on your time by reading the judgment in full. It recites the agreement which the Electric Company made with the City of Ottawa dated the 8th April, 1895.

MR. FLINTOFT: The Order Number is 3684.

MR. PROCTOR: Yes. I have given the Board the Order  
10 number, 3684.

The judgment recites the two agreements made with the two steam railway companies, and the substantial terms of the agreement. Then it goes on to say at page 3 of my copy:—

20 “The Ottawa Electric Railway Company, after making the agreements mentioned with the City and the other railway companies, removed the former bridge or bridges, constructed the present one, and carried two sets of railway tracks over the bridge into the village of Hintonburg, and on to the Experimental Farm. The City claims that the bridge is so narrow, and the traffic on the street railway line has so increased, that the bridge is now unsafe for ordinary street traffic; and upon the evidence adduced and the report of the Chief Engineer of the Board, and after personal examination, I am of the opinion that this claim of the City is correct, and that, in the public interest, the bridge should be widened by 16 feet, as requested.

30 The only substantial question for consideration is as to the body which shall bear the cost of the alteration. The City through its Counsel, has offered to bear one-fourth of the expense. The Canadian Pacific Railway Company and the Canada Atlantic Railway contend that, in view of their agreements with the Electric Railway Company, and of the fact that the necessity for the widening of the bridge arises wholly from its use by the Electric Railway Company, the latter company should bear the remaining portion of the expense; and in this view, as between the three railway companies, I think the contention of the former two companies is correct.”

40 Then an Order was made for the widening of the bridge by 16 feet, and that the City should pay the Ottawa Electric Railway Company one-fourth of the expense involved in the addition, and the Ottawa Electric Railway Company should pay the other three-fourths of the cost of the addition.

That, Mr. Chairman, is the bridge that is there today. At this time I think I should introduce some evidence as to the condition and want of repair and need for widening. I will call Mr. Maccallum.

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
re-examination.  
—Continued.

Board of  
Railway  
Commissioners

No. 6

Applicant's  
evidence  
Norman B.  
MacCrostie  
re-examination  
—Continued.

**THE ASSISTANT CHIEF:** I was suggesting at the outset that possibly with the exception of the Ottawa Electric Railway Company, that there was no dispute that the bridge was in poor condition. Perhaps I am wrong.

**MR. PROCTOR:** Counsel will probably contend otherwise, but I must read a little later on the evidence of the witness produced by the Ottawa Electric Railway Company, Mr. Chase Thompson, who makes no bones about the matter, that the bridge is not in good condition at all. But that separation of the bridges, Mr. Chairman, it seems to me is a little confusing. There is only one bridge there. 10

**THE ASSISTANT CHIEF:** I only made the suggestion because I thought there was substantial agreement that the bridge was in bad shape. I do not want to prejudice anyone.

**MR. FLINTOFT:** Perhaps we can shorten matters. We will admit as far as we are concerned, that the bridge needs renewal.

**MR. FRASER:** I will admit that.

**THE ASSISTANT CHIEF:** What about the Ottawa Electric Railway Company?

**MR. QUAIN:** We admit that the south part of the bridge, the part built in 1907, the south bridge, the vehicular bridge it might be called, is in bad repair and needs something to be done, we do not know what; probably renewal. But we say that the north bridge, the bridge built in 1896, is in perfect repair as far as any question of renewal is concerned; it is quite satisfactory for our cars to run over and with small minor repairs from time to time would last us for an indefinite period and we are quite content to have it there, and notwithstanding what my learned friend says, we think he must have misapprehended the evidence of our witness Mr. Thompson, who does not say our part of the bridge is not in good repair—if it were not, we would not be running street cars over it. 30

**MR. PROCTOR:** There is an issue there as to whether there is one bridge or two. We say there is only one bridge which was widened in 1907. We say we cannot have a piece of the old structure lying there and a half piece alongside of it.

**THE ASSISTANT CHIEF:** Proceed then with your presentation.

No. 7

Applicant's evidence. Andrew F. MacCallum, Examination.

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination

**ANDREW MacCALLUM,** called. Examined by **MR. PROCTOR.** 40

**Q.** Mr. MacCallum, you are City Engineer of the City of Ottawa?

**A.** Yes.

**Q.** Have you a first hand knowledge of this Somerset Street bridge?

**A.** Yes.

Q. Will you explain to the Board briefly the nature of the bridge that is there now, how it was constructed, what it is made of, and the condition that it is in now?

A. Outside of the approaches and between the bridges properly speaking there is first an opening over what is known as Champagne Street.

THE ASSISTANT CHIEF: Is that east or west?

A. That is to the east. The first opening going east; on the east side; a very narrow opening, about 11 feet wide. It is in bad  
10 condition. In fact the intention is to widen it so as to carry the traffic through. Then the next openings are across the two railways, one of which is about twice as wide as the other, and the abutments in each case are in bad condition. In fact there is one place where we will have to, this winter, put in temporary timbering to obviate any falling away of the abutments during the winter.

THE ASSISTANT CHIEF: Between Champagne Street and the first railway opening, is there a fill there?

A. It is a fill there, yes.

Q. Is that in good shape?

A. Yes, the fill is all in good shape.  
20

Q. So the trouble simply is as to the opening at Champagne Street and the openings over the railways.

A. Yes. And of course the width of the bridge.

MR. PROCTOR: We will come to that in a moment. The bridge after all—of actual bridging there is not a great deal?

A. No.

Q. There are three openings?

A. There are three openings, and the bridging in connection with the whole work is comparatively short, it is for a small distance.  
30

THE ASSISTANT CHIEF: Then subject to whatever widening might be necessary, the fill is all right?

A. The fill is all right, outside of the surface of course.

Q. And subject to whatever widening is required?

A. Yes.

MR. PROCTOR: How is that fill held in position?

A. At present by a dry stone wall.

Q. On both sides or on one side?

A. On one side.

Q. Which side is that?

A. The south side.  
40

Q. How is it held in position on the north side?

A. By the ordinary slope of the earth.

Q. The earth fill is just sloped off?

A. Yes.



Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination  
—Continued.

Q. Where Champagne Avenue crosses, and where the rights of way of the two railways are carried under, the bridge is carried over by steel members, is it?

A. Yes, by steel. They have replaced some recently, it is steel beams, more or less old beams; steel beams, more or less second hand when they were put in.

Q. Now or when they were put in?

A. When they were put in.

Q. Mr. Quain suggested that as to the part of the bridge over which the Electric Railway operates, that that is in sufficiently good condition to last indefinitely? 10

A. Oh no, nothing of the sort.

Q. What is the condition?

A. It is a condition such that constant repairs have to be made on that section to keep it up.

THE ASSISTANT CHIEF: Of what nature?

A. The strengthening of it. When that bridge was built there were much lighter cars running over than there are today. They have done some replacing of steel, but not sufficient in our opinion.

Q. Did they put in new steel beams to carry the road? 20

A. They put in some new steel beams but we do not think they are sufficient; with the abutments to carry them, that they are not sufficiently strong.

MR. PROCTOR: What do you say as to the abutments?

A. The abutments are past their usefulness as far as bridgnig is concerned.

MR. PROCTOR: Mr. Chairman, in July we introduced certain photographs showing the abutments. Will the Board consider those photographs filed on this hearing? May they be considered as now before the Board? 30

THE ASSISTANT CHIEF: Yes.

MR. PROCTOR: Mr. MacCallum, the photographs illustrate the condition of the abutments, but will you state what you know about their condition?

A. I am hazy about it at present, but I went over them some three months ago at the time those photographs were taken. The only point that came up in the discussion before this Board afterwards was a doubt whether those cracks in the abutments went through the abutments or went simply a certain depth. I expressed the opinion at that time, and still hold it, that those cracks went absolutely through the abutments, judging by the shape and continuity of them where they came through on both sides. 40

Q. Well, Mr. MacCallum, what would be the result if the Ottawa Electric Railway Company were to continue to operate on the

portion of the bridge they are on and the City were to construct a newer and wider bridge adjacent to it, how would it work out as engineering?

*Board of  
Railway  
Commissioners*

*No. 7*

*Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination  
—Continued.*

A. It would not work out. You could not widen the bridge, except in only one way, that is to the south, where really the highway traffic is at present. If you widened it to the north or wherever you intended to widen it, and it should be widened so as to get the tracks in the middle of the highway, the work must be gone over from one end to the other; you must put a retaining wall right along to carry  
10 the width and get the tracks in the centre. We will have to put new beams in and new steelwork, or reinforcing if they ask for it, that is really immaterial so far as we are concerned, although we are of opinion that steel covered with concrete is quite sufficient to obviate the effect of gases from the engines operating underneath.

THE ASSISTANT CHIEF: Please state that again, I did not hear you.

A. The walls will have to be carried through. In so far as the decks of the bridges under which the railway engines operate, these can be either steel or reinforced concrete. So far as the City is concerned  
20 that is immaterial to us, although we think that the steel will be much cheaper to construct, on account of the additional false work required.

THE ASSISTANT CHIEF: It is a question of maintenance is it not?

A. It would save on the maintenance, but we are not holding the point one way or the other, we would just as soon have the reinforced concrete deck or underdeck as the steel.

Q. What difference would it make in the cost of construction, approximately, as between reinforced concrete and steel?

A. I have not figured that out, but in putting in the reinforced  
30 concrete we would have to support it on the tracks very much, or bridge it from below, which would increase the cost of construction. They could put in steel beams of course, and case them with two inches of concrete, which would be quite sufficient.

Q. Have you formed any impression as to what the saving would be?

A. The saving in maintenance would be very small. Nearly all the damage done by the gases of smoke from engines, which in that place would be comparatively limited, is on thin steel, that is on sheet steel or on copper; but on steel beams at a place like that, it would  
40 be not very extreme, providing they kept the steel properly painted.

MR. PROCTOR: It is not in that sense a steel structure. What is the total length of the bridge?

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination  
—Continued.

A. The total length of the bridge—there are three spans, the one over the C.P.R. track is 32 feet, and the C.N.R. track 61 ft. 10 inches, and Champagne Avenue 22 ft.

Q. And the rest of the proposed structure is earth fill?

A. Just an earth fill; strictly speaking it is not a bridge, the rest of it.

COMMISSIONER OLIVER: As between concrete and steel, could you not get a lower level of the upper surface of the bridge with steel than with concrete?

A. Yes. 10

Q. You could lower the elevation by using steel?

A. Yes, I forgot to mention that.

Q. To what extent?

A. It would probably mean about 1½ ft. difference.

MR. PROCTOR: What about the carrying capacity of the present bridge?

A. It is not sufficient. Practically you cannot run over the street car tracks. You are forced to cross the tracks and run on the south side and it gives you a channel down the south side for traffic of about really one car each way. I mean by that a line of traffic of single cars each way. Now the crest of the bridge has rather a sharp rise and if you are coming up in a motor car from one side you are liable to head right into a motor car coming the other way. 20

THE DEPUTY CHIEF: What difference would it make in the grade?

A. We propose to flatten the grade at the top about 3½ ft. and put a vertical curve in so that you can see vehicles coming the other way, for sufficient distance to be able to clear them.

MR. PROCTOR: What is the effective roadway width of the present bridge for vehicles including that taken up by the tracks of 30 the street railway?

A. What do you mean?

Q. How much breadth have you? You say you have room for traffic in each direction.

A. Room for one line of cars each way.

Q. You are talking of motor cars?

A. Well, one line of vehicles.

Q. The present deck accommodates one line of vehicles each way when the street cars are on the tracks?

A. Yes. And you have that condition existing where the car 40 tracks are on one side, as at present, that the one line of vehicles is running contrary to traffic.

Q. I asked you what is the breadth of the portion of the bridge for vehicles at the present time?

A. 18 ft.

Q. There is 18 ft. exclusive of the track allowance?

A. Yes, outside of the track allowance.

Q. And that is another 16 ft.?

A. That will be another 18 ft. 36 ft. in all.

Q. What do you propose to substitute,—if the Board agrees,—for the existing bridge?

10 A. I have a plan showing the bridge proposed. We propose submitting a different condition altogether; that is having a highway 42 ft. in width between the kerbs, with an 8 ft. sidewalk on either side.

THE ASSISTANT CHIEF: Is that the plan dated City Hall March 22nd, 1927?

A. Yes, March 22nd, 1927. There is the section up in the right hand corner.

COMMISSIONER OLIVER: What is the width of the main roadway?

A. 42 ft.

20 Q. And with a sidewalk on each side?

A. Yes, two 8 ft. sidewalks, one on either side.

THE DEPUTY CHIEF: 58 ft. in all?

A. 58 ft. in all.

Q. And the 42 ft. would provide an allowance for the street cars?

A. Yes sir. We would have the tracks in the middle of a 48 ft. bridge, with two sidewalks, practically the same as at Bank Street.

MR. PROCTOR: How is Somerset Street as a traffic bearing street?

30 A. It carries traffic practically the same as Somerset Street near Bank Street. In other words it carries the traffic of a street car street down through the centre of the city. It is the vehicle traffic of course, but the conditions existing or that will exist—it will need a 42 ft. roadway to carry the traffic and carry it safely.

Q. How do you arrive at 42 feet, is that a certain standard?

A. No, that allows two cars to pass.

Q. That is four streams of traffic?

A. Yes.

40 COMMISSIONER OLIVER: What is the width of Bank Street between the sidewalks at the junction of Somerset Street?

A. It is 40 ft. into the City. At Somerset Street it is 44 ft. between the sidewalks.

MR. PROCTOR: There is a little detail here, Mr. MacCallum, showing an imaginary cross section. This will be filed. The plan

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence

Andrew F.  
MacCallum

Examination  
—Continued.

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination  
—Continued.

is filed. It was part of the records accompanying the application. This will be Exhibit 5.

EXHIBIT NO. 5: Filed by  
Mr. Proctor } Sketch.  
8 Sept. 1927. }

This sketch shows an imaginary cross section of your highway if the bridge is widened as proposed.

A. Yes sir, it shows a cross section of a 58 ft. roadway with a truck, two street cars, and a bus on it. Those are the largest vehicles we would have crossing there outside of the street cars. It shows also the clearance between each vehicle and the street cars. 10

Q. That is with two street cars passing two vehicles of large size the space is practically taken up?

A. Yes, it leaves a clearance of two feet between each one.

Q. Your plan has been criticized as being insufficient in detail to enable the engineers of the various companies to determine just what you propose constructing. Is there any detail lacking?

A. I don't see where it is lacking.

Q. Could another engineer take that and read it easily?

A. Yes. You will see in the bridges themselves there is practically nothing difficult. The one at Champagne St. and the crossing of the C.N.R. or the C.P.R. are straight girders, deck girders of the span that is given. That is a standard depth of steel for that width for highways. You could get that pretty nearly out of a catalogue. There is no calculation about that. On the C.N.R. tracks there are two posts or two sections. That is shown in the cross section up in the right hand corner. From that the quantity of steel can be taken off and calculated within a few dollars. 20

THE ASSISTANT CHIEF: The plan proposes lowering the tracks of the C.N.R. 30

A. Yes.

Q. Are those industrial tracks?

A. No.

Q. I mean limited to an individual industry or are they general?

A. They are really spur tracks. They are not passenger tracks or anything like that.

Q. One serves the McCall Company?

A. Yes. And a coal company I think or somethnig like that. One of those tracks goes around up into the Booth's.

Q. One, you propose lowering four feet? 40

A. Yes, both the tracks are to be lowered; one a very small amount.

Q. What effect would that have on the grades?

A. The grades are a little variable, but through underneath the bridge, for a short distance it would slightly increase the grade.

Q. Here are a couple of tracks serving some industry. Now if the tracks are lowered as suggested and exaggerate the grade, would that interfere with the service of the industry?

A. No not at all. They never send enough cars into a siding like that that any engine could not shove, so far as these grades are concerned.

Q. Do you mean a rising grade to the industry?

10 A. No, it is a down grade towards the river, to the north. The grades are really down from the south to the north. You get down practically to the river level when they get to about the C.P.R. round-house, about 5 ft. above the water level.

Q. What grades have you now?

THE DEPUTY CHIEF: Have the railways considered that change in the grade and is it agreeable to the railways?

MR. FRASER: The situation is this? We can serve the industries with the change in grade, but a good deal depends on how the change is made. If you go far enough back, we can keep almost  
20 our same grade. If it is done within a short distance, it would about double our grade, which would of course increase the cost. It is a question of cost altogether, but it does not prohibit our giving the service to the industry. Unless considerable money is spent in improving the grade, it would increase our cost of service. One of the tracks serves the Edwards Company and that is a pretty busy track; that is the lower track. The other one serves McCall.

A. The cars they spot at these places amount only to two or three at a time, so that any change in the grade would not mean much practically so far as traffic is concerned. As a matter of fact  
30 I have just got a memorandum showing that the present grade varies from half a per cent to  $1\frac{1}{2}$  per cent, and that the change will make it  $1\frac{1}{4}$  constant.

THE ASSISTANT CHIEF: Mr. Fraser, in the answer of your company, paragraph 4 it speaks about the questions raised and then goes on to say:—

40 “The plan and profile submitted by the City on this application has not sufficient detail to show what type of bridge the City desires to have constructed; but from the profile it would appear that the City contemplates lowering the C.N.R. tracks approximately 2 ft. and 4 ft. respectively, and to reduce the overhead clearance of 20 ft. although there is nothing on the plan to show what side clearances are to be provided.

There does not appear to be any advantage in altering the grade of the roadway, as shown on the said profile submitted

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination  
—Continued.

by the City, and it is considered that a proper reduction in the vertical curve between the original approach grades would give a better view of traffic approaching in either direction on the bridge, and with this arrangement it would only be necessary to lower 2½ ft. one of the Canadian National Railway sidings serving the Argue & McCall Coal Company's plant."

MR. FRASER: Mr. Walker will explain that.

THE ASSISTANT CHIEF: Was the former answer right wrong?

MR. FRASER: I think it is right, Mr. Chairman. 10

MR. WALKER: In our answer we claimed that we did not think it necessary to change the whole approach from the south side; all we desired was that the City should maintain the approach on the south side as it is, and then that portion of the curve in the centre could be flattened. Then you would not need to go as far down as the track to the McCall Company.

THE ASSISTANT CHIEF: You say "There does not appear to be any advantage in altering the grade of the roadway." "With this arrangement it would only be necessary to lower 2½ ft. one of the Canadian National Railway sidings." In other words, it 20 would not be necessary to lower the other siding.

MR. WALKER: Apparently not.

THE ASSISTANT CHIEF: If it says it is necessary only to lower one siding, then the other siding would not be affected.

MR. FRASER: As I understand it, the higher track is the one serving Argue & McCall; the lower one is the one that serves Edwards. And we propose that instead of going into the grading proposed by the City, that we would stay on a somewhat higher grade, in which case it would only be necessary to lower the track serving Argue & McCall 2½ ft. instead of 4 ft. 30

THE DEPUTY CHIEF: Those details could be worked out among the engineers?

MR. FRASER: Yes, that was my opinion.

MR. PROCTOR: There is an important point that is not a detail there, as I understand it, Mr. Macallum. The proposal of the company as to not having the tracks depressed as much as the suggestion made on the plan, has a bearing on the crown of the bridge has it not?

A. Yes.

Q. What bearing has it? 40

A. They would not get the headroom. Both these tracks have to be lowered to get the headroom under the bridge.

Q. Both of the tracks have to be lowered to get the necessary headroom under the bridge?

A. Yes, to get a headroom of 20 ft. 6 inches.

**THE ASSISTANT CHIEF:** A headroom of what?

A. A headroom over the C.N.R. of 20 ft. 6 inches. It would mean changing the grade half of one per cent. In other words, the existing grade is 4.91, and the new grade or the grade suggested is 4.41, or a difference of half of one per cent.

**THE ASSISTANT CHIEF:** What is the importance of that difference of .4? Bringing down the crest or increasing the traction efficiency?

10 A. Yes, you could get about 20 per cent increase in your traction by cutting down the grade that half of one per cent.

**MR. PROCTOR:** Then the tracks would have to be depressed to carry out the plan whereby you propose to reduce the grade of the deck of the bridge?

**COMMISSIONER OLIVER:** What is the difference between the span that you now have at Champagne Street and the span that you propose to give it?

A. The old span at Champagne Street was 11 feet and we propose to make it 22 feet.

20 Q. Will there be any difference in the spans over the railways?

A. The present width I understand is 11 feet or call it 12 feet. A present width of 12 feet and we propose to make it 22 feet.

**MR. PROCTOR:** Mr. Commissioner Oliver asks you about the railway and not particularly about Champagne Avenue. Is there any proposal to alter the breadth of the right of way of either railway?

A. No.

Q. They are to remain as they are?

A. They are to remain as they are.

30 Q. Now this bridge is to be widened on the north side if it is erected? I mean the proposal is to widen the bridge on the north side?

A. Yes, to widen on the north side of the bridge.

**THE DEPUTY CHIEF:** By how many feet?

A. By the difference practically between 36 and 58 feet. 22 feet.

**MR. PROCTOR:** And that has an effect upon the position of the tracks of the Ottawa Electric Railway Company?

A. Yes.

**THE ASSISTANT CHIEF:** The old bridge is 24 feet and the proposed bridge is what?

40 **MR. PROCTOR:** Do you mean the bridge that is there now?

**THE ASSISTANT CHIEF:** Yes.

**MR. PROCTOR:** Mr. Askwith says, 36 feet exclusive of the overhang of the sidewalk.

**THE ASSISTANT CHIEF:** Then the roadway is 36 feet plus the sidewalk?

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence

Andrew F.  
MacCallum  
Examination  
—Continued



Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination.  
—Continued.

MR. PROCTOR: Yes.

Q. Where is the widening then?

A. On the north side.

Q. What effect has that on the Electric Railway tracks?

A. That will place the tram track in the centre of the roadway. Today it is on the north side.

THE DEPUTY CHIEF: What would be the cost of rebuilding the bridge with its present width as compared with the cost of rebuilding it with the additional width that you propose?

A. That would be what? 10

Q. You propose to widen the bridge. If you should not widen it but simply reconstruct it, what would be the difference in the cost?

A. We could work that out. Offhand I cannot tell you.

Q. At any rate Chief Commissioner Killam said that the widening of the bridge was a highway proposition, and that the City should bear the expense incurred in such widening, and he estimated it at one-fourth of the cost. Is that correct?

MR. PROCTOR: No, he states in his judgment that we agreed to bear one-fourth of the cost of the widening and he took us at our word. He did not make any finding against us that we should bear 20 one-fourth of the cost.

THE DEPUTY CHIEF: But today do you submit that the Ottawa Electric Railway Company, owing to the agreements which were entered into between the various interested parties, is responsible for even that widening of the bridge?

MR. PROCTOR: That I think might fairly be left to the Ottawa Electric Railway Company to answer. My position as to those agreements I will state fully when I come to the argument, but I may state it shortly now. It is, if I may say so with deference, that the Board erred in its earlier Order in paying any attention to them; 30 that it introduced a confusing element into the Order; that it would have been much preferable had the liability of the different companies been found independently and then allowed those companies to find such relief as they could under their agreements, which were not binding upon the Board or upon the City of Ottawa. Now the opposite view having been taken, the burden looks large on the Ottawa Electric Railway Company but it must be borne in mind that when 75 per cent was assessed against the Ottawa Electric Railway Company, it was the burden of the Canadian Pacific Railway Company and the Canadian National Railway Company and the Ottawa Electric Rail- 40 way Company combined in one lump sum. When I come to that, I would ask that in the present Order, if the Board saw fit, that they distribute this liability as though no agreements were entered into.

THE DEPUTY CHIEF: On what ground could the Board set aside agreements entered into, not by minor children but by very responsible companies?

MR. PROCTOR: It is not, as I see it, setting them aside; they would not be asked to set them aside, but the position would be quite analogous as though the two companies had underwritten their risks; they have taken out insurance in these two agreements. And the matter of liability before the Board is not at all hampered by the fact that the Ottawa Electric Railway Company, for some consideration, good or insufficient or whatever it may be, a great many years ago took upon itself a certain burden of the two steam railway companies. That has a very practical bearing when we come to it, and

10 it is this: that the Ottawa Electric Railway Company operate under an agreement with the City of Ottawa, whereby their operating charges are carried forward in a reasonable fare, and that fare is assessed upon the public using their cars. Now I submit in the first place that these agreements were quite beyond the powers of the Ottawa Electric Railway Company to make and I think they were perhaps contrary to public policy.

THE DEPUTY CHIEF: Were they attacked in the courts of law?

MR. PROCTOR: No.

20 THE DEPUTY CHIEF: Apparently they have not been set aside. They are binding on the companies.

MR. PROCTOR: The city is not a party to them.

THE DEPUTY CHIEF: No, but here are agreements on file entered into by corporations and they have not been set aside. Whether the Ottawa Electric Company had the right to enter into such agreements or not is a matter that might have been settled elsewhere; but so long as the agreement is not set aside we take it for granted that they have the power to agree to them.

30 MR. PROCTOR: I think that might be safely conceded, sir, but as I view your position, I think you go beyond that, because after all the agreements are not binding on this Board.

THE DEPUTY CHIEF: I know, but I would be loath to set aside an agreement unless I have some good reason. I am not bound by the agreement but it is an important condition that it exists and that I should take into account.

MR. PROCTOR: I am not suggesting that the Board should do anything, and if I were asked I would probably consider the Board had no power to set aside the agreement. That would be quite beyond the power of the Board.

40 THE DEPUTY CHIEF: I do not say we could set it aside. We could ignore them if we wanted to.

MR. PROCTOR: You could make your distribution independently of the agreements, and the parties would have exactly the same rights under the agreements as if you took the agreements into consideration and bulked the proportion of the three companies under one heading by reason of the existence of the agreements.

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination.  
—Continued.

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination.  
—Continued.

**THE DEPUTY CHIEF:** Then if we did so I do not think the City would be saved in one particle. Supposing the element of cost were distributed among the railway companies and the City and the Street Railway Company. Then the railway companies, the C. P. R. and the C. N. R., would simply come back to the Ottawa Electric Railway Company.

**MR. PROCTOR:** That is quite true and it seems to me that would be much more satisfactory because then the companies could not come here and say they bore no portion of the cost of this bridge. They should, as I see the law on all principles, bear their proportion 10 of the cost of the bridge, and if they are entitled to indemnity, that they seek the indemnity elsewhere. It is not for the Board to enforce, as against parties not parties to the agreements, the effect of an indemnity agreement.

**THE ASSISTANT CHIEF:** Anyway, your position, Mr. Proctor is that these agreements being known to be of record, should be looked upon as secret and not of record; let the Board make its Order and then the parties be left to their own redress.

**MR. PROCTOR:** The parties are in the same position, as I see it, as if a man insure his house. 20

**THE ASSISTANT CHIEF:** That is a matter of argument.

**THE DEPUTY CHIEF:** So far as all the details of the engineering part of it are concerned, I do not believe, speaking only for myself now, that we will make much headway and I am afraid we are losing time, inasmuch as the engineers of all interested parties will have to get together under our Chief Engineer, who will have to report to the Board on that matter. Therefore unless there is some good reason why we should go further into the details now, I think it would be well to leave it to the Chief Engineer of the Board to adjust with the engineers of the interested parties. 30

**MR. PROCTOR:** I suppose that is quite true, sir, but I had the impression and I know I got a letter from the Board. The plans were furnished to the Board's Engineer and have been inspected by him, and I understood had been reported on favorably from him to the Board.

**THE DEPUTY CHIEF:** The railway companies now say that they are not in sufficient detail for them to offer a considered opinion.

**MR. PROCTOR:** I was asking Mr. Macallum about that, and of course that general statement would have to be implemented 40 by particulars as I do not know of any lack of details.

**MR. FLINTOFT:** That is why we say that it should be referred to the engineer. I submit that we are wasting time.

**THE ASSISTANT CHIEF:** The only point there I think is the question about the tracks and the grade. I think those are about

the only points. It was intimated at the outset that subject to what might develop, there would have to be some general question decided.

**THE DEPUTY CHIEF:** There was also the other point as to whether that portion of the bridge under the tracks of the Ottawa Electric should be reconstructed or if it could be maintained as it is now. Mr. Macallum saying that the whole thing should be rebuilt.

**MR. MACALLUM:** You were asking about whether if it were the same width, what the cost would be? We have made a rough  
10 calculation. The estimated cost is \$185,000. and the present width is practically two-thirds of the suggested plan. That would be \$125,000.

**THE ASSISTANT CHIEF:** Is that all, Mr. Proctor? Are there any further questions for Mr. Macallum?

**MR. PROCTOR:** It is a balancing of advantages as I see it, that question of depressing the tracks or keeping your existing grade on your bridge, or reducing your grade. Keeping the tracks where they are would keep the present grade. How would that work out, which is the greater advantage, Mr. Macallum?

20 **A.** Any damage done to the railway, the C. N. R., in connection with the change in depth, the change in their grade, it would be very slight, if anything at all. On the other hand, depressing our tracks or our grade gives us the traction for through traffic to the west end of the city and at the same time it gives greater visibility for safety.

**THE ASSISTANT CHIEF:** Any questions from Mr. Macallum?

#### CROSS-EXAMINED BY MR. QUAIN:

30 **Q.** Mr. Macallum, supposing the street railway tracks were not there or were not intended to be carried over this bridge, can you give us any idea of whether the bridge you propose building, and the type of bridge you do build for tracks not to be carried over,—whether that type of bridge would carry street cars?

**A.** Yes.

**Q.** So that I would be safe in saying there is no extra cost as far as strengthening the bridge is concerned in considering the question of the width?

**A.** Yes, there is, because you may have on the street car section a street car and also a loaded truck.

40 **Q.** So that whether the street railway tracks are on it or not, your bridge must be of such strength as to carry a weight equal to that of a street car?

**A.** No. We put on a 17 ton roller, carrying two thirds of the weight on the roller axle as the load. We take a roller practically as

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination.  
—Continued.

Cross-  
examination

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Cross-  
examination  
—Continued

our standard and a loaded truck, a 10,000 truck; so that the weight is about equally distributed.

Q. What I am getting at is this: under our agreement with the City, I contend that the sole obligation of the Electric Railway Company with respect to bridges, is to pay the City the extra cost incurred by strengthening a bridge over which the street railway contemplates running their cars.

THE ASSISTANT CHIEF: That is an agreement of what date?

MR. QUAIN: An agreement of 1893, section 20. I will refer 10 to it as the agreement of 1893 because there is only one agreement in that year.

MR. PROCTOR: There is an earlier agreement.

MR. QUAIN: This is section 20a, of an agreement made in the year 1893. Shall I read it into the record or only refer to it?

THE DEPUTY CHIEF: Is it long?

MR. QUAIN: It is rather long. Perhaps I had better read it later on.

COMMISSIONER OLIVER: Read it now and let us have 20 it on the record.

MR. QUAIN: Section 20-a says that in the event of any of the bridges under the control of the corporation—(that is the City of Ottawa)—traversed by the said railway—(that is the Ottawa Electric Railway)—requiring the supports or superstructure thereof to be strengthened, and in the opinion of three arbitrators, or a majority of them, to be composed of the City Engineer and a qualified Civil Engineer to be appointed by the companies and a third arbitrator to be appointed by the two previously named, the necessity for such strengthening has been caused or occasioned by the companies or their traffic thereon. "Companies" there refers to two companies 30 which were afterwards amalgamated into the Ottawa Electric Railway Company. The companies and corporation shall bear the cost of such strengthening in equal proportions; provided that the corporation shall not be liable for any obstruction, and so on.

THE DEPUTY CHIEF: Is this agreement still in force?

MR. QUAIN: Yes sir.

MR. PROCTOR: There is a simple answer to that which I may as well state now. That is an agreement of general application to all bridges. Then in 1895 we made this agreement specially referring to this one bridge, which was before the Board and it superseded and entirely displaces the general agreement which had refer- 40 ence to the general conduct of the railway.

MR. QUAIN: We dispute that anyway, so that this is relevant in case we are successful in our contention.

THE ASSISTANT CHIEF: You will develop that in your argument.

**MR. QUAIN:** Yes, later on. I was trying to show that that might be material; if my learned friend is correct it is not material; if I am correct it is.

**Q.** May I ask Mr. Macallum whether the bridge which he would ordinarily construct if the street railway were not intended to be run upon it, would carry street railway traffic?

**A.** No.

**Q.** I am informed that the type of bridge, the modern type that municipalities build is of such strength as to carry street railway traffic, on account of the present heavy weight of trucks, steam rollers, cement mixers, and so on; and they contemplate that that weight will increase, and that whether the street railway runs upon the bridge or not, they must build a bridge of sufficient strength that it would if necessary carry the street railway?

**A.** No, that hardly follows. Assuming that they carry the same weight on a highway bridge as on a street railway bridge, the highway bridge will carry those trucks at practically such a slow speed that you do not get nearly the impact, which would probably double your load on a rapidly moving railway car.

**20 THE ASSISTANT CHIEF:** In designing such a bridge do you take into consideration the double movement of street cars over it?

**A.** Yes, that comes in. What they call the loading factor of that bridge will be different for a high speed load than it will be for a load at low speed.

**Q.** In designing a street bridge, do you not take into consideration the possible movement of street car traffic over it?

**A.** Yes, in this way: that in designing a bridge to carry street car traffic, you will have different girders underneath and differently placed. If you have no street car tracks on there, you will probably have, we will assume, ten inch girders from one trestle to the other, but if you have street car tracks across there, then under those street car tracks you will put an additional depth of girders, probably increasing them to fourteen or fifteen inches.

**Q.** Supposing there are no street car tracks within eight or ten blocks from the bridge, in your calculation for the bridge do you consider the probability of street car tracks?

**A.** No. We have one bridge that we built to carry street car tracks, and the street car tracks are not connected for probably a quarter of a mile.

**40 THE DEPUTY CHIEF:** Supposing you built a bridge for highway traffic on Somerset Street and in five or six years the street railway were extended over it, do you think that it would be necessary to reinforce such bridge, built for highway traffic.

**A.** Yes sir. That same thing has happened on Wellington Street, right next to Somerset Street bridge.

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Cross-  
examination  
—Continued

Q. Do you think that a bridge built for highway traffic alone, must be reinforced when street cars pass over it?

A. Yes. You have to change your deck. Your deck loading would be different.

MR. QUAIN: The Wellington Street bridge was built some time ago and I think I will ask the witness whether that has not taught the city something or whether that has not indicated to the city the fact that such bridges should be of a heavier weight?

THE ASSISTANT CHIEF: Ask the question.

MR. QUAIN: Mr. Macallum, if you were building the Wel- 10  
lington Street bridge today, and if you did not know of any street  
car line contemplated over it, that is if there were no plans for such,  
would you build a bridge that would probably carry street cars?

A. On Wellington Street, yes.

Q. You would?

A. Oh yes.

MR. QUAIN: That is the point I wanted. They would build  
a bridge anyway of that construction.

BY MR. FLINTOFT: Q. Mr. Macallum, there is one point  
I want to be clear upon. As far as the revision of the grades is con- 20  
cerned, that deals with the Canadian National end of it, there is no  
revision with respect to the C. P. R.?

A. Yes; it does not touch the C. P. R. at all.

Q. And that is to get a better grade from the east approach  
is it?

A. To get a better grade from both approaches. No, I beg  
pardon; the grade is practically not changed on the approach where  
your under-bridge is, but it gets a better grade on the other end, and  
it helps to cut down the crown about 3 feet, 9 inches. It only means  
an inch or so over your track. 30

Q. Then that is entirely a matter of highway improvement.

A. Yes.

Q. And as far as the widening of the bridge is concerned, that  
as I understand it from what you say is due entirely to the road, the  
vehicular and pedestrian traffic over that bridge.

A. Yes, to meet the present needs.

Q. Largely I suppose due to the motor traffic? The matter of  
development of the motor traffic?

A. Yes, nearly all the traffic is motor traffic now.

MR. PROCTOR: I have nothing further from Mr. Macal- 40  
lum.

Then will the Board consider that the record of July 7th is be-  
fore it? There is Mr. Chase Thompson's evidence in that transcript  
at page 10026, it begins. There are only four or five pages of it.

It is volume 517, part 2, pages 10026 to 10033. I do not want to read it.

*Board of  
Railway  
Commissioners*

**THE ASSISTANT CHIEF:** Anything else by way of evidence?

No. 7

**MR. QUAIN:** Yes, Mr. Chairman, I am calling Mr. Walker. Mr. Fraser tells me that his clients are agreed also that the north half of this bridge does not require reconstruction or replacement.

*Applicant's  
evidence  
Andrew F.  
MacCallum  
Cross-  
examination  
—Continued*

**THE ASSISTANT CHIEF:** Mr. Fraser has not said that.  
**MR. QUAIN:** Perhaps he will say it now? Am I correct, Mr. Fraser?

**MR. FRASER:** Our view is that the north half, that is the older part of the bridge, has not been at all well maintained and is not in particularly good shape, but that it can with the expenditure of a certain amount of money, be made all right without being reconstructed. So far as the south part is concerned, the portion constructed in 1907, that is in pretty bad shape and we think that it would require renewal.

**THE ASSISTANT CHIEF:** Before the north portion?

**MR. FRASER:** That is the older portion.

**THE ASSISTANT CHIEF:** The newer portion is in the worst shape.

**MR. FRASER:** Yes. The older portion is not in as bad shape as the newer. That is our view, but as far as that is concerned, we will take the position on that, that we will be guided entirely by your Chief Engineer as to the condition of the bridge, both sides, and what is required and as to all the details; but it is our opinion that the north portion of the bridge can be put in good shape without being renewed.

**THE DEPUTY CHIEF:** Would it reduce the cost very materially?

**MR. FRASER:** Well of course, I think it would, yes; if the whole bridge did not have to be renewed it would make a large difference.

**THE ASSISTANT CHIEF:** Do you take into consideration the concrete, the abutments and so on?

**MR. QUAIN:** Perhaps it would shorten things if we say also that we are content to rely on the decision of the Board's Engineer, but we ought to say that we have been advised by our own engineers that there is no danger; we have been anxious on account of the south side, but we have been told that and we are running over still.

**MR. PROCTOR:** I rather object to the way in which these statements have been put before the Board, because they are not subject to cross-examination. They say, we are advised so and so, but I have a right to have the gentlemen who advise them under cross-examination here, and to cross-examine them as to the reasons for advisement. We have placed our evidence before the Board, and I



Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Cross-  
examination  
—Continued

cannot agree for a moment that Mr. Quain and Mr. Fraser can say that that north part of the bridge is in a safe condition in their hands and allow the Board to form a judgment upon that point.

**THE ASSISTANT CHIEF:** Mr. Proctor would have the right to cross-examine upon the evidence.

**MR. FRASER:** My friend objects to me giving the evidence, but the Board asked me for that statement.

**THE ASSISTANT CHIEF:** Mr. Quain having made a statement I asked you a question; but Mr. Proctor has the right to cross-examine upon the basis of the opinion. 10

**MR. FRASER:** I am not anxious to give the evidence; I am not offering the evidence, and Mr. Walker is here. If Mr. Proctor wants to ask him his opinion, I will be glad to have him do it. You asked me what position we took and I gave it.

**THE ASSISTANT CHIEF:** I asked you because you stated through Mr. Quain that you took a certain position.

**MR. FRASER:** I am not tendering evidence in connection with the thing because the position I am taking all the way through is that in that matter and in all matters of detail connected with the bridge we will accept at 100 per cent what is said by the Board's technical staff. 20

**THE ASSISTANT CHIEF:** Then as far as we are concerned, we have the statement that that is the condition north and south but that statement is made subject to correction.

**THE DEPUTY CHIEF:** You say you are so advised, but that you will submit to the Chief Engineer's decision on that point; therefore we need not issue a decision upon the statement made either by Mr. Fraser or Mr. Quain, but it will be for the guidance of our Chief Engineer when he investigates the matter further.

**THE ASSISTANT CHIEF:** Is there anything further Mr. Flintoft? 30

**MR. FLINTOFT:** I have no evidence but I would like to make a statement myself.

**THE ASSISTANT CHIEF:** Will it be in the nature of an argument.

**MR. FLINTOFT:** It will be partially argument.

**THE ASSISTANT CHIEF:** Perhaps we had better hear it then.

**MR. FLINTOFT:** It is a matter of reference to the old record, but I can make it in my argument. 40

**THE ASSISTANT CHIEF:** Then I understand there is nothing further in the way of evidence, and we are ready for argument.

MR. QUAIN: Oh, I have Major Burpee to call.

THE ASSISTANT CHIEF: I have been asking several times, Mr. Quain, if there was any further evidence.

MR. QUAIN: I thought you were still discussing the question of evidence as to the stability of the bridge. I want to show what our investment is in the bridge, and one or two things of that sort.

THE ASSISTANT CHIEF: Proceed.

Board of  
Railway  
Commissioners

No. 7

Applicant's  
evidence  
Andrew F.  
MacCallum  
Examination.  
—Continued

No. 8

10

F. D. Burpee, Examination.

No. 6

MAJOR F. D. BURPEE, called. Examined by MR. QUAIN.

F. D. Burpee  
Examination.

Q. You are Vice President of the Ottawa Electric Railway Company?

A. Yes.

Q. Can you tell us what the railway has spent in capital expenditure on your own 1896 bridge, that is the one we built for street railway traffic; and on the one built in 1907 for vehicular traffic?

A. The original structure cost \$14,000 and some odd. And our share of the widening, 75 per cent of the widening in 1907 cost \$17,000. The total is more nearly \$32,000 than thirty one.

Q. I understand you took a check of the vehicular pedestrian and street railway traffic?

A. Yes, we have taken several checks.

Q. Is this it in the form of a graph?

A. Yes that is the draftsmans representation of it.

Q. And have you got here the actual count showing for 24 hours the traffic over the bridge and its nature?

A. Yes.

Q. I submit the first as Exhibit 6, and Exhibit 7 the actual check.

EXHIBIT NO. 6: Filed by  
Mr. Quain } Graph, indicating traffic proportions.  
8 Sept. 1927 }

EXHIBIT NO. 7: do. Traffic count.

This is a check by your own employees and given to you in the ordinary course as Vice President.

A. Yes. They are dated July 21st to 24th. That includes a Saturday and Sunday to get the characteristic traffic. The graph is a composite of the four days; an average of the four for the 24 hours.

Q. And what do these show in a general way?

A. It shows that of all vehicles, street cars, motors, horse-drawn vehicles, that the street railway traffic is approximately 20 per cent.

Q. Does that apply to the peak or the average or to everything?

Board of  
Railway  
Commissioners

No. 8

F. D. Burpee  
Examination.  
—Continued

A. No, it is 20 per cent of the total for the 24 hours. The peak varies.

THE ASSISTANT CHIEF: What is the average peak?

A. I think it will be shown that they practically amount to the same. That is when the street railway traffic increases, the vehicular traffic increases.

Q. What are the peak hours?

A. They are as shown here. At noon; and in the evening around five to six.

Q. And the vehicular traffic goes up in about the same ratio? 10

A. It is shown as particularly high at noon and in the evening and with a smaller peak around midnight.

Q. That differentiates, showing what is motor traffic?

A. Yes.

Q. Taking the peak, does motor traffic play a greater or less proportion?

A. Motor traffic is about 65 per cent of the total vehicular traffic.

Q. At the peak?

A. Yes. 20

Q. About what does it run at other hours?

A. That would have to be calculated, I am afraid.

Q. Have you got an individual hour?

A. We have motor traffic and horse-drawn traffic bulked in one curve; but we have the individual percentages of each for the whole of each day, but not at the peak; but they are shown here graphically.

Q. Does that show the composition of the traffic by hours?

A. The detail we have given there will show that. Each hour is given there. In addition it gives the bicycles and pedestrians. It 30 gives the entire traffic for those four days.

MR. QUAIN: Is any removal of the Somerset Street line contemplated or do you intend to carry it on?

A. No. It is our intention to continue it.

Q. There has been some suggestion that we might remove the tracks to Wellington Street. Have you anything to say as to that?

A. We would object to that.

Q. Why?

A. In our opinion it won't be very many years before we will require tracks on both structures. 40

Q. That is on Wellington Street also?

A. Yes, as well as on Somerset Street.

Q. Have you ever sent any notification to the City regarding the condition of their half of the bridge?

A. As to the south half, yes.

MR. PROCTOR: Why do you say "their half"?

MR. QUAIN: I say their half although we paid three-fourths of it. Perhaps I should say the vehicular half.

Q. What is the effect of that notification and how did it come about?

A. Mr. Chase Thomson has been our Inspecting Engineer of bridges for a number of years. Each year a copy of his report is sent to the City Engineer, and attention drawn to anything that we think requires immediate attention on the part of the City. Mr. Thomson was asked last year to give particular attention to the Somerset Street  
10 bridge. He assured us that our part of the bridge that is the old structure where the tracks are, was quite safe and that we need have no worries and could continue operating across on that structure; but that the south half or the part that was added in 1907 was in dangerous condition and that something should be done before the winter: and that the particularly dangerous time would be in the spring when the water was running. He also submitted at our request, a plan for simply repairing it. These were forwarded to the City and we offered to pay our 75 per cent of it. The reply we received was that  
20 an application was to be presented to this Board for reconstruction of the whole bridge and that probably that would be accomplished before winter came.

Q. When you say "our 75 per cent" what have you reference to?

A. Well, it has been our custom in the past to share with the City the maintenance of the south part of the bridge in the proportion of 75 to 25.

Q. What have you to say as to the conditions of traffic comparing 1907, when the last Order was made, and at the present time as to the nature and condition of traffic?

A. We have no record of the 1907 traffic.

30 Q. From your experience as a street railway executive, what do you say?

A. Vehicular traffic other than street cars has very much increased, as shown today the motor traffic is 65 per cent at least of all the vehicular traffic that crosses the bridge.

Q. 65 per cent?

A. Yes.

Q. I think it is 80 per cent is it not?

A. Including horse-drawn. It is at least 65.

Q. Why do you say 65, what has the 65 reference to?

40 A. The 65 per cent of all vehicular traffic crossing the bridge today is motor traffic. Motor vehicular.

Q. There are other vehicles besides?

A. Yes.

Q. Do these graphs show motor vehicles?

A. Motor and horse-drawn vehicles and street cars.

Q. I suppose they take up about the same space?

Board of  
Railway  
Commissioners

No 8

F. D. Burpee  
Examination.  
—Continued

A. Yes.

Q. Now the Ottawa Electric Railway Company has a bond issue has it not?

A. Yes.

Q. It has mortgaged its properties as securities for bonds which have been sold to the public and the proceeds have been turned into the company and used to build extensions and so on.

A. There is a trust deed covering all our assets with the exception of some special items of real estate.

Q. And is this bridge or our investment in this bridge considered as part of our capital assets? 10

A. Yes, to the extent of our investment in it.

Q. And is it included in the list of our assets which are mortgaged to the Trust Company?

A. Yes.

Q. Are there any provisions in the trust deed regarding the destruction of our assets, or do you know that yourself? Perhaps I had better file a copy of that trust deed.

A. We must replace any physical assets that are scrapped by an equivalent amount of cash to the trustee. 20

Q. And what is your agreement with the City regarding your rate of fare on the street railway? You have an agreement dated 1924?

A. The agreement is that if the gross revenue in any five year period—the agreement covers five year periods—is not sufficient to pay all costs of operation, depreciation, proper maintenance and upkeep, and a reasonable return on the property, that the company may notify the City that they cannot continue on the existing rate of fares for the next five year period. Then the matter is open for discussion between the City and the company. 30

Q. I believe the words are the capital investment. It is the capital investment upon which you are entitled to earn a just and reasonable return. Is that substantially the wording?

A. Yes.

Q. Do you consider your investment in these bridges a capital investment?

A. Certainly.

Q. What about your rate of fare at present, what is it?

A. Five cents.

Q. Have you any proposal to alter it before the City? 40

A. We have at the present time.

Q. And what increase have you proposed to them?

THE ASSISTANT CHIEF: What is the relevance of that here?

MR. QUAIN: In this way, sir, that this is not one of the things which we considered in asking for an increased rate, or notify-

ing them that we intended to apply for an increased rate. The rate which we have increased it to is getting to a stage where we cannot get very much higher in a city of Ottawa's size. I do not know to what extent the Railway Board would be concerned in considering the effect of any Order which might add to that.

*Board of  
Railway  
Commissioners*

*No 8*

*F D. Burpee  
Examination.  
—Continued*

THE ASSISTANT CHIEF: What I was thinking of is, there are rumours that perhaps something may come before us some time, but I do not know that we should anticipate that.

10 MR. QUAIN: I was wondering if the Board should consider this: whether Orders should be made imposing a burden upon this railway which would have the danger of increasing our fares to an extent which might decrease our revenue below that which we get with the lower fare.

THE ASSISTANT CHIEF: The difficulty I see is that we should not be asked to do anything which would tie our hands in the wider presentation.

MR. QUAIN: Yes, I think it would lead to a long discussion as to whether the fare really is sufficient. I think that is perhaps right.

20 Q. Why was it that the railway built in 1896 the north bridge and paid for it itself? Have you any information or instructions, from the company's records or otherwise as to that point. They paid entirely for this bridge without asking the City for a contribution, and without asking the railways for a contribution. I suppose the reason with respect to the other railways was because they were junior to them perhaps.

A. I have no definite knowledge on that affair. This structure was at that time entirely outside the limits of the City, was it not?

MR. QUAIN: Yes.

30 MR. PROCTOR: Oh no.

THE WITNESS: In 1896?

MR. QUAIN: No it was not then.

MR. PROCTOR: The westerly abutment was the westerly city limit.

MR. QUAIN: It does not matter for the purpose of the question anyway.

As to this agreement which has been filed as Exhibit 4, whereby it is stated that we would incur some liability for any expense in connection with the construction of this bridge, you are familiar with the  
40 contents of that agreement are you not?

A. Yes.

Q. And of the agreement with the C.N.R. also.

A. Yes.

Q. Have you anything to say as to our—I do not know that our understanding of what the agreement is makes any difference.

Board of  
Railway  
Commissioners

No 8

F D. Burpee  
Examination.  
—Continued

**THE ASSISTANT CHIEF:** I was going to suggest that the agreement speaks for itself.

**THE WITNESS:** May I just say, reverting to a former question with regard to the condition of the bridge; that since the hearing in July of the level crossing case, I have again asked Mr. Chase Thomson to assure us that we could continue to operate cars over the Somerset Street bridge with safety, and he has assured us that we can, that there is positively no danger of anything happening to the structure over which we are operating.

**MR. QUAIN:** That is all I have to ask Major Burpee. 10

**CROSS-EXAMINED BY MR. PROCTOR:**

Cross-examina-  
tion by counsel  
for Applicant.

**Q.** We have had Mr. Chase Thomson's report here, to your company, of September 10th, 1923. At the C.P.R. crossing Mr. Thomson says:—

"A close inspection of the steel girders reveals that they are in very bad condition; covered with rust and scale, which in some places is over one-eighth inch thick. The steel work should be thoroughly cleaned and painted and particular attention should be given to the top surface between the ties."

That is the substructure on which you operate? 20

**A.** Yes.

**Q.** You have never carried out your engineer's report in that respect?

**A.** Oh yes we did.

**Q.** My information is to the contrary of that.

**MR. QUAIN:** Is that letter addressed to us or to the City?

**MR. PROCTOR:** To us. "The masonry is badly shattered and therefore dangerous on the north side."

**A.** That was repaired. There was some work done there. I cannot tell you because I am not a bridge engineer, but I know Mr. Chase Thomson's report each year was carefully followed through and all repairs he recommended were carried out. 30

**Q.** Badly shattered, he says, and therefore dangerous. What actually happened was that you shot a little cement into the cracks with a cement gun?

**A.** Do you know what they did, Mr. Proctor? I do not.

**Q.** It looks that way and I make that suggestion to you.

**A.** I cannot tell you what was done. Simply the instructions were to carry out Mr. Thomson's recommendations completely.

**Q.** You don't know whether they were carried out? 40

A. I cannot tell you that myself, but I can produce witnesses who can. I do know that I have assured myself afterwards by asking if the instructions were carried out.

**THE ASSISTANT CHIEF:** That appears to be all, Mr. Burpee. Anything further by way of evidence?

**MR. PROCTOR:** There is just a traffic return which does not quite agree with Mr. Burpee's. I will call Mr. Askwith.

*Board of  
Railway  
Commissioners*

**No 8**

F D. Burpee  
Cross-examination by counsel  
for Applicant.  
—Continued.

**No. 9**

**Frank C. Askwith (recalled) Examination.**

**No. 9**

Frank C. Askwith (recalled)  
Examination.

10 **FRANK C. ASKWITH, called. Examined by MR. PROCTOR.**

Q. Mr. Askwith, did you file this traffic count?

A. Yes.

Q. The difference consists in this, that the traffic count taken by the city over a week from June 22nd to June 29th, that is a longer period than that taken by the company, shows a larger percentage of street cars.

A. It gives the total number of cars crossing the bridge east and westbound, and the total number of vehicles of all classes there and bulking the totals and taking the averages, the volume of street car traffic is about 32 per cent of the whole.

**THE ASSISTANT CHIEF:** What is the highest point?

A. According to our records, the peak hours are between 12 noon and one o'clock and five to six in the evening.

Q. What is the street car percentage there?

A. I would have to figure that out. The totals are given only, sir. The average is not given at each hour. Our records were taken in three 24 hour shifts.

Q. Have you the totals by hours?

A. Yes.

30 Q. So that it can be checked?

A. Yes.

**MR. QUAIN:** You included motor vehicles and all other kinds?

A. Yes, all vehicles included and also all street cars crossing.

**MR. PROCTOR:** That will be Exhibit Number 8.

**EXHIBIT NO. 8:** Filed by  
Mr. Proctor } Traffic count.  
8 Sept. 1927.

40 **THE ASSISTANT CHIEF:** If that is all the evidence, we will proceed with the argument at half past two.

(Adjourned at 1 p.m. until 2.30 p.m. Thursday 8th September, 1927.)



Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S. J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.

No. 10

**Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners: S. J. McLean, Assistant Chief Commissioner, concurred in by Thomas Vin, K.C., Deputy Chief Commissioner.**

Application of the Municipal Corporation of the City of Ottawa, for an Order, under Sections 257 and 264, of Railway Act, requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of said companies, to replace the existing Somerset Street Bridge, or viaduct, in the City of Ottawa, which carries Somerset Street and the tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways, and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street, and for an Order apportioning the cost of such new bridge between the said railways, or between some one or more of them and the said Corporation, as the Board may direct. 10

CASE 396—Part 2.

McLEAN; ASSISTANT CHIEF COMMISSIONER:

I.

20

By application, dated July 14th, 1927, the City of Ottawa asked for an Order, requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said companies, to replace the existing Somerset Street Bridge, or viaduct, in the City of Ottawa, which carries Somerset Street and the tracks and right of way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways, and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said Street. 30

An Order is also asked for, apportioning the cost of such new bridge, between the said railways, or some one or more of them, and the said Corporation of the City of Ottawa, as the Board may direct.

It is set out that the existing bridge, over the tracks of the said railway companies, whereby the Ottawa Electric Railway Company's tracks and right of way are carried over the said railways, was originally constructed at the cost of the Ottawa Electric, and was, thereafter, enlarged at the joint cost of the said Company and of the Applicant Corporation, under Order No. 3684, of the Board, dated March 13th, 1907. It is represented that the bridge has fallen into bad repair and is dangerous to traffic. It is also set out that it is of 40

insufficient breadth, and it will be necessary to remove it and replace it by a more modern structure of greater breadth.

The Canadian Pacific Railway Company, in answering, claims seniority at the point in question, and therefore takes the position that it is exempt from contribution to the cost of construction and maintenance of a new bridge. In making its submission, it said it was not objecting to the application.

The submission made by the Ottawa Electric Railway Company, hereinafter spoken of as the Ottawa Electric, was as follows:

10           “1. The said bridge consists of a bridge built in 1907 which  
“is a roadway for vehicular traffic other than street car traffic,  
“and adjoining that on the north a bridge built about 1896 for  
“street railway traffic, upon which other vehicular traffic, as well  
“as foot traffic, was permitted.”

              “2. The said south bridge was built in order that the public,  
“other than the Electric Company’s passengers, should not drive  
“or walk on the Company’s north bridge which was said to be  
“dangerous for such traffic, and to supply a roadway equivalent  
20 “to the laneway which existed prior to the Electric Company  
“buying the said wooden bridge.

              “3. The Electric Company declares that it is the absolute  
“owner of the North Bridge and approaches thereto and is not  
“there solely as licensee or by permission and that such North  
“Bridge and approaches belong to it absolutely subject to any  
“right which the public other than the tramway using public  
“may have acquired through its constant use thereof over a long  
“period of years.

30           “4. The present application is occasioned by the increase  
“in vehicular and pedestrian traffic, the Electric Company’s  
“vehicles now comprising less than 16% of such vehicular traffic.

              “5. The effect of the Electric Company’s franchise agree-  
“ment with the present applicant is that the car-riding public  
“are burdened with such extra expenditures as may be imposed  
“on the Electric Company inasmuch as the Electric Company is  
“entitled to have its fares varied from time to time so that it  
“shall receive a just and reasonable return on the value of its  
“capital assets.

40           “5A. The said passengers and the Electric Company will  
“receive no benefit from the proposed new bridge inasmuch as  
“the present north bridge is adequate and safe for street railway  
“traffic.

              “6. The Ottawa Electric Railway has an investment of  
“\$31,918 in the said Bridges, which investment is a capital asset

*Board of  
Railway  
Commissioners*

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S. J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.

—Continued

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S J. Mc-  
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Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued

“upon which the Company has borrowed money, and issued bonds,  
“and upon which investment its revenue from fares must by law  
“provide a reasonable return, and which investment the present  
“application proposes to destroy.

“7. The Company’s sole obligations with respect to any  
“bridge are set forth in Section 20 of an agreement between the  
“City and the said Company, dated June 28th, 1893,  
“whereby the Company agreed to provide the stringers on the  
“underbeams of bridges traversed by the Company’s railway, and  
“in Section 20 (a) which provides that should any such bridge 10  
“require strengthening because of the operation of the said Com-  
“pany’s railway thereon, the Company and the City shall bear  
“the cost of such strengthening in equal proportions.

“8. All obligations and expenses relating to the construc-  
“tion, repair and maintenance of any bridge other than the obliga-  
“tions set forth in said Sections 20 and 20 (a) are obligations  
“and expenses to be borne by the City of Ottawa or by such other  
“parties exclusive of this Company as this Board may deem fit.

“9. If, as alleged, the Company originally constructed at  
“its own cost the said Bridges, then no principle was involved in 20  
“such construction nor was any precedent established thereby, the  
“sole reason therefor being that the City of Ottawa had no funds  
“to assist in the said construction and it was a matter of urgent  
“public necessity for the Company to extend its transportation  
“system forthwith westward along the said street and the Com-  
“pany made such expenditure voluntarily and without prejudice.

“10. The Order of the Board, dated March 13th, 1907,  
“was made at a time when the volume and nature of traffic was  
“radically different from that now prevailing and such order  
“was based upon conditions which do not now exist and upon a 30  
“misapprehension of the effect of certain agreements between the  
“City and the Company which were not referred to in the  
“evidence or argument at such time, or in ignorance thereof, and  
“the Company should not have been ordered to pay any part  
“of the cost of widening the said bridge.

“11. There is nothing contained in the agreement between  
“the City of Ottawa and this Company dated the 8th of April,  
“1893, releasing the present applicant from liability it might  
“have had or may now have respecting the construction, repair 40  
“or maintenance of the said bridges, or any bridge or bridges that  
“might be construed in its place, and the said Agreement simply  
“stating that *the agreement* shall not be construed as imposing  
“any such liability, and this Company declares that the City of

“Ottawa or others, and not the Company, always did have and  
 “still have the sole obligation for the said construction, repair  
 “and maintenance and that such obligation does not depend upon  
 “the said agreement and is not imposed thereby.

“12. The grade of the said bridge is unnecessarily steep  
 “and could be reduced with safety.”

The Canadian National Railways made a detailed answer claim-  
 ing that, under Agreement with the Ottawa Electric, it was to be  
 indemnified and saved harmless from and against all liability to  
 10 maintain, repair, alter, or re-construct, the said bridge, or the ap-  
 proaches thereto. The Agreement in question, which is referred to  
 later, is dated August 21st, 1896. The Canadian National Railways  
 also relied on the Judgment delivered by the late Chief Commis-  
 sioner Killam, in the matter of the said Somerset Street Bridge, dated  
 13th March, 1907, and of the Order No. 3684 of the Board of the  
 same date. The Judgment and Order in question are referred to  
 later.

The parties had their attention drawn to the plans, and were  
 asked to show cause why Order should not go, within eight days,  
 20 directing the performance of the work, and reserving the question of  
 distribution of cost for further Order, after hearing, if such hearing  
 was requested by any of the parties. This went out on August 5th,  
 1927. In the event it did not appear to be feasible to advance the  
 matter in this way, it consequently was set down for hearing.

In a supplementary written submission, dated August 17th,  
 1927, the City of Ottawa, by its solicitor, in asking for a date to be  
 set for a hearing, stated that, in the opinion of the Board of Control,  
 the ratepayers of the City of Ottawa should know the cost of the  
 structure, and their proportion, prior to the work being undertaken.

30

## II.

The plan, as submitted, shows a street 58 feet wide, 42 feet of  
 which are given over to vehicular and Street Railway traffic, and 16  
 feet for sidewalks. By lowering the two railway tracks and pro-  
 viding, approximately, 20 feet overhead clearance, it is proposed to  
 reduce the road grade on the east approach to 4.91%. There is no  
 material change to the grade to the west approach. The Board's  
 Chief Engineer points out that the side clearances are standard and  
 that he can see no special objection to the overhead clearance being  
 reduced, as there appears to be no particular necessity for men being  
 40 on the top of cars. There are three openings concerned.

- (1) Champagne Avenue, of which there is proposed a span  
 of 22 feet instead of 12 feet as at present;
- (2) A span of 61 feet 10 inches over the Canadian National;
- (3) A span of 32 feet over the Canadian Pacific.

*Board of  
 Railway  
 Commissioners*

No. 10

*Reasons for  
 Judgment  
 (Order No.  
 40417) of  
 Board of  
 Railway  
 Commissioners:  
 (a) S J. Mc-  
 Lean, Assistant  
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 missioner, con-  
 curred in by  
 Thomas Vien,  
 K.C., Deputy  
 Chief  
 Commissioner.  
 23rd Feb. 1928.  
 —Continued*

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S J. Mc-  
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Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued

The balance of the work will be made up of earth fills with necessary retaining walls. It is proposed to lower the tracks of the Canadian National to give a reduced clearance of 20 feet 6 inches. It was stated that the City proposed to use steel. It is understood by the Board's Engineering Department that it is proposed to build with steel encased in concrete. It is reported that, if this is so, then this type of construction gives more permanency than bare steel, and is just as good as a re-inforced concrete, providing the encasing is properly done. Reinforced concrete would require additional false-work, and the steel construction, as also set out, would mean about 10 1½ feet lower at the highest point of the bridge. (McCallum p. 10329). The re-arrangements in clearances, with their effects on grades would flatten the grade on top of the bridge about 3½ feet, (McCallum, p. 10329). The reduction of the vertical clearances brings about a betterment in grades. As proposed this grade revision deals only with the Canadian National end. There is no revision with respect to the Canadian Pacific. What is proposed would give a better grade from the east approach. A reduction of 3½ feet in the crown of the bridge has already been referred to. In later communication of the Chief Engineer of the City, he said it would give 20 a reduction of at least 3 feet 9 inches.

The Canadian National, while taking the position that they had no objection to the plans submitted so long as they were not called upon to contribute, said that if they did contribute, they would prefer reinforced concrete instead of steel; this preference being due to lower maintenance cost. The City favoured steel as having cheaper construction cost.

In cross-examination, of the City Engineer, by Counsel for the Ottawa Electric, the following developed: (p. 10346-7)

"Q. . . . As far as the revision of grades is concerned, 30  
that deals with the Canadian National end of it; there  
is no revision with respect to the C.P.R.?"

"A. Yes, it does not touch the C.P.R. at all."

"Q. And that is to get a better grade from the east approach,  
is it?"

"A. To get a better grade from both approaches. No, I beg  
pardon; the grade is practically not changed on the ap-  
proach where your under bridge is, but it gets a better  
grade on the other end, and it helps to cut down the  
crown about 3 feet 9 inches . . . ." 40

"Q. Then that is entirely a matter of highway improvement?"

"A. Yes."

"Q. And as far as the widening of the bridge is concerned  
that, as I understand it, from what you say, is due en-

tirely to the road, the vehicular and the pedestrian traffic over the bridge?"

"A. Yes, to meet the present needs."

"Q. Largely, I suppose due to the motor traffic?"

"A. Yes, nearly all the traffic is motor traffic now."

### III.

It is admitted by counsel for the Steam Railways that the bridge needs renewal. Counsel for the Canadian National (pp. 10347) says that the north half, i.e. the lower portion, is not at all well maintained and is not in particularly good shape, but can be made alright without being re-constructed. The south half, which was built in 1907, he says is in pretty bad shape and requires renewal.

In a written submission, dated June 18th, 1927, which was submitted in connection with the application of the City to restore the Somerset crossing at grade, it was stated by the Canadian National.

" . . . that there is no doubt but that the bridge in question is in a poor state of repair and requires renewal, and when renewed full consideration should be given to the present and future travel."

Counsel for the Canadian Pacific said, at p. 10323—

"We will admit, as far as we are concerned, that the bridge needs renewal."

Counsel for the Canadian National said, in the same connection: "I will admit that."

Counsel for the Ottawa Electric says (p. 10233-4) the south approach—the part built in 1907—is in bad repair and needs something to be done; probably needs renewal. It is claimed the north bridge—the one built in 1896—is in perfect repair, as far as any question of renewal is concerned, and that with minimum repairs it will last an indefinite period. It is contended that the need of change is due to increase in pedestrian and vehicular traffic.

### IV.

Exhibits filed dealt with the traffic on the bridge. Exhibit No. 8, filed by the City, shows that for one week, June 22nd to 29th, 1927, there were 19633 vehicular and street car movements. Of these 4721 were street car movements, or 24% of the total. This shows an average for a 24 hour period, in the case of vehicles, other than street cars, of 1115.7 movements eastbound, and 1014.57 westbound. The Ottawa Electric movements eastbound were 334.28, and 340.14 westbound. Pedestrian movements were 790.7 east-

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S. J. Mc-  
Lean, Assistant  
Chief Com-  
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curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S. J. Mc-  
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missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued

bound and 807.85 westbound. The traffic, it appears, was fairly well balanced.

The eight hours, 4 p.m. to 12 p.m. are, in proportion to time, the heaviest loaded in number of movements. In this period the following are the percentage of the respective daily totals—vehicles, other than street cars, 45%; street cars, 38%; Pedestrians, 53%. Reduced to smaller units of movements, the following detail is available:

	Per Hour	Per Minute	
Vehicles, other than street cars.....	94.9	1.57	10
Street Cars .....	24.8	0.41	
Pedestrians .....	83.3	1.38	

A further analysis of the total traffic for the average 24 hour period enables the following comparisons of traffic density to be made.

	Per Hour	Per Minute
Vehicles, other than street cars .....	88.75	1.47
Street cars .....	28.09	0.46
Pedestrians .....	66.60	1.11

In the submissions made in the application for a grade cross- 20  
ing, already referred to, the Canadian National filed a statement showing bridge traffic for the forty-eight hours ending noon on June 4th, 1927. This, when analysed, gives the following results:

	Average per day	Average per hour	Average per minute
Vehicles, other than street cars.....	3,277	136.5	2.60
Street cars .....	673	27.6	0.49
Pedestrians .....	2,224	92.6	1.54

Vehicles, other than street cars, afford the following percentage subdivisions—motors, 65.7%; horse drawn vehicles, 14.9%; bicycles, 30 18.8%.

Exhibits Nos. 6 and 7, were filed by the Ottawa Electric, dealing with the traffic count for four days, inclusive, July 21st to July 24th, 1927. This showed average daily crossings of motors and horse drawn vehicles as 2511, or 78.535% of the total, while the average crossings of street cars, per day, was 681.5, or 21.465% of the total. The details are given by days, and are worked out on graphs. The percentages vary somewhat. Those that have been given are the average. The highest per cent of street car crossings, in proportion to total crossings of motor cars and horse-drawn vehicles, was on 40  
Thursday, July 21st, where there appeared 23.56%; on Saturday, July 23rd, the lowest figure was 19.29%.

The Vice-President of the Ottawa Electric, in examination, (p. 10351) and following pages) gave testimony regarding Exhibit

No. 6, which covered the traffic proportions, as illustrated in graphs, which have just been referred to... He also dealt with Exhibit No. 7. He stated, in referring to Exhibit No. 6, that the Street Railway traffic, over a 24 hour period was approximately 20% and submitted that the average peak would be about the same, i.e. when the Street Railway traffic increases the vehicular traffic increases. The peak hours are about Noon and between 5 and 6 o'clock. Vehicular traffic is shown as being especially high at Noon and in the evening, with a smaller peak around midnight. Motor traffic is stated, by  
 10 him, to be about 65% of the total vehicular traffic at the peak.

Exhibit No. 7, filed by the Ottawa Electric Railway, for the same period, gave a grand total as follows, for the periods July 21st, to July 24th:

Street cars .....	2726
Horse drawn vehicles .....	614
Motor vehicles .....	9430
Bicycles .....	1128
Pedestrians .....	6212

which produced, daily averages,—Street cars 681 per day; horse  
 20 drawn vehicles 153; motor vehicles 2357; bicycles 282, and pedestrians 1553.

## V.

As has been pointed out, there are submissions from the railways in regard to the unsatisfactory condition of the bridge, the Ottawa Electric, however, contending that the portion of the structure it claims to be especially concerned with, is in good shape. The Board has had special tests made in regard to the condition of the structure, using for this purpose not only its own Engineers, but also the experts of the Canadian Inspecting & Testing Company,  
 30 Limited. The reports submitted show that the matter has been gone into in great detail.

In regard to the Champagne Avenue Subway, it was pointed out that rust damage had affected the beams. In the case of the bridge over the Canadian National tracks, the steel work is, in general, and apart from the design of the structure for street car traffic, in very satisfactory shape. In the case of the bridge over the C.P.R. tracks, the concrete piers supporting the structure, have a vertical crack, showing itself on the centre of the piers at each side of the tracks. On the south side of the south street line, towards  
 40 Breeze Hill Avenue, there is a large crack, which is said to be apparently caused by the side thrust of the road hill. The beams of the structure are said to be in bad condition, and the top and bottom flanges of the beams are badly affected by rust. It is said that, evidently, the steel work has not been painted for some considerable

*Board of  
 Railway  
 Commissioners*

*No. 10*

*Reasons for  
 Judgment  
 (Order No.  
 40417) of  
 Board of  
 Railway  
 Commissioners:  
 (a) S. J. Mc-  
 Lean, Assistant  
 Chief Com-  
 missioner, con-  
 curred in by  
 Thomas Vien,  
 K.C., Deputy  
 Chief  
 Commissioner.  
 23rd Feb. 1928.  
 —Continued*



Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued

time, as the beams in their present condition are considerably coated with soot and rust. Reference is again made to the entire steel work being weakened by rusted condition, and the destruction by sulphur and gas.

Reports made by the Bridge Engineer of the Board, may be summarized::

- (a) At Champagne Avenue, the present state of the steel shows the beams are over-stressed;
- (b) The portion of the bridge which crosses the Canadian National, and more especially the beams on the western side of the cross- 10  
ing, are strained to a greater extent than is permitted, not only by the Standard Specifications of the Canadian Engineers Standards Association, but by almost every standard bridge specification. The over-stress referred to is, however, stated by him not to be a cause for immediate alarm.
- (c) As to the bridge over the Canadian Pacific, it is stated to be strained beyond the point set by Standard Specifications.

A further report, dealing with the vehicular portion of the bridge structure openings sets out:

1. That the three steel openings, now used for vehicular traffic 20  
and for electrical railway traffic are at present under-going serious over-stress;
2. That all three steel openings require either repairs or additions or preferably renewal;
3. That if nothing is done in the near future to relieve its condition, this portion of the structure will be in danger.

The Board's Chief Engineer reported as follows:

1. "Herewith are Mr. Gagnon's reports on the steel work of the Somerset Street Bridge, in which I concur. It appears that the floor beams at all three openings require either extensive re- 30  
pairs or renewals;"
2. "As to the concrete and masonry walls, they are in much the same condition as they have been for some years. On the south side, the concrete retaining wall, starting from the east end, is in good condition as far as the C.N.R. opening. Between the latter and the C.P.R. opening, the wall was bulged and cracked in places and requires repairs and renewal. On the north side, the wall between Champagne Street and the C.N.R. is out of line and has bulged somewhat. While it is not sightly, I am of opinion that it will last for some considerable time. Taken 40  
as a whole the masonry and concrete will last sometime yet with reasonable repairs."

3. "As to the road surface and its width, I quite agree with the officials that the bridge requires widening. Under present conditions, west bound vehicular traffic has to cross the street car tracks at the foot of each approach, and there is no room for a sidewalk on the north side of the street, all of which makes for danger to users of the street. The City's contention that the street should be widened, so that there will be room for vehicular and pedestrian traffic north of the street railway tracks, is reasonable."
- 10 Copies of the memorandum of the Board's Chief Engineer and of the reports of its Bridge Engineer, went to the parties for the filing of their exceptions, if any. The Canadian National stated it had no exceptions to make. The City of Ottawa, re-emphasized the position taken in its application.
- In referring to the statement of the Chief Engineer, that the masonry and concrete will last for sometime yet with reasonable repairs, the comment was made that very extensive repairs and renewals would have to be made at great cost to make this structure absolutely safe for future traffic.
- 20 The Ottawa Electric submitted that it caused an inspection of bridges, over which it runs, to be made annually by a competent Engineer.
- The C.P.R. stated that it had no exception to take.

## VI.

- The estimate made of the cost of the structure, as made by the City and submitted by its Solicitor, was \$185,000. Included in this is a sum of, approximately, \$35,000 to cover paving, sidewalks, which the City admits should be borne by it. This figure has been checked by the Board's Bridge Engineer, who accepts it as correct. A re-
- 30 constructed bridge structure, as distinguished from a new structure, is estimated by the City's Engineer at \$125,000.

Lowering the tracks of the Canadian National to give a vertical clearance of 20 feet 6 inches, it is estimated by the Board's Engineering Department, would cost \$5,000. The following estimate of the effect still further reducing the vertical clearances has been made by the Board's Engineering Department:

- 40 "Lowering of grade from that shown in the City's application, reducing clearance to 18 ft. at both C.P.R. and C.N.R. bridge and lowering C.N.R. tracks will flatten grade at the top by about 3 feet, and provide a betterment in grade as follows:"
- "City's proposed grade—east approach, 4.41%, west approach 4.97%; new grades by reduced clearance—east approach, 3.75%; west approach, 3.60%."

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued.

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(a) S J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vien,  
K.C., Deputy  
Chief  
Commissioner.  
23rd Feb. 1928.  
—Continued.

“ESTIMATE OF SAVING IN COST

“Saving in cost—

“Less height of abutments at bridge crossings and retaining walls along north and south sides of approaches.		
“Concrete .....	\$10,400.00	
“Less fill at widened portion of bridge, north side.....	1,000.00	
“Less height of steel bents at C.N.R. crossing.....	100.00	
	<u>\$11,500.00</u>	
“Contingencies, .....	\$ 1,500.00	10
	<u>\$13,000.00</u>	
“Less extra cost of additional excavation required..	4,000.00	
	<u>\$ 9,000.00</u>	
“Net saving in cost.....	\$ 9,000.00	

VII.

In the written submissions, on file, and in material submitted in argument, reference is made to the agreements entered into between the Ottawa Electric and the Canadian Pacific, the Ottawa Electric and the Canada Atlantic (the predecessor in title of the Canadian National Lines) and the Ottawa Electric and the City of Ottawa. 20

As already pointed out, the Board had before it, in 1907, an application submitted by the City of Ottawa, for an Order directing the Ottawa Electric and the Grand Trunk Railway Company, and the Canadian Pacific Railway Company, to submit a plan and profile for the purpose of widening the bridge and approaches thereto constructed on Somerset Street—a public highway in the City of Ottawa.

The agreements referred to were gone into with the usual care which characterized the late Chief Commissioner Killam, and what is involved cannot be better set out than by excerpting the following summarized statement contained in his Judgment, rendered March 13th, 1907: 30

“By an agreement, in writing, bearing date of the 8th day of August, 1896, made between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company in consideration of the sum of eight hundred dollars paid by the Canadian Pacific Railway Company to the Electric Company, the last mentioned Company agreed from time to time and at all times thereafter to indemnify and save harmless the Railway Company from and against all liability to maintain, alter, repair, or reconstruct the said bridge or the approaches thereto, 40

“and also from and against all claims for damages of every kind  
 “or nature whatsoever, or for any penalty imposed upon the said  
 “Railway Company by reason of any defect or default in the  
 “said bridge or crossing or the approaches thereto’: and the  
 “Electric Company further agreed that if it should at any time  
 “become necessary to reconstruct the then existing bridge, or to  
 “alter the same, plans of such alteration, or of the new bridge to  
 “be constructed, should first be submitted to and approved by  
 “the Railway Company; and the Canadian Pacific Railway  
 10 “Company assigned and set over to the Electric Company all the  
 “right of the Canadian Pacific Company in or connected with  
 “the said bridge and the approaches thereto.

“A similar agreement was made between the Electric Com-  
 “pany and the Canada Atlantic Railway Company.”

In summarizing the agreement between the Ottawa Electric and  
 the City, he used the following language:

“By agreement between the Ottawa Electric Railway Com-  
 “pany and the City of Ottawa, bearing date the 8th day of  
 “April, 1895, the consent of the City of Ottawa was given to  
 20 “the construction, maintenance and operation by the Electric  
 “Railway Company of a double and single iron street railway  
 “upon and along Cedar Street and other streets in the City for  
 “the unexpired portion of the term of thirty years just men-  
 “tioned. By the last mentioned agreement certain privileges  
 “and benefits were conferred upon the Electric Railway Com-  
 “pany, and the Company agreed to construct a line of street rail-  
 “way from its then existing system in Ottawa to the Experimen-  
 “tal Farm, in the Township of Nepean; and it was provided  
 “that nothing contained therein, or in the original agreement  
 30 “between the City and the Company or in the by-law of the  
 “City Council ratifying the original agreement or that of April  
 “1895, should be ‘construed to impose any liability on the Cor-  
 “poration for the construction, repair or maintenance of the  
 “bridge on Cedar Street, crossing the Canada Atlantic Rail-  
 “way lines and the Canadian Pacific Railway lines, or any bridge  
 “or bridges that may be constructed in place of same’, or should  
 “be construed as an assuming by the Corporation of the said  
 “bridges or any or either of them’.

The Judgment proceeding sets forth that the City of Ottawa  
 40 had offered to pay one-fourth of the expense. In the present ap-  
 plication Counsel for the City emphasises that this was a voluntary  
 offer. The Chief Commissioner points out that the steam railways  
 contended that the necessity for the widening of the bridge arose  
 wholly from its use by the Ottawa Electric and that on this account  
 and under their agreements they should be exempt from contribu-

*Board of  
 Railway  
 Commissioners*

No. 10

Reasons for  
 Judgment  
 (Order No.  
 40417) of  
 Board of  
 Railway  
 Commissioners:  
 (a) S. J. Mc-  
 Lean, Assistant  
 Chief Com-  
 missioner, con-  
 curred in by  
 Thomas Vien,  
 K.C., Deputy  
 Chief  
 Commissioner.  
 23rd Feb. 1928.  
 —Continued

Board of  
Railway  
Commissioners

No. 10

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway

Commissioners:  
(a) S J. Mc-  
Lean, Assistant  
Chief Com-  
missioner, con-  
curred in by  
Thomas Vlen,  
K.C., Deputy  
Chief

Commissioner.  
23rd Feb. 1928.

—Continued

tion. He continued, "and in this view, as between the three railway "companies, I think the contention of the former two companies is "correct". It is pointed out that—

"Before the tracks of the Electric Railway Company were "extended over it, the bridge was quite safe and sufficient for the "traffic. So far as appears, it would, with such repairs as time "and use might have rendered necessary, have still been safe and "sufficient for the purpose."

He then refers to the provisions of the agreement between the Ot- 10  
tawa Electric and the City and finds that the Ottawa Electric should  
widen the bridge as asked for, provision being also made for a con-  
tribution of one-fourth of the expense by the City.

### VIII.

Under the decision above set out, while the agreement was one  
of the factors, probably the main one, the factor of changed condi-  
tions, in respect of the congestion brought about by the Street Rail-  
way traffic, is specifically mentioned in the Judgment.

The Board in *City of Windsor v. Canadian Pacific Ry. Co.* (the  
*Wyandotte Street Bridge Case*) 32 *Can. Ry. Cases*, 26, had before 20  
it a question of bridge construction arising under the obligations in  
this respect, which the railway had assumed in obtaining its loca-  
tion through Windsor, and which had, thereafter, been covered by  
an Order of the Railway Committee of the Privy Council. The  
Board in dealing with this case, wherein the element of agreement  
entered, said that, under specific conditions, weight might be given  
to certain factors. These are not set out as an exhaustive statement.  
In so far as they appear applicable to the present case they are as  
follows: (pp. 29-30). Congestion—that is to say, that while the  
bridge in existence may be strong enough to bear all the traffic then  
moving, it may do so at the expense of congestion. The Board may 30  
give weight to the question whether or not the life of the existing  
structure has expired. In so far as it still has life, this may be con-  
sidered as bearing on the question of apportionment of cost—in the  
*City of Hamilton v. Canadian Pacific and Toronto, Hamilton &*  
*Buffalo Ry. Co.* 20 *Can. Ry. Cases* 159, the life in the existing bridge  
was held to justify 30% being placed on the City. See also, 25 *Can.*  
*Ry. Cases*, 379 at p. 385; the Board may take into consideration whe-  
ther the increase in highway traffic is due to changed status of the  
highway. In considering changes in traffic, due to the changed status  
of the highway, some weight may be given to changes in the nature 40  
of the traffic itself; in this connection the situation existing in Windsor  
in respect of motor traffic was taken into consideration.

The bridge has still some life, which could be prolonged by re-  
pairs. An estimate of from eight to ten years is given by the Board's

Engineering Department. There is congestion of traffic—automobile traffic being, in the main, responsible. When Chief Commissioner Killam rendered Judgment, street car traffic was the prime factor in bringing about congested conditions. The items summarized in the Wyandotte Street Bridge Case may justifiably be taken into consideration here. Steam railways have a longer life than electric railways, operating over City streets, whose life is limited by franchise. The plans submitted seek a betterment of road conditions in respect of highway grades. This betterment will bring the grades below 5%. Unless in exceptional conditions, and then at the expense of the applicant, grades, or grade separations ordered by the Board do not go below 5%.

Order for the construction of the work asked for may go. Plans may be filed for approval of the Board's Engineer. As already indicated, the City is responsible for the paving of the roadway and for the sidewalks. The City should be responsible for the wearing surface of the bridge. The balance of the cost should be divided, 60% on the Ottawa Electric and 40% on the City of Ottawa. The maintenance, other than as referred to above, should be on the Ottawa Electric.

Ottawa, February 23rd, 1928.

S. J. McL.

"I Agree"

T. V.

No. 11

**Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners:—(b) Frank Oliver, Commissioner, dissenting.**

Application of the City of Ottawa for an Order under Sections 257 and 264 to the Railway Act, requiring the Ottawa Electric Railway Company, the Canadian Pacific Railway Company and the Canadian National Railways or some one or more of said Companies to replace the existing Somerset Street Bridge or Viaduct in the City of Ottawa, which carries Somerset Street and the Tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street, and for an Order apportioning the cost of such new bridge between the railways, or between some one or more of them and the said Corporation, as the Board may direct. File Case 396.

*Heard at Ottawa, September 8th, 1927*

*Board of  
Railway  
Commissioners*

No. 10

Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners: (a) S. J. McLean, Assistant Chief Commissioner, concurred in by Thomas Vien, K.C., Deputy Chief Commissioner. 23rd Feb. 1928. —Continued

No. 11

Reasons for Judgment (Order No. 40417) of Board of Railway Commissioners: (b) Frank Oliver, Commissioner, dissenting. 29th Feb. 1928.

Board of  
Railway  
Commissioners

COMMISSIONER OLIVER;

I.

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued

On May 27th, 1927 the Corporation of the City of Ottawa applied to the Board for an Order requiring the demolition and removal of the existing bridge or viaduct on Somerset Street over the tracks of the Canadian Pacific and Canadian National Railways, and the restoration of the street at grade level. The application was heard in Ottawa on July 7th, 1927.

In support of the application the City of Ottawa asserted,—

(1) That the existing bridge had fallen into such state of dis- 10  
repair that it had become dangerous;

(2) That street traffic had so increased that the bridge was  
not wide enough;

(3) That railway traffic across Somerset Street had decreased  
by reason of changes in the operation of both railway systems, so  
that it would not now be so great a danger to highway traffic by  
way of a level crossing as it had been when the existing bridge was  
built;

(4) That under present conditions adequate protection could  
be given a level crossing without serious inconvenience to the public; 20

(5) That since the present bridge was built, an overhead traffic  
bridge had been built a short distance to the northward over the  
same railway tracks, on the Richmond Road (Wellington Street)  
which converges into Somerset Street a short distance west of the  
bridge, and is able to take the traffic (with some detour) that now  
passes over the Somerset Street Bridge;

(6) That the Street Railway now routed over the Somerset  
Street Bridge could be routed by way of the Richmond Road viaduct  
without serious detriment to its patrons.

The application of the city for the demolition of the bridge 30  
was opposed by the Canadian Pacific Railway Company, by the  
Canadian National Railways, by the Ottawa Electric Railway Com-  
pany, by the West End Municipal Association and other sections  
of the citizens resident west of the bridge.

By Order dated July 12th, 1927, the application for the demoli-  
tion of the present overhead bridge and the establishment of a level  
crossing was refused by the Board.

II.

Following upon the refusal of the Board to permit the demoli-  
tion of the bridge and its replacement by a protected level crossing, 40

the City, on July 14th, 1927, applied to the Board under Sections 257 and 264 of the Railway Act, 1919, for an Order requiring the Ottawa Electric Railway Company, the Canadian National Railways and the Canadian Pacific Railway Company, or some one or more of the said Companies to replace the existing Somerset Street bridge; at the same time filing plan and profile of such bridge as it desired to have constructed in substitution for the existing bridge.

*Board of  
Railway  
Commissioners*

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued

10 By Order of the Board a very complete examination was made to decide as to the safety of the existing bridge. The final report of the Bridge and Structural Engineer of the Department of Railways and Canals, submitted on February 3rd, 1928, says,—

“Reasonable repairs could be made,—(1) to the Steel in the “bridge; (2) to the timber in the bridge; and (3) to some portion of “the concrete above grade in the bridge, but there would still be left “the repairs to be carried out to the walls and foundations, these “being the weakest parts of the whole structure. It would indeed “be very difficult and costly to carry out repairs in the walls and “foundations.

20 “Considering all factors, I am, so to speak, forced to state that “the life of the existing bridge with reasonable repairs appears to “be a quantity beyond estimation and one entirely dependent upon “its weakest portions, these as stated above, being the walls and “foundations. One could possibly, as a last resource, venture a guess “of from eight to ten years”.

30 This report did not establish that a reconstruction of the bridge is a matter of immediate urgency, so far as safety is concerned, but on the other hand, it does not establish that the bridge is actually in safe condition. It is however definite on the point that repairs are necessary if safety is to be maintained. No limit is placed on the cost of necessary repairs. The evidence in the case seemed to establish that vehicular traffic has increased to such an extent that the present bridge is inadequate.

### III.

The subject of the distribution of costs of a new bridge amongst the several parties concerned in or affected by the application of the City occupied the attention of the Board during the greater part of the hearing of September 7th, 1927.

40 The Canadian Pacific Railway Company claimed exemption from payment of any part of the cost of the proposed new bridge on two grounds,—(1) seniority of right; and (2) Agreement with the Ottawa Electric Railway Company, dated August 8th, 1896.



Board of  
Railway  
Commissioners

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued

The Canadian National Railways claimed like exemption on the ground of a similar agreement with the Ottawa Electric Railway Company, dated August 21st, 1896.

The Ottawa Electric Railway Company claimed exemption from payment of any part of the cost of the proposed new bridge on the grounds,—

That the north part of the present bridge had been built by the Electric Railway Company for its own purposes and at its own sole cost; that this was the only part of the bridge used by the Ottawa Electric Railway; that it was in fact a separate bridge and was adequate for the Electric Railway Company's purposes; that it was in sufficiently good repair, and did not need renewal on grounds of safety; and that the Ottawa Electric Railway Company should not be compelled to contribute to the cost of a new bridge which was only considered necessary by the increase in vehicular traffic. 10

The Ottawa Electric Railway Company also claimed compensation for its investment in the present bridge in case of replacement.

The claim of seniority of right made by the Canadian Pacific Railway Company was based on the ground that as successors of the St. Lawrence and Ottawa Railway, they had prior occupancy of the roadway at the bridge location. During the hearing on September 7th, 1927, the Railway Company's Counsel read into the record part of a letter dated November 24th, 1870, from Thomas Reynolds, then managing director of the St. Lawrence and Ottawa Railway, addressed to Messrs. Sparks and Slater, owners of certain properties in that neighborhood through or near which the railway passed, in which he said,—“The terms and conditions contained in your letter, including the building and keeping of two bridges over the cutting “is entirely to my satisfaction”. This letter was cited as evidence that the route of traffic which was admitted to be then existing at the site of the present Somerset Street bridge was only a farm and not a public crossing. But there appears on the file what is duly certified as a true copy of part of “Map or Plan of the proposed “extension of the St. Lawrence and Ottawa Railway,— as shown “on a duplicate,—examined and certified under 31 Victoria, Cp. “68, Section 8, by T. Trudeau, Deputy Minister of Public Works, “(dated) Ottawa, July 7th, 1870”, which shows the route of the St. Lawrence and Ottawa Railway between its crossing of the present Preston Street and its crossing of the Richmond Road. 20 30

Upon this plan is shown a road allowance crossed by the St. Lawrence and Ottawa Railway, at the site of the present Somerset Street bridge. The site was outside the then limits of the City of Ottawa and within a suburb known as Rochesterville, which at that time was only partly subdivided. The road or street allowance 40

shown on the plan mentioned gave access to the Richmond Road, which was then the great highway extending westward from the city. It was shown on the plan as being of the same width as the part of what is now Somerset Street between Preston and Rochester, and of which street it now forms a part. It appears to me that the plan mentioned clearly establishes that the St. Lawrence and Ottawa Railway when built according to the plan on file, was built subject to the reservation of the road shown thereon, and therefore must be junior to the highway at this point.

*Board of  
Railway  
Commissioners*

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
*—Continued.*

- 10 In the Agreement of August 6th, 1896, between the Canadian Pacific Railway Company and the Ottawa Electric Railway Company regarding the bridge now in question, the recital begins as follows,—

“Whereas the public highway in the City of Ottawa, formerly “known as Cedar Street and now known as Somerset Street, is and “has been carried over the St. Lawrence and Ottawa Branch of the “Railway Company’s line by means of an overhead bridge.”

- 20 It would therefore appear that in accordance with the letter of Managing Director Reynolds of November 24th, 1870, a traffic bridge, as promised by him, was duly constructed over the railway on the street shown in the plan, at the sole cost of the railway.

The Canadian Pacific Railway Company also claimed exemption from payment of any share of the cost of repair, renewal or replacement of the existing bridge under the terms of the Agreement already mentioned and dated August 8th, 1896. Sections 1 and 2 of this Agreement are as follows,—

- 30 “(1). The Electric Railway shall and will from time to time, and at all times hereafter, indemnify and save harmless the Railway Company from and against all liability to maintain, alter, repair or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind whatsoever, or for any penalty imposed upon the said railway company by reason of any defect or default in the said bridge or crossing or approaches thereto.”

“(2). The Electric Company further agrees that if it should at any time become necessary to reconstruct the present bridge, or to alter same, plans of such alteration, or of the new bridge to be constructed, shall first be submitted to and approved of by the Railway Company”.

- 40 At a date after 1870 and before 1893, the Canada Atlantic Railway crossed the roadway that is now Somerset Street, (then Cedar Street); and at its own cost built an overhead bridge to carry the

Board of  
Railway  
Commissioners

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

public traffic on that street across its tracks. This railway maintained the bridge so constructed at its sole cost from the date of its erection until August 21st, 1896, at which date an agreement was made with the Ottawa Electric Railway Company, identical in Sections (1) and (2) with the agreement made by the Canadian Pacific Railway Company with the Ottawa Electric Railway Company, as already quoted. At a later date the Canada Atlantic Railway became part of the Canadian National Railways system, which at present owns and operates the tracks that were built by the Canada Atlantic across Somerset Street and is therefore successor in title to that 10  
Company.

#### IV.

At some date between the years 1870 and 1893 the Village of Rochesterville became part of the City of Ottawa. The western boundary of the City of Ottawa then crossed Somerset Street at the west end of the main part of the overhead bridge. The western approach was in the Village of Hintonburg.

By an agreement dated June 8th, 1893, the City of Ottawa granted a franchise to the Electric Railway Company to be operative for thirty years from that date. In 1895 the Electric Railway Com- 20  
pany desired to make certain extensions to its lines on various city streets and also beyond the then city limits westerly to serve the then village of Hintonburg, the Experimental Farm and other points. An agreement was made between the City and the Company making provision for these extensions, dated April 8th, 1895. The powers granted the Company were expressly limited by the date of expiry of the thirty years franchise. A proviso in the agreement relieved the City from any liability,—

“For the construction, repair or maintenance of the bridges  
“on Cedar (Somerset) Street crossing the Canada Atlantic Rail- 30  
“way lands and the Canadian Pacific Railway lands, or any  
“bridge or bridges that may be constructed in place of the same,  
“or shall be construed as an assuming by the Corporation of  
“the said bridges or any or either of them.”

While the City in 1893 had become the owner of Somerset Street as far as the west end of the overhead bridge, it refused to exercise its rights on behalf of the Electric Railway Company in respect of the necessary reconstruction or replacement of the traffic bridges across the railway tracks on that Street. In effect the City said to the Electric Railway Company,—“You may use Somerset Street 40  
“for your tracks, but you must settle with the owners of the present  
“bridges over the steam railways on such terms as you can make  
“with them”. The Electric Railway Company secured authority from the Railway Committee of the Privy Council to cross the tracks

of the Railways,—there was then no Railway Commission,—and made the Agreements of August 8th, and of August 21st, 1896, with the Railway Companies as to the replacement of the then existing bridges by a bridge suitable to carry the Electric Railway traffic. The Ottawa Electric Railway Company then demolished the bridges that had been built by the railway and constructed an overhead bridge over both railway tracks for the use of pedestrian and vehicular as well as street railway traffic, at the sole cost of the Electric Railway Company.

*Board of  
Railway  
Commissioners*

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners;  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

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V.

On November 10th, 1906, the City of Ottawa made application to the Board of Railway Commissioners for an Order,—“directing “the Ottawa Electric Railway Company, the Grand Trunk Railway “Company of Canada, (which had acquired the Canada Atlantic) “and the Canadian Pacific Railway Company to submit a plan and “profile for the purpose of widening the bridge and the approaches “thereto constructed by them on Somerset Street.” The City stated that the widening asked for was necessary because the bridge had become inadequate to carry the increased pedestrian and vehicular traffic.

20

By this application the City assumed responsibility for the accommodation of traffic over the railway tracks which crossed Somerset Street that it had refused to accept in 1895 when the Electric Railway Company was first permitted to use the street.

The reply of the Ottawa Electric Railway Company was that the bridge was still adequate to carry the traffic.

The Canadian Pacific Railway Company claimed exemption under the Agreement with the Electric Railway Company, dated August 8th, 1896.

30 The Board heard this application in Ottawa on January 31st, 1907. On March 2nd, 1907, the Chief Engineer of the Board reported that the Somerset Street Bridge should be widened by sixteen feet.

The Judgment of the Board was delivered by the then Chief Commissioner Killam, on March 20th, 1907. It provided,—“That the Electric Railway Company should widen the bridge by sixteen feet, according to plans to be approved by the Board, and that the “City should pay the Railway Company one fourth the expense involved in the addition”. In his reasons for Judgment it would appear that the Chief Commissioner assessed one quarter of the cost of the bridge against the City because it had offered to pay that proportion, and released the two steam railway companies from any pay-

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Board of  
Railway  
Commissioners

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

ment, because of the terms of their agreements with the Electric Railway Company.

There appears on the file a memorandum by Deputy Chief Commissioner Bernier, dated Ottawa, March 20th, 1907, in which he said,— “I have examined the papers and read the evidence re the “Somerset Street bridge, Ottawa, and I came to the conclusion that “if the widening of it is considered a repair, the City of Ottawa and “the Ottawa Electric Railway Company should bear the expense “in the proportion agreed to, but I see no evidence that the plans for “such changes or repairs have been submitted nor approved by the 10 “Canadian Pacific Railway Company, as stipulated in the Agree-  
“ment of August 8th, 1896.”

This comment by the Deputy Chief Commissioner would seem to indicate that he was not convinced that the proposed widening was either “Maintenance”, “alteration”, “repair” or “reconstruction” of the then existing bridge. In support of that view he instanced that the terms of the Agreement had not been followed as to submission of plans.

## VI.

During the hearing of September 7th, 1927, it was assumed by 20 the railways in argument that the Judgment of the Chief Commissioner relieving them from contribution to the widening of the bridge in 1907 should be accepted as effective in relieving them from any share of the cost of the presently proposed new bridge.

It appears to me that the facts developed at the hearing of September 7th must be considered and as well the changes in governing conditions that have taken place since the Agreements of 1896 were made, before such acceptance should be given.

From the record of the hearing in January, 1907, and in the reasons for Judgment given by the then Chief Commissioner in 30 March of that year, it does not appear that he had become aware of the actual position in regard to the question of seniority, as between the City and the Canadian Pacific Railway Company, as shown by the plan of July 7th, 1870.

As the Order of March 20th, 1907, for the widening of the bridge was necessarily given before the work had been begun, the then Chief Commissioner could not have known that in fact under the Order an entirely new bridge sixteen feet in width was constructed. This bridge was entirely distinct from although alongside of the then existing bridge that had been built by the Electric Railway Com- 40  
pany, and therefore was not in any sense a “repair”, “maintenance” or “replacement” of that bridge, as mentioned in the Agreement between the City and the Electric Railway Company, nor was it a

“maintenance”, “alteration”, “repair” or “reconstruction” of the bridge that was the subject of the Agreements of August, 1896, between the steam railways and the Electric Railway Company.

*Board of  
Railway  
Commissioners*

No. 11

The Agreement relieving the City from liability for cost of “construction, repair, or maintenance of the bridges on Cedar Street” in its terms was quite as effective to protect the City as the railway agreements were to protect them. But the City did not understand that either the City or the railways were protected in the case of the construction of the new sixteen foot bridge. When the City offered

10 to pay one quarter of the cost, its responsible authorities must have believed that all four parties were liable and that the cost should be equally divided amongst them. Had this not been the City’s belief, it would no doubt have sought protection equally with the railways against any payment, as would have been the duty of its authorities.

*Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.*

## VII.

It was brought out at the hearing of September 7th, 1927, that there was no substantial ground of complaint as to the condition of the original bridge built in 1896-7 by the Electric Railway Company and still in use by it. The sole complaint as to urgent need of

20 Repairs related to the adjoining sixteen foot bridge built pursuant to the Board’s Order of 1907. While the newer construction of 1907 may have been to some extent dependent on the original Electric Railway bridge, the latter was in no way dependent on the more recently constructed sixteen foot bridge.

The application to the Board by the City of Ottawa on May 27th, 1927, for the complete demolition of the present bridge, with the establishment of protected level crossings in its place, and the refusal of the application by the Board, in my opinion altogether changes the respective positions of the several parties interested in

30 the Somerset Street crossing of the railway tracks from what they were when the application of 1907 was heard.

What was the village of Hintonburg in 1907 is now a part of the City of Ottawa, so that the City is now responsible for the west-erly approach to the bridge and for the traffic beyond, as it was not in 1907.

The City as owner of Somerset Street, and as the authority responsible for the maintenance of traffic upon it in crossing the railway tracks, definitely and in due form asked for the demolition of the bridge which it had in part paid for. There seemed to the

40 City authorities reasons that were sufficient warrant to them for making the request, and they were quite within their rights in making it. The Board had full power to grant, as well as to refuse the request. By its refusal it relieved the City of the responsibility of

*Board of  
Railway  
Commissioners*

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

choice in the matter and thereby in effect compelled it to apply for authority to construct a new bridge, which is the application now under consideration.

Under the circumstances, it would appear to me that the present application must be dealt with on the facts as they have been fixed by the Board's refusal to permit the demolition of the bridge, having regard to the needs of traffic on Somerset Street and the interruption to that traffic that in the judgment of the Board would be caused by the steam railways crossing the street on the level.

### VIII.

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While it is a fact that the Electric Railway Company has paid for the bridge by which it crosses over the steam railway tracks on Somerset Street, and that the part of the bridge which it uses is still in sufficiently good condition to warrant its continued use for some years, the fact that it is in occupation of a part of a roadway that the City is bound to keep open for highway traffic, places it in a position that does not entitle it either to be repaid the amount of its expenditures on the present bridge, or to be relieved of its fair share of the cost of the proposed new bridge made necessary by the Board's Order of July 12th, 1927.

20

Nothing was brought out either in evidence or argument to indicate that the railways where they cross Somerset Street have any special rights or claim to interrupt street traffic at that point. On the contrary the fact that both railways in the first place provided overhead crossings at their sole cost, and maintained those crossings for a period of twenty-six years in the case of the Canadian Pacific Railway and for a somewhat lesser period in the case of the Canadian National Railways, clearly establishes that both railways are in the position of all other railways at street or highway crossings and subject to the Order of the Board as to payment of their fair share of such crossing protection as the Board may order.

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### IX.

The application before the Board is by the City; it is opposed by the Electric Railway Company as well as by the steam railways, so far as sharing in distribution of costs is concerned. The claim of the railways that by the agreements they hold with the Electric Railway Company they are to be indemnified by that Railway for any costs to which they may be put by the construction of a new bridge on Somerset Street, does not seem to me to be a matter that calls for consideration by the Board. Section 35 of the Railway Act, 1919, empowers the Board to enforce the terms of agreements between railways and between railways and other persons or corporations. In

40

case of breach of such agreements the Board is empowered after hearing, to make such Order as may seem "reasonable or expedient".

*Board of  
Railway  
Commissioners*

- 10 The Agreements of 1896 were made in respect of the transfer of the rights of the steam railways in the overhead bridges which they had constructed to the Electric Railway Company which desired to replace them. The provisions of the agreements saving the steam railways from future liability at the cost of the Electric Railway Company were, and could only have been intended to be, applicable to cases in which the Electric Railway Company was altogether, or would in some degree, be responsible for the circumstances that would require the steam railways to incur costs. In the case under consideration it does not appear to me that the Electric Railway can be held to be responsible in any degree for the need of a new bridge. Under such circumstances I am of the opinion that it would not be either "reasonable or expedient" that the Board should order the Electric Railway Company to pay the costs ordinarily assessable against the steam railways for a new bridge that the City which owns the street and from whom the Electric Railway Company holds its rights, formally declared was not necessary.

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

- 20 If under their agreements the steam railways have a remedy against the Electric Railway, it would seem to me that they should seek that remedy in the courts at the proper time and not now at the hands of the Board in the terms of the Order to be issued for the construction of a new bridge.

## X.

- 30 On June 23rd, 1908, the Board ordered the construction by the Canadian Pacific Railway of a viaduct for highway traffic on the Richmond Road in the City of Ottawa, over the Canadian Pacific and what are now the Canadian National tracks. Somerset Street and the Richmond Road converge a short distance west of the present bridge and viaduct. The cost was to be paid in the proportion of twenty three thirty sixths ( $\frac{23}{36}$ ) by the railways and thirteen thirty sixths ( $\frac{13}{36}$ ) by the City of Ottawa and the County of Carleton jointly. That is to say the two railways paid slightly under two thirds of the total cost.

- 40 On September 4th, 1905, the Board ordered the Canada Atlantic Railway, now the Canadian National, to construct a subway on Bank Street in the City of Ottawa. The Electric Railway was using Bank Street at and before that date. The cost was distributed as follows,—three eights ( $\frac{3}{8}$ ) to be paid by the Canada Atlantic Railway; three eights ( $\frac{3}{8}$ ) by the City of Ottawa and one quarter ( $\frac{1}{4}$ ) by the Ottawa Electric Railway Company.

On November 15th, 1927, the Board ordered that in the case of certain grade separations in the north-western part of the City of



*Board of  
Railway  
Commissioners*

No. 11

Reasons for  
Judgment  
(Order No.  
40417) of  
Board of  
Railway  
Commissioners:  
(b) Frank  
Oliver,  
Commissioner,  
dissenting.  
29th Feb. 1928.  
—Continued.

Toronto the distribution of costs should be as follows,—forty per cent from the Grade Crossing Fund up to \$25,000.00; ten per cent of the balance to be paid by the Toronto Transportation Commission (Municipal Street Railway); the remainder to be paid fifty per cent by the steam railway, and fifty per cent by the City of Toronto.

I am of opinion that the conditions warrant an Order,—(1) for the construction of a new bridge, of the character and capacity shown on the plan submitted by the City on July 14th, 1927; details to be subject to alteration towards meeting the views of other interested parties as may be directed by the Board; and (2) that the cost should 10 be apportioned as follows,—The maximum amount permitted by law to be provided from the Grade Crossing Fund; the remainder to be divided equally between the steam railways and the City; the share of the railways to be divided between them, in proportion to the bridge space occupied by their respective tracks; the Electric Railway Company to pay half the amount chargeable to the City, if its tracks occupy a part of the surface of the bridge.

F.O.

Ottawa, February 29th, 1928.

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## No. 12

Judgment (Order No. 40417) granting application of the City of Ottawa to replace the bridge at Somerset Street with a new bridge.

*Board of  
Railway  
Commissioners*

No. 12

THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA

Judgment  
(Order No.  
40417) granting  
application of  
the City of  
Ottawa to  
replace the  
bridge at  
Somerset St.  
with a new  
bridge.  
5th Mar. 1928.

10

MONDAY, THE 5th DAY  
OF MARCH, A.D. 1928  
S. J. McLEAN,  
Asst. Chief Commissioner.  
20 THOMAS VIEN, K.C.,  
Deputy Chief Commissioner.  
HON. FRANK OLIVER,  
Commissioner.

IN THE MATTER OF the application of the Municipal Corporation of the City of Ottawa, in the Province of Ontario, hereinafter called the "Applicant," under Sections 257 and 264 of the Railway Act, 1919, for an order requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said Companies, to replace the existing bridge or viaduct at Somerset Street, in the City of Ottawa, which carries the said street and the tracks and right of way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street; and apportioning the cost of such new bridge between the said railway companies, or between some one or more of them, and the Applicant, as the Board may direct.

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Case No. 396

UPON hearing the application at the sittings of the Board held in Ottawa, September 7th, 1927, and September 8th, 1927, in the presence of Counsel for and representatives of the Applicant, the Ottawa Electric Railway Company, Canadian National Railways, and Canadian Pacific Railway Company, and what was  
40 alleged; and upon the report of the Bridge Engineer of the Board, concurred in by its Chief Engineer, and reading the written submissions filed—

Board of  
Railway  
Commissioners

**THE BOARD ORDERS**

No. 12

Judgment  
(Order No.  
40417) granting  
application of  
the City of  
Ottawa to  
replace the  
bridge at  
Somerset St.  
with a new  
bridge.  
5th Mar. 1928.  
—Continued.

1. That the Applicant be, and it is hereby, authorized to re-construct the said bridge carrying Somerset Street and the tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, in the City of Ottawa and Province of Ontario, in accordance with plans to be filed for the approval of an Engineer of the Board.

2. That the said bridge be fifty-eight feet in width.

3. That the Applicant bear and pay the cost of the construction of the sidewalks and the paving of the roadway, the remainder of the cost of the said bridge to be borne and paid sixty per cent by the Ottawa Electric Railway Company and forty per cent by the Applicant; the cost of maintaining the bridge, with the exception of the wearing surface thereof which shall be maintained by and at the expense of the Applicant, to be paid by the Ottawa Electric Railway Company.

S. J. McLEAN,  
Assistant Chief Commissioner,  
Board of Railway Commissioners for Canada. 20

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

No. 13

**Material parts of specifications approved under Order No. 40417.**

**CITY OF OTTAWA  
SPECIFICATIONS  
for the  
CONSTRUCTION  
of**

**BRIDGES AT SOMERSET STREET**

Crossing at Champagne Ave, and C.N.R. and C.P.R.  
tracks and the approaches thereto.

30

Date of Contract.....  
Date of order to commence.....  
Date for work to be completed.....  
Date of completion.....

.....  
Name of Contractor.

**BOARD OF RAILWAY COMMISSIONERS  
FOR CANADA.**

*Board of  
Railway  
Commissioners*

Approved as provided in Order No. 40417 dated 5 March, 1928.

No. 13

**H. A. K. DRURY,**  
Engineer Board of  
Railway Commissioners.

Material parts  
of specifications  
approved under  
Order No.  
40417.  
—Continued.

Ottawa, Oct. 31, 1928.

10 Tenders marked "Tender for the construction of Somerset Street  
Bridge and approaches" shall be received by the Chairman and Mem-  
bers of the Board of Control up to 12 o'clock noon on Tuesday, the  
13th day of November, 1928.

\* \* \* \*

**Existing Walls.**

It must be understood that, should any of the old abutment  
walls be found suitable to be incorporated in the new work in the  
opinion of the Engineer, the Contractor will be paid only for the  
work actually done.

\* \* \* \*

20 Title of Contract { Bridges at Somerset Street crossing at Cham-  
pagne Ave., the C.N.R. and C.P.R. tracks, and  
the approaches thereto.

\* \* \* \*

Item No. 1—Price for all demolition work providing and maintain-  
ing temporary bridges and walls and fences etc., and removing same  
at completion (except as item 2 and item 3 below). .....

Item No. 2—Price per cubic yard for taking down and removing  
concrete walls of present structures. ....

Item No. 3—Price per cubic yard for taking down and removing  
stone masonry walls of present structures. ....

N.B.—Unjointed and loose rubble stone, protecting banks will not  
be paid for as masonry.

30

Item No. 4—Price per cubic yard for excavation for new grade at  
approaches. ....

Item No. 5—Price per cubic yard for excavation at Bridge abut-  
ments and piers. ....

Item No. 6—Price per cubic yard for excavation at Retaining walls.  
.....

N.B.—Contractors should note under heading "excavation" in  
Specification, areas not allowed for.

Item No. 7—Price per cubic yard for solid rock excavation.  
.....

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Board of  
Railway  
Commissioners

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

(Loose rock and boulders shall not be classed as rock).

N.B.—Prices for all excavations include for backfilling or for disposing of same otherwise and for any required shoring.

Item No. 8—Price per lin'l feet for wood piling driven in place complete to depth required. ....

Item No. 9—Price per lin'l feet for piling cut offs. ....

Item No. 10—Price per cubic yard for 1-2<sup>1</sup>/<sub>2</sub>-5 mass concrete in place in bridge abutments including surface finish. ....

Item No. 10A—Price per cubic yard for 1-2<sup>1</sup>/<sub>2</sub>-5 mass concrete in place in retaining walls including expansion joints and surface finish. 10

Item No. 11—Price per cubic yard in molded projection course on top of walls of 1-2-4 concrete to detail for full width if wall (placed monolithic with walls). ....

Item No. 12—Price per cubic yard for 1-2-4 concrete in place in piers. ....

Item No. 13—Price per cubic yard for 1-2-4 concrete in ballast walls. ....

Item No. 14—Price per cubic yard for 1-2-4 reinforced concrete roadway slabs at bridges including around steel beams and channel at curb but not including reinforcing steel. 20

Item No. 15—Price per cubic yard for 1-2-4 concrete filling over roadway slab at car track section. ....

Item No. 16—Price per cubic yard for 1-2-4 concrete in sidewalk of bridges including around beams molded projection course, curb and wearing surface but not including reinforcing steel. ....

Item No. 17—Price per cubic yard for 1-2-4 concrete slab for ducts at bridges but not including reinforcing steel. ....

Item No. 18—Price per lin'l. feet for metal nosing on sidewalk curbs in place. .... 30

Note.—Prices for all concrete to include forms and surface finish specified.

Item No. 19—Price per ton for reinforcing steel in position including required bends and hooks. ....

Item No. 20—Price per ton for straight reinforcing steel rods in position including dowels. ....

Item No. 21—Price per square yard for waterproofing roadway slab at bridges. ....

Item No. 22—Price per lineal foot for 4 inch agricultural tile drains at back of abutments and retaining walls including plank and trenching to grade. .... 40

- |                                                                                                                                                                                                         |       |                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------------------------------------|
| Item No. 23—Price per lineal foot for 4 inch jointed vitrified drain pipe through wall and along front of abutments and retaining walls including shallow trenching to grade.                           | ..... | <i>Board of<br/>Railway<br/>Commissioners</i>                                |
| Item No. 24—Price per lineal foot for 6 inch joint vitrified pipe including shallow trenching to grade.                                                                                                 | ..... | No. 13                                                                       |
| Item No. 25—Price per cubic yard for broken stone fill behind abutments and retaining walls.                                                                                                            | ..... | Material parts<br>of specifications<br>approved under<br>Order No.<br>40417. |
| Item No. 26—Price per cubic yard for fill.                                                                                                                                                              | ..... | —Continued.                                                                  |
| 10 Item No. 27—Price per cubic yard for broken stone paving at car tracks section of roadway of approaches.                                                                                             | ..... |                                                                              |
| Item No. 28—Price per square yard for broken stone paving at sides of roadway of approaches.                                                                                                            | ..... |                                                                              |
| Item No. 29—Price per square yard cinder walks at approaches.                                                                                                                                           | ..... |                                                                              |
| Item No. 30—Price per 1000 feet B.M. for plank curbs at approaches including trenching and spikes.                                                                                                      | ..... |                                                                              |
| Item No. 31—Price per square yard for 3 inch asphalt wearing surface at tracks and sides of roadways at bridges.                                                                                        | ..... |                                                                              |
| 20 Item No. 32—Price per square yard for repairs to existing asphalt pavement at sides of roadway where required, for new grade including concrete foundation as per city specifications for this work. | ..... |                                                                              |
| Item No. 33—Price per square yard for repairs to stone block paving at street car section where required for new grade including foundation all as per city specifications for this class of work.      | ..... |                                                                              |
| Item No. 34—Price per ton for structural steel in place at all bridges including columns, girders and stringers, etc.                                                                                   | ..... |                                                                              |
| 30 Item No. 35—Price per lb. for 9 inch x 1/2 inch thick steel expansion plate across roadway of bridges at ballast walls, bolted to concrete.                                                          | ..... |                                                                              |

\* \* \* \* \*

**ESTIMATED QUANTITIES**

- |                                                                                |       |
|--------------------------------------------------------------------------------|-------|
| Item No. 1.—                                                                   |       |
| Item No. 2.—2350 Cubic Yards—Taking down and removing existing concrete walls. |       |
| Item No. 3.—131 Cubic Yards—Taking down and removing stone masonry walls.      | ..... |
| Item No. 4.—2657 Cubic Yards—Excavation for grade approaches.                  |       |
| 40 Item No. 5.—2400 Cubic Yards—Excavation for Bridge abutments and Piers.     |       |
| Item No. 6.—2400 Cubic Yards—Excavation for Retaining walls.                   |       |

Board of  
Railway  
Commissioners

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued.

- Item No. 7.—10 Cubic Yards—Rock Excavation.
- Item No. 8.—300 Lin'l feet—Woodpiling in place.
- Item No. 9.—30 Lin'l feet—Wood piling cut offs.
- Item No. 10.—2350 Cubic Yards—Mass concrete 1-2 $\frac{1}{2}$ -5 in Abutments, including outside surface finish.
- Item No. 10A.—2800 Cubic Yards—Mass concrete 1-2 $\frac{1}{2}$ -5 in Retaining walls, including outside surface facing, etc.
- Item No. 11.—115 Cubic Yards—Concrete 1-2-4 in moulded projection course of walls.
- Item No. 12.—55 Cubic Yards—Concrete 1-2-4 in Piers. 10
- Item No. 13.—59 Cubic Yards—Concrete 1-2-4 in Ballast Walls.
- Item No. 14.—333 Cubic Yards—Concrete 1-2-4 in roadway slabs of Bridges.
- Item No. 15.—63 Cubic Yards—Concrete 1-2-4 in fill over slabs at car track section.
- Item No. 16.—52 Cubic Yards—Concrete 1-2-4 in Sidewalks, etc.
- Item No. 17.—11 Cubic Yards—Concrete 1-2-4 in slab for Ducts.
- Item No. 18.—280 Lin'l. feet—Metal nosing at Sidewalk Curbs.
- Item No. 19.—7 Tons—Steel reinforcing bent or hooked.
- Item No. 20.—3 Tons—Steel reinforcing straight and dowels. 20
- Item No. 21.—656 Square Yards—Waterproofing roadway slabs.
- Item No. 22.—1530 Lin'l. feet—4 inch Tile Drains laid complete.
- Item No. 23.—1000 Lin'l. feet—4 inch Vitrified Drains Complete.
- Item No. 24.—890 Lin'l. feet—6 inch Vitrified Drains complete.
- Item No. 25.—1360 Cubic Yards—Broken Stone fill behind walls.
- Item No. 26.—3500 Cubic Yards—Fill.
- Item No. 27.—1706 Square Yards—Broken stone paving at car track section of Roadways at approaches.
- Item No. 28.—2280 Square Yards—Broken stone paving at roadway of approaches. 30
- Item No. 29.—1322 Square Yards—Cinder walks at approaches.
- Item No. 30.—12 M. B.M.—Plank Curbs at sidewalks of approaches.
- Item No. 31.—654 Square Yards.—3 inch Asphalt and Binder wearing surface at roadways of Bridges.
- Item No. 32.—30 Squar Asphalt pavement and new base in replacement for new grade.
- Item No. 33.—48 Square Yards—Stone block pavement at car tracks section of roadways including concrete base complete in replacement for new grade.
- Item No. 34.—110 Tons—Structural Steel at Bridges. 40
- Item No. 35.—500 lbs.—Steel expansion plates including bolts.

## CITY OF OTTAWA

Specifications for the construction of new bridges at Somerset Street crossing Champagne Avenue, and the tracks of the Canadian National Railways and the Canadian Pacific Railway Company and of the approaches thereto.

*Board of  
Railway  
Commissioners*

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued.

## Description of Work.

The work to which these specifications apply shall consist of steel beam bridges with reinforced concrete decking and sidewalks and concrete abutments, of single span at Champagne Ave., and the C.P.R. crossing on Somerset Street and a steel beam bridge of three spans on steel girder and column supports and concrete piers and abutments at the Canadian National Railway crossing, the construction of concrete retaining walls at approaches on both sides of street and fill as per the following drawings, specifications and general conditions.

The supplying and placing of the steel railway ties and rails, trolley wire supports, sidewalk balustrade or railing, Bell Telephone conduits and lamp standards are not included in this contract.

The Canadian National Railways are to lower the grade of their tracks north and south of Somerset Street. The excavated material from this work estimated at approximately 4000 cu. yds., can be obtained by the contractor for fill at new structure.

## Drawings.

Plan and Profile of existing bridges and approaches, Drawing No. 1.

Plan and profile of proposed construction, drawing No. 2.

Plan and sections at Champagne Avenue and C.P.R. crossing, Drawing No. 3.

Plan and sections at Canadian National Railway crossing; Drawing No. 4.

Cross sections at approaches, Drawing No. 5.

And such other drawings as may be necessary during the progress of the work.

## SPECIFICATIONS

As herein contained

- (a) Form of Tender.
- (b) General conditions forming a part of all department of works contracts.
- (c) Form of Agreement.



Board of  
Railway  
Commissioners

No. 18

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued.

### Extent of Work.

The work covered by these specifications shall extend from station Ox00 to station 10 x 17.00 (i.e. from the west line of the Breadner Manufacturing Company property to the west limit of Breezehill Avenue. The necessary work required for new grade beyond these limits shall be done by the city.

The extent of the work covered by these specifications shall be construed to consist of the dismantling and removal of the whole of the existing structures, including sidewalks and railings at bridges and approaches all materials entering into the construction of the bridges, 10  
floors concrete piers and abutments and the concrete retaining walls of the approaches on south side also the taking down and removal of all masonry and concrete work at north side where necessary for the new abutments, excavating at existing approaches for new grade, also for the supply and erection in good substantial and workmanlike construction of all the items, labor and material required for the completion of the entire new work, of all items shown upon the drawings of the department of works or upon the drawings of the contractor approved by the department of works and of all items described in these specifications also of all excavations, filling, piles, 20  
sheeting, shoring, falsework, centering, forms, scaffolding, tools, appliances and materials necessary and suitable to the safe expeditious and effective executions of all the temporary and permanent work.

All the materials from the demolition work except as specified elsewhere to be delivered within the city limits as directed by the Commissioner of Works. The excavation from the lowering of grade of existing approaches may be used in fill.

All work in connection with the lifting and laying the street railway tracks, poles and wires (but not including base for and laying of pavements) either of temporary or permanent character will be 30  
done by the Ottawa Electric Railway Co. All work in connection with the removal and laying of telephone ducts also removal of poles and wires will be done by the respective companies concerned. All work which the city may consider necessary in removing or diverting existing water mains and sewers will be done by the city. This does not include drains shown on drawings or otherwise specified which will be done by the contractor. The contractor shall at all times during construction cooperate and work in conjunction with the city and companies concerned.

### Unit Prices

40

All work shall be constructed upon a unit price basis as per schedule of rates in form of tender.

### Procedure of Work

Contractor will be required to proceed with the work in the following manner viz:

- Work shall be carried out in two sections. The north half from station OxOO to station 10 x 17.00 shall be constructed first, while this work is in progress traffic is to be maintained at all times along the south half of bridges and approaches. Upon completion of the north side traffic will be transferred and operations commenced upon the south portion of the works. Temporary bridge Contractor
- 10 shall provide, erect and maintain temporary bridges and their supports at the three crossings also strong rail fences along both sides for one half width of new structure of such capacity to carry safely the heaviest car equipment of the Ottawa Electric Railway Company and motor trucks up to vehicles of 10 ton gross capacity and pedestrian traffic until the north half of the work is completed and ready for use. Contractor will submit drawings of these structures for approval of the Commissioner of Works before work is started. The contractor may in lieu of constructing temporary bridges make use of the south half of present structures, provided however, that he
- 20 repairs strengthens and maintains same to carry safely the above mentioned loads. He shall submit drawings of proposed design for strengthening same for Commissioner of Works approval before starting operations. When traffic is transferred to the north side he will dismantle these structures and dispose of materials as previously stated.

### Working and Storage Space

- Contractor will be required to arrange with the owner or owners of adjoining properties for space outside of the Somerset Street limits, which he may require during construction for access and
- 30 storage of materials, etc., and shall at his own expense compensate owner or owners of properties for use of same. He shall also provide and maintain the existing access to properties adjoining until completion of the work.

### Precaution at Railways

At all times during construction the contractor must so arrange his work that train and engine movements at the railway crossings are not interrupted and shall cooperate with the officials of the railway companies so that accidents to life and property may be avoided.

### Alterations and Extras

- 40 All of the work shown on plans or specified herein shall be performed without alterations or changes unless by authority of a written order from the Department of Works, signed by the Commissioner of Works, or by his Assistant Engineer. Such order shall state

Board of  
Railway  
Commissioners

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued

Board of  
Railway  
Commissioners

No. 13

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued.

clearly the work to be done and the amount to be paid by the city or allowed by the contractor for such alterations, or changes. The contractor dissenting from the requirements of such order shall upon receipt of same, make a written statement of his objection and transmit some to the Department of Works.

All extras shall be paid for in accordance with the schedule of extras made a part of the contractor's tender for the work, provided, however, that all extras not specifically covered by such schedule shall be determined in accordance with paragraph 22 of the General Conditions forming a part of all Department of Works contract. 10

#### Drawings

All detail drawings necessary for the construction of the work except drawings for falsework and centering or for temporary construction shall be prepared by the Department of Works, from time to time, as the work progresses and prints from same shall be furnished the contractor without charge.

All drawings prepared by the contractor shall be made upon sheets thirty inches by forty-two inches (30 inches x 42 inches) showing the design and the kind and sizes of material.

Drawings shall be submitted for the approval of the Department of Works within a period of one month from the date of the awarding of the contract, and not less than six full working days before the commencement of its construction. 20

#### Excavation

Pits dug near the abutments at the Champagne Avenue and C.N.R. crossings showed sand and gravel below top soil, at the C.P.R. crossing clay was encountered. Excavations shall be taken to such depth as may be necessary to secure a firm foundation of which the Engineer shall be the judge. No concrete shall be deposited upon the foundation before the same shall have been examined and approved. The contractor shall be required to sheet the sides of excavations and to put in proper shoring or bracing to protect same from caving if necessary, without extra compensation. No allowance shall be made on account of slope to sides of excavations the contractor being required as specified to carry down the excavation to the proper depth and to protect same from caving. Excavated material except such as is required and used for fill shall be removed at the contractor's expense from the bridge site. In computing the volume of excavation to be paid for in any pit, the sides of the latter are to be assumed as vertical and no area will be allowed greater than that of a rectangle having each side longer by two feet than the corresponding side of the base of footing of the piers, pedestals or walls. The areas occupied by existing abutments retaining walls and piers to be 30 40

taken down will not be paid for as excavation as this work is paid for separately although allowance will be made for excavation below bottom of these walls and piers where such depth is required.

Board of  
Railway  
Commissioners

No. 13

**Unwatering**

All excavations shall be kept dry and the contractor shall at his own expense do all unwatering required in connection with the work.

Material parts  
of specifications  
approved under  
Order No.  
40417.

—Continued.

**Back Fill**

10 Backfill behind abutments and retaining walls and around piers to be in layers not exceeding 12 inches in thickness and thoroughly rammed. Backfilling behind walls is not to be made until walls have been allowed to set two weeks or longer as will be determined by the Engineer.

\* \* \* \*

**Abutment and Retaining Walls**

The concrete for all abutment and retaining walls will be a 1-2½-5 mix. The coarse aggregate from 2 inch size down (see table II) J. C. Standard Specification.

20 The walls shall be constructed as monolithic where practical, that is, any section between expansion joints shall be deposited in one continuous operation from bottom to top. Where monolith construction is impracticable, for the purpose of keeping each successive step of the work together a recess 6 inches deep and of a width equal to one third the width of the wall shall be left at the end of each days work for the entire length of such work in all walls where the cross section is two feet or more in thickness unless otherwise decided by the Engineer.

30 Rubble aggregate may be used in these walls up to a wall thickness of 3 feet (walls of lesser thickness shall not have rubble aggregate but these stones must not be laid closer together nor to the faces of wall than 9 inches and there must be 12 inches of concrete between each layer and from bottom of footing to first layer.

\* \* \* \*

**Floor System and Sidewalks**

The concrete of floor system at bridges including embedment of steel beams, roadway and sidewalk slabs and gutter shall be a 1-2-4 concrete the coarse aggregate from 1 inch size down (See Table II, J. C. Standard Specification).

No. 14

No. 14

Drawings Nos. 1 to 5 of specifications (not printed)—copies supplied.

Board of  
Railway  
Commissioners

No. 15

Application of  
Ottawa Electric  
Railway Co.  
for leave to  
appeal to the  
Supreme Court  
of Canada.  
12th April 1928.

No. 15

**Application of Ottawa Electric Railway Company for leave to appeal to the  
Supreme Court of Canada.**

**THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA**

IN THE MATTER OF the application of the Municipal Corporation of the City of Ottawa, in the Province of Ontario, hereinafter called the "Applicant," under Sections 257 and 264 of the Railway Act, 1919, for an order requiring the Ottawa Electric Railway Company, the Canadian National Railways and the Canadian Pacific Railway Company, or some one or more of the said companies, to replace the existing bridge or viaduct at Somerset Street, in the City of Ottawa, which carries the said street and the tracks and right-of-way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street; and apportioning the cost of such new bridge between the said railway companies, or between some one or more of them, and the Applicant as the Board may direct. 10 20

Case 396.

TAKE NOTICE that the Ottawa Electric Railway Company will apply to the Board on the 24th April, 1928, for leave to appeal to the Supreme Court of Canada from an Order of the Board herein dated 5th March, 1928.

The grounds of appeal are that as a matter of law certain agreements between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company, and the Canada Atlantic Railway Company, respectively, imposed no obligation of whatsoever nature upon the Ottawa Electric Railway Company respecting any widening or reconstruction or replacing of any presently existing bridge or bridges and in particular imposed on it no obligation to indemnify or save harmless in any manner or to any extent whatsoever the Canadian National Railways, or the Canadian Pacific Railway Company against any liability to maintain, alter, repair or reconstruct the presently existing bridge or bridges or against any liability to provide for any bridge of greater width than the width of the bridge referred to in the said agreements or against any liability to construct any wider or newer bridge in place of the presently existing bridge or bridges and that as a matter of law (if it should be found that the Ottawa Electric Railway Company had any obligation imposed thereby with relation to any part of the existing 30 40

bridge or bridges in question in this matter) such obligation extended only to the bridge which replaced the bridge referred to in the said agreement, and to the width thereof and not to any further bridges replacing the said reconstructed bridge or the present bridge or bridges whether described as, or being, a reconstruction or a replacement thereof.

DATED at Ottawa this 12th April, 1928.

**REDMOND QUAIN,**  
Counsel for the Ottawa Electric Railway Company.

- 10 To: The Canadian Pacific Railway Company.  
To: The Canadian National Railways.

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No. 16

Order granting extension of time to apply for leave to appeal to the Supreme Court of Canada (No. 44462) (*not printed*)

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No. 17

Reasons for Order granting leave to appeal to the Supreme Court of Canada.

- 20 **APPLICATION OF THE OTTAWA ELECTRIC RAILWAY COMPANY FOR LEAVE TO APPEAL TO THE SUPREME COURT OF CANADA FROM THE ORDER OF THE BOARD NO. 40417, DATED MARCH 5th, 1928. (CASE No. 396)**

**THE CHIEF COMMISSIONER:**

- 30 By its application dated the 14th July, 1927, the Municipal Corporation of the city of Ottawa applied to the Board of Railway Commissioners for an Order requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said companies, to replace the existing Somerset Street Bridge or viaduct, in the city of Ottawa, which carries Somerset Street and the tracks and right of way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street, and for an Order apportioning the cost of such new bridge. In its application the Corporation represented that the said bridge has fallen into a state of disrepair and is dangerous to traffic

*Board of,  
Railway  
Commissioners.*

No. 15.

*Application of  
Ottawa Electric  
Railway Co.  
for leave to  
appeal to the  
Supreme Court  
of Canada,  
12th April 1928.  
—Continued.*

No. 16

No. 17

*Reasons for  
order granting  
leave to appeal  
to the Supreme  
Court of  
Canada.  
8th June, 1928.*

*Board of  
Railway  
Commissioners*

No. 17.

Reasons for  
order granting  
leave to appeal  
to the Supreme  
Court of  
Canada.  
8th June, 1928.  
—Continued.

and of insufficient breadth, and that it will be necessary to remove the same and have it replaced by a more modern structure of greater breadth.

After a hearing at which all parties were represented, the Board made the following Order (No. 40417) dated March 5th, 1928:—

**“THE BOARD ORDERS:**

“ 1. That the Applicant be, and it is hereby, authorized to reconstruct the said bridge carrying Somerset Street and the tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, in the city of Ottawa and Province of Ontario, in accordance with plans to be filed for the approval of an Engineer of the Board. 10

“ 2. That the said bridge be fifty-eight feet in width.

“ 3. That the Applicant bear and pay the cost of the construction of the sidewalks and the paving of the roadway, the remainder of the cost of the said bridge to be borne and paid sixty per cent by the Ottawa Electric Railway Company and forty per cent by the Applicant; the cost of maintaining the bridge, with the exception of the wearing surface thereof which shall be maintained by and at the expense of the Applicant, to be paid by the Ottawa Electric Railway Company. 20

The applicant is now asking leave to appeal from that part of the above Order which directs that 60 per cent of the cost of the bridge be borne and paid by the Ottawa Electric Railway Company.

In August 1896, two certain agreements were made between the Ottawa Electric Railway Company of the one part, and the Canada Atlantic Railway Company (Canadian National Railways) and the Canadian Pacific Railway Company, respectively, of the other part, by which agreements the Ottawa Electric Railway Company, in similar terms as regards each company, obligated itself from time to time and at all times thereafter to 30

“indemnify and save harmless the railway company from and against all liability to maintain, repair, alter or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind whatsoever, and for any penalty imposed on the said railway company by reason of any defect or default in the said bridge or crossing, or approaches thereto.”

At the hearing under the application, the Board was of opinion that by virtue of such agreements the two railway companies whose 40

tracks are so crossed as aforesaid, should not be called upon to contribute to the expense of the new bridge. The allocation of cost was made upon that basis, being distributed between the city and the Electric Railway Company as above set out.

In his notice counsel for the appellant states the grounds of appeal thus—

10           “The grounds of appeal are that as a matter of law certain  
 “agreements between the Ottawa Electric Railway Company and  
 “the Canadian Pacific Railway Company, and the Canada  
 “Atlantic Railway Company, respectively, imposed no obliga-  
 “tion of whatsoever nature upon the Ottawa Electric Railway  
 “Company respecting any widening or reconstruction or replac-  
 “ing of any presently existing bridge or bridges and in particular  
 “imposed on it no obligation to indemnify or save harmless in any  
 “manner or to any extent whatsoever the Canadian National Rail-  
 “ways, or the Canadian Pacific Railway Company against any  
 “liability to maintain, alter, repair or reconstruct the presently  
 “existing bridge or bridges or against any liability to provide  
 20           “for any bridge of greater width than the width of the  
 “bridge referred to in the said agreements or against any  
 “liability to construct any wider or newer bridge in place of the  
 “presently existing bridge or bridges, and that as a matter of law  
 “(if it should be found that the Ottawa Electric Railway Com-  
 “pany had any obligation imposed thereby with relation to any  
 “part of the existing bridge or bridges in question in this matter)  
 “such obligation extended only to the bridge which replaced the  
 “bridge referred to in the said agreement, and to the width there-  
 “of and not to any further bridges replacing the said reconstruct-  
 “ed bridge or the present bridge or bridges whether described as,  
 30           “or being, a reconstruction or a replacement thereof.”

At the hearing some discussion ensued as to what might be called the primary liability of the Ottawa Electric Railway Company in the matter, as contrasted with its liability to indemnify the railway companies under the agreements, and because the 60 per cent imposed upon the Ottawa Electric Railway Company was not subjected to a percentage distribution showing such responsibility, it was contended that it did not appear from the judgment that the allocation of cost was affected by such agreements.

40           But during the argument on motion for leave to appeal, it was made clear that the railway companies were exempted from obligation by reason of such agreements, and it would follow that such exemption has a distinct bearing upon the percentage of cost to be

*Board of  
 Railway  
 Commissioners*

No. 17

Reasons for  
 order granting  
 leave to appeal  
 to the Supreme  
 Court of  
 Canada

8th June, 1928.

—Continued.



Board of  
Railway  
Commissioners

No. 17

Reasons for  
order granting  
leave to appeal  
to the Supreme  
Court of  
Canada  
8th June, 1928.  
—Continued.

borne by the city and by the appellant, wherefore it is important to decide whether the Board has correctly interpreted the agreements in that particular.

The city represented in its application that the bridge had fallen into disrepair, that it was dangerous to traffic and of insufficient breadth, and that it was necessary to remove the same and replace it by another structure, and by the Board's Order No. 40417 the city was authorized to reconstruct the bridge as above set out.

The question of law is, whether under the existing circumstances there is a continuing liability upon appellant under the several agree- 10  
ments to indemnify the railway companies for the amounts, which otherwise they might be directed to contribute as their shares of the cost of reconstructing or replacing said bridge. It was pointed out in the judgment sought to be appealed from, that the agreements referred to were before the late Chief Commissioner Killam in 1907 in an application to the Board for an Order directing the submission of a plan and profile for the purpose of widening the bridge and its approaches, but it is contended that the application then made to him was determined rather by the volume of traffic which at that time existed than from any other standpoint. Financially, the issue 20  
is important, and without suggesting that the Board has misconceived the obligations assumed by the Ottawa Electric Railway Company under said agreements, it is, in my view, arguable that liability for cost of the replacement or reconstruction of the bridge may not be within the meaning of the clauses of the agreements providing for indemnity to the railway companies, and in order that the Ottawa Electric Railway Company may be able to secure the judgment of the Supreme Court on this, to it, very important question, I am of opinion that leave to appeal should be granted.

Counsel for appellant will confer with counsel for the city and 30  
the two railway companies with a view of framing questions which will embody the ground on which leave to appeal is granted, and present the same to the Board for its approval.

H. A. McKEOWN,  
Chief Commissioner.

Ottawa,

June 8th, 1928.

I agree,

S. J. McL.  
T. V.

Order No. 44058 of Board of Railway Commissioners granting leave to appeal to the Supreme Court of Canada.

*Board of  
Railway  
Commissioners*

No. 18

ORDER NO. 44058

Order No. 44058  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada.  
17th Dec. 1929.

THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA

IN THE MATTER OF the application of the Municipal Corporation of the City of Ottawa for an Order requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said Companies, to replace the existing bridge or viaduct at Somerset Street, in the City of Ottawa, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street; and apportioning the cost of such new bridge between the said Railway Companies, or between some one or more of them, and the Applicant, as the Board may direct;

AND IN THE MATTER OF the application of the Ottawa Electric Railway Company, under Section 52 (3) of The Railway Act, for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 40417, issued upon the above application on the 5th day of March, 1928, upon a question which, in the opinion of the Board, is a question of law:

Case No. 396

10

TUESDAY, THE 17TH  
DAY OF DECEMBER,  
A.D. 1929.

20

HON. H. A. McKEOWN, K.C.,  
*Chief Commissioner.*

S. J. McLEAN,  
*Asst. Chief Commissioner.*

THOMAS VIEN, K.C.,  
*Deputy Chief Commissioner.*

30

40 UPON hearing the application in the presence of Counsel for the Ottawa Electric Railway Company, the City of Ottawa,

Board of  
Railway  
Commissioners

No. 18

Order No. 44058  
of Board of  
Railway  
Commissioners  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada.  
17th Dec. 1929.  
—Continued.

the Canadian Pacific Railway Company, and the Canadian National Railway Company, and what was alleged—

THE PARTIES AGREE that the facts, in so far as material to this appeal, are as follows:—

1. The location of the crossing in question herein is in the City of Ottawa, where Somerset Street (formerly Cedar Street) crosses approximately at a right angle the respective tracks and rights of way of the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Steam Railways."

2. The Chaudiere Branch of the St. Lawrence and Ottawa Railway Company was constructed during the years 1870 and 1871. 10

3. At and prior to the time of construction of the said railway, that portion of Lot 38 in the First Concession, Ottawa Front, in the Township of Nepean, County of Carleton, and Province of Ontario, lying to the south of Richmond Road, so-called, was un-subdivided farm property owned with other lands by the Estate of Nicholas Sparks, Senior.

4. In the year 1870 the said Railway Company entered into an agreement with the executors of the said Sparks Estate to purchase the land required for right of way through the Sparks Farm, 20 one-quarter of the purchase price being paid down and the balance secured by mortgage. The said purchase was subject to the following condition:—"That the Company shall erect and keep up three bridges over the cut, if we (the executors) so require, and shall fence the land the Company purchased before commencing work, so as not to throw the farm open."

Copies of the letters containing the said agreement are attached hereto as Schedule No. 1.

5. Pursuant to the said agreement of purchase, a wooden farm bridge was erected by the said Railway Company upon approximately 30 the same line as the present Somerset Street Bridge, 20 feet 6 inches wide or less.

Wherever reference herein is made to the present bridge, or the present Somerset Street bridge, it should be taken to mean the bridge in existence at the time the Order No. 40417 was made.

6. In the year 1875 the said Township Lot 38 was sub-divided into streets and lots by the Sparks Estate and Somerset Street (then known as Cedar Street) was shown on a plan in line with the bridge which had been erected.

7. In the year 1883 the Canadian Pacific Railway Company, 40 having acquired control of the St. Lawrence and Ottawa Railway

Company, paid the balance of the purchase price owing under the agreement of purchase referred to in paragraph 4 thereof, and by Deed dated the 1st day of June, 1883, Esther Slater and others conveyed to the St. Lawrence and Ottawa Railway Company the land required for right of way through the said Township Lot 38 and other properties. The strip of land through the said Lot 38 from the southerly limit of Richmond Road southerly to the northerly limit of the road allowance between the First Concession, Ottawa Front, and Concession "B", Rideau Front, therein conveyed, was  
 10 continuous without reservation of any portion for highway crossings, either in line with Somerset Street (then Cedar Street) or any other street. Extracts from the said Deed, so far as material to this issue, are attached hereto as Schedule No. 2.

*Board of  
Railway  
Commissioners*

No. 18

Order No. 44088  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada  
17th Dec. 1929.  
—Continued.

8. There is no evidence that the erection of either of the two other bridges mentioned in the agreement of purchase was ever required by the vendors.

9. A plan showing the revised location of the Canada Atlantic Railway passing through Rochesterville and Bayswater, in the Township of Nepean, County of Carleton, Ontario, dated 13th June,  
 20 1883, was approved by the Minister of Railways on 28th July, 1883, and the line covered by this revised location was constructed in the years 1883 and 1884. The said line for some distance approximately paralleled the St. Lawrence and Ottawa Railway, a farm crossing over the St. Lawrence and Ottawa Railway in line with what is now Somerset Street being carried over the Canada Atlantic Railway by a wooden farm bridge, easterly from that of the St. Lawrence and Ottawa Railway Company.

10. By Indenture dated the 2nd January, 1902, J. R. Booth, of the City of Ottawa, conveyed to the Canada Atlantic Railway  
 30 Company in fee simple certain lands and premises used and occupied by the said Railway Company, for the portion of its railway included within that part of the said revised location lying between Preston Street on the southeast and a point a short distance south of Richmond Road on the northwest, within which now lies Somerset Street. This right of way is described in said Deed by metes and bounds forming a continuous strip between the said points.

11. Prior to 1895 the two parallel rights of way, now owned  
 40 by the Canadian National Railways and the Canadian Pacific Railway Company, were crossed each by a separate wooden bridge of different height, erected by each steam railway or its predecessor, at its own expense, in the approximate location of the space now occupied there by the Electric Railway tracks, and having a width of 20 feet 6 inches, or less. Between these two wooden bridges there

*Board of  
Railway  
Commissioners*

No. 18

Order No. 44058  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada  
17th Dec. 1929.  
—Continued.

was a depression, and the two bridges did not lie end to end against each other but were quite independent of each other.

12. In the year 1895, and for some years prior thereto, the Ottawa Electric Railway Company, hereinafter called the "Electric Railway Company," owned and operated, and has since such date continued to own and operate, a street railway system for the carriage of passengers for hire in the City of Ottawa and in certain territory adjacent thereto.

13. The said Electric Railway Company is a body corporate subject to the legislative authority of the Parliament of Canada, in 10 so far as this matter is concerned, and the lines of street railway constructed by the said Company are declared to be works for the general advantage of Canada (1894, Chap. 86. Can.).

14. In the year 1895 the Electric Railway Company entered into an agreement with the Corporation of the City of Ottawa, dated the 8th April, 1895. A true copy of such agreement is attached hereto as Schedule No. 3.

15. In the year 1895 and thereafter down to the 13th August, 1923, the operations of the Electric Railway in the City of Ottawa and in certain territory adjacent thereto were governed by an agree- 20 ment in writing made between the Corporation of the said City, the Ottawa City Passenger Railway Company, and the Ottawa Electric Street Railway Company, dated June 28th, 1895, and other agreements. A true copy of the agreement specified is attached hereto as Schedule No. 4.

16. In 1894 the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company were amalgamated under the name, The Ottawa Electric Railway Company (1894, Chap. 86, Can.).

17. In connection with the extension of its street railway lines, 30 the Electric Railway Company entered into an agreement in writing with the Canadian Pacific Railway Company, dated the 8th August, 1896, in respect of the crossing of the said railway of the said Company at the point where the said bridge referred to in paragraph 5 hereof is located. A true copy of the said agreement is attached hereto as Schedule No. 5.

18. In connection with the extension of the street railway line, the Electric Railway Company also entered into an agreement in writing with the Canada Atlantic Railway Company, dated the 21st August, 1896, in respect of the crossing of the railway of the 40 said Company at the point where the bridge referred to in paragraph 7 hereof is located. A true copy of the said agreement is attached hereto as Schedule No. 6.

19. After the execution of the agreements referred to in paragraphs 16 and 17 hereof, the Electric Railway Company, at its own expense, carried out certain works in respect of bridges referred to in paragraphs 5 and 9 hereof and laid a double track thereon carrying the street railway over and across the rights of way and tracks of the Steam Railways, and has since operated its street railway system over and across the structure then made. The work done at that time included the following:—
- 10 Removing the flooring from the two bridges, filling the depression between the two bridges, laying a new floor over the entire length, including the earth fill, and in replacing the old wooden bents with concrete abutments and putting in steel girders in place of wooden sleepers. The steel girders which were put in to carry the street railway tracks were of heavier steel than those used in the other portions of the bridge. The height of the bridge was also raised four or five feet; to give greater clearance to the Steam Railways, and the grade of the approaches was lessened, and provision was made for the accommodation of vehicular or pedestrian traffic. Without arrangement with, or consent of, the Electric Railway Company, or either of the Steam
- 20 Railway Companies, the said works were thereafter also used by vehicles and pedestrians.

*Board of  
Railway  
Commissioners*

No. 18

Order No. 44058  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada  
17th Dec. 1929.  
—Continued.

20. The structure standing after the completion of the works referred to in paragraph 19 herein was in existence at the time of the 1907 application, referred to in paragraph 21 hereof, and is now approximately the north 20 feet 6 inches of the present bridge.

21. In the year 1907 the Corporation of the City of Ottawa applied to the Board, under the provisions of the Railway Act, 1903, for an order directing the Electric Railway Company and the Steam Railways to submit a plan and profile for the purpose of widening
- 30 the said structure and the approaches thereto, in order to afford additional accommodation thereon. A true copy of the said application is attached hereto as Schedule No. 7.

22. The Board rendered its decision in writing upon the said application under date of the 13th day of March, 1907. A true copy of the said decision is attached hereto as Schedule No. 8.

23. The Board thereafter issued its formal Order upon the said application, being Order No. 3684. A true copy of the Order is attached hereto as Schedule No. 9.

24. The work provided for in the said Order No. 3684 was
- 40 duly carried out, with the result that 16 feet additional accommodation for vehicular and pedestrian traffic was provided along the south side of the said bridge.

*Board of  
Railway  
Commissioners*

No. 18

Order No. 44058  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada  
17th Dec. 1929.  
—Continued.

25. On the 14th July, 1927, the Corporation of the City of Ottawa applied, under the provisions of the Railway Act, 1919, for an Order requiring the Electric Railway Company and the Steam Railways, or some one or more of the said Companies, to replace the then existing Somerset Street Bridge or viaduct by a bridge of sufficient breadth and of such construction as would afford safe and adequate facilities for all traffic using the said bridge. A true copy of the said application is attached hereto as Schedule No. 10.

26. The Board rendered its decision in writing granting the said application, under date of the 23rd February, 1928. A true copy of such decision is attached hereto as Schedule No. 11.

27. The Board thereafter issued its formal Order upon the said application, being Order No. 40417. A true copy of such Order is attached hereto as Schedule No. 12.

28. True copies of pertinent plans and material parts of the specifications approved under the said Order No. 40417 are hereto attached as Schedule No. 13.

29. The work so ordered by the Board consists of the demolition of parts of the works built in 1896 and 1897, and built pursuant to the Order of March 13th, 1907, and the replacement thereof and the addition of a roadway 21½ feet wide to the north of and adjoining the works built in 1896.

30. On the 8th May, 1928, the Electric Railway Company applied to the Board, under Section 52 (3) of The Railway Act (R.S.C. 1927, Chap. 170), for leave to appeal to the Supreme Court of Canada upon a question of law. The decision of the Board upon said application giving leave to appeal was rendered under date of the 8th June, 1928. A true copy of such decision is attached hereto as Schedule No. 14.

31. On the 23rd day of February, 1928, and down to the date of the filing of this Submission, the operations of the Electric Railway Company's lines of street railway in the City of Ottawa and in certain territory adjacent thereto, as set out in such agreements, are governed as well by the agreement scheduled as No. 4 hereto, as by a certain additional agreement in writing dated the 25th day of January, 1924, and other agreements. A true copy of such latter agreement is attached hereto as Schedule No. 15.

AND THE BOARD DOTH ORDER that leave be, and it is hereby, granted the Electric Railway Company to appeal to the Supreme Court of Canada upon the following questions which, in the opinion of the Board are questions of law:

Having regard to the facts above stated and the by-laws, agreements, decisions, and orders which are the schedules hereto—

*Board of  
Railway  
Commissioners*

No. 18

1. Has the Electric Railway Company any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in any respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute towards the cost of construction of a bridge such as provided for in the Board's Order No. 40417?

Order No. 44058  
of Board of  
Railway  
Commissioners,  
granting leave  
to appeal to  
the Supreme  
Court of  
Canada  
17th Dec. 1929.  
—Continued.

10 2. If the answer to Question 1 is "Yes," does such obligation thereunder extend to (a) the whole, or (b) part only of such cost that may be occasioned by the increased volume and the variation in character of traffic since the dates of the said agreements?

3. If the obligation extends to part only of the cost referred to in Question 2, then to what part?

4. If the Electric Railway Company has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation?

(S'G'D) H. A. McKEOWN,

*Chief Commissioner,*

20

Board of Railway Commissioners for Canada.

**BOARD OF RAILWAY COMMISSIONERS  
FOR CANADA**

Examined and certified as a true copy under Section  
23 of "The Railway Act."

(Sgd.) A. D. CARTWRIGHT,

*Sec'y of Board of Railway Commissioners for Canada.*

Ottawa, December 27, 1929.

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Board of  
Railway  
Commissioners

No. 19

Letter from  
executors  
estate of  
Nicholas Sparks  
to St. Lawrence and  
Ottawa Railway  
Company  
9th Nov. 1870

No. 19

Letter from executors estate of Nicholas Sparks to St. Lawrence and  
Ottawa Railway Company.

Ottawa, Nov. 9th, 1870.

Thos. Reynolds Esq.  
Ottawa.

Sir.

We beg to acknowledge the receipt of your letter dated 7th  
Octr. respecting the land you require on Sparks farm, Richmond  
Road, and beg to state that we accept the terms mentioned (viz) 10  
Six hundred dollars per acre for good land and four hundred dol-  
lars per acre for wet or swampy land. One fourth to be paid down;  
the remainder at interest at seven per cent on mortgage as may be  
agreed upon; on condition that the Company shall erect and keep  
up three bridges over the cut if we so require, and shall fence the  
land the Company purchase before commencing work so as not  
to throw the farm open.

We are dear Sir,  
Yours respectfully,

N. SPARKS  
JAMES D. SLATER, 20  
Exec.

No. 20

Letter from  
St. Lawrence  
& Ottawa Rail-  
way Company  
to executors of  
estate  
Nicholas Sparks  
24th Nov. 1870.

No. 20

Letter from St. Lawrence and Ottawa Railway Company to executors of  
estate Nicholas Sparks.

A true copy as corrected  
James Clark,  
Witness.

Ottawa, Nov. 24th, 1870.

Gentlemen—

I had the pleasure of receiving your favour of the 9th inst in  
answer to mine of 7th October x x x The terms and conditions  
contained in that said letter including the building, and keeping up  
of three bridges over the cuts is entirely to my satisfaction and I  
would have written to this effect earlier had I supposed you desired  
me to do so x x x 30

I am, Gentlemen,  
Yours very truly,  
THOS. REYNOLDS,  
Managing Director. 40

Nicholas Sparks Esq.  
and J. D. Slater, Esq.  
Executors of The Sparks Estate, Ottawa.

## No. 21

Extract from deed from Esther Slater and others to the St. Lawrence and  
Ottawa Railway Company.

Board of  
Railway  
Commissioners

No. 21

EXTRACT FROM DEED DATED 1st JUNE, 1883, MADE  
BETWEEN ESTHER SLATER ET AL AND ST.  
LAWRENCE and OTTAWA RAILWAY COMPANY  
and CANADIAN PACIFIC RAILWAY  
COMPANY.

Extract from  
deed from  
Esther Slater  
and others to  
the St.  
Lawrence and  
Ottawa Rail-  
way Company.  
1st June, 1883.

THIS INDENTURE made this first day of June in the year of Our  
10 Lord one thousand eight hundred and eighty three in pursuance of  
the Act to facilitate the conveyance of real property,

BETWEEN: Esther Slater of the City of Ottawa in the County of  
Carleton and Province of Ontario, Widow, of James Dyson Slater,  
late of the said City of Ottawa, Esquire, deceased, and Alonzo Wright  
of the Township of Hull in the County of Ottawa and Province of  
Quebec, Esquire, and Mary Wright, his wife,

Parties of the first part;

Charles Magee of the said City of Ottawa, Esquire, the admin-  
istrator of the personal estate and effects of the late Nicholas Sparks  
20 the younger in his lifetime of the said City of Ottawa, Esquire, de-  
ceased,

Of the second part;

John Sweetland of the said City of Ottawa, Physician, and  
Caroline Sweetland, his wife,

Of the third part;

AND

THE ST. LAWRENCE AND OTTAWA RAILWAY  
COMPANY

Of the fourth part;

30 AND

THE CANADIAN PACIFIC RAILWAY COMPANY

Of the fifth part.

WHEREAS by an Act of the Parliament of Canada made and  
passed in the thirty first year of Her Majesty's reign intituled "an  
Act to incorporate the St. Lawrence and Ottawa Railway Company"  
it is amongst other things in effect enacted that the said parties of  
the fourth part shall have full power and authority to extend lay out,  
construct, make and finish a double or single track of railway of iron at  
their own cost and charges of such width or gauge as the said parties of

Board of  
Railway  
Commissioners

No. 21

Extract from  
deed from  
Esther Slater  
and others to  
the St.  
Lawrence and  
Ottawa Rail-  
way Company.  
1st June, 1883.  
—Continued.

the fourth part see fit from a point on the line of the said railway to a point on the river Ottawa or lake Deschene in the County of Ottawa and Province of Quebec with such powers as are in the said Act specially mentioned.

AND WHEREAS under and by virtue of the last Will and Testament of the late Nicholas Sparks the elder deceased the father of the said Nicholas Sparks the younger Esther Slater and Mary Wright; the said Esther Slater, Mary Wright and the said Nicholas Sparks the younger at the time of his decease were seized of the freehold lands and tenements hereinafter described and intended to be conveyed as tenants in common in fee simple in possession subject to the contract for sale hereinafter expressed; 10

AND WHEREAS the said Nicholas Sparks being seized in common in fee with the said Esther Slater and Mary Wright of the lands and premises hereinafter described did in the year of Our Lord one thousand eight hundred and seventy and the said Esther Slater and Mary Wright did contract and agree to sell and convey to the said parties of the fourth part the said lands and premises hereinafter mentioned and described at and for the price or sum of Eleven thousand five hundred and fifty eight dollars; 20

AND the said parties of the fourth part thereupon and at the time of the said contract and agreement and in the lifetime of the said Nicholas Sparks the younger entered into possession of the said lands and premises hereinafter mentioned and described;

AND WHEREAS the said Nicholas Sparks the younger departed this life on or about the twentieth day of April in the year of our Lord one thousand eight hundred and seventy two intestate leaving him surviving the said Caroline Sweetland his widow and three children namely, Mary Sparks, Nicholas Charles Sparks and Sarah Sparks his heir and heiresses at law who were and are infants under the age of twenty one years; 30

AND WHEREAS by an Act of the Legislature of the Province of Ontario in the Dominion of Canada passed on the twenty ninth day of March in the year of Our Lord one thousand eight hundred and seventy three in the thirty sixth year of the reign of Her present Majesty intituled "An Act for the sale or other disposition of the lands belonging to the estate of the late Nicholas Sparks" it is amongst other things enacted as follows:—"The said Charles Magee is hereby empowered to make and execute conveyances of such of the real estate of the said late Nicholas Sparks as he had in his lifetime contracted and agreed to sell and convey to the party of parties with whom he made such contracts his or her or their heirs and assigns 40

respected his lands held in severally or in common with others and such conveyances shall be held to vest all the estate right title and interest of the said deceased at the time of his death and of his children in the said lands in the purchaser or purchasers thereof his her or their heirs and assigns;

10 AND WHEREAS the said Charles Magee hath in accordance with the requirements of the said in part recited Act given security for the due investment of the proceeds of the sales of the lands referred to in the said Act and also for the due and proper accounting and paying  
 10 over of the moneys according to the true intent and meaning of the said Act and for the performance of the duties imposed upon him by the said Act such security being by Bond with sureties to the satisfaction of the Judge of the Surrogate Court of the County of Carleton which said bond has been filed with the Registrar of the said Surrogate Court;

20 AND WHEREAS there is now due by the said parties of the fourth part for balance of principal and for interest thereon of the purchase money for the said lands the sum of Five thousand five hundred and forty dollars and eight cents which sum or money the said parties of  
 20 the fourth part are unable to pay;

30 AND WHEREAS in consideration of the payment by the said parties of the fifth part to the said parties of the first and second parts of the said sum of Five thousand and five hundred and forty dollars and eight cents they the said parties of the fourth part have agreed that they the said parties of the first and second parts shall convey all the right title claim property and demand of them the said parties of the fourth part to the said parties of the fifth part their successors and assigns in all and to all and singular the portions of lands hereinafter described and conveyed to the said parties of the fifth part the same  
 30 being a portion of the lands agreed to be conveyed to the said parties of the fourth part;

AND WHEREAS the said parties of the fourth part have requested the said parties of the first part to grant and convey the last mentioned lands to the said parties of the fifth part testified by being parties hereto and executing these presents;

40 AND WHEREAS the said Charles Magee under and by virtue of the powers and authorities in and by the hereinbefore in part recited act given to and conferred upon him has been requested by the said parties of the fourth part and by the said parties of the fifth part to  
 40 make and execute to the said parties of the fourth part their successors and assigns a conveyance of such parts of the real estate hereinafter particularly described and to make and execute to the said parties of the fifth part their successors and assigns a conveyance of

*Board of  
 Railway  
 Commissioners*

No. 21

Extract from  
 deed from  
 Esther Slater  
 and others to  
 the St.  
 Lawrence and  
 Ottawa Rail-  
 way Company.  
 1st June, 1883.  
 —Continued.

Board of  
Railway  
Commissioners

No. 21

Extract from  
deed from  
Esther Slater  
and others to  
the St.  
Lawrence and  
Ottawa Rail-  
way Company.  
1st June, 1853.  
—Continued.

such part of the real estate hereinafter particularly described and both which parcels the said Nicholas Sparks held in fee in common with the said Esther Slater and Mary Wright and the said Charles Magee and the said Esther Slater and Mary Wright are accordingly desirous to execute these presents as such conveyances of the lands and premises hereinafter mentioned and described and the inheritance thereof free from incumbrances at and for the sum of Eleven thousand five hundred and fifty eight dollars being the amount of purchase money agreed upon between the said Nicholas Sparks in his lifetime and the said Esther Slater and Mary Wright and the said parties of 10 the fourth part whereof there is now due for balance of purchase money and interest thereon the sum of Five thousand five hundred and forty dollars and eight cents and the said Alonzo Wright has also agreed to execute these presents;

AND WHEREAS for the purpose of releasing the dower of the said Caroline Sweetland the said parties of the third part have consented to join in these presents;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of the payment of Thirteen thousand five hundred and seventy dollars and forty four cents being portion of the 20 said purchase money and interest thereon paid by the said parties of the fourth part to the said parties of the first part and to the said party of the second part the receipt whereof is hereby by them acknowledged they the said parties of the first part do and the said party of the second part under and by virtue of and in pursuance and exercise of the powers to him given in and by the said in part recited Act and of all other powers and authorities in any wise enabling him in this behalf doth grant convey confirm and assure unto the said parties of the fourth part their successors and assigns forever ALL AND SINGULAR those certain parcels or tracts of land 30 and premises situate lying and being in the Township of Nepean in the County of Carleton and Province of Ontario in the Dominion of Canada being composed of part of lot number thirty eight in the first concession (Ottawa front) of the said Township of Nepean described as follows: commencing at a point where the easterly boundary of the St. Lawrence and Ottawa Railway intersects the southerly limit of the Richmond Road distant fifty five feet six inches from the centre line of the railway track when measured at right angles thereof thence southerly and parallel to the centre line of said Railway track by a curve turning to the left and described with a radius of one thousand 40 and ninety feet and one half of a foot a distance of seven hundred and eighteen feet more or less to the northerly boundary of Cedar Street thence South thirty four degrees forty two minutes east a distance of seven hundred and ninety six feet more or less to a point distant sixty five feet six inches from the centre line of said railway track when measured at right angles thereto thence south thirty one

- degrees fifty minutes east a distance of two hundred feet to a point distant fifty five feet six inches from the centre line of said Railway track when measured at right angles thereto; thence south thirty four degrees forty two minutes east and parallel to the centre line of said Railway track a distance of five hundred and seventy eight feet more or less to the point of commencement of curve, thence south easterly and parallel to the centre line of said Railway track by a curve turning to the right and described with a radius of three thousand eight hundred and seventy five feet and one half of a foot a distance of one
- 10 thousand two hundred and forty nine feet and three quarters of a foot more or less thence south easterly a distance of two hundred feet to a point distant fifty feet from the centre line of said Railway track when measured at right angles thereto thence south thirteen degrees three minutes east and parallel to the centre line of said Railway track a distance of one thousand three hundred and ninety six feet more or less to the northerly boundary of the allowance for road between the first concession Ottawa front and concession "B" Rideau front, thence south westerly and along said northerly boundary a distance of one hundred and one feet more or less to the westerly
- 20 boundary of the Railway aforesaid thence north thirteen degrees three minutes west and parallel to the centre line of said Railway a distance of one thousand four hundred and twelve feet more or less to the point of commencement of curve thence north westerly a distance of two hundred feet to a point distant forty four feet six inches from the centre line of said Railway track when measured at right angles thereto thence north westerly and parallel to the centre line of said railway track by a curve turning to the left and described with a radius of three thousand seven hundred and sixty four feet and one half of a foot a distance of one thousand two hundred and eight feet
- 30 more or less to the point of ending of curve thence north thirty four degrees and forty two minutes west and parallel to the centre line of said Railway a distance of five hundred and seventy eight feet more or less thence north thirty seven degrees thirty four minutes west a distance of two hundred feet to a point distant fifty four feet six inches from the centre line of the said Railway track when measured at right angles thereto thence north thirty four degrees forty two minutes west a distance of one thousand three hundred and fifty feet more or less to the southerly limit of the Richmond road thence north forty three degrees forty minutes east a distance of four hundred and
- 40 thirty four feet more or less to the place of beginning containing by admeasurement thirteen acres and fifty one hundredths of an acre be the same more or less ( $13\frac{50}{100}$  acres) as laid down upon a plan prepared by Robert Sparks P.L.S. and registered in the Registry office for the County of Carleton.

*Board of  
Railway  
Commissioners*

No. 21

Extract from  
deed from  
Esther Slater  
and others to  
the St.  
Lawrence and  
Ottawa Rail-  
way Company.  
1st June, 1883.  
—Continued.

Board of  
Railway  
Commissioners

No. 21

Extract from  
deed from  
Esther Slater  
and others to  
the St.  
Lawrence and  
Ottawa Rail-  
way Company.  
1st June, 1868.  
—Continued.

ALSO ALL AND SINGULAR . . . . .  
TO HAVE AND TO HOLD unto the said parties of the fourth part  
their successors and assigns forever . . . . .

also

AND THIS INDENTURE WITNESSETH that in consideration of one  
dollar now paid by the said parties of the fourth part and also of one  
dollar now paid by the said parties of the fifth part to the said parties  
of the third part the receipt whereof is hereby by them acknowledged  
they the said parties of the third part do hereby grant convey remise  
release and quit claim unto the said parties of the fourth part their 10  
successors and assigns forever and unto the said parties of the fifth  
part their successors and assigns for ever all dower and thirds and all  
right and title thereto at law in equity or otherwise which they the  
said parties of the third part have or to which she the said Caroline  
Sweetland may have or claim in to or out of all and singular those  
certain parcels or tracts of lands hereinbefore conveyed respectively  
to the said parties of the fourth part and to the said parties of the fifth  
part.

AND the said Alonzo Wright and the said John Sweetland each  
for himself duly and his heirs executors and administrators covenant 20  
with the said parties of the fourth part and with the said parties of the  
fifth part that they will execute such further ssurances of the said  
lands as may be requisite.

IN WITNESS WHEREOF the said parties of the first and second  
and third parts respectively have hereunto set their hands and seals  
and the said parties of the fourth part and of the fifth part respective-  
ly have caused their corporate seals to be hereunto affixed under the  
hands respectively of their proper officers the day and year first above  
written.

(In triplicate).

30

SIGNED SEALED AND DELIVERED

In presence of  
.. James Clarke.

Esther Slater  
Alonzo Wright  
Mary Wright  
Chas. Magee  
Jno. Sweetland  
C. Sweetland  
D. McIntyre  
Managing Director 40  
St. L. & O. Ry. Co.  
The Canadian Pacific Ry. Co.  
R. B. Angus  
Vice President.

## No. 22

**Agreement between the Ottawa Electric Railway Company and the  
City of Ottawa.**

*Board of  
Railway  
Commissioners*

No. 22

Memorandum of Agreement made this eighth day of April,  
A.D. 1895.

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
8th April 1895.

Between the Ottawa Electric Railway Company, hereinafter  
called the "Company"

of the First Part;

And the Corporation of the City of Ottawa, hereinafter called  
10 the "Corporation"

of the Second Part

Whereas, the said Company made an application to the said Cor-  
poration for an extension of time for the construction of certain por-  
tions of their line of railway mentioned and referred to in a certain  
agreement dated the 28th day of June, 1893, hereinafter called the  
original agreement (a copy of which is hereunto annexed and marked  
"A") and made between the said Corporation of the First Part, the  
Ottawa City Passenger Railway Company of the Second Part, and  
the Ottawa Electric Street Railway Company of the Third Part.

20 And whereas, the Council of the said Corporation dealt with the  
said application by a resolution passed at the meeting of the Council  
held on the 1st day of April, 1895, in the words and figures following:

"That in view of the fact of the Street Railway Committee  
having withdrawn its report, which was to have been presented  
at the last meeting of this Council, and in view of said Commit-  
tee not having yet reported on the matters mentioned in a com-  
munication from the Ottawa Electric Railway Company to this  
Corporation, bearing date 18th March, 1895, although referred  
to such Committee at said meeting, it is resolved:

30 "1. That the Company be granted permission to lay tracks  
on the Richmond Road from Broad Street to Preston, and on  
Preston from the Richmond Road to Cedar Street, and on Cedar  
Street from Preston Street westerly to the City limits.

"2. That the Company be bound to have a line of railway  
fully equipped and in operation from the City to the Experimen-  
tal farm, before the end of the present year (1895), and that the  
Company be allowed to charge only City rates for any passenger  
from any point within the City limits to the Experimental Farm  
(or any intermediate point), and the same rates from the Farm  
40 (or any intermediate point) to any part of the City.



Board of  
Railway  
Commissioners

No. 22

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa,  
8th April 1895.  
—Continued.

"3. That the Company be required to double track Nicholas Street from Rideau Street to Theodore, and Theodore from Nicholas to Chapel, (or to some other street east of Chapel to be agreed upon), and to continue such tracks to Rideau Street via Wurtemberg, and single track Nicholas Street from Theodore to the southerly limits of the City, all to be built and in operation not later than the 1st June, 1895.

"4. That in consideration of the foregoing the Company is to be bound to build and have in operation a line of railway on Elgin Street from Catherine Street to the Exhibition Grounds, not later than the 1st day of June, 1896, and to operate the same throughout the year after the 1st day of June, 1900; and that the time mentioned in the existing contract for building this line of railway be extended for one year. 10

"5. That the Company is to be bound to build and have in operation a line of railway on Bell Street from the westerly end of Emily Street to the present southerly end of Bell Street, not later than the 1st day of June, 1900; and that the time mentioned in the existing contract for building this line of railway be extended for a term of five years. 20

"6. That the Company be released from any liability under clause 9 of the original contract, to build on Preston Street south of its intersection with Cedar Street.

"7. That the Company be required to execute within one week from this date a formal supplementary contract, embodying the foregoing terms, and such other terms not inconsistent herewith as the City Solicitor may consider necessary for the protection of the City's interest, and in case the Company shall fail so to do that this resolution be void."

And whereas, the said Company have agreed to the terms and conditions imposed by and stipulated in the said resolution of Council. 30

Now this agreement witnesseth that in consideration of the covenants and agreements on the part of the said Company in these presents contained, as well as the covenants and agreements mentioned in the said original agreement, the consent, permission and authority of the Corporation is hereby given and granted to the Company, to construct, complete, maintain and operate during the balance of the term of thirty years mentioned in the said original agreement, a double and single iron street railway, the propelling power of which shall be electricity, ~~for~~(with the consent of the Corporation) any other power excepting steam, except during the period of winter, when the Company may substitute sleighs drawn by horses, with the necessary. 40

side tracks, switches and turnouts for the passing of cars, carriages and other vehicles adapted to the same upon and along the Richmond Road from Broad Street to Preston Street, and upon and along Preston Street from the Richmond Road to Cedar Street and upon and along Cedar Street from Preston Street westerly to the City limits, in the manner and on the terms and subject to the conditions, restrictions and provisoes herein, and in the manner and on the terms and subject to the conditions, restrictions and provisoes mentioned and contained in the said original agreement, and also subject to the provisions of Chapter 171, Revised Statutes of Ontario, 1887, entitled the Street Railway Act, or any amendment or amendments thereto that may be enacted from time to time during the currency of this agreement, so far as the same shall not be inconsistent herewith.

Board of  
Railway  
Commissioners

No. 22

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
8th April 1895.  
—Continued.

In consideration of the said permission and authority the said Company for itself, its successors and assigns doth hereby covenant and agree with the said Corporation and its successors and assigns as follows:

(1) That the Company shall and will construct, complete and equip and have in operation on or before the 31st day of December, A.D. 1895, a line of street railway from the present street railway system in the City of Ottawa to the Experimental Farm in the Township of Nepean.

And it is hereby further agreed that except as herein set forth the said agreement of the 28th of June, 1893, (herein called the original agreement) and the Street Railway Act and amendments therein mentioned shall apply to the said additional or substituted lines of railway hereinbefore mentioned or authorized hereby, and especially the terms thereof as to mileage rate to be paid by the said Company to the said Corporation, for so much of the lines as are within the City limits, and to the maintenance of the tracks and rails thereof, and to the removal of snow from the streets on which the same may be built, and to the running of cars and the times and intervals at which the same shall be run on the branches of the railway of the said Company and the period of time for which the charter, or permission, to operate said lines of railway shall continue, and the rights of the said Corporation to acquire and assume the ownership of the same and the works, plant and property, real and personal, used in connection therewith, and also all other stipulations and terms thereof in any way applicable to the branches hereby mentioned or authorized; it being hereby understood and agreed between the parties hereto that the said original agreement shall be read with and form part of these presents.

Provided always, and it is hereby expressly understood and agreed, that nothing contained herein, or in the said original agree-

*Board of  
Railway  
Commissioners*

No. 22

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
8th April 1895.  
—Continued.

ment, or in the By-law of this council ratifying the said original agree-  
ment, or in the By-law ratifying this agreement shall be construed  
to impose any liability on the Corporation for the construction, repair  
or maintenance of the bridges on Cedar Street, crossing the Canada  
Atlantic Railway lands and the Canadian Pacific Railway lands, or  
any bridge or bridges that may be constructed in place of the same,  
or shall be construed as an assuming by the Corporation of the said  
bridges, or any, or either of them.

In witness whereof, the parties hereto have caused their respec-  
tive Corporate Seals to be hereunto affixed under the hands of their 10  
proper officers in that behalf.

The Council of the Corporation of the City of Ottawa, so far as  
it is authorized by the said resolution, and not otherwise, enacts and  
ordains as follows:

No. 23

Agreement be-  
tween the  
Ottawa City  
Passenger Rail-  
way Company  
and the Ottawa  
Electric Street  
Railway Com-  
pany and the  
City of Ottawa.  
28th June 1893.

No. 23

**Agreement between the Ottawa City Passenger Railway Company and the  
Ottawa Electric Street Railway Company and the City of Ottawa.**

This indenture made in triplicate on the 28th day of June, A.D.  
1893:—Between the Corporation of the City of Ottawa, hereinafter 20  
called the Corporation, of the first part; the Ottawa City Passenger  
Railway Company, hereinafter called the Passenger Company, of  
the second part; and the Ottawa Electric Street Railway Company,  
hereinafter called the Electric Company, of the third part.

Whereas by virtue of an Act of the Province of Canada being  
29-30 Victoria, chap. 106, the said Ottawa City Passenger Railway  
Company was duly incorporated with the powers therein mentioned;

And whereas the said Act of Incorporation has been amended  
by an Act of the Legislature of the Province of Ontario, being 31  
Victoria, chap. 45, and also by an Act of Parliament of the Dominion  
of Canada, being 55-56 Victoria, chap. 53. 30

And whereas the said the Passenger Company and the Cor-  
poration entered into an agreement bearing date the 18th day of  
May, 1885, by which the route of the said railway was changed with  
the consent of the said Corporation, which said agreement was ratified  
by By-law No. 603 of the Council of the said Corporation.

And whereas the Ottawa Electric Street Railway Company was  
on the thirteenth day of February, A.D. 1891, duly incorporated  
by letters patent issued by the Lieutenant-Governor in Council of  
the Province of Ontario, pursuant to the provisions of "The Street  
Railway Act" and "The Ontario Joint Stock Companies' Letters 40

Patent Act," with the powers, privileges and franchises in the said letters patent mentioned;

*Board of  
Railway  
Commissioners*

No. 23

And whereas the said Electric Company and the said Corporation entered into an agreement bearing date the 5th day of November, A.D. 1890, by which said agreement permission was granted to the said Electric Company to operate a line of street railway by electricity in certain streets of the City of Ottawa which said agreement was ratified by by-law of this Council dated the 14th day of January, A.D. 1891, and numbered 1098.

Agreement between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company and the City of Ottawa.  
23th June 1893.  
—Continued.

- 10 And whereas the said "The Passenger Company" and the said "The Electric Company" intend to amalgamate the said Companies or otherwise unite and consolidate their business as soon as the necessary legal authority can be obtained for that purpose, and the said Corporation have agreed to consent to such amalgamation and to assist the said Companies and each and every of them in obtaining such legislation or other legal authority as may be necessary to effect the said amalgamation and otherwise to confirm and ratify this agreement.

- 20 The word "Companies" as used in this agreement shall be understood to mean and apply to the said Companies, the parties to this agreement and their successors, and either of them as the context may require until the said amalgamation or union shall take place, and thereafter the word Companies as herein used shall extend and apply to the said Company so formed by such amalgamation or union.  
Now this Indenture Witnesseth:

- 30 That in consideration of the covenants and agreements on the part of the said Companies in these presents contained, the consent, permission and authority of the Corporation is hereby given and granted to the Companies and their assigns to construct, complete, maintain and operate during the term of thirty years, to be computed from the thirteenth day of August, A.D. 1893, a double and single iron street railway, the propelling power of which shall be electricity or (with the consent of the Corporation) any other power, excepting steam (except during the period of winter, when the Companies may substitute sleighs drawn by horses) with the necessary side tracks, switches and turnouts for the passing of cars, carriages and other vehicles adapted to the same upon and along the streets hereinafter mentioned in the manner and on the terms and subject to the conditions, restrictions and provisos hereinafter contained, and also subject to the provisions of Chap. 171 R. S. O. 1887, entitled "The Street Railway Act," or any amendment or amendments thereto that may be enacted from time to time during the currency of this agreement, so far as the same shall not be inconsistent herewith.
- 40

Board of  
Railway  
Commissioners

No. 23

Agreement between the  
Ottawa City  
Passenger Railway Company  
and the Ottawa  
Electric Street  
Railway Company and the  
City of Ottawa.  
28th June 1898.  
—Continued.

1. The said "The Passenger Company" and "The Electric Company" hereby agree to unite and amalgamate the business, property, franchises and assets of the two Companies upon such terms and in such manner as they shall mutually agree upon and as they may be advised, as soon as they are legally empowered to do so by legislation or otherwise, and the Company so formed shall have its head office in the City of Ottawa.

2. And the said Corporation in consideration of the stipulations, covenants and agreements herein contained on the part of the said Companies and each of them hereby agree to consent to such union 10  
amalgamation and to join and assist the said two companies in obtaining such legislation as may be necessary to effect the union or amalgamation of the said Companies, the expense of procuring such legislation to be borne by the Companies.

\* \* \* \*

4. And the said Corporation may, after giving at least six months' notice thereof, prior to the expiration of the said period of thirty years, assume the ownership of so much of the said railway of the Companies as is situate in the Province of Ontario, and all real and personal property in said Province used in connection with the working thereof, on payment of the value thereof to be determined by 20  
arbitration.

(a) After the said Corporation shall have given notice of its intention to take over the said property it may at once proceed to arbitrate under the conditions in that behalf, and both the Corporation and the Companies shall in every reasonable way facilitate such arbitration, and the arbitrators appointed in the matter shall proceed so as if possible to make their award not later than the time named by the Corporation for taking over the said property. But if from any cause the award shall not be made by such time, or if either party be dissatisfied with the award, the Corporation may nevertheless take pos- 30  
session of the said portion of the said railway and all the property and effects thereof, real and personal, necessary to be used in connection with the working thereof, on payment into court, of either the amount of such award if the award be made, or if not, on paying into court or to the Companies such sum of money as a judge of the High Court of Justice may, after notice to the opposite party, order, and upon and subject and according to such terms, stipulations and conditions as the said Court shall by its order direct and prescribe, provided always that the rights of the parties except in so far as herein specially provided, shall not be effected or prejudiced thereby. In determining such 40  
value, the rights and privileges, and the revenue, profits and dividends being or likely to be derived from the enterprise are not to be taken into consideration, but the arbitrators are to consider only the actual value of the actual and tangible property, plant, equipments and

works connected with and necessary to the operation of the said portion of the said railway, which is not to include any land, property or rights acquired or used in connection with the said street railway, and which do not actually form a part of the said street railway undertaking necessary to the carrying on of the same.

*Board of  
Railway  
Commissioners*

No. 23

Agreement between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company and the City of Ottawa. 28th June 1893.  
—Continued.

(b) In the event of the Corporation, after the expiration of the said thirty years, not exercising its right to take over the real and personal property necessary to be used in connection with the working of the said portion of the said railway, the Corporation may, at the expiration of any fifth year thereafter, exercise such right, upon giving not less than one year's notice to the Companies; and the privilege of the Companies shall continue until the ownership is assumed by the said Corporation as aforesaid or possession taken under the provision of this section as above mentioned, provided always, that whenever the Corporation exercises such right of taking over the said property, the provisions for determining the value thereof herein contained shall apply in the same manner as if the Corporation had exercised its right at the expiration of the said period of thirty years.

20

\* \* \* \*

15. The said Companies are hereby authorized to use passenger and other cars as the Corporation may determine, and take transport and carry passengers and baggage upon the same.

\* \* \* \*

18. The Corporation shall grant to the said Companies exemption from taxation and all other municipal rates on their franchises, tracks and rolling stock and other personal property used in and about the working of the railway, also on the income of the Companies earned from the working of the said railway for a period of thirty years from the said thirteenth day of August, A.D. 1893. But this shall not apply to the real estate of the Companies.

30

\* \* \* \*

20. The Companies will provide special stringers on the under beams of the bridges traversed by the railway for their rails, and be at all expense for replanking and remodelling the flooring and timbers of all bridges, so far as may be necessary for the purpose of laying the rails upon such bridges, to the satisfaction of the City Engineer, in order to leave the rails flush with the planking or roadway in accordance with a plan to be approved by the City Engineer, and will maintain and keep in repair the said stringers.

40

20. (a) In the event of any of the bridges under the control of the Corporation traversed by the said Railway requiring the supports or superstructure thereof to be strengthened and in the opinion of three arbitrators or a majority of them, to be composed of the City

*Board of  
Railway  
Commissioners*

No. 23

Agreement between the  
Ottawa City  
Passenger Railway Company  
and the Ottawa  
Electric Street  
Railway Company and the  
City of Ottawa.  
28th June 1903.  
—Continued.

Engineer and a qualified Civil Engineer, to be appointed by the Companies, and a third arbitrator to be appointed by the two previously named, the necessity for such strengthening has been caused or occasioned by the Companies or their traffic thereon, the Companies and Corporation shall bear the cost of such strengthening in equal proportions. Provided that the Corporation shall not be liable for any obstruction or any delays that may be caused by reason of any repair to the bridges, or any strengthening thereof that be required by the said City Engineer.

20. (b) In the event of the said Companies failing to appoint 10  
such arbitrator within five days after notice given to the Companies  
by the City Engineer, or in the event of the said two arbitrators fail-  
ing to name a third within five days after their appointment the judge  
of the County Court of the County of Carleton may appoint an arbi-  
trator for the party or arbitrators in default, or a third arbitrator,  
as the case may require.

\* \* \* \*

31. The Companies shall be liable for all damages which may be  
occasioned to any person by reason of the construction, maintenance,  
repairs or operation of the railway. 20

32. The Companies shall indemnify and keep indemnified and  
save harmless the Corporation at all times from all costs, damages  
and expenses of every nature and kind whatsoever which the Corpora-  
tion may be put to or have to pay by reason of the exercise by the  
Companies of their powers or any of them, or by reason of neglect  
by the Companies in the executing of their works or any of them, or  
by reason of the improper or imperfect execution of their works or  
any of them, or by reason of the said works becoming unsafe or out  
of repair or otherwise howsoever; and should the Corporation incur,  
pay or be put to any costs, damages or expenses, the Companies 30  
shall forthwith, upon demand, repay the same to the Corporation.

\* \* \* \*

35. When it is necessary that the Companies' tracks should cross  
the track of any of the railway companies, or any of the work or  
property subject to any government, the Corporation shall join with  
the Companies in the application to obtain such privileges, the Com-  
panies paying the expenses of such application.

\* \* \* \*

52. In this agreement, unless the context otherwise requires, the  
expression track shall mean the rails, ties, wires and other works of 40  
the Companies used in connection therewith.

\* \* \* \*

55. The said parties hereto agree to join in applying to the  
Parliament of the Dominion of Canada and to the Legislature of

the Province of Ontario for legislation confirming and ratifying this agreement, and declaring the same to be valid, legal and binding upon the parties hereto, (the expenses of procuring such legislation to be borne by the Companies).

*Board of  
Railway  
Commissioners*  
No. 23

\* \* \* \*

In witness whereof the parties hereto of the first part have hereunto caused their corporate seal to be affixed under the hand of their Mayor and City Clerk, and the parties hereto of the second and third parts have caused their corporate seals to be hereunto affixed.

Agreement between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company and the City of Ottawa. 28th June 1893. —Continued.

10 Signed, sealed and delivered  
in the presence of  
A. MacLEAN,  
F. H. CHRYSLER.

O. DUROCHER,  
(L.S.) Mayor.

JOHN HENDERSON,  
City Clerk.

OTTAWA CITY PASSENGER RAILWAY COMPANY

(L.S.) W. Y. SOPER,  
President.

JAMES D. FRASER,  
Secretary.

20

OTTAWA ELECTRIC STREET RAILWAY COMPANY,  
LIMITED.

(L.S.) J. W. McRAE,  
President.

JAMES D. FRASER,  
Sec.-Treasurer.

No. 24

Agreement between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company.

No. 24

Agreement between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company 8th Aug., 1896.

30 MEMORANDUM OF AGREEMENT made and entered into in duplicate this eighth day of August A.D. 1896.

BETWEEN:

THE OTTAWA ELECTRIC RAILWAY COMPANY  
(hereinafter called "The Electric Company"),  
Of the First Part;



Board of  
Railway  
Commissioners

No. 24

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
Canadian Paci-  
fic Railway  
Company  
8th Aug., 1896.  
—Continued.

**AND**  
**THE CANADIAN PACIFIC RAILWAY COMPANY**  
(hereinafter called "The Railway Company"),

Of the Second Part.

**WHEREAS** the public highway in the City of Ottawa, formerly known as Cedar Street and now known as Somerset Street, is and has been carried over the St. Lawrence and Ottawa Branch of the Railway Company's Line by means of an overhead bridge:

**AND WHEREAS** the Electric Company have been authorized by the Corporation of the City of Ottawa to construct a line of Street Railway upon Somerset Street or Cedar Street to the westerly limit of the City: 10

**AND WHEREAS** the Electric Company, in consideration of the premises and of the money payment hereinafter set forth, have agreed with the Railway Company to assume and take over the liability (if any) of the Railway Company for the maintenance and repair of the said bridge and the approaches thereto and to indemnify the said Railway Company against all liability therefor:

**NOW THEREFORE THIS INDENTURE WITNES-**  
**SETH** that, in consideration of the premises and of the sum of 20  
eight hundred dollars (\$800.00), now paid by the Railway Com-  
pany to the Electric Company, the receipt whereof is hereby acknow-  
ledged, the parties, for themselves, their successors and assigns,  
mutually covenant, promise and agree to and with each other in  
manner and form following:—

1—The Electric Company shall and will from time to time, and at all times hereafter, indemnify and save harmless the Railway Company from and against all liability to maintain, alter, repair or re-construct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind 30  
whatsoever, or for any penalty imposed upon the said Railway Com-  
pany, by reason of any defect or default in the said bridge or cross-  
ing or the approaches thereto.

2—The Electric Company further agree that, if it should at any time become necessary to re-construct the present bridge, or to alter same, plans of such alteration, or of the new bridge to be constructed, shall first be submitted to and approved of by the Railway Company.

3—The Railway Company hereby assign and set over to the Electric Company all the rights of the Railway Company on or connected 40  
with the said bridge and the approaches thereto.

Provided that nothing herein contained shall be construed as divesting the Railway Company of the fee simple in the railway right of way under the said bridges and approaches.

PROVIDED FURTHER, that, in the event of the Railway Company's requiring at any time to widen the span of the said bridge, they shall be entitled to do so at their own proper costs, charges and expenses.

IN WITNESS WHEREOF the said parties hereto have duly executed these presents.

10 THE OTTAWA ELECTRIC RAILWAY COMPANY

J. W. McRae,  
President.

James D. Fraser,  
Secretary, Treas.

THE CANADIAN PACIFIC RAILWAY COMPANY

T. G. Shaughnessy,  
Vice-President.

C. Drinkwater,  
Secretary.

*Board of  
Railway  
Commissioners*

*No. 24*

*Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
Canadian Paci-  
fic Railway  
Company  
8th Aug., 1896.  
—Continued.*

20

No. 25

Agreement between the Ottawa Electric Railway Company and the Canada Atlantic Railway Company.

COPY of agreement, dated 21st August, 1896, made between The Ottawa Electric Railway Company and The Canada Atlantic Railway Company.

MEMORANDUM OF AGREEMENT made and entered into in duplicate this twenty-first day of August, A.D. 1896.

BETWEEN:

30 THE OTTAWA ELECTRIC RAILWAY COMPANY,  
(hereinafter called "The Electric Company")

Of the First Part,

- a n d -

THE CANADA ATLANTIC RAILWAY COMPANY  
(hereinafter called "The Railway Company")

Of the Second Part.

No. 25

*Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
Canada At-  
lantic Rail-  
way Company  
21st Aug. 1896*

Board of  
Railway  
Commissioners

No. 25

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
Canada At-  
lantic Rail-  
way Company  
21st Aug. 1896  
—Continued

WHEREAS the public highway in the City of Ottawa, formerly known as Cedar Street, and now known as Somerset Street, is and has been carried over the Canada Atlantic Railway Company's line, by means of an overhead bridge;

AND WHEREAS, the Electric Company have been authorized by the Corporation of the City of Ottawa to construct a line of Street Railway upon Somerset or Cedar Street to the westerly limit of the City;

AND WHEREAS, the Electric Company, in consideration of the premises and of the money payment hereinafter set forth have 10 agreed with the Railway Company to assume and take over the liability (if any) of the Railway Company for the maintenance and repair of the said bridge and the approaches thereto, and to indemnify the said Railway Company against all liability therefor;

NOW THEREFORE THIS INDENTURE WITNES-  
SETH that, in consideration of the premises and of the sum of five hundred dollars (\$500.00) now paid by the Railway Company to the Electric Company the receipt whereof is hereby acknowledged, the parties for themselves, their successors, and assigns, mutually covenant, promise and agree to and with each other in manner and 20 form following:

1. The Electric Company shall and will, from time to time and at all times hereafter, indemnify and save harmless the Railway Company from and against all liability to maintain, repair, alter, or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind whatsoever, or for any penalty imposed upon the said Railway Company, by reason of any defect or default in the said bridge or crossing or the approaches thereto.

2. The Electric Company further agree that, if it should at 30 any time become necessary to reconstruct the present bridge, or to alter same, plans of such alteration, or of the new bridge to be constructed, shall first be submitted to and approved of by the Railway Company.

3. The Railway Company hereby assign and set over to the Electric Company all the rights of the Railway Company in or connected with the said bridge and the approaches thereto.

PROVIDED, that nothing herein contained shall be construed as divesting the Railway Company of the fee simple in the railway right of way under the said bridges and approaches. 40

PROVIDED further, that, in the event of the railway company's requiring at any time to widen the span of the said bridge they shall be entitled to do so at their own proper costs, charges, and expenses.

IN WITNESS WHEREOF the said parties hereto have duly executed their presents.

**THE OTTAWA ELECTRIC RAILWAY COMPANY,**

By T. Ahearn,  
President.

(L.S.)  
10

James D. Fraser,  
Secretary-Treasurer.

**THE CANADA ATLANTIC RAILWAY COMPANY,**

By C. J. Booth,  
President.

(L.S.)

A. W. Fleck,  
Secretary-Treasurer.

*Board of  
Railway  
Commissioners*

No. 25

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
Canada At-  
lantic Rail-  
way Company  
21st Aug. 1896  
—Continued

No. 26

**Application of the City of Ottawa to the Board of Railway Commissioners to widen Somerset Street Bridge.**

20 The Board of Railway Commissioners for Canada Application No.

The Municipal Corporation of the City of Ottawa hereby applies to the Board for an order, under Sections 186 and 187 of the Railway Act, 1903, directing The Ottawa Electric Railway Company, The Grand Trunk Railway Company of Canada and The Canadian Pacific Railway Company, to submit a plan and profile for the purpose of widening the bridge and the approaches thereto constructed by them on Somerset Street a public highway in the City of Ottawa, and states:

30 1. That the said bridge is within the limits of the City of Ottawa and forms the principal western highway to and from the village of Hintonburg and the County of Carleton with the City of Ottawa.

2. In the year 1895, The Ottawa Electric Railway Company obtained permission from this Corporation to construct and operate its railway on Somerset Street aforesaid, and by agreement with the Canada Atlantic Railway Company and the Canadian Pacific Railway Company whose several lines of railway run across the said

No. 26

Application of  
the City of  
Ottawa to the  
Board of Rail-  
way Commis-  
sioners to widen  
Somerset Street  
Bridge.  
16th Nov. 1906.

*Board of  
Railway  
Commissioners*

No. 26

Application of  
the City of  
Ottawa to the  
Board of Rail-  
way Commis-  
sioners to widen  
Somerset Street  
Bridge.  
16th Nov. 1906  
—Continued.

highway, removed the bridge which then existed at this point and built the present bridge with the approaches thereto at its own cost and expense.

3. The said Electric Railway Company placed two tracks on said bridge and have since and are now running cars thereon, at very short intervals of time, with the result that there is no space left for vehicular traffic thereby rendering it unsafe and dangerous to persons with their horses and vehicles lawfully using this highway.

4. The approaches to the said bridge are narrow and inadequate, and no provision is made by sidewalks for the use of foot passengers whereby they are compelled to walk between the rails for the purpose of approaching the bridge and using the highway, thereby rendering the free access to, from and across the said bridge unsafe and dangerous. 10

5. That it is necessary for the proper use and enjoyment of the said highway that the said bridge and the approaches thereto should be widened or otherwise altered for the protection, safety and convenience of the public.

Dated at Ottawa this 16th day of November, 1906.

A. E. FRIPP, 20  
Acting City Solicitor,  
Corporation of Ottawa.

No. 27

Reasons for  
judgment  
(Order No.  
3684) of Board  
of Railway  
Commissioners  
for Canada  
13th Mar. 1907.

No. 27

**Reasons for Judgment (Order No. 3684) of Board of Railway  
Commissioners for Canada.**

**RE SOMERSET STREET BRIDGE, OTTAWA**

The Chief Commissioner:

The City of Ottawa has applied to the Board for an Order under sections 186 and 187 of the Railway Act, 1903, directing the Ottawa Electric Railway Company, the Grand Trunk Railway Company of Canada, and the Canadian Pacific Railway Company to submit a plan and profile for the purpose of widening the bridge and approaches thereto constructed by them on Somerset Street, a public highway in the City of Ottawa. 30

The bridge in question spans the tracks of the Canada Atlantic Railway and the Canadian Pacific Railway at the western boundary of the city. The eastern approach and the bridge proper lie within

the city of Ottawa, the western approach within the village of Hintonburg.

*Board of  
Railway  
Commissioners*

No. 27

The Ottawa Electric Railway Company is a corporation subject to the legislative authority of the Parliament of Canada. It owns and operates a street railway system in the city of Ottawa and its suburbs. The portion within the city was constructed and is operated under an agreement between the city and the company authorizing such company to exercise this franchise for the period of thirty years from the 13th of August, 1893.

*Reasons for  
judgment  
(Order No.  
2884) of Board  
of Railway  
Commissioners  
for Canada,  
13th Mar. 1907  
—Continued.*

- 10 By agreement between the Ottawa Electric Railway Company and the City of Ottawa, bearing date the 8th day of April, 1895, the consent of the City of Ottawa was given to the construction, maintenance and operation by the Electric Railway Company of a double and single iron street railway upon and along Cedar Street and other streets in the city for the unexpired portion of the term of thirty years just mentioned. By the last mentioned agreement certain privileges and benefits were conferred upon the Electric Railway Company, and the Company agreed to construct a line of street railway from its then existing system in Ottawa to the Experimental Farm, in the township
- 20 of Nepean; and it was provided that nothing contained therein, or in the original agreement between the city and the company, or in the bylaw of the city council ratifying the original agreement or that of April, 1895, should be "construed to impose any liability on the corporation for the construction, repair, or maintenance of the bridges on Cedar Street, crossing the Canada Atlantic Railway lines and the Canadian Pacific Railway lines, or any bridge or bridges that may be constructed in place of the same", or should be "construed as an assuming by the corporation of the said bridges or any or either of them".
- 30 The street thus referred to as Cedar Street is the one now known as Somerset Street, on which the bridge in question is situated.

- By an agreement in writing, bearing date the 8th day of August, 1896, made between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company, in consideration of the sum of eight hundred dollars, paid by the Canadian Pacific company to the electric company, the last mentioned company agreed from time to time and at all times thereafter to "indemnify and save harmless the railway company from and against all liability to maintain, alter, repair, or reconstruct the said bridge or the approaches thereto, and
- 40 also from and against all claims for damages of every kind or nature whatsoever, or for any penalty imposed upon the said railway company by reason of any defect or default in the said bridge or crossing, or

Board of  
Railway  
Commissioners

No. 27

Reasons for  
judgment  
(Order No.  
3684) of Board  
of Railway  
Commissioners  
for Canada  
18th Mar. 1907  
—Continued.

the approaches thereto"; and the electric company further agreed that, if it should at any time become necessary to reconstruct the then existing bridge, or to alter the same, plans of such alteration, or of the new bridge to be constructed, should first be submitted to and approved by the railway company; and the Canadian Pacific Railway Company assigned and set over to the electric company all the rights of the Canadian Pacific company in or connected with the said bridge and the approaches thereto.

A similar agreement was made between the electric railway company and the Canada Atlantic Railway Company.

10

That portion of the line of the Canadian Pacific Railway Company which passes under the bridge in question was originally constructed by the St. Lawrence & Ottawa Railway Company, and, at the time of its construction, there was at or near the site of the present bridge a lane; but whether there was any public right of user of the lane as a highway, is not made certain. The St. Lawrence & Ottawa Railway Company constructed over its line a bridge which became used as a public highway, and when the line of the Canada Atlantic Railway Company was constructed the latter company extended the bridge on the present line of Somerset Street over its tracks.

The Ottawa Electric Railway Company, after making the agreements mentioned with the city and the other railway companies, removed the former bridge or bridges, constructed the present one, and carried two sets of railway tracks over the bridge into the village of Hintonburg, and on to the experimental farm. The city claims that the bridge is so narrow, and the traffic on the street railway line has so increased, that the bridge is now unsafe for ordinary street traffic; and upon the evidence adduced and the report of the Chief Engineer of the Board, and after personal examination, I am of opinion that this claim of the city is correct, and that, in the public interest, the bridge should be widened by sixteen feet, as requested.

The only substantial question for consideration is as to the body which shall bear the cost of the alteration. The city, through its counsel, has offered to bear one-fourth of the expense. The Canadian Pacific Railway Company and the Canada Atlantic Railway Company contend that, in view of their agreements with the electric railway company, and of the fact that the necessity for the widening of the bridge arises wholly from its use by the electric railway company, the latter company should bear the remaining portion of the expense; and in this view, as between the three railway companies, I think that the contention of the former two companies is correct.

40

Before the tracks of the electric railway company were extended over it, the bridge was quite safe and sufficient for street traffic. So far as appears, it would, with such repairs as time and use might have rendered necessary, have still been safe and sufficient for the purpose. As between it and the other railway companies, the electric railway company is a railway company subject to the legislative jurisdiction of the Parliament of Canada which has been authorized to cross the line of the other two companies, and upon ordinary principles, as among these companies, the electric company should  
 10 be the one to bear the necessary expense incident thereto.

*Board of  
Railway  
Commissioners*

No. 27

Reasons for  
judgment  
(Order No.  
3684) of Board  
of Railway  
Commissioners  
for Canada.  
13th Mar. 1907  
—Continued.

While, by the original agreement between the city and the electric railway company, the latter was given a right to use the streets of the city for the purpose of its railway, the city did not agree to widen the streets for the purpose or to indemnify the electric railway company against any expenditure which the electric railway company might be required to make in connection with crossings over other railways or under the provisions of the general Railway Acts; and the agreement of April, 1895, stipulated that the city was not to be under any liability for the construction, repair, or maintenance of the bridge or any bridge or bridges that might be constructed  
 20 in place of the same. While a certain bridge was constructed in pursuance of the agreements mentioned, and presumably was constructed of the width it originally had with the approval of the proper authorities, and was treated as a completed structure and used as such, any further works or additions which are from time to time required appear to me to come within the proviso by which the city was not to be liable for the construction of bridges on Cedar Street.

I am, therefore, of opinion that the electric railway company should widen the bridge by sixteen feet according to plans to be  
 30 approved by the Board, and that the city should pay the railway company one-fourth the expense involved in the addition.

As to the western approach, if either of the parties desires, the village of Hintonburg may be called upon to show cause why it should not bear a portion of the expense of widening that approach.  
 Ottawa, March 13th, 1907.



Board of  
Railway  
Commissioners

No. 28

Judgment  
(Order No.  
3684) providing  
for widening  
of bridge.  
18th Mar. 1907

No. 28

Judgment (Order No. 3684) providing for widening of bridge.

ORDER NO. 3684

THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA

MEETING AT OTTAWA

WEDNESDAY, THE 13TH DAY OF MARCH, A.D. 1907

PRESENT

A. C. KILLAM,

Chief Commissioner.

HON. M. E. BERNIER, 10

Deputy Chief Commissioner.

JAMES MILLS,

Commissioner.

IN THE MATTER OF

The application of the Municipal Corporation of the City of Ottawa, hereinafter called the "Applicants", under sections 186 and 187 of the Railway Act, 1903, for an Order directing the Ottawa Electric Railway Company, the Grand Trunk Railway Company of Canada, and the Canadian Pacific Railway Company to submit a plan and profile for the purpose of widening the bridge and the approaches thereto constructed by them on Somerset Street, a public highway in the City of Ottawa, the said application being on file with the Board under case No. 396, file No. 326. 20

Upon the hearing of Counsel for the Applicants and the Railway Companies interested, and what was alleged; and upon the report of its Chief Engineer—

THE BOARD DOTH ORDER

That the Ottawa Electric Railway Company be, and it is hereby, directed to widen the said bridge by sixteen feet according to plans to be submitted to and approved by the Board. 30

That the Applicants pay to the said Ottawa Electric Railway Company one-fourth the expense involved in the said addition.

That the question as to the apportionment between the Corporation of the Village of Hintonburg and the Ottawa Electric Railway Company of the expense of widening the bridge to the westerly end of the said bridge be, and the same is hereby, reserved for further consideration by the Board .

A. C. KILLAM,

Chief Commissioner, Board of  
Ry. Commissioners for Canada. 40

**No. 29**  
**Agreement between the Ottawa Electric Railway Company and the**  
**City of Ottawa.**

*Board of  
Railway  
Commissioners*

**AGREEMENT**

**DATED THE 25th DAY OF JANUARY, 1924.**

**BETWEEN—**

**THE CORPORATION OF THE CITY OF OTTAWA,**  
hereinafter called the "City",

**No. 29**

*Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
25th Jan. 1924.*

**AND—**

Of the First Part

**10 THE OTTAWA ELECTRIC RAILWAY COMPANY,**  
hereinafter called the "Company",

Of the Second Part.

**WITNESSETH** that the parties hereto have agreed as follows:—

1. In this Agreement, unless the context shall otherwise require, the words,

(a) "Board" or "Board of Railway Commissioners" shall mean and include the Board of Railway Commissioners for Canada, and any other body subject to Federal jurisdiction that may at any time  
**20** hereafter have either in whole or in part the powers of such Board.

(b) "Five year period" shall mean each successive period of five years reckoned from and after August 13th, 1923.

(c) "School child" shall mean a child certified in writing to the Company to be under the age of fourteen years by a teacher in a public, or a separate school, or in a collegiate institute, or in such private schools as may be recognized by the Company and to be in attendance at such school.

(d) "Transportation system" shall mean any system for the operation of electric cars, either on metal tracks or without tracks,  
**30** or for the operation of motor busses by gasolene, electricity or other power, except the force of animals, and any system for the operation of vehicles for the carriage of passengers, but shall not include vehicles chartered for special trips, such as cabs and taxi-cabs.

(e) "Track" shall have the meaning defined by clause 52 of the Agreement dated June 28th, 1893.

2. All written Agreements, By-laws and Statutes governing the relations between the parties hereto, and the powers of the Company, in so far as they are in force and effect on January 1st, 1924, shall remain in full force and effect, except in so far as they are, or may  
**40** become, inconsistent with or altered by, or under, the terms of this Agreement.

Board of  
Railway  
Commissioners

No. 29

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
25th Jan. 1924.  
—Continued.

3. (a) The Company shall build all those certain track extensions and new lines of street railway (referred to on pages 28 to 33 inclusive of the printed report of R. M. Feustel, dated September, 1922, annexed hereto as Schedule "B"), described in Schedule "A" hereto, in accordance with the terms of said Schedule "A".

(b) The Company will also carry out in the years specified in such report the recommendations contained therein as to matters other than track extensions and additions, which recommendations are contained in Schedule "B" hereto.

\* \* \* \*

10

8. (a) The Company shall have and may exercise during the term of this agreement, and of the said Agreement of June 28th, 1893, and of any extension and renewal thereof, an exclusive franchise to construct, complete, maintain and operate within the limits of the City, as such limits may be from time to time, a transportation system, on the Company's present lines and any extensions or additions thereto, it being the intention of the parties hereto that the Company shall not be subject to competition in its business of transporting passengers whether such competition be in the nature of motor busses or otherwise.

20

(b) The City will not oppose applications by the Company for privileges to be exercised beyond the Limits of the City as such limits may be from time to time.

(c) The Company will not object to the operation, within the limits of the City, as such limits may be from time to time, of motor busses running between any point within one-quarter mile of the City Hall and towns and villages whether incorporated or unincorporated outside the said limits, but no such motor bus shall convey passengers from one point within the said City limits to another point therein.

(d) The City shall pass such by-laws as the Company may request and as it lawfully may, to enable the Company to enforce the provisions of sub-clauses (a) and (c) of this clause, but the City shall not be obliged to enforce such provisions.

30

(e) Notwithstanding anything contained in this clause during any and all times that the Company is prevented from regularly operating its lines for more than one day, the City may authorize the operation during such time of motor busses or other vehicles as public carriers.

(f) Nothing herein shall affect the right which any railway or other company may have, on January 1st, 1924, to operate a steam or an electric railway, wholly or in part, within the City limits and to carry passengers or freight, but, except in the case of a steam railway, the City shall not renew or extend any such right upon its expiration.

40

(g) The franchise or right given by sub-clause (a) of this clause shall include the right to construct, maintain and operate such equipment and other things as are, or may become, usual or necessary in connection with a transportation system; subject, however, to the provisions of any by-law of the City now or hereafter passed respecting the zoning or the location of buildings.

11. In the event of it becoming necessary to build or rebuild, strengthen or extend any bridge, viaduct or subway, in order that any of the lines of railway, which the Company by this Agreement undertakes, or may be required, to construct and operate, shall be constructed and operated under or over the same, if the parties hereto cannot agree as to the proportions in which the cost of building, rebuilding or extending such bridge, viaduct or subway shall be borne between the City and the Company, or as between the City and the Company and any other Company liable to contribute thereto, either party may apply to the Board for an order fixing and apportioning such cost, and the Company will pay such proportion of such cost as may be determined by such Board. The part of such work which the Company is ordered to pay for or to maintain shall be deemed to be a work in connection with the Company's system.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their Seals attested to by their respective proper officers in that behalf.

THE CORPORATION OF THE CITY OF OTTAWA

(Sgd.) HENRY WATTERS,  
Mayor.

(Sgd.) NORMAN H. H. LETT,  
Clerk.

THE OTTAWA ELECTRIC RAILWAY COMPANY

30 (Sgd.) T. AHEARN,  
President.

(Sgd.) G. L. SNELLING,  
Secretary-Treasurer.

#### SCHEDULE "B"

TO AN AGREEMENT MADE BETWEEN THE CORPORATION OF THE CITY OF OTTAWA AND THE OTTAWA ELECTRIC RAILWAY COMPANY, AND DATED THE 25TH DAY OF JANUARY, 1924.

OTTAWA ELECTRIC RAILWAY COMPANY  
PROPOSED TRACK AND SERVICE EXTENSIONS.

- 40 At the close of the year of 1893 the Ottawa Electric Railway system consisted of slightly more than 26 miles; this mileage may therefore be considered as the length of the original electric railway.

Board of  
Railway  
Commissioners

No. 29

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
25th Jan. 1924.  
—Continued.

Board of  
Railway  
Commissioners

No. 29

Agreement  
between the  
Ottawa Electric  
Railway Com-  
pany and the  
City of Ottawa.  
25th Jan. 1924.  
—Continued.

From 1894 to 1913 inclusive, a period of twenty years, the net additions and extensions to the system amounted to a little more than 30 miles averaging one and one-half miles per year. Owing to the World War and since that time to the imminent expiration of the franchise, the total extensions since 1913 have amounted to only one mile.

Had normal conditions existed and extensions progressed at the rate of one and one-half miles per year, the system in 1922 would have amounted to 70 miles instead of approximately 58 miles as of today. In other words the system is 12 miles behind its past program of growth.

10

While the growth of the system has been retarded the population of the City has continued to increase resulting in an increase in revenue passengers per year per mile of track from 423,300 in 1913 to 656,700 in 1921. The effect of this increase is an unusual congestion of cars in the centre of the City, especially on Sparks and Bank Streets, during the rush hours. This congestion so delays the service on all lines as to materially effect the travel of nearly all patrons of the system.

Steps should be taken so that the system may gradually catch up on its normal program of growth, building additions and extensions, over say a five year period, at a rate which will bring the system mileage to approximately what it would have been under normal and uninterrupted growth.

20

A study has been made of the City and its suburbs to determine the needs for extensions. This study indicates that there should be built, during the next five years, approximately 18 miles of new lines and that about one mile of the present system should be abandoned and removed, making a net addition of 17 miles. The system total would thus become, say in 1927, about 75 miles or approximately 3 miles less than it would be if the average growth shown for 20 years prior to 1914 had continued to and including 1927.

30

In order to keep from over-burdening the electric railway company in the matter of these extensions, they have been divided into five groups; one group to be built each year. The problem of determining which extension shall be built first is more or less simplified if the needs of the greatest number of patrons is given greatest weight.

**THE CORPORATION OF THE CITY OF OTTAWA,**

HENRY WATTERS,

Mayor.

NORMAN H. H. LETT, 40

City Clerk.

**THE OTTAWA ELECTRIC RAILWAY COMPANY,**

T. AHEARN,

President.

	<b>No. 30</b>	<i>Board of Railway Commissioners</i>
	<b>Certificate that security has been supplied (<i>not printed</i>)</b>	
	<b>No. 31</b>	<u>No. 30</u>
	<b>Notice of setting down of appeal to the Supreme Court of Canada. (<i>not printed</i>)</b>	<u>No. 31</u>
	<b>No. 32</b>	<i>Supreme Court of Canada.</i>
	<b>Certificate of Secretary of Board of Railway Commissioners as to Contents of Case.</b>	<u>No. 32</u>
10	<b>THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA</b>	<i>Certificate of Secretary of Board of Rail- way Commis- sioners as to contents of case. 4th Sept. 1930.</i>
	<p>I, the undersigned, Acting Secretary of the Board of Railway Commissioners for Canada, pursuant to the provisions of Section 24 of the Railway Act, 1919, do hereby certify that the following documents:—</p>	
	(1) Order of the Board No. 44058;	
	(2) Schedules 1 to 15 of Order No. 44058, No. 7 of which contains the application in this case, 14th July, 1927;	
	(3) Answer of the Ottawa Electric Railway Company to the application, 12th July, 1927;	
20	(4) Answer of the Canadian Pacific Railway Company to the application, 22nd July, 1927;	
	(5) Answer of the Canadian National Railways to the application, 5th August, 1927;	
	(6) Evidence of hearing, 7th September, 1927;	
	(7) Application for leave to appeal, 12th April, 1928;	
	(8) Order granting extension of time for leave to appeal to the Supreme Court of Canada, No. 44462, 8th May, 1928;	
	(9) Notice of setting down appeal, 17th February, 1930;	
30	(10) Certificate that security has been supplied, 14th February, 1930;	
	(11) Contents of the case as certified by the Board's Secretary—constitute the Case stated by the Board for the opinion of the Supreme Court, wherein the Ottawa Electric Railway Company is Appellant and the Canadian Pacific Railway Company and the Canadian National Railways are Respondents.	
	<p>IN TESTIMONY WHEREOF I hereby execute these presents at Ottawa this fourth day of September, A.D., 1930.</p>	
40	<p>R. A. RICHARDSON, Acting Secretary, Board of Railway Commissioners for Canada.</p>	

Order of Supreme Court of Canada dispensing with printing of  
certain documents.

No. 33

Order of  
Supreme Court  
of Canada  
dispensing with  
printing of  
certain  
documents.  
10th Sept. 1930.

## IN THE SUPREME COURT OF CANADA

Before the Registrar in  
ChambersWednesday the 10th day of September,  
1930.

BETWEEN:

THE OTTAWA ELECTRIC RAILWAY COMPANY, 10  
*Appellant*

and

THE CANADIAN PACIFIC RAILWAY COMPANY

and

CANADIAN NATIONAL RAILWAYS

*Respondents*

UPON the application of the above-named appellant and upon hearing the affidavit of Redmond Quain filed and upon hearing what was alleged by counsel for all parties.

IT IS ORDERED that the printing of the following documents, or 20 parts thereof, included in the Contents of the Case herein be and it is hereby dispensed with:—

1. Agreement between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company and the City of Ottawa dated 28th June, 1893, except the following parts:—Page 1, from the words "This Indenture" to the end of the page, Page 2, Page 3 to the end of Paragraph 2, Paragraph 4 on Page 3, Paragraph 15 on Page 7, Paragraph 18 on Page 8, Paragraph 20 on Page 9, Paragraph 20 (a) on Pages 9 and 10, Paragraph 20 (b) on page 10, Paragraphs 31 and 32 30 on Page 12, Paragraph 35 on Page 13, Paragraph 52 on Page 16, Paragraph 55 on Page 17, and the paragraph reciting the execution of the said agreement on Page 17, commencing with the words "In witness whereof" and continuing to the end of the signatures of the parties thereto on Page 18.
2. Agreement between the Ottawa Electric Railway Company and the City of Ottawa dated 8th April, 1895, except the following parts:—Page 23, commencing at the words "Memorandum

of agreement made the 8th day of April A.D. 1895" down to the end, Page 24, Page 25, to the end of the paragraph numbered (1), Page 27, except the first paragraph on the said page.

*Supreme  
Court of  
Canada*

No. 83

10 3. Agreement between the Ottawa Electric Railway Company and the City of Ottawa dated 25th January, 1924, except the following parts:—that part of page 9 which commences at the words "agreement dated the 25th day of January, 1924" down to the end of the page, the whole of Page 10, Paragraphs 3 (a) and 3 (b) on Page 11, Paragraph 8 on pages 13 and 14, Paragraph 11 on Page 17, that part of Page 19 which commences at the top of the page and ends with the words "Secretary treasurer" at the middle of the page, the whole of Page 23, the first eighteen lines of Page 24, down to but not including the words "extensions during first year", that part of Page 33 which commences with the words "The Corporation of the City of Ottawa" and ends at the bottom of the page.

Order of  
Supreme Court  
of Canada  
dispensing with  
printing of  
certain  
documents.  
10th Sept. 1930.  
—Continued.

20 4. The specifications referred to in Order No. 44058 of the Board of Railway Commissioners herein, except the following parts:—Title page, Sheet 1, 2, 4, 5, 6, 9, 10, 12, 13, 14, 15, 16, last paragraph on sheet 18, first paragraph on sheet 19, sheet 20.

5. Certificate that security has been supplied herein.

6. Notice of setting down appeal.

7. Order No. 44462 of Board of Railway Commissioners granting extension of time to apply for leave to appeal.

8. Drawings 1 to 5 inclusive referred to on sheet 12 of the specifications referred to in Order No. 44058.

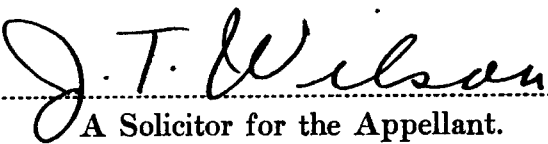
30 IT IS FURTHER ORDERED that as to Drawings Nos. 1 to 5 inclusive referred to on sheet 12 of the specifications referred to in Order No. 44058 of the Board of Railway Commissioners, 12 reproductions thereof be made for the use of the Court and of counsel for the Respondents.

E. R. CAMERON,

Registrar.



I, J. T. Wilson, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

  
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A Solicitor for the Appellant.

No. 34.

FACTUM OF THE OTTAWA ELECTRIC RAILWAY COMPANY.

IN THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Between

THE OTTAWA ELECTRIC RAILWAY COMPANY - - - *Appellant*

and

CANADIAN NATIONAL RAILWAYS

and

10

THE CANADIAN PACIFIC RAILWAY COMPANY - - - *Respondents.*

*In the Supreme Court of Canada.*

No. 34.  
Factum of the Ottawa Electric Railway Company.

PART I.

STATEMENT OF FACTS.

This is an appeal from a judgment of the Board of Railway Commissioners for Canada on questions of law which are set forth in Order No. 44058 of the Board, document No. 18 of the Case.

The appeal was by leave of the Board pursuant to Section 52, subsection 3 of the Railway Act R.S.C. Chapter 170.

20 The questions of law involve the interpretation of two agreements in the same language entered into by the Ottawa Electric Railway Company with the Canadian Pacific Railway Company in one case and the Canada Atlantic Railway Company in the other case. For the purpose of this appeal the Canadian National Railways may be taken to have been the successor to the Canada Atlantic Railway Company.

An application was made by the City of Ottawa for a new bridge to replace the one which carried Somerset Street in Ottawa over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, upon which street a double line of street railway tracks belonging to the appellant was in operation.

30 The Board of Railway Commissioners inferentially found the Canadian National Railways and the Canadian Pacific Railway Company primarily liable for some part of the cost of the new structure, and, following an interpretation given to the above agreements by the Board upon an application made in 1907, ordered the Ottawa Electric Railway Company to assume the share which otherwise would have fallen upon the Canadian National Railways and the Canadian Pacific Railway Company.

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

## PART II.

## ERRORS ALLEGED IN JUDGMENT APPEALED FROM.

Question 1 of the questions submitted is:—" 1. Has the Electric Railway Company any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute toward the cost of construction of a bridge such as provided for in the Board's Order No. 40417? "

The Board of Railway Commissioners found that there was such obligation and it is submitted that they were wrong in so finding and that a proper answer to this question is " no. "

It should be borne in mind that the Board may impose obligations on the Electric Railway altogether independently of any imposed pursuant to the agreements, and no question now arises as to any part, of the share imposed, that is imposed independently of the agreements.

But some of the share imposed was imposed because of the agreements, and so imposed wrongly.

Question 2 is:—" 2. If the answer to question 1 is " Yes, " does such obligation thereunder extend to (a) the whole or (b) part only of such cost that may be occasioned by the increased volume and variation in character in traffic since the dates of the said agreements? "

It is submitted that the Board's answer to the points involved in this question had the effect of the answer " The whole, " the Board imposing upon the Electric Railway all the cost due to the increased volume and the variation in character of traffic, that otherwise they would have imposed upon the Steam Railways.

It is submitted that no part of such cost should be imposed upon the Electric Railway in view of the jurisprudence hereinafter referred to.

Question 3 is:—" 3. If the obligation extends to part only of the cost referred to in question 2, then to what part? "

The Board's finding was that the obligation extended to the whole of the cost so occasioned, and not to part only.

It is submitted that the obligation extends to no part of the cost referred to, but if this submission is wrong, then it is submitted that the part of the cost so occasioned which is to be borne by the Electric Railway, at worst should be only such part as it would have had to bear pursuant to the agreements had a bridge no wider than the original wooden bridge been built but somewhat stronger.

Question 4 is:—" 4. If the Electric Railway Company has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation? "

The Board somewhat inconsistently imposed all the cost of maintenance upon the Electric Railway (p. 73 l. 18).

No reasons whatever are given for this decision, the sole reference being that contained in the last sentence of the judgment :—

“ The maintenance, other than as referred to above, should be  
“ on the Ottawa Electric.”

*In the  
Supreme  
Court of  
Canada.*

It is submitted that whatever part of the Order may stand, certainly there is nothing in the agreements in question which would warrant the imposition upon the Electric Railway of all the cost of maintenance, and that even if 60% of the balance of the cost referred to in the closing paragraph of the judgment were taken as the proportion of maintenance to be borne by the Electric Railway, this proportion would for the reasons hereinafter given against the judgment as a whole, be giving an improper interpretation to the Steam Railway agreements.

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

It is submitted that no part of the maintenance should be imposed upon the Electric Railway, at any rate pursuant to any interpretation of the Steam Railway agreements.

It is submitted that some part of the maintenance would in the ordinary course of events be paid by the Steam Railways, and that as to this part the Electric Railway is being charged pursuant to the agreements, and the interpretation thereof is wrong.

The maintenance may be a very large amount, and is not a trifling matter.

Furthermore under some interpretation of the word “ maintenance ” the Electric Railway some day might have to go very far along the way towards substantial major improvements in the bridge, under this part of the Order.

### PART III.

#### POINTS OF ARGUMENT.

Before dealing with the questions separately some preliminary observations applicable to all the questions are now submitted.

Some cases may be cited by respondents which it will be argued cover cases similar to the present, but it will be noted that such cases belong to one of the following classes :—

(1) Cases in which the question was whether it was negligent not to keep a bridge in a certain state of repair.

(2) Cases in which the question was whether one party, being bound by contract to protect the property of another passing under the bridge, must bear the increased burden caused by a variation in the traffic passing over the bridge.

(3) Cases in which the question was one of the obligation of municipalities to keep a bridge up to the modern standard for the accommodation of the public.

The present case comes within none of these classes.

Even as to these classes of cases there is no line of jurisprudence suggesting that one must completely demolish an existing bridge and replace it with

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

an entirely new one having no resemblance to the old one—or, *a fortiori*, replace the second one with one having three times the original width and many times the strength, of the successor to the original bridge; or continue doing this *ad infinitum*.

Whatever may have been the obligation of the Steam Railways at the time in question, it is evident that the Electric Railway refused to enlarge its obligation to indemnify, beyond what is covered literally by the agreement, and it cannot be enlarged by implication, or by reasoning from what the Steam Railways today (being wise after the event) would like to have the Electric Railway agree to do should the same condition as actuated the agreement exist today—and no one really knows what conditions did actuate the parties to the agreement in 1896. 10

There has been no considered opinion in this matter—the 1907 order, it is evident, was simply adopted holus bolus by the two members of the Board who gave the judgment:—

“It would be well for the parties . . . to show in what respect, if any, conditions are now changed so as to justify a different conclusion (from that of 1907) . . .” page 19, line 19.

“The agreements referred to were gone into with the usual care which characterized the late Chief Commissioner Killam, and what it involved cannot be better set out than by excerpting the following summarized statement contained in his judgment. . . .” Page 70, line 30. 20

The decision as to the meaning of the agreements with the Steam Railways was not necessary to the judgment of 1907. No increase in the strength of the bridge was required because of the increase in the traffic in 1907.

In any event the arguments of counsel are available as to the proceedings in 1907 and it is apparent that the question was not fully argued.

In 1907 in any event the total Steam Railway burden which the Electric Company assumed was hardly more than \$7000 or \$8000 each. 30

The 1907 order went largely upon the fact that the Railway had taken a strip of street from the city and must now restore it:—

“The Canadian Pacific Railway Company and the Canada Atlantic Railway Company contend that, in view of their agreement with the Electric Railway Company, and of the fact that the necessity for the widening of the bridge arises wholly from its use by the Electric Railway Company, the latter company should bear the remaining portion of the expense; and in this view as between the three railways companies, I think that the contention of the former two companies is correct. Before the tracks of the Electric Railway Company were extended over it the bridge was quite safe and sufficient for street traffic. So far as appears, it would, with such repairs as time and use might have rendered necessary, have still 40

been safe and sufficient for the purpose. As between it and the other railway companies . . . upon ordinary principles . . . the Electric Company should be the one to bear the necessary expense incidental thereto." Page 130, line 35.

*In the  
Supreme  
Court of  
Canada.*

If the judgment of the Board of Railway Commissioners is right with respect to the variation in traffic which took thirty years to occur, the principle applied should stand the test of the hypothetical case of the same thing occurring in one year, say between 1896 and 1897, and it is a vivid way of bringing home the extraordinary onerousness of the burden imposed.

10 The consideration paid by the Steam Railways as a result of which the Electric Railway finds certain obligations imposed upon it was \$500 and \$800 respectively.

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

Obligations imposed are :—

1. The major part of the \$17,000 paid by the Railway pursuant to the 1907 order.
2. The major part of the \$90,000 imposed upon it by the present order.
3. Indefinitely large amounts for all time in the future as new needs for highway improvements arise at this point—because 20 42 feet is not wide enough for any city street today, much less for one which, with two others, provides the **only** avenue of traffic between two major portions of the city of Ottawa.

It is true that the fact that one interpretation of an agreement involves an obligation out of proportion to the consideration received, is not an indication that such interpretation is less correct than one involving a lesser obligation. But nevertheless such fact does call for caution in giving to the agreement a meaning any more extensive than its literal interpretation calls for.

30 Lest there be a feeling that the Electric Railway had to cross on such terms as it could get from the Steam Railways and that the latter accordingly might be fairly assumed to have had in contemplation, and to have covered, the present situation, it is well to point out that, far from being in a position to dictate terms to the Electric Railway, the Steam Railways were on the defensive and were satisfied to get what, it is submitted, is all they did get, namely, indemnification against their liability to the farmers from whom they bought their rights of way.

The agreement does not contain, nor is it, an authority to cross the Steam Railway tracks. Such authority was got previously by the Electric Railway from the Railway Committee of the Privy Council :—

40 Commissioner Oliver's judgment, page 78, line 43

if at that time it was necessary, which is doubtful, in view of the seniority of Cedar (Somerset) Street over the rights of way, and in view of the permission given by the City to the Electric Railway.

For, among the inherent rights which ownership in its streets gives the municipality is the right to say to what use its streets shall be devoted.

*In the  
Supreme  
Court of  
Canada.*  
—

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

A municipality may, without leave from anyone, devote its streets in part to the transportation of its citizens.

The fact that a Steam Railway runs under such streets does not lessen such right.

For the purposes of this appeal it must be taken that Cedar Street where it crosses the Steam Railways was laid down as a public street before the Steam Railways acquired title to their rights of way:—

Page 21, line 40, as to C.N.R.'s predecessor (the Canada Atlantic Railway)

Page 24, line 33, and page 25, line 29, as to the C.P.R.'s predecessor (the St. Lawrence and Ottawa Railway) 10

A share of the cost of the bridge was imposed upon the C.P.R., which however we are charged with.

and upon this street the City had given the Electric Railway the right to run:—

Paragraph 2 of the recitals to the agreement in question (page 124, line 9, page 126, line 5)

The agreement of 1895 between the City and the Electric Railway, page 116, line 32.

It is submitted that the situation was that the Steam Railways, realizing their juniority or doubtful of their seniority, were fearful that they might be obliged to strengthen the wooden bridges then in existence in order that these bridges might carry Electric Railway's vehicles and that such obligation might be imposed upon them upon the ground that but for the Steam Railways cuttings no such strengthening of a city street would have been required in order to carry the Electric Railway's vehicles, and that the Electric Railway might take the stand that the City was obliged to provide for the Electric Railway a highway to run upon, or that at any rate the Steam Railways should not weaken any such highway. 20

For while the City had indemnified itself against any obligation to strengthen bridges for the Street Railway's vehicles (Clauses 20 and 20A of the Street Railway and City of Ottawa Agreement of 1893, page 121, line 32 and following) this did not prevent the Electric Railway from availing itself of the right it had to have city streets they were paying to run on, no worse off so far as carrying power was concerned than they were prior to the construction of the Steam Railway cuts. 30

In 1895 the obligations which it is today within the power of the Board of Railway Commissioners to impose upon "parties interested" were not imposable either by contract or common law, or statute, and there is no reason for believing that any obligation other than those of the two Steam Railways to the grantors of their rights of way or to the Electric Railway with respect to the wooden bridges, was in the mind of anybody in drawing the agreement as it was drawn. 40

Even as to those, the parties to the agreement considered it doubtful whether any such obligations existed at the time.

If this is not evident from the consideration (\$500 in one case and \$800 in the other) then at any rate it is evident from the wording of the third paragraph of the recitals to the agreement.

“ The Electric Company . . . agrees . . . with Railway Company to assume . . . the liability (*if any*) of the Railway Company for the maintenance and repair of the said bridge . . . ” (italics added).

10 It must have been evident to the Steam Railway that the wooden bridges would eventually be demolished and new ones constructed in place of them. The City stipulated in the same year that the mere fact of their permitting the Electric Railway to operate on Somerset Street, including the bridges, shall not

“ be construed to impose any liability on the City for the construction, repair or maintenance of the bridges . . . *or any bridge or bridges that may be constructed in place of the same* ” (italics added) p. 118, line 2.

The only existing obligation that the C.P.R. had toward the wooden bridge is set forth at Page 108 of the Case in the correspondence between executors of the Sparks estate and the St. Lawrence and Ottawa Railway 20 Company, who are taken to be the predecessors of the C.P.R.

What obligations toward the Canada Atlantic Railway wooden bridge were undertaken by that Company does not appear.

The plans however make it evident that Canada Atlantic Railway could not operate its right of way without cutting into the approaches to the wooden bridge which the C.P.R. had previously erected over their own right of way and which they were bound to keep up, but it does not appear what agreement had the C.P.R. with the C.A.R. or the Sparks estate or others to keep up the bridge which their cut obviously made necessary and which was accordingly built by somebody, presumably the C.A.R.

30 It may be argued that, apart from these contractual obligations to the farmers and the possible obligation of the Steam Railways to the Electric Railway the parties had in mind some present or prospective obligation to the public with reference to the *crossing*.

As to this contention, if the Steam Railways endeavoured to persuade the Street Railway to incorporate in the agreement a general covenant covering such obligation, it is evident that they failed in such endeavour.

Obligations to the public are not referred to. The word “ crossing ” is not used except, as shown elsewhere, in such a manner as to indicate that there was a distinction in the minds of the parties between the word 40 “ bridge ” and the word “ crossing ” and that the Electric Railway assumed very limited obligations toward the crossing, and somewhat more general obligations towards the bridge.

Appropriate phrases to specifically cover the obligations of the Steam Railways to the public with reference to *crossing* are not difficult to think of or to frame, and the omission of such specific provision is surely not without significance.

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*



*In the  
Supreme  
Court of  
Canada.*  
—  
No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

The agreements do provide general indemnity as to the crossing—but indemnity only against *damages* (i.e. damage claims) or *penalties* :—

“ . . . . . indemnify and save harmless . . . the Railway Company from and against *all claims for damages . . . or . . . penalties . . .* by reason of any defect or default in the said bridge or *crossing* or the approaches thereto.” Page 124, line 30 (*italics added*).

But when it came to a question of maintenance (as distinguished from the question of damages or penalties) the Electric Railway only agreed to

“ indemnify . . . against all liability to maintain . . . the said *bridge* 10  
“ or the approaches thereto ” (*italics added*).

It is fair to infer that the Steam Railways had seen and examined the agreement which the Electric Railway had with the city dated four months previous to the Steam Railways agreements, and which enabled the Street Railway to operate the line running over Somerset Street bridge (Cedar Street). It did not require any particular degree of astuteness to observe the phrase in the city agreement :—

“ or any bridge or bridges that may be constructed in place of the same . . . ” page 118, line 6.

and we may safely assume that the Steam Railways would have been pleased 20  
to see the same phrase in their own agreement with the Electric Railway.

It is submitted that it is also fair to infer that the Electric Railway refused to have the phrase in question in the agreement with the Steam Railways and that the omission of this phrase and of the word “ crossing ” in the first part of clause numbered 1 of the agreement was the result of a deliberate unwillingness on the part of the Electric Railway that an obligation to the public, or to the crossing, or to future bridges, should be assumed by it.

As to Question I, while the Electric Railway may have some obligations 30  
under the general law and while it may be competent for the Board of Railway Commissioners to impose obligations upon it pursuant to that law, there now remains no obligation so far as the agreements with the Steam Railways are concerned in view of the fact that the wooden bridge which was the subject of the agreement disappeared in 1897 and was replaced by a new one.

If it did not disappear in 1897 then it certainly disappeared in 1928.

The obligation being at most one to reconstruct *the said bridge*, such obligation was fulfilled in 1897, or at worst in 1928, even if the view is taken that neither of these operations constituted a replacement.

As to Question 2, it is submitted that any obligation of the Electric 40  
Railway was to indemnify the Steam Railways against any obligation of the Steam Railways to make the bridge fit for street car traffic; or to keep up a farm bridge (as required by the farmers who sold them the right of

way); or at any rate to keep up nothing more than the bridge which was in existence in 1896.

This obligation may be put in another way—that it is an obligation to keep up the wooden bridge so that it would be sufficient for the ordinary traffic at the date of the execution of the agreement and it is submitted that the Sharpness case is decisive on this point.

As to Question 3, if there be any obligation it relates only to the width of bridge existing in 1896, at the time of the agreement, and not to the width added in 1907 by the construction of a new bridge adjoining the second one built, nor to the added width of the bridge ordered in 1928.

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

### QUESTION 1.

“ 1. Has the Electric Railway Company any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in any respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute toward the cost of construction of a bridge such as provided for in the Board’s Order No. 40417.”

It is submitted that the answer to this is No.

The Electric Company’s obligation had reference to the wooden bridge existing at and prior to 1896 :—

(1) The Electric Company’s obligation related to the thing it bought, namely, the wooden bridge.

(2) The agreements with the steam railways recite that Cedar Street was carried over the C.P.R. lines “ by means of an overhead bridge,” and that the Electric Company was to take over the liability, if any, “ for the maintenance and repair of *the said bridge* ” (page 124 line 16) and the Electric Company goes on to “ indemnify and save harmless the Railway Company from and against all liability to maintain, repair or to reconstruct *the said bridge*,” and also from and against *all claims for damages or penalty* by reason of any defect or default in *the said bridge* or *crossing* or the approaches thereto. The Electric Company furthermore agreed to do certain things if it should at any time become necessary to reconstruct “ *the present bridge* ” (p. 124 l. 34) and the Railway Company assigned and set over its rights in “ *the said bridge* ”; and so on throughout the said agreement (italics added).

(3) There is no obligation upon the Street Railway Company to indemnify the Steam Railways against their liability in respect of the *crossing*, except against claims for damages or for penalty by reason of any defect or default therein.

(4) There is a distinction between the bridge and the crossing—the latter word might have suggested a more general liability.

“ The said bridge ” no longer exists.

*In the  
Supreme  
Court of  
Canada.*  
—  
No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

It was demolished and replaced in 1896 :—

1. Order No. 44058, p. 105, para. 19.
2. The judgment of 1907, p. 130, l. 22.
3. The application of the City of Ottawa made in 1906, p. 128, l. 1.
4. Commissioner Oliver's dissenting reasons, p. 79, l. 5; p. 81, l. 18.

If it was not replaced in 1896, then it is submitted that it was replaced in 1928 :—

1. Order granting leave to appeal, p. 106, paras. 25 and 26. 10
2. Application of the City of Ottawa was for a new bridge, p. 1, l. 4, which application was granted, p. 73, l. 13.
3. City Solicitor p. 8, l. 11-14.
4. Canadian National Railways' counsel p. 8, l. 35.
5. Engineer MacCallum p. 39, l. 8; p. 44, l. 11.
6. Deputy Chief Commissioner p. 44, l. 7; and the Answer at p. 47, l. 6; which were carried into the Board's order No. 40417, the Assistant Chief Commissioner saying at p. 69 l. 25 and l. 30 that there is a distinction between a reconstructed bridge structure and a new structure. 20
7. See also Reasons for Order No. 40417, p. 60, l. 24; p. 61, l. 2; p. 63, l. 31; p. 69, l. 25.
8. See also the specifications for the new bridge p. 87, l. 8, l. 25; p. 89, l. 33; p. 9, l. 2; p. 92, l. 8; p. 92, l. 9; p. 95, l. 20, all of which extracts make it clear that a new bridge is what was ordered and built.
9. See the Answer of the C.N.R., p. 6, l. 2.
10. See the Answer of the C.P.R., p. 5, l. 11.

Such obligation as the Electric Railway assumed at the time the agreements were entered into was effaced when the wooden bridges were replaced in or after 1896, shortly after the Steam Railway agreements were entered into. 30

The wooden bridges were demolished and new cement or stone bridges joined together were erected over the Steam Railway cuts on the site of the old wooden bridge. These stone bridges (called for convenience the Somerset Street bridge) were a complete replacement of the wooden structure.

They constituted therefore a complete fulfilment of the Street Railway's obligation to the Steam Railways.

If they were a replacement, then as a matter of fact no reconstruction of the bridge occurred and the bridge in question disappeared. 40

It may be argued that the wooden bridge was not replaced after 1896 but was only reconstructed, and it may be argued that it was not replaced after 1928, but only reconstructed.

It is submitted that there have been two distinct demolishments and two distinct replacements since the agreements in question were entered into.

But even if this were not so then the Electric Railway in any event has fulfilled its obligation in that it did "reconstruct the said bridge" in 1896-7.

It had no obligation to reconstruct for all eternity each successor to the old wooden bridge.

Having reconstructed the wooden bridge once, it was under no obligation to reconstruct again the reconstructed bridge.

10 There is no provision in the Steam Railway agreements that the Electric Railway would reconstruct the said bridge

"or any bridge or bridges that may be constructed in place of the same."

which phrase was in the agreement with the City in 1895 (p. 118, l. 6).

It is submitted that the wooden bridges were so unsuitable for the Electric Railway's purposes that no maintenance, alteration or repair or reconstruction was or could be done to them and consequently the Electric Railway completely demolished the bridges in 1896-7 and thereupon their obligation under the Steam Railway agreements ended.

20 Paragraph 2 of the agreement states that if it should become necessary to reconstruct "the present bridge" (that is the wooden bridge) plans thereof should be submitted to and approved by the Steam Railway. This was not done in 1896-7, nor in 1907, nor in 1928.

It is submitted also that the reconstruction the parties had in mind was one at the instance of the Electric Railway inasmuch as the burden was placed upon the Electric Railway to submit plans to the Steam Railways when they intend to reconstruct. If the reconstruction was to be made at the instance of some third party it would not be within the power of the Electric Railway to submit plans.

30 If any obligation to reconstruct existed at the date of the 1928 application then such obligation ceased when the structure erected in 1896-7, and 1907 was completely demolished pursuant to Order No. 40417 and a new structure (as ordered) erected—the whole pursuant to the City's application which was for an order,

40 "requiring . . . to *replace* the existing Somerset Street bridge or viaduct in the City of Ottawa . . . with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street, and for an order apportioning the cost of such *new bridge* between the said Railways . . ." (italics added.)

### QUESTIONS 2 AND 3.

" 2. If the answer to question 1 is 'Yes' does such obligation  
 " thereunder extend to (a) the whole, or (b) part only of such cost  
 " that may be occasioned by the increased volume and the variation  
 " in character of the traffic since the date of the said agreements."

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

“ 3. If the obligation extends to part only of the cost referred to in question 2, then to what part ? ”

It is submitted that question 2 should be answered as follows :—

“ The obligation extends to no part of the cost so occasioned.” and that this is the proper answer even though question 1 be answered in the affirmative.

It should be observed that there may be an obligation to indemnify other than to indemnify for all or part of the cost referred to in question 2—*e.g.*, an obligation to indemnify against such of the total cost of the bridge as represents the maintaining of a bridge of the standard of the wooden bridge. 10

If the *Sharpness* case is given effect to, it is submitted that the obligation found in the *Sharpness* case is not covered by question 2.

And the answer to question 2 must be

“ Neither the whole nor part of the cost so occasioned ” or words “ of similar import.”

It is submitted that if it becomes necessary to answer question 2 in any other manner, however, the answer should be “ part only of the cost so occasioned.”

And that if question 3 is to be answered, the answer should be “ to such part as may be due to the increased volume and the variation in character of the traffic upon a part of the new bridge of a width equivalent to the width of the original wooden bridge.” 20

If it should be found that there is an obligation upon the Electric Railway with reference to the present bridge, then it is submitted that the obligation is only such as the C.P.R. had to its private grantors and as set forth in the correspondence between its predecessor and these grantors.

That obligation was an obligation to :—

“ erect and keep up three bridges over the cut if we (the executors) so require ” (p. 108, l. 14).

The bridge built was a bridge such as one would expect to find at a farm crossing :— 30

Mr. Flintoft, p. 10, l. 40.

Order No. 44058, p. 102, l. 29; p. 103, l. 23.

No other bridge was ever required by the executors (p. 103, l. 14).

That bridge had (apparently) been approved by the executors, and the obligation was completely satisfied by the erection and keeping up of that wooden bridge.

That obligation (and the possible obligation to the Electric Railway because of the cutting away of Cedar (Somerset) Street) was the obligation that the Railways had in mind, and the fact that the Electric Railway in 1896-7 supplied a better bridge does not weigh against that Company. 40

The following cases are very much in point and it is proposed to quote them at somewhat unusual length.

*Sharpness New Docks vs. Attorney General* (H.L.), 1915 A.C., 654.

Under a certain Act the following obligation was set forth :—

“ The said company . . . shall also at their own charges  
 “ . . . make, erect, and set up . . . and from time to time  
 “ maintain and support . . . such bridges, . . . of such  
 “ dimensions, and in such manner, as the said commissioners shall  
 “ from time to time judge necessary and appoint . . . and the  
 “ said company . . . shall not make the said canal . . .  
 “ in or across any common highway, . . . until they shall at  
 “ their own proper charges, have made and perfected such bridges,  
 “ . . . across such highway, . . . and of such dimensions,  
 “ and in such manner, as the said commissioners shall adjudge  
 “ proper; and *all such . . . bridges, . . . to be made, shall*  
 “ *from time to time, be supported, maintained, and kept in sufficient*  
 “ *repair, by the said company.*” (Italics added.)

*In the  
 Supreme  
 Court of  
 Canada.*  
 —  
 No. 34.  
 Factum of  
 the Ottawa  
 Electric  
 Railway  
 Company—  
*continued.*

This action was for a declaration that the company were liable to support, maintain and keep in repair certain bridges, sufficient to bear the ordinary traffic of the district and the traffic which might reasonably be expected to pass along the said highways, having regard to the present character and needs of the district.

20 For the company it was contended that they were not bound to keep the bridges in a state of repair sufficient to bear the present ordinary traffic but only to carry such traffic as was ordinarily on such highways when bridges were originally constructed. (This case is different from ours inasmuch as in our case there was no obligation to construct a bridge and furthermore inasmuch as whatever obligation we have is solely toward the bridge company and is not affected by any common law questions as to what rights the public have to have their highways kept open for them.)

30 The argument against the contention of the company was that the public should be put in the same position as they would have been if the highway had not been crossed, and that unless the company are bound to maintain their bridges so as to be suitable for future traffic they do not give the public as good a right as they had before, for the right of the public is to continue along the highway with its ordinary means of support.

40 “ Viscount Haldane, page 660—“ The court of Appeal decided that the Appellants were liable to repair the bridges in such a way that they should be sufficient to bear the ordinary traffic which might, at the present time, be reasonably expected to pass along the highways carried by them over the canal—a conclusion which might obviously necessitate reconstruction . . . p. 661, My Lords, this question depends exclusively on section 61, and to the language of that section I therefore turn. I do not think that the words ‘ supported ’ and ‘ maintained ’ add anything to the effect of the expression ‘ kept in sufficient repair.’ Now it is to be observed that what are to be kept in sufficient repair are such bridges as were approved by the Commissioner. In my opinion this language, so far as the natural meaning of the words goes, prescribes unambiguously the extent of the obligation to keep in repair. It appears to me to stop short of imposing on the Appellants an

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

obligation to reconstruct so as to provide bridges of a standard higher than that which the commissioners have prescribed. When they had certified what was to be perfected and made, they were *prima facie functi officio*.”

(It should be observed that the whole judgment turns on the question whether the common law doctrine alleged to exist should be added to the wording of the special Act, because of its being a question of a Statute and its relation to the public, whereas in our case no such questions arise, the sole question being as between the steam railways and the Ottawa Electric Railway.)

“Page 662.—“Section 61 of the Act which we have to construe in the present case does not appear to me to admit of resort to any presumption of intention based on the analogy of the common law. It contains a code, so far complete in itself, and it is self-contained. . . . p. 633, the appellants are liable to support, maintain and keep in repair each of the bridges. . . . in the condition in which it was made and perfected . . .”

“Lord Atkinson, page 666—“No duty is cast upon them in this part of the section to maintain any bridges other than those they have so erected.”

“Page 667—“It enacts that all such gates, stiles, bridges, arches, and other works and conveniences to be made shall from time to time ‘be supported, maintained, and kept in sufficient repair.’”

“If one asks oneself the question, what, in relation to the *crossing* of the old highway where the canal is cut, are the structures which are to be supported, maintained, and kept in good condition, surely the answer must be those particular bridges, passages, and arches which were built by the company, . . . of the dimensions and in the manner adjudged proper by the commissioners, and not bridges, passages, and arches not built by this company at all, but built from time to time by their successors long afterwards. The identity of the work approved . . . must, I think, be preserved. I cannot think that the words ‘supported, maintained and kept in sufficient repair’ can be stretched to cover reconstruction in whole or in part so as to make the bridges so built and perfected something different from what they were left when finished according to the directions of the commissioners. Restoration so as to make them as near what they were when built, as time, wear, and the elements will permit, is, in my view, the very utmost that can be required from the appellants, the successors of the builders.”

Lord Parker, page 668— “. . . “there was nothing to prevent them from taking into account also the possible or probable increase in the dimensions and weight of the vehicles then in use, and for all that is known they may have done so.”

Lord Parmoor, page 671—“I can find no difficulty in the language of the section, giving to the words their ordinary meaning. It appears to be quite clear that the standard of support, maintenance, or repair, is fixed not in relation to the changing conditions of traffic, but to the character and strength of the structure as ordered and approved by the Commissioners. It is a fixed standard not a mutable one varying with the requirements of the traffic from time to time.”

“ . . . I am unable to hold that an obligation to support and to keep in sufficient repair a particular bridge can be construed as an obligation to reconstruct the bridge on a different scale, or of a different strength and character.”

*In the  
Supreme  
Court of  
Canada.*

*Attorney General vs. Great Northern Railway Co., 1916.*

2 A.C., 356, follows the *Sharpness* case.

In it, Section 46 of a certain Act stated that—

10 “ The railway . . . shall be carried over such road by means  
“ of a bridge . . . and such bridge, with the immediate approaches,  
“ and all other necessary works connected therewith shall be executed  
“ and at all times thereafter maintained at the expense of the  
“ company.”

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

The appeal raised the question whether the Respondents were liable merely to maintain the bridge in the same condition as to strength with relation to traffic as when completed or whether they were liable to strengthen the bridge or improve it to bear the ordinary traffic which might reasonably be expected to pass over the bridge according to the standard of the present day.

20 The question was whether the liability of the railway company was limited to maintaining the bridge in the condition as to strength in relation to traffic in which it was at the time of completion.

It was argued for the Appellant that the railway had stepped into the shoes of the highway authorities and was bound to keep up the obligations of the highway authorities. This point does not arise in the Somerset bridge case.

30 It was further argued for the Appellant that to interpret the statute in question in the way contended for by the railway would be to deprive the public of their right to have the road improved in accordance with modern progress—a thing which was not seriously objected to, the answer to it being that the railway had not by the particular statutes in question been declared to have the obligations of the highway authorities.

It was further argued on behalf of the appellant that, as the statutes did not specifically deprive the public of the right which they would be deprived of if the statute was interpreted in the way contended for by the railway company, the public had the right to have the bridge kept up to the same standard as the traffic required from time to time.

40 This argument does not enter into the Somerset bridge case because no matter how the agreement is interpreted no public rights will be affected; if the agreement is interpreted in our favour then the burden will be upon the railway to supply the wants which the railway board declares the public is entitled to have supplied.

For the other side it was argued that the section in question imposed an obligation to construct a particular thing at a particular time and an obligation at all times thereafter to maintain and repair that particular thing. And that “ maintain ” does not mean strengthen, improve or



*In the  
Supreme  
Court of  
Canada.*  
—  
No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

reconstruct—it means that the railway company must keep up the thing that it put there.

In the Somerset bridge case the word used is “Reconstruct,” but the bridge to be reconstructed is “the said bridge” and it has been reconstructed, which was not the case in the Great Northern appeal.

Page 363, Lord Buckmaster—“. . . they (the Appellants) say that the obligation cast upon the railway company is from time to time to strengthen, and, if necessary, to rebuild the bridge so as to carry all the traffic, whatever it may be, which can lawfully pass over the rest of the road. This is the real question involved in the appeal.”

10

Page 364—“The (*Sharpness*) case decided two important and relevant matters. First, that where a private Act casts upon a corporation the burden of maintaining a particular bridge. . . . the question of what would be the common law liability of the person who had intercepted a highway under similar circumstances was irrelevant for the purpose of construing the statute. If the statute imposed the duty of maintaining a defined structure, that liability was the true limit of the obligations of the company. Secondly, that an obligation expressed in general terms ‘*from time to time to maintain and support*’ such a bridge was only consistent with maintaining the structure that had once been erected. If, therefore, section 46 in this case imposes upon the railway company the obligation only of repairing a particular bridge, namely, the bridge which was properly erected to carry the road when the railway was made, then all outside considerations as to what the obligations might have been apart from the Statute become irrelevant, and no greater duty than that of maintaining such a bridge is cast on them by the statute. In my opinion this is all that the statute does.”

20

Page 365—“I cannot think that these words mean that the bridge is to be a changing and varying structure, altered from time to time to meet the growth of traffic wholly unseen and unexpected when the railway was made. There are no words in the section that imply that the structure, when once properly made to bear the road, has ever to be rebuilt in a new and strengthened form; and the only way in which the Appellants urge that this meaning can be introduced into the language of the Act is by saying that the road itself is a varying and inconstant quantity, and that the bridge must carry the road whatever the road may be.”

30

Page 366—“It is the bridge constructed in conformity with the provisions of the Act which the railway company are bound to maintain, and they are, in my opinion, subject to no further liability.”

Earl Loreburn, page 366—“What the railway company was required long ago to build consisted of a specific structure to be built so as to comply with given conditions. It was built in compliance with those conditions to the satisfaction of those concerned, so far as we know, and has stood ever since. That was the thing which the railway company had to maintain. . . . If the language of the Act imposed upon this company either the duty of originally building a bridge of size, strength and quality sufficient to meet all possible requirements of the future, or the duty of from time to

40

time reconstructing the bridge so as to keep pace with successive advances in the carriage of heavy traffic along roads, then of course it would be binding upon me. I find no such language, but merely a direction to build a bridge and maintain it together with the road upon it." Page 367—"If the Act merely directed a bridge to be built, then it would be a bridge reasonably suitable according to the standard of the time for the purpose designated. The railway company is not called upon to do more. . . . If traffic heavier than the prescribed bridge will bear is placed upon the road then the fault is not with the bridge or those who have to maintain it . . .

10 but with the people to whom Parliament has secured a way with a certain measure of strength and who think fit to place upon it weights in excess of that measure. The case of *Sharpness New Docks, &c. Co. v. Attorney-General*, as I understand the decision, is in accordance with this view. I thoroughly agree with that decision. Even if I did not agree with it I should be obliged to follow it. . . .

"I cannot read that (Act) as meaning that the railway company may be called on to pull down the bridge or alter its character in order to suit the road's new burdens, if there are such burdens."

Lord Shaw, page 373—"The Court of Appeal has decided that the

20 Respondents 'are liable to maintain the bridge in question in the same condition as to strength in relation to traffic as it was at the date of its completion, but that the defendants are not under any liability to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may be reasonably expected to pass over it in accordance with the standards of the present day.'" (Italics added.)

Lord Shaw quotes Lord Moulton in *Hertfordshire County Council v. Great Eastern Railway Co.* as follows: Page 374—"In my opinion the law as settled by the cases . . . practically amounts to this: that where persons acting under statutory authority for their own purposes interrupt

30 a highway by some work which renders it impossible for the public to use it, an obligation is *prima facie* imposed upon them to construct such works as may be necessary to restore to the public the use of the highway so interrupted, and that the obligation so imposed is of a continuing nature, involving not only the construction of such works, but also their maintenance," and says this is no longer law.

Lord Shaw says, page 374—"Were this important matter, my Lords, left to be settled upon a general principle, it appears to me to be not improbable that the one thus enunciated by Lord Moulton might be found a safe guide in the solution of the practical difficulty which has emerged. But,

40 in view of the judgment of this House in the Sharpness case, I do not feel myself able to hold that the proposition so expressed can now be maintained to be law."

One of the main arguments of the Appellant in that case seems to have been that the expression was contained in the Act that "*such road shall be carried over the railway*" but this does not occur in our own case.

Page 376—Lord Shaw continues: "So far accordingly as the working out of the Act is concerned the resultant situation was the same, in my

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

humble opinion, as if this particular bridge, with its specific dimensions and its consequential strength, and had been the subject of express statutory stipulation for erection and maintenance. In regard to maintenance, it should be further observed that there is nowhere in the statute any obligation, so far as can be discovered, with regard to the increase of the strength of the bridge according to future traffic requirements.”

Page 377—“And, with regard to the strength of the bridge, there is no provision whatsoever, limited or unlimited, for future increase or alteration thereof. I cannot, in these circumstances, hold that such a provision should be read into the statute, which as already explained, 10 I hold to be the measure of the respondents’ obligations.”

Lord Sumner, page 379—“The appellants’ case is that, even if the bridge was duly ‘executed’ in 1867, the respondents are now bound and compellable by law to maintain the bridge in such a fashion that it will safely carry such traffic; nay, more, that they are bound, in case of need, to reconstruct the bridge for the purpose, and so on, whenever hereafter further mechanical discoveries bring into use heavier and heavier vehicles, or such as in any other way load and strain the bridge beyond its capacity for the time being. My Lords, such a contention cannot, in my opinion, be rested on the word ‘execute.’ There are no words which expand this 20 into ‘re-execute to a higher standard in the future’—Nor can I think that it comes under the obligation as to maintenance. The section requires the respondents . . . to maintain such bridge as is required to be executed in the first instance . . . ‘maintain’ does not naturally mean maintain and alter, nor does ‘maintain such bridge’—(namely, the bridge previously executed)—naturally mean maintain it not as it was executed, but as something indefinitely different, stronger, more durable, and possibly of wholly dissimilar structure, material or design. It is said that this meaning, which I venture to call unnatural, is imposed on the words used, both as to execution and maintenance, because ‘such bridge’ 30 is to be the means of carrying such road over the railway. So it is; but, so far, there is nothing to show that such road is anything more than the physical road known about 1866. . . . The argument proceeds that . . . common law conferred on the public certain rights . . .”

Page 380—“My Lords, to this contention I think the short answer must be that the section is concerned with a physical thing to be executed *in praesenti* and to be maintained *in futuro*, and it is engaged in telling the undertakers what they are to do then and there. Having done so, it clearly adds, ‘that which is hereby directed to be made, shall at all times thereafter be maintained.’ Maintenance is in itself a word which 40 is not indicative of but negatives change. What is maintained is a *status quo*. It does not point to a higher standard of attainment.”

Page 381—“The legislature prescribes a bridge for present erection and future maintenance. It says ‘Do this and your duty is done.’ By what precise steps or from what sources the particulars of the works to be executed are prescribed cannot be material, as soon as they are ascertained.”

*Attorney General for Ireland and others v. Lagan Navigation Company*, 1924 A.C., p. 877, follows the *Sharpness* case.

By special Act passed in 1843 a canal Company was created to take over and manage a canal in Ireland, and the undertaking included a bridge constructed before the passing of the Act to carry a public road over the canal. This bridge had since been maintained by the canal Company in a state of repair sufficient to carry the ordinary traffic of the district as existing at the date of the passing of the Act, but not sufficient to carry the ordinary traffic of the present day, owing to the increase in amount and the variation in character of such traffic, and as a consequence part of one of the retaining walls of the bridge collapsed. The road authority of the district claimed to recover from the canal company the expense of repairing the retaining wall.

The special Act, by section 62, provided that the company should at all times during the continuance of the Act *maintain and keep* the navigation, and all bridges &c., and all works to be thereafter executed for the improvement thereof “*in good and substantial and serviceable repair*, and in an efficient state for all the purposes thereof, and of traffic on the same respectively.” (Italics added.)

Held: (By Viscount Finlay, Lord Atkinson, Lord Sumner and Lord Darling; Lord Blanesburgh dissenting) that upon the true construction of section 62, the only obligation imposed upon the company was to maintain the bridge in a state of repair sufficient for the ordinary traffic at the date of the passing of the Act. (*Sharpness New Docks v. Attorney General*, 1915 A.C. 654; and *Attorney General v. Great Northern Railway*, 1916 (2) A.C. 356, applied.)

The appellant cited the *Sharpness v. Attorney-General* and the *Attorney-General v. Great Northern Railway* cases and also argued that section 62 was in effect a statement of a common law liability, and in support thereof cited *Sevenoaks Railway Company v. London Chatham and Dover Railway Co.* (1879) 11 Chancery Division, page 625.

Viscount Finlay at page 883 . . . . . “I desire to refer to two passages in the judgments of these two learned judges (of the lower courts) (page 884). The first is in the judgment of the Lord Chief Justice:—‘In the present case the old bridges, of which “Lady Bridge” was one, were vested in the canal company by the 6 and 7 Vict. c. civ. and the words of section 62 as to repairs applicable to old bridges also apply to new works to be constructed by the company, with a provision in section 63 that the several works, improvements and repairs hereby required and authorized to be made shall be performed and executed under the inspection and to the satisfaction of the Commissioners of Public Works in Ireland. The liability of the defendants depends on this statute. So far as new works are concerned it seems to be clear that they are within the decision in the *Sharpness* case, and it is difficult to draw any distinction between the old and the new, which are covered by the same words and the same section.’

“The other passage is in the judgment of Moore, L.J.:—‘No limitations on construction could, from the nature of things, be laid down

*In the Supreme Court of Canada.*

No. 34.  
Factum of the Ottawa Electric Railway Company—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*  
—  
No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

for bridges already *in esse*. What creates or absolves from the liability to reconstruct is the form of the statutory obligation for ‘maintenance.’ Can it be said that without any differentiation in the language of the section, the same words in the section are to be given different effects on the whole subject matter of works and bridges, the present or future property of the defendants, according to date of erection, though the statute does not say so? I think we cannot accept this view.’ These two passages from the judgment in the Court of Appeal in Northern Ireland state the grounds on which I desire to rest my decision. It appears to me that the terms of the statute exclude any liability to alter and, if necessary, rebuild the bridge as traffic increases and changes in character. Like all other cases of this kind the decision must rest upon the construction of the statute, and upon that it appears to me that the case for the appellants entirely fails.” 10

Lord Atkinson goes into the history of the legislation concerning this company and these works at great length, and thinks that the principle on which the *Sharpness* case was decided applies directly to the works mentioned in the legislation concerning this company, and its undertakings. The judgment is too lengthy to set out here.

Lord Sumner simply concurs.

Lord Darling, page 908—“It appears to me that to decide in favour of the appellants would be to declare that the words of the statute ‘maintain and keep in repair’ are exactly equivalent to *remove and reconstruct, on other principles applicable to bridge building*, as and whenever the road traffic should change in character. This is so forced an interpretation that I cannot imagine that it expresses the intention of those who framed the statute in question, and the exact words of a speech or a statute are merely a means of expressing the intention of men who select and use those words when others are at their service, and their choice.” 20

*Manchester Corporation v. Audenshaw Urban District Council and Denton Urban District Council*, 1928 Chancery, page 763. 30

Under the provisions of a local Act of 1875 the Manchester Corporation was authorized to make a new road lying within the districts, such road to be “at all times thereafter maintained” at the expense of the Corporation, and to be of the dimensions, character, and composition therein expressly specified. The work was done according to all the requirements and provisions of the Act and the road was completed in April, 1878, as a water-bound macadamized road. At that date and for many years afterwards the road amply sufficed for the slight traffic thereon, and was maintained at the expense of the corporation. From 1914 onwards the traffic increased enormously in weight and volume, so the road began to deteriorate and was now in a state of serious disrepair. 40

The Trial Judge in a considered judgment held, applying the *Sharpness* case, that the plaintiffs were only liable to maintain the road in the state in which it was at the date of its completion in 1878.

Against the defendant’s contention that the plaintiffs are liable to make the road fit to bear modern traffic the plaintiffs contended that the standard of repair to be observed by them is that laid down by the House

of Lords in the *Sharpness* case, namely, the condition in which the road was when it was completed in 1878.

On pages 780, 781, 782, his Lordship, the Master of the Rolls, discusses the *Sharpness* case, the *Lagan Navigation* case and the *Attorney-General and Great Northern* case.

Applying these decisions to the case at bar, his Lordship decides that the plaintiffs had a duty to maintain the road at a standard which was fit for the traffic in 1878.

10 Lord Justice Lawrence, in his judgment at page 787, said: "Eve J. referred especially to the passage in the *Sharpness* case in which Lord Parker stated that the standard by which the obligation has to be judged is neither the ordinary traffic when the canal was constructed, nor the ordinary traffic of to-day, *but the bridge itself* as determined by the Commissioners under the Act. The learned judge applied that statement to the facts of the present case, and held that the standard by which the obligation on the Corporation is to be judged is neither the ordinary traffic when the road was constructed nor the ordinary traffic of to-day, *but the road itself* as completed in accordance with the provisions of the Act to the satisfaction of the local Boards. Now, so far as I can judge without hearing any argu-  
20 ments to the contrary, the learned judge was perfectly right in coming to that conclusion.

And in the judgment of Lord Justice Russell at page 790, "The passage in which you find the kernel of the learned (trial) judge's decision is where he applies the remarks of Lord Parker in the *Sharpness* case to the facts of the case before him. He says "Applying what Lord Parker says in his speech in the *Sharpness* case to the facts of this case, I should say that what the plaintiffs have to maintain is the *fabric of the particular road* of which the size, character and formation were determined by the Act, and that there is no principle of construction by which an obligation to maintain a particular  
30 structure can be enlarged into an obligation to reconstruct the fabric in such a way that it is materially different in size, character or formation from the particular fabric the subject of the obligation."

At the worst, the obligation assumed was an obligation to keep up a bridge suited to the needs of highway traffic at the date of the agreement in question, namely 1896 and in such case the railway would pay such part of the cost of the present new bridge as would represent the money saved through continually keeping up the old wooden bridge.

40 If there is any such obligation then the *Sharpness* case clearly establishes that it is an obligation only "to keep up the bridge (so long as it was not replaced by another bridge) in a state of repair sufficient for the ordinary traffic at the date of the entering into of the agreement."

It is submitted that regardless of what may be the view of the court as to the nature of the obligation (if any) of the Electric Railway with reference to the part of the cost of the present bridge that is represented by the width of highway occupied by the original bridge and its successors,

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*

there can be no obligation whatever as to the cost represented by the additional widening provided for in the new bridge ordered in 1928.

No distinction is made in the order that would enable one to ascertain what part of the cost occasioned by the increased width is being borne by the Electric Railway because of the primary imposition of some part of such cost upon the two Steam Railways and the subsequent indemnifying of these companies by the Electric Railway.

However some part of the 60 per cent. of the cost of the whole bridge which is imposed on the Electric Railway consists of cost arising out of the increased width. 10

While the Reasons for Judgment do not so specify in so many words, it is apparent that they proceed upon the assumption that the increased widening is "entirely a matter of highway improvement" p. 64, l. 34; and "is due entirely to the road, the vehicular and pedestrian traffic over the bridge" . . . " . . . largely . . . due to the motor traffic," p. 64, l. 43 and following.

"There is congestion of traffic—automobile traffic being, in the main responsible." Reasons for Judgment, p. 73, l. 1.

As to the 1907 judgment, it might be said that the Electric Railway were obliged to restore to the City approximately the width they had 20 deprived the City of through their double tracks, but no such consideration applies to the present addition to the bridge.

Question 4 :—

"4. If the Electric Railway Company has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation?"

It is submitted that this question should be answered "The Electric Railway Company has no such obligation."

The arguments hereinabove given respecting the obligations as to 30 capital cost apply also to the question of maintenance and it is not necessary to repeat them.

However it is important to point out that under some interpretations of the word "maintenance" very heavy obligations have been imposed, running all the way from minor repairs to substantial major improvements amounting almost to reconstruction, and this question should not have been dismissed in the offhand way in which it was dismissed in the Reasons for Judgment.

It is submitted that what is meant by "maintenance" is ordinary 40 current up-keep coming under the heading of minor repairs.

Nevertheless, it will doubtless some day be urged by the City of Ottawa or some other party that since the whole maintenance of the bridge is imposed upon the Street Railway, the Street Railway must reconstruct or rebuild, and such interpretation of the word (while distinctly wrong) is not

so ridiculous that it may never be urged, to the greater confusion of the questions involved in this matter.

The bridge which was the subject of the agreements having disappeared, the obligation of the Electric Railway is at an end and naturally this disposes of the question of any obligation on the part of the Electric Railway to maintain.

REDMOND QUAIN,  
Counsel for Appellant.

16 January, 1931.

*In the  
Supreme  
Court of  
Canada.*

—  
No. 34.  
Factum of  
the Ottawa  
Electric  
Railway  
Company—  
*continued.*





**FACTUM OF THE CANADIAN NATIONAL RAILWAYS.**

PART I.

STATEMENT OF FACTS.

This is an appeal on questions of law stated by the Board of Railway Commissioners for Canada, hereinafter referred to as the Board and set out in Part II hereof.

By its Order number 40417 dated 5th March, 1928, the Board authorized the Corporation of the City of Ottawa, hereinafter referred to as the "City," to reconstruct the existing bridge or viaduct at Somerset Street, in the City of Ottawa, in accordance with plans to be filed for the approval of an engineer of the Board. 10

By the said Order the Board directed the City to bear and pay the cost of the construction of the sidewalks and the paving of the roadway, and further directed that the remainder of the cost of the work be borne and paid sixty per cent. by the Appellant and forty per cent. by the City.

This bridge or viaduct, known as Somerset Street bridge, carries the said street and the tracks and right of way of the Appellant over the Canada Atlantic Railway, now owned and operated by this Respondent, and the St. Lawrence and Ottawa Railway, now owned and operated by the Respondent, Canadian Pacific Railway Company. 20

The Canada Atlantic Railway was constructed through Rochesterville and Bayswater, in the Township of Nepean, County of Carleton, Ontario, in the years 1883 and 1884. The said line for some distance approximately paralleled the Chaudiere Branch of the St. Lawrence and Ottawa Railway, including that portion thereof constructed through Township Lot 38 in the First Concession, Ottawa Front, a farm crossing over the St. Lawrence and Ottawa Railway in line with what is now Somerset Street being carried over the Canada Atlantic Railway by a wooden farm bridge, easterly from that of the St. Lawrence and Ottawa Railway Company. 30

By Indenture, dated the 2nd January, 1902, J. R. Booth, of the City of Ottawa, conveyed to the Canada Atlantic Railway Company in fee simple certain lands and premises used and occupied by the said Railway Company for the portion of its railway lying between Preston Street on the South-east and a point a short distance south of Richmond Road on the north-west, within which now lies Somerset Street. This right of way is described in said deed by metes and bounds forming a continuous strip between the said points.

Prior to 1895 the two parallel rights of way, now owned by the Canadian National Railways and the Canadian Pacific Railway Company, were crossed each by a separate wooden bridge of different height, erected by each steam railway or its predecessor, at its own expense, in the 40

approximate location of the space now occupied there by the Electric Railway tracks, and having a width of 20 feet, 6 inches, or less. Between these two wooden bridges there was a depression, and the two bridges did not lie end to end against each other, but were quite independent of each other.

5 In 1895 the Appellant obtained authority from the City of Ottawa to lay its street railway along Somerset Street and beyond the point where Somerset Street crosses the steam railways. In connection with this extension the Appellant entered into an agreement with this Respondent  
 10 dated 21st August, 1896, by which the Appellant, amongst other things, agreed from time to time and at all times to indemnify and save harmless this Respondent from all liability to maintain, alter, repair or reconstruct the bridge over this Respondent's railway above mentioned. A similar agreement was entered into by the Appellant with the Canadian Pacific Railway Company.

The Appellant then proceeded at its own expense to alter the two wooden bridges above mentioned in order to make them suitable for carrying its street railway tracks, filled up the depression between the two bridges, and laid a new floor over the entire length of the two bridges, and the inter-  
 20 vening earth embankment. It also replaced the wooden bents with concrete abutments and put in steel girders. Greater clearance was provided for the steam railways, the grade of the approaches was lessened and provision was made for the accommodation of vehicular or pedestrian traffic. The Appellant laid its street railway tracks over this structure and has since used this structure for the operation of its cars over the steam railways.

In 1907 upon the application of the City the Board issued its Order Number 3684 directing the Appellant to widen this structure by sixteen feet, the expense being divided between it and the City of Ottawa, in the proportion of 75 per cent. to the Appellant and 25 per cent. to the City.  
 30 The additional width was added along the south side of the structure.

In 1927 the City of Ottawa applied to the Board for an order requiring the Appellant and the Respondents, or some one or more of them, to replace the existing bridge with a bridge of sufficient width and of such construction as would adequately carry the traffic on Somerset Street using the said bridge across the steam railways, and by Order Number 40417 dated the 5th day of March, 1928, the Board authorized the City to reconstruct Somerset Street bridge in accordance with plans to be filed for the approval of an engineer of the Board.

The work so authorized by the Board was subsequently carried out  
 40 and consisted of the demolition and replacement of parts of the work constructed following the agreements of 1896 and that constructed under the Order of 1907 above referred to, together with the addition of a roadway twenty-one and one-half feet wide to the north of and adjoining the works constructed in 1896. The cost of such reconstruction was divided between the Appellant and the City.

*In the  
 Supreme  
 Court of  
 Canada.*

No. 35.  
 Factum  
 of the  
 Canadian  
 National  
 Railways—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

## PART II.

THE QUESTIONS SUBMITTED BY THE BOARD FOR DECISION ARE AS FOLLOWS :

No. 35.  
Factum  
of the  
Canadian  
National  
Railways—  
*continued.*

Having regard to the facts stated in the Order and the by-laws, agreements, decisions and orders which are schedules thereto :

1. Has the Electric Railway any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in any respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute towards the cost of construction of a bridge such as provided for in the Board's Order Number 40417? 10

2. If the answer to question 1 is "Yes," does such obligation thereunder extend to (a) the whole, or (b) part only of such cost that may be occasioned by the increased volume and the variation in character of traffic since the dates of the said agreements?

3. If the obligation extends to part only of the cost referred to in question 2, then to what part?

4. If the Electric Railway has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation? 20

## PART III.

### ARGUMENT.

At the time the Agreement of 21st August, 1896, was made the only crossing over this Respondent's right of way was the wooden bridge that had been constructed to connect the two portions of the farm severed by the construction of the railway. It was merely a farm crossing.

After Cedar or Somerset Street came to be used as a public highway the public made use of this farm bridge in crossing this Respondent's right of way and continued to do so after the execution of the above-mentioned agreement of 1896. 30

When the Appellant desired to construct its electric railway along Somerset Street it sought the consent of this Respondent to make use of the said bridge, to carry its line over this Respondent's railway. By the above mentioned agreement of 1896 this Respondent assigned and set over to the Appellant all its rights on or connected with the said bridge and the approaches thereto, expressly reserving, however, its title in fee simple to the right of way under the said bridge. It made the Appellant a substantial money payment and the latter agreed to indemnify it from time to time and at all times thereafter from and against all liability to maintain, alter, repair or reconstruct the bridge, it being provided that the plans of any work of reconstruction should be approved by this Respondent. 40

In other words, the Appellant assumed the obligations (if any) that rested upon the Respondent in respect of the bridge over its railway.

The Appellant contends that the obligations assumed by it under this agreement applied only to the bridge then in existence. However, the obligation of the Appellant under the agreement is to indemnify this Respondent against all liability to maintain, alter, repair or reconstruct the said bridge. This clearly includes the obligation (if any) to reconstruct or replace the bridge in order to meet the requirements of traffic from time to time.

10 *Sevenoaks, Maidstone and Tunbridge Railway Company vs. London, Chatham and Dover Railway Company*, 11 Ch. D 625.

*Canadian Pacific Railway Company vs. Grand Trunk Railway Company*, 49 S. C. R. 525.

Reconstruction also may, and often does include, enlargement or replacement by a structure of entirely different character.

The obligation of the Appellant under the agreement therefore, could not have been confined to the structure then in existence. The agreement specifically provides that the obligation shall persist from time to time and at all times, and the only limitation upon it whatever is the provision at  
20 the end of the agreement, that if the Railway Company wishes to lengthen the bridge to accommodate more of its tracks, it would do so at its own expense.

The agreement on its true construction provides that in so far as there might at any time be liability upon this Respondent in respect of a bridge at this point it was assumed by the Appellant.

It should be kept in mind that the work contemplated under the Order of the Board Number 40417 now in appeal, is necessitated entirely by highway requirements. This Respondent derives no benefit whatever from the new bridge. In fact it is detrimentally affected for the reason  
30 that the overhead clearance over its railway has been reduced so as actually to prevent it from handling certain traffic over this line which, if it were not for this limitation, it would desire to move over it.

This Respondent, therefore, submits that the Appellant is obliged under the agreement of 21st August, 1896, to indemnify this Respondent against such liability as it may have to contribute towards the cost of construction of a bridge such as is provided for in the Board's Order Number 40417 and the first question should, therefore, be answered in the affirmative.

In answer to question 2 this Respondent submits that there is no obligation whatever on it to contribute towards such cost, but that in any  
40 event the obligation assumed by the Appellant under the agreement covers the whole of such cost as may be occasioned by the increased volume and variation in character of traffic since the date of said agreement.

This Respondent has already given its reasons for saying that the Appellant must, under the terms of the said agreement, assume the entire liability of this Respondent in respect of a bridge at this point, and in answer to question 4 points out that the agreement specifically provides

*In the  
Supreme  
Court of  
Canada.*

No. 35.  
Factum  
of the  
Canadian  
National  
Railways—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

No. 35.  
Factum  
of the  
Canadian  
National  
Railways—  
*continued.*

that the Appellant shall indemnify it from time to time and at all times against liability to maintain the said bridge.

This Respondent submits that under Paragraph 11 of the agreement between the Corporation of the City of Ottawa and the Ottawa Electric Railway Company, of 25th January, 1924, special jurisdiction in certain matters is given to the Board of Railway Commissioners, and in cases coming under that paragraph there is no appeal.

ALISTAIR FRASER,  
Of Counsel for the Respondent,  
Canadian National Railways. 10

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## No. 36.

## FACTUM OF THE CANADIAN PACIFIC RAILWAY COMPANY.

*In the  
Supreme  
Court of  
Canada.*

## PART I.

## STATEMENT OF FACTS.

No. 36.  
Factum  
of the  
Canadian  
Pacific  
Railway  
Company.

This is an appeal on questions of law stated by the Board of Railway Commissioners for Canada, hereinafter referred to as the Board, and set out in Part II hereof.

By its Order Number 40417 dated 5th March, 1928, the Board authorized the Corporation of the City of Ottawa, hereinafter referred to as the "City,"  
10 to reconstruct the existing bridge or viaduct at Somerset Street, in the City of Ottawa, in accordance with plans to be filed for the approval of an engineer of the Board.

By the said Order the Board directed the City to bear and pay the cost of the construction of the sidewalks and the paving of the roadway, and further directed that the remainder of the cost of the work be borne and paid sixty per cent. by the Appellant and forty per cent. by the City.

This bridge or viaduct, known as Somerset Street bridge, carries the said street and the tracks and right of way of the Appellant over the St. Lawrence and Ottawa Railway, now owned and operated by this Respon-  
20 dent, and the Canada Atlantic Railway, now owned and operated by the Respondent, Canadian National Railways.

The Chaudiere Branch of the St. Lawrence and Ottawa Railway was constructed through Township Lot 38, in the First Concession, Ottawa Front, in 1870. Lot 38 was then unsubdivided farm property owned by the Spark's Estate, and the said Railway Company entered into an agreement with the Owners for the purchase of the land required for its right of way, and agreed with the Owners "that the Company shall erect and keep up three bridges over the cut if we (i.e. the Owners) so require." Pursuant to this agreement the said Railway Company entered into possession  
30 of the right of way and erected one wooden farm bridge approximately twenty feet six inches in width over its tracks. There is no evidence that the erection of either of the two other bridges mentioned in the agreement of purchase was ever required by the vendors.

This Respondent, having acquired control of the St. Lawrence and Ottawa Railway Company, paid the balance of the purchase price in 1883 and thereupon a formal conveyance to the St. Lawrence and Ottawa Railway Company was executed and delivered covering a continuous strip of land throughout the lot without any reservation for crossings.

In 1875 when Lot 38 was subdivided, a street, called Cedar Street, was  
40 shown on the subdivision plan approximately in line with the farm bridge above mentioned. The name of Cedar Street was later changed to Somerset Street.

*In the  
Supreme  
Court of  
Canada.*

When the line of the Canada Atlantic Railway Company, which paralleled that of this Respondent through Lot 38, was subsequently constructed, a wooden farm bridge crossing its railway was erected in line with and a short distance easterly from that over the railway of this Respondent.

No. 36.  
Factum  
of the  
Canadian  
Pacific  
Railway  
Company—  
*continued.*

In 1895 the Appellant obtained authority from the City to lay its street railway along Somerset Street and beyond the point where Somerset Street crosses the steam railways. In connection with this extension the Appellant entered into an agreement with this Respondent dated 8th August, 1896, by which the Appellant, amongst other things, agreed from time to time and at all times thereafter, to indemnify and save harmless this Respondent 10  
from all liability to maintain, alter, repair or reconstruct the bridge over this Respondent's railway above mentioned. A similar agreement was entered into by the Appellant with the Canada Atlantic Railway.

The Appellant then proceeded at its own expense to alter the two bridges in order to make them suitable for carrying its street railway tracks. The bridges were in line but were separated by a short earth embankment forming a depression between them. The Appellant filled up this depression and laid a continuous floor upon the two bridges and the intervening earth embankment. It also replaced the wooden bents of the bridges with concrete abutments and put in steel girders. Greater clearance was provided 20  
for the steam railways, the grade of the approaches was lessened and provision was made for the accommodation of vehicular or pedestrian traffic. The Appellant laid its street railway tracks upon this structure and has since used it for the operation of its cars over the steam railways.

In 1907 upon the application of the City the Board issued its Order Number 3684 directing the Appellant to widen this structure by sixteen feet, the expense being divided between it and the City in the proportion of 75% to the Appellant and 25% to the City. The additional width was added along the south side of the structure.

In 1927 the City applied to the Board for an order requiring the Appel- 30  
lant and the other Respondents, or some one or more of them, to replace the existing bridge with a bridge of sufficient breadth and of such construction as would adequately carry the traffic on Somerset Street using the said bridge across the steam railways, and by Order Number 40417, dated the 5th day of March, 1928, the Board authorized the City to reconstruct Somerset Street bridge in accordance with plans to be filed for the approval of an engineer of the Board.

The work so authorized by the Board was subsequently carried out and consisted of the demolition and replacement of parts of the work constructed following the agreements of 1896 and 1897 and that constructed under the 40  
Order of 1907 above referred to, together with the addition of a roadway twenty-one and one-half feet wide to the north of and adjoining the work constructed in 1896. The cost of such reconstruction was divided between the Appellant and the City.

## PART II.

THE QUESTIONS SUBMITTED BY THE BOARD FOR DECISION ARE AS FOLLOWS :

Having regard to the facts stated in the Order and the by-laws, agreements, decisions and orders which are schedules thereto;

1. Has the Electric Railway any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in any respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute towards the cost of construction of a bridge such as provided for in the Board's Order Number  
10 40417?

2. If the answer to question 1 is "Yes," does such obligation thereunder extend to (a) the whole, or (b) part only of such cost that may be occasioned by the increased volume and the variation in character of traffic since the dates of the said agreements?

3. If the obligation extends to part only of the cost referred to in question 2, then to what part?

4. If the Electric Railway has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation?

*In the  
Supreme  
Court of  
Canada.*

—  
No. 36,  
Factum  
of the  
Canadian  
Pacific  
Railway  
Company—  
*continued.*

20

## PART III.

## ARGUMENT.

At the time the agreement of 8th August, 1896, was made the only crossing over this Respondent's right of way was the wooden bridge that had been constructed to connect the two portions of the farm severed by the construction of the railway. It was merely a farm crossing.

This Respondent owned a continuous right of way in fee through the lot without any reservation for a highway crossing, and at the date of the agreement there was no public highway across its right of way.

The property was subdivided after its right of way was acquired, and  
30 after Cedar or Somerset Street was laid out the public made use of this farm bridge in crossing this Respondent's right of way and continued to do so after the execution of the above mentioned agreement of 1896. This has been repeatedly held by the Board not to constitute a highway crossing.

*Village of Weston v. C.P.R. and G.T.R.*, 7 C.R.C. 79.

*Town of St. Pierre v. Grand Trunk Railway Company*, 13 C.R.C. 1.

*City of Montreal v. Canadian Pacific Railway Company*, 18 C.R.C. 50.

When the Appellant desired to construct its electric railway along Somerset Street it sought the consent of this Respondent to make use of the said bridge to carry its line over this Respondent's railway. By the above



*In the  
Supreme  
Court of  
Canada.*

No. 36.  
Factum  
of the  
Canadian  
Pacific  
Railway  
Company—  
*continued.*

mentioned agreement of 1896 this Respondent assigned and set over to the Appellant all its rights on or connected with the said bridge and the approaches thereto, expressly reserving, however, its title in fee simple to the right of way under the said bridge. It made the Appellant a substantial money payment and the latter agreed to indemnify it from time to time and at all times thereafter from and against liability to maintain, alter, repair or reconstruct the bridge, it being provided that the plans of any work of reconstruction should be approved by this Respondent.

In other words, the Appellant assumed the obligations (if any) that rested upon this Respondent in respect of the bridge over its railway. 10

The Appellant contends that the obligation assumed by it under this agreement applied only to the bridge then in existence. However, the obligation of the Appellant under the agreement is to indemnify this Respondent against all liability to maintain, alter, repair or reconstruct the said bridge. This clearly includes the obligation (if any) to reconstruct or replace the bridge in order to meet the requirements of traffic from time to time.

*Sevenoaks, Maidstone and Tunbridge Railway Company, vs. London, Chatham and Dover Railway Company, 11 Ch.D. 625.*

*Canadian Pacific Railway Company vs. Grand Trunk Railway Company, 20 49 S.C.R. 525.*

The obligation of the Appellant under the agreement was not intended to be confined to the structure then in existence. The agreement specifically provides that the obligation shall persist from time to time and at all times. It is only in case the Railway Company wishes to lengthen the bridge to accommodate more of its tracks that it is to bear any expense.

The agreement on its true construction provides that in so far as there might at any time be liability upon this Respondent in respect of a bridge at this point, it was assumed by the Appellant.

It should be kept in mind that the work contemplated under the Order 30 of the Board Number 40417 now in appeal, is necessitated entirely by high-way requirements. This Respondent derives no benefit whatever from the new bridge. In fact it is detrimentally affected for the reason that the overhead clearance over its railway has been reduced so as actually to prevent it from handling certain traffic over this line which, if it were not for this limitation, it would desire to move over it.

This Respondent submits that the Appellant is obliged under the agreement of 8th August, 1896, to indemnify this Respondent against such liability, if any, as it may have to contribute towards the cost of construction of a bridge such as is provided for in the Board's Order Number 40417, and 40 the first question should be answered in the affirmative.

In answer to question 2 this Respondent submits that there is no obligation whatever on it to contribute towards such cost, but that in any event the obligation assumed by the Appellant under the agreement covers the whole of such cost as may be occasioned by the increased volume and variation in character of traffic since the date of said agreement.

This Respondent has already given its reasons for saying that the Appellant must, under the terms of the said agreement, assume the entire liability of this Respondent in respect of a bridge at this point, and in answer to question 4 points out that the agreement specifically provides that the Appellant shall indemnify it from time to time and at all times against liability to maintain the said bridge.

W. N. TILLEY,  
E. P. FLINTOFT,  
Of Counsel for the Respondent,  
Canadian Pacific Railway Company.

*In the  
Supreme  
Court of  
Canada.*

No. 36.  
Factum  
of the  
Canadian  
Pacific  
Railway  
Company—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

**No. 37.**

**FORMAL JUDGMENT.**

IN THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR  
CANADA.

Monday, the 18th day of May, A.D., 1931.

Present :—

The Right Honourable F. A. ANGLIN, P.C., C.J.C.  
The Honourable Mr. JUSTICE NEWCOMBE, C.M.G.  
The Honourable Mr. JUSTICE RINFRET.  
The Honourable Mr. JUSTICE LAMONT.  
The Honourable Mr. JUSTICE CANNON.

10

Between

THE OTTAWA ELECTRIC RAILWAY COMPANY - - *Appellant*  
and  
CANADIAN NATIONAL RAILWAYS AND CANADIAN  
PACIFIC RAILWAY COMPANY - - - *Respondents.*

The appeal of the above named Appellant from Order Number 40417 of the Board of Railway Commissioners for Canada, dated the 5th day of March, A.D. 1928, in the above matter, upon the following questions which 20 were in the opinion of the Board questions of law :—

1. Has the Electric Railway Company any obligation under the said agreements with the Steam Railways to indemnify the Steam Railways, or either of them, in any respect whatever with reference to such liability as the Steam Railways, or either of them, may have to contribute towards the cost of construction of a bridge such as provided for in the Board's Order No. 40417 ?
2. If the answer to Question 1 is " Yes," does such obligation thereunder extend to (a) the whole, or (b) part only of such cost that may be occasioned by the increased volume and the variation in 30 character of traffic since the dates of the said agreements ?
3. If the obligation extends to part only of the cost referred to in Question 2, then to what part ?
4. If the Electric Railway Company has any obligation under the said agreements to indemnify the Steam Railways, or either of them, with respect to maintenance, what is the extent of the obligation ?

having come on to be heard before this Court on the 5th and 6th days of May in the year of our Lord, 1931, in the presence of Counsel as well for the

Appellant as the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment.

*In the  
Supreme  
Court of  
Canada.*

1. THIS COURT DID ORDER AND ADJUDGE that the said questions should be and the same were answered as follows :—

No. 37.  
Formal  
Judgment,  
18th May  
1931—*con-  
tinued.*

1. Yes.
2. The whole.
3. Not answered.
- 10 4. Covered by answer to No. 2.

2. AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said Appellant should and do pay to the said Respondents the costs incurred by the said Respondents in this Court.

(Sgd.) J. F. SMELLIE,  
Registrar.

*In the  
Supreme  
Court of  
Canada.*

No. 38.

**REASONS FOR JUDGMENT.**

No. 38.  
Reasons for  
Judgment.  
Anglin,  
C.J.C. (con-  
curred in by  
Newcombe,  
Rinfret,  
Lamont and  
Cannon,  
J.J.).

ANGLIN C.J.C. (Concurred in by NEWCOMBE, RINFRET, LAMONT  
and CANNON, JJ.)

OTTAWA ELECTRIC RAILWAY COMPANY LIMITED v. C.N.R. and C.P.R.

We concur—

(Sgd.) E. L. NEWCOMBE.  
T. RINFRET.  
J. H. LAMONT.  
L. A. CANNON.

10

ANGLIN, C.J.C. : This appeal must be dismissed with costs.

The agreement in question provides for the indemnification of the two respondents by the appellant company in regard to the cost of erecting and maintaining the bridge carrying Somerset Street across the railways. That agreement, in our opinion, contemplated alteration or reconstruction of the bridge to meet the exigencies of highway traffic, whenever and as often as might be necessary in future.

It must be assumed that the Board of Railway Commissioners first determined that the entire cost of the construction should be apportioned as between the City of Ottawa and the railway companies (including the appellant company) in the proportion of 40 per cent. to be paid by the City, and 60 per cent. by the railways. On that assumption, the Board of Railway Commissioners was entirely justified in taking into account the agreement referred to in determining how the proportion of the cost of the recent reconstruction of the bridge payable by the railway companies should be borne as between the appellant and the respondents; and it is impossible to say that their decision that the whole 60 per cent. should be paid by the appellant company was wrong.

The answers to questions submitted are as follows :—

1. Yes.
2. The whole.
3. Not answered.
4. Covered by answer to No. 2.

30



No. 39.

**ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL TO  
HIS MAJESTY IN COUNCIL.**

AT THE COURT AT BUCKINGHAM PALACE.

The 17th day of March, 1932.

Present,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT.  
EARL OF ATHLONE.

SECRETARY SIR P. CUNLIFFE LISTER.  
SIR RENNELL RODD.

*In the  
Privy  
Council.*

No. 39.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
17th March  
1932.

10       WHEREAS there was this day read at the Board a Report from the  
Judicial Committee of the Privy Council dated the 15th day of March 1932  
in the words following, viz. :—

20               “ WHEREAS by virtue of His late Majesty King Edward the  
Seventh's Order in Council of the 18th day of October 1909 there was  
referred unto this Committee a humble Petition of the Ottawa  
Electric Railway Company in the matter of an Appeal from the  
Supreme Court of Canada between the Petitioners Appellants and  
the Canadian National Railways and the Canadian Pacific Railway  
Company Respondents setting forth (amongst other matters) that  
on the 14th July 1927 the Municipal Corporation of the City of  
Ottawa applied to the Board of Railway Commissioners for Canada  
for an Order under ss. 257 and 264 of the Railway Act 1919 requiring  
the Petitioners and the Respondents to replace the Somerset Street  
bridge in the City of Ottawa carrying Somerset Street and the  
tracks and right of way of the Petitioners over the tracks of the  
Respondents with a bridge of sufficient breadth and of such con-  
struction as would afford safe and adequate facilities for all traffic  
on the street and for an Order apportioning the cost of such new  
bridge between the Petitioners the Respondents and the Municipal  
30       Corporation as the Board might direct : that in support of such  
application the Municipal Corporation represented that the existing  
bridge was originally constructed at the cost of the Petitioners and  
was thereafter enlarged at the joint cost of the Petitioners and the  
Municipal Corporation under an Order of the Board dated the 13th  
March 1907 and that the bridge had fallen into disrepair and was  
dangerous to traffic and of insufficient breadth : that the Petitioners  
filed an answer to the application alleging the matters as set out in  
the Petition : that the Respondents the Canadian Pacific Railway  
Company filed an answer saying that they had no objection to the  
40       application provided no part of the cost of constructing and main-  
taining the new bridge fall upon them and the Respondents the  
Canadian National Railways filed an answer saying that the necessity

*In the  
Privy  
Council.*

No. 39.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
17th March  
1932—*con-  
tinued.*

for building a wider bridge arose from the highway traffic passing over it that by an agreement dated the 21st August 1896 the Petitioners had agreed with their predecessors (the Canada Atlantic Railway Company) to indemnify them from all liability to maintain repair alter or reconstruct the bridge and that they referred the Board to the Order of the Board dated the 13th March 1907 : that the history of the bridge in question is set out in the Petition : that the Board of Railway Commissioners (Hon. H. A. McKeown, K.C. Chief Commissioner S. J. McLean Assistant Chief Commissioner Thomas Vien K.C. Deputy Chief Commissioner A. C. Boyce K.C. Commissioner Calvin Lawrence Commissioner and the Hon. Frank Oliver Commissioner) having heard the application made an Order No. 40417 dated the 5th March, 1928 (Mr. Commissioner Oliver dissenting) directing that the Applicant be authorised to reconstruct the bridge in accordance with plans to be approved by an engineer of the Board that the bridge be fifty-eight feet in width and that the Applicant bear the costs of the sidewalks and the paving of the roadway the remainder of the cost of the said bridge to be borne and paid sixty per cent. by the Petitioners and forty per cent. by the Applicant the cost of maintaining the bridge with the exception of wearing surface thereof which shall be maintained by and at the expense of the Applicant to be paid by the Petitioners : that by the Order dated the 17th December 1929 granting to the Petitioners leave to appeal to the Supreme Court of Canada it was directed that the Appeal should be as to the following questions of law :—1. has the Electric Railway Company any obligation under the said agreements with the steam Railways to indemnify the steam Railways or either of them in any respect whatever with reference to such liability as the steam Railways or either of them may have to contribute towards the cost of construction of a bridge such as provided for in the Board's Order No. 40417 ? 2. if the answer to Question 1 is " Yes " does such obligation thereunder extend to (a) the whole or (b) part only of such cost that may be occasioned by the increased volume and the variation in character of traffic since the dates of the said agreements ? 3. if the obligation extends to part only of the cost referred to in Question 2 then to what part ? 4. if the Electric Railway Company has any obligation under the said agreements to indemnify the steam Railways or either of them with respect to maintenance what is the extent of the obligation ? : that the Appeal having been heard in the Supreme Court (Anglin C.J. and Newcombe Rinfret Lamont and Cannon JJ.) that Court by Judgment dated the 18th May 1931 dismissed the Appeal and answered the questions as follows :—1. yes ; 2. the whole ; 3. not answered ; 4. covered by answer to No. 2 : And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Supreme Court dated the 18th May 1931 or for such further Order as to Your Majesty in Council may seem meet :

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 18th day of May 1931 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

*In the  
Privy  
Council.*

No. 39.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
17th March  
1932—*con-  
tinued.*

10 “AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted subject to any objection that may be taken thereto by the Respondents as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20 Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

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In the Privy Council.

No. 21 of 1932.

*On Appeal from the Supreme Court of Canada.*

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BETWEEN

THE OTTAWA ELECTRIC  
RAILWAY COMPANY - *Appellant*

AND

CANADIAN NATIONAL RAIL-  
WAYS AND THE CANADIAN  
PACIFIC RAILWAY COM-  
PANY - - - - - *Respondents.*

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RECORD OF PROCEEDINGS.

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LAWRENCE JONES & CO.,

Lloyd's Building,

Leadenhall Street,

London, E.C.3.

*For the Appellant.*

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WYBE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C. 4.