

4, 1915

No. 64 OF 1914.

In the Privy Council

ON APPEAL FROM THE APPELLATE DIVISION  
OF THE SUPREME COURT OF ONTARIO

BETWEEN:—

The Toronto Suburban Railway Co.  
*Appellants*

AND

The Corporation of the City of Toronto  
*Respondents*

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Record of Proceedings.

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THE CORPORATION OF THE CITY OF TORONTO,

—AND—

THE TORONTO SUBURBAN RAILWAY CO.

APPEAL BOOK.

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**PART I.**

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**THE ONTARIO RAILWAY AND MUNICIPAL BOARD.**

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BETWEEN :—

THE CORPORATION OF THE CITY OF TORONTO,

Applicant,

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY,

Respondent.

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**NOTICE OF APPLICATION.**

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- 10      1. The Applicant is the Municipal Corporation, the City of Toronto.
2. The Respondent is a Railway Company operating a street railway  
in the said City of Toronto.
3. The Application is for an Order, ordering and directing the Com-  
pany to re-construct and put in a proper and sufficient state of repair its  
tracks and substructures on Bathurst Street and Davenport Road in the  
City of Toronto, together with that part of the roadway used for railway  
purposes, and eighteen inches on either side thereof.
4. This application will be heard by the Board after ten days from  
the service hereof, at such time and place and in such manner as the  
20 Board may order and direct.

THIS NOTICE is given by William Johnston, of the City Hall, To-  
ronto, Solicitor for the Corporation of the City of Toronto.

DATED this 25th day of April, A.D. 1912.

WILLIAM JOHNSTON,  
Solr. for the City of Toronto.

To Messrs. Royce & Henderson,  
Solicitors for Respondent.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

The 25th day of June A.D. 1912.

BEFORE:—

JAMES LEITCH, Esq., K.C., Chairman.  
A. B. INGRAM, Esq., Vice-Chairman.  
H. N. KITTSOON, Esq., Member.

BETWEEN:—

THE CORPORATION OF THE CITY OF TORONTO,

Applicant,

10

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY,

Respondent.

UPON the application of the above named Applicant, and upon hearing Counsel for the Applicant and Respondent,

THE BOARD ORDERS AND DIRECTS the Respondent to put in a proper and sufficient state of repair its tracks and substructures on Bathurst Street and Davenport Road in the City of Toronto, and to dig out and pave that part of the roadway used for railway purposes and eighteen inches on either side thereof.

20 AND THE BOARD ORDERS AND DIRECTS the Applicant to pave the remaining portion of the parts in question herein of Bathurst Street and Davenport Road.

AND THE BOARD ORDERS AND DIRECTS that the Applicant and Respondent shall work together under the supervision and direction of the Board's Engineer in carrying out the terms of this order, and that in case of difference between the Applicant and Respondent as to the kind of pavement to be put down, the matter shall be determined by the Board's Engineer.

30 JAMES LEITCH,  
Chairman of the Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

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BETWEEN:—

THE CORPORATION OF THE CITY OF TORONTO,  
Applicant (Respondent).

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY,  
Respondent (Appellant).

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NOTICE OF APPEAL.

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10 TAKE NOTICE that pursuant to the order of the Court of Appeal for Ontario made herein on Thursday, the twenty-first day of November, 1912, The Toronto Suburban Railway Company, above named appellant, intends to appeal and hereby appeals from the order of the Ontario Railway and Municipal Board, dated ninth day of October, 1912, whereby the Corporation of the City of Toronto and the Toronto Suburban Railway Company order to repave part of Bathurst Street and Davenport Road.

Dated at Toronto this 14th day of December, 1912.

ROYCE, HENDERSON & BOYD,  
Solicitors for the above named Appellant.

20 To William Johnston, Esq.,  
Solicitor for the City of Toronto.

## REASONS FOR JUDGMENT OF CHIEF JUSTICE MEREDITH.

## RE CITY OF TORONTO AND TORONTO AND SUBURBAN R.W. CO.

An appeal by the railway company from an order of the Ontario Railway and Municipal Board.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

I. F. Hellmuth, K.C., and R. B. Henderson, for the appellants.

10 G. R. Geary, K.C., for the Corporation of the City of Toronto, the respondents.

MEREDITH, C.J.O.:—This is an appeal by the Toronto and Suburban Railway Company from an order, dated the 25th June, 1912, made by the Ontario Railway and Municipal Board, on the application of the Corporation of the City of Toronto, by which the appellants were ordered and directed to “put in a proper and sufficient state of repair” their “tracks and substructures on Bathurst Street and Davenport Road, in the City of Toronto, and to dig out and pave that part of the roadway used for railway purposes and eighteen inches on either side thereof.”

20 The order further ordered and directed the respondents “to pave the remaining portions in question herein of Bathurst Street and Davenport Road;” and that the appellants and the respondents should “work together under the supervision and direction of the Board’s engineer in carrying out the terms” of the order; and that in case of difference between the parties as to the kind of pavement to be put down, the matter should be determined by the Board’s engineer.

30 The jurisdiction of the Board to make this order is attacked by the appellants, upon the ground that, under the agreement between the Corporation of the Township of York, the predecessors in title of the respondents, and the appellants whose name was then “The Toronto Suburban Street Railway Company Limited,” which conferred upon the appellants the right to construct, maintain, and operate their railway, the obligation of the appellants is to keep in proper repair that portion of the travelled road upon which the railway should be constructed “between the rails and for 18 inches on each side of the rail or rails lying or being next to the travelled road;” and that that obligation does not require them, or authorize the respondents to require them, to do more than what is necessary to keep the road in a proper condition for the traffic, having regard to the character and original manufacture of the road; and that the order of the Board requires them to make a new road of a different kind, not to repair the old one.

40 The agreement bears date the 4th September, 1899; and, with slight variations, not material to the present inquiry, was confirmed by an Act

## REASONS FOR JUDGMENT.

63 Vict. ch. 124, entitled "An Act respecting the Toronto Suburban Street Railway Company Limited." and is set out in schedule B to the Act.

Paragraph 6 of the agreement, upon which the appellants' obligation, so far as it is contractual, depends, is as follows: "6. The Company shall, where the rails are laid upon the travelled part of the road, keep clean and in proper repair that portion of the travelled road between the rails and for eighteen inches on each side of the rail or rails lying on or next to the travelled road, and in default, the township may cause the same to be done at the expense and proper cost of the company."

It is conceded that, when the agreement was entered into, neither Bathurst Street nor Davenport Road was paved, and that both of them were what was described in the argument of counsel as "mud roads;" and the contention of the appellants is, that their obligation as to those parts of them which they have contracted to keep in repair is to keep them in repair as "mud roads" and no more.

Having regard to the provisions of paragraph 6, the proximity of the roads to a large and rapidly growing city, the duration of the franchise granted to the appellants by the agreement, the right of the public to use for the purpose of travel that part of the highways on which the railway should be constructed, and the powers and duties under the Municipal Act of municipal corporations as to highways, I am of opinion that the covenant of the appellants contained in paragraph 6 should be construed as the Court of Appeals of the State of New York, in a recent case, construed a similar obligation imposed upon railway companies by an Act of the Legislature of that State.

I refer to Mayor, etc., of New York v. Harlem Bridge, etc., Co. (1906), 186 N.Y. 304, in which the Court of Appeals had to consider the nature and extent of the duty which by a law of the State, was imposed upon railway companies to keep "the surface of the street inside the rails and for one foot outside thereof in good and proper order and repair, and conform the tracks to the grades of the streets and avenues as they now are or may hereafter be changed by the authorities of the aforesaid towns;" and the conclusion reached was, that, "when the proper authorities, in view of the condition of the street as shewn to exist, decided that a granite block pavement should be laid . . . the requirement for repairing and keeping in good order compelled the defendant to co-operate with the city and put the space between its rails in the same condition as the rest of the street, even though that necessitated the laying of a new pavement."

[Reference to Leek Improvement Commissioners v. Justices of the County of Stafford (1888), 20 Q.B.D. 794, and Scott v. Brown (1903), 68 J.P. 181.]

I am also of opinion that, even if the appellants are not under any contractual obligation to do that which the Board has ordered them to do, the Board had, under sec. 3 of the Ontario Railway and Municipal Board Amendment Act, 1910, jurisdiction to require them to do it. . . .

## REASONS FOR JUDGMENT.

It was argued by Mr. Hellmuth that the word "tracks," as used in the section, means only the "rails," and that it does not extend to the space between the rails or the 18 inches on each side of them; and that there is nothing in the section which confers jurisdiction on the Board to require the appellants to do that which it has ordered them to do.

10 One of the purposes of the section, and probably its main purpose, was, as its language shews, to promote the security of the public and of the employees of railway companies; and, in my opinion, to carry out that intention "tracks" should be given its widest and not its narrowest meaning, and therefore as meaning, as applied to a railway laid on a highway, that part of it which is occupied by the railway.

It was also argued that the word "tracks" is used in the agreement with the limited meaning contended for; but, even if that were the case, as to which I express no opinion, it would have no bearing on the question of the construction to be placed on the same word when used in an Act of the Provincial Legislature.

20 It was also argued for the appellants that 1 Geo. V. ch. 54 limits the powers conferred on the Board by the Act of 1910; and that the effect of the later Act is to prevent the Board from making any order which would impose on a railway company a greater obligation than is imposed upon it by the agreement between the company and the corporation of the municipality, or the by-law of its council by which authority to construct the railway was conferred upon the company.

That, in my opinion, is not the effect of the Act. Its purpose and effect is, to make the tracks, switches, additional lines, and extensions of existing lines, which the Board orders to be constructed, subject to the terms of the agreement or by-law, and does not apply to existing tracks not constructed under an order of the Board.

30 It may be observed, as bearing upon the question of the sense in which the word "tracks" is used by the Legislature, that it is used in sec. 12, as enacted by 1 Geo. V. ch. 54, as synonymous with "lines."

For these reasons, I am of the opinion that the appeal fails, so far as it is based on the contention that the Board has no jurisdiction to order the appellants to pave that part of the roadway which, by paragraph 6 of the agreement, they covenanted to repair.

40 The order is, however, open to the objection that it does not prescribe the kind of pavement which the appellants are to lay, but leaves that to be determined by the engineer of the Board, if the parties are unable to agree; and the case should, therefore, be remitted to the Board in order that that question may be dealt with and provision made as to the kind of pavement which is to be laid; and there should be no order as to the costs of the appeal.

MACLAREN and MAGEE, JJ.A., agreed.

HODGINS, J.A., agreed in the result.

*Appeal allowed in part.*

## IN THE SUPREME COURT OF ONTARIO.

The Honourable Chief Justice of Ontario. [STAMP]

The Honourable Mr. Justice Mac-laren. Wednesday, the 4th day of June, 1913.

The Honourable Mr. Justice Magee. [STAMP]  
The Honourable Mr. Justice Hodgins.

BETWEEN:—

10 THE CORPORATION OF THE CITY OF TORONTO, Applicant,

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY, Respondent.

20 UPON motion made unto this Court on the twenty-fourth day of February, 1913, on behalf of the Toronto Suburban Railway Company, in the presence of counsel for the Corporation of the City of Toronto, by way of appeal from the order of the Ontario Railway and Municipal Board, dated the 25th day of June, 1912, whereby the said Railway Company was ordered to dig out and pave that part of the roadway used for Railway purposes, and eighteen inches on either side thereof, of Bathurst Street and Davenport Road, and UPON hearing read the said order appealed from and the other proceedings herein and UPON hearing what was alleged by counsel for both parties and judgment having been reserved until this day.

1. THIS COURT DOTH DECLARE that the said Board had jurisdiction to order the said Toronto Suburban Railway Company to pave those portions of the streets named in the said order, which, by the said order, they were ordered to pave with such material as the Board may order.

30 2. AND THIS COURT DOTH FURTHER DECLARE that according to the true construction of the word "Tracks" under Section 3 of The Ontario Railway and Municipal Board Amendment Act, 1910, Chap. 83, such word includes all that part of any roadway occupied by the said Railway Company.

3. AND THIS COURT DOTH NOT see fit to make any order as to the costs of this appeal.

4. AND THIS COURT DOTH ORDER that this matter be remitted to the said Ontario Railway and Municipal Board in order that the said Board may determine the kind of pavement with which such portions of the streets ordered to be paved by such order of the Board should be paved.

40 Issued 8th May, 1914.

[SEAL]

"J. D. GAUSBY,"

Assistant Registrar.

Entered 8-5-14.

J. B. 14 p. 430.

A. M.

Judgment signed this 8th day of May, 1914.

"D'ARCY HINDS,"

Judgment Clerk.

## IN THE SUPREME COURT OF ONTARIO.

APPELLATE DIVISION.

The Honorable  
Mr. Justice Hodgins  
In Chambers.

Thursday, November 6th, 1913.

THE CORPORATION OF THE CITY OF TORONTO,

(Respondent) Applicant,

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY,

(Appellant) Respondent.

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UPON the application of the Appellant, the Toronto Suburban Railway Company, and upon reading the evidence and other proceedings had and taken herein and the certificate of payment fyled herein, and upon hearing what was alleged by Counsel for the said Appellant and Respondent;

(1) IT IS ORDERED that the sum of \$2,000 paid into Court by the above named Appellant, the Toronto Suburban Railway Company, as security for the costs of the Respondent on the proposed appeal by the Appellant to His Majesty in His Privy Council from the Judgment of this Court dated the 4th day of June, 1913, be and the same is hereby allowed as good and sufficient security for the costs of the said Respondent, the Corporation of the City of Toronto, on the said appeal.

20

(2) IT IS FURTHER ORDERED that the said Appellant be and is hereby granted leave to appeal to His Majesty in His Privy Council from the said Judgment.

(3) AND IT IS FURTHER ORDERED that the costs of this application be costs in the said Appeal.

“N. F. PATERSON,”  
“Registrar.”

30 Issued 10th Nov., 1913.

N. F. P.

**PART II.**

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**THE ONTARIO RAILWAY AND MUNICIPAL BOARD.**

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BETWEEN:—

THE CORPORATION OF THE CITY OF TORONTO,

Applicants,

—AND—

THE TORONTO SUBURBAN RAILWAY COMPANY,

Respondents.

P.F. 1182.

June 25th, 1912.

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PRESENT:—

JAMES LEITCH, Esq., K.C., Chairman.

A. B. INGRAM, Esq., Vice-Chairman.

H. N. KITTSOON, Esq., Member.

P. H. DRAYTON, Esq., K.C., Counsel for the City of Toronto.

R. B. HENDERSON, Esq., K.C., Counsel for the Railway Company.

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MR. DRAYTON—The Company operates under its agreement with its predecessor in title to the City, the Township of York, a line on Davenport Road which commences on Bathurst Street at a point a short distance north of the C.P.R. tracks and then runs up to Davenport Road and runs westerly. The particular sections of the railway that I want the Board to consider, are the portions lying on Bathurst and Davenport Road. The subject of complaint is really the general condition of both the road and the highway.

THE CHAIRMAN—How much of the highway have they to take care of?

MR. DRAYTON—They have to take care of their highway and eighteen inches on either side; the space between the rails and one foot six inches im-

## PROCEEDINGS BEFORE RAILWAY BOARD.

mediately adjoining outside of each rail, to be paved or macadamized and kept in repair.

MR. HENDERSON—The section is contained in the Schedule to Chapter 124 of 60 Victoria.

MR. DRAYTON—It is on page 610 of the Statutes of the year 1900 and is dated 4th of September; that is the agreement my learned friend refers to. The agreement I was referring to is not that agreement.

THE CHAIRMAN—What he refers to is the old Suburban Street Railway.

10 MR. DRAYTON—Perhaps I had better give your Honors a list of all the agreements before we get down to complaints. The Toronto Suburban Company is incorporated by the Statutes of 1891, Chapter 97. In that particular instance, the Company was the Weston, High Park and Toronto Street Railway Company which was incorporated under the provisions of the Act, and that company's name was changed to the City and Suburban Electric Railway Company. Then the next statute in order apparently is the Statute of 1894, chapter 94 and that is the incorporating Act of the Toronto Suburban Street Railway Company.

THE CHAIRMAN—I read that act.

20 MR. DRAYTON—For the purpose of acquiring the assets of the City and Suburban Railway Company and the Davenport Railway Company, it fixed the stock and also provided that the Company shall be under the provisions of the Street Railway Act, which at that time was Chapter 171 of the then revised Statutes. It is specially incorporated into the special Act and therefore being incorporated as it is into the special Act, form part of their Franchise, and so far as the operation of the Company is concerned on Bathurst Street and Davenport Road, they are operating under the provisions of the special Act which special Act includes the provisions of the Street Railway Act as of that time, being Chapter 171.

30 Then the next thing that I refer to is the agreement and that is set out as a schedule to the Act. The agreement is dated April 20th, 1891, and is between the Township of York and the Davenport Street Railway. Under that, a franchise is granted on Davenport Road for a single track until Davenport Road is widened and graded to permit a double track. Then the streets are granted on which these lines are laid, so that they are properly on these streets. As to the kind of rail, it is to be of approved construction and generally the work is to be done under such regulations as may be necessary for the protection of the inhabitants and the public generally, and whenever switches are to be laid in, they have to look after the planking  
40 and macadamized portion of the road. I point out to you that under the agreement, all works, and that refers not only to the work they do, but the rails and superstructure, and also the work they do on the highway: "All works are to be according to the best modern practice in use in Toronto, under the supervision of the Township Engineer and to the satisfaction of the Council." Apparently what they wanted to do, was to continue in the Township the same class of business that was going on in the City. Then the location of the tracks is dealt with.

## PROCEEDINGS BEFORE RAILWAY BOARD.

THE CHAIRMAN—It is all a question of repairs.

MR. DRAYTON—Maintenance and construction. We think the time has come for a complete reconstruction of the road. The clause in the agreement under which this franchise is given and those tracks laid which refer to the highway, is to be found on page 470 of the Statutes of the 1894. (Clause read.) Then the next agreement seems to be an agreement which is set out in the same Statute of date May the 9th, 1892, and made between the Township of York and the Davenport Street Railway, which provides for the use of a "T" rail instead of a girder rail. Then there is also an  
 10 agreement between the Toronto Junction and the Davenport Street Railway which does not touch the streets at all. Then the agreement between the Junction and the Davenport Street Railway has nothing to do with this issue at all. That is of date June 8th, 1891. If my learned friend desires to refer to it, I shall point out to you that the Company has to construct roadways and pavements eighteen inches on either side of the rail and tracks and substructures are to be according to the best modern construction in Toronto.

Then there is the further agreement of October 5th, 1891, which is between the Toronto Junction and the City and Suburban Electric Railway.  
 20 That has nothing to do with these streets. These streets were Township streets and were not Junction streets. Then the next agreement is the agreement of April 20th, 1893, that is also referred to in this same Statute of 1894. It is an agreement between the Township of York and the Davenport Street Railway. That agreement has nothing to do with the present issue. It being an agreement which gives a further franchise in different parts of the Township.

Then the next Statute which I have a note of is of the year 1900 and is Chapter 103. That Statute was passed on a petition of Toronto Junction and does not have anything to do with this issue and I am simply giving  
 30 it to you so that you will have everything that has to do with the Company. There is also a By-law dealing with the Company set out as a schedule to that contract. That also has nothing to do with the Township.

Then there is a further agreement of date November 11th, 1899, also with Toronto Junction and having nothing to do with the present issue. Then there is a further agreement between the Junction and the Suburban Railway, that is the agreement of October 6th, 1899, and that again has nothing to do with this particular matter.

Then there is another Statute passed in the same year, which is Chapter 124 and that changes the name of the Toronto Suburban Railway Company.  
 40 Among the agreements validating there is an agreement between the Suburban Railway and the Township of York dated September 4th, 1899. That is the agreement that gives the Company certain rights on these particular streets and I suppose it is the agreement upon which my learned friend will rely. I do not know that it really makes very much difference which agreement is taken, the statutory obligation is the same. This agreement probably is the existing agreement because I notice in the recital it states: "This agreement shall be entered into in substitution of the agreement of

## PROCEEDINGS BEFORE RAILWAY BOARD.

April 20th, 1891," so that the other agreement would seem to be repealed. You come down to the September agreement, 1899, which is set out in the Statutes of the year 1900 at page 609. Then the duty of the Company under that agreement is that the location of tracks is to be determined by the engineer and approved by the Council and that all tracks laid on any portion of the travelled street are to conform with the streets and be flush with it so as to cause the least impediment to ordinary traffic, and they are to keep in repair that portion of the travelled road for eighteen inches on the side of the rail or rails. As to the character of the work, they are to be substantial and according to the best modern practice. There is the usual right to the Municipality to put the track and roadway in proper repair and to collect the cost.

Now the concrete difficulty with which the Board will have to deal, arises from the state of repair, or rather the lack of repair in which that portion of the highway which is occupied by the Company's rails, and the lack of repair of the railway itself. The complaint is in the first place as to the roadway: That the rails in places are four inches above the road and in other places, the ends of the ties are exposed and the roadway is rendered in a very, very bad condition; that the rails are worn out. In the first instance, they are only fifty-six pound "T" rails. The rails have lost their alignment and in some places, according to actual measurement, are three inches above the other rail. We find that the points of the rails in a great many instances are split or spread; that the ties are to a large extent rotten. The substructure is just as bad as the top structure. There is not any proper base on which to rest these tracks. Now the general roadway is just as bad. It is a case now of something having to be done; no doubt the municipality will have to do something as well as the railway. So far as the municipality is concerned, it will have to pave that portion of the road which it has to maintain and the company will have to pave that portion of the road which it has to maintain. The old roadway is gone.

THE CHAIRMAN—We have had our engineer over that road and we had his report and he says that ought to be done.

MR. DRAYTON—I have to say at once that is the only fair thing to do.

THE CHAIRMAN—There is no question about the accuracy of what you state. The only thing is to get the Company and the City at work together in some way or other so that that street will be paved. Our engineer says that for the Company to pave their part of the road eighteen inches on the outside of the rail would only mean that it would be destroyed.

MR. DRAYTON—That would be no good at all. We have to carry out the work together; there is no doubt about that if we are going to make a proper job of it. The conditions are the same as in the city. The agreement refers to the Toronto conditions and to the fact that the construction is to be the same. The conditions in Toronto call for a heavy concrete base under the rail and I do not think we have got it heavy enough yet because the rails have pounded out very quickly. We bring this matter before the Board for the purpose of getting the Board's direction and which of course, will include the question as to the kind of sub-base to be put un-

## PROCEEDINGS BEFORE RAILWAY BOARD.

der the tracks and the character of the surface construction.

MR. HENDERSON—I appear for the Toronto and Suburban Railway. Apparently there is not very much between us, because we are not only willing but have been anxious to get this matter settled and we have been trying to get the City to do something for over a year. There is only one question which may arise when this matter of repair comes up. I gather from my learned friend's remarks that he is interpreting this agreement in a way in which I do not think it will bear interpretation. There is no question that this is the agreement that we are under.

10 THE CHAIRMAN—That is the agreement of September, 1899?

MR. HENDERSON—Yes, the one that is contained in 63 Victoria, Chapter 124. That agreement goes on to say: "This agreement shall be entered into in substitution for the others," so that we need not trouble ourselves about these former agreements; this is the agreement under which we now have to work.

THE CHAIRMAN—Where do you say Mr. Drayton has mis-interpreted it?

20 MR. HENDERSON—The clause of that agreement as to the duty of the railway is clause 6. (Clause 6 read.) That is the clause under which we come and I take that clause to mean that we must keep in repair the portion of the roadway between our rails; that the city must in the first place give us something to put our rails on and then afterwards, we must keep that in repair. If they lay a roadway, we must put our rails on top of that and make proper repairs and keep our rails in proper repair and keep the place between our rails in proper repair. I do not know that my learned friend contends that there is any question as to that. What we have been asking for for a long time is that this road shall be put in such a position that we can put our rails on it.

30 THE CHAIRMAN—You do not contend that the City has to pave under your railway?

MR. HENDERSON—I say the meaning of that clause is that where the rails are laid upon the travelled portion of the road, the Company shall keep it clean and in proper repair. The portion of the travelled road between the rails and for eighteen inches on each side of the rails. What I submit is that they are to give us the substructure and then we are to keep that in repair. I do not see what else that clause can mean. I do not know whether the question will arise in a practical way or not. Those rails will all have to be taken up, I suppose. That is the only provision in this contract as to the duty of the Railway in regard to repairs. It contemplates that the road shall be laid and that then the Company shall lay their rails on it.

40

THE CHAIRMAN—The Company might lay their rails on mud; it is a mud road now.

MR. HENDERSON—Quite so.

THE CHAIRMAN—Suppose they wanted that road in a little better repair, don't you think you would have to repair your portion in the same way?

## PROCEEDINGS BEFORE RAILWAY BOARD.

MR. HENDERSON—So far as repair is concerned, undoubtedly. What I am pointing out is that the agreement calls for them to give us a basis and then we have to do the rest. I suppose if they put macadam or any other kind of roadway down there—

THE CHAIRMAN—I think when the bargain was made, you were bargaining about a mud road.

MR. HENDERSON—I do not know whether mud or macadam.

THE CHAIRMAN—Our engineer says he did not find any macadam.

MR. DRAYTON—I fancy it has all disappeared.

10 THE CHAIRMAN—It looks to this Board that this road should be paved by the City and the Company, and if the City go on and do their part and the Company do their part—the part occupied by their rails and eighteen inches on the outside.

MR. HENDERSON—I may be anticipating some question that will not arise, but reading that section in that way, I would like to reserve my rights under it. There is no question that in the old agreement that my learned friend read, there was a provision about paving, but it is not in this agreement, the agreement simply says to repair.

20 THE CHAIRMAN—It seems to the Board that this ought to work out all right in practice; there is a street there of forty feet to be paved, that will all have to be dug out and paved and the City can pave their part and the Company can pave their part. I do not suppose the City want to put in a fancy pavement.

MR. DRAYTON—I should think the best thing would be to have scoria blocks in the centre and asphalt on either side.

THE CHAIRMAN—What order do you suggest? I do not think any difficulty ought to arise.

MR. HENDERSON—Reserving any rights that we have.

30 MR. DRAYTON—I suggest that the Board's engineer and the engineers of the two parties should settle, if they can, the kind of pavement that should be put down. They may be able to agree among themselves. If they cannot agree, we can come to the Board's engineer and the order should be made that the road should be paved—the Company to pay for its portion of the road; track allowance and eighteen inches on either side, and the City to pay the balance.

THE CHAIRMAN—You want new rails.

MR. DRAYTON—That is a matter entirely for the Company.

MR. HENDERSON—The Company have been wanting to put down new rails and to put them in proper repair.

40 MR. DRAYTON—It has been a question of the roadway.

THE CHAIRMAN—From what we know of the rails, it would be a sin to lay them down on a new road bed.

MR. HENDERSON—I do not think there will be any question about that. The railway want that road put in order. That provision in the Act looks to me as if we were not liable.

MR. DRAYTON—The first agreement says “pave and repair.” The construction goes on; the Companies, I suppose, did pave and repair and put

## PROCEEDINGS BEFORE RAILWAY BOARD.

down some macadam, that was all that was necessary at that time. Then the Company has allowed that pavement in violation of their contract to maintain, to absolutely disappear; you cannot find any macadam there at all. Now surely where there is liability to maintain, if the person who is under that liability to maintain, allows everything to disappear, they are liable. The same contract says that all work to be done shall be of the best modern practice. We can say you have allowed that paving to disappear, you must replace it in proper modern methods; which is, of course, looking after that portion of the street which you occupy having regard to the importance of the district.

10

THE CHAIRMAN—We will make an order to repair and it will be done under the supervision of our engineer.

MR. HENDERSON—Will you put in that order that the City has to repair at the same time?

THE CHAIRMAN—Certainly. They want to get the streets put in repair.

MR. HENDERSON—And the other question if it should arise; I would like to reserve my rights under it.

MR. DRAYTON—If you want to make any application, you should make it now.

20

MR. HENDERSON—I want to reserve my rights under that question.

THE CHAIRMAN—You have your rights and whatever they are, you can maintain them any place you like.

CERTIFIED AS CORRECT.

“William C. Coe,”  
 Official Reporter,  
 — O. R. & M. B.

**PART III.**

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**STATUTES AND AGREEMENTS.**

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**CHAPTER 83.**

An Act to Amend The Ontario Railway and Municipal Board Act, 1906.

Assented to 19th March, 1910.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- (3) Whenever in the opinion of the Board repairs or improvements to or changes in any tracks, switches, terminals or terminal facilities, motive power or any other property or device used by any railway company in or in connection with the transportation of passengers, freight or property ought reasonably to be made thereto in order to promote the security or convenience of the public or of the employees of the company, or to secure adequate service or facilities for the transportation of passengers, freight, or property, the Board, after a hearing had either upon its own motion or after complaint, shall make and serve an order directing such repairs, improvements, changes, or additions to be made within a reasonable time and in a manner to be specified therein, and every railway company shall make all repairs, improvements, changes and additions required of it by any such order within the time and in the manner specified in the order.

**CHAPTER 94.**

(57 Vict., 1894.)

An Act to Incorporate The Toronto Suburban Street Railway Company (Limited.)

Assented to 5th May, 1894.

- WHEREAS by letters patent, dated the twelfth day of November, A.D. 1890, duly issued under The Ontario Joint Stock Companies' Letters Patent Act, and The Street Railway Act, the Weston, High Park and Toronto Street Railway Company (Limited) was duly incorporated for the purposes and objects, and with the rights, powers and privileges in the said letters patent set out; and whereas by the Act passed in the 54th year of Her Majesty's reign and chaptered 97, the name of the said Weston, High Park and Toronto Street Railway Company was changed and the corporate name thereof declared to be "The City and Suburban Electric Railway Company (Limited)," with the further powers in the said last mentioned Act set out; and whereas by letters patent, dated the eleventh

## STATUTES AND AGREEMENTS.

day of February, A.D. 1891, duly issued under The Ontario Joint Stock Companies' Letters Patent Act, and The Street Railway Act, the Davenport Street Railway Company (Limited) was duly incorporated for the purposes and objects, and with the rights, powers and privileges in the said last mentioned letters patent set out; and whereas the said City and Suburban Electric Railway Company (Limited), and the Davenport Street Railway Company (Limited) have constructed and are now operating a railway in the town of Toronto Junction and adjoining municipalities; and whereas the Street Railway Construction Company (Limited) have constructed the said railway for the said last mentioned railway companies, and there are balances due to it for the said construction; and whereas R. Wilson Smith, broker; John Torrance, shipping agent, and Albert W. Atwater, advocate, all of the City of Montreal, in the Province of Quebec; Henry W. Darling, electrician, of the City of Toronto, and of the City of Boston, in the State of Massachusetts, one of the United States of America, and Robert H. Fraser, electrician, of the City of Toronto, in the County of York, have by their petition prayed for incorporation under the name of "The Toronto Suburban Street Railway Company (Limited)," for the purpose of enabling the company so to be incorporated to acquire and take over all rights, powers, privileges, franchises and assets held by the City and Suburban Electric Railway Company (Limited) and the Davenport Street Railway Company (Limited), and to assume the liabilities entered into by the said last named companies; and for the conferring of certain other powers upon the said company, so as to be incorporated, and for the confirming of the several agreements and indentures hereinafter set out, and whereas it is expedient to grant the prayer of the said petition;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

5. The following agreements, namely, an agreement between the Municipal Corporation of the Township of York and the Davenport Street Railway Company (Limited), dated the twentieth day of April, A.D. 1891; an agreement between the corporation of the Town of Toronto Junction and the Davenport Street Railway Company (Limited), dated the eighth day of June, A.D. 1891; an agreement between the corporation of the Town of Toronto Junction and the City and Suburban Electric Railway Company (Limited), dated the fifth day of October, A.D. 1891, and an agreement between the Municipal Corporation of the Township of York and the Davenport Street Railway Company (Limited), dated the twentieth day of April, A.D. 1893, which agreements, together with certain other agreements and resolutions amending the same are fully set out in Schedule B to this Act, are hereby confirmed and declared to be valid and within the powers of the parties thereto, and to be binding upon the said the Corporation of the Township of York, the Corporation of the Town of Toronto Junction, the Davenport Street Railway Company (Limited) and the City and Suburban Electric Railway Company (Limited), respectively, and applicable upon the execution of the indentures aforesaid to the company.

## SCHEDULE B.

## SECTION 5.

## I.

This indenture made in duplicate the twentieth day of April, A.D. 1891, between

The Municipal Council of the Township of York, hereinafter called the "Council," of the first part, and

The Davenport Street Railway Company (Limited), hereinafter called the "Company," of the second part.

10       WHEREAS the said Company is empowered, among other things, to construct, maintain, complete and operate, and from time to time remove and change as required, a double or single iron or steel railway, with necessary side tracks and turnouts for the passage of cars, carriages and other vehicles adapted to the same, upon and along such of the streets in the municipalities of the City of Toronto, the Township of York and other municipalities as the Councils of the said municipalities, or any of them, may by By-law authorize, and over and upon lands purchased or leased by the Company for that purpose, and to take, transport and carry passengers upon same and to construct and maintain all necessary works, buildings, appliances and conveyances, and if required to generate, produce and distribute electricity to be used as a motive power and for lighting and heating the Company's property, and for street railway purposes only, but subject  
20 always to the provisions of "The Street Railway Act," and that all the rights, powers and privileges contained in the said Act and subject to the necessary agreements to be from time to time entered into by the Company with the municipal corporations, companies and individuals interested and concerned, or any of them.

And whereas the Davenport Road hereinafter mentioned was until recently under the control of the York and Vaughan Plank Road Company,  
30 by which York and Vaughan Plank Road Company all tolls and dues were collected; and whereas the said Street Railway Company has for valuable consideration procured said York and Vaughan Plank Road Company to abandon said Davenport Road to the Township of York, and said road has by By-law of said Council been assumed by said Council freed from all tolls.

And whereas the said Company has applied to the Council to sanction the construction and operation by the Company of a double or single track street railway upon or along certain parts of said Davenport Road and other streets and avenues and roads in the Township of York, hereinafter more particularly set out and described.

40       And whereas the Council, in so far as it has power and jurisdiction and in consideration of said Company having procured said abandonment free of charge to said Council, is willing to grant such permission upon the terms and conditions hereinafter set forth, and to enter into an agreement with the said Company such as is hereinafter contained.

Now this indenture witnesseth that the said Council and Company have

## STATUTES AND AGREEMENTS.

covenanted and agreed and by these presents do covenant and agree each with the other of them as follows:—

1. That the Company, their successors and assigns, be permitted without let or hindrance from the said Council, their successors or assigns, to construct, maintain, complete and operate, and from time to time remove and repair, an iron or steel railway track, to be a single track only until the Davenport Road be widened and graded sufficiently to warrant the Council in permitting the construction of a double track, such permission to be granted hereafter, with the necessary culverts, switches and turn-  
 10 outs, such switches and turn-outs not to exceed two per mile in number, beside one at each end, nor more than one hundred feet each in length clear of curves, for the passage of cars, carriages and other vehicles adapted to the same, in, upon and along that part of Davenport Road from its intersection with the northern limit of the City of Toronto westward to the easterly limit of the town of West Toronto Junction, that part of Bathurst Street between the said Davenport Road and the northerly limit of the City of Toronto, that part of St. Clair Avenue lying west of the westerly limit of the town of West Toronto Junction, or along such hereinbefore described  
 20 parts of streets, roads or avenues, or any of them, as the said Company may deem from time to time advisable, together with a switch or turn-out for the purpose of leading to or from their railway or tramway to the power house of said Company, which said power house shall be erected within 200 yards of the line of the track, subject to the approval of the township engineer; and that said Company be permitted to erect and maintain such posts and wires upon and along said roads, streets or avenues, or any of them as the said Company may from time to time deem requisite or necessary for the distribution of electricity to be used as a motive power or for lighting the said Company's property or for street railway purposes.

Such railway shall be of approved construction and worked under such  
 30 regulations as may be necessary for the protection of the inhabitants and the general public, and being subject always to the provisions of this agreement, and in all cases where switches and turn-outs are constructed the said Company, their successors or assigns, shall extend the road, metal or plank, on the macadamized or planked portion of the road, to a distance of at least sixteen feet beyond the rail nearest the ordinarily travelled road the full length of such siding.

2. All works necessary for constructing and laying down the railway or tramway shall be made in a substantial manner according to the then  
 40 best modern practice in use in the City of Toronto, under the supervision of the township engineer for the time being, and to the satisfaction of the Council.

3. The roadway, tracks and rails of said railway or tramway shall be located and constructed not less than two feet from the south side of the centre line of the Davenport Road and St. Clair Avenue and the west side of the centre line of Bathurst Street.

All the space between the rails and at least one foot six inches immediately adjoining the outside of each rail, as directed by the township en-

## STATUTES AND AGREEMENTS.

gineer or by the Council, shall be paved or macadamized and kept constantly in good order and repair and shall be maintained as nearly flush as can be with the top of the rails of the said railway or tramway by the said Company, their successors or assigns, who shall also be bound to construct and keep in good repair crossings of a character approved by the Council within the limits aforesaid at the intersection of every such railway or tramway track and cross street or highway now opened or that may hereafter be opened, and wherever bridges, culverts or waterways are found necessary for drainage or other purposes in the opinion of the township engineer or the Council, and those culverts or waterways already constructed shall be extended as directed.

4. The track and turn-outs shall conform to the grades of the streets, roads or avenues, or such other grades as may be furnished by the township engineer or the Council, and the Company shall not in any way change or alter the same without the approval of said engineer or said Council, but in all cases where it is found necessary in determining the grades of the said railway or tramway to lay the same at a different grade from the street or road, then in such cases when required by the said engineer or said Council the said Company, their successors or assigns, shall make up or depress the grade of the said street to conform with the grade of the railway or tramway and re-metal the same. The top of the rails shall be laid not more than one inch above the level of the street and shall be always so kept, and the gauge of said railway or tramway shall be uniform with the street tramways of the City of Toronto or the standard electric railway gauge in the discretion of the Company.

5. The location of the line of railway in the said street or highways shall not be made until the plans thereof showing the position of the rails and other works on said street shall have been submitted to and approved of by the Council and the township engineer.

6. That the said Council, their successors or their assigns shall have the right to take up any part of the streets or highways traversed by the rails either for the purpose of altering the grade thereof, constructing and repairing of drains or culverts or side crossings or for laying down or repairing gas or water pipes and for all other purposes within the province and privileges of a municipal corporation, without the Company, their successors or assigns, being entitled to any compensation for damages or otherwise occasioned to the working of the railway or tramway or works connected therewith and in prosecuting such works should any change be made in the grade of the said roads, streets or avenues by order of the said engineer or the said Council or their assigns, the said Company, their successors or assigns shall, without delay, make its road or track conform with such changed grade of road so made.

7. The rails and cars to be used by the said Company, their successors or assigns shall be of the latest approved pattern, in use in the City of Toronto, the same to be approved by the said Council. All persons using the road shall be at liberty to travel upon the portion of the said roadway occupied by the said railway or tramway, and in the same manner as upon

## STATUTES AND AGREEMENTS.

other portions of the highway and vehicles of every description are to be allowed upon such portion of the said highway, and the wheels thereof upon said rails without charge by the said Company, their successors or assigns, it being provided, however, that the cars of the said Company, their successors or assigns, shall have the first right-of-way over the said railway or tramway, and all vehicles or persons travelling on that portion of the said highway occupied by the said railway or tramway shall turn out upon meeting or being overtaken by any car of the said Company, their successors or assigns, so as to give them full right-of-way.

10 8. The Company, their successors or assigns shall run at least two cars each way morning and evening on a regular time table at such hours as will best meet the wants of the residents and the general public.

9. In case the electric motors or cars used by the Company, their successors or assigns, in operating the said road whilst passing along the railway or tramway, shall cause alarm to any horses travelling or being upon said roadway with vehicles or otherwise, the motors or cars of the Company shall, if necessary, be stopped to enable the horses so alarmed to pass, and the servants of the said Company shall assist the person or persons as aforesaid, so as to prevent accident or injury to the person or persons, horse  
20 or horses, vehicles or other property of persons travelling, using or upon said roadway.

So far as safely can be done without causing alarm or injury to horses or vehicles upon said roadway, the speed of the cars may be increased, not, however, to exceed at any time twelve miles per hour.

10. For facilitating the running of the Company's cars, sleighs or other conveyances may be used.

11. When the accumulation of ice or snow is, in the opinion of the township engineer or the said Council, sufficient to impede the running of the cars, the Company shall, on receiving notice from him, or them, remove  
30 the same, or provide sleighs or other conveyances as provided in the preceding section and no snow or ice shall be placed upon any portion of the highway without first having obtained the permission of the said engineer. And when the snow is removed from the track, the Company shall slant down the snow on the roadway so as to be convenient for the travelling public to the satisfaction of the said engineer.

12. No higher fare than five cents shall be charged for the conveyance of each passenger the full distance one way on the line in the limits described herein.

13. The Company, their successors or assigns, shall be liable for all  
40 damages occasioned by reason of the existence of the rails of the Company upon the said highway, and the said Company, their successors or assigns, shall hold the said Council and their successors and assigns in all respects harmless in respect thereof, and upon demand shall forthwith pay to the said Council or their successors or assigns, all sums payable by or recovered against the said Council or their assigns in respect of any such claims, together with all costs of or incidental to such claims incurred by the said

## STATUTES AND AGREEMENTS.

Council or their successors or assigns, and such claims and costs shall be a lien on the property of the Company, their successors or assigns.

10 14. Should the Company, their successors or assigns neglect to keep their track or road, or crossings, or ballastings in good condition, according to the term of this agreement, or to have the necessary repairs, according to this agreement, made thereon, the said Council may give notice requiring such repairs to be made within ten days; and it is agreed between the parties hereto, that a certificate of the township engineer for the time being as to the necessity of such repairs in order to keep the said track or roadway or crossing in good condition, shall be binding and conclusive upon said Company, their successors or assigns, and if after such notification given requiring such repairs to be made, the said Company, their successors or assigns, do not within one week begin and carry to completion, with all reasonable diligence, and complete within fifteen days from the receipt of such notice, or such further time as the said engineer may allow, then the same may be done by the Council at the expense and proper cost of the Company, and if said expense and cost are not paid within three months from the date when payment is demanded this agreement may be declared null and void, and the said Council shall be at liberty to remove the rails of the said Company, their successors or assigns, and to place the said highway in proper state of repair at the expense of the said Company, their successors or assigns.

20

15. The privilege and franchise granted by this agreement shall extend over a period of twenty years from the date hereof.

16. Upon the expiration of the privilege and franchise granted by this agreement, the Company, their successors and assigns shall be entitled to a renewal of the same, and upon the expiration of such renewal term to further renewals thereof upon such terms and subject to such conditions, covenants, provisos and stipulations as may be agreed upon between the Council or their successors on the one part, and on the Company, their successors or assigns on the other part, and in case the said parties are unable to agree then upon such terms, conditions, covenants, provisos and stipulations as may, from time to time, on each renewal be determined upon by arbitration to be appointed under the provisions of the Municipal Act, provided, however, that at the expiration of the existing privileges and franchise granted herein, the Council may, upon giving notice in writing of their intention to the Company, their successors or assigns twelve months prior to the expiration of the said existing privilege and franchise, assume the ownership of the railways and tramways of the Company, its successors or assigns, and of the franchise thereof and all real and personal property in connection with the working thereof on payment of the value of the same to be determined by arbitration.

30

40

17. The Company, their successors and assigns shall construct and have open for travel that part of their proposed line of railway or tramway along Bathurst Street, and that part of Davenport Road westward from Bathurst Street to the Northern Railway within eighteen (18) months from

## STATUTES AND AGREEMENTS.

the date of the execution of this agreement, and in default thereof, the Company, their successors or assigns shall forfeit all the rights, privileges and advantages granted by this agreement or acquired thereunder, and all such rights, privileges and advantages shall cease and determine as if this agreement had not been granted, and the consent of the Council had not been obtained by the Company as provided for in the hereinbefore in part recited Letters Patent.

10 18. Except as hereinafter provided, the Company, their successors or assigns shall have the exclusive right and privilege to construct a railway or tramway in, along and upon the said portion of the said roads, streets and avenues subject to the observance of the conditions and agreements herein contained.

19. Notwithstanding anything in this indenture to the contrary contained the said Council reserves to itself the right to construct sewers and to grant, cede or consent to any other company, persons or corporations the privilege to construct sewers, and to construct and operate a railway or railways, or tramway or tramways across the said streets, roads or avenues at such point or points on said streets, roads and avenues, as said Council may see fit in as ample a manner as if this agreement had not been entered into.  
20 And the said Company and their successors and assigns hereby consent to the construction of said sewers and the construction and operation of railway or tramway line or lines across said roads, streets and avenues without claims, charge, let, molestation or hindrance of any kind whatsoever.

20. No motive power other than electricity or horse power shall be used on the said road without the consent of the Council, in any way at any time.

21. The said services of the said township engineer in all cases to be paid by the Company.

22. That the Company, their assessors or assigns shall be subject to all By-laws of the said Township of York now in force, or that may be here-  
30 after passed in respect to highways as far as practicable.

23. Provided always, and it is hereby agreed by and between the parties hereto and their successors and assigns that the said Company, their successors and assigns shall commence the building of such road not later than four months from the date of the execution of this agreement, and shall complete the same not later than the time hereinbefore mentioned.

In witness whereof the said Council have caused their corporate seal to be hereunto affixed and the reeve and clerk thereof have set their respective hands and the said Company have caused their corporate seal to be hereunto affixed, and the President thereof has set his hand the day and  
40 year first above written.

## CHAPTER 124.

An Act Respecting The Toronto Suburban Street Railway Company, Limited.

Assented to 30th April, 1900.

WHEREAS the Toronto Suburban Street Railway Company, Limited,

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has under its Act of Incorporation and amendments thereto, constructed and is now operating a railway in the Township of York, the Town of Toronto Junction and adjoining municipalities; and, whereas, the said Company has by its petition prayed that an Act may be passed changing the name of the company and legalizing and confirming certain agreements entered into between the Company and the Municipal Corporations of the Village of Weston and the Township of York; and, whereas, it is expedient to grant the prayer of the said petition.

Therefore, Her Majesty, by and with the advice and consent of the  
10 Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The name of the said Company is hereby changed to The Toronto Suburban Railway Company, but the powers, rights and liabilities of the Company shall not be increased or affected in any manner by such change of name, and all contracts and agreements made, powers exercised and rights, franchises and property acquired by the said Company under its prior corporate names shall remain valid and binding and be the contracts, agreements, powers, rights and property of The Toronto Suburban Railway Company.

20 2. Every shareholder shall be individually liable to the creditors of the Company to an amount equal to the amount unpaid on the stock held by him for the debts and liabilities of the Company, and until the whole amount of his stock has been paid up; but shall not be liable to an action therefore before an execution against the Company has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable with costs against such shareholder.

30 3. Any passenger refusing to pay his fare, may, with his baggage, by the conductor of the car or train and the servants of the Company, be put out of the car or train at any usual stopping place, or near any dwelling house, as the conductor elects, the conductor first stopping the car or train and using no unnecessary force.

40 4. The agreements between the Corporation of the Village of Weston, bearing date the 27th day of October, 1898, and the Corporation of the Township of York, bearing date the 4th day of September, 1899, and the Company, which are fully set forth in the schedules "A" and "B" to this Act are hereby confirmed and declared to be within the powers of the respective parties thereto and to be valid, legal and binding for all purposes to the same extent and in the same manner as if the several clauses of such agreements were set out and enacted as part of this Act, and By-law Number 240 of the Village of Weston as set forth in Schedule "C" to this Act is hereby confirmed and declared to be legal, valid and binding upon the Municipal Corporation of the said Village of Weston and the ratepayers thereof.

And it is hereby declared that under the said agreements with the Village of Weston and the Township of York, the Company is entitled to the exclusive right and privilege of using and working a railway in and upon the streets, roads and highways of the Village of Weston as in said agreement provided for the full period of thirty years from the 27th day of Oc-

## STATUTES AND AGREEMENTS.

tober, 1898, and on the streets, roads and highways in the Township of York as in the said agreement provided for the full period of thirty years from the 4th day of September, 1899, and in both cases to renewals thereafter, but according to the terms and conditions in the said agreements expressed and contained.

5. It is hereby declared that the said agreements printed in schedules "A" and "B" are varied in the following respects:

10 Section 33 of the agreement set forth in Schedule "A" by adding the following words to the end of the section: "Provided, however, that this exemption shall not apply to school rates."

Section 40 and Section 2, Schedules "A" and "B," the following section shall in each case be substituted therefor: "Steam shall not be used as a motive power."

## SCHEDULE "B."

This indenture, made this fourth day of September, in the year of our Lord, one thousand eight hundred and ninety-nine, between the Municipal Corporation of the Township of York, hereinafter called the Township, of the first part, and The Toronto Suburban Street Railway Company, Limited, hereinafter called the Company, of the second part.

20 Whereas, by a certain indenture bearing date the 20th day of April, 1891, and made between the Township and the Davenport Street Railway Company, Limited, the said last mentioned Company was granted the right to operate street railways upon Davenport Road and Bathurst Street, as therein set out; and

Whereas, by a certain other indenture bearing date the 27th day of August, 1894, made between the Township and the Company, the Company was granted the right to operate street railways upon that part of Weston Road and deviation thereof as is therein described; and

30 Whereas, by a certain act passed in the 57th year of Her Majesty's reign, being chapter 94, the Company was incorporated and was thereby granted power to acquire, and did subsequently acquire, the rights, powers and franchises of The Davenport Street Railway Company, Limited, under the two hereinbefore in part recited agreements, and said agreements were by said Act confirmed and declared to be valid and binding upon the parties thereto; and

Whereas, it has been agreed between the parties hereto that the agreements hereinbefore in part recited shall be terminated, and that this agreement shall be entered into in substitution for the same, but upon the terms and conditions hereinafter set out and contained.

40 Now this agreement witnesseth:

1. The Company shall have the exclusive right to construct, maintain and operate an iron or steel rail or tramway, single and double tracks, subject to the conditions hereinafter specified upon and along (a) Davenport Road, in the Township of York, from the northern limit of the City of Toronto to the eastern limit of the Town of Toronto Junction, and that part of Bathurst Street between the said Davenport Road and the northerly

## STATUTES AND AGREEMENTS.

limit of the City of Toronto; (b) Weston Road, in the Township of York; (c) a deviation of said Weston Road from its intersection with the south-westerly limit of the Weston Road to its intersection with the northerly limit of the Town of Toronto Junction; (d) Dundas Street, from the westerly limit of the Town of Toronto Junction to the easterly limit of the Township of Etobicoke; (e) the road allowance between the fifth and sixth concessions west of Yonge Street, of the Township of York, and the roadway connected therewith leading southerly to the northerly limit of the Village of Weston, sometimes known as Weston Road, and also the part  
 10 leading therefrom westerly to and across the Humber River, sometimes known as the Albion Road; (f) the side road allowance between lots 20 and 21 in the sixth and seventh concessions west of Yonge Street, in the Township of York, to the easterly limit of the Township of Etobicoke, and the deviation therefrom across the River Humber; (g) the concession road allowance between the sixth and seventh concessions west of Yonge Street, in the Township of York, from the River Humber northerly to the old toll road leading to Woodbridge, and along the same northwesterly to and including the town line; (h) and over any lands which the Company may acquire or may expropriate under the provisions of the statute in that behalf, but the  
 20 exclusive privilege shall not extend to the erection of poles.

2. No motive power other than electricity or horse power shall be used without the consent of the Township in any way at any time.

3. The location of the Company's tracks not already constructed shall be located according to plans, profiles and cross-sections to be made by the township engineer and approved of by the Township Council.

4. The Company for the purpose of operating its railway may (a) lay down such tracks, rails, cables, conduits and sub-structures upon such streets, roads, highways and bridges as may be occupied by the Company's railway under this agreement; (b) maintain and erect such poles and wires  
 30 as may be necessary upon and along such of the streets, roads and highways of the Township as the said Company may from time to time deem requisite or necessary for the purpose of carrying wires and supporting the appliances necessary for operating the Company's line or lines of railway, and for conducting electricity in connection with any of the purposes provided for in the various Acts relating to the Company; and provided that the Township shall have the right to lay out the line in which the said poles may be erected, and provided further that no wires shall be strung at a less height than fourteen feet from the ground; (c) shall construct, put in and maintain such culverts, switches, turnouts and sidings as may from time to  
 40 time be found to be necessary for the operation of the Company's lines of railway on the streets herein set out or leading to any cross streets leading into or from any of the said streets, roads or highways, or for the purpose of leading to any track allowances or rights of way on lands adjacent thereto where the Company's line or lines deflect from said streets, roads or highways, or to the Company's power houses and car sheds, and the Company may from time to time alter the location of such culverts, switches, turnouts and sidings, but that not more than two parallel tracks shall be laid in

## STATUTES AND AGREEMENTS.

any one place without the consent of the Township.

5. All tracks laid on any portion of the travelled street or road shall, so far as is practicable, conform to the street or road, and shall be laid flush with the streets so as to cause the least possible impediment to the ordinary traffic of the streets.

6. The Company shall, where the rails are laid upon the travelled portion of the road, keep clean and in proper repair that portion of the travelled road between the rails, and for eighteen inches on each side of the rail or rails lying on or being next to the travelled road, and in default the Township may cause the same to be done at the expense and proper cost of the Company.

7. The Company may deflect its line from the said streets, roads and highways and operate the same across and along private properties after expropriating the necessary rights of way under the provisions of the statutes in that behalf or otherwise acquiring the same, and the Township agrees upon demand being made by the Company to pass By-laws from time to time to enable the Company to expropriate such lands as may be necessary for their purposes at the proper costs and charges of the Company.

8. At the intersection of the Company's railway and cross streets or highways crossing the said streets, roads or highways, and at entrances to private properties now existing, or may hereafter be required, the Company shall construct and keep in repair for the width of the railway, and eighteen inches on the outside of each rail, crossings of a similar character to those adopted by the Township, and shall construct underneath its track allowances such culverts and waterways as are necessary for drainage purposes.

9. The Company may at any time hereafter change the gauge of its railway now constructed, or that may be hereafter constructed, by the said Company under any authority of the Township from the now or then existing gauge to the standard railway gauge, being four feet eight and one-half inches, or to such gauge as may hereafter be adopted as a standard electrical railway gauge, or to such gauge as be in use upon the street railways or tramways in the City of Toronto, in the discretion of the Company, and may, with the consent of the Township, change the rail now in use by the said Company on its railway now or hereafter to be constructed.

10. All works necessary for changing the said gauge or rail shall be made in a substantial manner according to the best modern practice.

11. The Company shall have the right to remove the snow from and within its tracks, turnout sidings and switches provided that any snow put upon the graded or travelled part of the road by the Company, shall be evenly spread thereon and in such manner as not to interfere with public travel.

12. In case the electric motors or cars used by the Company in operating its railway whilst passing along the railway cause alarm to any horses travelling or being upon the said streets with vehicles or otherwise the motors or cars of the Company shall, if necessary, be stopped, and the servants of the Company in charge of such motors or cars shall, if necessary,

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assist the person or persons driving or riding or in charge of such horse or horses that may be alarmed.

10 13. The Company shall (unless prevented by accident, strikes or other unavoidable cause) run at least one passenger car each way every half hour between the hours of 6 o'clock and 10 o'clock in the forenoon, and between 5 o'clock and 8 o'clock in the afternoon, and during the remaining portion of the time between 6 a.m. and 11:30 p.m. the Company shall run at least one passenger car each way every hour. Such service to be each lawful day in the year over Bathurst Street from the Canadian Pacific Railway cross-  
ing at the foot of Bathurst Street to and along Davenport Road to the east-  
ern limit of the Town of Toronto Junction in accordance with a regular  
time table to be settled and approved of by the Township Council.

20 14. The Company shall each lawful day in the year (unless prevented by accident, strikes, or other unavoidable cause) run at least one passenger car every half hour between the hours of 6 o'clock in the forenoon and 11 o'clock in the afternoon over Weston Road between the northerly limit of the Town of Toronto Junction and the southerly limit of the Village of Weston, and provided the traffic is sufficient to warrant such service, such service shall also be given on Dundas Street between the Town of Toronto  
Junction and the Village of Lambton Mills, in accordance with a regular  
time table to be settled and approved of by the Township Council.

15. The speed of the cars shall not exceed or be increased beyond twenty miles an hour. All motors and cars run upon the Company's railway for the purpose of carrying milk, shall be stopped for the purpose of loading or unloading milk cans at such stations or stopping places as are from time to time designated by the Township, provided, however, that in determining the places at which stops are to be made no more than three stopping places in any mile section shall be designated.

30 16. Passenger car conductors shall clearly announce the names of the streets, cross roads and public places as the cars reach them.

40 17. The Township may at any time after giving to the Company seven days' notice of its intention so to do take up any part of the street or road along which the Company's railway is constructed for the purpose of altering the street or road grade, constructing sewers, drains, culverts or side crossings, laying down gas or water pipes or underground wires, and for all other purposes within the province and privileges of a municipal corporation without being liable for any compensation or damage that may be occasioned to the working of the railway or the works connected therewith. When and so often as it may be necessary for the Township to open the road or street for the purpose of repairing such street or road, sewer, drains, culverts, gas or water pipes or underground wires or putting in gas, water or other services a reasonable notice shall be given to the Company of the Township's intention so to do and the work thereon shall not be unnecessarily delayed, but shall be carried on and completed with all reasonable speed, due regard being had to the proper and efficient execution thereof. The said Township, after the completion of any such works and improve-

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ments, shall leave the said railway line rails and substructure in substantially the same state and condition as before the commencement of any such works or improvements.

10 18. The fares to be charged by the Company shall not exceed a rate of three cents per mile, provided, however, that if the rate per mile be hereafter fixed by any Act having general application to railways at a less rate than three cents per mile then the fares to be charged shall not exceed the rates so fixed by such Act, but the Company shall not be bound to carry any passenger any distance for less than five cents. A special class of tickets shall be sold good to be used only on that portion of the line of railway lying

between the Canadian Pacific Railway crossing at Bathurst Street and the eastern limit of the Town of Toronto Junction at the rate of ten for twenty-five cents, each ticket to be good for one continuous passage either way.

19. The Company may use its railway for the conveyance of freight, goods, merchandise and passengers.

20 20. All persons using the said street or streets shall be at liberty to travel upon any portion of the roadway occupied by the Company's railway and in the same manner as upon other portions of the highway, and vehicles of every description are to be allowed upon such portion of the highway, it being provided, however, that the Company's cars shall have the first right-of-way over the said railway, and all vehicles of persons travelling on that portion of the highway occupied by the railway shall turn out upon meeting or being overtaken by any of the Company's cars so as to give them full right-of-way, provided, however, that no person shall be allowed upon any bridge or part thereof built by the Company, or solely for the Company's use, but such bridge or bridges shall be guarded.

30 21. The Company shall be liable for and shall indemnify the Township against all damages arising out of the construction, repair or operation of the Company's railway arising out of the existence of the Company's railway, poles, tires or other material upon the roads, whether such damages are occasioned while running at a speed authorized by this agreement or otherwise and for and against the Township's cost and expenses of and incidental to claims for such damages.

40 22. The alignment of the Company's track the location of switches and the grades of the roadbed of its railway shall be prescribed by the township engineer or such engineer as the Township may appoint for the purpose, and all work done under the authority of this agreement shall be done in the most substantial manner and according to the best modern practice under the superintendence and to the satisfaction of the said engineer, with a right of appeal to the Township Council, and the Company shall pay to the said engineer or engineers such compensation for his services as the Township may from time to time certify.

23. The rights and privileges conferred by this agreement shall extend over a period of twenty years from the date of these presents which said period shall be renewed or extended for a further period of ten years in the event of legislation being obtained enabling this to be done, and the Town-

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ship hereby agreed upon the request of the said Company to forthwith aid in procuring such legislation. Upon the expiration of the term of thirty years granted by this agreement, or at such other time as this agreement may be terminated, the Township shall grant to the Company a renewed agreement for a further term of twenty years upon such terms and conditions as shall be mutually agreed upon between the Township and the Company, or determined by arbitration under the provisions of the Municipal Act, and so on at the end of each term of twenty years will grant further renewals for a like term under and subject to the same covenants, provisoes and agreements as are herein contained, except in so far as the same may be varied by mutual agreement or by arbitration as aforesaid provided, however, if at the expiration of any one of such terms the Company or the Township is unwilling to renew on the terms determined upon by arbitration the Township may at its option take over the railway and all the real and personal property necessarily used in connection with the working of the said railway at a value to be determined by agreement or arbitration as aforesaid, and the privileges of the Company shall continue until the ownership is assumed by the Township.

24. There shall be no unnecessary delay on the part of the Township or its officers in the granting of any certificate required by any of the provisions of this agreement, but the Township and its officers shall and will in all things so far as is consistent with their duty aid and assist the Company in carrying out this agreement.

25. In the event of any differences arising between the Township and the Company as to any matter or thing to be done or performed under the terms of this agreement, then the same as hereinbefore provided shall be referred for determination under the provisions of the Act relating to arbitrations and references to a Judge of the County of York for the time being and an appeal shall lie from his decision to the High Court of Justice or other superior court having jurisdiction in this province in such matters, and from that court an appeal shall lie to the Court of Appeal for Ontario, but no other or further appeal shall lie from the decision of such Court of Appeal for Ontario.

26. The Township shall enact and pass a By-law exempting all the property of the Company and the income derived therefrom from taxation for a period of ten years, and may renew such exemption for a further period of ten years thereafter, provided, however, that this exemption shall not apply to school or county rates.

27. The Company shall grant running rights over that portion of their railway on Bathurst Street from the Canadian Pacific Railway crossing to Davenport Road and on Davenport Road to one other bona fide railway company operating a street railway and having ingress to the City of Toronto upon such terms as may be mutually agreed upon between the Company and the Company applying for such running rights, or in case of disagreement upon such terms and conditions as may be determined upon by arbitration under the provisions of the Municipal Act; provided, however, that any Company applying for such running rights shall pay all costs of

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and incidental to such negotiations, and any agreement made in connection therewith, and of and in connection with any arbitration that may be held for the purposes aforesaid, and shall deposit with the Company a sufficient sum of money to cover the same at the time the application is made.

10 28. Should the Company neglect to keep their track or roadway in good condition according to the terms of this agreement, or to have the necessary repairs according to this agreement made thereon, the Township may give notice requiring such repairs to be forthwith made, and it is agreed between the parties hereto, that a certificate of the engineer for the time  
 20 being of the Township as to the necessity of such repairs in order to keep the said track or roadway in good condition according to the terms of this agreement shall be binding and conclusive upon the Company, and if, after such notification given requiring such repairs to be made the Company do not within ten days begin and carry to completion with all reasonable diligence and complete such repairs within thirty days from the receipt of such notice or such further time as the said engineer may allow, the franchise granted by this agreement shall be null and void and at an end, and the Township shall be at liberty at their option to remove the rails of the said Company and to place the said highway in a proper state of repair at  
 30 the expense of the said Company, the Company agreeing to pay for such work on demand.

29. Proper fenders shall be placed on all cars.

30. The Company may erect poles and wires for the supply of electricity for light, power and heat on all and any of the streets, roads and highways of the municipality, but such right shall not be an exclusive right.

31. After the year 1901 the Company shall, upon request of the Township, construct and operate their line of railway on Davenport Road, east of Bathurst Street, and on the streets, roads and highways running north from the northern limit of Weston village, such line or lines to be complete  
 30 and in operation within a period (not less than six months) to be fixed by By-law passed by a majority vote of all the members of the Township Council.

32. In case the Company shall refuse, decline or fail to construct a line or lines of railway as provided in section 31, the franchise of such portion of the street, road or highway as the Company shall not within the time fixed by the By-law hereinbefore referred to have built upon shall revert to the Township.

33. This agreement shall not be binding upon the parties hereto so far as the same applies to that portion of Dundas Street lying between the  
 40 western limit of the Town of Toronto Junction and the present terminus of the railway at the Village of Lambton Mills until the agreements between the County of York, the Town of Toronto Junction and the Company bearing dates respectively the 31st day of October, 1895, and the 5th day of October, 1891, granting certain rights to the Company, shall have been cancelled or terminated.

34. The Company shall, except where the same are inconsistent with

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this agreement, be subject to all By-laws of the Township now or hereafter in force in respect to highways.

35. The words "township engineer" shall include and be construed to mean, as well as the township engineer, any qualified engineer that may be appointed by the Council of the Township for any or all of the purposes mentioned in this agreement.

36. All the rights and privileges granted by the Township and as contained in this agreement shall be subject to confirmation by the Legislature of the Province of Ontario before they are binding upon the parties hereto. And the Township agrees to support such legislation and hereby consents and agrees to the same.

37. Nothing in this agreement contained shall affect the validity of By-law No. 1,530 of the Township of York to authorize the issue of debentures, but the same shall be binding upon the parties affected thereby and the confirmation of this section of the said agreement by the Legislature of the Province of Ontario shall be a confirmation of the said By-law No. 1,530.

38. The several clauses of the Street Railway Act, of the R. S. O., and of every Act in amendment thereof at present applicable to the Company shall apply to the Company except only so far as they may be inconsistent with the terms of this agreement.

39. In the event of this agreement being voided or forfeited then the rights of the parties as they existed prior to the execution thereof shall remain unaffected and as if this agreement had not been entered into.

In witness whereof the said Township have caused their Corporate Seal to be hereunto affixed and the Reeve and Clerk have set their respective hands and the said Company have signed, sealed and delivered this Indenture the day and year first above written, and the President and Vice-President and the Secretary thereof have set their respective hands and seals on behalf of the said Company.

30 TORONTO SUBURBAN STREET RAILWAY CO., LIMITED.

E. P. Heaton, Vice-President.

S. A. A. Watt, Secretary.

[Seal of Co.]

Henry Duncan, Reeve.

W. A. Clarke, Clerk.

[Seal of Corporation.]

Signed, sealed and delivered in the presence of

ALLAN H. ROYCE.