

19 OCT 1956

In the Privy Council.

No. 47 of 1893.

44596

ON APPEAL FROM THE COURT OF
~~35,1894~~ MANITOBA.

37,1894

BETWEEN

THE WINNIPEG STREET RAILWAY COMPANY
AND
THE WINNIPEG ELECTRIC STREET RAILWAY
COMPANY AND THE CITY OF WINNIPEG. Respondent

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	DESCRIPTION OF DOCUMENT.	Date.	Page.
	<i>the Court of Queen's Bench (in Equity) for Manitoba.</i>		
	ificate of Registrar of Queen's Bench as to documents	22nd May, 1893	1
II.	<i>Proceedings in the Court of Queen's Bench (in Equity).</i>		
	1. Bill of Complaint of the Winnipeg Street Railway Company . . . . .	. . . . .	2
	2. Answer of the Defendants, the Winnipeg Electric Street Railway Company, to the Plaintiffs' Bill of Complaint	24th October, 1892	20

t

A *

INDEX.

OF DOCUMENT.	Date.	Page.
<i>Continued.</i>		
Defendants, the City of Win- the Plaintiffs' Bill of Complaint	24th October, 1892	28
Reply, joining issue	27th October, 1892	31
Proceedings at trial	14th November, 1892	31
Evidence on behalf of the Plaintiff Company at the trial—		
Albert W. Austin, <i>examined</i>		32
" " <i>cross-examined</i>		62
" " <i>re-examined</i>		69
Robert G. Haynes, <i>examined</i>		70
" " <i>cross-examined</i>		71
" " <i>re-examined</i>		72
Isaac Campbell, Q.C., <i>examined</i>		72
Andrew McNabb, <i>examined</i>		74
" " <i>cross-examined</i>		76
Charles J. Brown, <i>examined</i>		77
" " <i>cross-examined</i>		79
" " <i>re-examined</i>		79
" " <i>further cross-examined</i>		80
7. Evidence on behalf of the Defendants—		
George H. Campbell, <i>examined</i>		81
" " <i>cross-examined</i>		91
H. N. Ruttan, <i>examined</i>	16th November, 1892	97
" " <i>cross-examined</i>		101
" " <i>re-examined</i>		101
Granville C. Cunningham, <i>examined</i>		103
" " <i>cross-examined</i>		107
Joseph Doupe, <i>examined</i>		112
" " <i>cross-examined</i>		114
" " <i>re-examined</i>		117
Alexander Logan, <i>examined</i>		118
" " <i>cross-examined</i>		118
David Philip, <i>examined</i>		119
" " <i>cross-examined</i>		119
John W. Sifton, <i>examined</i>		120
H. A. MacLean, <i>examined</i>	17th November, 1892	120

19 OCT 1958

INDEX.

No.	DESCRIPTION OF DOCUMENT.	Date.	Page.
II.	<i>Proceedings, &c.—continued.</i>		
	8. Evidence on behalf of the Plaintiff Company by way of rebuttal—		
	Frederick W. Heubach, <i>examined</i> . . . . .	. . . . .	122
	" " <i>cross-examined</i> . . . . .	. . . . .	125
	" " <i>re-examined</i> . . . . .	. . . . .	126
III.	EXHIBITS REFERRED TO IN THE FOREGOING EVIDENCE AND FILED AT THE TRIAL.		
	1. Letter from Solicitors for the Plaintiff Company to the City of Winnipeg and James Ross and Wm. MacKenzie	7th June, 1892	126
	2. Diagram of section of rail used by Plaintiff Company . . . . .	. . . . .	127
	3. Letter from the City Clerk of Winnipeg to W. Austin, Manager of Plaintiff Company	28th July, 1891	127
	4. Letter in reply from W. Austin to the Mayor and Council of the City of Winnipeg	10th August, 1891	128
	5. Letter from the City Clerk of Winnipeg to A. W. Austin, Esq., Manager of Plaintiff Company	25th August, 1891	128
	6. Letter from same to same	2nd July, 1890	129
	7. Letter from J. A. Platt, Clerk of Committees, to A. W. Austin, Esq.	25th July, 1890	129
	8. Certified extract from Minutes of Council . . . . .	. . . . .	130
	9. Letter from the Clerk of Committees to A. W. Austin	4th December, 1891	130
	10. Letter in reply from A. W. Austin to the Clerk of Committees	7th December, 1891	130
	11. Letter from A. W. Austin to the Mayor and Council of Winnipeg	5th January, 1892	130
	12. Letter from Clerk of Committees to A. W. Austin	18th January, 1892	131
	13. Letter from A. W. Austin to the Chairman of the Committee on Works	25th January, 1892	131
	14. Notice of intended application by Defendants, the Winnipeg Electric Street Railway, to the Railway Committee of the Executive Council of Manitoba	13th June, 1892	132

No.	DESCRIPTION OF DOCUMENT.	Date.	Page.
III.	EXHIBITS, &c.—<i>continued.</i>		
	15. The same	13th June, 1892 . . .	132
	16. Bye-law passed by the Mayor and Council of Winnipeg, approving plans of construction of the Defendants' railway	30th May, 1892 . . .	132
	17. Letter from A. W. Austin to the Chairman of the Board of Works	16th November, 1891 . . .	133
	18. Bye-law No. 522 of the City of Winnipeg, respecting the Winnipeg Street Railway	1891 . . .	134
	19. Order of the Railway Committee of the Executive Council, approving plans of construction of Defendants' railway	10th September, 1892 . . .	139
	20. The same, approving certain crossings and intersections	18th October, 1892 . . .	141
	21. Letter from J. A. Platt, Clerk of Committees, to A. W. Austin	21st August, 1891 . . .	141
	22. Letter from City Clerk to A. W. Austin	22nd August, 1891 . . .	141
	23. Letter from Clerk of Committees to A. W. Austin	21st January, 1892 . . .	142
	24. Letter from A. W. Austin to the Mayor and Council of Winnipeg	24th August, 1891 . . .	142
	25. Letter from A. W. Austin to the Chairman of the Committee of Works and the Corporation of Winnipeg	21st March, 1891 . . .	143
	26. Petition of the Plaintiff Company for incorporation as a company	3rd October, 1881 . . .	144
	27. Report of Committee of the Executive Council, advising that a charter be granted to the Plaintiff Company	3rd October, 1881 . . .	148
	28. Order of Mr. Justice Dubuc on Motion by the Plaintiff Company for Interlocutory Injunction	10th October, 1892 . . .	148
	29. Certified Copy of a Report of the Privy Council (Canada), transferring to the Provincial Government portion of the great highway, from Pembina to L. Winnipeg, to the Province of Manitoba	3rd February, 1888 . . .	149
	30. Grant by the Crown to the Hudson's Bay Company of land in Manitoba	5th June, 1873 . . .	150

No.	DESCRIPTION OF DOCUMENT.	Date.	Page.
IV.	JUDGMENT AND DECREE.		
	1. Judgment of Mr. Justice Bain	14th December, 1892 . .	153
	2. Order, dismissing Plaintiff Company's Bill of Complaint, with costs	14th December, 1892 . .	162
V.	<i>In the Court of Queen's Bench (in banc). Re-hearing by way of Appeal.</i>		
	1. Præcipe, setting cause down for re-hearing in banco by way of Appeal	11th January, 1893 . .	162
	2. Judgment of Taylor, C.J. (Dubuc, J., concurring)	. . . . .	163
	3. Judgment of Killam, J. . . . .	. . . . .	169
	4. Order, dismissing Appeal	13th May, 1893 . .	179
	5. Order, granting Plaintiffs leave to appeal on giving security	22nd May, 1893 . .	179
	6. Order, admitting Appeal	22nd May, 1893 . .	180

In the Privy Council.

No. 47 of 1893.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, MANITOBA.

BETWEEN

THE WINNIPEG STREET RAILWAY COMPANY *Appellants,*

AND

THE WINNIPEG ELECTRIC STREET RAILWAY
COMPANY AND THE CITY OF WINNIPEG *Respondents.*

RECORD OF PROCEEDINGS.

In the Queen's Bench.—In Equity.

Between

The Winnipeg Street Railway Company *Plaintiffs,*
and
The Winnipeg Electric Street Railway Company and The City
of Winnipeg *Defendants.*

I, Robert John Wilson, of the City of Winnipeg, in the Province of
Manitoba, Registrar of the Court of Queen's Bench in Equity, do hereby certify
that the papers hereto attached and marked with the letters A, B, C, D, E, F, G,
10 H, J and K respectively, are true copies of the original documents hereinafter
mentioned, namely:—

"A," of the Pleadings in this cause, being the Plaintiffs' Bill of Complaint,
the answers of the two Defendants and the Plaintiffs' replication.

"B," of the evidence taken at the hearing of this cause.

"C," of the exhibits referred to in said Evidence and filed at the hearing.

"D," of the Reasons for Mr. Justice Bain's judgment at the hearing of this
cause, dismissing the Bill of Complaint.

"E," of the Decree made in this cause.

"F," of the Præcipe setting this cause down by way of Appeal to the Court
20 *in banc* from the said decree.

RECORD.

I.
*In the
Court of
Queen's
Bench (in
Equity) for
Manitoba.*

—
Certificate of
Registrar of
Queen's
Bench, as to
documents.

RECORD.

I.
In the
Court of
Queen's
Bench (in
Equity) for
Manitoba.

"G," of the reasons for the judgment of the judges of this Court *in banc* dismissing the said appeal, and affirming the decree.

"H," of the order of this Court *in banc* dismissing said appeal.

"J," of the order of this Court, giving the Plaintiffs leave to appeal to Her Majesty, in Her Privy Council, and

"K," of the order admitting the said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court of Queen's Bench, this 22nd day of May, A.D. 1893.

(L.S.)

R. J. WILSON, Registrar.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany.

"A."

10

In the Queen's Bench.—In Equity.

Between

The Winnipeg Street Railway Company Plaintiffs,

and

The Winnipeg Electric Street Railway Company and The
City of Winnipeg Defendants.

City of Winnipeg.

To the Honourable the Judges of the Court of Queen's Bench in Equity.

The Bill of Complaint of the Winnipeg Street Railway Company humbly sheweth as follows:—

20

1. Hereinafter in this Bill the Winnipeg Street Railway Company is called the Old Company, and the Defendant Company, the Winnipeg Electric Street Railway Company, is hereinafter in this Bill called the New Company, and the Defendants, the City of Winnipeg, are hereinafter in this Bill called the City.

2. The old company was duly incorporated by an Act of the Legislature of the Province of Manitoba, passed in the 45th year of Her Majesty's reign, chapter 37, and that Act was assented to and became law on the 27th day of May, 1882.

3. The City of Winnipeg is a municipal corporation, and was incorporated as such about the year 1874, and its Act of Incorporation was from time to time amended by various Acts of the Legislature of this province, and finally by an Act of the said Legislature passed in the 45th year of Her Majesty's reign, chapter 36; the Charter or Act of Incorporation of the City with its various amendments were all duly consolidated and made into one Act of Incorporation, and this last mentioned Act was assented to on the 30th day of May, 1882.

4. At the time of the passing of the Consolidated Act of Incorporation last above mentioned, the City of Winnipeg was a city of about 15,000 inhabitants, and it covered a large extent of territory, exceeding twenty square miles, and the inhabitants thereof had their residences scattered over nearly the whole of this territory and at considerable distances from the centre of the city, and the city for many years previously was intersected by a large number of roads and streets used by the residents as highways, and these roads and streets have ever since continued to be so used, and are now so used.

5. No part of the streets or highways of the city was then in any way paved, and owing to the peculiar character of the soil, the city met with great difficulty

in keeping these highways in repair, and they were at times difficult to be used, and at certain seasons of the year almost impassable.

6. The said Act of Incorporation of the city contains the following provisions in the following words:—

“CLV. Every public street, road, square, lane, bridge or other highway in the city shall be vested in the city, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway reserve.

“CLVI. Every such public street, road, square, lane, bridge and highway, shall be kept in repair by the corporation.

10 “1. All persons having made reservations in any street, road or bridge, shall apply within six months after the passing of this Act to the City Council, in order to obtain a final settlement and adjustment under the provisions of this Act as hereinafter provided, of such claim; otherwise such claim shall cease to exist.”

7. By virtue of the above mentioned two sections the absolute fee simple and all right of the Crown in all the streets and highways of the said city thereby became vested in the said city absolutely, and the city thereby became liable to the public and to each individual citizen for the repair and maintenance of the said streets, and were bound to keep the streets and highways in such a state of
20 repair that they could be used by the citizens as highways and as means of transit from one part of the city to the other.

8. For the purpose of building and erecting a carriage-way over certain of the unpaved streets of the City of Winnipeg, and for the purpose of creating a means by which the inhabitants of the city could, at a very low charge, find conveyance from one part of the city to the other, the city, on the 12th day of June, 1882, passed a bye-law, which bye-law is in the words and figures following:—

30 “A bye-law to authorise and empower the ‘Winnipeg Street Railway Company’ to lay down, construct, complete, maintain and operate a street railway, for the purposes hereinafter mentioned, in, along and upon street, streets or highways within the limits of the City of Winnipeg, as the council thereof may determine.

“Whereas the Legislature of the Province of Manitoba did, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and eighty-two, pass an Act intituled ‘An Act to incorporate the Winnipeg Street Railway Company,’ by which Act it is, amongst other things, provided that the City Council of the City of Winnipeg and the Winnipeg Street Railway Company are respectively authorised to make and enter into any agreement or covenant relating to the construction and operating of said street railway.

40 “Therefore the mayor and council of the City of Winnipeg, in council assembled, enacts as follows:—

“1. The Winnipeg Street Railway Company are hereby authorised and empowered to construct, maintain, complete and operate, and from time to time remove and change a double or single track railway, with the necessary side tracks, switches and turnouts for the passage of cars, carriages and other vehicles adapted to the same, upon and along any of the streets or highways of the City of Winnipeg, and to run their cars, take transport and carry passengers upon the same, by the force or power of animals or such other

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RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.

Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany

— continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 1.
 Bill of Com-
 plaint of the
 Winnipeg
 Street Rail-
 way Com-
 pany
 — continued.

“ motive power as may be authorised by the said council of the said city, and on
 “ the terms and under the conditions and relations hereinafter contained in this
 “ bye-law, and subject to the same, and such railway shall have the exclusive
 “ right to such portion of any street or streets as shall be occupied by said rail-
 “ way, and shall be worked under such regulations as may be necessary for the
 “ protection of the citizens of said city.

“ 2. The said railway, switches, turnouts and side tracks shall be of
 “ approved construction, and the rails shall be laid in such a manner as shall least
 “ obstruct the free and ordinary use of the streets and the passage of vehicles
 “ over the same; the upper surface of the rails shall be laid as nearly as 10
 “ practicable flush with the surface of the streets, and shall conform to the grades
 “ thereof as are now or which may hereafter be established.

“ 3. The roadway between and at least eighteen inches outside of each rail
 “ shall be kept in proper order and at the expense of said company; but
 “ whenever the said City of Winnipeg decide to pave, gravel or macadamize the
 “ street, streets or highways traversed by the Winnipeg Street Railway Com-
 “ pany, the said company shall pave, gravel or macadamise the portion occupied
 “ by the track or tracks, and a portion extending eighteen inches on each side
 “ thereof, and at their own expense, and also be bound to construct and keep in
 “ repair crossings of a similar character to those adopted by the said City of 20
 “ Winnipeg, and at the intersection of every such railway track with the streets
 “ along or across which such track passes.

“ 4. During the operation of constructing the railway and laying the rails,
 “ a free passage for vehicles over the streets shall be kept open, and immediately
 “ after said rails have been laid, the surface of the streets shall be levelled to a
 “ condition as near as possible to that in which it was before the commencement
 “ of the construction, and in strict conformity to the preceding section of this
 “ bye-law.

“ 5. The location of the line of railway in any of the streets or highways
 “ shall not be made until the plans thereof showing the position of the rails and 30
 “ other works in such street or streets shall have been submitted to and approved
 “ by the city engineer or other authorised officer appointed by the council for
 “ the purpose, and that the gauge of said railway track shall be four feet eight
 “ and one half inches.

“ 6. The city authorities, or any duly authorised person, persons or corpora-
 “ tions, shall have the right to take up the streets traversed by the rails of said
 “ company, and to remove all rails, roadways or tracks necessary for the purpose
 “ of paving, grading, gravelling or macadamising the said streets, or for con-
 “ structing or repairing any drains or sewers, or for laying down
 “ or repairing water or gas pipes, for raising or altering the grade of such streets, 40
 “ and for all other purposes within the province and privilege of the corporation
 “ of said city, without being liable to any claims or demands for compensation
 “ or for damages arising from any delays that may be occasioned to the working
 “ of the railway, or to the works connected therewith, by reason of such taking
 “ up of any such street or removal of any such rails, tracks or roadways, as afore-
 “ said; provided always that should the said city authorities, or any such duly
 “ authorised person, persons or corporations, take up any such street, streets

" or highways necessary for the purposes aforesaid, the said city authorities, or
 " duly authorised person, persons or corporation, shall, without any unnecessary
 " delay, repair such street, track and roadway, and replace such rails at their own
 " proper cost and charges, and shall leave such track and roadway in the same or
 " in an equally good condition to that in which it was found by them, or any of
 " them, before being taken up or removed.

" 7. The said company shall place and continue on said railway tracks good
 " and sufficient cars for the convenience and comfort of the passengers, and shall
 " run the same at such times and intervals as the public need may require. Each
 10 " car shall be numbered on the outside and inside.

" 8. The said cars shall be run on Main Street, from Broadway to Point
 " Douglas Avenue, during and at such times as the council may direct, and at
 " intervals each way of not more than thirty minutes, and on all cross and other
 " streets and extensions where tracks may be laid, at such intervals and at such
 " times in the interests of the citizens as the council by resolution may
 " direct.

" 9. The said company shall have their cars running between Broadway
 " and Point Douglas Avenue on Main Street, within six months from the date
 " of the agreement with the said City of Winnipeg.

20 " 10. The said cars shall be run at a speed of not more than six miles per
 " hour, and the conductors or drivers shall announce to the passengers the names
 " of the streets and public squares as the cars reach them.

" 11. Whenever there shall occur a fall of snow which materially obstructs
 " the tracks (and until such tracks can be again used), the said company is
 " authorised to use sleighs of sufficient capacity and in sufficient numbers for
 " the conveyance of passengers, and such sleighs shall carry at night lighted
 " coloured lamps, and the said company shall have the right to charge the same
 " rates of fare thereon as they are entitled to on their cars.

30 " 12. Whenever it shall be necessary to remove any snow, ice or dirt from
 " any of the tracks of said company, the same shall be removed by the said
 " company in such a manner as not to obstruct the ordinary traffic, and in the
 " case of snow it shall be spread as evenly as possible over the street, so as
 " not to interfere with the passage of other vehicles along and over the
 " same.

" 13. The company shall have the right to charge and collect from every
 " person on entering any of their cars or sleighs for the purpose of riding any
 " distance within their route, a sum not to exceed ten cents; any person refusing
 " to pay the said fare may be removed from any such car or sleigh.

40 " 14. The company shall not carry packages, baggage or freight exceeding
 " in weight twenty-five pounds for any one passenger.

" 15. The company shall be liable for all damages arising out of the con-
 " struction or operation of their railways.

" 16. The cars and sleighs of said company shall be entitled to the right of
 " way on the tracks of said railway. All vehicles, however, may travel on, along
 " or across said track, but any vehicle, horseman or foot passenger upon the
 " track shall turn out on the approach of any car, so as to leave the track clear.
 " Any person or persons refusing to so turn out, or in any way or manner

RECORD.

II.
*Proceedings
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No. 1.
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RECORD.
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*Proceedings
 in the
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No. 1.
 Bill of Com-
 plaint of the
 Winnipeg
 Street Rail-
 way Com-
 pany
 —continued.

“ obstructing the free passage of said cars on and along said track, shall be liable,
 “ upon conviction before the city police magistrate, the mayor, or any justice or
 “ justices of the peace having jurisdiction, to a fine not exceeding \$20 and costs
 “ for each offence, or in default of payment of said fine and costs, to imprison-
 “ ment in any lock-up house in said city for a period not exceeding thirty days,
 “ unless such penalty or costs be sooner paid.

“ 17. The said cars shall not stop on any street crossings, and when leaving
 “ or receiving passengers the cars shall be stopped so as to leave the rear plat-
 “ form as near the edge of the crossing as possible.

“ 18. It shall be the duty of the company to employ careful, sober, well- 10
 “ behaved and prudent conductors or drivers to take charge of their cars, and it
 “ shall be the duty of such conductors or drivers, so far as practicable, to keep
 “ vigilant watch for all teams, carriages and persons on foot or horseback, either
 “ on the track or moving towards it, and on the first appearance of danger the
 “ car shall be stopped in the shortest space and time possible.

“ 19. The cars after dark shall be provided with coloured lights, both in
 “ front and rear.

“ 20. Any of the conductors or drivers employed by the said company
 “ who may be guilty of using profane, abusive or insulting language, or of
 “ overcharging, or of being drunk or disorderly, or of gross carelessness, while 20
 “ in the discharge of his or their duty, upon conviction before the city police
 “ magistrate, the mayor, justice or justices of the peace having jurisdiction,
 “ shall, in addition to the fines and penalties set forth in clause 16 of this bye-
 “ law, be liable to instant dismissal from said employment, and it shall be one of
 “ the provisions of this bye-law, and of the agreement founded hereon, that the
 “ said conductor or driver, or any of them so convicted, shall be liable to instant
 “ dismissal from said employment.

“ 21. Should the company neglect to keep the track, roadway or crossings
 “ between and on each side of the tracks to the extent of eighteen inches in
 “ good condition, or to have the necessary repairs made thereon, as provided by 30
 “ the third section of this bye-law, the city engineer or other officer duly
 “ authorised, shall give notice thereof to said company requiring such repairs
 “ to be made forthwith, and if not made within a reasonable time the said city
 “ engineer or other proper officer may cause the said repairs to be made, and
 “ the costs thereof may be recovered from the said company in any court of
 “ competent jurisdiction, with the costs of prosecution.

“ 22. Should the said company fail to complete the said tracks and run
 “ said cars, and do all that is required of it in the manner provided for in this
 “ bye-law, and within the time limited therein, then the said company shall
 “ forfeit the privileges and rights conferred upon it by this bye-law. 40

“ 23. The privileges granted by the present agreement shall extend over a
 “ period of twenty years from the date of the agreement, but at the expiration
 “ thereof the corporation may, after giving six months' notice prior to the expira-
 “ tion of said term of their intention, assume the ownership of the railways
 “ and all real and personal property in connection with the working thereof, on
 “ payment of their value to be determined by arbitration; and in case the
 “ corporation should fail in exercising the right of assuming the ownership of

“ said railways at the expiration of twenty years as aforesaid, the corporation may, at the expiration of every five years to elapse after the first twenty years, exercise the same right of assuming the ownership of the said railways, and of all real and personal estate thereunto appertaining, after one year’s notice to be given preceding the expiration of every fifth year, as aforesaid, and on payment of their value, to be determined by arbitration.

“ 24. The arbitration aforesaid shall be conducted by three arbitrators, one to be chosen by each of the parties hereto, and the third to be appointed by the two so chosen as aforesaid. In the event of either party hereto failing, neglecting, or refusing to choose an arbitrator for one week after being requested in writing by the other party so to do, then the party who makes such request shall appoint the arbitrator for and on behalf of the party hereto failing, neglecting or refusing as aforesaid, and in the further event of the said two arbitrators being unable or failing to agree upon the said third arbitrator for one week after their appointment, or the appointment of the one of them who was last appointed, then such third arbitrator shall be chosen and appointed by the Chief Justice, for the time being, of the Court of Queen’s Bench for the Province of Manitoba.

“ 25. In the event of any other parties proposing to construct street railways on any of the streets not occupied by the parties to whom the privilege is now to be granted, the nature of the proposal thus made shall be communicated to them, and the option of constructing such proposed railway on similar conditions as are herein stipulated shall be offered, but if such preference is not accepted within two months, then the corporation may grant the privilege to any other parties.

“ 26. This bye-law shall only come into force after an agreement based upon the conditions and provisions herein stipulated, shall have been entered into and executed between the said company and the said corporation of the City of Winnipeg, represented by the mayor and city clerk, who are hereby authorised to sign such agreement.

“ Done and passed in council at the City of Winnipeg, this twelfth day of June, in the year of our Lord one thousand eight hundred and eighty-two.”

9. In pursuance of this bye-law, and for the purpose of more fully carrying the above into effect, and for the purpose of increasing the usefulness of the said streets and highways, the city, on the 7th day of July, 1882, entered into an agreement with the old company, which agreement was duly executed by the proper officers of the city and of the old company under the seal of each corporation, and that agreement is in the words and figures following:—

“ This indenture, made in duplicate this seventh day of July, in the year of our Lord one thousand eight hundred and eighty-two, between ‘ the mayor and council of the City of Winnipeg,’ of the first part, and ‘ The Winnipeg Street Railway Company,’ of the second part.

“ Whereas the legislature of the Province of Manitoba did, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and eighty-two, pass an Act, intituled ‘ An Act to incorporate the Winnipeg Street Railway Company,’ by which Act it is (amongst other things) provided that the city council of the City of Winnipeg and the Winnipeg Street Rail-

RECORD.

II.
*Proceedings
in the
Court of
Queen’s
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Equity).*

No. I.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
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No. I.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany
—continued.

“ way Company are respectively authorised to make, and enter into, any
“ agreement or covenant relating to the construction and operating of said street
“ railway.

“ And whereas the parties of the first part have, by bye-law number one
“ hundred and seventy-eight, authorised and empowered the parties of the second
“ part to lay down, construct, complete, maintain and operate a street railway,
“ subject to the conditions therein expressed.

“ Now this indenture witnesseth that in consideration of the premises and of
“ the sum of one dollar of lawful money of Canada, now paid by the parties of
“ the second part to the said parties of the first part (the receipt whereof is 10
“ hereby acknowledged) they, the said parties of the first part, for
“ themselves and their successors, do hereby grant unto the said
“ parties of the second part, their successors or assigns, the right, full per-
“ mission and authority to construct, maintain, complete and operate, and from
“ time to time remove and change, a double or single track railway with the
“ necessary side tracks, switches and turn-outs for the passage of cars, carriages
“ and other vehicles adapted to the same, upon and along any of the streets or
“ highways of the City of Winnipeg, and to run their cars, take transport and
“ carry passengers upon the same by the force and power of animals or such
“ other motive power as may be authorised by the said council of the said city, 20
“ and on the terms, and subject to the conditions and relations, contained in
“ the bye-law hereinbefore recited, and such railway shall have the exclusive
“ right of such portion of any street or streets as shall be occupied by the said
“ railway, and shall be worked under such regulations as may be necessary for
“ the protection of the citizens of said city.

“ And the parties of the second part for themselves, their successors and
“ assigns, covenant, promise and agree to and with the said parties of the first
“ part and their successors in manner following (that is to say):—

“ That the said railway switches, turn-outs and side tracks shall be of
“ approved construction, and the rails shall be laid in such manner as shall least 30
“ obstruct the free and ordinary use of the streets and the passage of vehicles
“ over the same; the upper surface of the rails shall be laid as nearly as practic-
“ able flush with the surface of the streets, and shall conform to the grades thereof
“ as are now or which may hereafter be established.

“ That the roadway between and at least eighteen inches outside of each
“ rail shall be kept in proper order, and at the expense of said parties
“ of the second part, but whenever the said City of Winnipeg decide to pave,
“ gravel or macadamise the street, streets or highway traversed by the Winnipeg
“ Street Railway Company, the said parties of the second part shall pave, gravel
“ or macadamise the portion occupied by the track or tracks, and a portion 40
“ extending eighteen inches on each side thereof, and at their own expense, and
“ also be bound to construct and keep in repair crossings of a similar character
“ to those adopted by the said City of Winnipeg, and at the intersection of every
“ such railway track with the streets along or across which such track passes.

“ That during the operation of constructing the railway and laying the rails
“ a free passage for vehicles over the streets shall be kept open, and immediately
“ after said rails have been laid the surface of the streets shall be levelled to a

“ condition as near as possible to that in which it was before the commencement
 “ of the construction, and in strict conformity to the preceding section of the
 “ bye-law.

“ That the location of the line of railway in any of the streets or highways
 “ shall not be made until the plans thereof, showing the position of the rails and
 “ other works in such street or streets, shall have been submitted to and approved
 “ by the city engineer or other authorised officer appointed by the said parties of
 “ the first part for the purpose, and that the gauge of said railway track shall be
 “ four feet eight and one half inches.

10 “ That the city authorities, or any duly authorised person, persons or
 “ corporations, shall have the right to take up the streets traversed by the rails
 “ of said company, and to remove all rails, roadways or tracks necessary for the
 “ purpose of paving, grading, gravelling or macadamising the said streets, or for
 “ constructing or repairing any drains or sewers, or for laying down or repairing
 “ water or gas pipes, for raising or altering the grade of such streets, and for all
 “ other purposes within the province and privileges of the corporation of said city,
 “ without being liable to any claims or demands for compensation or for damages
 “ arising from any delays that may be occasioned to the working of the railway,
 “ or to the works connected therewith, by reason of such taking up of any such
 20 “ street, or removal of any such rails, tracks or roadways as aforesaid; provided
 “ always that should the said parties of the first part, or any such duly authorised
 “ person, persons or corporation, shall, without any unnecessary delay, repair
 “ such street, track and roadway, and replace such rails at their own proper cost
 “ and charges, and shall leave such track and roadway in the same or in equally
 “ good condition to that in which it was found by them or any of them before
 “ being taken up or removed.

“ That the said parties of the second part shall place and continue in said
 “ railway tracks good and sufficient cars for the convenience and comfort of the
 “ passengers, and shall run the same at such times and intervals as the public
 30 “ need may require. Each car shall be numbered on the outside and inside.

“ That the said cars shall be run on Main Street, from Broadway to Point
 “ Douglas Avenue, during and at such times as the parties of the first part may
 “ direct, and at intervals each way of not more than thirty minutes, and on all
 “ cross and other streets and extensions where tracks may be laid at such
 “ intervals and at such times in the interests of the citizens as the council by
 “ resolution may direct.

“ That the said parties of the second part shall have their cars running
 “ between Broadway and Point Douglas Avenue, on Main Street, within six
 “ months from the date of this agreement.

40 “ That the said cars shall be run at a speed of not more than six miles per
 “ hour, and the conductors or drivers shall announce to the passengers
 “ the names of the streets and public squares as the cars reach them.

“ That whenever there shall occur a fall of snow which materially obstructs
 “ the tracks (and until such tracks can be again used) the said parties of the
 “ second part are authorised to use sleighs of sufficient capacity, and in sufficient
 “ numbers for the convenience of passengers, and such sleighs shall carry at night
 “ lighted coloured lamps, and the said parties of the second part shall have the

RECORD.

—
II.*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.

Bill of Com-
plaint of the
Winnipeg
Street Rail-
way om-
pany

—continued.

RECORD. " right to charge the same rates of fare thereon as they are entitled to on their
" cars.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

" That whenever it shall be necessary to remove any snow, ice or dirt from
" any of the tracks of the said company, the same shall be removed by the said
" parties of the second part in such a manner as not to obstruct the ordinary
" traffic, and in the case of snow it shall be spread as evenly as possible over the
" street, so as not to interfere with the passage of other vehicles along and over
" the same.

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany

" That the said parties of the second part shall have the right to charge and
" collect from every person on entering any of their cars or sleighs for the 10
" purpose of riding any distance within their route, a sum not to exceed ten
" cents; any person refusing to pay the said fare may be removed from any such
" car or sleigh.

—continued.

" That the said parties of the second part shall not carry packages, baggage,
" or freight exceeding in weight twenty-five pounds for any one passenger.

" That the said parties of the second part shall be liable for all damages
" arising out of the construction or operation of their railways.

" That the cars and sleighs of the said parties of the second part shall be
" entitled to the right of way on the tracks of said railway. All vehicles, however,
" may travel on, along or across said track, but any vehicle, horseman or foot 20
" passenger upon the track shall turn out on the approach of any car, so as to
" leave the track clear.

" Any person or persons refusing to so turn out, or in any way or manner
" obstructing the free passage of said cars on and along said track, shall be liable,
" upon conviction before the city police magistrate, the mayor, or any justice or
" justices of the peace having jurisdiction to a fine not exceeding twenty dollars
" and costs for each offence, or in default of payment of said fine and costs, to
" imprisonment in any lock-up house in said city for a period not exceeding
" thirty days, unless such penalty and costs be sooner paid.

" That the said cars shall not stop on any street crossings, and when leaving 30
" or receiving passengers, the cars shall be stopped so as to leave the rear platform
" as near the edge of the crossing as possible.

" That it shall be the duty of the said parties of the second part to employ
" careful, sober, well-behaved, and prudent conductors or drivers to take charge of
" their cars, and it shall be the duty of such conductors or drivers, so far as
" practicable, to keep vigilant watch for all teams, carriages and persons on foot
" or horseback, either on the track or moving towards it, and on the first
" appearance of danger the car shall be stopped in the shortest space of time
" possible.

" That the cars after dark shall be provided with coloured lights, both in 40
" front and rear.

" That any of the conductors or drivers employed by the said company who
" may be guilty of using profane, abusive or insulting language, or of over-
" charging, or of being drunk or disorderly, or of gross carelessness while in
" the discharge of his or their duty, upon conviction before the city police
" magistrate, the mayor, justice or justices of the peace having jurisdiction
" shall, in addition to the fines and penalties set forth in clause 16 of the bye-

“ law, be liable to instant dismissal from said employment, and it shall be one of
 “ the provisions of the bye-law and of the agreement founded thereon, that the
 “ said conductor or driver or any of them so convicted, shall be liable to instant
 “ dismissal from said employment.

“ That should the said parties of the second part neglect to keep the track,
 “ roadway or crossings between and on each side of the tracks to the extent of
 “ eighteen inches in good condition, or to have the necessary repairs made thereon,
 “ as provided by the 3rd section of the bye-law, the city engineer or other
 “ officer duly authorised, shall give notice thereof to the said parties of the
 10 “ second part, requiring such repairs to be made forthwith, and if not made
 “ within a reasonable time the said city engineer or other proper officer, may
 “ cause the said repairs to be made, and the costs thereof may be recovered from
 “ the said parties of the second part in any court of competent jurisdiction, with
 “ the costs of prosecution.

“ That should the said parties of the second part fail to complete the said
 “ tracks and run said cars, and do all that is required of it in the manner
 “ provided for in the bye-law, and within the time limited therein, then the said
 “ parties of the second part shall forfeit the privileges and rights conferred upon
 “ it by the bye-law.

20 “ That the privileges granted by the present agreement shall extend over
 “ a period of twenty years from the date hereof, but, at the expiration thereof,
 “ the said parties of the first part may, after giving six months’ notice prior to
 “ the expiration of said term of their intention, assume the ownership of the
 “ railways and all real and personal property in connection with the working
 “ thereof, on payment of their value, to be determined by arbitration, and in
 “ case the said parties of the first part should fail in exercising the right of
 “ assuming the ownership of said railways at the expiration of twenty years as
 “ aforesaid, the said parties of the first part may, at the expiration of every five
 “ years, to elapse after the first twenty years, exercise the same right of assuming
 30 “ the ownership of the said railways and of all real and personal estate there-
 “ unto appertaining, after one year’s notice to be given preceding the expiration
 “ of every fifth year as aforesaid, and on payment of their value, to be determined
 “ by arbitration.

“ That the arbitration aforesaid shall be conducted by three arbitrators,
 “ one to be chosen by each of the parties hereto, and the third to be
 “ appointed by the two so chosen as aforesaid. In the event of either party
 “ hereto failing, neglecting or refusing to choose an arbitrator for one
 “ week after being requested in writing by the other party so to do, then the
 “ party who makes such request shall appoint the arbitrator for and on behalf of
 40 “ the party hereto failing, neglecting or refusing as aforesaid; and in the further
 “ event of the said two arbitrators being unable, or failing to agree upon the said
 “ third arbitrator for one week after their appointment of the one of them who
 “ was last appointed, then such third arbitrator shall be chosen and appointed by
 “ the Chief Justice for the time being of the Court of Queen’s Bench for the
 “ province of Manitoba.

“ That in the event of any other parties proposing to construct street
 “ railways on any of the streets not occupied by the parties to whom the

RECORD.

II.
 Proceedings
 in the
 Court of
 Queen’s
 Bench (in
 Equity).

No. 1.
 Bill of Com-
 plaint of the
 Winnipeg
 Street Rail-
 way Com-
 pany

—continued

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany
—continued.

“ privilege is now granted, the nature of the proposal thus made shall be commu-
“ nicated to them, and the option of constructing such proposed railway, on
“ similar conditions as are herein stipulated shall be offered, but if such pre-
“ ference is not accepted within two months, then the parties of the first part may
“ grant the privilege to any other parties.”

10. Immediately upon the execution of that agreement and for the purpose
of carrying the same into effect, the old company paved with wooden ties or
timbers, that portion of Main Street lying between the Assiniboine river and
the track of the Canadian Pacific Railway Company where it crosses Main
Street, which includes that portion of Main Street mentioned in the 8th para- 10
graph of the bye-law, and is a distance of about two miles, and this pavement
was sunk by the old company into the earth to the level of the top of the clay
in the street, and iron rails were placed upon this pavement, all of which was
done to the satisfaction of the city and of its engineer.

11. The pavement last above described was for the whole of the way eight
feet wide, and for a portion of the way sixteen feet wide, and the same gave a
firm, level road bed, smooth on top, and convenient to be used as a highway for
carriages and other vehicles, and very greatly improved the street as a highway;
and so soon as the same was so put down it was used by the citizens of the
city and other persons as a waggon road or highway, and the same was very 20
extensively used as such highway, and the portion so paved continued to be used
until that street was paved by the city, as hereinafter mentioned; and the pave-
ment put down by the old company above described was practically worn out and
rendered useless by the user thereof by the public, as hereinbefore set
forth.

12. The old company commenced running their cars upon the said track
within six months of the date of the agreement, as provided for by section 9 of
the bye-law, and fully complied with all the provisions of the bye-law and the
agreement.

13. In the year 1883 the old company laid down a similarly paved roadway, 30
commencing at the Main Street pavement above described, and running thence
westerly on Portage Avenue to the junction of that avenue and Kennedy Street,
and thence along Kennedy Street to Broadway, which said Portage Avenue,
Kennedy Street and Broadway were, at the date of the agreement, and are now
streets and highways of the city, and are covered by the provisions of the said
bye-law and agreement.

14. Upon that roadway the old company laid down iron rails, and at once in
that year commenced running street cars, in accordance with the provisions of
the bye-law and agreement.

15. The Plaintiffs show that the said roadway was built in the same manner 40
and of the same material as the one laid down on Main Street, and upon the
completion thereof the same was used by the citizens and others as a roadway for
vehicles in the same manner as the roadway laid down by the old company on
Main Street, as hereinbefore detailed.

16. The said paved roadway extended upon Portage Avenue for a
distance of half a mile, and upon Kennedy Street for a distance of a quarter of
a mile.

17. In the year 1885 the old company continued their street railway track, and constructed and completed the same upon Main Street, beginning at the end of their track upon Main Street, which they had completed in 1882, and continued the same northward to the northern limit of the City of Winnipeg, and thence onward for some distance into the adjoining municipality, thereby making a continuous street railway track upon Main Street from the Assiniboine River northward to beyond the northern limit of the City of Winnipeg—thus entirely completing a continuous line of street railway on Main Street three miles and a half in length.

10 18. As soon as the Plaintiffs completed the construction of this last-mentioned portion of their road, and in the year 1885 they commenced operating the same by running their street cars upon this newly laid track, and they have ever since continued running such cars upon said track.

19. In the year 1890 the old company applied to the council of the city under said agreement for leave to construct a street railway upon the streets of the City, beginning upon Main Street, where the same is crossed by the Assiniboine River and thence southerly along Main Street, River Avenue and Pembina Street to the southern limit of the City of Winnipeg, to be operated by electricity as a motive power; and this application was considered by the city,
20 and leave was granted whereby the old company were authorised to lay down a line of street railway along those streets to be operated by the motive power of electricity.

20. Pursuant to this leave, granted as aforesaid, the Plaintiffs, in the year 1890, at great expense laid down the necessary timbers and pavement, and thereon fixed iron rails and fully completed the line of street railway upon and along Main Street from the Assiniboine River, thence southerly to the end of that street, and thence along River Avenue to its junction with Pembina Street, and thence along Pembina Street to the southern boundary of the City of Winnipeg, and continued the road beyond that point into the adjoining municipality; and
30 the old company have not yet built or operated any street railway upon any of the streets of the city, except the streets and highways hereinbefore in this Bill mentioned.

21. For the purpose of operating that portion of the street railway last above-described by electricity, as agreed upon, the old company erected large and expensive works and buildings, with steam-engine and necessary plant, for the purpose of generating electricity, and in erecting this plant and machinery they expended over sixty thousand dollars.

22. The buildings and machinery were put up and erected by the Plaintiffs at the north end or limit of the said electric street railway, so that the same
40 could be conveniently used in operating by electricity the street railway lines which they had previously built, as soon as they could change their iron rails to those suitable for electric power and erect the necessary poles.

23. As soon as the electric street railway was built and completed, and as soon as the buildings were completed (which was in the month of February, 1891), the Plaintiffs commenced operating that railway as a street railway with the cars propelled by electricity, and the Plaintiffs have ever since continued to operate and still operate the same.

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.

Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany

—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany
—continued.

24. The street railway line, operated by electricity last above described, is three and three quarter miles in length.

25. The Plaintiffs show as the fact is that in the month of February, 1891, they had running and were operating their lines of street railway upon the public streets and highways of the City of Winnipeg for over nine miles in length, and these railways were of great use to the citizens of the City of Winnipeg and of great advantage to the city, and the Plaintiffs have always in every way complied with all the provisions and requirements of the bye-law and the agreement, and have fully performed the same on their part.

26. For the first few months after the completion of their railway line, in 1882, the old company charged ten cents to each passenger travelling upon their said railway, but in that year the fare was reduced to five cents, and has remained at that rate ever since.

27. Ever since the completion of each portion of the street railway hereinbefore set forth, the old company have continuously operated the same as a street railway up to the present time, and have continued running their cars upon each such portion from early in the morning until very late at night, and have always been ready and willing to carry, and have always carried, all persons entering their cars, and have always permitted everyone so desiring to enter their cars to be carried upon their railway; and this service has been of great advantage and profit to the City of Winnipeg and to the citizens thereof.

28. In the year 1885 the City of Winnipeg decided to pave with wooden blocks that portion of Main Street between the Assiniboine River and the Canadian Pacific Railway, and in order to make the same less expensive to the city, the city, pursuant to the terms of the said agreement, called upon the old company to pave and pay for, and the city required the old company to pave and pay for the pavement of that portion of Main Street lying between each of their rails, and a foot and a half each side thereof outside, from the Assiniboine River to the crossing of the Canadian Pacific Railway; and accordingly and pursuant to that requirement the old company did pave and did pay for the pavement of that portion of Main Street eight feet wide, extending from the Assiniboine River to the crossing of the said Canadian Pacific Railway, and this pavement cost the Plaintiffs the sum of fourteen thousand dollars.

29. In the year 1888 the city in like manner required the old company to repave Portage Avenue and Kennedy Street; and pursuant to that requirement, and pursuant to the agreement and bye-law, the old company paved and paid for the pavement of that portion of Portage Avenue and Kennedy Street upon which they had previously erected their street railway as before mentioned, to the width of eight feet. This pavement was also of wooden blocks upon planks similar to that on Main Street above described, and cost the Plaintiffs the sum of five thousand dollars.

30. In the year 1891 the city in like manner required the old company to pave that portion of Main Street extending from the track of the Canadian Pacific Railway Company to the northern limit of the city; and pursuant to the agreement and pursuant to the city's requirement, the old company paved in the manner last above described, and paid for the pavement of the said last-mentioned portion of Main Street, which pavement cost the Plaintiffs the sum of fifteen thousand dollars.

31. All the pavements last above-mentioned are constructed of wooden blocks, lying upon planks, and so adjusted as to make a smooth, complete and even roadway for carriages and vehicles of all kinds, and the pavement so completed by the Plaintiffs are of great advantage and great use to the citizens and others using the said streets and highways, and the completion thereof by the Plaintiffs is of great advantage to the city, and releases the city from the expense of constructing the same.

32. Ever since the old company constructed its first pavement, and ever since the renewal thereof by wooden blocks last above-mentioned, the Plaintiffs
10 have kept the portion constructed and paid for by them in good and sufficient repair, and these pavements have ever since been commonly used and enjoyed by the citizens and others as a highway and place for convenient travel.

33. The cars upon the whole of the old company's lines of street railway have always been and are now drawn by horses, except that portion above described which has been operated by electricity; but recently the Plaintiffs, believing that it would be more to the advantage of themselves and of the citizens to have these cars propelled by electricity, applied to the city for leave to operate the same by electricity; and although the city consented to allow the Plaintiffs to operate a portion of their line by electricity, as above set forth, and the portion to
20 be hereafter erected as hereinafter mentioned, yet the city have always neglected and refused thus far to permit the Plaintiffs to operate the rest of their line by electric power.

34. When the old company received permission to operate by electricity the portion so operated as above described, they believed that they had the right to operate the remainder of their system by that power, and for that purpose the Plaintiffs erected their power house and machinery at the northern end of the line, heretofore operated by electricity, in the central portion of the city.

35. The city has not communicated any proposal or made any offer to the old company, as provided for in section 25 of the bye-law, and as provided for in
30 the last paragraph of the agreement, nor has the old company been given any option, as provided for in that clause of the bye-law and the agreement.

36. The old company desires to extend its street railway system upon and along the following other streets of the city—namely, upon Central Avenue, from Portage Avenue to Fourteenth Street North; also upon Fourteenth Street North, from Central Avenue to 8th Avenue North; also upon 8th Avenue North, from Fourteenth Street North to Main Street; and also upon Seventeenth Avenue North, from Main Street to Twenty-fourth Street North; and thence to the exhibition grounds main gates; and also upon Portage Avenue, from the terminus of its line as now laid down upon that avenue to Boundary Street, and
40 has made arrangements for the immediate commencement of that work, and desires and intends within the next year to complete the work upon those streets by laying down the track for the street railway, and by operating street cars upon the same. All the above-named streets were at the date of the agreement made between the old company and the city streets and highways of the said city, and are included in the terms of the agreement.

37. Recently the old company notified the city of its intention to lay those tracks upon the streets above mentioned, and requested the city to consent to

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany

—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 1.
 Bill of Com-
 plaint of the
 Winnipeg
 Street Rail-
 way Com-
 pany
 — continued.

use of electricity as a motive power upon those lines, and the city not only consented that the old company might use electricity as a motive power on the last mentioned streets, but requested the old company to use such electric power; and the old company as aforesaid is now about to lay down street railway tracks for a street railway system, to be operated by electricity upon these last mentioned streets, and for this purpose will connect the electric street railway system which it is already operating with the electric system upon the streets last above mentioned.

38. When the various portions of the street railway were from time to time completed, as above set forth, the operation thereof by the old company was for a long time a loss to the company, and only recently, on account of the growth of the city, has the traffic of the railway been profitable to them. From now, onward, however, owing to the steady increase in the population of the city, and owing to the increased facilities which the old company now have, they expect the profits of their enterprise, and expect, within the next few years, to get a return for all the capital invested heretofore by the company.

The plant and machinery of the old company, which will be on hand at the end of the term of their agreement, should the present rights of the company remain and be protected, will be worth over five hundred thousand dollars, and by the terms of the said agreement the company may either continue the user of that plant with the franchises which they now possess, or the city must take over the same and pay the old company therefor, as provided by the agreement and bye-law.

39. The Act of Incorporation of the City of Winnipeg hereinbefore in this Bill referred to, continued to be law and to be their Act of Incorporation until the passing of the Act of the Legislature of Manitoba, passed in the 49th year of Her Majesty's reign, chapter 52, but the city, as a corporation, continued to exist under the last mentioned Act with slightly changed powers.

40. The Plaintiffs show, as the fact is, that notwithstanding the change of the powers of the city by the last mentioned Act, the rights secured to the old company by the bye-law and agreement still continued and still exist.

41. Recently and after the city had consented to the old company using electric power on their street railway to be built upon the streets referred to in the 36th paragraph of this Bill, the city resolved upon depriving the old company of the rights secured to them by the bye-law and agreement hereinbefore set forth, and for this purpose the city, on the 1st day of February, 1892, passed a bye-law, which bye-law is known as as "Bye-law No. 543 of the City of Winnipeg," and is set out in full in Schedule "A" of the Act of the legislature of this province passed in the 55th year of Her Majesty's reign, chapter 56.

42. For the purpose of carrying this design into effect the City of Winnipeg, with the assistance of the persons in that Act mentioned, procured the Legislature of this province to pass the said last mentioned Act, and to thereby attempt to confirm the *ultra vires* and unlawful provisions of the said bye-law.

43. Pursuant to the last mentioned Act the new company was incorporated

and proper steps were taken for the organization thereof, and officers of the company were elected and the company commenced its corporate existence, as provided by the Act.

44. On or about the 15th day of June, 1892, James Ross and William McKenzie, the parties referred to in Bye-law No. 543, duly assigned and transferred to the new company all the rights, powers and privileges granted to them by the said bye-law, and thereby and by reason of the provisions of section 33 of that bye-law, the new company acquired all the rights and powers of the said Ross and McKenzie granted by the said bye-law.

10 45. Immediately upon such transfer to the new company, the new company entered into an agreement with the city, which agreement embodied the terms of that bye-law, and thereby the new company covenanted and agreed with the city that the said new company would perform and carry out the provisions of that bye-law on their part, as provided for in the said last-mentioned section thereof.

46. As soon as the last-mentioned contract had been entered into, the new company applied to the city for leave to build their street railway upon that portion of Main Street, lying between the track of the Canadian Pacific Railway and 17th Avenue North, thence upon and along 17th Avenue North from Main
20 Street to 24th Street North, and thence upon the last-mentioned street, to the exhibition grounds main gate; and this leave the city duly granted and the new company then commenced and have since then completed their electric street railway upon all those portions of the streets last above-mentioned.

47. The new company, in the completion of this work, laid down ordinary railway ties, with a space of twenty inches between each one, and upon these ties at right angles to them, laid down ordinary railway iron, and completed the same as an ordinary railway track, with the railway iron four feet eight and a-half inches apart.

48. Upon these ties and alongside of each iron rail the new company have
30 spiked planks, and between these planks, in the middle part of the roadbed, they have filled this space with mud and gravel.

49. The new company have erected along the said streets poles on each side thereof, and they have wires connecting each such pole at right angles to the roadway, and upon these wires and running along above the centre of the roadway, they have suspended a large copper wire for the purpose of conducting the electricity to be used in propelling their cars—all of which has been done with the sanction and consent of the city.

50. Upon the streets and parts of streets last above-mentioned the company are running cars and carrying passengers for hire as a street railway, to the
40 detriment of the old company.

51. The new company have commenced tearing up the pavement of Main Street between the crossing of the Canadian Pacific Railway and the Main Street Bridge, and have commenced laying down iron rails upon sleepers to be used in the running of their electric street railway upon that portion of Main Street last above-mentioned, and the company are threatening and endeavouring to cross the street car tracks of the old company by laying their lines up to the same and crossing the same at different parts of Main Street so as to lay down

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.

Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany

— continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.

*Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany*

—continued.

their lines of street railway parallel to the old company's lines on the above-mentioned street and across the same at switches and so as to form switches on the new company's line.

52. The old company have had for many years a double track of street railway upon that portion of Main Street last above mentioned, and the same is constantly used in the operation of the road; these two tracks are about twenty-four feet apart, and they are connected in several places by switches and cross tracks, and the new company are now upon that portion of Main Street last above mentioned also laying down double tracks, so that when completed there will be upon Main Street—if the new company are permitted to complete their lines—two 10 tracks of ordinary street railway with ordinary street railway iron, and two tracks of ordinary railway iron laid down in the pavement, making in all, in the principal part of Main Street, four tracks of street railway, with switches and cross tracks; and in this part of Main Street the travel by ordinary vehicles is very great.

53. The new company threaten and intend to, and will, unless restrained by the order and injunction of this honourable Court, complete their tracks upon the portion of Main Street last above mentioned by laying down thereon the ordinary railway iron above described; and they will, unless so restrained, intersect the old company's line of street railway, and cross the same with their said tracks 20 of railway iron, and will tear up and mutilate the old company's street railway tracks and road-bed and mutilate their iron, and will impede the old company in their traffic upon their lines of street railway.

54. The new company threaten and intend to, and will, unless restrained by the order and injunction of this Honourable Court, lay down their electric railway upon all the streets mentioned in the 36th paragraph of this Bill, and will lay thereon a road-bed similar to the one already built by them, and will erect poles and wires, and will operate the same in the same manner in which they have built, erected and operated the portion above described.

55. The streets mentioned in the 14th paragraph of bye-law No. 543, which 30 is Schedule "A" to the Act of Incorporation of the new company, are the same streets and avenues which are mentioned in paragraph 36 of this Bill, and the Main Street, which is referred to in the old company's bye-law and agreement, is the Main Street referred to in the bye-law set forth in Schedule "A" of the Act of Incorporation of the new company.

56. The streets and avenues referred to in Sections 14 and 31 of the bye-law set forth in the said Schedule "A," were streets and avenues of the City of Winnipeg at the date of the entering into of the agreement between the old company and the city hereinbefore set forth, and had been streets and avenues of the city for more than a year previous thereto, and are streets or highways referred 40 to in the said agreement, and are covered by the provisions thereof.

57. Seventeenth Avenue North and Twenty-fourth Street North are narrow streets, and owing to the obstructions placed thereon by the new company, with the sanction of the city above set forth, the old company are unable to lay down their line of street railway upon the same. If these two lines were permitted upon the same street it would be closed to public travel, or at all events would be so unsafe for travel that the public would be deprived of the use of the same for vehicles and conveyances of various kinds.

58. The Plaintiffs show, as the fact is, that the city has not communicated to the old company the offer of the new company to construct street railways upon the streets and avenues set forth in the 36th paragraph of this Bill, or any of the streets of the City of Winnipeg, nor has the city given the old company the option of constructing the proposed railway, as provided for in the bye-law and agreement made between the old company and the city.

59. The old company show that, by the terms of their agreement with the city, they are bound to remove the snow from their tracks in the winter and spread the same evenly over the highway, and by the bye-law referred to in
10 schedule "A" aforesaid, and by the agreement made between the new company and the city, the new company are bound to remove the snow and ice, and spread the same evenly over the balance of the street.

60. The Plaintiffs show that the streets and highways mentioned in paragraph 36 of this Bill are greatly used by the citizens and others as thoroughfares of traffic for vehicles and carriages of various kinds, and on account of the great traffic with such carriages, and on account of the provisions for removing snow and ice above set forth, it is not possible, without serious danger to life and property, to have four tracks of street railway upon Main Street, and rival lines of street railways upon the other streets mentioned in paragraph 36.

20 61. The new company intend to charge and receive fares from passengers travelling in their said street cars, and by so doing, and by carrying passengers upon their various proposed lines of street railway, they will interfere with the rights and privileges of the Plaintiffs, and will reduce the income of the Plaintiffs, and will carry passengers that the Plaintiffs otherwise would and should carry upon their said street railway cars, and will otherwise injure and embarrass the Plaintiffs.

62. The new company, if they are permitted to build the proposed street railway, will interrupt the Plaintiffs in the user of their line of street railway by crossing the same, and by intercepting the Plaintiffs' street cars at those crossings,
30 and will otherwise injure the Plaintiffs, and will, on account of the narrowness of the streets, prevent the old company from building their line of railway upon the other streets of the city not now occupied by the Plaintiffs.

The Plaintiffs therefore pray—

1. That it may be declared by this Honourable Court that they have the exclusive right to the use of the whole of Main Street now occupied by the Plaintiffs, for their street railway, and also to that part of Portage Avenue and Kennedy Street upon which the Plaintiffs are now running their street cars, and
40 that the Defendants, the Electric Street Railway Company, may be restrained by the order and injunction of this Honourable Court from operating street railways upon the said streets.

2. That the Defendants, the Electric Street Railway Company, may be restrained from laying down their line so as to cross the line of the Plaintiffs' street railway, except for the purpose of crossing the same to run upon streets which are not occupied by the Plaintiffs, and which the Plaintiffs do not wish to occupy.

3. That the said Defendants, the Electric Street Railway Company, may be

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RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 1.
Bill of Com-
plaint of the
Winnipeg
Street Rail-
way Com-
pany
—continued.

RECORD. restrained from operating any street railway upon any of the streets or portions of streets mentioned in the 36th paragraph of the Plaintiffs' Bill.

II.

Proceedings in the Court of Queen's Bench (in Equity).

No. 1.
Bill of Complaint of the Winnipeg Street Railway Company
—continued.

4. That it may be declared that the Plaintiffs have the first right to build and construct street railways upon any streets in the city of Winnipeg not now occupied by them, and that the Defendants, the Electric Street Railway Company, have no right to occupy the same until after the Plaintiffs have been offered the privilege of constructing the same and have not accepted such offer within two months.

5. That the Defendants, the Electric Street Railway Company, be restrained by the order and injunction of this Honourable Court from in any way impeding 10 or obstructing the Plaintiffs, or taking up, or in any way interfering with the tracks of their street railway.

6. That it may be declared that the city has no right to deprive itself of, or contract away its right to permit the Plaintiffs to use electricity as a motive power for propelling street cars.

7. That the city be restrained by the order and injunction of this Honourable Court from giving its consent to the user of the streets mentioned in the 36th paragraph of this Bill until after the Plaintiffs have neglected for two months to accept the offer or proposal to build thereon, and that the city be restrained from assisting the Winnipeg Electric Street Railway Company in 20 building and operating their street railway upon the streets of the City of Winnipeg, which are now occupied by the Plaintiffs' street railway.

8. That the Defendants may be ordered to pay the costs of this suit, and that for the purposes aforesaid all proper directions may be given and accounts taken.

9. That the Plaintiffs may have such further and other relief as the nature of the case may require.

And the Plaintiffs will ever pray.

In the Queen's Bench.—In Equity.

No. 2.
Answer of the Defendants, the Winnipeg Electric Street Railway Company, to the Plaintiffs' Bill of Complaint.

Between

The Winnipeg Street Railway Company *Plaintiffs.* 30

and

The Winnipeg Electric Street Railway Company and The City of Winnipeg *Defendants.*

The answer of the Defendants, the Winnipeg Electric Street Railway Company, to the Plaintiffs' bill of complaint in this cause.

In answer to the said bill of complaint the Defendant Company say as follows:—

1. The admissions made herein are made for the purposes of this suit only.

2. The Defendant Company are the company incorporated by chapter 40 number fifty-six of the statutes passed by the Legislative Assembly of the Province of Manitoba, in the year one thousand eight hundred and ninety-two.

3. The Defendant Company admit the truth of the statements as contained in the third, forty-third and forty-ninth paragraphs of the said bill of complaint, and that all the rights, powers and privileges granted to James Ross and William McKenzie under bye-law number five hundred and forty-three of the City of Winnipeg, have been duly assigned to the Defendant Company, and that the Defendant Company have acquired all the said rights, powers and privileges.

4 The Defendant Company deny that the City of Winnipeg consented or agreed to allow any portion of the Plaintiffs' lines lying north of the Assiniboine River to be operated by electricity, and deny the truth of so much of paragraph number thirty-seven of the said Bill as states that the City of Winnipeg agreed or consented that the Plaintiffs might use electricity as a motive power, or requested such use upon the streets in said paragraph referred to, and the truth of the statements contained in the fifty-seventh paragraph of the Plaintiffs' Bill, and so much of the sixtieth paragraph of the Plaintiffs' Bill as states that it is not possible, without serious danger to life or property, to have the tracks of the railways therein mentioned on the streets therein mentioned.

5. That by indenture of assignment, bearing date the third day of June, one thousand eight hundred and ninety-two, James Ross and William McKenzie, mentioned in the Plaintiffs' bill of complaint, duly assigned to the Defendant Company all their rights and privileges under bye-law number five hundred and forty-three of the City of Winnipeg, referred to in the said bill of complaint, as provided by the thirty-third clause of the said bye-law.

6. That by indenture, bearing date the fourth day of June, one thousand eighth hundred and ninety-two, the Defendant Company duly executed and entered into a contract and covenant with the City of Winnipeg to perform all the matters and things, and embodying the terms contained in the said bye-law number five hundred and forty-three, and of the contract thereunder, bearing date the eight day of February, one thousand eight hundred and nine-two, which had theretofore been executed by the said James Ross and William McKenzie and the City of Winnipeg, under the terms of the said bye-law number five hundred and forty-three, and which last mentioned contract embodied the provisions of the said bye-law number five hundred and forty-three.

7. That on the thirtieth day of May, one thousand eight hundred and ninety-two, the Council of the City of Winnipeg duly passed bye-law number five hundred and fifty-six of the said city, enacting that on the terms therein mentioned the Defendant Company were authorised to construct and operate their line of railway on Main Street aforesaid between the Assiniboine River and the Canadian Pacific Railway, and that bye-law number five hundred and forty-three aforesaid should in all respects apply to the construction and operation of said line.

8. That on or about the twenty-ninth day of May, one thousand eight hundred and ninety-two, construction was commenced of the Defendant Company's line of street railway on Main Street in the City of Winnipeg, north of the Canadian Pacific Railway, and along said Main Street North to Seventeenth Avenue North, and thence along Seventeenth Avenue North to Twenty-fourth Street North; and thence southerly along Twenty-fourth Street North, in said

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 2.
Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 2.

Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint
—continued.

city, to the main gates of the exhibition grounds. And said lines were ready for operation and were first operated on the twenty-fifth day of July, one thousand eight hundred and ninety-two, and since that date have been continually operated, as permitted by bye-law number five hundred and forty-three of the City of Winnipeg, referred to in the bill of complaint.

9. That on the twenty-first day of July, one thousand eight hundred and ninety-two, the Defendant Company commenced laying their double line of street railway, on Main Street, in said city, on the south side of the Canadian Pacific Railway tracks, and proceeded continuously from that time to complete said line on Main Street aforesaid, from the Canadian Pacific Railway tracks southerly to the Assiniboine river, and operation of one of said double lines was commenced on the fifth day of September, one thousand eight hundred and ninety-two, and a few days thereafter both of said lines on Main Street, between the Canadian Pacific Railway and the Assiniboine River were put in operation. The Defendant Company's cars have since that time continued to be run on and over said double line, and the same has since been in full and constant operation for the carrying of passengers; carrying a large number of passengers daily (except Sundays), from seven o'clock in the morning till eleven o'clock at night, at the fares provided for in said bye-law number five hundred and forty-three .

10. That on the tenth day of September, one thousand eight hundred and ninety-two, the Defendant Company commenced construction of their lines of street railway on Portage Avenue, in said city, from its junction with Main Street to Boundary Street, and on the twentieth day of September, one thousand eight hundred and ninety-two, they commenced the construction of their line of railway on Central Avenue in said city, and have continued the construction of same along Central Avenue to Fourteenth Street North, and thence along Fourteenth Street North to Eighth Avenue North, and thence along Eighth Avenue North to Main Street aforesaid, and the lines of railway in this paragraph mentioned are now nearly ready for operation.

11. That the said lines of street railway, together with their location on said streets, and the position and style of their tracks, roadbeds, rails, poles, wires and all other appliances in connection therewith, have been duly approved of by the city engineer of the said city by his certificate, given therefor under said bye-law number five hundred and forty-three, and by the council of said city.

12. That on the fourteenth day of June, one thousand eight hundred and ninety-two, the Defendant Company caused the Plaintiffs to be served with a notice in writing, under the corporate seal of the Defendant Company, and the signature of the secretary thereof, stating that it was the intention of the Defendant Company to apply to the railway committee of the executive council of the province of Manitoba, on the twenty-fourth day of June, one thousand eight hundred and ninety-two, at the hour and place in the said notice mentioned, for the sanction and approval of such committee of the crossings and intersections with the lines of the Plaintiffs on Main Street and Portage Avenue aforesaid, by the lines of the Defendant Company.

13. That plans of said intended crossings and intersections were delivered to the Plaintiffs before the time fixed for the hearing of such application, and after several postponements of said hearing by said railway committee, said application

was made before and heard by said railway committee in the presence of the counsel and manager for the Plaintiffs, and counsel and manager of the Defendant Company, and the city engineer of said City of Winnipeg.

14. That after hearing the matters and details in connection with the said proposed crossings and intersections, and suggestions then made by the Plaintiffs' counsel and manager, as to the mode of construction of said crossings, and hearing counsel on behalf of all parties, the decision of the Railway Committee thereon was reserved, and afterwards, on or about the eighth day of the month of September, one thousand eight hundred and ninety-two, the decision of said
10 committee was given thereon as to the proposed crossings on Main Street, permitting and allowing said crossings on Main Street aforesaid, except crossings numbers A, B and C on plan number one of the plans of said crossings produced before said committee, to be made in the manner in which said crossings on said Main Street have since been made by the Defendant Company. The said order and decision permitting and sanctioning said crossings and intersections on Main Street is contained in a written order made by the said railway committee, and bearing date the tenth day of September, one thousand eight hundred and ninety-two.

15. The said crossings on Main Street so approved of have since been made
20 and effected by the Defendant Company, and the Defendant Company have complied in all respects with the directions of said decision and order, and have executed the agreement and covenant mentioned therein, and have effected the said crossings with as little damage as possible, and without any interruption of the Plaintiffs' traffic on their said Main Street lines.

16. An order was, on the eighteenth day of October, one thousand eight hundred and ninety-two, duly made by the said railway committee of the executive council of Manitoba approving of the crossings of the Plaintiffs' line on Portage Avenue in said city by the line of the Defendant Company, and the Defendant Company intend to make such crossings on Portage Avenue pursuant
30 to said order.

17. That the Plaintiffs were well aware of the commencement and continuation of said works of construction of the Defendant Company's lines at the time that the same were commenced and under construction respectively, and were also aware previously to such commencement and construction that it was the intention of the Defendant Company, under the powers vested in them by virtue of their Act of Incorporation and said bye-laws, and their contract with the City of Winnipeg, to proceed with such construction and with the operation of said lines.

18. The Defendant Company say that there has never been any agreement
40 between the City of Winnipeg and the Plaintiffs permitting or authorising the use of electricity as a motive power on any of the streets of said city on which the Defendant Company's lines are now being constructed or in operation, and that the Plaintiffs have always declined to construct any lines of railway on Central Avenue, Fourteenth Street North, or Eighth Avenue North, or on Portage Avenue from the intersection of Eighth Street South, therewith westerly to the intersection by Boundary Street, or on Seventeenth Avenue North, or Twenty-fourth Street North referred to in the bill of complaint.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 2.

Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint

—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 2.
 Answer of
 the Defen-
 dants, the
 Winnipeg
 Electric
 Street Rail-
 way Com-
 pany, to the
 Plaintiffs'
 Bill of Com-
 plaint
 — continued.

19. For a long time before the passing of bye-law number five hundred and forty-three of the City of Winnipeg, referred to in said bill of complaint, the Plaintiffs had declined, and up to the present time the Plaintiffs have declined to agree with the said city or council thereof to construct lines of railway to be operated by electricity as a motive power on the streets on which the Defendant Company are constructing or operating their lines, and in the month of January, one thousand eight hundred and ninety-two, the council of said city, being desirous of providing proper transportation and travelling facilities on the said streets, decided to ask for tenders and propositions from any parties who might wish to construct street railways in the city of Winnipeg, including the street 10 railways on the streets on which the Defendant Company's lines are now being constructed and in operation, and including the Plaintiffs, and gave notice of their desire to obtain and consider applications for such privileges and franchise, and in answer thereto, the Plaintiffs and James Ross and William McKenzie, in said bye-law number five hundred and forty-three mentioned, made offers for such franchise, and the Plaintiffs, and James Ross and William McKenzie deposited with the said city, as earnest of their good faith on such application, each the sum of ten thousand dollars (\$10,000).

20. That thereupon the council of the said city fully considered the said offers and applications, and after hearing the representatives of the said applicants, 20 concluded that in the interests of the said city, the franchise and privileges provided for in said bye-law number five hundred and forty three of the said city should be given to the said James Ross and William McKenzie, and thereupon passed the said bye-law number five hundred and forty-three, the terms of which were thereupon duly complied with by the said James Ross and William McKenzie, and the deposit made by the Plaintiffs as aforesaid was then applied for by and returned to them.

21. The Plaintiffs, during said negotiations, declined and refused to accept the franchise for constructing street railways in said city, on the terms contained in said bye-law number five hundred and forty-three; and although the 30 said franchise provided for in said bye-law number five hundred and forty-three was not in all respects on the terms proposed by the said James Ross and William McKenzie on their said application, the said bye-law, when passed, was accepted by them as aforesaid.

22. That previously to the passing of the said bye-law number five hundred and forty-three, and on the twenty-eighth day of December, 1891, the council of the said City of Winnipeg had passed a certain bye-law of the said city, number five hundred and forty-one, containing to a large extent the same terms as the said bye-law number five hundred and forty-three, and granting to the said James Ross and William McKenzie the privileges therein provided for with reference to 40 building and operation of street railways on the streets of the City of Winnipeg, including the streets on which the Defendant Company have now constructed and are operating their said lines; and the terms of the said bye-law number five hundred and forty-one were well known to the Plaintiffs at the time of their said application and tender. Said bye-law number five hundred and forty-one was, in consequence of the application of James Ross and William McKenzie for the correction of certain errors, therein repealed, and it was at that time that

the said council decided upon asking for the said tenders and propositions, which afterwards resulted, after fair and open competition for the franchise therein granted between the Plaintiffs and the said James Ross and William McKenzie in the passing of said bye-law number five hundred and forty-three.

23. That, in the early part of the year 1891, and a number of months previously to the passing of the said bye-law number five hundred and forty-three, the Plaintiffs, wishing to obtain certain privileges from the City of Winnipeg with reference to the street railways in said city, submitted to the council of the said city a proposition contained in a draft bye-law then submitted by the Plaintiffs to said council, which draft bye-law was not, after consideration by the said council, accepted or passed by said council or by said city.

24. That in said draft bye-law so submitted by the Plaintiffs they asked that the council should agree to the following clause, among others, being inserted therein:—

“The company, except in cases where other lines may cross its lines, shall have the exclusive right to operate its street railway system on the streets of Winnipeg on which it is at present running the same, and also on the streets for which permission to put down railway lines may hereafter be granted,” but the council of the said city did not agree to the terms proposed in said draft bye-law, and neither the same nor any other bye-law than said bye-law number one hundred and seventy-eight, referred to in the bill of complaint, has ever been passed by the said city or the council thereof granting any privileges whatever to the Plaintiffs.

25. With the exception of the spaces occupied by the crossings of the Plaintiffs' lines by the lines of the Defendant Company, the Defendant Company's lines and works do not and will not occupy any portion of the roadway or space of said streets occupied by the lines of railway of the Plaintiffs' lines or railway or works of the Plaintiffs on said streets, or in any way obstruct or interfere with their tracks or the running of their cars or carriages, and since the making and operation of the Defendant Company's lines the Plaintiffs have continued and do now operate their lines freely, safely and without obstruction by the lines or works of the Defendant Company.

26. The spaces of about twenty-four feet between the double track of the Plaintiffs on Main Street south of the Canadian Pacific Railway tracks, and also the spaces of street lying on each side of the tracks on the streets on which the Plaintiffs had single lines, had always up to the time of commencement of construction of the Defendant Company's lines, been used as a drive-way and roadway for the passing of vehicles and the general traffic of the said streets, and were free from the control of the Plaintiffs, and were not repaired by them, and the Plaintiffs had never any right to exercise any control over the said spaces or widths of the said street, and did not in any way occupy the same.

27. The Defendant Company say that Main Street and Portage Avenue, referred to in the said bill of complaint, are streets having a uniform width of one hundred and thirty-two feet through their entire length, and that of said width on Main Street, between the Canadian Pacific Railway tracks and the Assiniboine River, there are two side walks for foot passengers—one on each side of the

RECORD.

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II.*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*—
No. 2.Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint

— continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 2.

Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint
— continued.

street—and each having a width of about eighteen feet for most of the length of said street, and not exceeding such width, and that in the centre of said street, from said railway to said river, there is a paved roadway for carriages and vehicles having a uniform width of ninety-six feet, and that there is, in addition to the portion of the said paved roadway on Main Street over which the lines of the Plaintiffs and the Defendant Company, as at present constructed and operated pass, a total space and width, free from the passage of vehicles and carriages of fifty-six feet, of which thirty-three feet in width are on the west side of the said street, and twenty-three feet in width on the east side of said street, and that on the spaces occupied by said lines of railway and between 10 the said vehicles and carriages may pass and do pass at all times with safety and convenience, turning out from time to time on the passing of cars on the lines of the Plaintiffs and Defendant Company.

28. On Main Street aforesaid, between the Canadian Pacific Railway tracks and the northern limits of the City of Winnipeg, the Plaintiffs and the Defendant Company have each a single line of street railway, with switches and turnouts, and being at a general distance of about five feet from each other, and the greater part of the traffic on the said street between the said limits by ordinary vehicles, is and has for years past been upon the paved portion of said street, which is not in any way interfered with by the line of the Defendant Company, their said line 20 being constructed at the side of the said paved part and not thereon, and the said paved part of the said street has a width north of the Canadian Pacific Railway tracks of about twenty-four feet, giving ample room for the passage of the ordinary vehicles and traffic of the street. That there is also on the said roadway on said North Main Street ample room off the said pavement, and to the east thereof for the passage of vehicles and the ordinary traffic of the street.

29. That on Portage Avenue aforesaid the Plaintiffs and the Defendant Company have each constructed a single line of railway, the line of the Plaintiffs having a switch for the passage of cars near Eighth Street South, and a short turnout near Main Street; and that except at said switch and turnout the lines of 30 the Plaintiffs and Defendant Company are not nearer to each other than over nine feet, and that there is ample room between the Defendant Company's line on Portage Avenue and that of the Plaintiffs' thereon to permit both lines to be operated freely and safely.

30. The Defendant Company have now a large number of men employed on their works of construction, and have expended on the various works in connection with their lines in the City of Winnipeg about ninety-five thousand dollars, and expended thereon before the commencement of this suit about the sum of twenty thousand dollars, and had expended on said lines between the filing of the bill of complaint in this cause and the time of the service of notice of motion for an 40 interlocutory injunction herein on the twenty-second day of September, one thousand eight hundred and ninety-two, about the sum of forty thousand dollars, and have, since last-mentioned date, expended on said works about the sum of thirty-five thousand dollars up to the present time, and the lines and works so constructed by the Defendant Company have a total length of about eight and a half miles, and are now and will be of great public utility to the citizens of Winnipeg and to the said city.

31. The Defendant company submit that they have the right to construct their said line of street railway on Main Street, Portage Avenue, Central Avenue, Fourteenth Street North, Eighth Avenue North, Seventeenth Avenue North, and Twenty-fourth Street North, and all other streets of the city, under the powers conferred upon them by their Act of incorporation, and the said bye-laws numbers five hundred and forty-three, which has been confirmed by the Legislature of the Province of Manitoba, and under said bye-law five hundred and fifty-six and the agreements and contracts thereunder with the City of Winnipeg.

10 32. The Defendant Company further submit that the mayor and council of the City of Winnipeg had no power, at the time of the passing of bye-law number one hundred and seventy-eight, referred to in the Plaintiffs' bill of complaint, or at the time of the execution of the contract thereunder, to grant to the Plaintiffs any exclusive right to construct or operate street railways on any of the streets of the said city, including the streets mentioned in the said bill of complaint, and that so much of the said bye-law and contract (if any) as purport to confer such exclusive right are and have always been illegal and void.

20 33. The Defendant Company further submit that neither said bye-law number one hundred and seventy-eight, nor the contract of the Plaintiffs with the City of Winnipeg, referred to in the bill of complaint, grant to the Plaintiffs any rights whatever in the streets traversed by their lines of railway outside of the portions and spaces thereof occupied and used by the Plaintiffs for the laying of their rails and tracks and the running of their cars and carriages; and that the said council had and have the right and power to grant to the Defendant Company the privilege of constructing and operating lines of street railway on and through the streets of the said city where the same are now being constructed and operated.

30 34. The Defendant Company further submit that the mayor and council of the City of Winnipeg had no power or authority, under their Acts of incorporation, or powers conferred on them, to pass the twenty-fifth clause of the said bye-law, number one hundred and seventy-eight of said city, or enter into the agreement contained in the clause of the contract thereunder referring to the same subject; and that the said clauses have always been and are illegal and void, as being an agreement to discriminate in favour of the Plaintiffs as against others, who might at any time thereunder apply for the right to construct and operate street railways in said city, and as restricting and preventing the said city from exercising its proper corporate powers from time to time as required, and as being otherwise *ultra vires* and void.

40 35. The Defendant Company further submit that there has been no breach of such clauses, and if there has, that such breach is justified under the term of the said Act of the Legislative Assembly of Manitoba confirming said bye-law number five hundred and forty-three.

36. The Defendant Company further submit that the construction of a railway on any of the streets of the City of Winnipeg, operated by the motive power electricity, is not in any case an infringement of any rights of the Plaintiffs, and that the Defendant Company have a right to operate their lines by that motive power.

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RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 2.

Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint

—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 2.

Answer of
the Defen-
dants, the
Winnipeg
Electric
Street Rail-
way Com-
pany, to the
Plaintiffs'
Bill of Com-
plaint
—continued.

37. The Defendant Company further submit that if the Plaintiff Company had at any time any rights in the premises, and any cause for asking the relief prayed for in their Bill, that all such rights and cause have been waived by the delay, laches and acquiescence of the Plaintiffs as heretofore set forth. The Plaintiff Company was well aware of all the facts and circumstances hereinbefore set forth at the respective times at which they occurred, and more particularly of the passing of the said bye-law by the city council; of the various negotiations between the council and the said James Ross and William McKenzie; of the contracts with the said James Ross and William McKenzie; of the contracts between the city and the Defendant Company; of the application to the Legis- 10
lative Assembly of the Province of Manitoba for the Act to confirm said bye-law number five hundred and forty-three; of all the work done upon the various streets; nevertheless the Plaintiff Company took no step to assert their pretended rights until the filing of the bill in this cause, and made no application for an interlocutory injunction until the 22nd day of September, 1891, when a notice of motion was served, and made no effort to obtain such interlocutory injunction; but on the contrary, upon the return of the notice after the Defendant Company had incurred great expense, applied to have the motion postponed until the hearing; but, on the contrary, the Plaintiff Company has acquiesced in all that has been done, and by its delay, laches and acquiescence has (it is submitted) 20
disentitled itself to any relief in the premises.

The Defendant Company further submits that the Plaintiffs have not in and by their bill set forth any equity to entitle them to any relief in the premises, and the Defendant Company claim the same benefit of this objection as if they had formally demurred to the said bill.

The Defendant Company ask to be dismissed with their costs of this suit.

In witness whereof the Defendant Company have caused their corporate seal to be hereunto affixed, and the signatures of their vice-president and secretary to be subscribed, this twenty-fourth day of October, one thousand eight hundred and ninety-two. 30

(Sd.) Wm. Whyte, Vice-President.
F. Morton Morse, Secretary.

(L.S.)

In the Queen's Bench.—In Equity.

Between

The Winnipeg Street Railway Company *Plaintiffs,*
and

The Winnipeg Electric Street Railway Company and The City
of Winnipeg *Defendants.*

The answer of the Defendants, the City of Winnipeg, to the Plaintiffs' bill of complaint in this cause. 40

In answer to the said bill of complaint the Defendants, the City of Winnipeg, say as follows:—

1. The admissions made in this answer are made for the purposes of this suit only.

No. 3.
Answer of
the Defen-
dants, the
City of
Winnipeg, to
the Plaintiffs'
Bill of Com-
plaint.

2. The city deny that the City of Winnipeg consented or agreed to allow the Plaintiffs to operate any portion of their lines of street railway on Main Street, north of the Assiniboine River, or on any of the other streets north of said river, by electricity, as in bill stated.

3. And the city also deny that the City of Winnipeg agreed or consented that the Plaintiffs might use electricity as a motive power, or requested such use upon the streets, in paragraph number thirty-seven of said bill mentioned.

4. And the city deny the truth of the statements contained in the fifty-seventh paragraph of the Plaintiffs' bill of complaint, and also deny that it is not possible, without serious danger to life or property, to have the tracks of the Plaintiff Company and of the Defendant Company operated on the streets in the sixtieth paragraph of the Plaintiffs' bill mentioned.

5. The city says that the Plaintiffs have always declined to construct or operate the lines of street railway operated by electricity on any of the streets of the City of Winnipeg lying north of the Assiniboine River, including the streets on which the Defendant Company have built and are operating their line, and although it has been the desire of the council of the said city for a number of years past that a more advanced system of operation should be adopted for street railways in the City of Winnipeg than that adopted by the Plaintiffs, and although the city has repeatedly negotiated with the Plaintiffs with a view of arriving at an agreement as to the terms upon which the Plaintiffs would construct and operate lines of street railway in said city north of the Assiniboine River by the motive power of electricity, said company have always declined to enter into any arrangement with the said city which the council of the said city considered to be in the interests of the city or the ratepayers thereof.

6. That after long negotiations with various parties, including the Plaintiffs, for the granting of a franchise for the construction and operation of street railways in Winnipeg, to be operated by the motive power of electricity, the council of the city, in or about the month of December, 1891, desiring to secure adequate travelling facilities on the streets of the said city, asked for tenders and propositions from any parties wishing to construct street railways in said city, including the street railways on the streets on which the lines of the Winnipeg Electric Street Railway Company have since been constructed and been operated, and as a result of asking for such tenders and propositions the Plaintiffs and James Ross and William McKenzie, in said bill of complaint mentioned, made offers for such franchise, and each deposited with the said city, as earnest of their good faith, the sum of ten thousand dollars (\$10,000) in cash; that thereupon the council of the said city fully considered the said offers, and awarded said franchise and privilege in respect of such street railways to the said James Ross and William McKenzie, and such decision was given in a fair and open competition for such franchise, and after all the terms of the propositions by the said James Ross and William McKenzie and the Plaintiffs were considered and weighed.

7. The city thereupon passed bye-law number 543 referred to in the Plaintiffs' bill of complaint, and the said privileges therein mentioned were thereupon granted to the said James Ross and William McKenzie, who have since complied with the terms of the said bye-law.

8. The Plaintiffs during such negotiations refused to accept the franchise

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 3.

Answer of
the Defen-
dants, the
City of
Winnipeg, to
the Plaintiffs'
Bill of Com-
plaint

— continued.

RECORD. awarded to the said James Ross and William McKenzie, as contained in said bye-law number 543, and had always done so previously.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 3.

Answer of
the Defen-
dants, the
City of
Winnipeg, to
the Plaintiffs'
Bill of Com-
plaint

— *continued.*

9. The City of Winnipeg have always, since the passing of bye-law number 178 of the said city, referred to in the Plaintiffs' bill of complaint, repaired those portions of the streets through which the Plaintiffs' lines run, except the portions lying between the rails of the Plaintiffs' tracks and eighteen inches outside of each rail, and the Plaintiffs have not in any way used or interfered with those portions of the said streets on which their lines run outside of their tracks and the space on and over the said street necessary for the laying of their rails and tracks, the running of their cars and carriages. 10

10. The City of Winnipeg has not been paid by the Plaintiffs for the cost of the pavements of the portions of all the streets on which the lines of the Plaintiffs run, which were to be paid by the Plaintiffs to the city, but the city have refrained from asking or requiring from the Plaintiffs payment of a very large sum of money for the cost of said portions of such streets, and have in other ways granted to the Plaintiffs benefits not provided for by said bye-law number 178, or the contract thereunder.

11. The City of Winnipeg have authorised and approved of the construction and operation of the Defendant Company's lines of railway, and the location of the said lines on the streets of the City of Winnipeg; that since the Defendant Com- 20
pany's lines have been operated, there has been no material obstruction to the passage of general traffic over the streets on which said lines run or of the lines of street railway of the Plaintiff Company.

12. That the width of the streets on which the Defendant Company's lines are being constructed and in operation is such that there is ample room for the safe operation of the Plaintiffs' and Defendant Company's lines of street railway thereon, and of other lines of street railway thereon, and for the safe passage of the general traffic of the streets.

13. The city submit that the mayor and council of the City of Winnipeg had no power, when bye-law number 178 of the said city was passed, to grant to 30
the Plaintiffs any exclusive right to construct or operate street railways on any of the streets of the said city, including the streets referred to in the Plaintiffs' bill of complaint.

14. And the city further submit that the said city did not by said bye-law number 178 or the said contract grant such or any exclusive rights to the Plaintiffs.

15. The city further submit that in the portions of the said streets not actually necessary for the laying of the Plaintiffs' rails and tracks and the passing of their cars and carriages, that the city had always had, by virtue of the powers conferred by the Legislature of Manitoba, power to grant to any other person or 40
company than the Plaintiffs the privilege and franchise of constructing street rail-
ways, and of operating same on any of the streets of said city.

16. The City of Winnipeg further submit that there was no power to pass clause twenty-five (25) of the said bye-law number 178, or to make an agree-
ment with the Plaintiffs embodying the terms of said clause; and that in any case the city has not, by granting the privileges referred to in bye-law number 543 of
said city, referred to in the Plaintiffs' bill of complaint, acted in any manner

beyond their powers, or in breach of said bye-law number 178, or the contract thereunder.

17. The City of Winnipeg further claim that the Plaintiffs have not shown as against the said city any ground in equity for relief or discovery, and the city claim the same benefit from this objection as if they had demurred to the Plaintiffs' bill of complaint.

18. The City of Winnipeg further submit that the Plaintiffs, if they ever had any rights in the premises or to the relief asked for, that such rights have been waived by the acquiescence of the Plaintiffs' as above set forth. The Plaintiffs were fully aware that the city council of said city intended to award the said franchise to the applicant therefor who should agree to build and operate said lines on the terms which said council should consider best in the interest of said city, and knowing this, entered into the said competition for said franchise, and were well aware of all the matters hereinbefore set forth at the times the same occurred respectively including the passing of said bye-laws, and acquiesced in the competition for said franchise by tendering therefor with the said James Ross and William McKenzie as aforesaid, and that such alleged rights have been waived by the delay and laches of the Plaintiffs in questioning the right of the city or the Defendant Company in the premises.

20 The City of Winnipeg ask to be hence dismissed with their costs of suit.

In testimony whereof the corporate seal of the said Defendants, the City of Winnipeg, has been hereunto affixed this twenty-fourth day of October, A.D. 1892.

In the Queen's Bench.—In Equity.

Between

The Winnipeg Street Railway Company Plaintiffs,

and

The Winnipeg Electric Street Railway Company and The City of Winnipeg Defendants.

30 The Plaintiffs join issue with the Answers of both the Defendants herein. Dated the 27th day of October, A.D. 1892.

ARCHIBALD HOWELL and CUMBERLAND,
Solicitors for Plaintiffs,
411, Main Street, Winnipeg.

"B."

In the Queen's Bench.—In Equity.

Court House, Winnipeg, Nov. 14, 1892.

Present—His Lordship Mr. Justice Bain.

The Winnipeg Street Railway Company
vs.

40 The Winnipeg Electric Street Railway Company and the City of Winnipeg.

H. M. Howell, Q.C., and T. D. Cumberland appear for the Plaintiff Company.

RECORD.

II.
Proceedings in the Court of Queen's Bench (in Equity).

No. 3.
Answer of the Defendants, the City of Winnipeg, to the Plaintiffs' Bill of Complaint

—continued.

No. 4.
Plaintiffs' Reply, joining issue.

No. 5.
Opening proceedings at Trial.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 5.
 Opening pro-
 ceedings at
 Trial
 —continued.

John S. Ewart, Q.C., and J. H. D. Munson for the Defendant Company.

Isaac Campbell, Q.C., and C. P. Wilson for the Defendants, the City of Winnipeg.

Mr. Cumberland read the bill of complaint; Mr. Munson the answer of the Defendant Company; and Mr. Campbell the answer of the Defendants, the City of Winnipeg.

It is admitted that the bye-law and agreement, as set out in the bill of complaint, are as Plaintiffs claim.

Mr. Munson: And you will admit our bye-laws the same way?

His Lordship: What do you mean by "admit"—that they were passed by 10 the city?

Admission.—It is admitted that the bye-law, set forth in paragraph 8 of the bill of complaint, was duly passed by the City of Winnipeg, and that the contract (paragraph 9) was duly executed by the Plaintiff Company and the city.

Mr. Ewart: That is, we admit the proper execution. We don't admit the validity.

Mr. Howell: You admit the execution?

Mr. Ewart: We admit the execution, passing of the bye-law, and the execu- 20 tion of the agreement.

It is admitted that the bye-law set forth in the schedule to the Act incorporating the Defendant Railway Company was duly passed, as contained in chapter 56 of the statutes of Manitoba, 1892.

It was admitted that Exhibit 1 was served by the Plaintiffs upon John Hirst, the active foreman on the new railway works, on June 7th, 1892, and that a copy was also served upon Neil Keith, who was the actual foreman in charge of the old works, on the 8th of June, 1892, and that a copy was also served upon Mr. C. J. Brown, the clerk of the City of Winnipeg, on the 7th of June, 1892.

THE EVIDENCE.

30

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Albert W.
 Austin.

Albert W. Austin, *sworn, examined by* Mr. Howell:—

Q. You are the managing director of the Plaintiff Company? A. Yes.

Q. And you have been such ever since the organisation of the company?

A. Yes.

Q. You and your relatives have always had control of the company in so far as the stock is concerned? A. Yes.

Q. The company got its charter in May, 1882, by Act of the local legis-
 lature? A. Yes.

Q. And your company is the company referred to in chapter 37 of 45
 Victoria, Statutes of Manitoba? A. Yes.

Q. And you are the Albert W. Austin referred to as one of the original
 incorporators in that Act? A. Yes.

Q. Can you tell me how long after that charter was obtained it was before
 the company was organised itself, appointing officers, &c.; was it before or after

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the agreement was entered into between you and the city? *A.* We organised before the agreement with the city.

Q. The agreement which you mean is set forth in the bill of complaint?
A. Yes.

Q. When did you come to this province, Mr. Austin? *A.* In 1880.

Q. Have you resided in the province continuously ever since then?
A. Yes.

Q. And you have resided always in the city? *A.* Yes.

Q. Can you say how soon after the agreement was entered into, which is
10 set forth in the Bill, that you commenced the work of construction? *A.* Almost immediately.

Q. What was the first portion of the street railway that you built, pursuant to that agreement? *A.* The main street.

Q. What part? *A.* Close to the Assiniboine River.

Q. From where? *A.* From the Assiniboine River, on Main Street, to the C.P.R. Station.

Q. You say you commenced at the Assiniboine River. What side of Broadway would that be? *A.* The south side of Broadway.

Q. To what street did you run when you say you ran to the C.P.R.?
20 *A.* Known as Point Douglas Avenue.

Q. Then you did run from Broadway to Point Douglas Avenue how soon after the agreement was signed? *A.* About two months.

Q. I will read to you the ninth paragraph of the bye-law, and see whether you complied with that:—"That the said cars shall be run on Main Street from
"Broadway to Point Douglas Avenue, during and at such times as the parties
"of the first part may direct, and at intervals each way of not more than thirty
"minutes, and on all cross and other streets and extensions where tracks may be
"laid, at such intervals and at such times in the interests of the citizens as the
"council by resolution may direct." Did you comply with that paragraph?
30 *A.* Yes.

Q. Not only did you comply with it, but you more than complied with it, did you not? You ran further, did you not? You ran south of Broadway?
A. Yes.

Q. So that you more than complied with that by running beyond Broadway as far as the Assiniboine River? *A.* Yes.

Q. The Assiniboine River is how far from Broadway—how far south of Broadway? *A.* About 500 yards.

Q. And the C.P.R. track is on Point Douglas Avenue? *A.* Yes.

Q. And it there crosses Main Street? *A.* Yes.

Q. Then beginning upon Main Street, at the Assiniboine River, you proceed
30 northward 500 yards, and reach Broadway, do you not? *A.* Yes.

Q. And then about how far from the Assiniboine River to the C.P.R. beyond that? *A.* North a mile and a half from the Assiniboine River to the track.

Q. And then the Assiniboine River is south of the C.P.R. track? *A.* Yes.

Q. It crosses Main Street at about right angles, and about a mile and a half apart? *A.* Yes.

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RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

R

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. What piece of railway did you commence to construct next? A. Our line on Portage Avenue.

Q. Tell us where that began now? A. It joined our Main Street track in the centre of Main Street, and ran up across that west half of Main Street to Portage Avenue; and westerly up Portage Avenue to Kennedy Street; and thence along Kennedy Street to Broadway.

Q. How long is that second piece of railway track that you constructed? A. Nearly a mile.

His Lordship: Nearly a mile from Main Street to Broadway and Kennedy Street? A. Yes.

Mr. Howell: When was it that you constructed this second piece of track? A. In 1883.

Q. It was constructed in November? A. Yes.

Q. When did you commence the Portage Avenue and Kennedy Street Branch? A. Immediately after completion.

Q. What month? A. It was in November.

Q. You did not tell me when you commenced to operate the Main Street part, which you first constructed? A. On the 20th of October, 1882.

Q. When did you construct the next piece of track? A. The Kildonan line in 1884.

Q. You commenced the construction in 1884, and when did you commence the operation? A. In the fall of 1884.

Q. When did you construct the next piece? A. The River Avenue line?

Q. That is known as your electric portion? A. Yes.

Q. You commenced the construction in what year? A. 1890.

Q. In starting the construction of that road, that was all south of the river, was it not? A. Yes, south of the Assiniboine River.

Q. In commencing the construction of that road, did you commence and lay your road-bed in the ordinary way for your ordinary street car purposes as you had formerly constructed your street car roads? A. No, it was laid specially for electricity.

Q. The others had been made specially for horse power? A. At that time.

Q. You constructed this in the beginning specially for electricity? A. Yes.

Q. By laying a heavier rail and making a different roadbed? A. Yes.

Q. You commenced that when? A. In the summer of 1890.

Q. When did you complete that? A. It was completed about the first of the year 1891.

Q. What is the length of that piece? A. About one mile.

Q. You commenced the operation of that when? A. On the 1st of February, 1891.

Q. What next did you construct? The continuation of that line to the (Elm) Park.

Q. When did you commence that construction? A. In the spring of 1891.

Q. And completed it when? A. The same year in the summer—about July.

Q. Of 1891? A. Yes.

Q. And commenced operating it when? A. About the 1st of July, 1891.

Q. These two pieces, which really form one continuous line, are of about what length? A. Nearly 4 miles in length.

Q. All operated by electric power. A. Yes.

Q. This last-mentioned part runs upon that part of Main Street, which is south of the Assiniboine River to its junction with River Avenue? A. Yes.

Q. And then along River Avenue westward to Smith Street? A. Yes.

Q. And then southerly along Smith Street to Pembina Street? A. Yes.

Q. And then southerly along Pembina Street to the southerly limit of the city? A. Yes.

10 Q. Pembina Street is practically a continuation of Smith Street, is it not? A. Yes.

Q. Smith Street is but a short street, about 100 yards? About 100 yards, I think.

The case was now adjourned until half-past 2 o'clock, when it was continued.

Mr. Howell (to Mr. Austin): Your lines of street railway run up to each bank of the Assiniboine River, do they not? A. Yes.

Q. And they connect, or are they connected at all? A. Yes.

Q. By what? A. By rails laid on the Assiniboine Bridge.

20 Q. These rails laid on the Assiniboine Bridge are used rather for the electric cars than the horse cars? A. Yes.

Q. Your office of management, your central office of management I mean, is situated on Main Street, just at the north bank of the Assiniboine River? A. Yes.

Q. The stables where you keep your horses are close to the Assiniboine River, just near Main Street? A. Yes.

Q. Your electric power house is just across the street, and upon the bank of the Assiniboine River? A. Yes.

Q. On the north bank, across the street from the stable? A. Yes.

Q. And close to Main Street? A. Yes.

30 Q. So that the practical working centre of your system is just off Main Street, and just off the bank of the Assiniboine River? A. Yes.

Q. And when I speak of your system I mean both the horse and electric system? A. Yes.

Q. Will you describe as well as you can, and as simply as you can, how you built the track upon Main Street originally? A. The track upon Main Street is built with stringers upon which were placed the regular railroad ties.

30 Q. How did you lay them? Tell us how long a stringer is, and so on? A. A stringer is lumber, consisting of a piece of 16 feet long and 5 by 7, placed under the ties, one on each side.

Q. These are placed lengthwise in the street? A. Yes.

Q. About how far apart? A. About four feet apart.

Q. How far below the surface on the rail? A. About 5 inches.

His Lordship: Is that the top is 5 inches below the surface? A. Yes, the top is.

Mr. Howell: Now next, what? A. On the top of the stringers the ties are placed.

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RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. What is a tie? A. A tie consists of timber 8 feet long, 6 inches thick, by 8 inches wide.

Q. These ties are laid at right angles to the stringers, are they? A. Yes.

Q. So that they are laid across the street? A. Yes.

Q. They are laid at right angles to the stringers, and also at right angles to the street? A. Yes.

Q. How far apart are they? A. Touching each other.

Q. They were laid touching each other? A. Yes.

Q. So that you have a bed of timber 6 inches thick? A. Yes.

Q. Resting upon the stringers running lengthwise with the street? A. Yes.

Q. The top of these ties would be in what relation to the surface of the earth? A. They were even with the surface—each tied and spiked directly to the stringer.

Q. What would lie upon the ties? A. The regular street railway tram rail.

Q. Describe to the Court what a tram rail is? A. A tram rail is a steel rail about 30 feet in length—about 2 inches of tread.

Q. It is a piece of steel how wide, about in the widest part? A. About 20 5 inches.

Q. That is the bottom surface? A. Yes.

Q. And that bottom surface lies on the top of the surface of the ties? A. Yes.

Q. How thick is that rail, not speaking of the flange that sticks out? A. About half an inch thick.

Q. That half-inch thickness continues how far? A. For 3 inches.

Q. And then it becomes how thick? A. An inch and a half.

Q. How far does that extend? A. It is an inch and a half thickness from the tie to the rail tread.

Q. How far does that extend? A. About 2 inches.

Q. There are about 2 inches of that rail about 2 inches thick and about 3 inches half an inch thick? A. Yes.

Diagram of this rail is put in and marked as Exhibit 2.

Q. What kind of wood did you make the stringers of? A. Pine.

Q. And what wood was the ties made of? A. Tamarac.

Q. In excavating the earth for this track what did do with the earth? A. We filled it into roads and along the wedges of the ties, and levelled it over the street.

Q. What was your object in building the road making this a solid wood road?

Mr. Ewart: I think, perhaps, we had better come to some understanding with regard to the contention. There are a good many allegations in the Bill for doing this and that thing, and I raise the point that their intention putting the road-bed in in a certain shape, and putting their power-house in a certain place, is something aside from the issue. What their object was, it seems to me, has no bearing upon this question.

Q. What object had you in making it then?

Mr. Ewart: That is the same thing.

Q. Why did you make that road-bed in the way you describe? A. In order to enable our horses to travel upon it.

Q. Then, if I understand your description right, the roadbed which you constructed was a solid wood roadbed 8 feet wide during the entire length that you constructed? A. Yes.

Q. It was not only 8 wide, but it was 5 inches thick? A. Six inches thick.

Q. Did you build any turnouts anywhere, that is in order to allow one car to pass another? A. Yes.

Q. How many did you build between the Assiniboine River and the Canadian Pacific Railway? A. About four.

Q. How long were these turnouts? A. 150 feet.

Q. Each one was 150 feet? A. Yes.

Q. And they consisted of a roadbed gradually swinging out to how wide? A. To about 16 feet.

Q. So as to make it 16 feet wide at the widest part? A. Yes, make the main line and the turnout 16 feet wide.

Q. The road you have described to us is the way you built that one between the Assiniboine River and the C. P. R. track? A. Yes.

Q. How did you build the piece adjoining your Main Street track and the line up Portage Avenue to Kennedy Street? A. In the same manner.

Q. How many turnouts or switches have you in that last mentioned branch? A. Three.

Q. And they were built in the same way? A. In the same way.

Q. The track that you built north of the C. P. R., that was built at the same time that the street was paved, was it not? A. Yes.

Q. The whole street was paved. Was that part of your system that was built north of the C. P. R. constructed of longitudinal timbers laid in the wooden block pavement? A. Yes.

Q. The street was then just newly being paved with new wooden blocks? A. Yes.

Q. Blocks of what kind of wood? A. Mostly Tamarac.

Q. It was all Tamarac was it not? A. It was mixed. I think there was some Spruce in it.

Q. But chiefly Tamarac? A. Yes.

Q. The Tamarac block pavement was made by levelling the street, and putting upon it boards or blocks first? A. Yes.

Q. And then upon that blocks of wood upon their end? A. Yes.

Q. How long were these blocks? A. About 6 inches.

Q. The interstices between these blocks were filled in with what? A. Sand.

Q. While that pavement was being laid down there was laid down longitudinal timbers for your railway? A. Yes.

Q. And upon those longitudinal timbers your rails were laid? A. Yes.

Q. The whole of this expense of the timbers and the iron was paid for by whom? A. By the Municipality of Kildonan and the ratepayers along the line.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. The Municipality of Kildonan at that time was just adjoining Winnipeg, was it not? A. Yes.

Q. At all events it was between the part of the Municipality of Kildonan that adjoined the city and the inhabitants that lived there that paid for that track? A. Yes.

Q. Will you tell me how it was that you did not pay for that? A. Because we had no desire to make that extension.

Q. Why not? A. It would not pay.

Q. As an inducement for you to operate there they agreed to lay the track? A. Yes. 10

Q. And you agreed to operate it? A. Yes.

Q. And you did? A. Yes.

Q. When you commenced laying down your electric part of your system, was the street on Main Street south of the Assiniboine River and River Avenue paved? A. Yes.

Q. It was then paved, and had been for a year or two previously? A. About that time.

Q. What did you do? How did you lay down your track. A. We removed some of the blocks, and placed crossties, consisting of the same material, Tamarac, as the blocks were and laid our rails upon the ties. 20

Q. You did not put down longitudinal pieces. A. No.

Q. You just laid crossties underneath the blocks? A. Yes.

Q. And laid your iron rail directly upon the crossties? A. Yes.

Q. How far were the ties apart? A. About four feet.

Q. About four feet between each tie? A. Yes.

Q. What is the height of your iron rail? A. About 3 inches.

Q. How do you build that up to the level of the top of the earth? A. The tie consisted of 4 inches, and the earth about 3 inches—which made about seven. We removed the blocks where we put the crossties, and placed the ties on the inch bearing. 30

Q. You removed the blocks where you put the crossties, and brought the upper surface so that it was within 3 inches of the top? A. Yes.

Q. Between the rails and top of the tie, what did you fill in? A. Longitudinal timber, bringing it up even with the top of the rail.

Q. And the top of the block? A. Yes.

Q. The top of the rail was even with the top of the block? A. Yes.

Q. So that the tie was laid in such a manner that the upper surface came within 3 inches of the upper surface of the block pavement? A. Yes.

Q. And the rail was laid at right angles to the tie? A. Yes.

Q. Which brought the top of the earth even with the top of the block? A. Yes. 40

Q. Thus you laid your railway track upon Main Street South and upon River Avenue? A. Yes.

Q. How did you lay your track upon Smith Street and Pembina Street, which was not paved? A. The ordinary railway tie.

Q. What is an ordinary railway tie? A. It consists of a Tamaric tie six inches by eight inches, and eight feet long.

- Q. Those were laid how far apart? A. About three feet.
- Q. And those were laid at right angles to the street? A. Yes.
- Q. And the rails were then laid at right angles to the ties? A. Yes.
- Q. For the purpose of conducting the electricity to give power to the road, would you please describe what you first did when you first started? A. It was necessary to erect a power house.
- Q. What did you do for transmitting your power first? A. We erected poles along each side of the road and strung wires on them.
- Q. Were they valuable poles? A. Yes.
- 10 Q. For the purpose of transmitting your electricity for power purposes, you erected a series of wooden poles? A. Yes.
- Q. Upon each side of these streets? A. Yes.
- Q. These poles are made of wood, and how long? A. 30 feet long.
- Q. And they are inserted in the earth sufficiently far enough to keep them firm? A. Yes.
- Q. How far apart are these poles? A. About 135 feet.
- Q. During the entire distance of the electric road you had these two lines of poles, one on each side of the street? A. Yes.
- Q. In order to transmit the electric power you suspend a copper cable over
20 the centre of your track, do you not? A. Yes.
- Q. And you suspend this copper cable, you pass a wire at right angles to the street from each one of these poles, which are placed opposite each other? A. Yes.
- Q. And that you did between every pair of poles? A. Yes.
- Q. These poles are arranged in pairs? A. Yes.
- Q. For that purpose? A. Yes.
- Q. Upon these wires which are run from these pairs of poles and along the centre of your track you suspend this copper cable? A. We suspend feed wires along the side.
- 30 Q. You suspend the copper cable, otherwise known as the trolley wire, along the centre of your track? A. Yes.
- Q. That cable or trolley wire is for the purpose of conducting the electricity? A. Yes.
- Q. How far above the surface of the street is this trolley wire? A. About 19 feet.
- Q. The electricity is carried to this trolley wire from your power-house? A. Yes.
- Q. To do that you have what you call feed wires? A. Yes.
- Q. These feed wires are along one of the lines of poles, and connect with the
40 trolley wire at stated distances? A. Yes.
- Q. So as to supply feed, or electric current, at various different points? A. Yes.
- His Lordship: The trolley wire itself is not directly attached to the battery?
- A. No. The feed wire feeds it here and there. That is not always done, but it is done where you want to have a safe system. It is the most effective way, and the most costly way of building an electric railway.
- Mr. Howell: This you did? A. Yes.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
— continued.

Q. That is the system upon which you erected the whole of that line of about three and a-half miles? A. Yes, nearly 4 miles.

Q. To generate electricity to be used as above, what do you do? A. We erected a station, and purchased a dynamo engine and general electric plant.

Q. The station is a large brick building? A. Yes.

Q. In which you have engines and boilers and use steam appliances? A. Yes.

Q. And in that you have what is known as dynamos for the generation of electricity? A. Yes.

Q. And this is conducted to your railway system by what you call feed 10 wires? A. Yes.

Q. For the purpose of completing the electric current in laying the road, it is necessary to connect your iron rails together by some special means; the usual contact will not do, will it? A. No.

Q. What do you do? A. We use bond wires.

Q. Bond wire is the wire with the end of it inserted in each end connecting the rails? A. Yes, and both sides join in our system.

Q. For the purpose of making a more complete electric system? A. Yes, so as to have the return.

Q. So that the electric current goes forward to the end of your line and 20 underneath returning? A. Yes, it returns by the rail.

Q. Experience has found that owing to the oxydizing of the iron the connection is not complete by mere contact by the ends of the rails? A. Yes.

Q. You need not give us very accurate, but somewhere in round figures, the various costs. About what did the first line that you built between the Assiniboine River and the C. P. R. track cost you?

His Lordship: You mean exclusive of the cars and stock?

Mr. Howell: Yes, just the roadbed? A. About \$30,000.

Q. What did that part on Portage Avenue and Kennedy Street cost? A. About \$20,000. 30

Q. The original construction of that north of the C.P.R. track cost you nothing? A. The original cost us nothing.

Q. What did that part cost you known as your electric portion? I am not speaking of the power house—I mean roadbed, poles and trolley wires? A. About \$40,000.

Q. What did your power house and plant cost you? When I say plant, I don't mean the cars at all. A. About \$25,000.

Q. That includes dynamos and engines? A. Yes.

Q. Did you ever have to relay your original road before the pavement was done in the city? We had constantly to keep repairing it. 40

Q. But did you ever relay it before the pavement? A. We relaid quite a portion of the Kildonan Road before the city took up its general system of paving.

Q. That you did at your own expense. What year was it that the city commenced paving Main Street? A. About the year 1884.

Q. Did they pave any in 1884? A. I think a portion was paved in 1884.

- Q. That was the year of the sewers. Was any part of it paved then?
 A. I think they had either arranged for it or commenced to pave that portion from the station on in 1884.
- Q. How far did they get in 1884? A. They only got up four or five streets from the station.
- Q. Did they get that far? A. I think they got that far, or very close to it.
- Q. In 1884? A. Yes.
- Q. How far would you say that they got with their pavement in 1884—a quarter of a mile? A. About one-eighth of a mile.
- 10 Q. The city commenced paving Main Street with wooden blocks in 1884, and got about an eighth of a mile, commencing at the C.P.R. and going southward? A. Yes.
- Q. And they completed the pavement in 1885? A. Yes.
- Q. How was the street paved by the city? A. By planking and blocking.
- Q. They did what, first? A. First levelled the street, and then placed planks upon the street.
- Q. And then upon this planks? A. Yes, and 7-inch blocks.
- Q. What kind of wood? A. Spruce and Tamarac.
- 20 Q. These blocks were stood upon their ends? A. Yes.
- Q. And they are round blocks? A. Yes.
- Q. The interstices between them are filled up with what? A. Gravel and sand.
- Q. When was it that they commenced paving Portage Avenue? A. I think it was in 1888. They got as far as the Clarendon Hotel, first in 1887, and in 1888 they went on further.
- Q. The Clarendon Hotel is about half way up that portion of Portage Avenue that you have your track running upon? A. Yes.
- Q. So that that portion of Portage Avenue we are concerned in was paved 30 between, or rather one half in 1887, and one half in 1888? A. Yes.
- Q. When was Kennedy Street paved, do you know? A. Kennedy Street was paved in 1890, or the fall of 1890, about a year after the other, I think, 1889 or 1890.
- Q. You think the ordinary travelled portion of Portage Avenue, west of the Clarendon Hotel, was paved in 1889, but that your track and Kennedy Street was paved in 1890? A. Yes.
- Q. When the city commenced paving Main Street, what state was your track in? A. A very bad state.
- Q. Describe how the ties were? A. The ties were worn in the centres to 40 that extent that it only left about two inches of a bearing, and in some places worn through entirely.
- Q. So that between the rails your ties were worn down from 2 inches to nothing? A. Yes.
- Q. So that they were practically gone? A. Yes, they were useless.
- Q. Then you took up your whole roadbed, did you not? A. Yes.
- Q. And you paid the expense of paving your track from the C.P.R. to the Assiniboine River to the width of how much? A. To the width of 8 feet.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Albert
 W. Austin
 —continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. Any switches? A. Yes, and the necessary switches.

Q. The city did the work but you paid for it? A. Yes.

Q. Your track, or your iron rails, were laid upon longitudinal timbers laid between the blocks? A. Yes.

Q. Anything to support these longitudinal timbers? A. Yes, the boards underneath, upon which the blocks were laid.

Q. You laid on Main Street a double track? A. Yes.

Q. But you only paved for a single one? A. That is all.

Q. Why was that? A. Because the city thought that it was better if I would go to the expense of procuring the rails for the second track to have it 10 railed all at once rather than have the blocks removed in a few years.

Q. Your trade did not then require a double track, but you did not know how soon you might require one? A. No.

Q. And that was the arrangement that you made with the city? A. Yes.

Q. What was the state of your ties on Portage Avenue and Kennedy Street at the various times when they were taken up, when the city paved those streets? A. The same as on Main Street.

Q. Completely worn out? A. Yes.

His Lordship: On Main Street you paid for and supplied the iron for both tracks? A. Yes. 20

Mr. Howell: You also supplied the longitudinal timber on Main Street on both tracks? A. Yes.

Q. The pavement that was originally laid down on Main Street, north of the C.P.R. track, became completely worn out? A. Yes.

Q. Absolutely useless? A. Yes.

Q. And that part of it used by your horses became worse than useless—became a nuisance? A. Yes.

Q. So much so that you had to repair it from time to time yourself, at a great deal of expense? A. Yes.

Q. When was it that that became worn out, or rather what years did the 30 city repave north of the C.P.R. track? A. Last year—the early part of 1891.

Q. They commenced repaving that? A. Yes.

Q. And finished or completed it when? A. Completed it this year.

Q. Did you do anything towards paying for that new repavement? A. Yes.

Q. What did you do? A. We have to pay all our portion.

Q. Which was what? A. About eight feet wide.

Q. You paid for that part the whole length of Main Street to the northern limit of the city? A. Yes, about eight feet wide, with the necessary switches. 40

Q. Where the switches were you had to pay for the extra width? A. Yes, about \$15,000.00.

Q. And you had to relay your longitudinal pieces and your iron? A. Yes.

Q. Who did that? A. The city, at our expense.

Q. That was commenced in 1891, and it was completed this year?— A. Yes.

Q. How much did it cost you for the new part of the pavement that you

had to do between the C. P. R. track and the Assiniboine River? A. About \$12,000 for the pavement.

Q. And the laying of the track? A. Yes.

Q. How much for that portion of Portage Avenue and Kennedy Street which you occupy? A. About \$6,000.

Q. How much for that portion north of the C. P. R. track and to the northern limit of the city? A. About \$15,000.

Q. And this you have paid then by way of new pavements? A. Yes.

Q. I desire to read to you a portion of clause 17 of the bill of complaint, and want you to say whether that is correct or not—"In the year 1885 the old company continued their street railway track, and constructed and completed the same upon Main Street, beginning at the end of their track upon Main Street which they had completed in 1882, and continued the same northward to the northern limit of the city of Winnipeg, and thence onward for some distance into the adjoining municipality, thereby making a continuous street railway track upon Main Street from the Assiniboine River, northward to beyond the northern limit of the city of Winnipeg—thus entirely completing a continuous line of street railway on Main Street 3 miles and a-half in length." You say 1885. Is that right? A. No, I think it was 1884.

Q. Then that paragraph in the Bill is wrong in stating that it was in the year 1885. It should have been 1884? A. Yes.

Q. Then the result of your evidence is this, that, in October, 1882, you were operating a street railway from the Assiniboine River to the C.P.R. track on Main Street. Your company was doing that? A. Yes.

Q. In the latter part of 1884 you had continued that track northward to the northern limit of the city and beyond it a distance into the municipality of Kildonan? A. Yes.

Q. And were operating it? A. Yes.

Q. And that you completed the whole of Main Street by continuing it on the other side of the Assiniboine River in 1891? A. Yes.

Q. And you were operating a connection with that Main Street by Portage Avenue and Kennedy Street in 1883? A. Yes.

Q. What have you done upon that road ever since any interruptions, or what has been done—the whole of that system? A. Had no interruptions.

Q. Have you been operating it ever since? A. Yes.

Q. These various roads that you have described that you built, were they built in accordance with or in opposition to the wishes of the city and the city officials?

Mr. Ewart: I don't know anything about officials. If the city has expressed a wish at all of course it must be in writing.

Mr. Howell: Have they ever objected; either the city or the city officials objected to your method of doing this work. A. No.

Q. Not at all? A. No, not at all.

Q. Have you ever got its approval in any way?

Mr. Ewart: That would be in writing.

Mr. Howell: I want to show out the fact if there has been any given.

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RECORD.

II

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. Where there any plans given? A. Yes, plans were drawn for our Company.

Q. Plans of what parts? A. Of every part.

Q. Plans of every part were drawn for the Company, and what was done with them? A. Filed with the city engineer from time to time.

His Lordship: How do you mean—what kind of plans? A. Plans showing the method of construction.

Mr. Howell: They were filed in every instance with the city engineer? A. Yes.

Q. Will you say whether he ever approved of them or objected to them—the various city engineers, because there have been several? A. He has certified to them.

Q. In every instance? A. In every instance.

Q. Your roads have been built in accordance with those plans then? A. Yes.

Q. After putting up your poles for transmitting the electricity as you have described, with one row on each side, there was an objection raised to that, was there not? A. Yes.

Q. And what did you do? A. We, from the city engineer's instructions, and I think the city also, removed one line of poles and operated one line of poles 20 on the bracket some time, contrary to my own wishes.

Q. Still you did it in deference to their wishes? A. Yes.

Q. When you first commenced operating that road what rate of fare did you charge? A. Five cents cash fare, and four cents ticket fare.

Q. I am speaking of the first road? A. Ten cents.

Q. That was permitted to you by the agreement and bye-law? A. Yes.

Q. How long did you continue that charge of ten cents? A. About two years.

Q. And then what did you do? A. We reduced the fare to five cents cash fare, and four cents ticket fare.

Q. Tell us what you mean by ticket fare? A. Any person desiring to purchase a dollar's worth of tickets would get twenty-five tickets for a dollar.

Q. And each of these tickets was taken for a fare? A. Yes.

Q. So thus they got a ticket for four cents? A. Yes.

Q. And ever since that reduction was made by you, you have continued the same rate of fare? A. Yes.

Q. What state were the streets in as to pavement when you laid down your track upon Main Street, between the Assiniboine and the C.P.R. and upon Portage Avenue and Kennedy Street? Was there any pavement? A. There 40 was no pavement.

Q. It was simply the Red River mud? A. Yes, it was simply the Red River mud.

Q. What was the ordinary state of those streets at the time you commenced laying down your street car track, and previously, and up to the time that the city paved? A. They were in a very dilapidated condition, very uneven, large rough lumps here and there, and after the wet season, or after the snow had disappeared they became so muddy that they were next to impassable.

- Q. Almost impassable? A. Yes.
- Q. How deep would the mud be? A. From 2 to 3 feet deep.
- Q. Can you give me any further description of it? A. It was so bad that teams often got stuck in the mud with empty waggons; in fact it was a common sight to see oxen and other teams with empty waggons stuck in the middle of the street.
- Q. What state were the wheels in? A. The wheels were in that state that you could not see through them frequently.
- Q. They would be solid? A. Yes, they would be solid with mud.
- 10 Q. As to the proportion of time that the streets were in this terrible state, every rain would leave them in a very bad state, would it not? A. Yes, after a rain they would be left in a very bad state.
- Q. When they dried up were they smooth? A. No, anything but smooth—all ruts.
- Q. In what way did the municipal authorities endeavour to make them passable? A. They would occasionally send out men with picks to try and level them up, but it was such a big undertaking that only a portion of the street was in a fit condition to drive on.
- Q. What does the street consist of, sand? A. No, black loam.
- 20 Q. Any gravel or sandstone, or anything of that kind in it? A. No, none whatever.
- Q. After your tracks were built what was the line of travel if the roads were bad? A. Mostly all on the street railway track.
- Q. The teams hauled up on that immediately? A. Yes, almost a continuous line of them.
- Q. Did you manage to get them out of your way? A. Often with collisions we got them out of the way, and a good deal of squabbling and fighting and injury to cars.
- Q. During a part of the time your street railway track was the main line of 30 travel? A. Yes.
- Q. And that applied to all streets upon which your track was? A. Yes.
- Q. In what way could the carriages or waggons travel upon your line of street railway—how could they travel? A. On account of the ties extending about a foot and a half on each side of the rail there was no trouble for carriages or other vehicles to travel their own wheels upon our rails.
- Q. Your rails, in relation to the width of the ordinary wheels, how are they? A. On an average, the same gauge.
- Q. So that the ordinary waggon wheels fit upon your iron? A. Yes.
- Q. What was the reason that your ties or roadbed was so worn out, 40 when they commenced repaving the city, as you describe, was it your horses that wore them out? A. No, it was the constant travel of the public that wore them out, mainly.
- Q. I believe that the city recognised that they had a big hand in wearing out your track, and they gave you a munificent present? A. Not a very munificent one.
- Q. How big was it? A. We got, on condition that the fire engines were to have the right of way on our track, and that is just this, that our cars were to stand on the switches in case of fire.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Albert
 W. Austin
 — continued.

Mr. Ewart: There was a resolution, and it had better go in.

Mr. Howell: You got, pursuant to a resolution of the council, how much money? A. \$1,000.

Q. Whenever a fire occurred in the City of Winnipeg, how could they get the fire engine from one part of the city to another? A. It was an impossibility almost to travel without getting it on our roadbed, and without our roadbed they could not have travelled.

Q. Did you ever see the fire engine stuck in the mud? A. Yes.

Q. And the building burning up? A. Yes.

Q. In order to permit the fire engine to run upon that track in time of 10 fires, what did you do in order to permit them to pass your cars? A. Our drivers were instructed on the first appearance of the fire engine, or if there was a signal that there was a fire, to stick on the switches.

Q. You would run on the switches on the signal of fire, and they would rattle down your track? A. Yes.

Q. And you say the wearing out of your roadbed was chiefly on account of the public travel, and not your own horses? A. Yes.

Q. The teams moving from the side streets on to your track, what effect did that have? A. It had the effect of causing ruts alongside of the ties, which we filled in. 20

Q. Carry anything up with it? A. Carried mud up to our track.

Q. Large blocks of it? A. To such an extent that our cars were often blocked from running.

Q. I believe you wrote a letter to the council to that effect? A. Yes.

Q. You complained to the council about the large blocks of mud going on there? A. Yes.

Q. You came here first in 1879? A. Yes.

Q. Were you at all conversant with the province, its general division, its inhabitants, and the division of them? A. Yes.

Q. About what was the population of this province in 1882? A. About 30 75,000.

Q. In the whole province? A. Yes.

Q. About what was the population of this city at that time? A. About 25,000.

Q. The city was then about one-third of the province? A. Yes.

Q. Kennedy Street, Portage Avenue, the whole of Main Street, River Avenue, Smith Street, Notre Dame Street, Nina Street, and Logan Street were all streets of this city in 1882? A. Yes.

Q. Logan Street is now known as 8th Avenue North? A. Yes.

Q. Notre Dame Street is now known as Central Avenue? A. Yes. 40

Q. Nina Street is known now as 14th Street North? A. Yes.

Q. Selkirk Street is now known as 17th Avenue North? A. Yes.

I desire now to read to you the last clause in your agreement:—

“In the event of any other parties proposing to construct street railways on any of the streets not occupied by the parties to whom the privilege is now granted, the nature of the proposal thus made shall be communicated to them, and the option of constructing such proposed railway, on similar conditions as

"are herein stipulated, shall be offered; but if such preference is not accepted within two months, then the parties of the first part may grant the privilege to any other parties." Did the city ever communicate any such proposal as therein agreed to your company? *A. Never.*

Q. Did the company ever refuse to perform any option there given? *A. Never.*

Q. In respect to that or any street? *A. With respect to that or any street.*

Q. Who alone did all the business connected with this company? *A. I*
10 *did.*

Q. Who is the president of the company? *A. James Austin.*

Q. That is your father? *A. Yes.*

Q. He is a very elderly gentleman, and resides in Toronto? *A. Yes.*

Q. He has nothing to do with the management of the company at all?

A. No.

Q. You had some correspondence with the city, and you received this document? *A. Yes.*

Letter referred to is dated July 28th, 1891, and is now filed as Exhibit
No. 3.

20 *Q.* These pencil marks on three are in your own handwriting? *A. Yes.*

A. In answer to that letter, did you write this? *A. Yes.*

Letter of 10th of August, 1891, referred to and filed as Exhibit No. 4.

Q. Did you get a reply to that four? *A. Yes, that letter is the reply.*

Letter referred to, dated August 25th, 1891, from the city to A. W. Austin,
filed as Exhibit No. 5.

It is admitted that Exhibit 5 was written in pursuance of a resolution of the
council, as it passed the committee on works, and was afterwards approved by the
council on the 20th of August, 1891, in the following words: "Adverting to the
"communication from A. W. Austin, dated 10th of August, to council, and
30 "referred to this committee, it would recommend that he be informed that the
"council is desirous that in all future street railway extensions he should use the
"electric system of motive power, such system to be approved by the city."

Q. Did you ever seek to alter your Main Street system from horse locomotion to anything else? *A. Yes.*

Q. To what end; what did you do? *A. I waited upon the council of the board of works.*

Q. That is, the board of works is a committee of the council of the City of Winnipeg? *A. Yes.*

Q. And I believe you submitted some method? *A. Yes.*

40 *Q.* It was what? *A. Known as the overhead system of electricity.*

Q. The same as you are operating south of the Assiniboine? *A. Yes.*

Q. Did you propose any kind of poles, and where they were to be erected?

Mr. Ewart: Before this is gone on with further I must take the point that if there were communications with the committee, we must see what authority the committee had to negotiate. What is to be given will be practically conversations between Mr. Austin and members of the committee, and I don't know what

RECORD.

—
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—*continued.*

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

authority it had to deal with this man at that time, or to bind the city by any conversations that took place there. We must see, before the city is bound, that that committee was authorised to bind the city by conversations or any agreement made at that time.

Mr. Howell: I suppose the city could not be bound by the conversations of that committee, or the mayor, or by the council, but possibly we might be, and it shows this, if we wish to do anything what can we do? We may talk, they may refuse to hear us, but we did our part and that is what I wish to show.

Mr. Ewart: My learned friend says that he made offers, and I understand 10 now that is what he desires to prove, that he made offers to the city. The fact that he made these offers to a committee of the council is not an offer to the council unless that committee had power to receive offers on behalf of the city; so that my point still remains, and my learned friend will not seek to give a conversation in order to bind him (Austin), unless on the other hand we are bound, because it is against us.

His Lordship: So far I would not stop the evidence. I don't know what it may amount to, but will let Mr. Howell go on.

Mr. Howell: It would not be more binding if we had it in writing.

His Lordship: No, but you might have to procure the writing. 20

Mr. Howell: To work out that, did you do anything towards showing the feasibility of working your Main Street cars, south of the Assiniboine by electricity? A. Yes.

Q. What did you do? A. We operated them.

Q. Give them samples of anything? A. We had evidence from other places.

Q. Did you get samples of anything? A. We had a sample pole.

Q. Where did you place that? A. We placed that up near our office on the corner of Main and Assiniboine Street.

Q. And your intention was to place a row of poles down the centre of Main 30 Street? A. Yes, a row of iron poles.

Q. With a cross bracket? A. Yes, with a cross, ornamental bracket.

Q. In order to hold the trolley wires? A. Yes.

Q. One on each side? A. Yes, as well as feed wires.

Q. Then your intention was to propose a scheme of putting up a row of poles down the centre of Main Street, with a double track on each side close to this row of poles? A. Yes, double track.

Q. And the tracks close together in the centre of the street? A. Yes.

Q. So that there would be one row of poles holding the two wires without cross wires? A. Yes. 40

Q. Did you communicate that scheme to anyone on behalf of the city?

Mr. Ewart: Will your Lordship allow this?

His Lordship: I think so. It had to be communicated to some individual to get to the council.

Q. Did you communicate this scheme to anyone? A. Yes.

Q. To whom? A. The Board of Works.

Q. Were they in session? A. Yes.

- Q. That is a committee of the council of the City of Winnipeg? A. Yes.
- Q. Who was the chairman of the Board of Works? A. Mr. Smith.
- Q. You desired the council to do what? A. To give me the privilege of putting down an electric line on Main Street.
- Q. And to do what with your tracks? A. To take up our present tracks, and move them close to the poles in the centre.
- Q. Could you get such leave? A. No, much opposed to it.
- Q. What was the reason given—did you know? A. The reason given was —
- 10 Mr. Ewart: Does your Lordship allow this? There is no authority shown in that Board of Works, and I don't know what time it was even.
- His Lordship: I don't like to disallow evidence of this sort. If the authority is not shown now it can be shown hereafter.
- Mr. Howell: Here is the difficulty that I will be met with—difficulty with counsel who have given opinions to the city. Is this city to be prevented getting electricity? and we wanted to give them electricity even for our short term, and they would not take it.
- Mr. Ewart: These offers, a great many of them, are in writing, and the powers of the Board of Works from time to time are here, and I think both sides
- 20 have gone into the resolutions and bye-laws passed, and if there are any resolutions passed by the Board of Works at that time not here, we will have them here.
- His Lordship: The Plaintiff, to avail himself of the benefit of evidence of this kind, will have to show that the Board of Works has the power.
- Mr. Ewart: But we have all the resolutions and bye-laws here.
- Mr. Howell: I shall put in every thing of that kind that I can when I call the city clerk, Mr. Brown.
- His Lordship: The Board of Works has no statutory powers?
- Mr. Howell: Oh no, they get their powers through resolutions, but prac-
- 30 tically everything originates in that way. You lay it before the Board of Works, and if the council approves of it it is all right, and if the council disapproves of it that is the end of it; and I want to show that he did offer to do this to the Board of Works.
- Mr. Campbell: Unless the council did something with them it avails nothing. You are merely proving Mr. Austin's willingness.
- Mr. Howell: Yes, we were not only ready and willing, but you knew it.
- Q. At all events, you did offer to put down poles and operate Main Street by electricity? A. Yes, all the roads that we were then operating by horse-power.
- 40 Q. I believe they desired you to operate all other streets? Mr. Ewart objected to this question.
- Q. You did not stipulate an extension of your time for that purpose? A. No, not for that purpose.
- Q. Before operating the electric portion of your railway system did you get any leave of the council. A. Yes.
- Q. To whom did you go to apply for that leave? A. The Board of Works first.

RECORD.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin

—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

- Q. You went to the Board of Works for leave? A. Yes.
 Q. You got the leave? A. Yes.
 Q. That leave is in writing? Yes.
 Q. Your application to the Board of Works was verbal, was it not? A. Yes.
 Q. What date was it, do you remember? A. About August of 1890.
 Q. You applied verbally to the Board of Works for leave to operate by
 electricity; A. Yes.
 Q. The part that you are now operating by electricity? A. Yes.
 Q. You applied verbally for leave to run by electricity? A. Yes.
 Q. And you got the reply in writing? A. Yes.
 Q. This is the reply? A. Yes.

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Reply filed as Exhibit No. 6.

Q. You were afraid that that was not broad enough, and you applied verbally again? A. Yes.

Q. And in reply got this letter? A. Yes.

Letter referred to marked as Exhibit No. 7.

Q. Showing your application was to run by electric power? A. Yes.

Q. No question about that, I suppose?—A. No, none whatever.

Q. And in the arrangement of the poles and the removal of the poles it was done at the request of the city council and the engineer? A. Yes.

20

Q. I read to you part of the first paragraph of your agreement. "And to run their cars, take transport and carry passengers upon the same, by the force and power of animals, or such other motive power as may be authorised by the said council of the said city." What object had you in putting in the clause, by the force and power of animals, or such other motive power, what did you intend to cover by the term "such other motive power?"

Mr. Ewart: We object to that of course.

Mr. Howell: That is one of the questions that I wish to discuss. My learned friend may say that we never intended electricity and I want to put that question. They may argue to your Lordship that we never intended to cover electricity, and it is to meet that that I am asking the question. I submit that that is one of the questions that should be given, and we need not go as far as to show that it was discussed at the time.

Mr. Ewart: It is something new if it is newer than electricity. That after an agreement has been executed by parties, and the question comes up on the construction of it, that one man should be asked what did he intend by the words put in there, and we all know the way of construing a document. Where a bill is filed to rectify, he may be asked, and if it is not a bill to rectify, we have to take the words as they are ordinarily construed. This embraces what was agreed upon or it does not. If it does embrace what was agreed upon, no evidence can be given, and if Mr. Austin's point is that it does not embrace what was agreed upon, then the evidence must be, we agreed to so and so, and that is not properly stated in the document; and in a bill of that kind, intention would be everything, but that is not their bill here, and that being so, no question of intention can arise.

Mr. Howell: I don't say it is ambiguous, and I don't say we are seeking to explain anything. We say horse power or any other power, and we say it was electricity.

His Lordship: That may be, but I don't think you should call one witness to show that.

Mr. Howell: We will go further and show that it was in the mind of the council.

His Lordship: If you can show that it was in the mind of the council, I think that will be all right, but in saying it was in Mr. Austin's mind, I don't
10 think you could give that.

Mr. Ewart: I submit after an agreement is reduced to writing, that that is the only evidence of what an agreement is, and if evidence could be given as to the meaning attaching upon, or attached to any particular words by the negotiations, that would be altering the agreement really. As I said before, does this agreement contain what was agreed upon?

His Lordship: I should think I would consider that to refer to any power that had been used for propelling street cars up to that time.

Mr. Howell: I want to go further than that—any motive power that may have been reasonably thought of.

20 His Lordship: Electricity was undoubtedly thought of at that time, because they had electric roads in other parts. I know that. I rule Mr. Austin cannot be asked that question what he intended by that.

Mr. Howell: What I wish to ask is this. Was that intended to cover, or expected to cover, the possible future electric power?

Mr. Ewart: That is a question of what he intended.

His Lordship: You may ask him, if you like, getting away from his intention, and find out what he knew were motive powers employed at that time in street car propellation.

Mr. Howell: Any other power in contemplation. For instance, they didn't
30 use steam at that time.

His Lordship: I don't think you could ask the question what his intention was in putting those words there; but you can ask him what he knew as a fact—what powers were in use or were in contemplation of being used.

Mr. Howell: At all events I trust your Lordship has noted this, that I have asked the question, and my learned friend has objected to it. It is not ruled out by your Lordship's ruling, but after objection by my learned friend.

His Lordship: Yes.

Q. In May, 1882, what were the powers that were then thought of by you or others for street car propellation? A. Besides electricity?

40 Q. No, not besides that. What were the powers that were in contemplation by you or others, for street car propellation? A. Cable, dummy steam engine and gas power

Q. Any other? A. I don't remember.

Q. Others that were thought of by yourself and others—all of the powers that were thought of? A. Cable, steam engine and gas power.

Q. None others? A. None others.

Q. You did not think of horses? A. Yes, I did.

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RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

Q. Anything else. A. None other than electricity.

Q. I would like you to mention that. A. Of course I thought I was not allowed to mention that, but electricity most strongly after horses.

Q. Do you know, from your general knowledge of electricity, whether electricity had at that time been used for the propellation of cars anywhere? A. Yes.

Q. Where? A. Been used in Germany.

Q. Had it been used at that time anywhere in Canada? A. I think St. Catharines was about a year later, but it was contemplated about that time.

Q. It was running in 1883? A. Yes, I think so. I am possibly thinking of Toronto. They had one running there in 1885 anyway, if not before, besides operating it in the old country.

Q. When you say the old country do you mean England? A. It was operated in 1883 in Portrush, Ireland.

Mr. Ewart: Mr. Austin can hardly know about that.

Mr. Howell: History can always be given as evidence.

His Lordship: If it was general repute.

Q. In 1882 it was in general repute as a motive power? A. Yes.

Q. Was it one as applicable to the propellation of cars? A. Yes.

Q. What is the width of Main Street? A. 132 feet.

Q. What is the width of Notre Dame Street? A. 66 feet, I think.

Q. And so is Nina Street? A. I think so.

Q. What is the width of Logan Street? A. 66 feet.

Q. River Avenue is also 66 feet wide? A. Yes.

Q. Since the Defendant Company have commenced operating their cars upon Main Street between the C.P.R. and the Assiniboine River, have you noticed any reduction in the receipt of your fares? A. Yes.

Q. About what proportion of reduction? A. About 50 per cent.

Q. That is of the gross receipts? A. Yes.

Q. The gross receipts fell off one half after they operated for a short time? A. Yes.

Q. At first they operated only one or two cars? A. Yes.

Q. Didn't make much difference in your fare? A. Yes.

Q. They afterwards got on four cars on that street, and you noticed a reduction of 50 per cent. in your fares? A. Yes.

Q. That was a reduction of 50 per cent. of your fares of the month preceding it? A. Yes.

Q. How did it compare with the corresponding part of the year previously? A. About 50 per cent. less.

Q. Was the business of the city, or the inhabitants of the city, sufficient to justify your keeping up your full receipts if they had not been there? A. Yes.

Q. Then everything justified your keeping up the full receipts? A. Yes.

Q. What did you attribute this falling off to? A. The electric cars.

Q. Entirely to that cause? A. Entirely.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
— continued.

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- Q. Can there be any doubt that that is the cause? A. No.
- Q. What fares do they charge, or do they charge any? A. In a great many cases they do not.
- Q. What fares do they charge? A. A five cent fare with a reduction with tickets, 25 for a dollar, and another reduction that I am not quite familiar with.
- Q. But they do collect fares from passengers in ordinary street car business? A. Yes.
- 10 Q. How do they run their cars, will you describe it? A. They run their cars at intervals.
- Q. Where do they get passengers? A. Along the street.
- Q. Pick them up in the street anywhere? A. Yes.
- Q. Let them off anywhere? A. Yes.
- Q. They stop as ordinary street cars along the street, pick up passengers, and drop them off at different parts? A. Yes.
- Q. And passengers are charged for what? A. For riding in the cars.
- Q. What are they carrying on that business for—hire? A. Yes.
- Q. How do you know that? A. I can see.
- Q. So that they do carry passengers just in the same way that you do? A. Yes.
- 20 Q. In the conduct of your street car business you carry passengers from place to place in the same manner, do you? A. Yes.
- The case was now adjourned until the following day, November 15th, 1892, at 10.30 a.m., when it was continued, Mr. Howell examining Mr. Austin as follows:—
- Q. Recently on the streets of Winnipeg another street railway has been laid? A. Yes.
- Q. About when did that work begin, as well as you can remember? A. About the 1st of June.
- 30 Q. It began on the Main Street where? A. North of the C.P.R. track.
- Q. Main Street is the chief street of travel in Winnipeg, is it not? A. Yes.
- Q. And that chief travel is between the C.P.R. crossing and the Assiniboine River, is it not? A. Yes.
- Q. Work commenced about the 1st of June, you say, north of the C.P.R. track? A. Yes.
- Q. In what did it begin at first—what was done? A. Ploughed up the street.
- Q. And then using scrapers for scraping the earth away? A. Yes.
- 40 Q. The work went on, and when did it come to be in the nature of a street railway completed sufficient for operation? A. They started to operate it in an imcompleted state, just before the exhibition time.
- Q. Could you give me the date? A. The latter part of July.
- Q. The road was laid down up to that stage just like an ordinary railway, was it not? A. Yes.
- Q. Just ties laid down and ordinary iron rail upon them? A. Yes.
- Q. And it ran up Main Street as far as Selkirk Street, did it not? A. Yes.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Albert
 W. Austin
 —continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.

Albert

W. Austin

— continued.

Q. And in so far as it ran up to Selkirk Street on Main Street, it ran parallel to your line generally, up to the northern part of the city? A. Yes.

Q. How far from your track is their track away? A. About 6 feet.

Q. It ran parallel with your line and about 6 feet distant from it? A. Yes.

Q. When it reaches Selkirk Street the line leaves Main Street and runs up Selkirk Street? A. Yes.

Q. You have no line on Selkirk Street? A. No.

Q. It runs up Selkirk Street where? A. To 24th Street North.

Q. And then southerly to the exhibition grounds? A. Yes.

Q. It does not run very far southerly? A. About 300 yards. 10

Q. This new road that was commenced about the 1st of June runs about a quarter of a mile on Main Street? A. Yes.

Q. And in that distance it is parallel with your line? A. Yes.

Q. At Selkirk Street, how far does it run? A. About a mile and a half.

Q. About 300 yards on 24th Street North? A. Yes.

Q. That line was operated to be operated by electricity? A. Yes.

Q. And operated by what is called an overhead trolley wire over the centre of the road, as you have described with your road? A. Yes, except that it has no feed wire. 20

Q. But the general system is the same? A. Yes.

Q. This trolley system is manipulated by trolley wires strung on poles on the side of the street? A. Yes.

Q. The company began operating that in the latter end of July? A. Yes.

Q. Where did it get its motive power from? Where was the electricity generated? A. From the Manitoba Gas and Electric Light Company.

Q. That is another electric company in this city? A. Yes.

Q. Was there any more work done on this electric road from the continuation of it, and if so, when was it begun? A. There was a small amount commenced south of the C.P.R. tracks on Main Street. 30

Q. On the 27th of July, I think, your Bill says? A. Yes.

Q. They commenced about the 27th of July, on the south side of the C.P.R. track? A. Yes.

Q. Commenced a double line, was it not; laying down two parallel lines? A. They commenced to work on one line on one side of the street, and then abandoned it for a mile.

Q. And then they commenced on the other side? A. And then they commenced on the other side.

Q. Evidently the work went on eventually, and since then two lines of electric railway have been laid down on Main Street, from the C. P. R. to the Assiniboine River? A. Yes. 40

Q. Your two lines of railway were run one on each side of the centre of Main Street, were they not? A. Yes.

Q. And are now situated in that way? A. Yes.

Q. About how far apart? A. About 20 feet.

Q. Your street cars are run one on each side of the centre of Main Street, and about 20 feet apart? A. Yes.

- Q. They commenced laying their western track where in relation to yours—
your tracks? A. About six feet west of us.
- Q. West of your most westerly track? A. Yes.
- Q. Their west line that they commenced building was about 6 feet west of
your most westerly line on Main Street? A. Yes.
- Q. And where was their easterly line on Main Street? A. About four feet
and a half east of our easterly line on Main Street. They commenced about
6 feet west of the westerly line, and then they abandoned that track, and then
they started on the south side only one track.
- 10 Q. They abandoned it for a time only, and went on with it afterwards in
the same place? A. No; the track is there now—not been used.
- His Lordship: They commenced their west line about 6 feet west of your
west line? A. Yes.
- Mr. Howell: And ran it how far? A. About 100 yards.
- Q. And then abandoned that work? A. Yes, abandoned it altogether.
- Q. And that is not connected with the rest? A. Not connected.
- Q. Then they commenced on their easterly line on the point you have
already described, and ran that street through to the Assiniboine River?
- 20 A. Yes.
- Q. And that east line does not cross your track anywhere, except where?
A. Except at Broadway.
- His Lordship: Where did they build the east line with reference to your
track? A. About 4.6 east from the easterly line of our track.
- Mr. Howell: Then this easterly line runs from the line of the C.P.R.
continuously to the Assiniboine River? A. Yes.
- Q. And always parallel to your easterly line, and about four and a half feet
distant? A. Yes.
- Q. There are no switches or turnouts of yours, which are crossed by that
30 easterly line, except one at Broadway? A. That is all.
- Q. It there (Broadway) crosses one of your switches or turnouts? A.
Yes.
- Q. Where did they recommence the work of laying the westerly track? A.
At Fonseca Street on Main Street.
- Q. About how far from the C.P.R. track? A. About 100 yards.
- Q. That would not be far from the point where they left off the other work?
A. No.
- Q. How far? A. About 20 yards.
- Q. And they commenced this westerly line about 20 yards distant from the
40 place where they abandoned the other? A. Yes.
- Q. Where did they commence that with reference to your track? A. About
six feet west on our easterly line.
- Q. And therefore east of your westerly line? A. Yes, east of our westerly
line.
- Q. So that it would be between the two lines? A. Yes.
- Q. And then it went from there along Main Street, between your two lines
to the Assiniboine River? A. Yes.
- Q. And about the same distance from each line? A. Pretty much.

RECORD.

H.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. From the point where they commenced their westerly line how did they connect northerly with their system? A. They cross our tracks at Fonseca Street.

Q. And joined their easterly line? A. Yes.

Q. The west line crosses your westerly track at Fonseca Street and joins their own easterly line? A. Yes.

Q. And so from Fonseca Street to the station they have but one line? A. Yes, that is all that is used.

Q. Then the westerly line crosses your westerly track about at Fonseca Street? A. Yes. 10

Q. Then going southerly towards the Assiniboine River, where do you come to the next crossing of your track? A. Close to Portage Avenue on Main Street.

Q. The Defendants' west line crosses your track again at Portage Avenue—they cross a switch? A. Yes, they cross a switch close to Portage Avenue.

Q. And where next? A. Close to the Hudson's Bay Store.

Q. That is not far from Broadway? A. Not far from Broadway.

Q. They cross a switch of yours there again? A. Yes.

Q. And where next? A. Close to Assiniboine Street, they cross our track. 20

Q. Close to Assiniboine Street their west line crosses your eastern track? A. Yes, crosses our eastern track to join their eastern track.

Q. So that at each end of the Electric Company's line they cross your east track? A. Yes.

Q. Besides the switches and turnouts you have already mentioned? A. Yes.

Q. Then your eastern main line is crossed twice? A. Yes.

Q. And your switches are crossed how many times? A. Three times on Main Street.

Q. The two lines of this electric street railway are not joined at the station? Q. The easterly line and the westerly lines do. 30

Q. The line which you have described north of the C.P.R. track is not connected with the line south of the C.P.R. track? A. Not by track; it is connected by trolley wire and bond wire.

Q. But the rails are not laid? A. No, the rails are not laid.

Q. Have they laid down a similar track or electric railway, on Portage Avenue, running parallel with your line and going beyond the Kennedy Street division on Portage Avenue? A. Yes.

Q. And that is erected, the rails laid, and the poles and wires erected just as you have already described? A. Yes.

Q. Does that Portage Avenue Electric Railway cross your street car line? A. Yes. 40

Q. Where does it cross first, beginning at Main Street? A. It crosses our westerly line at Main Street.

Q. It crosses your westerly line at the junction of Main Street and Portage Avenue? A. Yes.

Q. Where next? A. At the junction of Portage Avenue and Kennedy Street again.

- Q. Where your line turns to go up Kennedy Street? A. Yes.
- Q. They have also laid down recently an electric line upon Notre Dame Street, Nine and Quelch Streets and Logan Streets, have they not? A. Yes.
- Q. And those make a loop, beginning at Main Street, running thence westerly upon Portage Avenue, and then Notre Dame Street westerly to Nina Street, and thence northerly along Nina Street and Quelch Street to Logan Street, and thence easterly along Logan Street to Main Street? A. Yes.
- Q. And that makes a loop, does it not? A. Yes.
- 10 Q. I suppose it is contemplated to cross your track at Logan Street to connect with their track? A. They do cross us there.
- Q. Then this loop line crosses your track at Logan Street? A. Yes.
- Q. It crosses also your Portage Avenue track at the junction of Notre Dame Street and Portage Avenue? A. Yes.
- Q. In addition to the crossings on your east track on Main Street and your switches there which you first described, your Main Street line is crossed by the loop line at Logan Street? A. Yes.
- Q. It is also crossed on Main Street at Portage Avenue by the Portage Avenue line? A. Yes.
- 20 Q. And your Portage Avenue line of street railway is crossed by their line on Portage Avenue at the junction of Notre Dame Street? A. Yes.
- Q. When did they commence operating their Main Street line between the C.P.R. track and the Assiniboine River—when was the first operation at all at any time—they ran a car or two for a day or two? A. I think about the latter end of August.
- Q. They began to run it pretty effectively about what date? A. Some time in September.
- Q. That is on Main Street? A. Yes.
- Q. Have they commenced operating the Portage Avenue cars yet? A. Yes.
- 30 Q. When did they begin that? A. On Saturday last.
- Q. That would be in November? A. Yes.
- Q. Have they commenced operating what you term the loop line yet? A. Yes.
- Q. When was that commenced? A. At the same time.
- Q. Saturday last—two or three days ago? A. Yes.
- Q. Now, Mr. Austin, you have charged in your bill that the running of their railway, by crossing your track, renders dangerous the operation of your line. Will you say whether that is true or not? A. It does.
- 40 Q. It does not render it dangerous? A. Yes.
- Q. In what way? A. On account of their cars crossing our tracks.
- Q. Have you any exemplification of the danger at all? A. Yes.
- Q. Has there been any danger or loss actually? A. Yes.
- Q. What was it?
- Mr. Ewart: Was he present?
- Mr. Howell: He knows whether his material has been injured or not.
- Mr. Ewart: He does not know unless he was there.
- Mr. Howell: I will call the car man, then.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Albert

W. Austin
— continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. You were present at one accident? A. Yes.
Q. When was that? A. About an hour ago.
Q. Where did that accident occur? Down by Assiniboine Street, close to my office.

Q. That is where the electric line crosses your east line? A. Yes.
Q. What happened there? A. The electric car ran into one of our cars and damaged it very badly.

Q. Where was your car? A. Our car was in the act of running along our own line just at the crossing.

Q. What happened? A. The electric car ran into it. 10

Q. At the crossing? A. Yes.

Q. Smash it at all? A. Smashed it pretty badly.

Q. Was there anybody killed? A. No.

Q. If anyone had been there would there have been danger to life?
A. Yes.

Q. How much is your car injured, can you say? A. It will take about a week to repair it, and then it will not be in the same condition as before.

Q. Do you know whether it was thrown off the track or not? Q. No, it was not thrown off the track. 20

Q. Have any other accidents been reported to you? A. Yes.

Mr. Ewart: That is not evidence.

Mr. Howell: I don't intend to go any further with it.

Q. In what way does their crossing injure you? A. In the way of impeding our cars by having to slow up when crossing over.

Q. You have to slow up when crossing the track? A. Yes.

Q. Any other way? A. Having to run at no higher rate than 6 miles an hour under our bye-law, most seriously interferes with our traffic, on account of so many slowings up at the crossings.

Q. As to the crossings themselves, in order to effect a crossing of your track what is done with your rail; is your rail left continuous, or what is done? A. No, our rail is removed and theirs put in its place. 30

Q. Your rail is cut in two? A. Yes, our rail is cut in two.

Q. And their rail is put in its place? A. Yes.

Q. And it leaves a space between the ends of your rails about how long?
A. From half an inch to inch and a half—it varies.

Q. How are the ends of your rails fastened? A. The ends of our rails are spiked to longitudinal timbers on our own track.

Q. The end of your rail is cut in two and simply spiked to your own timber below? A. Yes. 40

Q. How does it cross their track? A. Through a slot cut in their rail.

Q. What is the width of the slot cut in their rail? A. From an inch and a quarter to an inch and a half.

Q. Does that interfere at all with the working of your road? A. Yes.

Q. In what way? A. The constant jarring in passing over has a tendency to shorten the life of the wheels, and generally the car, as well as the danger there is of running off at these places.

Q. Has that increased the danger of running off at these places? A. Yes, very much. RECORD.

Q. This greatly increased the accidents by running off the track? A. Yes.

Q. Then the cars do leave the track at these crossings? A. Occasionally.

Q. On your track there is a provision for the flange of the wheel on your car to run on the edge of the flange-hold? A. The wheels have a flange.

Q. The bearing of the wheel runs upon the top of the highest part of your rail? A. Yes.

Q. The flange catches on the bearing marked "A" on Exhibit 2? A. Yes, 10 to the extent of three quarters of an inch.

Q. At the crossings your car wheels run into a slot that is cut diagonally in their rail of the width of how much? A. About an inch and a quarter to inch and a half.

Q. And the bearing part of your wheel runs diagonally then across the top of their rail? A. Yes.

Q. Will you say how in any other way that crossing interferes with your business? A. It interferes with our snow flangers.

Q. When your track is covered with snow, how do you remove it? A. By flangers placed in front of the wheels.

20 Q. Which scrape it off the top of the rail? A. Yes.

Q. When they come to a crossing, what effect has that? A. They have to be lifted or they catch in the corner of the slot, and injury is done to the flangers.

Q. Have they any trouble with keeping the slot that crosses their rail—keeping that clear so that the flange of your wheel will go on? A. Yes, on account of the manner in which it is put down we have trouble with it.

Q. In what way? A. On account of the clumsy manner in which the tracks are laid, not evenly, and on account of the way the foundation for the rails is set, poorly put in, it causes a spring when our cars are going over them, and we have 30 had wheels wrenched loose.

Q. On these crossings? A. Yes.

Q. Assuming that the crossing was perfectly made according to the principles that they have laid down, would there be any difficulty keeping that slot free—supposing it got filled with earth, sand, or gravel, or anything. A. It would require a person there attending to it to keep it clean.

Q. Have you had any difficulty in that thus far? A. Yes; we have had a little.

Q. Because unless that slot that crosses their track is kept absolutely clear, what would be the effect? A. You are apt to have a run off.

40 Q. Then thus far how many accidents have you had by virtue of collisions with the other line?

Mr. Ewart:—He must only speak of his own knowledge.

Mr. Howell: How many are reported?

Mr. Ewart: We cannot be bound by that—how many are reported to him.

Mr. Howell: You saw one yourself? A. Yes.

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RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. The electric railway cannot run without the snow being kept off its track, can it? A. Not with this system.

Q. Can it be run at all with any degree of snow on the iron—supposing that there were an inch or two of snow on the iron? A. No, it cannot be run to any extent.

Q. Then, during the winter, their iron must be kept clear of snow? A. Yes.

Q. Your agreement provides that you shall take the snow from your own track, and spread it evenly over the whole street? A. Yes.

Q. Can you do that without putting it on the Electric Railway Company's 10 track? A. Not very well.

Q. Can you do it at all—could you spread it evenly without putting it on there? A. It might be done by shovelling it off our track and carting it away.

Q. That would not be spreading it evenly over Main Street? A. No, not evenly over Main Street. I did not understand you.

Q. Then if you spread it evenly over Main Street, you must spread it on their track? A. Yes.

Q. Your agreement so compels you? A. Yes.

Q. In passengers getting off or getting on your cars, is there any 20 danger of a collision of those passengers by the passing electric railway? A. Yes.

Q. Do you know whether any such have occurred thus far?

Mr. Ewart: Of your own knowledge?

Q. Did you ever see any yourself? A. Some very narrow escapes I have seen.

Q. If your car stops to let off a passenger, the passenger must carefully look out that he is not run over by an electric car? A. Yes.

Q. Will you say whether you think that that interferes with your business or not? A. It does. 30

Q. About what rate of speed does an electric car go—at times, at all events? A. They vary very much.

Q. Sometimes at how high a rate? A. I have seen them going at the rate of 15 miles a hour.

Q. On Main Street? A. On Main Street.

Q. That is on the thickly travelled part of Main Street? A. Yes.

Q. From the enquiries which you have made as to the construction of this road in the beginning, who were you led to believe were first constructing it?

A. Ross and McKenzie.

Q. Why was it that you caused this notice (Exhibit 1) to be served upon 40 Ross and McKenzie? A. Because I thought that they were the proper parties.

Q. The parties doing what? A. Doing the work.

Q. They were the parties building the road, you thought, at that time? A. Yes.

Q. Did you ever try to find out if the Defendant Company was doing the work, or cause any enquiries to be made? A. Yes.

Q. From whom were the enquiries made? A. From some of the men on the work.

Q. And any source to find out who got the leave to do the work? A. From some of the city officials.

Q. You did try from time to time to find out from some of the city officials who was doing the work? A. Yes.

Q. From what source of revenue does your company derive its profits in connection with your street railway? A. Fares from passengers.

Q. A passenger, on entering your car, pays how much? A. Five cents, or a ticket fare equal to four cents.

Q. And then when they wish to alight, the car stops anywhere in the street and lets them off? A. Yes.

Q. The Defendant Company's electric road has the same means of providing of profit or revenue? A. Yes.

Q. They have no other that you know of? A. No other.

Q. They sell tickets to some passengers and collect money fares from others, the Defendant Company? A. Yes.

Q. In the same way that you do? A. Yes.

Q. And they receive and discharge passengers in the same way that you do? A. Yes.

Q. About how many cars have you running on your various systems? A. About fourteen at present.

Q. How many do you keep running on Main Street between the C. P. R. and the Assiniboine River? A. Eight at present.

Q. About how much does it cost in capital to keep up the stock of your street cars, the rolling stock, the horse-power part of your system?

His Lordship: Are the fourteen cars on your whole system? A. Yes, on the horse car system.

Mr. Howell: Aside from your electric system, you keep 14 cars propelled by horse power? A. Yes.

Q. About how much capital have you to keep in rolling stock? A. About \$25,000.

Mr. Ewart: In cars alone? A. Yes.

Q. They cost over \$1,000 a car? A. Our cars cost over that.

Mr. Howell: It takes about \$25,000 to keep a supply of horse cars on hand. A. Yes.

Q. And these require of course constant repair and renewal? A. Yes.

Q. In addition to that, when your track is blocked up with snow and it is impossible to use the rails, what do you use? A. Sleighs.

Q. And for that purpose you must keep a stock of sleighs on hand? A. Yes.

Q. Those are cars similar to your ordinary cars, only upon runners? A. Yes.

Q. And you have them heated with a stove? A. Yes.

Q. About how much does your supply of sleighs cost to keep up; what capital have you to keep invested in sleighs? A. About \$10,000.

Q. Then for the purpose of operating your horse cars, about how many horses do you have to keep on hand? A. From 80 to 100.

Q. You also require to keep stocks of harness? A. Yes.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

RECORD.

Q. About what capital have you invested in horses and harness? A. About \$20,000.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

Q. This capital that you have just mentioned is required for rolling stock and motive power to be kept on hand? A. Yes.

Q. And the return that you expect to make on that capital is derived entirely from the five cent fares that you get upon your street cars? A. Yes.

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. I suppose the Portage Avenue electric car has not been running long enough for you to speak as to what loss you are likely to sustain by the operation of that line? A. No, I can't tell. 10

Mr. Howell: I don't propose, unless your Lordship requires it, to go into the actual loss.

Mr. Ewart: I don't know what all this evidence is to show. The case is one of the construction of documents.

Mr. Howell: I think we have to show a loss, and I think we have to show that we have a large capital invested in this.

His Lordship: Oh yes, I think you are quite right in showing that you have a large capital invested in it.

Cross-examined by Mr. Ewart:—

Q. You are the only member of your company, I think, in this country, Mr Austin, are you not—you are the only stock holder of your company? A. No. 20

Q. The only one having any considerable quantity of stock? A. No.

Q. Who are the others? A. The president has considerable.

Q. Who is the president? A. James Austin, my father.

Q. But I say in this province, you are the only one in this province a stockholder in this company? A. Yes.

Q. You don't trouble much about holding directors' meetings? I believe you are the board of directors yourself? A. Pretty much,

Q. The management and control of this railway is confided to you? A. Yes. 30

Q. Your father, I believe, and you, own the railway, or very nearly so? A. Very nearly so.

Q. And he leaves the management to you? A. Yes.

Q. So that anything you do for the railway is really the railway doing it? A. Yes.

Q. You have been in Winnipeg during the whole of the time of the construction of the Defendants' railway. A. Yes.

Q. You saw and observed what was being done from day to day? A. Yes.

Q. You were quite familiar with what they were doing all the way through? A. Pretty much so. 40

Q. And for the last couple of years you and McKenzie and Ross have been competing with one another for the electric franchise, which the city was proposing to give, have you not? A. Directly and indirectly.

Q. You have been aware of the different bye-laws which the city has passed at, or about the time that they were passed with reference to the city railway? A. Yes.

Q. You are aware of the agreement which is set out in the charter of the Defendants' railway, about the time it was made, that is the agreement between Ross and McKenzie and the city? A. Yes.

Q. You were aware of the application which was made to the legislative assembly last session to confirm that bye-law? A. Yes.

Q. And you appeared with counsel before the Committee of the House, to oppose the confirmation of that bye-law? A. Yes.

Q. And did oppose it? A. Yes.

Q. You were aware that the statute was passed confirming it? The statute
10 that we have amongst the Acts of last Session? A. Yes.

Q. And you were aware that it was the intention of McKenzie and Ross to go on building the railway within the terms of the bye-law? A. Yes.

Q. You knew that the agreement was with Ross and McKenzie, but that there was a clause in the agreement about assigning it to a company? A. I am not very clear on that point, Mr. Ewart, I think I did.

Q. You knew that an application was made to the legislative assembly to incorporate this Defendant Company? A. Yes.

Q. And you knew that the idea of incorporating that company was that that company would do the work instead of Ross and McKenzie? A. I did not know
20 but what the company might have power to assign to some other.

Q. Did you know that the idea of getting the company incorporated was that Ross and McKenzie would do it through the company, and not themselves? A. I cannot say that.

Q. What did you think that they were applying for the charter for? A. To enable them to construct a railway, to be able to borrow money, &c.

Q. For what purpose to borrow money? A. To construct a street railway.

Q. That is the street railway which had been agreed upon between Ross and McKenzie, on the one hand, and the City of Winnipeg, on the other. It was to
30 carry out that agreement? A. I fancy so.

Q. It could not have been for anything else. It was because you were aware of that when you opposed the company with those powers? A. I had an idea that they wanted to get power to run because of other things.

Q. It was with the view to preventing them carrying out that agreement with the city that you opposed the granting of a charter to them? A. Yes.

His Lordship: There was an application.

Mr. Howell: We opposed the legislation, the legalization of the bye-law. It was all one Act, and we opposed it.

Q. You tell us, in the early history of the city, before Main Street was
40 paved, that the public used your line a great deal? A. Yes.

Q. And it was worn out by such usage to a large extent? A. Yes.

Q. You of course knew, when you got your charter, that the public had a right to use that? A. Yes.

Q. But notwithstanding that you complained to the city, and the city gave you \$1,000? A. There was a consideration.

Q. You tell me there was a consideration, but I have the document here

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.

Albert
W. Austin
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

under which it was granted: your memory must have failed with reference to that. If you will look at this copy, which is certified by Mr. Brown, the city clerk, it will remind you of the circumstance. That was the way that you got the \$1,000 wasn't it? *A.* That was the way partly.

Document referred to was now filed as Exhibit No. 8, it being clause 2 of the report of the Finance Committee, of meeting May 1st, 1884.

Q. You have told us what the population of Winnipeg was in 1882. You remember that there were very great expectations in the breasts of the Winnipeg people in 1882, were there not, as to the future of their city? *A.* Yes.

Q. People thought that we were going to have a Chicago in a very short 10 time? *A.* Yes.

Q. There are the remains of a big hotel down on Main Street yet? *A.* Yes.

Q. The expectations of the people with regard to the future of the city were very high, and very great at that time, speaking generally? *A.* Yes.

Q. That was greater in the first half of 1882 than in the last half, I believe, isn't that so? *A.* I think throughout the summer.

Q. Wasn't the great excitement through January and February? *A.* That extended on to June and July.

Q. It extended from the spring do you think? *A.* Yes.

Q. Wasn't the highest part of the excitement in the early winter of 1881 20 and 1882? *A.* The prospects were very bright then.

Q. You told us something of a proposition that you made to the Board of Works at one of their meetings with reference to putting down poles and tracks on each side of those poles. I believe you had a great deal of negotiating of that kind and could not come to terms with the Board of Works? *A.* Yes.

Q. With reference to the position in which electrical discovery was in in 1882, I suppose, from your evidence, you have been reading the same book that we have been reading, have you? *A.* I have read this book (Crosby and Bell's "Electric Railway") partly.

Q. It was from that that you gave some information which you gave us 30 yesterday, wasn't it? *A.* From some of that.

Q. And there is no reason to doubt the correctness of the statements in this book? *A.* No.

Q. From this, then, you are aware—rather, you know—that there was no electric railway on the continent of America, even for exhibition purposes, until 1883? *A.* Yes, I think there was.

Q. Where do you say there was any electric railway prior to the Chicago Exhibition in 1883? *A.* I think there was in a place called Brandon, in the States.

Q. In what year? *A.* Back close on around 1840. 40

Q. Perhaps, to some extent, you are right there, but that was not with a dynamo? *A.* It was with a motor.

Q. It was not with a dynamo; it was not the present system of street railway? *A.* It was not the present system.

Q. The use of the dynamo really makes a fundamental difference in the commercial feasibility of electric street railway, does it not? *A.* Yes.

Q. Prior to the election of the dynamo, electric street railways were more

for exhibition purposes than for commercial use? A. More in the way of experimenting. RECORD.

Q. It was the dynamo that really brought them within commercial use?

A. Still they were experimenting at the time, and it reached a certain degree of success in early days.

Q. But still the cost was out of all proportion to the speed attained? A. The cost is pretty much the same now.

Q. But the dynamo has made a revolution with reference to cost? A. Oh, yes.

10 Q. I am right in saying this: That in Chicago, in 1883, there was first exhibited an electric railway running by a dynamo? A. I would not say as to that.

Q. You have no information to the contrary? A. I think there was, but I can't speak now.

Q. This book (Crosby and Bell's) has nothing to the contrary? A. I don't know as to that book; my ideas are not all from that book.

Q. Would you disagree with this, at page 345 of Crosby and Bell's book, entitled "The Electric Railway"—up to 1883 the electric road in this country was practically undeveloped; all the advances had been made elsewhere, but
20 soon the scene of activity was to shift—have you any reason to dispute the correctness of that statement? A. Mr. Edison was experimenting with that process, and it was said that he was pretty successful.

Q. Up to that time, 1883, it was practically undeveloped? A. To any great extent as far as operating goes.

Q. These writers, Crosby and Bell, say that the first road thrown open to the public as an electric railway on the Continent of America was in Cleveland on July 27th, 1884. Have you any reason to dispute that? A. I have no doubt about the operation of that road.

Q. Have you any reason to contradict the statement that that was the first
30 road run for commercial purposes in any city or in any place on the American Continent? A. I think there were some roads run previously to that.

Q. You think there were? A. Yes.

Q. Can you tell me where these ran for the purpose of making money, not for experimental purposes? A. I think there was in Portrush, Ireland.

Q. I mean in America; was there any road in any place prior to the Cleveland Road which was opened when I say on July 27th, 1884? A. I cannot say no.

Q. Now, these writers say that the Portrush 6 miles was completed in 1883, and the regular running of trains began on the 5th of November, 1883, the same
40 year. Have you any reason to dispute the accuracy of that statement? A. I have no reason to dispute it.

Q. Do you know, or have you heard of any electric railway running by a dynamo for commercial purposes previous to the Portrush one? A. I don't know that I have heard so; there is a great deal of difference of opinion on that matter.

Q. You cannot tell me about that? A. No.

Q. So that in 1882 we must take it on this continent the feasibility of the

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II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

I

RECORD. application of electricity to street cars was in an experimental condition? A. It was on this side of the Atlantic.

II.
Proceedings
in the
Court of
Queen's
Bench (i:
Equity).

Q. Something that people were looking forward to, but had not yet been accomplished? A. Looking forward to from some time back.

Q. But it had not yet been accomplished? A. Not to any extent.

Q. You have said, Mr. Austin, that the effect upon your receipts by the running of the Defendants' line of railway has been to reduce your receipts upon Main Street fifty per cent.? A. Yes.

Q. What were your receipts prior to the running of the Defendants' railway? A. They varied very much.

Q. When you say they were reduced fifty per cent. give us some idea of what they were before, and what they have been reduced to? A. \$125 to \$150 a day. 10

Q. Is that what they were before the competition? A. Yes.

Q. And now they are reduced to about half that? A. Yes.

Q. With reference to these crossings, have these crossings been put in properly and skilfully, do you think? A. No, not by any means.

Q. They have been approved by the Government engineer, have they not? A. I don't think that they have all been approved by him.

Q. Some of them have? A. I believe so. 20

Q. He has told you so, has he not? A. No, I heard so.

Q. You don't mean to say that if crossings are properly made that there is danger to the cars because of them? A. If properly made there is not the danger to any great extent.

Q. That is danger of running off or injury to cars you mean? A. Yes.

Q. If they are properly made there is no increased danger or rather injury to the cars crossing them? A. There is always a certain amount of wear and tear from wheels passing over these crossings.

Q. The wheels cannot cross anywhere without experiencing a certain amount of wear and tear, but if made properly, wheels going over these crossings would not be materially diminished in their life on account of these crossings? A. Yes, I think they would. 30

Q. Be materially diminished? A. Yes.

Q. What is the ordinary life of a wheel? A. They vary.

Q. Upon your line, how long would a wheel last? A. On some lines, some last two years, and some last four and five.

Q. And then what becomes of them, what is wrong with them at the end of that time? Q. The flange and the tread are worn.

Q. Suppose these crossings are properly put in, what part would be affected by the crossings, what part of the wheel? A. Both the tread and the flange. 40

Q. In what way? A. By the bounding or concussion passing over the slot.

Q. And there would be some jar at the slot, you say, no matter if the crossing was properly made? A. Yes.

Q. But the wheel gets a jar every time it turns, does it not? A. Not to any great extent.

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
—continued.

Q. Every time it passes from one rail to another it gets a jar? A. Not if properly laid.

Q. But your lines, as they are made now, when it is going around, your wheel passing from one rail to another, it gets a jar? A. Not to any extent.

Q. When you are passing over a rail can't you tell when you are passing from one rail to another? A. Not on all roads.

Q. You know that is a common way of calculating the speed you are going at? A. No; it must be going slow on some roads to be able to get at that.

Q. I think you told me that if the crossings were properly laid or made, there would be no increased danger to going off? A. You didn't ask me that I think.

Q. What did you say there would be no increased danger as to? A. If properly made there would not be any increased amount of danger.

Q. You say that there is danger to your passengers by having the electric cars run upon the street? A. Yes.

Q. And I suppose there is some increased danger because of every vehicle that there is on Main Street, is there not? A. To a certain extent.

Q. You are aware however, that in a large proportion of States in the United States there are two companies running upon the same street? A. I don't know that, Mr. Ewart.

Q. You haven't heard of that? A. No.

Q. Perhaps I am wrong in saying a large number; there are many? A. I cannot say as to that.

Q. During the negotiations that you had with the council I believe that you were asked at one time if you would build the extension lines, that is on the other streets that Ross and McKenzie were proposing to build on, and you refused to build upon those streets unless the council gave you an extension of your franchise, did you not? A. I did not refuse.

Q. Well, what do you mean by not refusing? A. They asked if we were willing to make all extensions of electricity without an extension or increase of terms of years, to which we replied No.

Q. What do you mean by an extension? A. Wherever they wanted an extension throughout the city, but these lines that we occupy we were willing to do so.

Q. You were asked if you would make these extensions with the electric system, and you declined to do so unless you got an extension of your franchise of time? A. We were willing to operate all our lines with electricity that we at present occupied, and reserve the option of making further extensions, but we were not going to be compelled to do so.

Q. Make what extensions? A. All extensions by electricity.

Q. Didn't you decline to make the extensions with the horse service unless you were given an extension of your time?

His Lordship: You say you were willing to operate your present lines without any extension? A. Yes, and reserve the option with regard to any others, if we found it would pay.

His Lordship: He declined to be bound to put in electricity on the others.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Albert
W. Austin
— continued.

RECORD.

II.
 Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Albert
 W. Austin
 —continued.

Mr. Howell: Yes, declined to be compelled.

His Lordship: Did you agree to operate any extensions that they wanted by horse-power without making any condition as to extending the charter?

A. I was not asked to.

Mr. Ewart calls for the production of letters from J. A. Platt to A. W. Austin, of 4th December, 1891, and another from the same party to A. W. Austin of December 7th, 1891.

These were produced and marked respectively as Exhibits No. 9 and No. 10.

Letter dated 5th January, 1892, Austin to the mayor and council, filed as 10

No. 11.

Letter of the 18th January, 1892, Platt to Austin, filed as Exhibit

No. 12.

Letter dated 25th January, 1892, A. W. Austin to the Committee of Works, filed as No. 13.

Q. The correspondence speaks of a bye-law which you sent in, and which you were willing to accept: this is the bye-law, is it not, No. 522 (Exhibit No. 18)? A. I think that is the bye-law by the city; it may be printed from my proposal.

Q. Don't you remember telling the council at one time after your bye-law 20 had been read a first time, and it was standing before the council yet——?

A. I think there were one or two bye-laws prepared.

Q. But this is the one you sent—referring to Exhibit 18? A. No, I don't think I got that one printed.

His Lordship: Did you ever submit a bye-law at all? A. Yes.

Mr. Ewart: This one, 507, is one that the city got out for you all to tender on? A. Yes, but I don't think there were any offers submitted under that.

His Lordship: Was your bye-law printed? A. No; the one that I put in in writing, and the city may have got it printed afterwards. 30

Q. In your proposition you made it a *sine qua non* that you should have pavement free on certain streets? A. On certain conditions.

Q. You always wanted the pavement free upon conditions that you would build upon the extensions? A. Not always.

Q. Were you willing ever to do the pavement upon the extensions? A. No, because my letter or communication shows an offer of so much per mile in lieu of pavement, that is a bonus every year instead of doing pavement, the city was to do that and we were to pay the bonus, the same as in Ottawa.

Mr. Ewart: I ask you to produce the notice served upon you of an applica- 40 tion to the railway committee to settle the matter of crossings.

The document was produced.

Q. The document which I now show you was served upon you on the 13th of June, 1892? A. Yes.

Filed as Exhibit No. 14.

Q. And the document which I now show you was served upon you when?

A. On the 14th of June, 1892.

Filed as No. 15.

Q. You attended with counsel before the railway committee, Mr. Austin, upon the return of these notices that I have just shown you? A. Yes.

Q. And urged various contentions with reference to the kind of crossings that should be put down? A. Yes.

Q. And arrangements that ought to be made? A. Yes.

Re-examination by Mr. Howell:—

Q. You attended before the Executive Council of Manitoba, and you objected to certain things, my learned friend says; but what was the first objection?

A. To crossing at all.

10 Q. You claimed at first, through your counsel, that they had no right to cross at all? A. Certainly.

Q. A lot of your offers have been put in here, and your bye-laws respecting the franchise competed for by the other electric people. Why did you go into that—you thought you had no monopoly? A. Oh, no; I thought I had a monopoly right enough, I knew it, in fact.

Q. Why did you apply then? A. I applied with a view to coming to some arrangement about the extension of electricity throughout the city.

Q. Any other object? A. And to get an extension of time for those lines which the city wanted to bind us to make.

20 Q. So that during the whole of that time you knew that you had a monopoly? A. Yes.

Q. You were quite fortified in your idea that you had a monopoly? A. Yes, quite so.

Q. You told my learned friend this: that if properly made the crossings would not increase the danger, do you adhere to that? That there would be no danger in crossing your line if the crossings were properly made, is that so? A. There would be a certain amount of danger.

Q. In what way? A. By collision.

Q. Is not that the principal danger? A. Yes.

30 Q. Is any crossing made of your railway by another railway a detriment to it? A. Yes.

Q. Any crossing is a detriment to it? A. Yes.

Q. Had you any power, or have you any power, to warn the electric railway off your track—that you have to warn waggons off? A. We have no power to warn them off our track more than what our rights would give us.

Q. Then the chief reason that you had for negotiating with the city for new terms was what? A. The introduction of electricity.

40 Q. Anything else? A. And as I have already stated as to the unprofitable extension that they wanted me to make to get an extension of time, as mostly all street railways do.

Q. Then another object was to get an extension of time? A. Yes.

Q. You had only then about ten years to run, had you not? A. Yes, that is all.

Q. And you wanted an extension up to what time? A. Twenty more years we asked for.

Q. What was the chief dispute between you and the council? A. The chief dispute at the start off was that the over head wires were dangerous.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.

Albert
W. Austin

—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff

Company.

Albert

W. Austin

—continued.

R. G. Hayes.

Q. After that what was the chief dispute? Was it time that was the dispute, or what? A. The time was the chief dispute.

Q. That is, an extension of your time was the chief dispute? A. Yes.

Q. And you would not yield to bind yourself to put in electricity over your future and present systems without an extension of time? A. Yes.

Q. During the whole of that time, you say then that you had no doubt as to your monopoly? A. I had no doubt as to my monopoly, because I had the undoubted opinion of legal men in the east on the question.

The witness was stating the names of those whose opinion he had secured in the matter, when his Lordship said, "We don't want that." 10

Mr. Howell: Surely he can say that.

His Lordship: You accomplish all you want by his saying that he was quite satisfied that he had a monopoly.

Robert G. Hayes, sworn. Examined by Mr. Howell:—

Q. You are a driver of the Winnipeg Street Railway Company? A. Yes.

Q. You were driving at the station a few days ago when there was a collision? A. Yes.

Q. What day was it that that accident took place? A. Wednesday of last week.

Q. You were driving the Winnipeg street car in which direction? A. 20 North.

Q. And you were on the iron track of the Winnipeg Street Railway? A. Yes.

Q. And you were driving northward? A. Yes.

Q. When you were approaching that crossing there was also an electric car approaching in the opposite direction? A. Yes.

Q. Whose car first got within 100 feet of that crossing? A. I did.

Q. You got there first, and you drove on to cross the track, did you? A. I drove on until I saw that the motor man in the electric car didn't throw off his motor, or ease his brake, and then I put on my brake to save the passengers 30 in my car.

Q. And they came straight ahead? A. Yes.

Q. And ran into you? A. Yes; and if I had gone ahead I would have been in the centre of the crossing by the time they got there.

Q. They go faster than you? A. Sometimes.

Q. When you noticed that he did not shut off his motor you threw off your brake? A. Yes, to save the passengers.

Q. Had you any passengers in your car? A. Yes, there were seven; six inside and one out.

Q. The electric car struck yours? A. Yes.

Q. When did the electric motor man put on his brake? A. The car stopped 40 when it was about 100 yards away from me. I could not say whether he stopped for passengers or not. My brake was on when he got past, and it struck about 9 inches of my car, and it knocked it a little ways back. It didn't put it off the track.

Q. And it got past then? A. Yes, it got past then.

Q. And it went on about a hundred yards? A. Yes.

Q. And then you, to be sure that they would stop—— A. I don't know whether they stopped for passengers or not.

Q. Did it do any injury to your car? A. Yes, it broke up the corner very badly.

Q. Did it injure anybody? A. No.

Q. Was there any danger to life there in any way? A. Yes, there was a boy standing to my left hand side, and it came within two inches of striking
10 him.

Cross-examined by Mr. Ewart:—

Q. You are a very careful driver, I suppose? A. I have had quite a little bit of experience.

Q. I suppose if they were all as careful as you, there would not be any trouble, would there? A. You get into trouble whether you are careful or not.

Q. There is really no danger at these crossings, if men act reasonably, is there? A. Yes, when the motor man of the electric car does not pay any attention.

20 Q. If both men act reasonably, there really is no danger there? A. Well, yes, sir, because there is apt for the horses to start away from the driver, or such as anything go wrong with the electric car and cause an accident.

Q. That would happen too, if your horses ran away and ran into somebody else? A. Yes, certainly.

Q. But under ordinary circumstances with careful men, who are acting reasonably, there would be no danger? A. Yes, that is right, mister.

Q. Whose fault was it on this occasion? A. The motor man's.

Q. The motor man says it was yours? A. How is it that he does not defend it?

30 Q. He has talked to you, and says it was your fault? A. I have never talked to him.

Q. You say it was his fault? A. Yes.

Q. Your car did not leave the track? A. No.

Q. It went on some distance after the accident happened before the car stopped ahead? A. No, it could not, because the brake was on.

His Lordship: Were you stopped when this car struck you? A. Yes, and the electric car was about 7 yards from me when I stopped; I put up my hand and waived them, but I hadn't time to put the car back.

Mr. Ewart: Your car did not go three lengths ahead afterwards?

40 A. No.

Q. Were you sober? A. Yes.

Q. Hadn't taken a drink that day? A. Never take a drink in working hours.

Q. You were quite sober? A. Yes.

Q. You do not take a drink once and a-while? A. I may take a drink once a month.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.

R. G. Hayes
—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 R. G. Hayes
 — *continued.*
 Isaac Camp-
 bell, Q.C.

Q. You were not under the influence of liquor at that time? A. No.

Q. You do get tight sometimes? A. No, and no one can say that they saw me.

Q. Then this accident happened after the electric car had crossed or passed the crossing? A. Yes, it was past the crossing.

Q. You hadn't reached the crossing? A. No.

Q. The electric car had? A. Yes, but I had gone ahead, and not put on my brake for the purpose of saving my passengers, I would have been in the centre of the crossing and would have been there first.

By Mr. Howell: When the accident took place, the electric car was on 10 the crossing? A. Yes.

Q. And you were far enough back so that the rear of the car would be on the crossing and yet slip past you? A. Yes.

Isaac Campbell, Q.C., *sworn.*

Mr. Howell: You are the solicitor for the city? A. Yes.

Q. You received, or your office received the agreement referred to in the 6th paragraph of the company's answer? A. The agreement 4th June, 1892. Yes.

Q. Your firm received that? Q. Yes.

Q. For whom did you receive that? A. For the city. 20

Q. When was that received by your firm? A. When it first came to me, I am not sure of the date; I think it must have been about the 24th of June; I saw it at the office on the 3rd or 4th of July, having been away from the 20th of June; I think it must have come on the 24th because Mr. Hough had a duplicate one filed there at the government offices on that date, and that date was the 24th of June; it was the first appointment there, and that was the only one; Mr. Hough was there at the first one.

Q. When was the meeting—the appointment was the 24th of June? A. That was the first one, and he was only at that one. I am only speaking from information; when I speak from my own knowledge I speak of the 4th of July 30 when I returned and then found it.

* (Sic.)

Q. Had it been approved of by either you or Mr. Hough up to the

A. Yes, I think it had been approved of about the time of its date, the 4th of June: we settled what the form would be, with the exception of the first two clauses, except the form of the bye-law, and I think we settled the form of it about the 4th of June, the date it bears, and Mr. Munson drew it and sent that in.

Q. What makes you think it was settled about the 4th of June? A. I have no record, but I think it was, and it would be prior to the 18th of June, 40 and some little time prior that we settled the form.

Q. It was handed to your firm while you were away, do you think, some-time, or somewhere about the 24th of June? A. I assume that from information.

Q. You found it in your office on your return? A. Yes.

Q. An executed copy? A. Yes, executed by the officers of the company, I mean.

Q. A copy executed by the officers of the company? A. Yes.

Q. The first time you had seen it executed yourself, then, was on the 4th of July? A. Yes.

Q. That was the first time you had seen it executed by the company? A. Yes.

Q. I mean by executed, signed and sealed? A. Yes, that is I refer to this one: I was shown another one by Mr. Munson, but I did not examine that, but the first time I examined the one I now produce I mean, it was executed.

Q. Do you know when the company actually signed and sealed that 10 document? A. No, unless it is shown here (in the document) I have no idea.

Q. You don't know yourself? A. No.

Q. Was it signed and sealed by the company before you left Winnipeg? A. As I understand it it was, but as to that I cannot say—as to this one.

Q. You had not seen the document at all events? A. I am not sure but what I was shown one of them, but it was not delivered to us; it may have been held in hand, and I have an indistinct idea that Mr. Munson told me that he had it, but I don't think I examined it in any way.

Q. When was it delivered to you or your firm in any way? A. Sometime before the 4th of July.

20 Q. You think the 24th of June? A. I have taken that from what I have been told of its production elsewhere.

Q. You wanted the city corporation to sign this? A. Yes.

Q. For that purpose what did you do with it? A. Sent it in to them.

Q. When? A. On the 23rd and 25th of July.

Q. The writing on the back of it certified correct and executed by the Winnipeg Electric Street Railway Company, Hough and Campbell, is your handwriting? A. Yes.

Q. And you wrote that on the back of it as a justification for the city authorities to execute it? A. Yes.

30 Q. When did you write that memorandum? A. I don't know when it was endorsed.

Q. It would be after the 4th of July? A. Yes.

Q. Can you say when you sent it into the city council? A. I think it was on the 23rd or 25th of July.

Q. Did you not make some objection to that and ask for some change in some of the phraseology in that document, after you returned on the 4th of July? A. There was a suggestion made; when we compared this with Bye-law 543, the clerks in our office read it over and said there was some difference, and I may have held it up for one meeting; when I came to look at it "shall" was left out 40 in two places, and they had in "is to be," and when I saw it the first time I passed it.

Q. You did not see Mr. Munson about it on that ground? A. He may have asked me why it did not go through at the meeting of the 8th or 9th of July, and I may have said that we were comparing it, and I didn't want it to go through. We may have been disputing about the track on 17th Avenue North, but there was no dispute about this; there may have been a delay about comparing it in the office, but not for long.

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RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Isaac Camp-
bell, Q.C.

—continued.

K

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Isaac Camp-
 bell, Q.C.
 —continued.

Q. At all events the document was not compared and passed by your office until some time after the 4th of July? A. No, I take it that not accepting that by the comparison we found it was not as we intended it to be.

Q. You did not compare it, and finally deliver it yourself after it was all right until after the 4th of July? A. No, but we would have done that if we had settled it on the 4th of June; we would have done the same thing after it came back to us.

Q. When you saw it was the very same document? A. Yes.

Q. So that you satisfied yourself that it was the very same document some-
 time after the 4th of July? A. Yes. 10

Q. And then sent it in? A. Yes.

Q. The document that you refer to is the document provided for in the proviso to section 33 of the bye-law in the Defendant Company's charter?
 A. Yes.

(There was no cross-examination of this witness.)

The Court now adjourned for lunch—meeting again at 2.30.

Andrew
 McNabb.

Andrew McNabb, *sworn* :—

By Mr. Howell:—You are an old-timer here? A. Yes.

Q. When did you come to this country? A. In August, 1872.

Q. You remained in this country ever since? A. Yes, I have been 20
 here ever since, except a year and a half that I was in British Columbia.

Q. What year was that? A. The fall of 1888 till December 1891.

Q. What business did you carry on here? A. Carriage builder.

Q. As a carriage builder and a citizen could you form any opinion as to
 the state of the roads? A. I can very well.

Q. Can you say when the city was incorporated? A. I think it was in
 1873; I think it was September or November; I could not tell you the exact
 date. I think it was September, but I may be mistaken.

Q. The Act was passed in 1873, and the first council was elected and met
 in January, 1874? A. Yes, I think the 4th or 5th of January 1874. 30

Q. Mr. Cornish was the first mayor? A. Yes.

Q. Will you say what the population was about of this city in September,
 1873?

Mr. Ewart: Does your lordship say that that is material?

His Lordship: I cannot see myself, but I don't like to stop Mr. Howell?
 A. I think it was somewhere about 3,000 the population.

Q. What was the total population of the province assumed to be about that
 time? A. I think it was somewhere about 18,000.

Q. That was the whole province including Winnipeg? A. Yes, I think it
 was somewhere thereabout. 40

Q. Was there any town of any size in the whole province at all, excepting
 Winnipeg? A. No.

Q. What was the next one in size? A. Portage la Prairie was the
 next one.

Q. What was the population of that? A. About 150.

Mr. Ewart: If this is material we have prepared no evidence to meet it.

His Lordship: I can't see what the population of Portage la Prairie has to do with the case.

Q. In what state were the roads in the years 1873 and 1874, were there any side walks to begin with? A. No, there were no side walks, except private side walks in front of a few of the places on Main Street.

Q. Can you name any places where there was a private side walk? A. Yes; in front of the Davis House there was a little private side walk.

Q. How did other pedestrians get along? A. Through the mud.

Q. Any danger? A. Yes, we lost a boot occasionally.

10 Q. Did the city roads continue in that state up to 1882, much about? A. The roads were graded in 1874, and side walks were put on from time to time here and there throughout.

Q. Beyond the grading of the streets their natural clay and mud was left in its original state? A. Yes.

Q. Nothing done to improve it? A. No.

Q. In 1882, say in May, 1882, were the streets much the same as when you first saw them? A. There was a great difference.

Q. In what way? A. They were mixed up almost like mortar.

Q. So that they were much worse in 1882? A. Yes.

20 Q. Will you tell me during the years 1881-1882 what state the streets were in as nearly as you can, describe them as nearly as you can, as if you were describing them to strangers? A. They were all cut by traffic on the streets in great holes in some places on the street, and other places where mud had been lifted up on the wheels caused quite a piece of mud to be in some places, and left holes underneath it, and it was difficult to get along, even with a light waggon or buggy, in a great many places, when the horses having to stop to get breath. I know I had a horse of my own, and I had a great deal of driving to do, and I know that was the case. The roads were very bad indeed.

Q. What state would the wheels be in—can you say? A. The wheels, I have seen them for a great deal of time, weeks at a time, when you could not 30 see through the wheels at all; it would be solid with mud.

Q. How deep down would the horses go in this mud? A. Sometimes three feet, and the wheels would often go to the axles.

Q. When the roads dried up, what state would they be in? A. Those places where the mud rolled up and dried would dry up, and alongside of this large lump there would be a hole, and it would be lumpy and holes, and it would be a great difficulty to get along. After it got dry, the corporation would try and level them down by scrapers, and men and picks and shovels, and one thing and another.

40 Q. Have you any peculiar means of knowledge, or anything that would call your attention to it by any position you occupied in 1882? A. I had. I had a great deal of experience in turning out new work, especially platform waggons I built in those days, and there was no rod reach to them, and I had great difficulty with the new work that I turned out in those days that would be broken and returned to me. They would generally fall back on me, saying it was poor work.

Q. Had you any official position, in 1882, that would give you any information? A. Yes; I was in the city council in 1882.

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RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Andrew
McNabb
—continued.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
 Evidence on
 behalf of the
 Plaintiff
 Company.
 Andrew
 McNabb
 —continued.

Q. In the Board of Works and Fire and Light Committee? A. Yes.

Q. Was there ever any difficulty in getting the fire engines from one part of the city to another? A. Yes, there was.

Q. On account of the state of the roads? A. Yes.

Q. Did you ever occupy any other position than that of member of the Board of Works during 1882? A. I was acting chairman of the Board of Works for a while during 1882, during the chairman's absence.

Q. You were one of the councillors then at the time when Mr. Austin built his first street railway? A. Yes.

Q. When that railway was completed, did it make any difference to the 10 traffic on the streets? A. Oh, a great deal.

Q. How? A. They followed the track.

Q. Who followed the tracks? A. Mostly all teams, the transportation company, and mostly all individuals doing any driving they got on the track of the street car company; the street car track is the exact width of the wheels in this country, 4-8½ in width and the wheels are the same width apart, and they would fit in the track.

Q. The carriages would get on the track? A. Yes, and they would run along the iron rails, and they made a good smooth drive.

Q. Can you say whether teams took that usually? A. Oh, yes, generally. 20 I have seen eight or ten teams together, all together one after the other on this track, and I remember one accident where a waggon broke down, the front part went down, and the hind part went up, and was up on the track, and it delayed the cars about two hours; it was a loaded waggon; the party came to me, and had the front axle taken off, and the waggon taken off the track.

Q. After this track was built did the fire engine use it in any way? A. Yes, always used it.

Q. The fire-engine in going to fires always took the track? A. Yes.

Q. The streets continued practically in that state until the corporation paved them? A. Yes, until 1885; 1884 and 1885 the city paved them. 30

Q. What was the population of this city about in the year 1882? A. We calculated on about 35,000, but I think about 25,000 would be about the mark; those were boom days, and we always made wild calculations as a rule.

Q. You think about 25,000 would be the population? A. Yes.

Q. Have you tried to make any calculation as near as you could of what the whole population of the province was at that time? A. In 1882?

Q. Yes? A. I think it was something about 65,000 or 70,000; I think probably it was somewhere thereabout.

Q. The census of 1881, could you tell us what that was? A. I think it was about 65,000. 40

Q. And you think that they had a little more than the census in 1882? A. Yes, probably 70,000 would be the number then.

Cross-examined by Mr. Campbell:—

A. When you speak of the streets being so deep in mud, and the fire-engine having to take to the street car track, you are referring of course to a period in the spring and a period in the fall of the year; the streets break up in the spring and the wet weather comes in the fall? A. There was always a period in the spring;

we generally had June rains, and June was always very bad; July and August would not be, but the rest would be.

A. Main Street has always been a good fall street except in 1882?
A. Yes.

Q. And that is about five months? A. July and August was generally very good; in the summer we don't have so much rain, but April, May and June was generally very bad.

Q. Have we had June rains since 1882? A. Not as a rule, but 1883 was a very bad June.

10 Q. Most of the Junes since then have not been anything out of the usual of summer months? A. Not anything as bad as we had in the early days.

Q. And the bad state of the streets in the autumn was due to the fall rains? A. Yes.

Q. And the spring due to the melting snow? A. Yes, to a great extent, and there was a great deal of mud rolled up on those tracks.

Q. But once the water had run off and the street had become dry, the city was able to make the streets in proper shape? A. Yes, it was all right for a few weeks during the summer.

20 Charles J. Brown, sworn :—

By Mr. Howell: You are a clerk of the City of Winnipeg? A. I am.

Q. You produce a copy of the resolution which was passed in the council on the 25th day of July last? A. Yes.

“Moved by Alderman Cockburn, seconded by Alderman Carruthers, that upon the solicitor certifying the same, the contract between the city and the Winnipeg Street Railway Company, in pursuance of bye-law 543, be executed by the proper officers. Carried.”

30 Q. What agreement did that refer to? The agreement required by the proviso to section 33 of the Winnipeg Electric Street Railway Company's bye-law? A. The motion says the contract under that bye-law 543, and I suppose that would be the same if it is.

Q. That is the agreement? A. I suppose so.

Q. That is the agreement referred to in section 33 of the schedule A of the Defendant Company's Act? A. I suppose so.

Q. You saw the agreement itself. Who affixed the corporate seal to it? A. It would be done in my office.

Q. Do you remember whether you did it or not? A. No, I don't; either by myself or assistant it would be done, but never by any one else.

40 Q. Do you know when the mayor did sign it under that? A. No, we never see these agreements until after they are signed.

Q. Do you affix the seal before or after the signature? A. It would not be presented to us until after the mayor's signature is on.

Q. You would not put it on without the resolution? A. Oh, yes; if a document is brought to me with the mayor's signature on, I would put on the seal.

Q. Look at the bye-law 556; that is the bye-law of the city, is it not? A. It is.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Andrew
McNabb
—continued.

Charles J.
Brown.

RECORD.

II.

Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 6.

Evidence on
behalf of the
Plaintiff
Company.
Charles
J. Brown
—continued.

Q. Passed when?—30th day of May, 1892.

Q. The heading is, "Bye-law to approve plans street railway construction by James Ross and William McKenzie"? A. Yes.

Copy of the bye-law filed as Exhibit No. 16.

Q. What was the revenue of the City of Winnipeg in the year 1882? A. From taxes it was a little over \$300,000, according to the auditor's report; from taxes and other sources about \$50,000

Q. So that the entire receipts were a little over \$350,000. And I fancy it would be safe to say that they spent every dollar of it? A. They generally did.

Mr. Ewart: What have we to do with this?

His Lordship: I don't know that there is anything in the pleadings about it. 10

Mr. Howell: No, I don't say there is, but I am going to point an argument, and a very strong argument too, with regard to it.

Mr. Ewart: If that is the case, then we must take a stronger stand with regard to it; if he wishes to affect the case with this, he should at all events plead them, and he should make them known to your Lordship.

His Lordship: There are pretty wide questions raised, and it is better to allow counsel to know their own cases as they usually do better than the court as they go along. In support of what allegation in your Bill are you bringing 20 this evidence?

Mr. Howell: A city this size, and its revenue, and its mud, and they made a bargain, and I can see a point in that.

His Lordship: I suppose the argument that Mr. Howell will present is, or has, something to do with the *ultra vires* of the agreement.

Mr. Howell: Certainly.

Mr. Ewart: There is nothing said in the pleadings with reference to the city mud, or the revenue of the city upon which to base this, that that agreement was a good one; if we had attacked the agreement on the ground that it was unreasonable because there was no mud here, or because there was no revenue, I 30 could understand my learned friend, as there would be an issue then as to whether under the circumstances of the city this was a good bargain to be made; I suppose that is what my learned friends want, but it is not. The city had certain powers given it by the legislature to make agreements, and the city made a bargain, and surely the point to be argued and decided is, is that bargain within the powers granted the city?

His Lordship: It seems to me that that is the object Mr. Howell has in view. I can quite see his object in bringing this evidence. I cannot say that it will bear out the legal aspect, but, at all events I will not prevent it going in at present. 40

Mr. Howell: You gave us the revenue? A. Yes.

Q. And the expenditure was quite up to the revenue? A. little more so, of course I am speaking from the auditor's reports.

Q. Generally, you need not go over the various years, but generally for a year or two previous to 1882, and for several years subsequently, the revenue of the city and the expenditure was much the same? A. That I could not say. I have not looked into that matter. I looked into 1882, but not other years; of

course the estimates are passed every year, covering the expenditure for the year. RECORD.

Q. The amount would not vary very much? *A.* No, not very much. It never has, of course that is the expenditure and revenue account.

Cross-examined by Mr. Munson:—

Q. The revenue of the city was determined by the expenditure? *A.* In the estimate of the expenditure.

Q. So that the sum at that time was a matter entirely within the discretion of the city council? *A.* Certainly, as it is now.

10 *Q.* And more could have been raised if desired, so far as possibility is concerned? *A.* Yes.

Q. Have you in your custody the bye-laws of the City of Winnipeg? *A.* I have.

Q. Can you tell us whether any bye-law has been granted or passed, granting any rights to the Winnipeg Street Railway Company, except bye-law No. 178, any bye-law? *A.* No, that is the only one.

Q. Will you produce a letter of the 16th of November, 1891, from Mr. Austin to D. Smith, chairman of the Board of Works, would it be in your custody? *A.* Not necessarily.

20 *Q.* Will you examine your letters and see if you have it?

Mr. Munson: We will ask Mr. Austin to produce the letters first under the notice to produce.

Mr. Howell: We don't produce it.

The Witness: I hav'nt got that communication.

Q. Had you this letter in your custody as city clerk, addressed to the chairman of the Board of Works? *A.* I could not say; I don't see anything on it which would show that I had.

Letter of the 16th November, 1891, filed as No. 17.

His Lordship: Does the witness prove that?

30 *Mr. Howell:* We admit sending that letter.

Q. Do you remember \$1,000 being voted Mr. Austin for consideration, or alleged consideration, for the use of his roadbed by the general public on Main Street? *A.* Yes, I remember it passed the council.

Q. Was this the resolution; is that a copy of it certified by yourself? *A.* Yes.

Q. Can you say whether the money was paid? *A.* With reference to the auditor's report of 1884 it shows payment of \$1,000.

Q. At any rate, would you be able to say that there was a payment made; that this (8) was the resolution it was made under? *A.* Yes.

40 *Re-examined by Mr. Howell:—*

The chief subject of Mr. Austin's negotiations and dispute with the council was an extended renewal of term that he wanted, was it not? *A.* That was one of them, and I suppose it would be the principal one with him.

Q. That was one of the keynotes in the negotiations, the extension of his term to 30 or 35 years? The council thought he wanted too much.

Q. But that was the contention and the principal contention, between them all the time—that he wanted an extension of his term of his franchise? *A.* Yes.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Charles
J. Brown
—continued.

RECORD.

. II.

*Proceeding
in the
Court of
Queen's
Bench (in
Equity).*

No. 6.
Evidence on
behalf of the
Plaintiff
Company.
Charles
J. Brown
—continued.

Mr. Munson: He asked for more than that at first, making 41 years.
A. I think it was 35 in addition to the term that he had still to run.

Q. Which was 11, and that would make it 46? A. Yes.

Mr. Howell: And that was one of the terms of bye-law 542?

Mr. Ewart: The bye-law had better go in.

Mr. Howell: I am quite willing to allow it to go in.

His Lordship: Mr. Austin and this witness has said that that was one of the terms.

Mr. Howell: I want to further and show that that was one of the terms in that bye-law; that is the point. 10

His Lordship: I don't suppose the city will deny that that was one of the terms in the bye-law.

Mr. Ewart: But if we are going into one of the terms that is onerous or reasonable, I think the whole of it should be put in.

Mr. Howell: I don't mind the bye-law going in, but the only object I want it in for is to show that term; but if they want the whole bye-law in, we will put it in.

Q. Bye-law 522 is one of the bye-laws that Mr. Austin presented, is it, or is it not? A. Yes, that he presented to the city.

Q. And that was read a first time, was it not? A. Yes, the 24th of 20 August.

Bye-law referred to, filed No. 18.

Q. In the various discussions of these various proposals and counter-proposals that are put in by Mr. Austin and the other parties, the chief difficulty was that Mr. Austin wanted too long a franchise?

A. That was the principal reason with reference to that Bye-law 522; the bye-law was introduced and read and then amended and printed, I think; of course I am only speaking from memory. I am merely mentioning this so that it should not be taken as my saying that this was the bye-law that was introduced and it is more to prevent mistakes than anything else that I make the statement, but the 30 books will show.

Q. There was a bye-law introduced and it was read a first time and amended and then printed? A. Yes.

Q. You could not quite say whether this (Exhibit 18) was the one that was introduced or the amended one? A. Not without reference to the books.

Q. But the chief contest during the whole of these negotiations was that Mr. Austin wanted an extended franchise? A. That he wanted too much.

Q. But that was one of the great things? A. Yes.

Mr. Munson: One of the rules of your council is that bye-laws shall be read three times? A. Yes. 40

Q. That is not a bye-law, 18? A. Yes.

Q. Was one of the matters discussed that Mr. Austin should be relieved of all payments for pavement? A. There was a question of his paying so much a mile instead of paying for the pavement.

Q. Was that a matter to which the council agreed to? A. No.

This was the case for the Plaintiffs.

THE DEFENCE.

George H. Campbell, *sworn* :—

By Mr. Munson: You, I believe, had something to do with the negotiations in question for the franchise that was awarded to James Ross and William McKenzie? *A.* Yes.

Q. What part did you take in securing the franchise for them? *A.* I conducted the negotiations with the council.

Q. With the council of the City of Winnipeg? *A.* Yes.

Q. What was your first communication to the council in connection with those negotiations? *A.* I made an offer to the council.

Q. Was it in writing? *A.* In writing.

Q. Do you remember when it was sent? *A.* It was in September, 1891—early in September, I think.

Q. Describe shortly the course of the negotiations up to the first date when something was done? *A.* In pursuance of that proposition I met the council and a committee of the council.

Q. Which committee? *A.* The committee on works, and discussed the question in its various phases and aspects, and after arriving at a basis, with some amendments, a bye-law was passed.

Q. A bye-law was passed? *A.* Yes.

Q. Do you remember what the number was? *A.* 541, I think it was; that was the first bye-law.

Q. This bye law was passed at what time? *A.* It would be the latter part of December.

Q. You remember the time of the passing of this bye-law, do you? *A.* Yes.

Q. Was this bye-law acted upon? *A.* No, we didn't act upon it.

Q. On whose behalf throughout these negotiations were you acting? *A.* Messrs. Ross and McKenzie.

Q. Why was this bye-law not acted upon? *A.* There were some minor points which we wished changed; we were not quite satisfied with it, and we asked some changes to be made in it.

Q. What was done next. *A.* We asked for some changes in it as I stated on some minor points, and in the meantime the new council came into office—the council of 1892—and they decided that the bye-law ought to be re-opened again.

Mr. Howell objected to his stating what the new council decided had to be done.

Q. What did they do? *A.* They re-opened the question, they would not make the changes without re-opening the question.

Q. What do you mean by re-opening the question? *A.* That is put up to tender again.

Q. Was anything done by the council towards having their decision carried out by way of competition? *A.* Yes, they advertised in the papers calling for new offers for the franchise.

Q. In pursuance of that, what was done by yourself? *A.* We put in another offer?

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RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.

George H.
Campbell.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

George

H. Campbell
—continued.

Q. On whose behalf? *A.* Messrs. Ross and McKenzie, the same parties.

Q. What was the final result? *A.* Another bye-law was passed.

Q. Before that matter was decided, can you state as to whether anyone else competed for the franchise? *A.* Yes.

Q. Who? What party? *A.* The Winnipeg Street Railway, Mr. Austin acting for them.

Q. What was done with reference to this; what security was required from the parties? *A.* The council asked for \$10,000 accompanying each tender.

Q. Was the \$10,000 put up by you? *A.* It was by us, and I understand 10 by the other parties.

Mr. Howell objected to this answer while it was being made.

Q. Had you yourself any discussion or interviews with the council and committees? *A.* Oh yes, I had several.

Q. Do you know whether Mr. Austin appeared before the committee and council with counsel to discuss the terms of his proposition? *A.* I do.

Q. You say, in pursuance of this another bye-law was passed. *A.* Yes.

Q. What bye-law was that? *A.* The one we are working under now, bye-law No. 543.

Q. After the passing of that bye-law was any step taken, so far as having 20 it sanctioned by the legislature is concerned? Do you recollect? *A.* Yes.

Q. Do you remember being present on the occasion of the discussion of the bye-law before the legislature for that purpose? *A.* Yes, I was present.

Q. Who were present opposing the application? *A.* I can hardly say; Mr. Austin was there and some solicitors, I believe, were there.

Q. Supporting his opposition? *A.* Yes.

Q. And they did oppose, did they? *A.* Yes, they did.

Q. A statute was passed by the legislature, and after that what was done by the company towards construction of the road, what was the first date of construction, and what was the general course of construction? *A.* I think we began 30 construction the latter part of May or the first of June.

Q. When you say "we began" will you tell us how the work was commenced, on whose behalf first? *A.* I think it was begun under Ross and McKenzie.

Q. On what date was the first work done? *A.* I think about the 30th or 31st of May; I am not quite clear as to the exact date.

Q. Where was the work commenced? *A.* Just north of the C.P.R. station on Main Street.

Q. Is this the line that has been referred to by Mr. Austin as being constructed to the exhibition grounds? *A.* Yes. 40

Q. When was that line opened for operation? *A.* On 25th of July.

Q. Is there a line of the Plaintiffs on Main Street, between the Canadian Pacific Railway tracks northward to Selkirk Street, where that line branches westward? *A.* Yes, we have a line there.

Q. Single or double track? *A.* Single track.

Q. Is that single track on or off the pavement? *A.* It is on the pavement.

- Q. There is a pavement there? A. Yes.
- Q. Of what? A. Cedar blocks, I think.
- Q. How wide? A. I should think it would be about 20 feet.
- Q. Is your line on that portion of Main Street on the pavement? A. No, it is not on the pavement.
- Q. Which side of the Plaintiffs' line is this line? A. Ours is on the west side of the Plaintiffs' track.
- Q. How far away? A. About 5 feet.
- Q. When was this line to the exhibition ground open for traffic?
10 A. 25th July.
- Q. In time, I believe, for carrying passengers to the exhibition?
A. Yes.
- Q. Carry very many passengers that time to the exhibition? A. We did; I think we carried something over 3,000 the first day.
- Q. The fare continued for several days? A. Yes.
- Q. What was the next work done in connection with this company? A. That was on Main Street, south of the C.P.R. track.
- Q. And extends from there to what place? A. Down to the Assiniboine Bridge.
- 20 Q. On Main Street? A. Yes.
- Q. On what date was work commenced on that portion of the line? A. About the 21st of July.
- Q. You think it was about the 21st July? A. I think so; I am not positive to the exact date, but I think that is about the date.
- Q. Towards the end of July? A. Yes.
- Q. What progress was made with that work? A. We had a large force of men on pushing it along as fast as possible under the circumstances.
- Q. Single or double track? A. Double track.
- Q. I believe near the Canadian Pacific track the Plaintiffs' lines are
30 between your double track: that is, you have a track on each side of their track? A. Yes; we have a piece there for a block or two which is not finished.
- Q. Then one of your lines bends in and crosses over their line to reach the other line? A. Yes.
- Q. Then these lines continue alternately, don't they, first their East line, and then your East line, and then their West line, and then your West line, do they not? A. Yes, our West line runs between his two East lines, and in order to get to our West line we have to cross his East line.
- His Lordship: You are the most easterly of the four lines? A. Yes.
- 40 Mr. Munson: What is the width of Main Street, Mr. Campbell?
A. I think it is 132 feet; I have never measured it, but I am told it is that.
- Q. Have you measured the distance between your tracks and those of the Plaintiffs on Main Street? A. Yes, in some places I have, a number of places.
- Q. In speaking generally of the distance from each other, would you be able to tell us now what the spaces are between the Defendant Company's

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.
George
H. Campbell
—continued.

RECORD. tracks and the Plaintiffs' tracks on Main Street? A. Yes, generally the distance is 5 feet.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

*Evidence on
behalf of the
Defendants.
George
H. Campbell
—continued.*

Q. Taking the distance between their West line and your West line, there is a difference, isn't there? A. Yes; that is wider than it is between their East line and our West line.

Q. What is the distance? A. I should think it would be 8 or 9 feet there.

Q. You are not able to say more definitely? A. No.

Q. What is the least width between your tracks and the Plaintiffs' line on Main Street South, excepting where the lines approach to cross? A. I don't think it is less than 5 feet at any of these places.

Q. The distance between the two westerly tracks, that is, your westerly track and the Plaintiffs' westerly track is greater? A. Oh yes.

Q. Do you know the distance between the curb or sidewalk and the nearest track on each side? A. 26 feet I think it is on the east side.

Q. You are not able to say as to these distances definitely? A. No, not definitely.

Q. Speaking generally of the distance of your line on Main Street, south from the Plaintiffs' lines, can you tell the Court what effect outside of the competition, that the operation of the Defendant Company's lines has on the Plaintiffs' lines? Is there any obstruction? A. I don't consider so.

Q. Have you seen the Plaintiffs' lines working since your tracks were there and your cars operated? A. Yes.

Q. Do you know of any obstruction to the Plaintiffs' cars? A. No, nothing more than the mere crossing of one line over another.

Q. There would be a delay there, crossing sometimes? A. Yes.

Q. But so far as the safe working of both lines is concerned, what opinion would you express? A. I don't see any reason why they should not work safely and properly; if the employes of both companies do their duty, there is no reason in the world why they should not.

Q. What do you say as to the sufficiency of the distance between your nearest tracks on this portion of Main Street? A. I think it is ample; I don't think there is any doubt about it.

Q. On that portion of Winnipeg's streets the traffic is greater than at any other part, both of horses and people? A. Yes, I think so.

Q. At which end of Main Street is the traffic greatest? A. I should think the north end, that is the part between the Portage Avenue and the C.P.R. station.

Q. At the south end, what do you say? A. It is not so great as it is at the north end.

Q. Is the traffic very great on the street as compared with its width. A. I think not; the traffic is very light in my opinion.

Q. As compared with what? A. As compared with streets of a similar size in other cities.

Q. That is larger cities, I suppose? A. Yes.

Q. Have you seen a number of cities in the United States where street cars are operated? A. Yes, I have seen some.

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- Q. Have you seen the City of St. Paul, in the State of Minnesota?
A. Yes.
- Q. What, roughly, would be the width of their inside business streets, where traffic is large, as compared with Main Street, Winnipeg? A. Not nearly so wide; I don't think there is any street in St. Paul so wide as Main Street.
- Q. What fraction of the width, their inside streets, business streets, where traffic is heaviest? A. Not over 60 feet.
- Q. You made an examination, I believe, of some of the streets in St. Paul, in connection with this suit? A. Yes.
- 10 Q. What is believed to be the population of the City of St. Paul, in Minnesota?
A. It is over 200,000.
- Q. What streets do you refer to? A. I have made a particular examination with regard to Wabasha Street.
- Q. How many lines of cars are there on Wabasha Street? A. There are two about $4\frac{1}{2}$ feet apart; some hours of the day the cars are not a minute apart; other times during the day two or three minutes.
- Q. From what you saw, could you see any danger to the travelling public on account of the closeness of these tracks? A. I could not see any and I did not hear of any.
- 20 Q. They appeared to be running all right? A. Yes.
- Q. Did you see other streets in operation there as well? A. Yes.
- Q. Were these lines of the same company, as far as you could see?
A. Yes.
- Q. What other streets did you see in St. Paul where you observed two lines?
A. I think it was Shelby Street, where the cable car runs.
- Q. Two lines and double track? A. Yes.
- Q. How would the width be there? A. I didn't measure it particularly, except between the curb and the rail, and it was less than 10 feet.
- 30 Q. How is the traffic on this street? A. There is very large traffic on it.
- Q. How would the traffic on both these streets compare with the general traffic on Main Street, Winnipeg, south of the C.P.R. track? A. On Wabasha Street it is very much greater.
- Q. You have been in the City of Minneapolis? A. Yes.
- Q. Have you seen the operation of the street car lines on the streets of this city? A. Yes.
- Q. Have you seen streets on which there have been double tracks of street railway? A. Yes.
- Q. Do you know what company operates the lines there? A. The Rapid Transit Company there.
- 40 Q. It is all under one company there? A. Yes.
- Q. What is the size of the City of Minneapolis? A. I think it is even larger than St. Paul now, reputed to be a little over 200,000.
- Q. It is reputed to be that? A. Yes.
- Q. It is a city you would say, from your own observation, many times larger than Winnipeg? A. Yes.
- Q. Is it a city in which there must be a good deal of travel on its inside business streets? A. Yes.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

George
H. Campbell
—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 7.
 Evidence on
 behalf of the
 Defendants.
 George
 H. Campbell
 — continued.

Q. By what motive power are the cars operated both in Minneapolis and St. Paul, where you observed? A. Chiefly electric and cable cars as well.

Q. What spaces were between those double lines on the streets in Minneapolis? A. Generally four feet a few inches; it varied.

Q. Did you see the cars pass? A. Yes.

Q. What do you say as to the danger, if any, is caused by those passing; did you see any? A. No, nor heard of any.

Q. What about the traffic? A. It would be twenty times as great as in Winnipeg.

Q. People going and going all the time? A. Yes. 10

Q. Have you observed the manner of conducting the street railway traffic of that place, on some of the streets? A. Yes, I have generally.

Q. Can you mention some of the streets on which there are a number of tracks? A. Yes; State Street and Clark Street.

Q. What number of tracks did you observe in actual operation on State Street? A. I think they have four tracks on State Street.

Q. Do you know whether they are operated by the same or rival companies? A. I cannot say as to that.

Q. What is the population estimated to be of Chicago, and that you believe it to be? A. 1,500,000; it has a very large population and I don't know hardly 20 what it is.

Q. It is a very large city? A. Yes.

Q. How would the traffic of vehicles and pedestrians on State Street, Chicago, compare with the traffic in Winnipeg? A. It would be very great; it would be hundreds of times greater.

Q. A street as wide as Main Street, is it? A. No; I think it is not so wide as Main Street; I think it is about 100 feet wide.

Q. Now, leaving this description of outside places, and coming back to the construction of your own line, at what date was the Main Street line, or any portion of it, open for operation? A. The east line was open for traffic on the 30 6th of September.

Q. That is your eastern track of your double line on that street? A. Yes.

Q. Were you in Court when Mr. Austin stated, that after the opening of that line you abandoned the working of it? A. No; I didn't hear him state that.

Q. Was the working of that line abandoned in any way? A. No.

Q. There was a stoppage of your eastern line, I believe, a few days after it was opened for operation, was there not? A. Yes; the wires were crossed for a day or two. 40

Q. But no abandonment of the line or the working of the line? A. Oh, no.

Q. When was your western line opened for operation on that same street? A. About the 18th or 20th of the same month—September.

Q. From then, what? A. They have been operating continuously.

Q. From the C.P.R. track to where? A. To the Main Street bridge at the Assiniboine River.

Q. As a railway along Main Street to the Assiniboine River? A. Yes; for the first few days we ran to Broadway, Ninth Avenue South, and then after that we opened up to the river.

Q. The company has also constructed other lines? A. Yes.

Q. What are the other lines? A. Portage Avenue, Central Avenue, Fourteenth Street North, Eighth Avenue North, and we are extending the Main Street North, line to the city limits.

Q. That is on 17th Avenue North to the city limits? A. Yes.

Q. Are these lines all in operation at present? A. Yes.

10 Q. The Portage Avenue line and the circuit along 8th Avenue to Main Street? A. Yes.

Q. Is the line in operation on Main Street North at present? A. No; there is a sewer there, and we cannot complete it.

Q. By what system of motive power is the company's line operated? A. Electric system; the overhead system.

Q. Is there any other names given to it? A. Yes, the trolley system.

Q. Do you know whether it is a single or double trolley? A. It is a single trolley.

Q. Did you hear the construction of your system of wiring and all your 20 poles described by Mr. Austin when he gave his evidence? A. No, I don't think I did. I think I was out at that time.

Q. At any rate you know the manner in which the Plaintiffs' line on River Avenue is constructed? A. Yes, I am familiar with it.

Q. Can you say shortly the method adopted by your line is practically the same with the exception of the poles? A. It is the same system; our trolley wire is heavier and gives better service.

Q. Your poles are on both sides of the streets, instead of having a bracket to hold the wire? A. Yes.

Q. You are the manager of the Defendant Company, and have been since 30 its formation? A. Yes.

Q. As manager would you be aware of the amounts expended in the construction of the Defendant Company's works? A. Yes.

Q. What amount, within a few thousand dollars, would you say the works of the Defendant Company in connection with their lines have cost? A. Round numbers \$130,000.

Q. Can you tell us what the expenditure was up to the time of the filing of the bill of complaint, or the service of the bill of complaint, in this suit, on the 26th of July? A. About \$20,000.

Q. Then up to the 22nd of September, the date on which the notice of motion 40 was served for the interlocutory injunction, can you tell the Court how much had been expended between the filing of the bill and that date. A. About \$40,000 additional.

His Lordship: That would be \$60,000 in all? A. Yes.

Mr. Munson: And the balance of the \$130,000 has been spent since that time? A. Yes.

His Lordship: I suppose that \$130,000 includes the motors? A. Yes.

Mr. Munson: And track and work generally in connection with the line? A. Yes, and there will be additional yet; we haven't got all our bills in.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.
George
H. Campbell
— continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

George

H. Campbell
—continued.

Q. Of this total what portion would you say would be the cost of the permanent structure, the track? A. Between \$80,000 and \$90,000.

Q. The electric company has made crossings of the Plaintiffs' lines at different places? A. Yes.

Q. These crossings were made? A. Yes.

Q. Under what authority? A. Pursuant to the Act of the Legislature.

Q. What kind of rails do the electric company use in the construction of their track? A. We use what is known as the "T" steel rail 56 lb. track.

Q. What rails are used by the Plaintiffs? A. They use what is known as the flat girder rail. 10

Q. On what portion? A. I think they use it on all their horse car rails.

Q. What rail do they use on the electric line? A. I think they use a "T" rail like ours, but lighter.

Q. Which is the more expensive? A. Ours; it is bought by the pound.

Q. What kind of a track does your rail make on Main Street or anywhere, so far as obstructing the traffic is concerned? A. I don't think it obstructs the traffic at all; it is almost level with the pavement.

Q. Describe the method of construction of your track. A. We lay the blocks down to the plank foundation along the road, and we lay on that a stringer, and that is bolted to the foundation of the street, and we fasten our rails 20 to that, and on the outside and inside of the rail we run another stringer and bolt the whole thing solid through to the foundation.

Q. How is the surface replaced? A. We replace the blocks then up alongside of these stringers and fasten them.

Q. What is a stringer? A. It is a plank.

Q. What thickness? A. About 3 inches; it varies in thickness.

Q. A wooden plank? A. Yes.

Q. How are these planks placed? A. Longitudinally.

Q. How are they fitted; what do you do with the planks as far as the track is concerned? A. We fit them to the bed of the street. 30

Q. The rail is between the planks? A. Yes; that plank is fitted to the bed of the street, and then we put in another plank, and fit that in close to the rail, so that the outside comes up level with the top of the rail.

Q. So that the upper planks fit tight up to the rail on each side? A. Yes; you could see nothing but the head of the rail and a small piece over.

Q. How far would your rail project over the level or above the level of the street? A. It hardly projects any; it is placed to come practically to the head of the rail; there may be a few cases when it does not, but it is supposed to; the inside plank is left so as to leave three and a quarter inches to allow the flange of the wheel to run in. 40

Q. Does it obstruct the traffic of the street at all? A. I don't consider it does; I consider it is a very much superior track than the Plaintiffs', and it is much easier crossed by vehicles.

Q. At any rate you would say it is no worse? A. I would say it is a great deal better.

Q. Is the increased weight of the rail considered better—an advantage or otherwise? A. It is considered a great advantage; it gives a solider track, and gives a solider roadbed.

Q. Have you seen this class of rail used anywhere else? A. Yes; they use it in Ottawa, Canada, and in St. Paul, the only two cities I can speak as to; in Minneapolis they are taking up the girder rail and replacing it by a "T" rail, which they consider the better.

Q. We have described the lines on Main Street, covered by wooden pavement, what class of construction of the roadbed of the Winnipeg Electric Street Railway Company is there on the streets, ordinary earth streets? A. We excavate the earth about 8 feet, the width of the track, and then we lay cross-ties.

10 Q. Wooden ties? A. Yes, about 2 feet apart, and upon them we spike our rails, and we fill in between the ties and the rails, and fill it all in level with the surface of the earth, and ballast it on the top with gravel.

Q. You fill it in with gravel? A. Yes, we fill to the top of the rails, and on the top of the ties we put a plank, and fill it up so that vehicles and teams can pass over it, then relay and embed the whole thing thoroughly in the earth.

Q. Is the earth which has been disturbed replaced outside of your track? A. Part of it is embedded in the rails and part of it is spread over the street, and levelled so as to make a level surface on the street.

20 Q. The planks, you say, are placed on each side of the rail, just as they are on the wooden paved portion of the street? A. Yes, and fitted closely to the earth.

Q. So that the rails do not project where the tracks first placed, on what we may call the unpaved streets, higher, to any extent, or any appreciable extent, than the level of the street? A. Practically the same.

Q. Your lines, I believe, are not all completed yet? A. Practically all completed, but not exactly.

Q. What remains to be done? A. On the outer ends there is some ballast to be put on.

30 Q. And filled in? A. Yes.

Q. What would you say as to whether vehicles could pass over your lines on the unpaved streets? A. I think they are immensely better; I consider the street is very much improved, there is not the slightest difficulty in passing over them, and anywhere where it will be it is very much superior to the street itself, the traffic portion.

Q. How long have you lived in Winnipeg? A. Since 1879.

Q. Had you, previously to the commencement of the construction of the electric company's line, noticed the amount of traffic on the Plaintiffs' line on Main Street and other streets, as any other citizen would? A. Yes, probably a
40 little more so.

Q. And you would know, from your experience as manager of this company, roughly, the number of passengers travelling on your line? A. Yes.

Q. Can you tell the Court whether the same number of people would travel by an electric line as those who would travel by a horse car line? A. I should certainly think that there would be a very much greater number.

This was objected to.

Q. How do you say that the traffic compares, assuming that on a particular

t

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

George

H. Campbell
—continued.

M

RECORD.
 II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*
 No. 7.
 Evidence on
 behalf of the
 Defendants.
 George
 H. Campbell
 — continued.

street, a horse-car system existed up to a certain time, and afterwards a line the same as yours propelled by electricity, which would carry the greater number of passengers? *A.* There is no question the electric line would be the greater.

Q. How does the electric line, as compared with the horse-car line, compare with reference to the carrying of passengers? *A.* It increases the number that would travel by a great deal.

Q. It is your belief then that more people travel by the electric line than would travel by the horse line? *Yes*; undoubtedly.

Q. On the other hand, there might be some people who would not travel on the electric car? *A.* Yes. 10

The order for crossings, dated 1st of September, 1892, made by the Railway Committee of the Executive Council of Manitoba, filed as Exhibit No. 19. This is admitted.

Another order for crossings, dated the 18th of October, 1892, authorising the crossings referred to in that order, made by the Railway Committee of the Executive Council of Manitoba, produced and filed as Exhibit No. 20.

Q. Have these crossings been made? *A.* Yes, they have been made.

Q. As provided for by the orders? *A.* Yes.

Q. The orders refer to certain agreements being executed? *A.* Yes.

Mr. Munson: If my learned friends desire it will be well to put in these 20 agreements.

Q. Were they executed and delivered? *A.* Yes.

Q. And the crossings were made accordingly? *A.* Yes.

Q. Can you say whether the crossings were made as required by the order?

A. Yes, they were.

Q. You have seen cars passing over these crossings at times? *A.* Yes.

Q. What effect did the making of these crossings have on Mr. Austin's cars as far as you could see, and the operation of his line, beyond the incidental delay at times on crossings? *A.* I don't see how it could affect him; I could not see that his cars were delayed the slightest, other than possibly they might 30 have to wait to let ours pass there, and ours would have to wait to let his go through.

Q. I mean as to damage to the wheel? *A.* I don't see how it could affect him any more than any other cars.

Q. There is some, I suppose? *A.* It is infinitesimal, if any.

Q. Do you notice any stoppage or delay to him on account of those crossings? *A.* No; it strikes me he is running more frequently and faster than I am.

Q. You don't think the speed of his cars has slackened any? *A.* No; I think it has increased. 40

Q. Have you been on the streets from time to time watching them? *A.* Yes, a great deal.

Q. And you haven't seen any stoppage by reason of your works? *A.* Before we had one of the crossings completed I saw one of his cars run off at the crossing, but it is completed now, and it is all right.

Q. The order required such work to be done after eleven o'clock at night? *A.* I don't think it required that it should be done after eleven, but that it should not be done so as to intercept him.

Q. That meant that it should be done after eleven? A. It was practically all done after eleven o'clock at night anyway.

Cross-examined by Mr. Howell:—

Q. So you got leave for all the crossings you have put in, have you?
A. Yes.

Q. You are certain of that? A. Yes.

Q. When did you get leave to put in the crossing connecting Portage Avenue with Main Street? A. I don't remember the date.

Q. But have you got it? A. Yes.

10 Q. Is it one of those orders produced? A. I can't say.

Q. How do you know you got it? A. I know I have it. I got the authority from the railway commissioner.

Q. In writing? A. I don't think that it is in writing.

Q. You got a verbal order for that crossing? A. Yes, I think the written order is there, but I cannot say that I have the written order yet.

Q. You put in one of the crossings on the verbal order of the railway commissioner? A. Yes.

Q. You will swear that there was such an order made as that? A. Yes.

20 Q. You were present when it was made? A. Yes.

Q. Where was it made? A. In the office of the railway commissioner.

Q. Mr. Greenway? A. Yes.

Q. Anyone else present besides you and the railway commissioner?
A. No.

Q. You formed the railway committee—you and the railway commissioner? A. I know nothing further than that he told me to go ahead and put in the crossing, and I went ahead.

30 Q. I presume you are aware that the committee had to make the order?
A. I presume so. I don't know.

Q. You have sworn to various street railway lines that you have seen—when did you see those in Minneapolis that you have sworn to? A. I think it was in the month of September.

Q. You saw the "T" rails being used there did you? A. Yes.

Q. On what streets did you see them? A. I think on Wabasha Street in St. Paul and I think on Washington Avenue in Minneapolis; I cannot be sure of the street in St. Paul.

40 Q. You put in an affidavit before swearing that there was a girder rail being used there? A. Yes, they were taking out the girder rail when I was there and putting in the "T."

Q. There is no doubt about that? A. No.

Q. You saw them take out the girder rail from that street? A. I don't swear to that street.

Q. It was one of the streets in the centre of the city? A. Yes.

Q. And they backed them up as you did, just had wooden blocks in?
A. Yes.

Q. And you swear to that, are you swearing to that? A. Yes, I am.

t

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.
George
H. Campbell
—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 7.
 Evidence on
 behalf of the
 Defendants.
 George
 H. Campbell
 —continued.

Q. That they had blocks of wood that went up to the "T" rail in St. Paul?
 A. Yes.

Q. And not blocks of granite? A. No.

Q. And that was one of the principal streets in St. Paul? A. Yes.

Q. Would you kindly give us the name of the street? A. I can't give it to you.

Q. Does this plan filed in Court here show blocks of granite? A. Yes.

Q. So they changed their mind and took up blocks of granite and put down blocks of wood? A. I don't say; I did not swear that that is the street; I said I think Wabasha Street. 10

Q. But you think it is that street? A. Yes.

Q. So then in St. Paul they have "T" rails backed up with blocks of wood? A. Yes.

Q. And that is the same way that they are doing in Minneapolis——* (Sic).

Q. Wooden pavement blocks going straight up to the edge of the "T" rail?
 A. No.

Q. What then? A. It is a wooden stringer run lengthwise of the rail.

Q. What kind of wood? A. I don't know.

Q. Not covered with a plate of iron or anything? A. No.

Q. And that is what they are using in the streets of St. Paul and Minnea-20
 polis? A. Yes.

Q. You have been in Toronto lately? A. Not since the early summer.

Q. They were putting down street railway there? A. Yes.

Q. Using "T" rails? A. Yes.

Q. Are you swearing to that? A. Yes.

Q. They are using "T" rails in Toronto? A. Yes.

Q. In Toronto they back them up with blocks of wood also? A. No; I don't know what they are doing, but I should hardly think they are.

Q. Blocks of granite aren't they? A. I can't say, I didn't see that done.

Q. In Montreal they put in blocks of wood also up to the "T" rail? A. I 30
 cannot say.

Q. In Ottawa they are putting in blocks of wood? A. I don't know.

Q. You saw them using the "T" rails there? A. Yes; but I wasn't interested in what they were putting in there.

Q. You can't remember what they put up to the "T" rail? A. No; I don't.

Q. In the busy streets of St. Paul they put down the "T" rail and block it up with wood? A. Yes.

Q. And that you saw done yourself? A. Yes.

Q. And that was this year? A. Yes. 40

Q. And to do that they took up the girder rail? A. Yes.

Q. A girder rail blocked with granite? A. I don't know what it was blocked with.

Q. Did they take up girder rails blocked with granite and put down "T" rails blocked with wood? A. I don't know what they took up; they told me what I have stated.

Q. You don't know otherwise than what they have told you? A. No.

- Q. You don't know what kind of track it was? A. No.
- Q. It was an electric track that they took up and changed? A. Yes.
- Q. How far do your cars hang over beyond the outside edge of your track?
A. I think it is about 16 inches.
- Q. Two passing hanging over that way would take 32 inches of space.
A. Yes; it is either 14 or 16 inches; I am not quite sure which it is.
- Q. It would take a very lean man to stand between 4 feet less 32 inches?
A. It is 5 feet.
- Q. You swore in St. Paul and Minneapolis it was only 4 feet? A. Yes.
- 10 Q. How near are you to our track on Portage Avenue? A. Just at the siding I think it is about 4 feet at Kennedy Street.
- Q. I am asking you about Portage Avenue, at the siding before you strike Main Street, how near do you come to our track? A. I have not measured that distance.
- Q. Would you swear it would be a foot and a half? A. It would be nearer 4 feet.
- Q. Would you swear to that? A. No, I have not measured it.
- Q. Would you swear it would be less than 4 feet, or would you swear it would be less than 42 inches? A. I cannot say what it would be, I have not
20 measured it.
- Q. Main Street, Winnipeg, between the C.P.R. track and the Assiniboine River, is the chief street for traffic in Winnipeg? A. Yes.
- Q. What is the population of this city, about at the present, or say in this year throughout? A. I should think 23,000, between 28,000 and 30,000.
- Q. You told us that you had spent \$20,000 on the road before the Bill was filed? A. Yes.
- Q. Was that a fact? A. Yes.
- Q. The company? A. Yes.
- Q. Who spent the first money? A. I guess there were a few dollars spent
30 by Ross and McKenzie, first for a day or two; it is my memory that we were only working a day or two.
- Q. And then the company commenced working? A. Yes.
- Q. Were you working for Ross and McKenzie when they commenced doing the work? A. Yes; but I don't remember the exact date.
- Q. When did your company organise and get into existence at all? A. It was early in June.
- Q. The shareholders had a meeting early in June? A. I cannot swear as to the date; the books of the company will show that, but I think that meeting was the latter part of May or early in June, but I am not sure as to dates.
- 40 Q. Why did you carry on the work in the name of Ross and McKenzie at first? A. They were the holders before it was transferred to the company.
- Q. Didn't you state to the council that you couldn't get a document signed until one of the members, who was in Europe, returned? A. I cannot say.
- Q. Is not that a fact? A. I don't think it was a fact, but I don't know.
- Q. Didn't you swear that you couldn't get the transfer on that account? A. I don't think so.

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.
George
H. Campbell
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

George

H. Campbell

—continued.

Q. Who signed the transfer? A. I don't know.

Q. You knew there was such a document? A. Yes.

Q. And it had to be signed by Ross and McKenzie? A. Yes.

Q. And Ross was in the old country? A. I don't know that he was at that time.

Q. Who did sign the transfer? A. I don't know; I never saw it.

Q. As far as you are concerned you don't know that there ever was a transfer? A. Yes, I think there was.

Q. You have just sworn that you never saw one? A. I was at the meeting when it was ordered to be passed and made. 10

Q. What meeting? A. The meeting of the company.

Q. And they ordered Ross and McKenzie to do this? A. The meeting of the company when we accepted the transfer.

Q. You saw it? A. I saw it at the meeting, but I didn't see who signed it; I don't know whether Mr. Ross signed it himself or whether it was signed by power of attorney or otherwise.

Q. Was Mr. Ross in this country at the time that this transfer was ordered to be passed? A. I cannot tell, my memory does not serve me.

Q. Did you tell the council, or did you not, that there was delay in getting the transfer because of Mr. Ross being absent in the old country? A. I cannot say that I did; I don't remember doing so.

Q. Did you get a transfer signed by Mr. Ross on the 27th June? A. I cannot say; I don't know; I don't remember.

Q. You can't say whether you did or not? A. No.

Q. You can't say where Mr. Ross was? A. No.

Q. Where was Mr. Ross? A. I don't know.

Q. He wasn't here? A. I don't remember.

Q. You don't remember whether Mr. Ross was here or not? A. No, the books will show.

His Lordship: Where was the meeting held? A. In Winnipeg.

Mr. Howell: Try and rack that gigantic intellect, and say whether he was 30 there (at the meeting) or not? A. I don't think he was.

Q. Was Mr. Ross present? A. I don't think he was; I think he was in Europe, but whether he was in Europe at that time I can't say; I can't tell you whether he was in Winnipeg at the time of the organisation of the company or not

Q. You can't say whether he was not here for a month afterwards? A. No; I can't say positively as to these things, because my memory does not serve me clear enough as to these things.

Q. When was that document that has been shown here two or three times actually signed—that was produced that night by Mr. Munson before the 40 Executive Committee with a flourish of trumpets? A. I can't tell you anything about it.

Q. You didn't sign it yourself? A. No; I hadn't anything to do with it.

Q. You hadn't anything to do with the signing of it? A. No.

Q. You did not see it signed? A. No, I haven't the slightest recollection of it at all; it was a thing that I had nothing to do with at all.

Q. When did you first see it? A. I think I first saw it in Mr. Munson's office, our solicitor's office, when he told me that it was signed and executed.

Q. That is the first time you remember anything about it? A. Yes.

Q. Your memory fails you entirely about anything about Mr. Ross being in the old country, or whether Mr. Mackenzie was here or not? A. Yes, I say I think Mr. Ross was in the old country at the time, but I can't say.

Q. Was your company organised at the time the work began? A. No, we began under Ross and McKenzie.

10 Q. Did you, yourself, go to the city council to get leave for Ross and McKenzie to commence work? A. We went to the city engineer.

Q. You went? A. Yes.

Q. You got leave for Ross and McKenzie to commence the work? A. Yes.

Q. Why didn't you wait until the company would be organised? I didn't know when the company would be organised.

Q. So you went yourself to the city engineer and got leave for Ross and Mackenzie to commence work? A. Yes.

Q. Did you get this document (Exhibit 1). Was it handed to you at all? A. I think this is the document, a copy of it.

20 Q. A copy of it was handed to you by whom? A. I don't know who gave it to me.

Q. It got into your hands in some way? A. Yes. I think that was the document.

Q. It got to you from one of your foremen? A. I don't know who gave it to me, I am sure.

Q. You don't know who gave it to you? A. No.

30 Q. See if you can possibly remember if you ever heard of such a thing as this from one of your foremen; just think of it; do you think any of the foremen could have by any possibility told you of having received this? A. The foreman told me about it, and I remember having a conversation with him about it.

Q. What foreman? A. His name was Keith.

Q. The foreman for Ross and McKenzie? A. Yes.

Q. He was foreman for Ross and McKenzie? A. He was when we started.

Q. He was when he handed you that paper? A. I really cannot say that.

Q. When you got that paper was the foreman who handed it to you the employé of Ross and McKenzie? A. I can't tell you.

Q. After the company commenced the work did Keith remain there? A. He did.

Q. He remained as a foreman? A. Yes.

40 Q. Did Hurst hand you a paper? A. I don't think so.

Q. You don't think he handed you one? A. No; I don't remember his having done so.

Q. I suppose if Keith said at that time that he was foreman for Ross and McKensie, he told what was untrue? A. No; I would not say so.

Q. Was the work in the hands of Ross and McKenzie on the 8th day of June, 1892? A. I can't say.

Q. I want you to swear to that. A. I won't swear to that, but I think it

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.
Evidence on
behalf of the
Defendants.
George
H. Campbell
— continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 7.
 Evidence on
 behalf of the
 Defendants.
 George
 H. Campbell
 — continued.

was the electric company; I will not swear positively, but I think it was; I think it was on the 4th of June that we commenced under the company. I am only speaking purely from memory.

Q. Do you think on the 4th of June you commenced for the company?
 A. Yes.

Q. And you changed the pay-roll then? A. Yes; I don't think that it was out in anyone's name in particular.

Q. Whose name was it in? A. I don't think there was any name attached to it, simply a book, roll, for the purpose of showing men's time.

Q. When was that book changed to the electric company? A. I don't think 10 that it was changed; I don't think it ever had a heading, either the electric company or Ross and McKenzie.

Q. When you got this notice, did you think it something startling that Ross and McKenzie should be ordered to stop this work? A. No; I turned it over to the solicitors, and I haven't thought of it since.

Q. At the time that notice was served, had Ross and McKenzie transferred their interest to the company? A. I don't know, and I can't tell what time that was served.

Q. The Bill was filed somewhere about the 25th or 26th of July. The moment you got that Bill you stopped work, at once, you were frightened? 20
 A. No.

Q. Did you go on the next day at work as usual? A. Yes, I think so.

Q. Then you were served with the notice of motion for injunction?
 A. Yes.

Q. You stopped work then? A. I don't think so.

Q. You went right on? A. Yes.

Q. That notice of motion was pending for a week or so, as between the service of it and the return? A. I don't know when it was returned.

Q. There was quite a time elapsed until it was argued in court?
 A. Yes.

Q. Between the service of the notice of motion and the argument in Court 30 you stopped the work right up? A. No.

Q. Went on spending the money as usual? A. Yes.

Q. And after the motion for injunction up to now, you went on spending moneys just the same? A. Yes.

Q. Weren't frightened of that Bill? A. No.

Q. If you had been served with that Bill on the 3rd or 4th of June, you would have stopped? A. I don't think we would have.

Q. You think you commenced work on Main Street between the C.P.R. track and the Assiniboine River about the 21st of July? A. Yes, I 40 think so.

Q. What makes you think that? A. It was, in my opinion, a day or two before we opened the line to the exhibition, and I know we opened that line on the 25th.

Q. You think it was a day or two before? A. Yes.

Q. You pushed it on with great vigour? A. We pushed it with great vigour, and it is all completed now.

Q. You pushed it from the beginning with great vigour? A. Yes.

Q. Didn't you for the first two or three weeks do practically nothing? A. I don't think so; we have two or three times been waiting for material during the course of construction, and if there was any delay then it was on account of material not being on hand; and if we were a day or two idle, then it was for the want of material.

Q. Will you say you did more than lay six rails the first six days you were working south of the C.P.R. track? A. No; I will not say.

Q. You don't say that you did more than that? A. No; I know we had
10 that line open on the 6th of September, and we could not have been delayed very much.

Q. That is, you had the east line open on the 6th of September? A. Yes; and we could not have been delayed very much.

Q. The 6th of September was the first time you ran a car at all on Main Street South? A. Yes; I think so.

Q. And it was just shortly after that that the injunction was served, was it not? A. I don't remember the date at all.

The case was now adjourned until the following morning, November 16th, at 10.30, when it was resumed.

20 H. N. Ruttan, sworn. Examined by Mr. Munson:—

Q. You are now, and have for many years past, been city engineer of the City of Winnipeg, Mr. Ruttan? A. Since 1885.

Q. What is your profession? A. Civil engineer.

Q. How long have you been practising the profession of civil engineer, how many years? A. About 24 or 25 years.

Q. Have you any experience in railway engineering? A. Yes.

Q. Considerable experience I believe? A. Yes; a great deal of experience in railway engineering.

Q. You are the city engineer of the city referred to in the electric com-
30 pany's bye-law, that is, you fill that office? A. Yes.

Q. And have, for the time you mentioned? A. Yes.

Q. Have you approved of the plans and location of the electric company's lines and works? A. I have approved of several plans, yes.

Q. That is what is required, the method of construction and the location? A. The method of construction and the location.

Q. You have'nt certified that they are completed as yet? A. No.

Q. But the standard required you have approved of? A. Yes.

Q. You might say for all their lines? A. As far as I know, for all their
lines.

40 Q. What is the width of Main Street, in the City of Winnipeg? A. 132 feet.

Q. Uniform width of that amount? A. I believe it is.

Q. And of Portage Avenue? A. The same.

Q. What is the width of the street known as Central Avenue, formerly Notre Dame Street? A. I believe that is 66 feet.

Q. And Nina Street, Logan Street and Selkirk Street, or Seventeenth Avenue

t

RECORD.

II.

Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.

Evidence on
behalf of the
Defendants.

George
H. Campbell
—continued.

H. N. Ruttan.

RECORD,
 II.
 Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).
 No. 7.
 Evidence on
 behalf of the
 Defendants.
 H. N. Ruttan
 — continued.

North? A. The first three are 66 feet, and a portion of Seventeenth Avenue North is 66 feet, for the portions next to Main Street, but some distance out it is narrower than that.

Q. How much narrower? A. I don't remember the exact width, but I think it is 12 or 15 feet narrower.

Q. Is the place where it is narrower far out, where there are practically no houses? A. There are not many, if any, houses there.

Q. It is very sparsely built upon? A. Yes.

Q. May we say that the wide part of it is where the street is mostly built up, and where there is most traffic? A. Yes; it is mostly built up nearest Main Street.

Q. Nearest Main Street where the greatest traffic would be, I suppose? A. Yes.

Q. Will you mention to the Court the portion of Main Street South of the C.P.R. tracks which is covered by the sidewalk or footpath on each side, or the width of footpath or sidewalk? A. The sidewalks are intended to be 18 feet wide, leaving 96 feet for the paved portion of the street.

Q. The sidewalk on each side would not be more than 18 feet? A. Approximately not more than 18 feet; it might be an inch or two more, of course.

Q. That would be 36 feet; how would the remaining portion of the street be taken up? A. By the block pavement.

Q. The rest of the street is paved? A. Yes.

Q. With block pavement, for vehicles and other traffic I suppose? A. Yes.

Q. What is the gauge of the Plaintiffs' railway? A. $4.8\frac{1}{4}$.

Q. As laid down on the street? A. Yes.

Q. What is the width of the electric company's railway? A. It is also $4.8\frac{1}{2}$.

Q. Begin from the edge of the eastern sidewalk on Main Street at that place, and give the measurements of the pavement on each of the lines, and the distance between them as they come going westward from the edge of the sidewalk?

A. Pavement, 33 feet.

Q. Beginning from the east side? A. Pavement 23 feet.

Q. Is that pavement from the two car tracks? A. Yes, the track of the Electric Street Railway 4 feet $8\frac{1}{2}$ inches, pavement 5 feet; Winnipeg Street Railway Company's track 4 feet $8\frac{1}{2}$ inches, pavement about 7 feet; Electric Street Railway Company's track 4 feet $8\frac{1}{2}$ inches gauge, pavement 7 feet 5 inches; Winnipeg Street Railway track 4 feet $8\frac{1}{2}$ inches, pavement 33 feet.

Q. That would be a total of 66 feet, pavement to pavement? A. About that; there is an inch or two here, I notice the width of the rails; I notice the distances are not marked on this plan, and I don't know whether the width of the top of the rail is included or not.

Q. But, approximately, these are the correct measurements that you have given? A. Yes.

Q. Then the width of the street available for passage of vehicles, quite outside of what is occupied by the car tracks in the middle of the street, would be within a few inches of 66 feet? A. 33 and 23, that is 56 feet.

Q. That is Main Street South of the C.P.R. track? A. Yes.

Q. Now, passing to Main Street North of the C.P.R. track, how is the roadbed there taken up? A. There is a pavement of 24 feet about the centre of the street.

Q. Then what proportion of the street would be taken up by the sidewalks?

A. The sidewalks on that portion of the street are narrower—they are not the full width.

Q. They would be less than 18 feet? A. Yes.

Q. There are sidewalks on each side? A. Yes.

10 Q. Then how wide is the roadbed for the travel of vehicles on Main Street North of the C.P.R. tracks? A. The travel is chiefly on the block pavement, which is 24 feet wide.

Q. Is there a portion of the street outside the pavement available for the passage of vehicles, and which was there before the railway was built? A. Yes, there is a portion now available, and before that they could travel on both sides.

Q. Is the traffic on that part of Main Street North of the C.P.R. very great? A. No; I would not call the traffic very heavy.

Q. The Plaintiffs' tracks are on the west side of the 24 feet of pavement?

20 A. Yes.

Q. And the electric company's tracks are on the west side of that again?

A. Yes.

Q. On the unpaved part of the street? A. Yes.

Q. What is the distance of the two tracks from each other? A. I don't remember the exact distance.

His Lordship:—Is the Plaintiffs' track west of the pavement or on the west portion of the pavement? A. It is on the pavement.

Mr. Munson: On Portage Avenue there is block pavement? A. Yes.

30 Q. Both companies have single lines of railway on Main Street North have they not? A. Yes, single lines.

Q. All the same gauge? A. Yes.

Q. When we are speaking of their lines we may say that their gauge is the same on all streets? A. Their gauge is supposed to be standard gauge, 4 feet 8½ inches.

Q. On Portage Avenue both the Plaintiff and the electric company have a single line have they not? A. Yes.

40 Q. What is the distance that separates the tracks of the two companies on Portage Avenue, generally speaking, outside of the places where they approach the switch near Kennedy Street or Ninth Street South? A. I think it is 9 feet, I would not be positive, but it is about that.

Q. At any rate you would say it was 9 feet within some inches? A. I think so.

Q. It would not be under 7 feet? A. No.

Q. At the switch on Kennedy Street they approach closely? A. Yes, I believe they are about 4 feet apart there.

Q. On Central Avenue or Notre Dame Street, Nina Street, Logan Street, the electric company's lines, only, are constructed? A. Yes.

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RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.
Evidence on
behalf of the
Defendants.
H. N. Ruttan
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

H. N. Rutan
— continued.

Q. Have you ever approved of any plans or locations on the street for the electric railway over the Plaintiffs' line of railway outside of River Avenue and the Fort Rouge portion of their system? A. I don't think so.

Q. Were you in Winnipeg in 1882? A. Yes.

Q. And for some years previously? A. I came here first in 1875.

Q. And at different times between 1875 and 1882, were you here in Winnipeg? A. Yes.

Q. You were away a time, I believe, practising your profession? A. Yes.

Q. Were you familiar with the condition of Main Street? Yes, I was.

Q. At that time I mean? A. Yes.

Q. What kind of a street was Main Street, for the purpose of travel of vehicles in ordinary summer weather? Q. It was an ordinary prairie street and it had not been improved in any way except to cut side ditches; in dry weather it was not bad, but in wet weather it was very bad.

Q. Was it the same as the other streets in the city of Winnipeg, which at present are unpaved by blocks or other pavement? A. Just the same.

Q. I suppose there would be more traffic on it? A. There was more traffic on it, and owing to that reason, the street in wet weather was worse than other streets.

Q. When the dry weather came after the wet weather, what would be done with the ruts that were left? A. I think there were men working on the streets all the time levelling up ruts whenever it was dry enough for them to work.

Q. Looking at the Plaintiffs' lines and the electric company's lines, and observing how they have been operated, and their relation one to the other, as far as their operation is concerned, what effect has the construction and operation of the electric lines upon the actual operation of the Plaintiffs' lines? A. I don't think it would have any effect with ordinary care, beyond the fact or effect, that any line crossing another when two cars are there at the same time, one must wait.

Q. Does a car run as smoothly over any crossing, no matter how well constructed, as well as over the smooth rail? A. No, there is always a jar at the frog, no matter how well cut.

Q. Does that apply to all crossings, no matter how well constructed? A. Yes, it applies to all crossings.

Q. What do you say as to the safety of the public and of passengers of both lines, as affected by the running of the lines? A. With ordinary care there should be no danger.

Q. What different systems of electric motive power for the propellation of street cars are there now in vogue? A. The overhead and underground trolley systems and the storage battery, accumulative system.

Q. Are there different systems of the trolley systems? A. Yes.

Q. What are they? A. Overhead and underground system.

Q. As to single or double? A. There are also double and single.

Q. Which is the system that is in use by the company here? A. The single overhead trolley.

Q. In what respect does that differ? A. The overhead has two overhead conductors, and the two conductors and a section of the current goes through the

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wires instead of through the rails, as by the system adopted by the Electric Company's line.

Q. The storage battery is what? A. The storage battery is a system where the electricity is taken for the moter from accumulators which are placed in the car, and stored at a station on the line, and has no connection between the station and the car.

Q. No connection by wire, as in the other system? A. No.

Q. Are there poles on the street or suspended wires? A. No; no outside electrical system.

10 Q. No contact with any fixed structure for the purpose of getting the electrical current? A. No.

Q. What do you say as to there being any danger, from your observation, of the operation of both of these lines with reference to possible running off at crossings, as they are constructed? A. Cars running off at crossings?

Q. Yes, within the crossings as they are constructed? A. I don't think there would be any danger when the crossings are completed.

Q. You mean with proper crossings there is no danger? A. Yes.

Q. Do you know the style of crossings adopted here? A. Yes, generally.

Q. You have not examined them all? A. No.

20 A. What do you say as to that style of crossing? A. I think it is a very good crossing.

Cross-examined by Mr. Howell:—

Q. It would not be safe to cross a crossing at full speed, you would have to slow up, wouldn't you? A. I don't think they slow up when they get the crossings complete and in good running order; I don't think they require to slow up, although it is safer to do so—better to do so.

Q. Railways always slow up at crossings? A. Yes.

Q. And the same with street cars? The Government order makes them slow up to 3 miles an hour when they come to crossings? A. Yes, I think that 30 is a proper provision.

Q. Is that for the purpose of allowing other cars to approach them, or to more safely get over the switch? A. I think it is chiefly to avoid collision.

Q. They had better hurry and get over them? A. I don't think so.

Q. Well then, the provision about slowing up is such for the reason of preventing collisions, as a safety to the cars from jumping the tracks at the crossings? A. Yes.

By Mr. Munson, re-examined:—

Q. Have you observed street railway lines on streets of other cities in America? A. Yes.

40 Q. Can you mention some of the cities where you have seen street railway lines in operation in Canada and the United States? A. Do you mean electric street railways?

Q. All classes of street railways? A. Montreal, Ottawa, Toronto, Port Arthur.

Q. Any of the cities of the United States? A. Yes; Boston, New York and other cities.

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.
Evidence on
behalf of the
Defendants.
H. N. Ruttan
— continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.
H. N. Ruttan
—continued.

Q. I believe you were deputed by the City of Winnipeg to visit cities in the United States and make a report on the system of electric construction?
A. Yes.

Q. Have you mentioned cities in the United States where you have seen them?
A. Boston, Minneapolis, St. Paul, Duluth, New York, Chicago and some other places.

Q. Have you seen State Street in Chicago?
A. Yes.

Q. Will you tell the court how many lines of railway there are on State Street?

His Lordship: How wide is State Street?
A. I don't know the width of the 10 street; I should think it was something less than Main Street.

Mr. Munson: Would you say it was as wide as Main Street?
A. It strikes me that it is a little narrower than Main Street.

Q. Is it one of the busiest streets in the city?
A. It is a very busy street.

Q. How many lines of railway did you observe operated on that street?
A. There are at least 4; I am not sure whether there are more or not; cable cars and horse cars.

His Lordship: That is four single tracks?
A. Yes.

Mr. Munson: Do you know whether they are operated by the same or 20 different companies?
A. I don't know.

Q. Did you observe the frequency of the passing of the cars on those lines, how they compete with the frequency of trips here?
A. On that street you might say the cars are running continuously at very short intervals.

Q. Would you say of a minute?
A. I would say of less than a minute in many parts of the city.

Q. You would say the traffic was very heavy?
A. Yes; the cars run two or three together, as a rule.

Q. They run in trains?
A. Yes.

Q. Attached?
A. Yes.

Q. A great many people on that street? passing to and fro all the time?
A. Yes, it is a very busy street.

Q. How would the volume of travel on that street, both of vehicles and pedestrians, compare with the travel on Main Street at its busiest part?
A. I should think anywhere from ten to twenty times as great.

His Lordship: Often a great many accidents there, are there not?
A. I don't know as to that; I have not heard of any; it is a street where they have to be very careful—police standing on all crossings—and they have to be very careful in crossing the street.

Mr. Munson: Do you know of places having a population of 10,000 or 40 15,000 having street railway lines operated?
A. I know there are places of smaller populations than that and larger, I don't know of places exactly that size.

Q. You know of places having smaller populations than that having street railways on their streets?
A. Yes.

Q. Mention some of them?
A. Port Sault Ste. Marie.

Q. Do you know of one at St. Catherine's, Ontario, and Belleville, Ontario?
A. I have heard of it, but I have not seen it.

Granville C. Cunningham, *sworn. Examined by Mr. Munson.*

RECORD.

Q. Where do you live now? A. In Montreal.

Q. What is your profession? A. Civil engineer.

Q. How long have you practised that profession? A. Since about 1863, when I first began.

Q. From that time since? A. Yes.

Q. What positions have you occupied? A. I have been in the position recently of assistant engineer in Toronto and Montreal, city engineer, and now chief engineer of Montreal Street Railway.

10 Q. While you were city engineer of Toronto, had you anything to do with street railways? A. Yes, as city engineer I had general control of the street railway system there.

Q. As far as it related to the engineer's department of the city? A. Yes.

Q. And the city engineer, I suppose, had a good deal to do with the railways? A. Yes.

Q. What is the population of Toronto roughly? A. About 185,000 or 188,000, I think.

20 Q. I suppose we may say, making allowance for any possible discrepancy, at any rate it is over 150,000? A. Oh, yes, it is quite over that.

Q. Are there many street lines in operation there? A. There is about 70 miles, all under one company.

Q. What are the chief business streets in Toronto in which lines of street railway are operated? A. King Street, Yonge Street, Queen Street, and Bloor Street.

Q. Say business streets? A. King Street, Yonge Street, Queen Street and Church Street, are the chief business streets.

Q. What is the width of King Street, Toronto? A. The width is 66 feet.

30 Q. Yonge Street? A. 66 feet.

Q. Queen Street? Q. Queen Street is mostly 66 feet; there is one part that is wider a short distance.

Q. Which is the narrower part of Queen Street, the part where the traffic is less or greater? A. The greatest traffic on Queen Street is on the narrow part, in the central part of the town near Yonge Street.

Q. What company has operated the lines there? A. The Toronto Street Railway Company, until recently now called the Toronto Railway Company.

Q. How many lines, that is tracks, have been operated on King Street in Toronto? A. Two tracks; double track.

40 Q. What space has there been of width up till recently? A. Three feet between the tracks.

Q. Was that under the horse car system? A. That was under the horse car system.

Q. Up to a short time ago, I understand, the lines in Toronto were operated by horses? A. Yes.

Q. But recently a number of them are being operated by electricity? A. Yes.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).
No. 7.
Evidence on
behalf of the
Defendants
—continued.
Granville C.
Cunningham!

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
—continued.

Q. That width that you speak of between the two lines on King Street, was when the horse car system was in vogue? A. Yes.

Q. There was a double line on Younge Street? A. Yes; a double line there the same as on King Street and the same space between the tracks.

Q. What was the width of the sidewalks on King Street? A. 12 feet.

Q. That would be 24 feet—both? A. Yes; leaving 42 feet width of roadway.

Q. Were the tracks placed in the centre? A. Yes.

Q. Would the middle 3 feet be the middle of the street? A. Yes.

Q. May we say the same of Younge Street? A. Yes.

Q. What was the width of the side walk on Younge Street? A. The same, 12 feet.

Q. Leaving the same width for roadway? A. Yes.

Q. Queen Street? A. Queen Street was similar.

Q. Did the cars on those lines in Toronto pass each other on those double lines going in opposite directions, from time to time? A. Oh, yes; constantly.

Q. What effect did the placing of those lines that distance from each other have upon the safety of the traffic of the public generally, as far as you have observed? A. It was run that way for a number of years, but I think 3 feet was too close, and I made a report to that effect to the council.

Q. Was the width extended? A. Yes, the width was extended when electricity was adopted.

Q. To what width? A. To 3 feet 6 inches in some of the streets.

Q. How does the volume of traffic of vehicles on King Street and Younge Street, Toronto, compare with Main Street, in Winnipeg? A. It is very much larger on King Street and Younge Street.

Q. Have you seen the traffic on Main Street, at different times you have been here before? A. Yes, I have been here before.

Q. Could you say, in your estimation, taking month in and month out, how many times more as a matter of estimate? A. It would be very difficult to estimate, but it must be ten or twenty times as great, considering the narrowness of the street and the number of vehicles travelling on that square yard of street.

Q. You made a report for the Toronto City Council on the street railways? A. Yes.

Q. Did you visit other cities? A. Yes, Buffalo, Cleveland, Pittsburg, New York, Orange, New Jersey, Albany, Schenectady, Springfield and a number of other cities.

Q. Did you observe in these the operation of electric lines? A. Yes it was for that purpose that I went.

Q. These cities you have mentioned are all in the United States? A. Yes.

Q. Did you observe the space between the tracks on these various railway lines in these various cities? A. Yes, I did.

Q. How did you find the widths? A. Taking the general width it was 4 to 4½ feet between the tracks in general.

Q. There were some narrower? A. Yes, some that were narrower in Pitts-

burg and Alleghany, width only 3 feet between the tracks throughout both cities. RECORD.

Q. Did you observe in these cities certain streets used for the lines of different companies? A. Yes, I did.

Q. In what places? A. In all places of course, I took notice of the lines.

Q. I am speaking now of rival lines on the same street? A. Yes, in Pittsburg and Alleghany and also in Cleveland.

Q. How did the streets compare where the rival lines were in width with our streets here, Portage Avenue and Main Street. A. In Pittsburg and Alleghany the streets are very narrow, I made notes at the time of the width.

Q. In Pittsburg you found what? A. Very narrow streets; on Smithsburg Street the street is only 34 feet between the curbs, that is the outer edges of each footpath; there is a great deal of traffic there, and the width between the tracks is 3 feet.

His Lordship: How many tracks are there there? A. Two tracks, leaving about a 10 foot driving strip on each side of the tracks.

Mr. Munson: Are you now speaking of the street on which the rival lines are? A. There are both electric and horse cars.

Q. Have each the same line? A. Yes; one runs over the track of the other, and the same track is used by both.

Q. Have you observed, in any of these cities you have visited, for instance, two rival lines on the same street? A. In Federal Street, in Alleghany, 50 feet wide between the curbs, four tracks laid there with 3 feet between the tracks, leaving about a 10 foot driving space on each side of the tracks.

Q. Are these lines operated by horse cars? A. Both horse and electric cars operated on that street.

Q. What population has Alleghany? A. I should think the population is somewhere about 150,000 or 200,000; I don't remember at present. It is a very large place, very closely built, and Pittsburg the same, very closely built.

Q. At all events, you think it is a larger place than Winnipeg? A. Yes.

Q. What kind of traffic on these streets upon which you saw the four lines? A. The traffic was heavy, both vehicles and car traffic very heavy.

Q. At what interval do the cars pass? A. There must have been cars going every two minutes at the very least.

Q. Short intervals? A. Yes; I didn't specially note the time.

Q. You observed in another city an even closer space, the two railways of rival companies? A. In Pittsburg I noticed on a street—I am not certain of the name of it—where the rails were laid within 6 or 4 inches of each other. Fourth Avenue crowded, busy street; 20 feet between the curbs; one line of cars.

Q. The tracks overlap in the case you mention? A. Yes.

Q. Did you observe if these lines were operated on this street? A. Oh yes, they were operated.

Q. They could not be operated quite so conveniently as by companies that had their own roadbed free? A. Yes.

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II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.
Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
—continued.

Q. You observed that they were operated apparently without interruption?
A. Yes, they seemed to be without interruption.

Q. You have seen street railways in places smaller than Winnipeg; do you know of any places in Ontario smaller than Winnipeg, where there are any? A. St. Thomas had a street railway—horse railway—when it was about 10,000 population.

Q. Any other places. Have you ever been in Belleville? A. No.

Q. In St. Catherine's? A. Yes; I have been in St. Catherine's; there was a street railway there, and that was certainly smaller than Winnipeg at that time. 10

Q. About what population had St. Catherine's; what would you estimate it to be at the time you speak of? A. I should say about 6,000 or 8,000, but I am not certain.

Q. Have you been at Windsor? A. Yes.

Q. Observe a street railway there? A. Yes, I remember that street railway there.

Q. In Chatham? A. Yes; Chatham also; I don't recollect whether there was one there; I don't think there was one there when I was there.

Q. Brantford? A. I have been in Brantford; I don't think there was a street railway there when I was there. 20

Q. Did you observe a street railway at Windsor? A. Yes; it was a horse railway.

Q. What was the size of Windsor? A. At that time I don't think it was more than 5,000 or 6,000 then.

Q. Windsor and St. Catherine's are in Ontario? A. Yes.

Q. Are you familiar with the motive powers that have been generally applied for the propellation of street railways within the last 10, or 12 or 15 years? A. Yes.

Q. In America? A. Yes.

Q. Speaking as an engineer, and as a matter of history combined with what you personally know, from having seen certain railways operated, when do you say the electric motive power began to be used in America for that purpose? A. When it came practically into the field as a street railway power I should say not earlier than 1886 or 1887; it then began to be looked upon as a possible motive power.

Q. You made a report on that very subject, did you not, to the Toronto City Council? A. Yes, I did.

Q. Do you remember what you found on a particular date, what number of railways operated by electrical motive power in America, from your searches at that time? A. I don't recollect it without looking at my report now. 40

Q. You may look at the report to see what number you found? A. By the middle of September of the year 1891, the number of miles operated by animal power was 5,443; by electricity, 3,009; by steam motors, 1,918; and by cable, 660.

Q. Was there any other date that you reported upon as showing a certain number of electric railways in operation? A. At the beginning of 1888 there were, through the United States, about twenty electric roads in operation, having a total of 80 miles of track, and working 90 motors; that was in 1888.

Q. Your researches at that time didn't go farther back than 1888? A. No, I didn't go farther back. I thought that showed, practically, the commencement of the work.

Q. In 1882 or 1883, what would you say as to electricity being one of the known powers for propellation on street railway lines in America? A. I should say that it was known of course, but it was purely in an experimental stage at that time; it had not been developed.

Q. It was known that it was a power? A. Yes.

Q. But so far as its adaptability to that particular class of travel is 10 concerned, was it in 1882 in any way familiar? A. No, I should certainly say not.

Q. You have stated that in 1882 it was not a familiar idea that electricity should be used for that purpose, so far as you know? A. Yes.

Q. You say the Toronto Street Railway Company operated its lines by horse power up to a short time ago? A. The spring of this year.

Q. The franchise expired when? A. The franchise expired last year—1891.

Q. When was electricity introduced in Montreal? A. Only about two months ago, electric cars.

20 Q. What power had been used in Montreal up to that time? A. Horse power.

Q. Do you know the City of Hamilton, in Ontario? A. Yes, I do.

Q. What power was in use there? A. Until recently it was horse-power; electricity was introduced early this year, some time about May or so.

Cross-examined by Mr. Howell :—

Q. Would you be surprised to find that electricity was actually discussed here before the council in 1882 as a possible street car motive power? A. I should be surprised.

Q. You think it hadn't got that far here? A. No.

30 Q. Electricity was not used in Canada as a motive power until about 1890 or 1891? A. I think that was about the first time; you mean for street cars?

Q. Yes? A. St. Catherine's may have been used before then.

Q. When did St. Catherine's begin? A. I don't know when it began.

Q. You spoke of it? A. There were horse cars when I saw it in 1883.

Q. In 1888, or at least when you made this report, did you forget poor little St. Catherine's? A. Yes; I did not take any notice of it, the street car is not running there, they are not running it there now.

40 Q. It ran so long it got worn out? A. No; the system was not a proper system and it got into some difficulty.

Q. There are thousands of cities in Canada and the United States having street cars? A. Yes.

Q. You have mentioned two where there are rival companies on the same street? A. There are numerous that have rival companies.

Q. Running on the same street? A. I have no doubt you will find it so.

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RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity.*

No. 7.
Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

*Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
— continued.*

Q. You are swearing to that? A. No, I am not; I say I have no doubt you will find it so.

Q. As an engineer, you think 4 tracks as safe to life as 2? A. No, I don't say so; I don't think so.

Q. Do you think having rival lines on the same street is just as safe as having all under one management? A. I don't think rival lines would increase the danger to the public any more than there would be an increase in traffic.

Q. You think the rival lines would not increase the danger? A. Not necessarily; I don't think it is an increase of danger; it is an increase of traffic. 10

Q. Practically, do you think it is an increase of danger? A. No; I don't think so.

Q. There is no place in Canada where they have such a thing, except in Winnipeg? A. No; except in Ottawa.

Q. And you say they have it there? A. There are rival lines there.

Q. You know better than that? A. No, I don't; I was there only three weeks ago, and I saw it running.

Q. Don't you know one company gobbled up the other? A. No, because they told me the other day they hadn't done it.

Q. It was your company that did it? A. No, it was not. 20

Q. What is your company? A. The Montreal Street Railway Company.

Q. And it was the same men in that as in this? A. I don't know that they are.

Q. The chief men in both this and the Montreal Company are the same, and the same with regard to Ottawa? A. No, I say they are not; there are rival companies in Ottawa.

Q. Running on the same streets? A. I think on the same streets; yes, I think they use partly the same streets in some places.

Q. Will you name one street where they use it? A. Yes, I think across at the Rideau Bridge. 30

Q. They actually cross the same bridge? A. No, when they come to go over, crossing the bridge, they run on the same track.

Q. What is the name of that street? A. I don't remember the name of it.

Q. How far do they run four cars on the same street in Alleghany: how far do they run the four tracks—100 yards? A. Yes, it would be considerably over 100 yards.

Q. Would you say 200 yards? A. My recollection is that it would be about 1,000 feet long.

Q. Where the four cars run together? A. Yes. 40

Q. And then they turn off on to other streets? A. Yes.

Q. They necessarily have to do that in order to continue their system? A. I don't know that it is necessary.

Q. They run together 1,000 yards? A. I am merely giving it roughly from my recollection.

Q. Coming to Pittsburg, where they run in the same way, how long is that piece that you spoke of on Fourth Avenue, where the two rival lines run on the

same street? *A.* That was quite a long piece of street, I should think that would be fully a quarter of a mile long, that Fourth Avenue that I spoke of.

Q. Were they running overlapping one another for half a mile? *A.* Yes, I am not swearing whether that was Fourth Avenue, but there was one street where I recollect the tracks overlapping and running perhaps half a mile, overlapping one another; it was not put in as a mere turn out to get around a corner, it was run on the Main Street continuously.

Q. Your memory is that it was half a mile? *A.* Somewhere about that; I didn't measure it particularly, but it ran for some considerable distance along the
10 same street.

Q. You mentioned some other cities, where you saw rival companies running on the same street? *A.* In Cleveland.

Q. How far do they run on the same street there, rival companies? *A.* I don't recollect.

Q. Will you name one street in Cleveland where there are rival companies running on the same street? *A.* Yes, there are rival companies running, but I don't remember the street, but they are just past Geddoe Street, because there are electric and horse cars running; and I think on that street there are four cars running about three-quarters of a mile I should say.

20 *Q.* They are rival companies running on that street? *A.* I should think so.

Q. Is there a street in Cleveland upon which rival companies run lines? *A.* I say yes, in this sense of rival companies, that they are companies running with a different mode of propellation, and to all appearances, as far as I know, competition with each other for the traffic of the public.

Q. I am asking you are they rival companies—in Montreal you are running horse and electric cars? *A.* Yes, but in Cleveland they are run by different companies, and each one is competing for the traffic of the public.

30 *Q.* You examined the track, too, in these cities, I suppose, and you found the iron backed up by wood, too? *A.* No, I did not.

Q. Did you find any one place done in that way? as is done in Winnipeg? *A.* No, I don't think so.

Q. Mr. Campbell has spoken about a busy city like St. Paul with wood backed up against the iron; as an engineer would you think that is right? *A.* I think as the track is laid here with the requirements of the place and the town, I think it is a very good plan.

Q. Do you think that it would last a year with wood? *A.* Yes, I think it would require to be renewed once a year.

40 *Q.* In a city like St. Paul or Minneapolis would you expect to find an ordinary electric "T" rail backed up by wood? *A.* I would not be surprised, but I would not expect to see it.

Q. You don't do it in Montreal? *A.* No.

Q. You don't do it in Toronto? *A.* No.

Q. What do you do in Toronto? *A.* The street railway is laid in the wooden block pavement; it is all scoria blocked in granite and then in asphalt.

Q. Tell me one of the places where it is laid in wooden block? *A.* It was laid nearly the whole length of King Street when I last saw it; it has been renewed with asphalt since then; I have not seen it lately.

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.
Granville C.
Cunningham
—continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 7.
 Evidence on
 behalf of the
 Defendants.
 Granville C.
 Cunningham
 —continued.

Q. I ask you one place even as far as four miles from King Street, which they have backed with wooden block? A. Wherever they have laid in the electric railway, I presume that they would put in some other backing than wood, they will put in asphalt or if asphalt pavement, they might put in the granite or scoria, not account of the electricity, but to prevent the cutting of the rail.

Q. You don't know any place in Toronto, miles from the centre, where they have laid wood against the rail as they have done here? A. No.

His Lordship: Speaking as regards the convenience of the public riding in a car, what is the difference between wood and stone? A. No difference. 10

Q. It is just a question of durability? A. Yes.

Q. I suppose wood would be the most comfortable to ride over? A. Yes.

Mr. Ewart: We have to repair that, my Lord.

Mr. Howell: You have mentioned three places where there are rival lines on the same street; mention one more, will you? A. In Boston there is.

Q. Where is it? A. I don't know; this street is down off Commonwealth, down the Boston Common.

Q. How far does it run? A. I don't know.

Q. Will you say it runs more than 200 yards on the same street? A. Yes. 20

Q. Rival lines competing for the traffic on the same street? A. Yes, that is my opinion.

Q. How many lines are there laid down? A. I think only two at the place I am speaking of along past the Boston Common, I think there are only two lines laid there.

Q. Are they run by rival companies? Rival companies run over them.

Q. They run on the same iron? A. Yes.

Q. And neither company owns that iron? A. I don't know whether they own it or not.

Q. Or it is owned in common between them? A. I don't know how they own it, probably one pays rent to the other.

Q. Are they electric companies? A. Yes; there is an electric company there.

Q. Both electric? A. No, there were horses running there as well.

Q. And these were rival companies? A. I expect so; I believe so.

Q. What makes you believe so? A. Because they were different sorts; they were different, and if they had been the same they would not have been competing for the traffic, I should say.

Q. You are competing in Montreal for the traffic? A. No, we are not; where we run the electricity we don't run the horse, except in one place, where 40 one piece joins on.

Q. In Ottawa they run horse and electricity on the same line? A. No, I don't think so.

Q. In Toronto they run horse and electricity on the same line? A. Yes, I think so.

Q. And one company likewise runs horse and electricity on the same line? A. Yes.

Q. Did you examine the system in Boston very thoroughly? A. I did not look into the system as to rival companies. RECORD.

Q. You might tell us something peculiar about that system if you had looked into it carefully? A. I don't know. II.
Proceedings in the Court of Queen's Bench (in Equity).

His Lordship: What is the width between the tracks in Boston in front of the common? A. I think it was from 4 to 4½ feet.

Mr. Howell: The street railway in Boston you are referring to was the west end? A. Yes, the large railway company.

Q. Was there another street railway company in Boston when you were 10 there? A. I think so. No. 7.
Evidence on behalf of the Defendants.

Q. Will you swear to it? A. I am swearing. I think so.

Q. Can you give us the name? A. No, I cannot. I am under the impression there are two or three companies there. Granville C. Cunningham
—continued.

Q. Each having its own division? A. No; I think many of them run into the heart of the city.

Q. The West End Company run into the heart of the city, and do the heart of the city business? A. Yes, I think so.

Q. Tell us the names of them? A. I cannot.

Q. You have seen rival companies run into the heart of the city on the same 20 streets? A. Yes.

Q. What are the names of the streets? A. I can't tell you. I did not observe that point particularly when I was there, or I would be able to tell you.

Q. In what other cities did you see rival lines on the same streets? A. I think that was the only one. In Newark, all one company; in Albany, all one company; in Springfield I think it was all one company. I don't think there were any rival companies there.

Q. A man was very nearly killed here last night by the electric street railway, wasn't he? A. He was struck by a car.

Q. He was struck by one car, trying to avoid another? A. I don't think so. 30

Q. Will you swear that that was the case? A. I will swear I don't understand that.

Mr. Munson: Do you know anything about it yourself? A. No; not personally.

By Mr. Howell: There was another one hurt last night also? A. Yes.

Q. Making two? A. I heard so.

Q. These accidents both connected with the electric system? A. Yes.

Mr. Ewart: There are three letters we will put in in the meantime; Platt to 40 Austin, dated 21st of August, 1891.

Filed Exhibit No. 21.

Another letter from the city clerk to A. W. Austin, dated the 2nd of August, 1891.

Filed as Exhibit No. 22.

Another letter, Platt to A. W. Austin, dated 21st of January, 1892.

Filed as Exhibit No. 23.

RECORD. Joseph Doupe, sworn. Examined by Mr. Munson:—

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 7.
Evidence on
behalf of the
Defendants
—continued.

Joseph
Doupe.

Q. You are a dominion land surveyor, are you not? A. I am.

Q. I believe you were employed by the Government of Canada to survey the main highway running through the city of Winnipeg, known as the main highway running from Pembina to Lake Winnipeg, that portion of it from the city of Winnipeg to Lake Winnipeg? A. That portion of it from the old city limits to the Assiniboine.

Q. To what part of the city—

Q. To what part of the city would it take you? A. To Emily Street, I think. 10

Q. Is that north of the C.P.R. track? A. Yes.

Q. Can you tell us now how that main highway compared with Main Street as the street now ends, as Main Street upon which the lines of the street railway and the electric street railway run, the part you surveyed? A. It is identically the same.

Q. There was a portion of the street formerly included in Fort Garry, a portion of what is now Main Street? A. Yes.

Q. You have been here since when? A. 1871.

Q. Can you say if there was a small part of what is known as Main Street formerly included within the limits of Fort Garry, and any part of the old trail? A. Yes. 20

Q. Would that be a large part? A. No.

Q. How much, roughly? A. It was in the wall of the fort, probably wouldn't be more than 150 feet or so.

Q. Do you remember where the trail skirted? A. Yes.

Q. It didn't go through the fort, as it does now? A. No, it turned down towards the Assiniboine River, and the crossing was at the Main Street Bridge.

Q. The general direction of Main Street is north and south? A. Yes.

Q. It is not a straight street? A. It is not. 30

Q. And at its southern end, just where it ran into the Assiniboine River, it bent more easterly along the wall of the fort to the river? A. Yes.

Q. There was a ferry there? A. Yes.

Q. Has that been the travelled highway since you have been in Winnipeg? A. Do you mean the street generally?

Q. Yes? A. Yes.

Q. Was the street you surveyed the travelled highway? A. Yes, I surveyed the street as it now is.

Q. So far as the part of the street where the lines of the railway are—you know where they are? A. Generally, yes; I have seen them all. 40

Q. On Main Street you have seen them? A. From the C.P.R. track to the corner of Portage Avenue, yes.

Q. Have you seen them south of Portage Avenue, too? A. Yes, I think I have seen them all the way up to the river.

Q. From the C.P.R. tracks to the river on Main Street. A. Yes.

Q. From your survey of what was formerly the travelled road or trail, that portion of the great highway, would you be able to say whether the part occupied

by these tracks was on that former travelled road, as you knew it, and as you remember it? *A.* Do you mean on the trail where it was previous to my survey?

Q. Yes; and what was known generally as the travelled highway? *A.* I think it was excepting the extreme end at the Main Street Bridge.

Q. At the Main Street Bridge the portion you mention as having been within the Fort limits? *A.* Yes; there might be at the Market Square, it might not be right at what was the first line of Main Street.

Q. You think it possible that either line of either company is off what was
10 formerly the line covered by the old trail? *A.* It might.

Q. There is a possibility it is at that point? *A.* Yes, it might; I don't know; I didn't take the trouble to ascertain to what extent the street varied when I surveyed it from what it had formerly been.

His Lordship: It varied from the old trail? *A.* Yes.

Mr. Munson: What is your opinion, or rather, from your knowledge, seeing the trail from time to time, how do you say it does correspond with its general length and use from the time you first saw it? *A.* I think they are the same.

Q. There may be difference in the boundaries—the radiations? *A.* Yes.

20 *Q.* But practically its present location is the same? *A.* Yes, its present location of the street would go on what was formerly the line of travel, except, of course, at the extreme end of the Fort walls.

Q. Were these roads known by any name, what was that road called? *A.* The only name I knew of besides Main Street was the Great Highway.

Q. The Great Highway from where? *A.* Along the side of the Red River.

Q. From where to where? *A.* It would go from Pembina to near Lake Winnipeg.

Q. You made a survey of it for the Dominion Government? *A.* Yes.

30 *Q.* Portage Avenue—Do you know whether it covers the space formerly occupied by any railway, at any rate that part of it where the Street Railway Company's lines are? *A.* It occupies that part where there was a line of travel at the time I came to the country here.

Q. What was it known as? *A.* Portage Avenue, but I don't know but at first it was called Assiniboine Street; I am not sure.

Q. It was a trail? *A.* I have been informed.

Q. Do you know whether it was a trail? *A.* Oh yes, I know it was.

Q. Do you know what trail it was known as? *A.* The Portage Road we called it.

40 *Q.* As a resident of Winnipeg at that time, could you say from your own knowledge of what trail it formed a part? From where to where? *A.* It formed a part of the Great Highway from the Red River up to the Portage.

Q. What was the place known as, when you came here in 1871? what was the name? *A.* Red River Settlement.

Q. What was the name of this particular place—Fort Garry? *A.* I don't know whether the name Fort Garry extended from the Hudson's Bay Company's Fort or not.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.
Evidence on
behalf of the
Defendants.
Joseph
Doupe
—continued.

Q. It was generally known as Fort Garry? A. Yes.

His Lordship: Fort Garry was the Post Office? A. Yes.

Mr. Munson: This trail would run from Fort Garry to where? A. Portage la Prairie.

Q. Which side was the trail? A. The west side.

Q. Can you say whether it was the main road of travel from Fort Garry to Portage la Prairie on the west side of the river when you came there? A. There were so many other trails also at the time that it would be hard to say which you would call the main line of travel at the time; but there was a road surveyed there by the Council of Assiniboia previous to that where the present 10 Portage Avenue is.

Q. Did you, when you made your survey of Main Street, compare it with the record of the survey made by the Council of Assiniboia? A. No, I did not; I just took the present location.

Q. Can you tell us where the main highway on the west side of the Red River was, from Lake Winnipeg, as compared with Main Street, in the City of Winnipeg? A. Of what time?

Q. When you came to this country, and as it was then travelled and used? A. It was generally about where it is now.

Q. That is where Main Street is now you mean? A. Yes, with the excep- 20 tions mentioned before.

Q. With the small exceptions you mentioned before? A. Yes.

Q. Where was the main highway leading from Fort Garry to Portage la Prairie at that time, that is, how would it compare with Portage Avenue where the street cars now are? A. Generally the same.

Cross-examined by Mr. Howell:—

Q. You made this survey in what year? A. In 1887.

Q. The whole of Main Street had been laid out and surveyed before that, had it not? A. Yes.

Q. The Red River runs parallel with Main Street? A. Generally. 30

Q. And the survey line there practically fronted on Red River, and ran back about at right angles to Red River and Main Street, that is the general survey? A. Yes.

Q. So that Main Street crossed the Dominion Government Survey of their various lots about at right angles? A. No, in some places it differs.

Q. Nearly at right angles? A. It does not cross all the lots down on Point Douglas; there are some there, short ones that it does not cross.

Q. I mean those at right angles? A. Yes.

Q. The Dominion Government Survey was of long narrow lots, running back 40 some distance from Main Street? A. Yes.

Q. And they patented them to the different settlers in that way? A. I suppose so.

Q. Each settler as he got his land laid out a sub-division or plan, and left a strip that we now call Main Street, did he not? A. I don't know. I didn't do any of those sub-divisions.

Q. Do you know whether that is the case from any of your examinations? A. I think it is the case.

Q. So that each settler, as he got his patent, laid out a sub-division and reserved one long continuous strip, that now corresponds with Main Street?
A. I rather think some of them made sub-divisions before they got their patents.
Q. That was generally the case, in fact, universally the case? A. Yes.
Q. They made their surveys either before or after they got their patents?
A. I suppose so.
Q. Have you any doubt about it, or do you think some of them didn't survey?
A. I really cannot say from personal knowledge.
10 Q. You found Main Street there and you surveyed it? A. Yes.
Q. You must have surveyed it from something? A. Yes.
Q. You made it from previous surveys, your survey, did you not? A. Yes.
Q. These previous surveys were made, or were the surveys of each individual owner of land, who was entitled to obtain or got a patent? A. There had been some few changes made.
Q. Each owner of a river lot had surveyed and left a road in his survey which corresponded with the present Main Street, and in these various surveys it was generally marked there and known as Main Street? A. I think so.
Q. When you came to survey it you found ready for you a survey of the
20 street, did you not? A. Yes.
Q. So you didn't pay any attention to the old trail, but followed a street that had already been laid out? A. Yes.
Q. The Hudson's Bay Company had also surveyed this same street, had they not? A. Through part of the city.
Q. The Hudson's Bay Company's lot begins at Portage Avenue, does it not, and runs from Portage Avenue to the Assiniboine River? A. It crosses Portage Avenue from Notre Dame Street.
Q. It doesn't go further north than Portage Avenue? A. West of Main Street it does.
30 Q. The Hudson's Bay Company's survey began a few chains south of Portage Avenue? A. Yes.
Q. And ran from Portage Avenue to the Assiniboine River? Yes.
Q. That would be about half a mile on Main Street? A. I think so.
Q. About half a mile of Main Street runs through the Hudson's Bay Company's lot? A. Yes.
Q. The Hudson's Bay Company surveyed that road to run straight through the fort didn't it?
Mr. Ewart : He wasn't here when all this was done that my learned friend is asking about? A. To run through part of it.
40 Q. How did you survey it through the fort? A. The fort was not there when I surveyed it.
Q. When you first came here the trail didn't go through the fort? A. It did not.
Q. Then you followed the Hudson's Bay Company's survey as of Main Street in laying down your street? A. Yes.
Q. And went straight through where the old fort used to be? A. Yes.

RECORD.
—
II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).
—
No. 7.
Evidence on
behalf of the
Defendants.
Joseph
Doupe
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.
Joseph
Doupe
—continued.

Q. Many of these subdivisions and surveys were made away along in the early settlement, were they not? A. Yes.

Q. In fact, most of them? A. Yes.

Q. You came here in 1871? A. Yes.

Q. Was Main Street at all defined when you came here, or did it twist and turn about in any direction? A. It was very crooked then; it was more crooked than it is at present. I don't know that it was defined by any survey when I came here.

Q. In fact people went where they could to avoid the mud-holes? A. The mud-holes were not worse than they were later on. 10

Q. When they came to a mud-hole they would turn out to where there were none? A. Yes.

Q. Were the lines of the old trail defined like Main Street is now, or did it wander generally? A. There was a main line of travel that you could see at all points, but there were trails running out in all directions that you could see.

Q. There were very few houses to define a street at all? A. Yes.

Q. Were they standing close to the street? A. Some of them were standing close to it, and some of them were standing back.

Q. And these same remarks apply to Portage Avenue? A. I don't know that there were any buildings on Portage Avenue except a few blocks back. 20

Q. The old Portage Road started off from Main Street and ran westerly? A. Yes.

Q. Did it start from where the junction of Portage Avenue and Main Street now is? A. I always considered so; I don't know whether it was the trail with the most traffic on.

Q. There was one trail there? A. Yes.

Q. And there were others starting off from different parts? A. Yes; there was the one running diagonally from the fort, and joined the other near Colony Creek.

Q. How far is Colony Creek from Main Street, generally? A. About half 30 a mile.

Q. Portage Avenue began at Main Street, and ran to Colony Creek? A. Yes.

Q. Portage Avenue begins at Main Street and runs to Colony Creek, running through the Hudson's Bay Company's lot, does it not? A. Very near Main Street.

Q. About a chain from Main Street? A. It must be more; it must be two or three chains.

Q. Two or three chains from Main Street, Portage Avenue as now laid down, commenced in the Hudson's Bay lot? A. Yes. 40

Q. Portage Avenue two or three chains westerly of its junction with Main Street, commenced running through the Hudson Bay Company's lot, is not that so? A. I would rather call it 4 or 5 chains.

Q. And it runs through the Hudson's Bay Company's lot until it reaches Colony Creek? A. I think so.

Q. And that is about half a mile? A. Yes.

Q. That is some distance beyond Kennedy Street? A. Yes.

Q. Westerly of Kennedy Street? A. Yes.

Q. In laying down Portage Avenue for the Dominion Government, you simply laid it down where the Hudson's Bay Company had laid it down in its plan? A. I didn't lay down Portage Avenue at all for the Dominion Government.

By Mr. Ewart:—

Q. Did you lay down Main Street for the Dominion Government? A. Yes.

Q. What year do you say you laid out Main Street for the Dominion Government? A. In 1887.

10 Q. When you came here were there any highways known as the Great Highways? A. I cannot say that in the first year I came here there was any thing called the Great Highway, but I have an idea there was.

Q. What were they that were called and known by that name? A. I don't know that they were called exactly by that name, but they were considered main roads, one along the west side of the Red River, and the other along to the Portage.

Q. What year are you speaking of now when they were known as that? A. I am speaking of 1871 and a few following years.

20 Q. Where was that Main Road in 1871 and the few following years in the City of Winnipeg now? A. With the exception of where I have mentioned the exceptions, it was where it is now, I mean in the part near the jog of the part near the Market Square.

Q. The part in the Fort is near the Assiniboine River? A. Yes.

Q. How far from the Assiniboine did it begin to diverge from the present street? A. I would have to guess at it; may be 500 or 600 feet.

Q. South or north of where Broadway now is? A. I think it would be south of Broadway.

30 Q. And then did the old road diverge from the present street line to such an extent that the west part of the old line would be on the east side of the present line? A. I think—I am not certain of that—near the Assiniboine River it would.

Q. Then you say there is another part of Main Street where the roads were not the same—a divergence near the market? A. I mean in front of the city hall.

Q. For what length of the street was there a divergence at that point? A. Crossing either one or two of the river lots.

Q. What length would that be? A. It may be 600 or 800 feet. I am not certain of the length. I have not much idea just now, but I think 600 or 800 feet.

40 Q. How much of a divergence was there? A. I don't know. I didn't ascertain.

Q. Do you know whether it was as much as the whole width of the street that was removed? A. I know it was not the whole width of the street that was moved.

Q. Was it as much as half the street? A. I think not.

Q. With these two streets the whole main highway along the west side of the Red River was the same as it is now? A. I think so. Of course at that

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants.

Joseph
Doupe

—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 7.

Evidence on
behalf of the
Defendants
—continued.

Alexander
Logan.

time Main Street was not marked out by stakes as now, except along a little part of it where the McIntyre Block is now.

Q. Portage Avenue, how did that compare with this Main Road that you speak of as running along the north side of the Assiniboine River? A. Where Portage Avenue is now it was marked by stones. On one place, near where the Old Knox was, there was a stone there, and it was marked on it. It was lying on the ground.

Q. And that was the same as Portage Avenue now? A. Yes.

Q. Have you heard the term "Great Highway" applied to these two roads? A. Yes. 10

Q. They were known as the Great Highways in the province? A. Yes.

Alexander Logan, sworn. Examined by Mr. Ewart:—

Q. I believe you are one of the old residents in Manitoba? A. I believe I am.

Q. How many years have you been living here in Manitoba? A. Since 1841.

Q. Do you know were there any roads in Manitoba in 1870, and later on, known as the Great Highways? A. Yes, or Queen's Highway, as called at that time, running from Lake Winnipeg to Pembina.

Q. Where were the Great Highways, as they were called? A. Through 20
Winnipeg now.

Q. Where did they come; take one at a time? A. Well, I think it ran about where it is now, where Main Street does now, with a little straightening up.

Q. From what place to what place did it run? A. From Lake Winnipeg or St. Peter's to Pembina.

Q. And that ran through where the City of Winnipeg now is? A. Yes.

Q. Where was that Great Highway as compared with any of the streets now in Winnipeg? A. Very much about the same now, with a very little straightening up. 30

Q. Very much what? A. The same as Main Street now is.

Q. There was another road known as the Great Highway; where did it run? From where to where? A. It commenced at the corner of McDermott's fence before the city was laid out, and ran up to Spence's place. I think Portage Avenue, as at present, runs about where the old road known as the Great Highway 20 or 30 years ago ran.

Q. You were a member of the council in 1882, weren't you? A. Yes; I was the mayor in 1882.

Cross-examined by Mr. Howell:—

Q. When you got your patent for your lot, your land ran from the 40
Red River straight back to what is now Main Street to the outer two
miles? A. Yes.

Q. Before you got your patent you surveyed your lot into town lots?
A. I think I had part of it.

Q. You surveyed that part where Main Street now is? A. Yes.
 Q. And in that plan you reserved a part corresponding with what is now Main Street? A. Yes.

Q. I think you called it Main Street, didn't you? A. Yes.

Q. About what year was it that you did that work? A. 1871 or 1872.

By Mr. Ewart:—

Q. You surveyed lots up to each side of where the street was? A. Yes, I think so.

By Mr. Howell:—

10 Q. Your lot that you got is part of Winnipeg now, and is a part crossed by both these street railways now? A. Yes.

Q. Both these street railways on Main Street now cross it? A. Yes; on the east side of Main Street there was an old Hudson Bay post, and I think that was one of the posts that Mr. Parr, when surveying it, went by about the middle of Alexander Street now.

Mr. Ewart: So that Main Street had been surveyed and laid out before that? A. Yes.

A letter, dated 24th August, 1891, from A. W. Austin to the Mayor and Council of the City of Winnipeg, filed No. 24.

20 Letter of March, 1891, Austin to Chairman of the Committee on Works, filed No. 25.

David Philip, *sworn*:—

Mr. Ewart: What is your occupation? A. Chief clerk in the Provincial Secretary's Department, and Queen's printer.

Q. Do you produce from the records of your office a petition to the Lieutenant-Governor in Council, *re* Winnipeg Street Car Company? A. Yes.

Q. Do you know any of the signatures? A. I do not.

30 Q. Do you know Mr. McArthur's? A. Yes, I think that is Mr. McArthur's signature to it, but I would not swear to it.

Q. Do you know whether Letters Patent were issued upon this petition? A. According to the Order in Council, a certified copy of what I have here, Letters Patent were issued, it has never been copied in the books.

Q. But an Order in Council was passed, directing the issue of the letters? A. Yes.

Q. And this is a copy of the Order in Council? A. Yes, but I can't produce the Letters Patent, because a copy was never kept.

Order in Council, filed No. 26.

Copy Order in Council, filed as No. 27.

40 Q. Was the incorporation advertised in the "Manitoba Gazette"? A. Yes.

Q. The issue of the Letters Patent was advertised in the "Gazette," of what date? A. August 27th, 1881.

Q. Issued to the persons whose names appear in the petition? A. Yes.

Cross-examined by Mr. Howell:—

Q. You don't know whether Letters Patent were, in fact, issued or not?

RECORD.

II.
Proceedings in the Court of Queen's Bench (in Equity).

No. 7.
 Evidence on behalf of the Defendants.
 Alexander Logan
 —continued.

David Philip.

RECORD. A. I cannot say; it was not copied in the book; there were numerous charters under the old Government, which were never copied in the book at all.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

Q. So you cannot say whether Letters Patent were issued or not? A. No; I cannot say at all.

Mr. Ewart (to Mr. Howell): Will you admit the signature of A. W. Austin, to the Petition 26?

Mr. Howell: Yes; A. W. Austin.

No. 7.

Evidence on
behalf of the
Defendants.
David Philip
—continued.

John W. Sifton, *examined by* Mr. Ewart:—

Q. What is your occupation now? A. I am acting chief-clerk at the present 10 time, in the public works department.

Q. You are acting chief clerk; what are you apart from that? A. Inspector of public institutions in the province.

Q. You are employed in the public works department in the province? A. Yes.

Q. And have been for how long? A. Acting chief clerk only about a month.

Q. How long have you been in the public works department here of the province? A. A year and a half.

Q. Have you made any search in the records of your department to ascertain 20 whether the Dominion Government has ever made any transfer to the province of any of the thoroughfares or public travelled roads or trails in the province? A. I have.

Q. On what department would there be any record of such transfer, if there had been any, to the province? A. Naturally, I suppose, they would be with the provincial secretary, but still, any plans or anything connected with the roads would be or would go through the public works department as well.

Q. If there had been any such transfer as I have referred to, would it come through your department? A. I don't know; I know there is no record in our department of any transfer, but there is a record of an order in council of the 30 dominion.

Q. What record is there of that? A. A copy of the order in council.

Q. But there is no record of any transfer? A. No, not that I can find.

Q. Have you ever heard of there being any such transfer? A. I did not.

The case was now adjourned until the following day at 10.30, when it was resumed.

Mr. Munson: It is agreed that we shall put in the Order made on the motion for interlocutory injunction.

Filed as No. 28.

H. A.
MacLean.

H. A. MacLean, *sworn*:—

40

By Mr. Ewart:—

Q. You are the Deputy Attorney-General of the Province, I believe? A. No; my official title is chief clerk of the department.

Q. There is no deputy attorney-general? A. No.

Q. How long have you been in the attorney-general's department?
 A. Since some time in 1888—I think fall in 1888

Q. Which department would have any knowledge of the transfer, had there been any, from the Dominion Government to the Provincial Government, of the roads or highways in the province? A. The department of Public Works is supposed to concern itself with roads and trails, but if there had been any transfer from the dominion to the province, the Attorney-General's department would certainly be made aware of it, I imagine, it being a legal matter.

10 Q. Have you recently been engaged in some work connected with obtaining a transfer, or transfers, from the Dominion Government to the province; has there recently been some negotiations going on with respect to it? A. In what respect?

Q. Between the Provincial and the Dominion Governments in order to get control of these trails and highways? A. Yes; there has been considerable correspondence between the Government here and the Government at Ottawa; the Provincial Government have been urging the Dominion authorities to hand over those trails to the province in order that they might deal with them altogether, but this has never been done.

20 Q. From your position in the office of the Attorney General and the knowledge you have of these matters can you say whether there has been as yet any transfer from the Dominion Government to the Provincial Government of any of the roads and highways in the Province of Manitoba? A. Yes, there has been a transfer of certain of those trails; I may say that the transfer takes the form merely of an order in council passed by the Dominion Privy Council.

Q. Then what you mean is that there has been an order in council?
 A. Yes.

Q. Has there been anything else? A. No nothing else which has been considered—

Mr. Ewart: Never mind that. His Lordship will have to determine that.

30 Q. There has been nothing further than an order in council? A. Yes.

Q. Is this the order in council? A. That is the one with regard to Main Street in the city of Winnipeg.

Q. Was there any order in council with reference to Portage Avenue?
 A. Not that I know of.

Q. And this is the only one with reference to Main Street? A. That is the only one I know of.

Order in council, dated 3rd February, 1888, filed No. 29.

Q. There has been no transfer unless this order (29) be the transfer?
 A. Not unless that be a transfer.

40 Mr. Ewart: That is the defence.

RECORD.

II.
Proceedings in the Court of Queen's Bench (in Equity).

No. 7.
 Evidence on behalf of the Defendants.

H. A. MacLean
 —continued.

RECORD.

II.
*Proceedings
 in the
 Court of
 Queen's
 Bench (in
 Equity).*

No. 8.
 Evidence
 for the
 Plaintiffs by
 way of
 rebuttal.
 Frederick
 W. Heubach.

REBUTTAL.

Frederick W. Heubach, *sworn* :—

Mr. Howell: You are in the Land Department of the Hudson's Bay Company? A. Yes.

Q. You produce the patent of Lot 1, St. John, otherwise known as the Hudson Bay Company's reserve? A. Yes.

Q. What part of Main Street in Winnipeg is covered by that patent?

Mr. Ewart: This is not in reply, but affects a mere matter of putting in documents. I presume your Lordship will exercise your discretion and allow it to go in, but I don't raise any objection as to the document; it is all right; but 10 as to the evidence I must.

Mr. Howell: I am going into evidence. The defence started out by showing that the Main Street is in the Dominion Government, and I am going to show it is not.

Mr. Ewart: His defence is that these streets are vested in the city—that is part of his original case (reads paragraph 6 of the bill of complaint), and then the bill goes on to allege the contract between the city and the Plaintiff company so that the frame of the bill is this: The city had title to these streets, and having the title to these streets it made this bargain set out in the bill with the Plaintiff company. My learned friend contented himself with such proof of the 20 first of these allegations as would be supplied by the fact that the city was more or less in possession of these streets, which is no doubt something of a *prima facie* case in order to prove title, but he did not attempt to prove the paper title to these streets; now, in reply, he desires to do so.

It is perfectly clear a Plaintiff cannot divide his case. Anything that he ought to prove in opening he must prove in opening, and cannot produce it in reply. From the bill it was part of his case to prove that the city had title to these streets, and that the land was vested in the city. I did not think it was incumbent upon us to give the negative evidence that we have done, because under the revised statutes of Canada 30 method is made by which these trails are to be transferred to the Province of Manitoba, and I don't think it was incumbent upon us to negative the fact of the transfer having taken place; but in reply we might exclude any presumption that there might be from the lapse of time and so on, we thought it well to negative the fact; the Statute is Cap. 49, revised Statutes of Canada, on the Government of Canada receiving a request from the Provincial Government. A survey is to be made of these roads and highways, and an order directing the same to be transferred is to be made, and they may thereafter transfer them to the province. I did not, as I stated, *incumbent upon us to negative the fact of that transfer, but we did it in order to rebut any presumption in the Plaintiffs' favour 40 of the title of the streets being in the city. Now he wants to divide his case and commence it all over again, and in answer we cannot say anything. If the patent is put in here I haven't the slightest idea what it shows; but suppose it does exactly what my learned friend suggests, and supposing that patent has been recalled, how are we going to prove that? We have no method of calling a witness in reply, but my learned friend would, in reply, make the paper title, which he alleges in his Bill, and I submit that cannot be done.

* *Sic.*

Mr. Howell: It seems to me that the answer to this is so simple. What do we allege? We don't pretend that we have any paper title, nor can we have any paper title, nor are we seeking now to have a paper title. What we say is, that the Provincial Government vested in us, by Act of Parliament, the streets of Winnipeg. How do my learned friends meet that? They say the Provincial Government hadn't power to do so, and I rebut that by showing that they had the power; they seek to raise a presumption that they hadn't the power to do that.

They were streets in Winnipeg, and the Act says that they shall be vested
10 in them, and they say the Government passed that law, but they hadn't power to pass with*, because the Dominion Government hadn't parted with it.

His Lordship: Isn't that part of your chain of title?

Mr. Howell: No; we say our chain of title is the same as it was before. We say we had title from the Local Government. That is our title, and it will be our title if we give our evidence; and they say, true it is your title. But the Provincial Government hadn't the power nor the title, because they never had the title to a bit of Main Street, but they could legislate away every possible right and vest them in us; and they say you could not legislate away every possible right and vest them in Winnipeg, because it was not subject to your jurisdiction,
20 and I want to give evidence to show that they could do so, and I want to give evidence to show that at the time this Act was passed the lands were not vested in the Queen, but were vested in the individuals who laid them out, and the Local Government said these were in you, and they say that was *ultra vires* of the Local Government, and we say it was not, that is beyond doubt.

His Lordship: It certainly is not beyond doubt.

Mr. Howell: Then there is another way; it is a matter of discretion, and wouldn't your Lordship like to know that they say the Government had no legal jurisdiction, and I say they had; and aside from all that, it is purely in your Lordship's discretion.

Mr. Ewart: In an ejection suit the Plaintiff says in his opening, I claim
30 title from A.B., and produced a deed from him, that is good evidence, but he does not show how A. B. got title. In reply evidence could not be given to show that he had no title. My learned friend can show me no point where he obtained his title, but having started on one point he cannot in reply go lower down. He alleges the city had title. That statute is, shall be vested; and he alleges the effect of that is to vest in fee simple; then he traces title merely under the Provincial Government.

Mr. Howell: No, I don't, because the Provincial Government had no title.

Mr. Ewart: That is the only way that he does trace it.

Mr. Howell: No, I say the Provincial Government had no title; I gave evidence of the Act to show the title—

Mr. Ewart: But my learned friend had to say so, that the streets were in the jurisdiction of the Local Legislature, either belonging to them, or were in some way under their control, so that they could convey them. Any document that he may produce coming from the Local Government will not give him title, because it has to come from the Dominion Government, and what is shown to us is from

RECORD.

II.
Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 8.
Evidence
for the
Plaintiffs by
way of
rebuttal.
Frederick
W. Heubach
—continued.

* Sic.

RECORD.

II.

Proceedings
in the
Court of
Queen's
Bench (in
Equity).

No. 8.
Evidence
for the
Plaintiffs by
way of
rebuttal.
Frederick
W. Heubach
— continued.

the Dominion Government to the Local Government and the Local Government to him, and if he gave his title from the Local Legislature in chief, he cannot make a better title from the Dominion in reply; and, in this case, he merely puts in this statute, and we say these particular roads didn't go in that statute; we don't say that that is *ultra vires*; we say the Act has plenty to operate on, but we say with regard to these particular roads that they never passed, and never came within the pale of this statute. The statute is *intra vires*, perfectly; but my learned friend must show that they were transferred by that statute, so as to come to the control or jurisdiction of the Local Government, in order to make amendments to his case; we proved that they were not within the statute, and my learned friend, in reply, 10 cannot go behind his original case.

Mr. Howell: We claim from A. B. the rest of our title there, and he put in a deed from A. B. to somebody else, and we put in a deed from that somebody else. We have put in the title showing that that land was derived by that Act of Parliament; and they say because there was no deed in existence we didn't get it by that Act of Parliament; and I say yes, there was a deed in existence. Mr. McLean says, I know of no conveyance; and I want to contradict his evidence.

His Lordship: A conveyance to the province?

Mr. Howell: No, not to the province; but a conveyance under which the 20 Act was part.

Mr. Ewart: But that is part of your case?

Mr. Howell: I can't see how that is part of our case.

His Lordship: I see it distinctly. You rely on an Act of Parliament, and that is effectual for your purpose only in the event of the Dominion Government having done something that brings it within the Act; but surely it was part of your original case to show that where you start out showing the fee vested in the Dominion Government, and you rest on a deed from the local legislature. I am strongly inclined to think Mr. Ewart's point well taken, but in a case of this kind, where I have any discretion, I am not going to shut out 30 anything that would deprive either party of its legal rights.

Mr. Ewart: You will confine it to documentary evidence?

His Lordship: There cannot be anything else but that as to transfer.

Copy of the patent to be marked No. 30.

Q. How much of Portage Avenue, if any, runs across the land which is thus patented to the Hudson's Bay Company?

Mr. Ewart: Only speak from your own knowledge? A. Some 3,100 feet from Colony Creek towards Main Street; 3,180 would be more correct.

Q. That runs from Colony Creek? A. Yes.

Q. It comes within how far of the junction with Main Street? A. About 40 260 feet.

Q. All of Portage Avenue between Main Street and Colony Creek is covered by the company's patent excepting the first 260 odd feet? A. Yes, 261 or 262 feet at the outside.

Q. How much of Main Street runs over the land patented to the company? A. About 3,320 feet north from the Assiniboine River.

Q. That 3,320 feet begins at the Assiniboine River, and runs northwards

almost to the junction of Main Street and Portage Avenue? *A.* Yes, the centre line of Main Street projected.

Q. The only reservation in the Crown of this land given to the Hudson's Bay Company is in the following words:—"Saving, and excepting, and reserving, nevertheless unto us, our successors and assigns, the free uses, passage and enjoyment in, over all navigable waters which shall, or may be hereafter found on or under or to be flowing through or upon any part of the said parcel or tract of land hereby granted as aforesaid?" *A.* Yes.

Q. And except that there is no other reservation? *A.* No.

10 *Q.* Main Street and Portage Avenue where it crosses this lot has been reserved by the Hudson's Bay Company? *A.* Yes.

Q. The date of that patent is 5th June, 1873? *A.* Yes.

Cross-examined by Mr. Ewart:—

Q. Do you know where any street is or was leading from Winnipeg to Fort Garry? *A.* From Lake Winnipeg to Fort Garry?

Q. No; it says from Winnipeg to Fort Garry? *A.* Yes; it is at the junction; they call it the northerly and we call it the easterly limit of Main Street.

20 *Q.* Where was that street leading from Winnipeg to Fort Garry? *A.* I can tell you where it is now.

Q. Where? *A.* The corner of Notre Dame and the present Main Street; that is the point referred to in that charter.

Q. I am not asking you that, I am asking you where that street was; it speaks of a Main Street leading from Winnipeg to Fort Garry? *A.* I say it refers to the point adjoining—

Q. I am asking you where that street was, I am not asking you what the patent refers to, I am asking you where that street was at the date of that patent, which is in 1873, do you know? *A.* Yes; I know it is there; that is what I understand it to be where I think it is now, at the corner of Notre Dame
30 Street.

Q. I am asking you where a street was? *A.* As I wasn't here, I can't tell you.

Q. Do you know where any street was, leading from Winnipeg to Fort Garry? *A.* No, not in 1873.

Q. Or at any time? *A.* No.

Q. Then you cannot make out this description? *A.* Yes, I can.

Q. From your own knowledge you cannot? *A.* Yes, from my own knowledge, and following the line of the registered plan.

40 *Q.* You cannot tell me where the street is? *A.* If you show me the patent I can tell you where it is; the boundary is clearly defined in that patent, the starting point of that patent is defined, and it says so many chains and so many links north by west to a street, and that is the point of that street.

Q. "And then along the said street" where would you go? *A.* If you follow the patent you go north some 3 chains.

Mr. Ewart: I will not agree to a part of this patent going in. Afterwards, perhaps, we may, and if we want a copy of it we will have to have it.

RECORD.

II.
*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 8.
Evidence
for the
Plaintiffs by
way of
rebuttal.
Frederick
W. Heubach
—continued.

RECORD.

II.

*Proceedings
in the
Court of
Queen's
Bench (in
Equity).*

No. 8.
Evidence
for the
Plaintiffs by
way of
rebuttal.
Frederick
W. Heubach
— *continued.*

Mr. Howell: The company has always held the land accordingly, as you have set forth? A. Yes.

Mr. Ewart: Were you here in the office employed when the company surveyed that property? A. No.

Q. So you are not saying anything of your own knowledge when you speak of that survey? A. No.

By Mr. Howell: there was a survey made of all this before you came? A. Yes.

Q. You found it in that way? A. Yes; and a portion of it has been surveyed since. 10

Q. And always selling, according to the description you have given us? A. Yes, always holding according to the description I have given.

This closed the evidence in rebuttal.

Mr. Ewart: We will have to ask to reply to this evidence in this way. As soon as we knew my learned friend was putting this in we telephoned for Mr. Goulet, for the purpose of showing that these roads existed previous to that patent.

Mr. Howell: I will admit that there were roads existing practically corresponding with Main Street and Portage Avenue as they now exist, with the exception of minor deviations.

Mr. Ewart: Referred to in the evidence already? 20

Mr. Howell: Yes.

Mr. Ewart: That they did exist prior to and at the time of this patent to the Hudson's Bay Company?

Mr. Howell: Yes.

"C."

Exhibit 1.

To the City of Winnipeg, and

James Ross and William McKenzie.

Sirs,—We beg to notify you that the Winnipeg Street Railway Company, under bye-law No. 178 of the City of Winnipeg, and under an agreement made 30 between the City of Winnipeg and the company, are entitled to the exclusive user of Main Street, in the City of Winnipeg, for street railway purposes, and are entitled to the entire revenue which may be derived from operating a street railway on that street.

By the bye-law, and the contract above-mentioned, the Street Railway Company are also entitled to the exclusive and first right to occupy, for street railway purposes, any other street in the city. In case any other party or corporation desire to operate a street railway upon any other street or streets in the city, the city, by the contract, is bound to offer that right, so to construct and operate, to the Winnipeg Street Railway Company, and the company have two months 40 thereafter to decide whether they will build a street railway upon such street or streets.

We are informed that you are commencing the construction of a street railway upon Main Street, north of the C.P.R. track, and also upon another street, commonly known as Selkirk Street; the work thus far does not in any way

III.

Exhibits
referred to
in foregoing
Evidence,
and filed at
the trial.

No. 1.

Letter from
solicitors for
the Plaintiff
Company
to the
Defendants,
the City of
Winnipeg,
dated 7th
June, 1892.

interfere with the rights of the Winnipeg Street Railway Company; but we hereby notify you that should you commence operating a street railway on either of those streets, the Winnipeg Street Railway Company will apply to the Court of Queen's Bench, in this Province, for an injunction to restrain you from operating that street railway, and from in any way interfering with the rights of the Winnipeg Street Railway Company.

Dated at Winnipeg, this 7th day of June, A.D. 1892.

ARCHIBALD HOWELL & CUMBERLAND,
Solicitors for

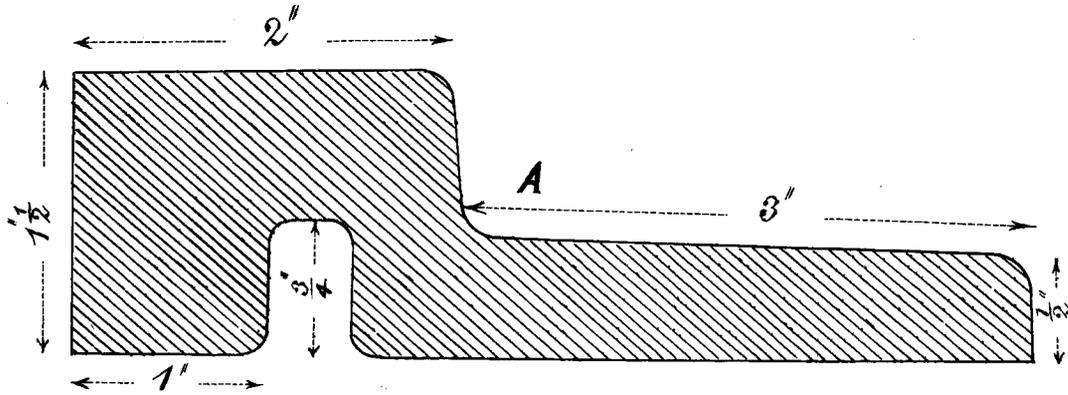
The Winnipeg Street Railway Company.

10

RECORD.

III.
Exhibits.

Exhibit 2.



No. 2.
Diagram of section of rail used by Plaintiff Company.

Exhibit 3.
(Arms of City.)

City Clerk's Office,
Winnipeg, July 28th, 1891.

A. W. Austin, Esq.,
Manager Wpg. St. Ry. Co.,
Winnipeg.

No. 3.
Letter from City Clerk of Winnipeg to the manager of the Plaintiff Company, dated 28th July, 1891.

Dear Sir,—The following clause of the report of the works committee was adopted by the Council last evening, viz.:—

“It would submit the following proposed street railway extensions as desirable and necessary, and it would recommend that the Winnipeg Street Railway Company be asked if they are willing to construct and operate such extensions, viz.:—

(1) 14th Avenue, Dufferin, North, or 17th Avenue, Selkirk Street, from Main Street to 24th Street North.

RECORD.

III.
Exhibits.

No. 3.
Letter from
City Clerk of
Winnipeg to
the manager
of the
Plaintiff
Company,
dated 28th
July, 1891
—continued.

(2) Central Avenue, Notre Dame, from Portage Avenue, to 14th Street, Nena.

(3) 14th Street North, Nena, from Central Avenue, Notre Dame, to 8th Avenue North, Logan.

(4) 8th Avenue North, Logan, to 14th Street North, Nena, to Main Street.

(5) Portage Avenue, from 8th Street South, Kennedy, to Western City limits.

(6) 9th Avenue South, Broadway, from 8th Street South, Kennedy, to 15th Street South, Boundary.

(7) 15th Street South, Boundary, from 9th Avenue South, Broadway, to Portage Avenue.

(8) 10th Avenue North, Fonseca, from Main Street, to Louise Bridge.”

In accordance with the above, I have to request that you will inform me for the information of the council if your company are willing to construct and operate such extensions.

By order,
C. J. Brown, City Clerk.

10

No. 4.

Letter from
manager of
Plaintiff
Company to
Mayor and
Corporation
of City of
Winnipeg,
dated 10th
Aug., 1891.

Exhibit 4.

Office of the Winnipeg Street Railway Company,
Winnipeg, Man., 10th August, 1891.

20

The Mayor and Council of the City of Winnipeg.

Gents,—I beg to acknowledge receipt of yours of 28th ult. Your communication does not specify whether you wish the street railway extensions asked for to be operated by horse-power under our present agreement, or by electricity under new terms. In accordance with your request last March we wrote you our terms, *re* the adoption of electricity. If you are willing to take up this matter at once, I will be pleased to meet you any time you appoint, and endeavour to come to some arrangement. It is needless for me to remind you that unless this matter is taken up at once it will be possible to do but very little this year.

Yours truly,
A. W. AUSTIN, Manager.

No. 5.

Letter from
the City
Clerk of
Winnipeg to
A. W.
Austin,
manager of
Plaintiff
Company,
dated 25th
Aug., 1891.

Exhibit 5.

(Arms of City.)

City Clerk's Office,

Winnipeg, August 25th, 1891.

A. W. Austin, Esq.,
Manager, Wpg. St. Ry.,
Winnipeg.

Dear Sir,—I am instructed by council to inform you that the council is desirous that in all future street railway extensions your company should

40

use the electric system of motive power, such system to be approved by the council. RECORD.

Yours, &c.,
C. J. BROWN, City Clerk.

III.
Exhibits.

Exhibit 6.

July 2, 1890.

A. W. Austin, Esq.,
Manager, St. Ry. Co.,
Winnipeg.

10 Dear Sir,—The following clause of the report of the Works Committee (as amended) was adopted by council, Monday evening last, viz.: “That the request of the Winnipeg Street Railway Company to lay a track and operate the same from south side of Main Street Bridge, thence *via* Main Street South, River Avenue, Smith Street, Pembina Street to River Park, be granted; the plan of the proposed railway to be subject to the approval of the city engineer. The work of laying the same and the location on the streets to be to his satisfaction; the company to have the privilege of using Main Street Bridge for a transfer of cars only; the city to clear and grade the extension of Pembina Street to the Park, at an estimated cost of \$550, upon the right of way being secured to the city, free of
20 cost by deeds satisfactory to the city solicitor. The permit hereby granted shall expire at the end of eleven years from the date of permit; the service on River Avenue to Osborne Street to be a daily one; the fare to the Park to be not more than five cents. each way from Main Street Bridge.

Yours, &c.,
C. J. BROWN,
City Clerk.

No. 6.
Letter from
the City
Clerk of
Winnipeg
to A. W.
Austin,
manager of
Plaintiff
Company,
dated 2nd
July, 1890.

Exhibit 7.

Office of the Clerk of Committees,
Winnipeg, Manitoba,
July 25th, 1890.

30

J. A. Platt, Clerk of Committees.

A. W. Austin, Esq., Manager,
St. Ry. Co.

Dear Sir,

Re Motor on St. Railway.

The committee, on considering this matter, have found that the recommendation made to council, of which you have been advised, contains all that you require *re* motors, when it says that your request to lay tracks and operate the same on certain streets should be granted, of course, subject to the approval of
40 the city engineer.

Yours truly,
J. A. PLATT, C. of C.

No. 7.
Letter from
J. A. Platt,
Clerk of
Committees,
to A. W.
Austin,
manager of
the Plaintiff
Company,
dated 25th
July, 1890.

RECORD.

III.
Exhibits.

No. 8.
Certified
extract from
minutes of
Council.

Exhibit 8.

Extract from Minute of Council.

M.G.—Page 116.

Clause 2.—Report of Finance Committee, adopted by Council, May 1st, 1884.

That the sum of \$1,000 be granted to the Street Car Company, for the use and cleaning of the track on Main Street from April 1st, 1883, to April 1st, 1885, in consideration of the said road having been used and to a certain extent worn out by the public.

Certified true extract.

C. J. BROWN, City Clerk. 10

City Clerk's Office,
Winnipeg, November 15th, 1892.

No. 9.

Letter from
J. A. Platt,
Clerk of
Committees,
to A. W.
Austin,
manager of
Plaintiff
Company,
dated 4th
Dec., 1891.

Exhibit 9.

Office of Clerk of Committees,
Winnipeg, Man., Dec. 4/91.

J. A. Platt,
Clerk of Committees.

A. W. Austin, Esq., Manager, Wpg. Street railway.

Dear Sir,—I am instructed by the chairman and members of the committee on works to ask if you have any further propositions to make relative to electric street railway franchise, or any amendments to make to your proposition already made? 20

Yours truly,
J. A. PLATT, C. of C.

No. 10.

Letter from
A. W.
Austin,
manager of
the Plaintiff
Company, to
J. A. Platt,
Clerk of
Committees,
dated 7th
Dec, 1891.

Exhibit 10.

Office of the Winnipeg Street Railway Company,
Winnipeg, Man., 7th December, 1891.

J. A. Platt, Esq.,
C. of C., City.

Dear Sir,—I am in receipt of your favour of 4th inst. asking if we have any further propositions to make relative to electric street railway franchise, or any amendments to make to our proposition already made, and in reply beg to state that we have not. 30

Yours truly,
A. W. AUSTIN.

No. 11.

Letter from
A. W.
Austin,
manager of
Plaintiff
Company, to
the Mayor
and Council
of the City of
Winnipeg,
dated 5th
Jan., 1892.

Exhibit 11.

Office of Winnipeg Street Railway Company,
Winnipeg, Man., 5th Jan., 1892.

The Mayor and Council of the City of Winnipeg.

Gents,—May we ask the favour of an interview at an early date, in order to continue negotiations for the extension of electricity on our lines in the city? 40

Yours truly,
A. W. AUSTIN, Manager.

Exhibit 12.
Office of the Clerk of Committees,
Winnipeg, Manitoba,
January 18th, 1892.
J. A. Platt, Clerk of Committees.

A. W. Austin, Esq.,
Manager, Winnipeg Street Ry. Co.

Dear Sir,—As the street railway question has practically been re-opened, if you desire to make any changes in your former draft bye-law, please do so at once, and submit a bye-law embodying all the amendments you want and concessions you are willing to make. In other words, send the committee on works the bye-law just as you desire the council to pass, and that you are prepared to accept. Please reply not later than noon on Wednesday, 20th inst.

This letter is written upon the authority of his worship the mayor and of the chairman of the committee on works.

Yours truly,

J. A. PLATT, C. of C.

RECORD.

III.
Exhibits.

No. 12.
Letter from
J. A. Platt,
Clerk of
Committees,
to A. W.
Austin,
manager of
Plaintiff
Company,
dated 18th
Jan., 1892.

Exhibit 13

25th January, /92.

20 To the Chairman,
Committee on Works.

Re Electric Railway Bye-law.

Dear Sir,—We beg to submit to you our revised offer in compliance with your communication of 18th instant, and we beg to offer you the following options: The construction of a track on Dufferin Street to Exhibition grounds, instead of *via* Logan Street (time of running to apply the same as in clause 10 of the bye-law). Instead of the clause referring to paying for block pavements we will agree to pay to the corporation annually the sum of \$400 per mile of double track and \$300 per mile of single track (the necessary side tracks and turnouts not to be included as part of the track to be paid for in mileage), said mileage to be paid for all streets occupied by the railway whether paved or not; the corporation on their part agreeing to keep the streets and crossings clean and in good repair. Also we will give to the city that portion of the present pavement on Main Street North now occupied by us, you turning over the rails to us and to continue pavement until present charge against us is cancelled; we constructing an entirely new road bed of ties on the side of said street. Said mileage not to be levied on those streets, viz.: Portage Avenue, Kennedy and Main Street North, on which payment for pavement has been arranged for, until such time as payment has been completed; in other words the city would commence to receive the bonus on the following streets: Main Street South, double track; Park line from Main Street Bridge to Park; Assiniboine St. line to present track on Kennedy Street Boundary from Kennedy Street on Portage Avenue, Notre Dame, Nena, Quelch, Logan and Dufferin Streets.

Yours truly,

A. W. AUSTIN, Manager.

No. 13.
Letter from
A. W.
Austin,
manager of
Plaintiff
Company,
to the
Chairman of
the Com-
mittee on
Works,
dated 25th
Jan., 1892.

RECORD.

Exhibit 14.

To the Winnipeg Street Railway Company.

III.
Exhibits.No. 14.
Notice of
intended
application
by the
Defendant
Company to
the Railway
Committee of
the Council
of Manitoba.

Take notice, that on the 24th day of _____, at the hour of three o'clock in the afternoon, or on the first day and hour thereafter at which a session of the Railway Committee of the Executive Council of Manitoba shall be held, an application will be made by the Winnipeg Electric Street Railway Company to the Railway Committee of the Executive Council of the Province of Manitoba, at the office of the Railway Commissioner, in the Legislative Buildings, on Kennedy Street, in the City of Winnipeg, for the approval by said committee as to the places and mode of crossing, intersection and junction of the lines of railway of the Winnipeg Electric Street Railway Company, over and with the lines of railway of the Winnipeg Street Railway Company on Main Street and Portage Avenue, in the City of Winnipeg.

The Winnipeg Electric Street Railway Company,
F. MORTON MORSE, Sec.

Dated at Winnipeg, this 13th day of June, A.D. 1892.

No. 15.
The same.

Exhibit 15.

To the Winnipeg Street Railway Company.

Take notice that on the 24th day of June, 1892, at the hour of three o'clock in the afternoon, or on the first day and hour thereafter, at which a session of the 20 railway committee of the executive council of Manitoba shall be held, an application will be made by the Winnipeg Electric Street Railway Company to the railway committee of the executive council of the province of Manitoba, at the office of the railway commissioner, in the Legislative Buildings, on Kennedy Street, in the City of Winnipeg, for the approval by said committee as to the places and mode of crossing, intersection and junction of the lines of railway of the Winnipeg Electric Street Railway Company over and with the lines of railway of the Winnipeg Street Railway Company on Main Street and Portage Avenue, in the City of Winnipeg.

Dated at Winnipeg, this 13th day of June, A.D. 1892.

30

The Winnipeg Electric Street Railway Company,
(Seal.) F. MORTON MORSE, Secretary.

No. 16.
Bye-law
passed by the
Mayor and
Council of
the City of
Winnipeg,
approving
construction
of Defendant
Company's
line.

Exhibit 16.

Bye-law No. 556.

A bye-law to approve plans of construction of street railway lines, by James Ross and William McKenzie.

The Mayor and Council of the City of Winnipeg enact as follows:—

1. That the plans of construction of the lines of street railway, as submitted by James Ross and William McKenzie, and marked "A," and signed by William McKenzie, and filed in the office of the city engineer, for their lines of street railway on Main Street, and of all appliances in connection with and necessary for the same, are hereby approved.

2. The approval herein contained and the authority hereby granted as to that portion of the tracks of said lines on Main Street between the Assiniboine River and the Canadian Pacific Railway are for temporary track, which are to be removed and replaced when the city proceed to repave said portion of Main Street ; such removal and replacement shall be contemporaneously effected with the repairing, as the latter is proceeded with; the location on said street, and the character of the said tracks, when replaced, to be subject to the approval of the city engineer, as provided in bye-law No. 543.

3. The Winnipeg Electric Street Railway Company are authorised to 10 construct and operate the said lines, and continue the construction and operation of the said lines on the terms aforesaid, on the transfer to them by said James Ross and William McKenzie of the rights and privileges conferred by said bye-law No. 543, and the contract thereunder, and on the execution by said company of the contract required to be executed by them, as directed by section 33 of said bye-law No. 543.

4. Bye-law No. 543 shall in all respects apply to the construction and operation of the said lines, except only as to matters herein otherwise specially provided.

Done and passed at the City of Winnipeg, this thirtieth day of May, 20 1892.

A. MACDONALD, Mayor.
C. J. BROWN, City Clerk.

(Corporate Seal, City of Winnipeg.)

RECORD.

III.
Exhibits.

No. 16.
Bye-law passed by the Mayor and Council of the City of Winnipeg, approving construction of Defendant Company's line
—continued.

Exhibit 17.

Office of the Winnipeg Street Railway Company,
Winnipeg, Man., 16th November, 1891.

D. Smith, Esq.,
Chairman Board of Works,
30 City of Winnipeg.

Dear Sir,—I beg leave to say that the offer submitted by us to the city council, to operate an electric railway in the city of Winnipeg, and which was read a first time 25th August, 1891, under bye-law No. 522, is still before the council, and we are willing to enter into negotiations on the terms contained therein, offering the choice, should the council so desire, to operate the Exhibition line *via* 14th Avenue North instead of 8th Avenue North. All extensions named to be completed by end of next year.

I also desire to state that, in the event of the new Edison system of propelling cars without trolley wire, of which I have lately received encouraging reports, 40 proving a success, and of which we shall have the right to in this city, we will be pleased to adopt same as our system.

Yours truly,
A. W. AUSTIN, Manager.

No. 17.
Letter from A. W. Austin, manager of the Plaintiff Company, to the Chairman of the Board of Works for Winnipeg, dated 16th Nov., 1891.

RECORD.

III.
Exhibits.
No. 18.
Bye-law No.
522 of the
City of
Winnipeg,
respecting
the
Winnipeg
Street
Railway.

Exhibit 18.

Bye-law No. 522.

A bye-law of the City of Winnipeg, respecting the Winnipeg Street Railway and certain extensions thereof, and the use of electricity as a motive power.

Whereas the Winnipeg Street Railway has applied for permission to use electricity as a motive power on its lines of street railway, and to use meanwhile what is known as the overhead system.

And whereas the said company has also asked permission to lay down and construct and to operate lines of street railway on certain streets of the city 10 hereinafter named, in addition to streets at present occupied by its lines.

And whereas the city council has decided to grant such permission, but subject in all respects to the terms and conditions named in the proposed agreement, a copy of which is hereinafter set out.

Now, therefore, the council of the City of Winnipeg, in council assembled, enacts as follows:—

I. The proposed agreement, a copy of which is hereinafter set out, is hereby approved by the council, and the mayor, treasurer and comptroller shall sign the same, and the corporate seal of the city shall be affixed thereto.

II. The city engineer shall examine all plans and specifications relating to 20 said street railway, and shall express his approval or disapproval of the same in all cases within a reasonable time.

III. The city engineer shall examine and inspect the methods of construction of said railway lines and the appliances thereof, and if the same be not approved of by him as not being in accordance with the plans and specifications theretofore approved by him, he shall have the right and shall exercise the same of prohibiting and preventing further construction of said lines of railway, and of any of the appliances thereof, until the requirements and conditions of said agreement have been complied with.

IV. The following is a copy of the said proposed agreement between the 30 City of Winnipeg and the Winnipeg Street Railway Company:—

“Agreement made between the City of Winnipeg, hereinafter called the city, of the first part, and the Winnipeg Street Railway Company, hereinafter called the company, of the second part.

Whereas the company has applied to the city for permission to lay down lines of track on certain streets as hereinafter named, and to use electricity as a motive or propelling power on streets, and in connection with their lines of railway now existing, with the right for such purposes of erecting poles and stringing wires for the transmission of such motive power, that is, of using what is known as the overhead system. 40

And whereas the city has agreed to give such permission on the terms and conditions hereinafter contained, and on the distinct agreement that the fulfilment of the said terms and conditions, in so far as the same are prior in point of time to construction and operation of such railway lines or any part thereof, shall be conditions precedent to the construction and operation thereof; and in so far as the terms and conditions hereinafter contained relate to the operation, conduct or management of said railway lines, or system or any part thereof, the same shall

in all cases be conditions precedent to the continued enjoyment of the rights and privileges under such permission as aforesaid.

Now this agreement witnesseth that subject to the fulfilment by the company of the terms and conditions hereinafter named, which terms and conditions are to be taken as hereinbefore stated as conditions precedent to the rights and privileges hereby granted.

1. The company is hereby granted the right to add electricity and to use the same exclusively as a motive or propelling power for its cars on its system of lines of street railway, at present in use or hereafter to be put in use in the city, and
 10 for such purposes may erect the necessary poles in connection with the same: No such poles or other appliances shall be put up, placed or constructed, without the approval of the city engineer, both as to the character and style of said poles, and as to their location on the street, and the location also of the lines of railway :

Provided also that the city, upon giving three years' notice to the company, of its desire to change the character, or form or method of application of motive power to some other electric system, may order the over-head system now proposed to be erected, to be taken down and changed, and all poles and wires to be removed, and the company shall, in such case, make
 20 use of such other electric system at its own expense, and in default of so doing, the city may without any right or claim of damages on the part of the company, take down such poles and remove all wires and other appliances in connection therewith.

2. The company shall have the right of running its street cars at a speed of not more than twelve miles per hour. The city council shall have the control of the rate of speed on all streets, and may permit on any street a greater rate than twelve miles per hour, where the same would not be dangerous or inconvenient.

3. The company, except in cases where other lines may cross its lines, shall
 30 have the exclusive right to operate its street railway system on the streets of Winnipeg, on which it is at present running the same, and also on the streets for which permission to put down railway lines may hereafter be granted.

4. It is a condition of this agreement that the company shall charge for each passenger not more than a five cent fare for one continuous trip, including all necessary transfers (and including the right of carrying ordinary hand baggage), and that no fare shall be required for a child under four years of age, while travelling under the care of an older person. And the company shall transfer any passenger who has paid one fare on any line operated by the company in the city of Winnipeg, and such passenger shall be entitled to a continuous trip or passage
 40 on any connecting or crossing line operated by the company in the city. A passenger shall be entitled to as many transfers for one fare as shall be necessary to allow one continuous trip over the lines of the railway, from any one point thereon, within the city, to any other point on said lines therein, and such right of transfer shall be taken advantage of on the next car departing on the connecting or crossing line.

RECORD.

III.
Exhibits.

No. 18.
By-law No.
522 of the
City of
Winnipeg,
respecting
the
Winnipeg
Street
Railway
—continued.

RECORD.

III.
Exhibits.No. 18.
Bye-law No.
522 of the
City of
Winnipeg,
respecting
the
Winnipeg
Street
Railway
—continued.

5. The council may, during the year 1893, or any subsequent year, by written notice served on the company, its president, secretary, treasurer or manager, or by serving any one of its officers or agents resident in the city, whom the company shall, by written notice to the city, designate to represent them as an officer to receive notices or process, demand the construction of any new line within the city limits on any streets used as public highways, which, in the opinion of the city council, are in reasonably good condition for such purpose. Line must be fully designated as to route and terminus, and must extend from line in operation. At the time of said notice there must be along said proposed route, for each half mile, an average actual *bona fide* resident population within a 10 quarter mile on both sides of proposed line, and not within one-eighth of a mile of any line already in operation, of at least five hundred persons above five years of age. In case, however, of the junction of the street on which it is proposed or required that a new line be built, the estimate of such population shall commence at a point upon the street upon which said line is proposed to be built, distant one-eighth of a mile from such junction, and the first half mile square shall be measured or counted from said last-named point. The company shall not be required to build more than three miles of new line in any year.

6. The company may construct a double track on Main Street, from Point Douglas Avenue to the Main Street Bridge (Assiniboine), 4 feet apart, with 20 centre poles between and within the space occupied by the lines of the company's railway, and, after said tracks are completed, the company shall take up the present tracks or lines, and complete and put the pavement into good condition, by inserting pavement blocks where the rails at present are located, and by completing such pavement to the satisfaction of the city engineer. Provided, however, that before proceeding with such new track, or putting up poles or wires, or any other appliances intended to be used in connection with the use of electricity, the location on the street of the new tracks, and of the poles, the kind of rail, poles, height and character, and general detail of same shall be approved of by the city engineer, with whom plans and specifications of same shall be filed; and, further 30 provided, that the work of laying down the new track shall be satisfactory to the city engineer in all respects, and that if the same be not satisfactory to him, as aforesaid, the city council may prohibit the company proceeding with the same, and its employes shall cease work until the city council gives its permission to proceed with same; and that if any such work, or the rails, poles or wire, be not approved of by the engineer, the company shall take up, or take down, and remove the same, and substitute other plans for the same.

7. In respect of the following named portions of streets, namely, Central Avenue from Portage Avenue tracks to Fifth Street North, Eighth Avenue North from Main Street to Catherine Street, Portage Avenue from Eighth 40 Street South to Fifteenth Street South, and Osborne Street from the Assiniboine River Bridge to River Avenue, the company may put down a single line of railway on the above-named portions of the same, without being required to pay a portion of the cost of the pavement now existing on said portions of said streets. The above is not, however, in any way to exempt the company from liability to pay the costs of the renewal of its portion (eight feet) of pavement, when a renewal becomes necessary, or is made, but shall only apply to the pavement

already down on the said portions of said streets. If, at any future time, a pavement of any portion of any street shall be contributed before the construction or putting down of a street railway line upon said street or a portion thereof, the company shall not be exempt under this clause, but shall pay its portion of cost of said pavement in the same way as in cases where the company now pays or is liable for its proportion of cost. On the above-named portions of streets the turn-outs and switches, as well as the main line, are to be subject to location by the city engineer.

8. Permission is hereby granted to the company to continue its Portage Avenue and Eighth Street South railway line along Ninth Avenue South and Osborne Streets, and thence to River Avenue. The track, turn-outs, poles, and all other appliances shall be located, and shall be of a character, kind and description to the satisfaction of the city engineer, with whom plans and specifications of the same shall be filed, and whose approval shall be obtained to the same before the commencement of operations, or before in any way laying down or constructing said lines of railway.

9. The company, in crossing over any of the bridges in the said city, shall, at their own expense, keep in repair as well as renew that portion of the planking of the bridge occupied by their tracks, as well as 18 inches on each side thereof.

10. The city hereby grants, in pursuance of the terms and conditions herein contained, permission to the company to extend its line or system of street railway from Portage Avenue along Central Avenue to Fourteenth Street North, thence along Fourteenth Street North to Eighth Avenue North, and thence along Eighth Avenue North to Main Street; also from Fourteenth Street North along Eighth Avenue North to C.P.R. railway track. This last-named extension, namely, from Fourteenth Street North along Eighth Avenue North to Twenty-Fourth Street North may be operated only during exhibition time, or until such time as traffic will warrant it. Also continuation of the present track on Portage Avenue from the corner of Portage Avenue and Eighth Street South along Portage Avenue to Fifteenth Street South. Plans and specifications showing construction, location of lines, poles, and all other appliances in connection with or appurtenant to the railway system on said streets, shall be filed with and shall receive the approval of the city engineer, before the company or its agents in any way proceed with the work of construction. All the lines mentioned in this section are to be completed and in operation on or before the 31st day of December, 1892; Main Street to be completed within the present year.

11. All extensions on unpaved streets shall consist of a tie road-bed, ties 24 inches apart, to be filled in with gravel, and at the intersections of all streets the crossing shall be boarded in, and until such time as the city shall decide to pave the streets upon which such road-bed is constructed, when, if requested by the city, the company agree to substitute paving for tie road-bed.

12. If the company in all respects complies with the terms and conditions of this agreement, and the bye-laws applicable to its railway lines, and shall continue to operate its lines in accordance therewith, the company shall have the right to operate its said lines, and to enjoy the franchise thereof for a period of thirty years from the _____ day of _____, 1891, not only in

RECORD.

III.
Exhibits.No. 18.
Bye-law No.
522 of the
City of
Winnipeg,
respecting
the
Winnipeg
Street
Railway
— continued.

RECORD.

III.
Exhibits.No. 18.
Bye-law No.
522 of the
City of
Winnipeg,
respecting
the
Winnipeg
Street
Railway
— *continued.*

respect of the new lines, for whose construction permission has been granted by this agreement, but also for the lines of railway already in operation by the company, namely, on Main Street, Portage Avenue and Twelfth Avenue South, the true intent and meaning of these presents being that an extension of nineteen years be granted to the company of the time mentioned and agreed upon for the enjoyment of its franchise, as provided for and agreed upon by the indenture of agreement made between the parties hereto, dated the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-two.

And it is hereby agreed that (subject to the said extension of nineteen years) 10 all the provisions of said former agreement, as to the rights of the parties at the end of the twenty years therein named, are to remain of force and effect, and shall apply also to the lines for which permission to build is hereby granted, and all lines built, constructed or operated in the future.

13. The present existing arrangements as to the company paying for its portion (eight feet) of the paving of any street, shall be continued during the whole period of the use, exercise and enjoyment of the company's franchise on the whole of its lines, as well as those to be hereafter constructed, as those now in existence or in process of construction, including not only the period of eleven years or thereabouts yet to expire under the present agreement, but for the 20 whole period of the said extension of nineteen years.

14. The chief of the fire department of said city, or the officer or officers who may be acting in his stead, may order a suspension of the running of the cars on said lines of railway, or either of them, as he may deem necessary, during any fire. In case of fire, the chief of the fire brigade, or other proper officer or officers of the city, may cut or pull down any wires, poles, structure or appliances used to operate the cars on said lines, or any of them or incidental thereto; and neither the city nor its officers shall thereby be liable for any loss or damage resulting from the cutting or pulling down thereof, nor for the cost or expense of repairing or replacing the same. The members of the police and fire department 30 of the City of Winnipeg, when in uniform, are to be carried free of charge on all of the street cars operated by the company. All the cars running on said lines of railway shall be used only for carrying passengers, including hand baggage, and after dark shall be provided with signal lights to be maintained in such colours and manner as the city engineer may direct or approve.

15. This agreement shall be subject to all the terms and conditions of the said agreement between the parties hereto of the seventh July, 1882, and of any bye-law or bye-laws heretofore passed relating thereto, in so far as the same shall not be inconsistent or do not conflict with this agreement.

16. It is further declared and agreed that in respect of any further extension 40 of this system other than that mentioned herein, the company shall first obtain permission from the city council for the right to construct, lay down or extend their railway, or any line or track thereof.

17. The city may pass a bye-law empowering its officers to do all such acts, take such proceedings, and to enforce, so far as may be necessary, the provisions of this agreement.

18. The city will assist the company by taking such proceedings as shall not

involve expense or cost as may be deemed necessary and expedient in securing the elevation of all wires, telephone or otherwise, to the height required by law, so as to facilitate the operation of the company's system by electricity.

19. Notwithstanding any provisions hereinbefore contained, providing that the plans or the location of any of the street railway lines, or the character of the poles, or the material used in the construction of the lines, or the said construction, or any matter or thing whatsoever shall be subject to the approval, or opinion, or direction of the city engineer, or be done to his satisfaction, the company shall have the right in any such case to appeal from the opinion or decision of such engineer to the city council, and the decision of the city council on such appeal shall then take the place of the opinion or decision of the said engineer.

In witness whereof, the parties of the first part have caused these presents to be signed by their mayor, treasurer and comptroller, and have affixed their corporate seal hereto, and the parties of the second part have caused these presents to be signed by their _____, and have caused their corporate seal to be affixed hereto the day and year first above written."

V. The copy hereinbefore set out of the proposed agreement between the city of Winnipeg and the Winnipeg Street Railway Company, which by this bye-law is authorised to be executed, is made a part of this bye-law in as far as and to the same effect as if its clauses and provisions had been separately enacted.

VI. The city will assist the company by taking such proceedings as shall not involve expense or cost as may be deemed necessary and expedient in securing the elevation of all wires, telephone or otherwise, to the height required by law, so as to facilitate the operation of the company's system by electricity.

Done and passed in council assembled, at the city of Winnipeg. this day of _____, A.D. 1891.

_____, Mayor.
_____, City Clerk.

30

Exhibit 19.

In the matter of the Winnipeg Electric Street Railway Company
and

The Winnipeg Street Railway Company.

Application having been made to the railway committee of the executive council of the province of Manitoba, for the approval of the crossings and intersections hereinafter-mentioned, it appearing that due notice of such application has been given, IT IS ORDERED that the crossings and intersections of the Winnipeg Electric Street Railway Company's proposed line of railway with the lines of railway of the Winnipeg Street Railway Company, on Main Street and Portage Avenue, in the City of Winnipeg, as shown upon plans No. 1, 2, 3, and 4, hereto annexed, with the exception of the several crossings which upon plan No. 1 are marked respectively A, B and C, stand approved subject to the following conditions.

1. Leave is hereby granted to the Winnipeg Electric Street Railway Company

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s 2

RECORD.

III.
Exhibits.

No. 18.
Bye-law
No. 522 of
the City of
Winnipeg,
respecting
the Winnipeg
Street
Railway
— continued.

No. 19.
Order of the
Railway
Committee
of the
Executive
Council,
approving
plans of
construction
of the
Defendant
Company's
railway.

RECORD.
 III.
 Exhibits.
 No. 19.
 Order of the
 Railway
 Committee
 of the
 Executive
 Council,
 approving
 plans of
 construction
 of the
 Defendant
 Company's
 railway
 — continued.

to put in crossings where the lines of the two companies cross, as shown upon said plan, according to a plan hereto attached, marked "A." The rails of the Winnipeg Street Railway Company where the same are cut to be securely fastened in such manner as may be approved of by the railway committee, and upon the Winnipeg Electric Street Railway Company covenanting with the railway commissioner to remove the said crossings when required by the railway committee, and to put in lieu thereof crossings of the following nature, namely:—

The foundation of each crossing shall be solid with 3 inches of gravel placed evenly on top, and sound tamarac timbers not less than 6 by 8 inches, and of necessary length underneath the rail, the said timbers to be dovetailed and well joined, the rails to consist of steel girder rails as shown upon plan (c. 2.) attached as made by the Johnston Company of Johnstown, Pennsylvania. The style of each and every one of said Johnston Street railway crossings is to be of the style of railway crossings shown on plan "C," hereto attached, the whole to conform with the present level of the Winnipeg Street Railway Company's tracks, and also covenanting to keep the said crossings in a good state of repair.

2. The said crossings shall be put in and kept in repair at the expense of the Winnipeg Electric Street Railway Company, and in winter shall be kept free from snow by said company, and the same style of crossings shall be used at the proper angle, and wherever the tracks of the Winnipeg Electric Street Railway Company cross those of the Winnipeg Street Railway Company.

3. The right of way over the crossings hereby authorised shall be determined in the following way, that is to say: The car which comes first within one hundred (100) feet of the crossing shall have the right to proceed without interruption and any car on the other line within one hundred feet of the crossing afterwards shall halt and remain stationary until the first mentioned car has passed the crossing.

No car shall pass over any crossing at the rate of any more than three miles per hour.

No cars under any circumstances shall be permitted to stop or stand upon any crossing except the crossing shown nearest the Canadian Pacific Railway Company's track on Main Street North, upon which crossing the cars of the Winnipeg Street Railway Company may stand according to the ordinary course of traffic.

4. In the construction of the crossings hereby approved work shall be commenced after the hour of 11 o'clock p.m., and between the said hour of 11 o'clock p.m., and 6 o'clock a.m. on the following morning shall be completed, or said work may be commenced and performed at such other times as will not interfere with the traffic of the Winnipeg Street Railway Company, the whole of the work to be finished in a workmanlike manner and generally to the satisfaction of the railway committee.

5. Any dispute that may arise as to the meaning of this order, or any portion thereof, or the proper interpretation of the same, or the meaning or the intention of the plan or plans hereto annexed, shall be decided by the railway Committee.

Dated at Winnipeg, this 10th day of September, A.D. 1892.

THOMAS GREENWAY,
 Chairman, Railway Committee.

Exhibit 20.

In the matter of the Winnipeg Electric Street Railway Company.
 "The Winnipeg Electric Street Railway Company"
 and

"The Winnipeg Street Railway Company."

Application having been made to the Railway Committee of the Executive Council of the Province of Manitoba, for the approval of the crossings and intersections hereinafter mentioned, it appearing that due notice of said application has been given,

10 IT IS ORDERED, That the crossings and intersections of the "Winnipeg Electric Street Railway Company's" proposed line of railway with the lines of railway of the "Winnipeg Street Railway Company," on Portage Avenue and Main Street, in the City of Winnipeg, shown upon plans lettered "A," "B" and "C," hereto annexed, are hereby approved, subject to the same conditions which are set forth in the order of this committee, dated the 10th day of September, A.D. 1892.

Dated at Winnipeg, this 18th day of October, A.D. 1892.

THOS. GREENWAY,
 Chairman of Railway Committee.

RECORD.

III.
 Exhibits.

No. 20.
 Order, &c.,
 approving
 certain
 crossings and
 intersections

Exhibit 21.

20 J. A. Platt,
 Clerk of Committees.
 A. W. Austin, Esq.,
 Manager, Winnipeg Street Railway Company.

Office of Clerk of Committees,
 Winnipeg, Man., Aug. 21st, 1891.

No. 21.
 Letter from
 J. A. Platt,
 Clerk of
 Committees,
 to A. W.
 Austin,
 manager of
 Plaintiff
 Company,
 dated 21st
 Aug., 1891.

Dear Sir,—The committee on works at its meeting last evening adopted a resolution requesting you to make your best offer for the extension of your street railway system, using electricity as the motive power; basing the offer on the bye-law 507, which had its first reading in April last, and the proposed extensions added as indicated in the letter of the city clerk to yourself on 28th July last.

30 The committee will meet again in regular session on Thursday evening next,
 27th inst. Yours truly,

J. A. PLATT, C. of C.

Exhibit 22.
 Arms of City.

A. W. Austin, Esq.,
 Manager Winnipeg Street Ry. Co.,
 Winnipeg.

City Clerk's Office,
 Aug. 22, 1891.

No. 22.
 Letter from
 the City
 Clerk of
 Winnipeg to
 A. W.
 Austin,
 manager
 of the
 Plaintiff
 Company,
 dated 22nd
 Aug., 1891.

40 Dear Sir,—By direction of the mayor I enclose you a copy of bye-law No. 507, re street railway, and referred to in clerk of committees' letter of yesterday to you.

Yours truly,

C. J. BROWN,
 City Clerk, W. H. R.

RECORD.

III.
Exhibits.

No. 23.
Letter from
J. A. Platt,
Clerk of
Committees,
to A. W.
Austin,
manager of
Plaintiff
Company,
dated 21st
Jan., 1892.

J. A. Platt,
Clerk of Committees.
A. W. Austin, Esq.,
Manager, Wpg. St. Ry. Co.

Exhibit 23.

Office of Clerk of Committees,
Winnipeg, Man., Jan. 21st, 1892.

Dear Sir,—You are requested by the committee on works to prepare a bye-law embodying your recently proposed alterations and concessions, also your original agreement in so far as it does not conflict with your present propositions, the object being to have incorporated in one bye-law and agreement all the terms and conditions thereof. You are requested to follow as nearly as possible the order of subjects and topics as appear in Bye-law 541, making any alterations and conditions which you may see fit. If the bye-law as presented as thus indicated, and if it is adopted by council, it will take the place of the old one, and the agreement, which will be based upon said bye-law, will take the place of the present one, which latter will, of course, be cancelled. This is required for consideration by the committee, by 1 p.m. on Monday, 25th instant.

Yours truly,
J. A. PLATT, Clerk of Committees, 20

No. 24.
Letter from
A. W.
Austin,
manager of
the Plaintiff
Company,
to the
Mayor and
Council of
Winnipeg,
dated 24th
Aug., 1891.

Exhibit 24.

Winnipeg, 24th August, 1891.

The Mayor and Council of the City of Winnipeg.

Gents,—Having been asked in a communication, dated 21st inst., from the committee on works, to again submit our offer *re* the adoption of electricity as a motive power, and the extensions contemplated, I hereby enclose same in the shape of a bye-law, very similar to that amended and drawn up by your solicitor. You will notice that we have embodied the following extensions:—

1. Central Avenue, from Portage Avenue to Fourteenth Street North.
2. Fourteenth Street North, from Central Avenue to Eighth Avenue North.
3. Eighth Avenue North to Main Street.
4. Fourteenth Street North, along Eighth Avenue to C.P. Railway.
5. Portage Avenue, from Eighth Street South to Fifteenth Street South.
6. Eighth Street South, *via* Ninth Avenue to Osborne Street.
7. Osborne Street to River Avenue.

Respecting further extensions, other than those named above, in the future, we will be governed by clause 5 of our bye-law, which enables a resident population within a quarter of a mile, of seven hundred (700) persons over five years of age to have a street railway extension should the city desire. This is a reduction of 40 one hundred (100) residents per quarter of a mile under what was asked by the council when considering the bye-law.

Regarding the franchise, you will notice that we have consented to a reduction of the time to thirty (30) years.

This, however, is only conditionally on negotiations being completed with you within the present week. We have, for one week, the refusal of a quantity of rails, which will enable us to complete Main Street and Kildonan lines this year; all other extensions mentioned in the bye-law will be completed next year. Unless a settlement can be arrived at this week, any further negotiations will be based upon starting work next spring.

A. W. AUSTIN, Manager.

RECORD.

III.
Exhibits.

Exhibit No. 25.

21st March, 1891.

No. 25.

Letter from
A. W.
Austin,
manager of
the Plaintiff
Company,
to the
Chairman
of the
Committee of
Works and
the Corpora-
tion of
Winnipeg,
dated 21st
March, 1891.

10 To the Chairman, Committee of Works, and the Corporation of the City of Winnipeg:

Gents,—In view of the introduction of electricity as a power for the propelling of our cars in this city, we desire to submit for your early consideration, the following proposition:—

That our bye-law be amended to cover the following points—

1. Permission be given us to add, to our present system, electricity as a propelling power, and to erect the necessary poles in connection with the running thereof.
- 20 2. The speed of running cars to be at no higher rate than 12 miles per hour through busy thoroughfares (instead of six miles per hour as in present arrangement).
3. To carry freight over lines of railway.
4. To have the exclusive right to run a street railway on any of the streets on which we are at present running or may hereafter run.
5. That the city will cause all obstructing wires along the line of our railways to be raised to the height of no less than 30 feet from the ground.
6. Permission be granted us to construct a double track on Main Street from Point Douglas Avenue to Main Street Bridge, with centre poles between and within the spaces at present occupied, and after said tracks are completed, our
30 old tracks to be taken up by us and paving blocks inserted, where at present rails are located.
7. That permission be granted us to take up our present roads from Point Douglas Avenue to Kildonan on Main Street, and construct in the side of said street a tie road-bed, with ties 24 inches apart, the said road-bed to be filled in at all street crossings to permit of the easy crossing of vehicles.
8. That wherever pavement is already laid along any of the streets, that the city council may give us permission to construct a line of railway, that we be not asked to pay for said road-bed already constructed, but only to keep same in repair until the end of our present term.
- 40 9. That permission be granted us to cross Main Street Bridge to connect our River Avenue and Main Street line, and to continue our Kennedy Street track around Broadway, Osborne Street, and bridge connecting with our present track on River Avenue, also to extend our line from Portage Avenue along Notre Dame Street, West Nena Street, and Logan Street to Main Street.
10. That at the expiration of our present term of agreement with the city

RECORD. a further renewal of our bye-law be granted us for a period of thirty years, and that the expense of constructing any new lines of our system shall be paid for by us, we agreeing to keep same in repair; but in event of the city deciding to pave that portion of the road occupied by us, the expense of such paving and repairs of same shall be borne by the city. For these privileges we agreeing to pay the city from the time of said renewal the sum of \$300 per mile for double track, and \$200 per mile for single track constructed per annum, to be assessed and paid for the same time as other taxes (the necessary side tracks and turn-outs not to be included as part of the tracks to be paid for in mileage).

III.
Exhibits.

Yours truly,

A. W. AUSTIN,
Manager.

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No. 26.
Petition of
the Plaintiff
Company for
incorporation

Exhibit 26.

To the Lieutenant-Governor of the Province of Manitoba in Council.

The petition of Duncan MacArthur, of the City of Winnipeg, in the County of Selkirk, banker; Albert William Austin, of the same place, broker; Heber Archibald, of the same place, barrister-at-law; James Austin, of the City of Toronto, in the Province of Ontario, banker; and Edmund B. Osler, of the said City of Toronto, broker, sheweth as follows:—

1. Your Petitioners have associated themselves together, under the name 20 and style of the Winnipeg Street Car Company, and under such name and style desire incorporation under letters patent, under division seven of chapter nine of the consolidated statutes of Manitoba, intituled an Act respecting the Incorporation of Companies and their Powers, and 44 sec., cap. 11, statutes of Manitoba, amending same.

2. Your Petitioners seek such incorporation for the purpose of building, equipping and operating a street tramway for the conveyance of passengers for hire within the limits of the City of Winnipeg, and such of the adjacent localities as your Petitioners may deem it expedient and desirable at any time or times to extend the line of such tramway into, upon the terms and subject to the con- 30 ditions hereinafter set forth.

3. The capital stock of such company so proposed is one hundred thousand dollars, divided into one thousand shares of one hundred dollars each, and your Petitioners have subscribed said capital in the following amounts, that is to say:—Duncan MacArthur, twenty-four thousand dollars; Albert William Austin, twenty-four thousand dollars; Heber Archibald, four thousand dollars; James Austin, twenty-four thousand dollars; and Edmund B. Osler, twenty-four thousand dollars.

4. The chief place of business of the said proposed company to be at the said City of Winnipeg.

5. That the said company may commence operations and exercise the powers hereby applied for, so soon as one hundred thousand dollars of the capital shall have been subscribed, and ten per cent. thereon shall have been paid up.

6. That the said company may be authorised and empowered to purchase,

40

lease, hold, acquire and transfer all real estate and personal estate necessary for the carrying on of the operations of the said company.

7. And that the said company may be authorised and empowered to construct, complete, maintain and operate a single or double track, with the necessary side tracks, switches and turnouts, for the passage of cars, carriages and other vehicles adapted to the same, upon and along any of the streets or highways in the City of Winnipeg and the adjacent localities, or any of them, and to take, transport and carry passengers upon the same by the power and force of animals, and to construct and maintain all necessary works, buildings and conveniences therewith
10 connected.

8. That the said company may have full power and authority to use and occupy any and such parts of the street or highways as may be required for the purpose of their track and the running of their cars thereon: provided always, that the consent of the said city and adjacent localities shall be first had and obtained, and that the said City of Winnipeg and the said adjacent localities may be authorised and empowered to grant permission to the said company to construct the said proposed tramway as aforesaid, within their respective limits across, and along, and to use and occupy the said streets or highways, or any part of them, for that purpose, upon such conditions and for such period or periods as may
20 be respectively agreed upon between the company and the said city, or adjacent localities aforesaid, or any of them.

9. That the rails of the said proposed tramway shall be laid flush with the streets and highways, and the track shall conform to the grades of the same so as to offer the least possible impediment to the ordinary traffic of the said streets and highways, and that it shall be lawful for ordinary vehicles to travel on the tracks of the company; provided they do not interfere with or impede the running of the cars of the company and in all cases any conveyance, carriage or vehicle on the tracks, or on any of the sidings or turnouts, shall give place to the cars of the company by turning off the same.

30 10. That the affairs of the company shall be under the control of and shall be managed and conducted by a board of directors of not less than three nor more than seven, and of whom three shall be a quorum, each of whom shall be a stockholder to an amount of not less than one hundred dollars, and shall be elected on the first Monday in November in each and every year, at the office of the company, in the City of Winnipeg, or at such other place in the said city as the directors shall from time to time appoint, of which due notice shall be given; and all such elections shall be by ballot by a plurality of the votes of the stockholders present; each share upon which all instalments due have been paid shall give one vote, and stockholders not personally present may vote by
40 proxy; and the directors so chosen shall as soon as may be elect one of their number to be president, which president and directors shall continue in office one year, and until their successors shall be elected; and any director shall be eligible for election. Should any vacancy happen of the president or directors, the remaining directors shall supply such vacancy for the remainder of the year. After the first election of directors to be made, no share or shares of the capital stock of the said company shall confer a right of voting

RECORD.

III.
Exhibits.

No. 26.
Petition of
the Plaintiff
Company for
incorporation
—continued.

RECORD.

III.

Exhibits.

No. 26.
Petition of
the Plaintiff
Company for
incorporation
—continued.

that shall not have been held for one calendar month prior to the day of election or of the general meeting, when the votes of the stockholders are given.

11. That the said Duncan MacArthur, Albert William Austin, Heber Archibald, James Austin and Edmund B. Osler shall be the first directors of the said company, who shall severally hold their offices until the first Monday in November after the commencement of the work of the construction of said tramway.

12. That if at any time an election of directors be not made, or do not take place at the proper time, the company shall not be held to be thereby dissolved, but such election may take place at any general meeting of the company duly called for that purpose, and the retiring directors shall continue in office until 10 their successors are elected.

13. That the directors of the said company shall have full power and authority to make, amend, repeal and re-enact all such bye-laws, rules, resolutions and regulations as shall appear to them proper and necessary touching the will or doings of the company. The number of directors, the acquirement, management and disposition of its stock property and effects, and of its affairs and business, the entering into arrangements and contracts with the said city and adjacent localities, the declaration and payment of dividends out of the profits of said company, the form and issuing of stock certificates, and the transfer of 20 shares, the calling of special and general meetings of the company; the appointment, removal and remuneration of all officers, agents, clerks, workmen and servants of the company; the fares to be received from persons transported over the tramways or any part thereof, and in general to do all things that may be necessary to carry out the object and exercise of any powers incident to the company.

14. That the directors of the company may from time to time raise or borrow for the purposes of the company any sum or sums not exceeding in the whole two-thirds of the capital stock of said company, by the issue of bonds or debentures in sums of not less than one hundred dollars, on such terms and credit as they may think proper, and may pledge or mortgage all the property, tolls and 30 income of the company, or any part thereof, for the repayment of the moneys so raised or borrowed, and the interest thereon: provided always that the consent of two-thirds in value of the stockholders of the company, then present in person or by proxy, shall be first had and obtained at a general or special meeting to be called and held for that purpose.

15. That the said city and the said adjoining localities, or any of them, and the said company may be authorised to make and to enter into any agreements or covenants relating to the construction of the said tramway; for the paving, macadamising, repairing and grading of the streets or highways, and the construction, opening of and repairing of drains or sewers; and the laying of gas and 40 water pipes in the said streets and highways; the location of the tramway, and the particular streets along which the same shall be laid; the time and speed of running of the cars, the amount of fares to be paid by passengers, the time within which the works are to be commenced, the manner of proceeding with the same and the time for completion, and generally for the safety and convenience of passengers, the conduct of the agents and servants of the company, and the non-obstructing or impeding of the ordinary traffic.

16. That the said city and the said adjacent localities may be authorised to pass any bye-law or bye-laws, and to amend, repeal and enact the same, for the purpose of carrying into effect any such agreements or covenants, and containing all necessary clauses, provisions, rules and regulations for the conduct of all parties concerned, and for the enjoining obedience thereto, and also for the facilitating the running of the company's cars, and for regulating the traffic and conduct of all persons travelling upon the streets and highways through which the said tramway may pass.

17. That the company may substitute sleighs for cars or carriages during the winter months upon the routes of the tramway.

18. That the fare shall be due and payable by every passenger on entering the car, carriage or sleigh, and any person refusing to pay the fare when demanded by the conductors or drivers, and refusing to quit the car or sleigh, shall be liable to a fine not exceeding fifty dollars, recoverable before any justice of the peace.

Your Petitioners therefore pray:—

1. That your Honour may be pleased to constitute your Petitioners a body corporate and politic, with perpetual succession and common seal, by the name of the Winnipeg Street Car Company, for the purpose of building and operating, in the streets of Winnipeg and adjacent localities, a street tramway for the purpose of conveying passengers.

2. That the said company may be authorised and empowered to purchase leasehold, acquire and transfer all real and personal estate necessary for the carrying on the operations of the said company.

3. That the said company may be authorised and empowered to construct, complete, maintain and operate a single or double track, with the necessary side track, switches and turnouts, for the passage of the cars, carriages, and other vehicles adapted to the same upon and along any of the streets or highways in the city of Winnipeg and the adjacent localities, and to both transport and carry passengers upon the same by the power and force of animals, and to construct and maintain all necessary works, buildings and conveniences therewith connected.

4. That the said company may have full power and authority to use and occupy any and such parts of any of the streets or highways aforesaid, as may be required for the purpose of the tramway and the running of the cars and carriages, provided always that the consent of the said city and adjacent localities shall be first had and obtained.

5. That the said city of Winnipeg and adjacent localities may be authorised and empowered to grant permission to the said company to construct their tramway as aforesaid within their respective limits, across and along the streets and highways, or any part of them within their respective limits, for that purpose, upon such condition and for such period or periods as may be respectively agreed upon between the said company and the said city and adjacent localities as aforesaid, or any of them.

6. That the other powers and conditions set forth in the above petition may

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RECORD.

III.
Exhibits.

No. 26.
Petition of
the Plaintiff
Company for
incorporation
— continued.

RECORD. be embodied in the letters patent herein prayed for, and such other powers as to your Honour may seem meet.

III.
Exhibits.

And your petitioners will ever pray.
Dated 3rd day of October, 1881.

No. 26.
Petition of
the Plaintiff
Company for
incorporation
—continued.

D. MACARTHUR.
A. W. AUSTIN.
HEBER ARCHIBALD.
JAMES AUSTIN, by his Attorney, A. W. Austin.
EDMUND B. OSLER, by his Attorney, A. W. Austin.

Exhibit 27. 10

No. 27.
Report of
Committee of
Executive
Council,
advising that
a charter be
granted to
the Plaintiff
Company.

To his Honour the Honourable Joseph Cauchon, Lieutenant-Governor of the Province of Manitoba, &c., &c.

Report of a Committee of the Executive Council on matters referred to their consideration.

Present :—The Honourable Mr. Walker in the Chair ; Mr. Gerard ; Mr. Goulet.

On matters of State, may it please your Honour :—On the recommendation of the Honourable the Attorney-General, and under the provisions of the Consolidated Statutes of Manitoba, chapter 9, Committee advise that a charter be granted to the Winnipeg Street Car Company. 20

Respectfully submitted.

D. M. WALKER, Chairman.

Certified.

C. GRABURN,
Clerk, Executive Office.

Executive Council Chamber, October 3rd, 1881.

Approved and ordered, 3rd October, 1881.

JOSEPH CAUCHON.

No. 28.
Order of Mr.
Justice
Dubuc on
motion for
interlocutory
injunction.

Exhibit 28.

In the Queen's Bench.—In Equity. 30

Mr. Justice Dubuc.

The tenth day of October, A.D. 1892.

Between

The Winnipeg Street Railway Company *Plaintiffs,*
and

The Winnipeg Electric Street Railway Company and the City of
Winnipeg *Defendants.*

Upon motion made by the Plaintiffs, pursuant to notice given to the Defendants, on the 22nd day of September, A.D. 1892, for an order to restrain the Defendants, the Winnipeg Electric Street Railway Company, from taking up, 40 cutting or removing, or crossing by way of iron rails, the street railway track of the Plaintiffs, on Main Street or Portage Avenue, in the City of Winnipeg, and

from operating their street crossings on Main Street or Portage Avenue, aforesaid, and from receiving passengers thereon for hire or reward, or otherwise, and from in any way interfering with the rights of the Plaintiffs, said motion coming on upon the twenty-ninth day of September, 1892, was enlarged till the tenth day of October, 1892, at the request of the Defendant Company, to enable them to answer the affidavits filed by the Plaintiffs; and again coming on upon the said tenth day of October, 1892, in presence of counsel for all parties, the Defendants having in the meantime filed the affidavits of G. H. Campbell, H. N. Ruttan, J. A. Maughan, C. L. Aman,
 10 H. C. Aksby, C. O. Hemless, and C. O. Cook; and the Plaintiffs having filed in reply the affidavit of H. M. Howell upon opening of the matter, counsel for the Plaintiffs suggested that the motion should stand until the hearing of the cause, such hearing to be proceeded with at the Equity Sittings beginning on the eleventh day of October, 1892, and after hearing counsel for all parties,

THIS COURT DOTH ORDER, That the said motion do stand till the hearing of this cause, and that the costs thereof be reserved to be disposed of by the presiding judge at the hearing.

THIS COURT DOTH FURTHER ORDER, That the Defendants do file their answers to the bill of complaint, on or before the 24th day of October, 1892, and do also,
 20 on the same day, file their affidavits on production of the documents; and that the Plaintiffs do, on the 25th day of October, file their affidavits on production of documents, and file their replication on or before the 27th day of October, A.D. 1892.

AND THIS COURT DOTH FURTHER ORDER, That this cause be brought on for hearing on the 10th day of November, A.D. 1892.

R. J. WILSON, Registrar.

RECORD.
 III.
 Exhibits.
 No. 28.
 Order of
 Mr. Justice
 Dubuc on
 motion for
 interlocutory
 injunction
 —continued.

Exhibit 29.

P. C., No. 192.

30 Certified copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 3rd February, 1888.

Government House, Ottawa,

Friday, 3rd day of February, 1888.

Present:—His Excellency the Governor in Council.

Whereas by the 3rd section of chapter 49 of the Revised Statutes of Canada, intituled "An Act respecting Roads and Road Allowances in the Province of "Manitoba," it is provided that on the Government of Canada receiving notice from the government of the province, of the particular thoroughfares or public travelled roads or trails in the province, which existed as such on the 15th day of
 40 July, 1870, and which the government of the province desires to have transferred to the province, the Governor in Council may pass an Order, directing the same to be forthwith surveyed by a Dominion land surveyor, and thereafter may transfer each such thoroughfare, public travelled road or trail, according to the plan or description thereof, to the province.

No. 29.
 Certified
 copy of
 Report of
 the Privy
 Council
 (Canada),
 transferring
 to the
 Provincial
 Government
 highways in
 Manitoba.

RECORD.

III.
Exhibits.

And whereas under authority of an Order in Council, dated the 17th September, 1887, that portion of the old trail or great highway from Pembina to Lake Winnipeg, on the west side of the Red River, which lies within the limits of the City of Winnipeg, has recently been surveyed by a Dominion land surveyor, with a view to its transference to the province.

His Excellency in Council, on the recommendation of the Minister of the Interior, and under the provisions of the said third section of the above cited Act, has been pleased to Order, and IT IS HEREBY ORDERED, That the said portion of the old trail or great highway from Pembina to Lake Winnipeg, on the west side of the Red River, which lies within the limits of the City of Winnipeg, be and the 10 same is hereby transferred to the Province of Manitoba.

JOHN J. MCGEE,
Clerk of the Privy Council.

Privy Council, Canada (Seal).

No. 30.
Grant by the
Crown to the
Hudson's Bay
Company of
land in
Manitoba.

Exhibit 30.

(L.S.)

DUFFERIN.

CANADA.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

Grant by Her Majesty the Queen, to the Governor and Company of Adventurers of England, trading into the Hudson's Bay, in the Province of Manitoba, 20 450 acres, dated 5th June, 1873, recorded 6th June, 1873.

(Signed) E. PARENT, S.S.
For Secretary of State and Registrar-
General of Canada.

To all to whom these presents shall come greeting of Her Majesty the Queen.

Whereas by an order in council, at the Court of Windsor, on the twenty-third day of June, one thousand eight hundred and seventy, it was ordered and declared that the North-Western Territory and Rupert's Land should, as therein mentioned, be admitted into and become part of the Dominion of Canada, on certain terms and conditions; and whereas certain of the said terms and conditions 30 were embodied and contained in a deed of surrender, bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, from the Governor and Company of Adventurers of England, trading into the Hudson's Bay, to Her Majesty; and whereas amongst such terms and conditions were the following, that is to say :

The company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents, whether in Rupert's Land or in any other part of British North America, and may within twelve months after the acceptance of the said surrender, select a block of land, adjoining each of their posts or stations, within any part of British North America, not comprised in 40 Canada and British Columbia, in conformity, except as regards the Red River territory, with a list made out by the company and communicated to the Canadian Ministers, being the list in the schedule attached to the said deed of surrender. The actual survey is to be proceeded with with all convenient speed.

And whereas the size of the block at Upper Fort Garry, in the Red River Territory, and now in the Province of Manitoba, that being one of the said posts or stations referred to, has been agreed upon, between the said Governor and Company of Adventurers of England, trading into the Hudson's Bay, and the Governor-General of Canada in Council, at five hundred acres, but reserving thereout, in further pursuance of the terms of the said deed of surrender, a plot of fifty acres for public purposes, which said block is hereinafter described and intended to be hereby granted and conveyed.

Now know ye that, in pursuance and consideration of the premises, and in
 10 further pursuance of an order of the Governor-General in Council, passed on the
 thirty-first day of May, in the year of our Lord one thousand eight hundred and
 seventy-three, we have granted, aliened, conveyed and assured, and by these
 presents do grant, alien, convey and assure unto the said Governor and Company
 of Adventurers of England, trading into the Hudson's Bay, their successors and
 assigns, for ever, all that parcel or tract of land situate, lying and being on the
 north side of and adjoining the River Assiniboine, and bounded eastwardly by the
 Red River, in the County of Selkirk, in the Province of Manitoba, containing four
 hundred and fifty acres, be the same more or less, and which may be better known
 and described as follows, that is to say, commencing at the water's edge on the
 20 westerly side of the channel of the Red River, where the same is intersected by
 the southerly limit of a certain allowance for a road one chain wide, lying on the
 south side of and adjoining the lower part of lot number one thousand two
 hundred and ten (1,210), as described at length in the official survey of the Red
 River Settlement, which said lower part of lot number one thousand two hundred
 and ten is the same which is described in a certain lease for one thousand years,
 dated the thirteenth day of June, one thousand eight hundred and sixty-six,
 made by the said Governor and Company of Adventurers of England, trading
 into Hudson's Bay, to one John Schultz, of Red River Settlement; thence north
 sixty-three degrees and fifty minutes west thirty-seven chains, be the same more
 30 or less, to the northerly limit of the Main Street leading from Winnipeg to Fort
 Garry; thence along the said limit north nineteen degrees and thirty-two minutes
 west, three chains and eighty links, more or less, to a point in the westerly limit
 of a certain allowance for a road one chain wide, originally granted by the said
 governor and company, along and upon the westerly boundary of lot number
 two hundred and forty-nine (249) of the general survey of the said Red River
 Settlement, sold by the said governor and company to one William Drever;
 thence along the said westerly limit of the said road allowance north sixty-three
 degrees and fifty minutes west, fifty-one chains and ninety links, more or less,
 to a point where the same is intersected by the production northwardly of the
 40 western limit of lot number thirty-five (35) fronting on the said River Assiniboine,
 known as the most easterly lot of certain lots for pensioners, as the same were
 laid out by the said governor and company, which said lot number thirty-five
 is now owned by one James Spence Cooper; thence south three degrees
 and seven minutes west along and upon the extension as aforementioned
 of the said westerly limit of the said lot number thirty-five,
 thirty-eight chains and ninety links, more or less, to a point in the centre of the
 channel or bed of the creek known as Colony Creek, the said point being the

RECORD.

III.
Exhibits.No. 30.
Grant by the
Crown to the
Hudson's Bay
Company of
land in
Manitoba

—continued.

RECORD.

III.
Exhibits.No. 30.
Grant by the
Crown to the
Hudson's Bay
Company of
land in
Manitoba

—continued.

north-west angle of the said lot, number thirty-five; thence southwardly and eastwardly upon the said centre of the channel or bed of the said Colony Creek, and following the precise curves and angles therein to where the said creek debouches into the said River Assiniboine; thence eastwardly along and upon the northerly edge of the water in the said River Assiniboine with the stream, nine chains and fifty links, more or less, to where the same is intersected by the westerly limit of the track of fifty acres fronting on the said river, reserved by the Government of the Dominion for public purposes; thence along the said westerly limit of the said track, north nineteen degrees and thirty-seven limits, west twenty-one chains: thence north seventy degrees and twenty-three minutes, east three chains and forty-one links; thence north nineteen degrees and thirty-seven minutes, west ten chains and nine links; thence north seventy degrees and twenty-three minutes, east thirteen chains and nine links, to the westerly limit of the street boundary of the said track of fifty acres on the east, as laid out by the said governor and company; thence along the said easterly limit of the said track of fifty acres, being the westerly limit of the said street, south nineteen degrees and thirty-seven minutes, east thirty-four chains and seventy-five links, more or less, to the aforesaid northerly edge of the water in the River Assiniboine; and thence easterly and northwardly following the said water's edge of the said River Assiniboine to the confluence of the said river with the Red River; and thence northwardly along the westerly edge of the water in the Red River, with the stream, in all eighty-nine chains, more or less, to the place of beginning.

To have and to hold the said parcel or tract of land hereby granted, conveyed and assured unto the said Governor and Company of Adventurers of England, trading into Hudson's Bay, their successors and assigns, for ever, saving, excepting and reserving, nevertheless, unto us, our successors and assigns, the free uses, passage and enjoyment of, in and over all navigable waters which shall or may be hereafter found on or under, or be flowing through or upon any part of the said parcel or tract of land hereby granted as aforesaid.

Given under the great seal of Canada.

30

Witness, Our Right Trusty and Well-beloved Cousin and Councillor, the Right Honourable Sir Frederick Temple, Earl of Dufferin, Viscount and Baron Clandeboye of Clandeboye, in the County of Down, in the Peerage of the United Kingdom, Baron Dufferin and Clandeboye of Ballyleidy and Killeleagh, in the County Down, in the Peerage of Ireland, and a baronet; Knight of Our Most Illustrious Order of Saint Patrick, and Knight Commander of Our Most Honourable Order of the Bath; Governor-General of Canada, and Governor and Commander-in-Chief in and over the Island of Prince Edward, and Vice-Admiral of Canada and Prince Edward.

At Ottawa, this fifth day of June, in the year of our Lord, one thousand eight hundred and seventy-three, and in the thirty-sixth year of our reign.

By Command.

JOHN O'CONNOR,
Acting Secretary of State.

JOHN A. MACDONALD,
Attorney-General, Canada.

" D "

The Winnipeg Street Railway Company

and

The Winnipeg Electric Street Railway Company, *et al.*

JUDGMENT.

RECORD.

IV.

Judgment

and

Decree.

No. 1.

Judgment of

Mr. Justice

Bain.

This suit has been instituted by the Plaintiffs with the object of mainly obtaining a declaration from the Court that they have the legal right to the exclusive use for street railway purposes of the whole of the portion of Main Street, Portage Avenue, and Kennedy Street, in the city of Winnipeg, on which they have been
 10 and are now operating their street railway, and an order or injunction to restrain the Defendant Company from operating street railways thereon.

The contention of the Plaintiffs as regards these streets is, that by the bye-law of the city of Winnipeg, No. 178, and the agreement made between them and the city in pursuance of this bye-law, they acquired, for the period mentioned therein, the legal right to the exclusive use for street railway purposes of the whole of the portions of the streets laterally as well as longitudinally, which they should occupy with their railway, and that having so occupied the portions of these streets described in the bill the Defendant Company must be regarded as trespassers thereon, and should be restrained by the Court from
 20 interfering with the Plaintiffs' right.

Both the Plaintiffs and the Defendant Company, relying on the franchises they have obtained from the city, have invested a large amount of money in building and operating their street railways on Main Street and Portage Avenue, two of the main thoroughfares of the city, and important interests, both as regards the two companies and the City of Winnipeg, are involved in the decision of the questions raised by the suit. The main question, briefly, is whether or not the Plaintiffs have the exclusive right or monopoly of operating street railways on these streets for the period mentioned in their agreement. By the Act 55 Vic., C. 56, the Provincial Legislature incorporated the Defendant
 30 Company, and in the same Act validated and confirmed the bye-law of the City of Winnipeg, under which the company has built and is now operating railways in the streets of the city. It appears that this Act was passed by the Legislature with the full knowledge that the Plaintiffs were claiming to have the exclusive rights to the whole of the streets they occupied with their railway, and that passage of the Act was in fact opposed by the Plaintiffs before a Committee of the House. It is provided in Sec. 33 that, "Nothing in this Act or in the " schedule thereto shall in any way affect or take away any rights held by or vested " in the Winnipeg Street Railway Company (the Plaintiffs), if such there be," but subject to this reservation, the effect of the Act is that the Defendant Company
 40 has been expressly empowered by the Legislature to construct and operate their street railway on Main Street and Portage Avenue, on which streets the Legislature knew the Plaintiffs were in occupation with their railway. The Defendants contend that, in the face of the legislative authority, which the Defendant Company has, the Court cannot, or at any rate should not, by the exercise of its extraordinary jurisdiction, prevent the Defendant Company from exercising and enjoying the right which has been given to it, and that the Plaintiffs, if they have the right they claim, should be left to enforce it in an ordinary action against the city. I am not prepared

RECORD. to say, however that if the Plaintiffs can establish their right, the jurisdiction of the Court to interfere by injunction is taken away, for I apprehend that the right given by the statute to the Defendant Company, was in effect given upon the condition that the Plaintiffs had not a legal right to prevent the Defendant Company operating a railway in these streets. But it is very evident, I think, that before the Court can undertake to render the legislative grant the Defendant Company has received wholly nugatory and ineffectual, it will have to be satisfied beyond doubt or question that the Plaintiffs have the legal rights they claim.

IV.
Judgment
and
Decree.
No. 1.
Judgment of
Mr. Justice
Bain
—continued.

Before it can be held that the Plaintiffs have the exclusive right they claim 10 it must be established not only that the right has in fact been made over and granted to them by the city, but further that the conferring of such a right or franchise was within the corporate powers of the city, and the answer of the Defendants directly challenges both these propositions. The Plaintiffs, they say, have not received from the city the exclusive right they claim, and if the city did undertake to give such a right, it had not the power to do so, and its grant was invalid.

The expression in the bye-law and agreement, "and such railway shall have "the exclusive right to such portion of any street or streets as shall be occupied "by such railway," is ambiguous, and it may be a question of some difficulty to 20 decide what was the extent of the exclusive right granted, and I think it will be better, before construing the bye-law and agreement, to deal with the question of the power of the city to make such an exclusive grant as the Plaintiffs contend it did. If I come to the conclusion that the city did go beyond its powers if it gave the right contended for, then it will not be necessary for me to undertake to construe the bye-law and agreement.

Assuming, then, that the city did undertake to confer upon the Plaintiffs the exclusive right they claim, the Defendants urge that the city could not legally give this right unless it had express authority from the legislature to do so. The Plaintiffs' reply to this is, that the express authority the Defendants demand 30 is found in the city charter, and in the Plaintiffs' Act of Incorporation; and furthermore they say that as the streets were vested in the city by its charter, it could give the exclusive right to use them, and that at all events, as the legislature has not expressly or by necessary implication deprived the city of the power to give this exclusive right, the circumstances are such that it must be deemed to have had the power as incident to the power expressly given.

There can be no question of the city having had full power to enter into an agreement with the Plaintiffs, authorising them to build and operate street railways on all or any of the streets in the city. The provisions in Section 154 of the city charter would in themselves give this power, and the Plaintiffs' Act of 40 Incorporation expressly authorises the city "to grant permission to the said "company to construct their railways as aforesaid, * * * across, along, and to use "and occupy the said streets, highways or any part of them for that purpose, "upon such conditions and for such period or periods as may be respectively "agreed upon between the company and the said city."

This is express authority for the city to allow the company to use its streets; but while the city might have abstained from allowing anyone else to use

them for that purpose, I find nothing here, or in the city charter, that expressly authorises the city to agree with the Plaintiffs, that they are to have the exclusive right to the use of the whole width of the streets, and that enables it to put it out of its power to allow other persons or companies to use other portions of these streets for street railway purposes. The words "upon such condition," to which Mr. Howell referred, certainly cannot be taken either to enlarge the legislative grant to the Plaintiffs, or to confer authority upon the city to enter into any agreement with the Plaintiffs that would be beyond its corporate powers.

10 Main Street and Portage Avenue are portions of the old roads known as the "Great Highways," that were laid out by the Council of Assiniboia, before the transfer of the country to Canada, and these streets as they now exist, follow, with some slight deviations, the line of these great highways. On the surrender of the country up to Canada by the Hudson's Bay Company, the soil in these highways became vested in the Dominion Government, and by cap. 49 R.S.C., it was provided that the Governor-General in Council might, by Order in Council, transfer to the province the public thoroughfares or roads that existed as such at the date of the transfer. It appears that by Order in Council, dated the 3rd of February, 1888, Main Street was so transferred, but it is not shown that Portage
20 Avenue has ever been transferred. Main Street for about half a mile or so runs through Lot 1 in the Parish of St. John, usually known as the Hudson's Bay Company's Reserve, and nearly all of the portions of Portage Avenue occupied by the Plaintiffs is in this lot; and in the grant from the Crown to the Hudson's Bay Company neither street is excepted or reserved. This Patent was issued before the date of the city charter of 1882.

By sec. 155 of the city charter of 1882, it is provided that "every public road, street, &c., shall be vested in the city, subject to any rights in the soil which the individuals who laid out such road, street, &c., reserve." Then, in the following section, it is provided that all persons, having made any reservation in
30 any street, shall apply, within six months, for a settlement or adjustment of such claim, otherwise such claim shall cease to exist. The effect of these provisions is, it is argued, that the actual ownership of the streets was vested in the city, and therefore that the city could dispose of them or grant any rights and privileges in them it saw fit.

It is clear enough, I think, that in saying the streets, &c., should be vested in the city, the Legislature intended that some property in the actual soil should vest in the city. But it is equally clear, I think, that whatever that property was, the city acquired and held it only as for a street, and for the use and purposes of the public, and that it could not dispose of or deal with it in any
40 manner not authorised by its charter. Like most of the provisions of our various Acts dealing with municipalities, this section 155 was taken from the Ontario Municipal Act, and its effect was discussed in the case of *Sarnia vs. Great Western Railway Company*, 21 U.C., Q.B., 59, which decided that the Plaintiffs, an incorporated town, could not maintain an action of ejectment against the Defendants for portions of the streets of the town. If the streets were vested in the town, as was contended, it may be open to doubt, perhaps, if the actual decision in the case was correct (*Vespra v. Cook*,

RECORD.

IV.
Judgment
and
Decree.

No. 1.
Judgment of
Mr. Justice
Bain

—continued.

RECORD.
 IV.
 Judgment
 and
 Decree.
 No. 1.
 Judgment of
 Mr. Justice
 Bain
 —continued.

26 U.P., C.P., 182), but I refer to the case because I think the following remarks made by McLean, J., very well describe the nature of the property that is vested in a municipality by the section in question. "That section," he says, "I think does vest in the municipalities the several streets and roads within their borders, but it does not necessarily follow that it conveys such a freehold and estate as will enable a municipality to maintain ejection. Every individual in the community has an equal right to a public street or a road, and the municipalities cannot be considered as proprietors, and so entitled to control the possession any more than any other person or corporation or person interested in the streets or highways. The property 10 vested in the municipality is a qualified property, to be held and exercised for the benefit of the whole body of the corporation. . . . They, so far, may be said to hold the freehold, but it is only as trustee for the public, and not by virtue of any title which confers a right of exclusive possession."

Notwithstanding, then, that the property in the streets as streets, was vested in the city, I think the power of the city to dispose of or deal with the streets was strictly limited by its corporate powers.

And I cannot say that I find anything that really conflicts with this view in the case of *Coverdale v. Charlton*, 4 Q.B.D., 104, which was strongly pressed on me by Mr. Howell. In that case the Court were considering a provision 20 of the Public Health Act (that all streets shall vest in, and be under the control of, the urban authority), and what the case decided was, as James, L.J., said in *Roles v. George*, 4 Ch. D. 785, "that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil which would entitle them as owners to bring a possessory action." The decision, too, was given on a special case stated by two private individuals, and the question whether the grant of the pasturage on the road by the local board to the Plaintiff was within the powers of the board, as against the public, was in no way raised by the case or touched upon by the Court. In *Wendworth Board of Works v. United Telephone 30 Co.*, 13 Q. B. D., 904, the Master of the Rolls, speaking of this case, and of the section in question, said: "My own view at the time was . . . it passed the property so as to enable the local board, as far as anybody else than the public was concerned, to do with it what any other owner than the public might do. There might be a breach of their duty to the public, but with regard to anybody else than the public they could do with it as any other owner could do, that is, without infringing that which was their primary duty, namely, to keep "it as a street."

The "street" in question was, it appears, a green lane in a rural district, and the exclusive grant that had been made was that of the pasturage along the sides 40 of the lane for a period of seven months; and even if it had been held that the local board had authority to make such a grant, I could hardly consider the case decisive of the one before me.

On this contention of the Plaintiffs I must hold then that the property the city had in the streets would not, in itself, authorise it to give the Plaintiffs the exclusive right they claim, unless it otherwise appears that it was the intention of the Legislature that this was a disposition of the streets

that the city should be authorised to make. I have already held that there is no such authority expressly given, and it remains now for me to consider if the intention of the Legislature that the city was to have this authority can be inferred or implied.

The weight of authority seems to show that at common law a corporation could bind itself to do anything to which a natural person could bind himself, and deal with its property as a natural person might deal with his own; and in dealing with corporations created by or under Acts of Parliament for definite purposes, and with powers for effecting that purpose, there are evidently two ways in which the powers of such corporations may be measured. One is, that it may be presumed that the transactions of such corporations are valid, and that they will be held to be invalid only if it can be shown that the Legislature has deprived them, either expressly or by necessary implication, of the power to enter into such transactions. The other is, that their transactions will be held to be valid only if it appears they were authorised either expressly or by necessary implication. Mr. Howell urged that the former view is the one that prevails in the English Courts, but, as has been pointed out by a learned author (Pollock on Contracts, page 117), the decision of the House of Lords, in *Ashbury Railway Carriage Company v. Riche*, L.R. 7, H.L. 653, has made the conflict between the two theories much less sensible in practice than might be expected; and it seems to me indeed that this decision goes very far to establish that for all practical purposes the theory of limited capacity is the one that is to prevail.

In *Attorney General v. Great Eastern Railway Company*, 5 App. Cas., 473, Lord Blackburn, speaking of *Ashbury v. Riche*. said:—"That case appears to me to decide at all events this, that where there is an Act of Parliament creating a corporation for a particular purpose and giving it powers for that particular purpose, what it does not expressly or impliedly authorise is to be taken to be prohibited." In the later case of *Baroness Wenlock v. River Dee Company*, 10 App. Cases, 354, this principle was again affirmed and applied to the great loss of the Plaintiff, and it was held to apply to all corporations created by statute for particular purposes. As Lord Watson said, p. 362, "Whenever a corporation is created by Act of Parliament with reference to the purposes of the Act, and solely with a view to carrying these provisions into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived from its provisions."

The principles then, upon which I must decide the question before me are thus clearly and authoritatively prescribed, but the difficulty in the case lies in the application of the principles to the facts, and it so happens that there are no cases, at least that I have been referred to, in which the English Courts have had to decide a question of the kind upon a state of facts which is at all similar to that presented here.

It is a long established principle of English law that "When the law doth give anything to one, it giveth impliedly whatever is necessary for the taking and enjoying the same"—Co. Litt 56, and in the case of the *Attorney-General v.*

RECORD.

IV.
Judgment
and
Decree.

No. 1.
Judgment of
Mr. Justice
Bain

—continued.

RECORD . Great Eastern Railway Company, that I have referred to, I find Lord Selborne thus
 IV. defining in what spirit the principle laid down in the Ashbury case should be
 Judgment applied. "I agree with Lord Justice James," he says, "that this doctrine ought
 and "to be reasonable and not unreasonably understood and applied, and that what-
 Decree. "ever may be fairly regarded as incidental to or consequential upon those
 No. 1. "things which the Legislature has authorised, ought not (unless expressly pro-
 Judgment of "hibited) to be held by judicial construction to be *ultra vires*." In the latter
 Mr. Justice "case of *Small vs. Smith*, 10 Appeal Case, 129, Lord Selborne again said: "I
 Bain "entirely adhere to what was said in this House in the case of Attorney-General
 —continued. "v. Great Eastern Railway Company, that when you have got a main purpose 10
 "expressed, and ample authority given to effectuate that main purpose, things
 "which are incidental to it and which may reasonably and properly be done, and
 "against which no expressed prohibition is found, may and ought *prima facie* to
 "follow from the authority for effectuating the main purpose by proper and
 "general means." But he also points out that "The grounds of such an impli-
 "cation must be found in the nature of the situation, and the reasonable con-
 "sequences of that situation, and not in what a man, who may do what he
 "pleases with his own, may or may not consider proper to do under such circum-
 "stances."

Applying these principles then, what I must consider is, was there anything 20
 in the nature of the situation and in the circumstances of the case from which it is
 a legitimate and reasonable inference that when the legislature authorised the city
 to arrange for the construction of street railways, and to make an agreement with
 the Plaintiffs to that end, it also intended that the city might agree with the
 Plaintiffs that they alone, and that none but themselves, should be able to obtain
 the privilege of using the streets for street railway purposes for the period
 limited.

The Plaintiffs, believing doubtless that the right or franchise which they
 received from the city was an exclusive one for at least 20 years, have invested a
 large sum of money in the construction of their several lines of railway, and in 30
 providing and maintaining the necessary rolling stock therefor, and as far as the
 evidence shows they have carried out the terms of the agreement, and have
 done nothing to forfeit the rights and privileges the city conferred upon them.
 The operation of the Defendant Company's railway, it also appears, will have the
 effect of materially diminishing the value of the Plaintiffs' property; and as the
 circumstances of the case are presented in the evidence, I see no reason why the
 Court should hesitate to extend its assistance to the Plaintiffs, if by legitimate
 inference it can come to the conclusion that it was the intention of the legislature
 that the franchise which the city was authorised to grant might also be an
 exclusive one. But I am bound to say that, in my opinion, the Plaintiffs have not 40
 shown anything in the situation or circumstances that existed when the agreement
 was made that would make it what has been termed a "potential necessity" that the
 franchise should be exclusive, or from which I can in anyway legitimately infer that it
 was intended by the legislature that it should be exclusive. At the time it was
 entered into, Winnipeg was a new and growing town, with a population of about
 25,000, and it is well known that at that time it was expected the population
 would increase much more rapidly than it has. Main Street and Portage Avenue

are streets of unusual width, having a uniform width of 132 feet, and the other streets that have been referred to have a width of 66 feet. At this time, none of the streets had been paved, and it is shown that in the spring and fall, and in wet weather, the streets often became impassable for ordinary vehicles. These are about the only facts shown that bear upon the question, and while it may be inferred from them that the city would be desirous of having street railways introduced, they fail to suggest to me any such conclusion as that it was necessary, in order that the city might come to an agreement with the Plaintiffs to build and operate street railways, it should be able to give the Plaintiffs the exclusive right, and to put it out of its power for so long a period of twenty years, to agree to give a similar right to others, should it afterwards prove to be to the public benefit to do so. The width of the streets, especially of the two I am immediately dealing with, is such that it is clearly not physically impossible, or even highly inconvenient or necessarily dangerous for two rival companies to maintain and operate street railways upon them; so it cannot be said that the franchise which the Plaintiffs obtained was one that has sometimes been called a natural monopoly, that is one in which competition would be physically impossible, or necessarily destructive. And there is nothing to show either that at the time the agreement was made, the city, on account of its inability to induce the Plaintiffs or others to undertake the construction of street railways, had either to agree to give the Plaintiffs the monopoly or to do with our railways; and I cannot find that from consideration of this sort or any other, it was necessary that the city should have the power to give the exclusive right, in order that it might be able to carry into effect the powers granted to it.

Then again, the right the Plaintiffs claim they acquired from the city is in the nature of a monopoly. It is true that the right of laying down tracks and operating railways in the public streets is not a right common to all, and the right to do this must come, directly or indirectly, from the Legislature. But others as well as the Plaintiffs might wish to acquire this right, and against all such the Plaintiffs, if they have what they claim, have a practical monopoly. Had the Legislature intended that the Plaintiffs were to be authorised to obtain such a monopoly in the streets of Winnipeg, it would have been very easy, when they were specially dealing with the matter, to have said so; but as they have not said so, the intention that they might obtain such a monopoly is not to be imputed without great reason for so doing.

The section of the city charter that authorises the city or the council to pass bye-laws for the construction of street railways, also authorises bye-laws for regulating and governing them when they are constructed; and it was agreed that this power to regulate implied a power to restrict and limit, and that a bye-law limiting the right to use the streets to the Plaintiffs alone is not unreasonable, and therefore is not *ultra vires*. It is quite true that a power to regulate must in certain cases involve a power not only to limit but also to prohibit, because if it did not the power would, in many cases, be found to be nugatory. If the public benefit sought to be attained in giving a municipality power to regulate can only be obtained by prohibition, then a bye-law going that length may be held to be unreasonable and *ultra vires*.—*Slattery v. Naylor*, 13 Appeal Cases, 446. But the circumstances here, as we have seen, do not show any necessity for

RECORD.
 IV.
 Judgment
 and
 Decree.
 No. 1.
 Judgment of
 Mr. Justice
 Bain
 — continued.

RECORD.

IV.

Judgment
and
Decree.

No. 1.

Judgment of
Mr. Justice

Bain

—continued.

limiting the right to use the streets exclusively to the Plaintiffs. The power to govern and regulate the operation of street railways after they have been constructed is one that is absolutely necessary that the city should have. The word "regulate" in the sub-section has a well defined meaning, and I think the Legislature never intended in using that word that it was to be implied from it that the city might give to one person or company the monopoly of using the streets for a long or indefinite term.

In England, until at least the passing of the Municipal Acts of later years, the powers of incorporated towns and cities rested on an entirely different basis from those of municipal corporations in this province. Here, and in the Province of 10 Ontario, from which our municipal system is closely copied, municipalities have been established directly by the Legislature, for the sole purpose of more conveniently carrying out the details of certain portions of civil government specially delegated to them, and municipal corporations exist only for the purposes for which they were created. This is also the theory and a system of municipal government that exists in, I think, all the states of the United States, and, as has been pointed out by Mr. Brice, in his work on *Ultra Vires*, there is no country in which there are so many corporations, or, in which the law, as to the powers of corporations, municipal and others, has been so much discussed as in the United States. Both in this Court and in the Courts of Ontario, when ques- 20 tions of municipal law are under discussion, decisions of the Courts in the United States, both federal and state, have always been recognised as instructive, and I think I may say that when they do not conflict with principles established by decision of the English Courts, they have very generally been adopted and followed.

Considering the facts of the case in the light of authoritative principles of English law, I have come to the conclusion that I cannot, by what I would consider a legitimate inference, infer from these facts that it was the implied intention of the legislature that the city was to have the power to give the Plaintiffs the exclusive use of the streets, and it is not necessary, therefore, that I should 30 consider at any length the numerous decisions of the United States Courts, both state and federal, that bear upon the question; and it is the less necessary because Mr. Howell fully conceded in the argument, that the whole weight of these cases is against the Plaintiffs' contention.

The principle of construction that these courts apply in construing legislative grants to corporations is thus laid down by the Supreme Court in *Minturn v Larue*, 23 How., 435:—"It is a well settled rule of construction of grants by the legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the Act, or derived therefrom by necessary implication, regard 40 being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favour of the public." And dealing particularly with municipal corporations, Judge Dillon, in his well-known work on municipal corporations, at s. 89, uses the following language, that has more than once been expressly adopted by the Courts: "Municipal corporations," he says, "can exercise the following powers, and no other: First, those granted in express terms; second, those necessarily and fairly implied in, or

“ incidental to the powers expressly granted ; third, those essential to the declared
 “ objects and purposes of the corporation, not simply convenient, but indispensable.
 “ Any fair, reasonable doubt concerning the existence of power is resolved by the
 “ Courts against the corporation, and the power is denied.” And in such cases
 as *Minturn v. Larue*, above referred to, *Fanning v. Gregorie*, 57 U.S., 523, the
 State of Cincinnati, 18 Ohio State R., 264, *Parkersburg Gas Coy. v. Parkersburg*,
 S. E. R., 650, *Saginaw Gas Light Coy. v. Saginaw*, Fed. Reporter, vol. 28, No. 10,
 529, and many others that might be cited, the above principles have been applied,
 with the result that claims for exclusive rights in public franchises, resting on the
 10 implied powers of municipal corporations to grant such franchises, have been
 denied. As was said in one of these cases, nothing will be intended from a
 legislative grant to a municipal corporation.

If I were able to regard the city as having been in the position of a man who
 could do with his own as he pleased, I cannot say that I could see anything
 unreasonable in its undertaking to give the Plaintiffs the monopoly of the
 streets for twenty years in consideration of the Plaintiffs undertaking to introduce
 and operate street railways. But that is a view of the city's position that I am
 clearly precluded from taking. It could act in the matter only as it was
 authorised to do by the legislature, and I cannot find that the legislature either
 20 expressly or by implication authorised it to give the Plaintiffs the monopoly of the
 whole of the streets, or that it was necessary that the city should have given this
 monopoly in order that it might carry into effect the authority that it did receive.
 If I am right in this view, then the Plaintiffs cannot have the legal right they claim,
 and having failed to establish their legal right they cannot be entitled to an
 injunction.

I have considered the case as it specially refers to Main Street and Portage
 Avenue, but if the Plaintiffs are not entitled to an injunction as to these streets
 they cannot, of course, be entitled to one as to the other streets mentioned in
 the Bill.

30 Even if it could be held that the city had authority and power to give the
 Plaintiffs the monopoly they claim, they would still have to face the conten-
 tion of the Defendants that the city did not in fact give them this monopoly. The
 exclusive right mentioned in the bye-law and the agreement, the Defendants say
 is limited to the portion of the street actually occupied by the railway, and further,
 to a railway operated by the force or power of animals. However, as I have
 decided against the Plaintiffs in the other branch of the case, it is not necessary
 that I should express any opinion as to what is the proper construction of the
 bye-law and agreement.

It appears that the line or tracks of the Defendant Company's railway cross
 40 the Plaintiffs' tracks in several places on Main Street and Portage Avenue ;
 and the Plaintiffs' bill contains a prayer that the Defendant Company may be
 restrained from crossing the Plaintiffs' tracks except for the purposes of crossing
 the same to run upon the streets which are not occupied by the Plaintiffs, and
 which the Plaintiffs do not wish to occupy. But if the Defendant Company has
 the right to lay down and operate its railway on these streets, section 33 of their
 Act of Incorporation gives them power to cross the lines of the Plaintiffs' railway
 subject to the provisions of the Manitoba Railway Act ; and it is shown that, under

RECORD.

 IV.
 Judgment
 and
 Decree.

 No. 2.
 Judgment of
 Mr. Justice
 Bain

—continued.

RECORD.
 IV.
 Judgment
 and
 Decree.

the provisions of the last-mentioned Act, the Railway Committee of the Privy Council has approved of the several crossings, and that the Defendant Company has complied with the directions of the Committee in regard thereto.

The Plaintiffs' Bill is dismissed with costs.

(Signed) J. F. BAIN, J.

12th December, 1892.

No. 2.
 Order
 dismissing
 Plaintiff
 Company's
 Bill of
 Complaint,
 with costs,
 dated
 14th Dec.,
 1892.

"E."

In the Queen's Bench.—In Equity.

Mr. Justice Bain.

Wednesday, the fourteenth day of December, A.D. 1892.

10

Between

The Winnipeg Street Railway Company. *Plaintiffs,*
 and

The Winnipeg Electric Street Railway Company and the City
 of Winnipeg *Defendants.*

This cause, coming on to be heard on the fourteenth day of November, 1892, at the sittings of this Court, holden at the City of Winnipeg, for the examination of witnesses and hearing of causes. Upon opening of the matter and upon hearing read the pleadings, and upon hearing the evidence adduced on the part of the Plaintiffs and Defendants, and what was alleged by counsel aforesaid, THIS COURT DID ORDER, That this cause should stand over for judgment, and the same coming on this present day for judgment,

THIS COURT DOETH ORDER, That the bill of complaint in this cause be, and the same is, hereby dismissed with costs, including costs of the motion for an interlocutory injunction, to be paid by the Plaintiffs to the Defendants forthwith, after taxation thereof.

R. J. WILSON, Registrar.

V.
 In the Court
 of Queen's
 Bench
 (in banc).
 Re-hearing
 by way of
 Appeal.

"F."

In the Queen's Bench.—In Equity.

Between

The Winnipeg Street Railway Company *Plaintiffs.*
 and

The Winnipeg Electric Street Railway Company and the City
 of Winnipeg *Defendants.*

30

No. 1.
 Præcipe,
 setting Cause
 down for
 re-hearing
 by way of
 Appeal

Set this cause down to be reheard before the Full Court *in banc*, by way of appeal from the decree made herein at the hearing.

The Plaintiffs seek to have the whole decree reversed. and seek the relief asked for in the bill of complaint, with costs.

Dated the 11th day of January, A.D. 1893.

ARCHIBALD HOWELL & CUMBERLAND. 40
 Plaintiffs' Solicitors.

To Geoff. H. Walker, Esq., Prothonotary.

"G."

The Winnipeg Street Railway Company

vs.

The Winnipeg Electric Street Railway Company and The City of Winnipeg.

JUDGMENT by Taylor, C.J.

The Act 45 Vic., c. 36 M, incorporating the City of Winnipeg, passed in 1882, provided by sec. 154 that the city council might pass bye-laws, among other things, (7) for authorising the construction of any street railway or tramway upon any of the streets or highways within the city, and for regulating
10 and governing the same, and for fixing the rates to be charged thereon. The Plaintiff Company was incorporated in 1882, by the Act 45 Vic., c. 37 M. In the same year, under an agreement with the City of Winnipeg, dated 7th July, 1882, entered into under the authority and in pursuance of a bye-law of the city council, No. 178, and passed on the 12th June, 1882, the Plaintiff Company constructed a tramway or street railway upon Main Street, in the City of Winnipeg, from the Assiniboine River on the south to the Canadian Pacific Railway Station on the north. A few years after a branch line was constructed from the junction of Main Street and Portage Avenue, running along Portage Avenue as far as Kennedy Street, and thence along that street as far as Broadway.
20 Still later the line on Main Street was continued on that street, north from the Canadian Pacific Railway Station, and as far as the parish of Kildonan. The original line and these extensions have ever since their construction been and now are operated by the Plaintiff Company, according to terms and provisions of the bye-law and agreement. The Act of Incorporation, bye-law and agreement all provide that the motive power used shall be "the force, and power of animals, " or such other motive power as may be authorised by the said council of the "said city."

In 1892 the city council passed another bye-law, No. 543, which, after reciting that certain persons therein named had applied for the right and privilege
30 to construct and operate a double or single track railway over and along the streets and highways of the city, proceeded to grant the applicants the privilege applied for, the motive power used to be "electric power, or such other power as "may be found practicable." Following upon this, certain persons, including those named in bye-law No. 543, were by 55 Vic., c. 56 M., incorporated as the Winnipeg Electric Street Railway Company, and the bye-law was thereby validated and confirmed in all respects as if it had been enacted by the legislature. In pursuance of this bye-law the Defendant Company have constructed, and are now operating by electricity a street railway with tracks on Main Street and Portage Avenue, laid alongside those of the Plaintiff Company, and also upon
40 other streets of the city.

The Plaintiff Company claim that they are, under bye-law No. 178, and their agreement with the city, entitled to the exclusive use of the streets upon which they are operating their lines for street railway purposes, and have begun this suit to obtain an injunction restraining the Defendant Company from operating their line of railway, and for a declaration that they have a legal right to the exclusive use which they claim.

The Act 55 Vic., c. 56, incorporating the Defendant Company, was opposed

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RECORD.

V.

*In the Court
of Queen's
Bench
(in banc):
Re-hearing
by way of
Appeal.*

No. 2.

Judgment by
Taylor, C.J.,
Dubuc, J.,
concurring.

RECORD. by the Plaintiff Company before the Private Bills Committee of this legislature, so it was passed by the Legislature with full knowledge that the Plaintiff Company claimed the exclusive right now asserted in this suit. But the 23rd section of the Act provides that, "Nothing contained in this Act, or in the schedule there-
 to, shall in any way affect or take away any right held by, vested in or belonging
 to the Winnipeg Street Railway Company, if any such there be; but any such
 right may be held and exercised by the Winnipeg Street Railway Company as
 fully and effectually as if this Act had not been passed." The bye-law No. 543
 is also expressed to be made "subject to the legal rights" of the Plaintiff Com-
 pany. It is therefore necessary to enquire what these are, and whether the 10
 Plaintiff Company have the exclusive rights and privileges claimed. They con-
 cede that if they have no exclusive right, or if, though the bye-law and agreement
 purport to give an exclusive right, it was not in the power of the city council to
 grant it, they cannot maintain their suit.

V.
*In the Court
 of Queen's
 Bench
 (in banc).
 Re-hearing
 by way of
 Appeal.*

No. 2.
**Judgment by
 Taylor, C.J.,
 Dubuc, J.,
 concurring
 —continued.**

The Plaintiff Company insist that, for the period of time mentioned in the bye-law and agreement, they have acquired the legal right to the exclusive use of such streets in the city as they may occupy with their line of railway; that is, that they are entitled to the exclusive use of the whole width as well as length of the streets so occupied by them.

The Act incorporating the Plaintiff Company provides, in section 9, that the 20
 company, on obtaining the consent of the city, shall "have full power and
 authority to use and occupy any and such parts of any of the streets or high-
 ways aforesaid as may be required for the purposes of their railway track."
 The wording of the bye-law, clause 1, and of clause 1 of the agreement, is,
 "such railway shall have the exclusive right to such portion of any street or
 streets as shall be occupied by said railway." On these words great reliance is
 placed. But there are other arguments used in favour of exclusiveness, such as
 that onerous conditions were imposed upon the Plaintiff Company, and they have
 fulfilled these; that in the very nature of things, and the conditions of a railway
 track, there must be an exclusiveness; and that unless an exclusive right had been 30
 given, no one would have made or taken the risk and expended such a large
 amount of money as they have done.

The position taken by the Defendant Company is, that the Plaintiff Company
 have no such exclusive right as is claimed, and that they have an Act of the legis-
 lature, and the bye-law thereby confirmed, giving them certain rights, the Court
 should not interfere by injunction, but should leave the Plaintiff Company to
 enforce against the city any rights they may have. As to this, I agree with the
 learned judge who heard the case in the first instance, that the Act incorporating
 the Defendant Company, having in effect been based on the supposition that the
 Plaintiff Company have not the right now claimed, the jurisdiction of the Court 40
 cannot be said to be taken away. Though I also agree with him, that before the
 Court will interfere, so as to defeat the legislative grant to the Defendant
 Company, the Plaintiff Company must place the legal right they claim beyond
 doubt.

The Plaintiff Company assert that an exclusive right has been granted to
 them, and that it was within the corporate power of the city to grant such a
 right. The Defendant Company on the other hand, attack both of these pro-

positions and say, the city did not grant an exclusive right, and if it undertook to do so the grant is invalid, because it exceeded its corporate powers in making such a grant. The learned judge at the hearing dealt with the powers of the city, and having come to the conclusion that granting an exclusive right was beyond its authority, it was unnecessary for him to consider whether the city did undertake to confer such a right by the bye-law and agreement with the Plaintiff Company.

Counsel for the Plaintiff Company concede that the American cases dealing with the powers of municipal corporations may be considered as opposed to the
 10 position which they take, and that Cooley in his work on Constitutional Limitations at page 231, fairly states the law as expounded by the American Courts. "The general disposition of the courts in this country has been to confine
 "municipalities within the limits that a strict construction of the grants of
 "powers in their charters will assign them; thus applying substantially the same
 "rule that is applied in charters of private incorporation. The reasonable
 "presumption is, that the state has granted in clear and unmistakable terms all
 "it has designed to grant at all."

This doctrine seems to have prevailed from an early period in the United States, though perhaps for the first time so distinctly asserted in Charles River
 20 Bridge v. The Warren Bridge Co., 36 U.S., 420, a case in which, however, two judges dissented, one of them being the eminent jurist Judge Storey. Since then the rule of strict construction as applied to such charters has prevailed, and as a learned judge in the Supreme Court of Pennsylvania once said: "In the
 "construction of a charter, to be in doubt is to be resolved, and every resolution
 "which springs from doubt is against the corporation."

Dillon, in his work on Municipal Corporations, at sec. 91, says:—"The
 "rule of strict construction is not as directly applicable to the ordinary clauses in
 "the charters or incorporating acts of municipalities as it is to the charters of
 "private corporations; but it is equally applicable to grants of powers to
 30 "municipal and public bodies, which are out of the usual range, or which may
 "result in public burdens, or which in their exercise touch the right to liberty
 "or property, or, as it may compenduously be expressed, any common law right
 "of the citizen or inhabitant." In the "American and English Encyc. of Law,"
 vol. 15, p. 1,055, after stating in the text that a municipal corporation cannot, in
 the absence of express legislative authority, grant to any person or corporation
 the exclusive privilege of using the streets for laying gas or water pipes, street
 railway tracks, &c., it is said in a note that the weight of judicial authority supports
 this statement in the text, although there are several decisions which
 sustain the contrary doctrine. Two such cases are there cited. One, Newport
 40 vs. Light Co., 8 Ky. Law Rep., 22, which was relied upon by Mr. Howell in this
 argument; the other, Desmoines Street Railway Co. vs. Desmoines, 73 Iowa, 513.
 In that case the Court held that, although there was no grant of power in express
 terms authorising the council to confer an exclusive privilege in the use of
 streets, yet, under the circumstances of the case and to procure a better public
 service, the council could grant a valid exclusive right for a limited period, such
 contract being necessary to secure the service which it might not otherwise be
 able to obtain. It would appear, however, that the power there given the city

RECORD.

V.
 In the Court
 of Queen's
 Bench
 (in banc).
 Re-hearing
 by way of
 Appeal.

No. 2.
 Judgment by
 Taylor, C.J.,
 Dubuc, J.,
 concurring
 —continued.

RECORD.

V.

In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.

No. 2.

Judgment by
Taylor, C.J.,
Dubuc, J.,
concurring
—continued.

was somewhat peculiarly worded, as it seems to have been authorised "to grant
"or prohibit" the laying down street car tracks within its limits.

It is, however, insisted that under English law the powers of municipal corporations are broader than those of other corporations. For this Brice, on *ultra vires*, is relied upon at page 516, where he says: "A wider and more liberal
"construction will be put upon the powers vested in bodies, such as local govern-
"ment boards, municipal corporations, and sewage commissioners, whose duties
"are the accomplishment of public improvements." The learned Judge has gone
very fully into the consideration of the English authorities bearing upon the manner
in which powers given by the legislature to corporations are to be construed. 10
Applying the principles laid down in these to the present case, he held that there
was not anything in the nature of the situation, and in the circumstances from
which it is a legitimate and reasonable inference that, when the legislature
authorised the city to arrange for the construction of street railways, and to make
an agreement with the Plaintiff Company, it also intended that the city might
agree that the Plaintiff Company alone should be able to obtain the privilege of
using the streets for street railway purposes during the time limited. With the
conclusion so arrived at by him I quite agree. I also concur with him in the
finding that it has not been shown by the Plaintiff Company that there was any-
thing in the existing situation and circumstances, when the agreement was entered 20
into, which would make this franchise, being exclusive, what has been spoken of
as a potential necessity.

Whatever argument may be brought forward as to the broader powers of
municipal corporations, there are numerous cases showing plainly that strict
compliance with the provisions of any statute by which the rights of the public
to the use of every part of a highway are interfered with, is necessary, and they
must be strictly followed. In *Ponthren v. Pennefather*, 5 Taunt., 634; *Rex v.*
Justices of Worcestershire, 8 B. and C., 254; *Reg. v. Justices of Kent*, 10 B. and C.,
477; *Rex v. Justices of Cambridgeshire*, 4 A. and E., 111; *Rex v. Downshire*,
4 A. and E., 698; *Rex v. Milverton*, 5 A. and E., 841, may be referred to on 30
this point. In the Province of Ontario the powers of municipal corporations as
to dealing with public highways have also been strictly construed, and they have
been rigidly confined within the powers given by statute, *Reg. v. Great Western*
Railway, 32 U. C. R., 506; *re Lawrence and Thinlow*, 33 U. C. R., 223;
Cameron v. Waite, 3 App. R., 175; *re Laplante and Peterborough*, 50 R., 634.
In *Winter v. Keown*, 22 U. C. R., 341, Hagarty, J., said: "The legislature has
"given a certain power to the municipality, and it seems to me that such power
"must be strictly executed."

On the contention of the Plaintiff Company, the city having power to pass
bye-laws for the construction of any street railway have done so, giving them an 40
exclusive right for twenty years. No doubt the city, having once made an
agreement with the Plaintiff Company, might decline for twenty years to entertain
proposals on the part of any other person or corporation to construct any other street
railway, and in that way practically give the Plaintiff an exclusive right, but it
would be for the council of any particular year in which such a proposal might be
made to consider and deal with it. Here it is claimed that the city has bound itself
that no council shall for twenty years consider any such proposal. In other words,

the council of 1882 agreed that they and their successors, for twenty years to come, should abdicate part of their powers as a council. *Ayr Harbour Trustees v. Oswald*, 8 App. Cases, 623 *Vandecar v. East Oxford*, 3 App. R., 131, are authorities that they could not do so. I also agree with the conclusion come to by the learned judge, that whatever property in the streets as streets was vested in the city, the power to dispose of or deal with these streets was strictly limited by its corporate powers.

But did the city grant, or undertake to grant, to the Plaintiff Company the exclusive right claimed? I cannot see that the city made any such grant. It is only in the first clause of the bye-law, and in the first clause of the agreement that any direct mention of exclusiveness is made. Throughout the bye-law and agreement there are two distinct things spoken of and dealt with, the "company" and the "railway." Now, taking the plain language of the bye-law and agreement, it seems to me it is not the company but the railway that is given any exclusive right. The company is authorised and empowered "to construct, maintain, complete and operate" . . . "a double or single track railway" . . . "upon and along any of the streets or highways of the city" . . . "and such railway shall have the exclusive right to such portion of any street or streets as shall be occupied by said railway." Now, any grant to a company authorising the construction of a street railway, must confer an exclusive right to a certain extent. Once the track and rails are laid, it is evident no other company can lay a track and rails upon the same space of ground as has already been occupied by the track and rails of the first company. To permit such a thing would certainly hinder, if not entirely prevent the operation of the railway by both companies. The language used there seems to me carefully used to express just that extent of exclusiveness necessarily involved in the nature of things, in the construction of a street railway.

Then the first part of clause 16 of the bye-law, and clause 17 of the agreement, show that even this right is a limited one, for it is provided that vehicles may travel on, along or across the track, subject only to the obligation to turn out on the approach of any car so as to leave the track free. The Plaintiff Company may have such a right to the portions of the streets actually occupied by their tracks and rails as is in the very nature of things involved in the having a railway track at all, but that is something widely different from what they claim, an exclusive right to the whole length and width of every street on which they have a track laid.

Further, section 9 of the Plaintiff Company's charter shows this limited right to have been all that the legislature intended should be dealt with. The language used there is: "The company shall have full power and authority to use and occupy any and such parts of any of the streets and highways aforesaid, as may be required for the purposes of their railway track, and laying of the rails and running of their cars." That gives no countenance to the claim of the Plaintiff Company. To support such a claim one would expect to find some provision that they are to have full power and authority to use those streets or highways on which they may lay their tracks. On the contrary, it is only such part of any street as may be required for the purposes of the track, distinctly confining their right within that limit.

RECORD.

V.
In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.

No. 2.
Judgment by
Taylor, C.J.,
Dubuc, J.,
concurring
—continued.

RECORD.

V.
*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 2.
Judgment by
Taylor, C.J.,
Dubuc, J.,
concurring
—continued.

The exclusive right of ferries was urged as an argument in support of the claim of the Plaintiff Company, but I can see no analogy between this case and that of a ferry. Ancient ferries, and I believe ancient ferries only, are held to have exclusive rights, but they are so for the reason assigned by Blackstone, vol. 3, p. 219, "Where there is a ferry by prescription, the owner is bound to keep it always in repair and readiness for the ease of all the king's subjects; otherwise he may be grievously amerced."

This passage was quoted with approval in *Letton v. Goodden*, L.R., 2 Eq. 132. The same principle, the obligation to maintain the ferry, was remarked on in *Hopkins vs. Great Northern Railway Company*, 2 Q.B.D., 224. It is true, in 10 *Newton v. Cubitt*, 12 C.B., N.S., 32, Willes, J., spoke of the exclusive right as given, because in an unpopulous place there might not be profit sufficient to maintain the boat without a monopoly. The obligation to maintain the ferry seems however, the true ground, and on that ground *Kindersley, V.C.*, put it in *Letton v. Goodden*, L.R., 2 Eq., 133, "The only ground," he said, "upon which the owner of an ancient ferry can claim protection is the obligation he is under to keep the ferry always in a fit state for the use of the public; and it is upon this principle alone that the several cases which have been cited in which the owner of the ferry has been protected, have been decided."

Now, I can find nothing in this bye-law or agreement at all analogous to the 20 obligation to keep the ferry in a fit state for the use of the public. There is nothing in either of them under which the Plaintiff Company can be compelled to operate their street railway. They are, it is true, to place and continue on their railway tracks good and sufficient cars, they are to run the cars during and at such times as the council may direct, and so on but suppose they do not comply with these requirements, and wholly cease to operate the railway—what then?

There is nothing in the bye-law or agreement under which they can be made to operate the railway. Clause 22 of the bye-law, clause 24 in the agreement, does not seem to provide for a forfeiture of privileges in case of failure to keep the railway in operation. That seems to refer to clause 9 of the bye-law, 10 of 30 the agreement. What is provided for is that the company shall complete their tracks and have cars running within a limited time, and failing that shall forfeit the privileges and rights. The "do all that is required of it, in the manner provided for in this bye-law, within the time limited therein," must refer to the matters dealt with by such clauses as 2, 4, and 5 of the bye-law.

Upon the argument counsel for the Plaintiff Company dealt largely with the exclusive right claimed, and the powers of the city, and the construction of the bye-law and agreement as bearing upon that question. Little was said as to any rights the Plaintiff Company may have under clause 25 of the bye-law, 27 of the agreement, but these are referred to in the bill of complaint. 40

They are considered by my brother Killam in his judgment, and as I agree with what he says, I do not dwell upon them.

Upon both grounds then, that the city had no power to confer an exclusive right, and that it has not given nor undertaken to give any such right, the contention of the Plaintiff Company, in my opinion, fails, and the decree made at the hearing should be affirmed, with costs.

Dubuc, J., concurred in judgment of the Chief Justice.

Winnipeg Street Railway Company,

v.

Winnipeg Electric Street Railway Company and the City of Winnipeg.

JUDGMENT.

Killam, J.:—The Plaintiff Company was incorporated by Act of the provincial legislature, 45 Vic., c. 37, for the purpose of constructing and operating street railways, in the City of Winnipeg and adjacent territory. A bye-law was then passed by the council of the city, authorising the company to construct and operate such railways on the streets of Winnipeg, and an agreement was entered
 10 into between the civic corporation and the company embodying the terms of the bye-law. The Plaintiff has constructed, and has for several years operated such lines of railway on some of the streets of the city. This company claims that under and by virtue of this statute, bye-law and agreement it has the exclusive right, for a certain period, to construct and operate street railways in Winnipeg. It alleges that this right has been infringed by the passage by the council of the Defendant Corporation, the City of Winnipeg, of a bye-law authorising the Defendant Company to construct and operate similar railway, and by the construction of such new lines, partly on the streets on which the Plaintiffs' railways are, and partly on other streets, and this suit is brought to enforce the right claim.
 20 The suit came up for hearing before my brother Bain, who dismissed the bill on the sole ground that the city corporation had no power to grant such an exclusive right. The Plaintiff now seeks to have this judgment reversed, and to obtain a decree in accordance with the prayer of its bill of complaint.

The principal prayer of the bill, and the one to which the arguments before us were almost exclusively directed, as to declaration of such a right as to the streets on which the Plaintiffs' lines have been built, and an injunction to restrain the Defendant Company from constructing or operating such railways on these streets, two main points were raised and argued on this rehearing:—First, as to the power of the city corporation to bind itself by such an agreement; and
 30 secondly, as to the proper construction of the agreement.

In considering the former of these questions, it appears to me unimportant to determine the limits of corporate powers generally. For the Plaintiff, it is contended that the property in the soil of the streets is vested in the city corporation, which may therefore bind itself as to the use of that property. But the cases of *Coverdale v. Charlton*, 4 Q.B.D., 104, *Rolls v. St. George's*, 14 Ch. D., 785, and the *Board of Works v. The Union Telephone Company*, 13 Q.B.D., 904, seem to show that this must be regarded as a qualified property. The corporation held the lands for use as streets and highways. Its council had certain powers as to altering or closing these streets, and if it should exercise
 40 such powers some question might arise as to the ownership of any portion thus ceasing to be public highways. With this, however, we have nothing now to do.

I take it that, without statutory authority, the corporation could not authorise the construction and operation of a street railway along and upon a public street. Such a structure would be regarded in law as a nuisance—at least, if so found by a jury. This appears to have been settled in *Reg. v. Train*, 3 F. and F., 22, 2 B. and S., 640; 9 Cox C.C., 180. Certainly without statutory authority the corporation or its council could give no right of occupation of a

RECORD.

v.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.
Judgment of
Killam, J.

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.

— continued.

portion of the streets as against the public, or compel the public to give way to the vehicles of the railway proprietors. I doubt if it could even grant such a right of occupation for railway purposes enforceable as against the corporation itself. It does not seem possible, then, to treat the case as one in which the corporation was disposing of some interest in a portion of its lands, and assuming to bind itself not to allow a certain user of the remainder, or some part of the remainder.

By the Plaintiffs' Act of Incorporation, 45 Vic., c. 37, s. 8, the Plaintiff Company was authorised "to construct, maintain, complete and operate, and from time to time remove and change a double or single track iron railway, with the necessary side tracks, switches and turn-outs for the passage of cars," &c., upon and along the streets and highways in Winnipeg. And by s. 9 the company was given "full power and authority to use and occupy any and such parts of any of the streets or highways aforesaid as may be required for the purposes of their railway track, the laying of the rails and the running of their cars and carriages," with a proviso requiring the consent of the city corporation, and authorising it "to grant permission to the said company to construct their railway as aforesaid . . . across and along, and to use and occupy the said streets or highways, or any part of them, for that purpose, upon such condition and for such period or periods as may be respectively agreed upon between the company and the said city," &c.

At that time the only statutory authority in force, expressly referring to street railways in Winnipeg, was contained in the Act 38 Vic., c. 50, s. 107, s.-s. 5, by which the city council was authorised to pass bye-laws "for regulating and governing street railway companies and fixing the rates to be charged thereon." But three days after the passing of the Plaintiffs' Act the Consolidated Charter of the city, 45 Vic., c. 36, received the assent of the Lieutenant-Governor. And, as if the legislature, in the consideration of the question had found it desirable to make the powers of the council upon the subject more clear, the council was, by the later Act, s. 104, s.-s. 7, empowered to pass bye-laws "for authorising the construction of any street railway or tramway upon any of the streets or highways within the city, and for regulating and governing the same," &c.

I am unable to accede to the argument of the Plaintiffs' counsel that this gave power to authorise the construction of only one such railway, or one such along on any particular street. It appears to me that the power thus given was as general as it was possible to make it, and that it enabled the council to authorise as many sets of railway tracks on any particular street, under the management or control of as many different persons or bodies, as the council might deem proper, and the circumstances might admit.

The real question then is, whether the council by bye-law, or the corporation by agreement, could deprive the council of the right to exercise any such power. I am of opinion that neither of them could do so without statutory authority.

The right to use the streets as highways is the right of the public generally, not that of the inhabitants of Winnipeg alone. In exercising its powers respecting the streets, the city council is not merely the agent or the governing body of the city corporation or of the ratepayers. It is also a public body, having those powers vested in it on public grounds.

Although a railway track may constitute such an obstruction to the free use in some ways of the streets, that, if constructed without authority, it would be a nuisance, yet experience has shown that the facilities afforded by such a structure are so great, and that the extent of the obstruction occasioned by it may be so minimised, that it is really a valuable aid to the traffic of the streets. In the United States, the doctrine seems firmly settled, that the laying down of rails on the street and the running thereon of cars for the conveyance of passengers, is only a later mode of using the street as a way—that it is a change in the mode only, and not in the use. See *Briggs v. The Lewiston and Auburn Horse R. R. Co.*, 79 Me., 363; *Williams v. The City Electric Street R. Co.*, 41 Fed. Rep. 556; *Halsey v. The Rapid Transit Street Ry. Co.*, 20 Atl. Rep. 859; *Lockhart v. The Craig St. R. Co.*, 139 Penn. St. 419.

The evidence in this case shows that the railway track under some circumstances, might even facilitate the ordinary modes of traffic of a street.

The council, then, in the power to pass bye-laws upon this subject, was given an important discretionary power, to be exercised in the public interest. Certainly it was not obliged to authorise the construction of any such railway or to allow any particular applicant to construct one; and it might, by its bye-laws, limit the number of such tracks to be laid on any particular street. But, by the Interpretation Act of Manitoba, C.S.M., c. 71, s. S. s. 29, “Where power to make bye-laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same and make others if deemed expedient.” Any limit thus fixed by the council, therefore, should be changed. Neither the council nor the corporation can change this Act of the Legislature, or lessen the authority thus given, unless under other statutory authority.

Any attempt to limit these powers would be an attempt to change the constitution granted by the legislature. These views appear to be supported by the decisions in *Reg. v. The Governors of Darlington School*, 6 Q.B., 682, 717; *Mulliner v. The Midland Ry. Co.*, 11 Ch. D. 611; *Ayr Harbour Trustees v. Oswald*, 8 App. C. 623; *Vandecar v. E. Oxford*, 3 Ont. A.R., 131; *Thomas v. The Rail Road Co.*, 101 U.S., 71.

But the express power thus given to alter or revoke bye-laws is subject to the limitations in s. 6 of the Interpretation Act, “except in so far as the provisions thereof are inconsistent with the intent and object of such Act, or the interpretation which such provisions would give to any word, expression, or clause, is inconsistent with the context.” Naturally, the power to authorise the construction of street railways involved the granting of a privilege under which money would be expended; and it would seem inconsistent with this that the council should have power to withdraw the authority to construct in the midst of the work, or to render it nugatory by taking away any right of operation it might give, or by granting other privileges inconsistent therewith. There would then, apparently be an implied limitation upon the power of the council to pass bye-laws authorising such construction. But it seems impossible to limit express statutory power by implication to any greater extent than is absolutely necessary to attain the object of the Act, and any such implied restriction would seem to extend only to the authorising and doing of acts

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.

—continued.

RECORD. directly interfering with the construction, maintenances and operation of the railway. It appears to me that, at most, there could not be thus implied any greater limitation upon the powers of the council than is involved in the Plaintiffs' own Act of Incorporation.

v.
In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.

Now, that Act gave to the Plaintiff Company, subject to a condition precedent, a statutory right to construct and operate railways on the streets of Winnipeg, and to occupy and use so much of the streets as may be requisite for the purpose.

No. 3.
Judgment of
Killam, J.
—continued.

The condition precedent was the obtaining of permission from the city, which permission itself could be made conditional and be limited as to time.

The inconvenience involved in any attempt to have different sets of tracks, managed by different persons or companies, upon co-incident or nearly co-incident portions of the street, suggest at once the necessity for some restriction of the powers of the council, and that some such was contemplated by the legislature further appears from the right of occupation given to the Plaintiff, and the provision in the fourteenth section, requiring carriages and vehicles to turn off the track.

But, by the terms of the Act itself, the right to use and occupy the streets is a limited one. It is (s. 9) limited to so much as "may be required for the purposes of a railway track, the laying of the rails and the running of the cars and carriages." It is well settled that private Acts, giving special privileges as against the public, are to be construed strictly. Proprietors of the Strowbridge Canal *v.* Wheeley, 2 B. and Ad., 792; *Gildart v. Gladstone*, 11 East, 685; *Priestly v. Foulds*, 2 Sc. N. R., 228; *Barrett v. Stockton and Denver Ry. Co.*, 2 Sc. N. R., 337, 3 Sc. N. R., 815, 8 Sc. N. R., 653. Upon no principle, then, does it seem possible to imply in the corporation a right to contract its council out of the power to authorise the construction of street railways upon any portion of a street not actually required for the Plaintiff's sets of tracks, switches, &c., and for the running of cars thereon.

The Plaintiff's counsel relies on the word "condition" in the 9th section, and the power to make "any agreement" conferred on the council of the city by the 17th section of the Plaintiff's Act, as giving the necessary authority. But here again the principle of strict construction applies. The word "condition" is one so frequently used in a loose sense that it may be very easy to imply from the context a much wider meaning than its proper one, as was done in *Walker v. Hobbs*, 23 Q.B.D., 458. But the natural signification of the word is that given to it in *Ex parte Collins*, L.R., 10 Ch. 372, and *Ex parte Popplewell*, 21 Ch. D., 73. Ordinarily it "denotes something which prejudicially affects the interest of the donee." The city was empowered to grant a permission upon condition, which certainly involves no authority to give something beyond a permission. And the agreements that might be made were confined to certain specific subjects, which are of such a nature as to suggest the reserving to the city authorities of certain rights and powers restrictive of the Plaintiff's right of occupation, rather than the further limiting of the powers of those authorities. I cannot infer from the power to make any agreement on those subjects a power of the city corporation to bind itself to give as

consideration for beneficial covenants of the railway company on any of these subjects something otherwise beyond its powers. Could it be said, for instance, that it could pledge itself to establish and carry on the manufacture of rails or railway carriages for the purpose of supplying them cheaply to the Plaintiff? Could it bind the council to forego its police or sanitary powers by way of consideration for any such covenant? It is impossible to imply from such a clause authority in the corporation or the council to divest itself of statutory powers to any greater extent than the nature of the subject matter necessarily involves. And the onus of establishing such an authority must be thrown on the party
 10 asserting its existence. In my opinion, there is nothing even to suggest it.

Upon the other question also, I think that the Defendants are entitled to our judgment.

It has been contended that the maxim, *Verba Chartarum fortius accipiuntur contra proferentem*, should be applied in the construction of the bye-law and agreement upon which the Plaintiff's case depends. So far as relates to the granting of the exclusive franchise claimed by the Plaintiff, I am not sure that this would be a correct principle to adopt; that is, with an assumption that the grant of privileges is to be taken as in the language of the grantor, the city corporation. Many of the considerations applicable
 20 to private Acts of Parliament would seem to be involved. The council is very much in the position of a legislature assuming to bind the public. A private individual or company has the advantage of dealing with it. There is none on the other side equally interested to see that the rights of the public are preserved. Even the most honest and most capable members of the council seldom bring to bear in the public interest the same energy and astuteness which they exercise in their private affairs. The grant is frequently, if not usually, made in the language of the applicant, as in case of a private Act of Parliament. In this very case it appears that, in the course of the negotiations for the establishment of railways to be operated by electric power, the Plaintiff was asked
 30 to submit, and did submit, a form of bye-law for the consideration of the council.

But however this may be, it does not appear to me that there is in these documents any real ambiguity which can require the application of the maxim.

The bye-law begins with a recital of the Plaintiff's Act of Incorporation, and the powers thereby given to the city and the company to make an agreement for the construction and operation of a street railway. While this would not exclude the application of powers otherwise derived, it suggests very strongly that the object was the fulfilment of the condition upon which the Plaintiff's
 40 statutory right to occupy and use the streets for railway purposes depended.

The scheme of both bye-law and agreement appears to be this: That the grant of privileges is first made, and then the condition and limitations of the grant and the burdens upon the company are set out. This is the more apparent in the agreement, as the first clause alone purports to emanate from the City Corporation; the remainder purports to consist only of the covenants of the company, this scheme, however, is not logically carried out, as in the 16th clause of the bye-law and the corre-

RECORD.

V.
 In the Court
 of Queen's
 Bench
 (in banc),
 Re-hearing
 by way of
 Appeal.

No. 3.
 Judgment of
 Killam, J.
 — continued.

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.

—continued.

sponding clauses of the agreement there are a grant of a right of way, and provision for the imposition of a penalty for obstructing the passage of cars. Even these, however, are apparently thus placed in connection with the limitation in favour of the public upon the right originally granted, and as if to make more clear the relative rights of the company and the public.

Now what do these instruments purport to grant? There is, first, the permission to construct, &c., the railway lines and to run cars thereon, &c. Then follows the proviso making this subject to the subsequently mentioned conditions. Then the clause concludes with something not directly expressed in the statute: "And such railway shall have the exclusive right of such portion of any street or 10 streets as shall be occupied by such railway." It is not very easy to determine whether it was intentional, or by a mere slip, that this right was granted to the railway and not to the company. Undoubtedly it should be so read as to give the provision a reasonable effect. It is possible that it was thus put, although clumsily, to show that it was to exclude other railways. It is noticeable also that, while the statute gave a right "to use and occupy" the streets, or portions thereof, so far as requisite, conditionally upon the grant of permission by the civic corporation, the bye-law and agreement grant no such permission in those terms. Apparently this "exclusive right" took the place of that portion of the statute, and was substituted in order to make it more clear that the right of 20 occupation was to be excluded as against all but the ordinary public traffic of the streets, or as against other railways. This exclusive right is not an exclusive right to occupy all the streets of the city, or the whole of any street for railway purposes or otherwise. It is "the exclusive right of such portion of any street, or streets, as shall be occupied by said railway." The grammatical connection of the word "as" is with "such." It is "such portion" . . . "as shall be occupied." The exclusive right is, by the very terms of the provision, limited to a portion of a street or streets.

The first question, naturally, is, In what sense is this word 'occupied' employed? How should the "railway" be said to occupy the street? Or, if by 30 "railway" is meant in both cases "railway company," how should the railway company be said to occupy the street?

In the case of the Pimlico, &c., Tramway Company v. the Assessment Committee of the Greenwich Union, L.R., 9 Q.B. 9, it was held that the tramway company had not a mere easement or right to pass over the streets, but that it was an occupier of the part used. Lush, J., said: "The Act of Parliament enables the proprietors of a tramway to appropriate to their own purposes a given portion of the public road for the purpose of laying down tram rails which are necessary for the conveyance of their cargoes along the line of road; the tram rails occupy a portion of the soil; they are exclusively 40 used by the tramway company for the purposes of the tramway, and that, I think, makes them occupiers of that portion of the soil. I do not think they are the less occupiers because the public have the right of passage of the surface of their iron road. The road as a tramway is in their exclusive use, and used for their exclusive benefit; therefore I agree in thinking that they are occupiers."

And Quain, J., said, "I am unable to distinguish the iron tram rails from

the gas and water pipes; both physically occupy the soil; one is somewhat deeper than the other, the tram rail having the upper surface level with the road; but they both occupy the soil of the road physically, and in exactly the same manner."

By the Plaintiffs Act the Company are given power conditionally to "occupy any and such parts of the streets as may be required for the purposes of their railway track, the laying of the rails, and the running of their cars and carriages." The occupation here referred to is evidently a physical occupation, similar to that referred to in the Pimlico Co.'s case.

10 By the third clause of the bye-law, and the corresponding clause of the agreement, the company was bound to pave, &c., the "portion occupied by the track or tracks," and a portion extending eighteen inches on each side thereof. Apparently, taking with this the previous part of the clause requiring the company to keep in order "the roadway between and at least eighteen inches outside of each rail," and the description of the railway in the statute and bye-law as a double or single track iron railway, the word "track" covered the two rails necessary to support a car and the space between the rails. In this case also the reference was to the physical occupation authorised by the statute.

20 When the Plaintiffs' railway was first constructed it consisted of a single track, composed of two lines of rails built upon ties, eight feet in length, placed at right angles to the rails. The streets were afterwards paved, and in some portions the company laid two sets of tracks, but was compelled to pay for paving eight feet in width, for one set of tracks only. This space appears to represent approximately the width of street required for the passage of cars and the portion which, in respect of each track and side track the Plaintiff Company was authorised to occupy and use. At any rate, even if more space in width were required, it sufficiently appears that there is ample room for the passage of the Plaintiffs' cars without interference, except at and near the crossings by the cars of the other company.

I agree entirely with the contention of the Plaintiffs' counsel that the agreement is not to be construed by reference to a particular clause alone, but the 30 whole tenor and object of the agreement, and every clause in it must be considered for the purposes of the construction of each clause. So far I have referred to the indications offered by the Plaintiffs' Act of Incorporation, the apparent object of bye-law and agreement, and the language of the particular clause under which the Plaintiffs' claim mainly arises. The only portion of the bye-law or the agreement which can by any possibility suggest that a wider meaning should be given to the first clause, or which, in default thereof, can itself give the right claimed, is the twenty-fifth clause of the bye-law and the corresponding one in the agreement. That clause reads, "in the event 40 "of any other parties proposing to construct street railways on any of the streets "not occupied by the parties to whom the privilege is now to be granted, the "nature of the proposal thus made shall be communicated to them, and the "option of constructing such proposed railway on similar conditions as are "herein stipulated shall be offered; but if such preference is not accepted within "two months, then the corporation may grant the privilege to any other parties." The object of this provision appears clear enough. The statute had given to the

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.
—continued.

RECORD. Plaintiffs a general right to construct railways on the streets of Winnipeg subject to the condition that permission should be obtained from the civic corporation. The bye-law and the agreement granted a general permission as all streets, not particularising or excepting any. The only provision made of the revocation of this permission during the original twenty years of the grant even as to the streets not built upon, is that contained in this 25th clause. With no power to revoke it, there might be great difficulty in getting others to build on streets having no railway. The Plaintiff might refuse to build or to renew its right to do so. On most of the streets it would be so inconvenient as to be practically impossible to operate satisfactorily several sets of railway tracks. This served as a protection to the Plaintiff, and at the same time made it desirable that the civic authorities should be able to determine the Plaintiff's right, so that the company could not assist* on duplicating lines, to the inconvenience of the public.

v.
In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.

No. 3.
Judgment of
Killam, J.
—continued.
* (Sic.)

There is one possible construction of the 25th clause which may seem inconsistent with the retention of a right to authorise the construction of other lines upon the same street with the Plaintiff. The clause applies to streets not occupied by the Plaintiff. This might mean all that are not thus wholly occupied. The expression might possibly include even streets on which the Plaintiff's lines are built, but the whole of which those lines do not occupy in this sense I have already given to the word. This would involve the idea that the option had to be given to the Plaintiff of constructing other lines alongside its own, in the event of others seeking to do so. I cannot, however, think that this was intended. The evidence shows that, on two streets at least there was ample room for more tracks than the Plaintiff had power to construct. The Plaintiff's corporate power was at most to construct two sets of tracks with switches &c. Permission was given to construct these. The 25th clause could not have been intended to extend this. I cannot read it as adding to the Plaintiff's rights but merely as enabling the civic authorities to revoke in certain cases the permission given. It is apparently relied on chiefly as showing that the exclusive rights given by the first clause extended to the whole width of the street. Viewing the object of the clause as I do, I cannot ascribe it to this effect. The use of the word "occupied" is somewhat ambiguous, but I am unable to imply from it, or from the clause as a whole, the necessity for giving to the first clause a wider meaning than that which for the reasons given it seems to have.

The Plaintiff's counsel contends that the privilege granted to the Plaintiff's company is a franchise, which should be deemed to be exclusive, on the principle of a ferry franchise. Properly speaking, a franchise is derived from a grant of the Crown, or exists by prescription which presupposes such grant. 2 B. Com. 37. 13 Vin. Abr., tit. Franchise, p. 508. At common law a ferry was unlawful without a license from the Crown. *Blisset v. Harte*, Willes, 512; *Jellett v. Anderson*, 9 S.C.R. 11. Such a franchise, once granted, was regarded as property of which the grantee could not be divested by similar grants to another. 13 Vin. Abr. tit. Franchise 508; B.L. C. 264. But the case of *Letton v. Goodden*, L.R. 2 Equity, 123, shows that the incident of exclusiveness does not necessarily extend to every public ferry.

I concur in the view expressed in the *Chicago City B. Co. v. The people*, 73

l., 541, that the grant by the Municipal Corporation in such a case is a grant of a mere license, and not of a franchise. The franchise, if the term be a proper one, was granted by the legislature. It may be doubted whether any such franchise, except that of incorporation, could have been granted by the Crown. At any rate, I know of no authority for the view that a legislative grant of authority to carry passengers on land, whether by rail or other special method, and whether on or off a highway, is *prima facie*, exclusive. It seems inconsistent with modern ideas to imply such an incident, as well as with the principles of construing private Acts of Parliament. It appears, however, to be clear that in this instance, the legislature did not intend to grant to the Plaintiff Company an exclusive franchise or privilege of constructing and operating street railways in Winnipeg and of taking tolls from all who might desire to use that method of conveyance. Three days after the passage of the Plaintiffs' Act it gave to the city council extended or clearer powers to authorise such railways generally. These provisions were contained by the city Charter of 1884, 47 Vic. c. 78, s. 149, s.s. 129, and were copied into the Municipal Acts after the city was brought under their operation. See 49 Vic., c. 52, s. 349, s.s. 38 (M. 1886), 53 Vic., c. 51, s. 376, s.s. 41 (M. 1890), and R.S.M., c. 100, s. 65 s.s. (t). I do not think, then, we can infer an intent to exclude the construction of such other lines on the same parallel streets with those on which the Plaintiffs might build. Although, as I have said, the width of some streets is shown to be such that room was left outside the portions occupied by the Plaintiffs' line for the construction of other lines, yet it is doubtful whether such could have been paid down to advantage without crossing the Plaintiffs' line at some point. At any rate it appears that the Defendant Company has found it necessary or advantageous to make such crossings. These are the only points at which the new company appears to have directly interfered with the Plaintiffs' lines or to have encroached on the portions of the streets occupied by the Plaintiffs. These crossings are of two kinds—those made for the operating of lines alongside the Plaintiffs, and those for the purpose of connecting with lines on other streets. Were it not for the Statute 55 Vic., c. 56, s. 33, such interference and encroachment would seem unlawful. By that Act, however, the Defendant Company was authorised, subject to the provisions of the Manitoba Railway Act, to make such crossings, notwithstanding any rights of the Plaintiff Company. The Bill distinguishes between two kinds of crossings mentioned, and asks particularly for an injunction against any but the latter kind. It does not appear to me that it is possible to make any difference in this respect. It is doubtful whether, apart from the statute last referred to, the provisions of the Railway Act, R.S.M. c. 130, s-s. 26-30, respecting railway crossings, would apply to such railways as those now in question. But the statute seems now to make these provisions applicable, and to warrant the Defendant Company in constructing such crossings, and in operating its railway lines by means thereof over and across the Plaintiffs' lines under an order of the railway committee of the executive council. It has not been disputed that such an order was made authorising all these crossings, or that the crossings conform to the order. Upon the argument-in-chief no question was raised as to the

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.

—continued.

RECORD. validity of the order, but in reply some such were suggested. Being raised in this way only, and not really argued, I do not consider them.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 3.

Judgment of
Killam, J.

—continued.

The Bill, also, alleges that the Plaintiff Company desires to make extension of its line to certain other named streets, and asks an injunction against the operation by the Defendant Company of any street railway on those streets, and also a declaration that the Plaintiff has the first right to build and construct street railways on any of the streets of Winnipeg not already occupied by the Plaintiff, and that the new company has no right to occupy such streets until the Plaintiff has been offered the privilege of constructing the same, and has not accepted the offer within two months, and also that the city corporation may be restrained by injunction from giving any consent to such user of the streets, which the Plaintiff desires to extend its lines, until the Plaintiff has neglected or two months to accept the offer or proposal to build on the same.

Upon these points some attempt was made by counsel for the Defendant to show that upon the evidence the prescribed offer had been made to the Plaintiff. This, however, appears to me not made out, nor does it appear that any right to such an offer has been in any manner waived. On the other hand, it is not shown that the Plaintiff Company had submitted to the city engineer, or other authorities, any plans of location or construction on new streets, or otherwise taken any overt act towards making such extensions. It is, I think, the necessary result of the opinions I have already expressed that the Plaintiff Company is entitled to no such relief. I regard the twenty-fifth clause already discussed, as merely affording a means of revoking in part the original permission given to the Plaintiff Company, whose right to so extend its line appears still to exist but not yet to be definitely disputed. If it shall see fit to make any attempt in that direction, and it be found that the works of the Defendant Company interfere with such extensions, or if that company, or the civic authorities, try to prevent the same, then will be the time to consider the Plaintiffs' rights in that respect.

The Bill also asks that it be declared that the city had no authority to deprive itself of or to contract away its right to permit the Plaintiff to use electricity as the motive power for propelling street railway cars. Upon this point, also, no argument has been attempted, and it does not seem that we should express any opinion upon it.

I wish to add that, although I have made reference to scarcely any of the numerous cases in the American reports, to which we have been referred, I have examined and considered nearly all of those which have any bearing upon the point that I have been discussing, and particularly those cited in behalf of the Plaintiff. They are very interesting and instructive, but in any intelligent discussion of them it would be necessary to point out certain distinctions between our constitution and that of the United States, and their effect upon the decisions.

As this could not alter the result, and as, without this, the case could be disposed of on what has seemed to us to be proper principles, I have thought that no good purpose would be served by undertaking the task.

I agree that the Order dismissing the Bill should be affirmed, with costs.

"H."

In the Queen's Bench.—In Equity.

The Chief Justice, Mr. Justice Dubuc, Mr. Justice Killam.

Saturday, the thirteenth day of May, A. D. 1893.

Between

The Winnipeg Electric Street Railway Company *Plaintiffs,*
and

10 The Winnipeg Electric Street Railway Company and the City
of Winnipeg *Defendants.*

This cause coming on to be re-heard by way of appeal from the decree made in his cause on the fourteenth day of December, 1892, upon opening of the matter, and upon hearing read the pleadings and the evidence adduced on the part of the Plaintiffs and Defendants, and what was alleged by counsel for the Plaintiffs and Defendants this Court did order that this cause should stand over for judgment, and the same coming on this day for judgment.

20 THIS COURT DOETH ORDER, That the said appeal be and the same is hereby dismissed, and the said decree affirmed, with costs, to be paid by the Plaintiffs to the Defendants forthwith after taxation thereof.

By the Court,

G. H. WALKER, Prothonotary.

RECORD.

V.

*In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.*

No. 4.

Order
dismissing
appeal.

"J."

In the Queen's Bench.—In Equity.

Mr. Justice Bain.

30 Monday, the twenty-second day of May, A.D. 1893.

Between

The Winnipeg Street Railway Company *Plaintiffs,*
and

The Winnipeg Electric Street Railway Company and the City of
Winnipeg *Defendants.*

40 Upon the application of the Plaintiffs, and upon hearing read the notice of motion herein, and the affidavit of Albert William Austin and the Exhibits therein referred to, and the pleadings and proceedings in this cause, and upon hearing what was alleged by counsel for all parties

IT IS ORDERED, That the Plaintiffs have leave to appeal to Her Majesty in Her Privy Council from the order of this Court sitting *in banc*, dated the 13th day of May, A.D. 1893, dismissing the Plaintiffs' appeal from the decree made in this cause, dated the 14th day of December, A.D. 1892.

AND IT IS FURTHER ORDERED, That the Plaintiffs do give security, in the sum of \$2,400, for the prosecution of the said appeal, and the payment of all such

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No. 5.
Order
granting
Plaintiffs
leave to
appeal.

RECORD. costs as may be awarded by Her Majesty, or by the Judicial Committee of Her Majesty's Privy Council, to the Respondents, and that such security be given by bond, with two sureties, to the satisfaction of the Registrar of this Court.

V.
In the Court
of Queen's
Bench
(in banc).
Re-hearing
by way of
Appeal.

AND IT IS FURTHER ORDERED, That upon such security being given, and the said appeal admitted, execution of the said decree and order be suspended pending the said appeal.

R. J. WILSON, Registrar.

No. 6.
Order
admitting
appeal.

" K. "

10

In the Queen's Bench.—In Equity.

Mr. Justice Bain.

Monday, the twenty-second day of May, A.D. 1893.

Between

The Winnipeg Street Railway Company *Plaintiff,*
and

The Winnipeg Electric Street Railway Company and the City
of Winnipeg *Defendants.*

Upon the application of the Plaintiffs, and upon hearing read the Order made herein, on the 22nd day of May, 1893, giving the Plaintiff leave to appeal to Her Majesty in Her Privy Council, from the Order of this Court *in banc*, dated the 13th day of May, 1893, dismissing the Plaintiffs' appeal from the decree in this cause, dated the 14th day of December, 1892, and fixing the amount and nature of the security to be given by the Plaintiffs for the prosecution of the said appeal, and the payment of all such costs as may be awarded by Her Majesty, or by the Judicial Committee of Her Majesty's Privy Council, to the Respondents; and upon hearing what was alleged by counsel for all parties; and it appearing that security of the nature and amount required by said Order has been given by the Plaintiffs,

IT IS ORDERED, That the Plaintiffs' said appeal to Her Majesty in Her Privy Council be and the same is hereby admitted.

R. J. WILSON, Registrar. 30

In the Privy Council.

No. 47 of 1893.

*On Appeal from the Court of Queen
Bench, Manitoba.*

BETWEEN

THE WINNIPEG STREET RAIL-
WAY COMPANY *Appella*

THE WINNIPEG ELECTRIC
STREET RAILWAY COM-
PANY and THE CITY OF
WINNIPEG *Respo*

RECORD OF PROCEEDING

BOMPAS & CO.,
4, Great Winchester Street,
for

WILSON, BRISTOW & CO.,
1, Copthall Building
*for Respondents, the Winn
Street Railway Comp*
and

FRESHFIELDS & WILLIAMS,
5, Bank Buildings,
for Respondents, the City