

THERE IS DANGER IN THIS CLAUSE

Form in Which Tube-building
Authority is Given.

MEANS FUTURE TROUBLE.

Compensation Plan Gives
Street Railway a Lever.

Measure as Drafted for Submission to
Private Bills Committee of the
Legislature To-day Constitutes a
Grave Danger to the Public In-
terests.

Grave danger to the public interest lurks in the form in which the clause authorizing the city to build an underground tube system has been drafted for presentation to the Private Bills Committee to-day. The clause is as follows:—

"The corporation of the City of Toronto may construct, build, maintain and operate a system of underground railways for the transportation of passengers and freight, and may acquire any land necessary for construction and operation thereof, with or without the consent of the owners thereof, upon making due compensation under the provisions of the municipal act for all land so taken or injuriously affected by reason of the construction of the railway hereby authorized, or by the exercise of the power hereby conferred, and upon making compensation also for damages, if any, suffered by any railway company by the work of actual construction of such system to the working of the railway of any such company, and the works connected therewith; provided, however, that such damages shall not include any damages or compensation from which under any agreement the said railway is exempt, or any damages by reason of competition with any other railway."

Means Endless Litigation.

This clause confers on the Toronto Railway the power of endless litigation, and is a direct nullification of clause 18 of the original Street Railway agreement of 1891, which provides that "the city shall have the right to take up and replace the streets traversed by the railway lines for the purpose of altering the grades thereof, constructing or repairing pavements, sewers, drains or conduits, or for laying down or repairing water or gas pipes, and for all other purposes within the powers of the corporation, without being liable for any compensation or damage that may be occasioned to the working of the railway or the works connected therewith."

City Has Power Now.

Under this clause there can be no doubt that the city has just as much right to build a tube roadway under Yonge street without compensation as a sewer or any other public work. The Toronto Railway should have been left to obtain compensation for disturbance under the common law like any other suitor. The Street Railway Company has exclusive surface rights for eleven years more in the older portion of the city. It has not now and never had the remotest claim to underground rights, and it is ominous to see how keenly the railway lawyers are fighting by hook or by crook to have the company made a party, even in a negative sense, to the tube agreement. If the Premier is sincerely desirous of aiding the city he will exclude all mention of surface railways or their rights from the tube agreement.

Adopted Yesterday.

The clause set forth above was finally adopted by the special sub-committee of the Private Bills Committee appointed to determine the statutory protection to be accorded the street railway and private property-owners in event of damages by reason of the construction or operation of the "tubes." Mr. W. S. Brewster was the Chairman, and the other members present were Messrs. W. F. Nickle, T. W. McGarry, John Shaw and W. D. McPherson. The city was represented by Mayor Geary and Solicitor Wm. Johnson, while Messrs. H. S. Osler, K.C., Allan Royce and H. J. Wright represented the railway interests.

It was agreed that the street railway was entitled to no consideration for damages under operation, but the majority of the committee held that private owners were. The matter of vibration of adjoining property was principally in question.

Many Clauses Submitted.

For two hours the legal experts present grappled with the problem. Clause after clause was submitted and rejected, and passages at arms were frequent. Mr. McGarry told his Worship that in his eagerness to get everything for the city he was sacrificing the interests of private citizens and property-owners. The Mayor declared the inference was an unfair one, and protested that he was anxious only to secure the best for the whole city.

"I thought that you had got your lesson on insisting on too much in the committee the other day," was Mr. Osler's thrust at Mr. McPherson.

His Lesson.

"The railways and their friends are giving me my lesson," shot back the member, "so you can go on with your taunts."

The Mayor submitted that the citizens were fully protected under the municipal act, but the legal members of the committee did not think so.

Mr. Shaw urged that while it was just and desirable to protect all parties from loss, the clause must not be made wide enough to invite all kinds of lawsuits against the city. "It is our business to see to it that both the citizens and the city are adequately protected," he observed.