THE INTERURBAN ELECTRIC RAILWAY AS AN ADDITIONAL BURDEN UPON THE STREETS AND HIGHWAYS.

New and interesting questions of law have arisen by reason of the extension of the electric street railway of the city into the country, its operation over the country highways and final development into the modern interurban railway. Whether such a railway is an additional burden on the streets and highways over which it is constructed and operated, is an important and much disputed question and one affecting the rights of the abutting owners, rival steam railroads and the public generally.

It has been well settled by the weight of authority that a steam or commercial railroad is an additional burden both upon the city streets and the country highways. On the other hand, the courts almost universally held that the street railway operating upon the streets of a municipality does not constitute an additional servitude.

The interurban railway, however, partakes to some extent both of the nature of the street railway and the commercial railroad. It was at first merely an extension of the street railway into the suburbs and was used to carry passengers from the city to various points along the suburban road. Upon the perfection of electric motive power these suburban roads extended their lines to adjoining towns and have gradually built up a system which forms a net-work of interurban traffic over a large portion of this country. The urban railway developed into the suburban and the interurban and is now becoming an interstate system.

An interurban railway may be defined as a railway operated on the street of a city or town by electricity or by power other than steam which extends beyond the corporate limits of said city or town to another city, town or village, or any railway operated by power other than steam extending from one city, town or village to another city, town or village.[1]

[1] See Cedar Rapids Ry. Co. v. Cummins, 125 Ia. 430 (1904).

It usually has many of the characteristics of the street railway when operated within a municipality, it runs its cars entirely upon the streets, stops at the street corners for the accommodation of passengers and its road bed is constructed so as to conform to the grade of the street and the rails laid so as not to materially interfere with the traffic thereon. In the country, however, the modern interurban is often built upon private right of ways, stops only at designated stations at infrequent intervals, runs at a high rate of speed, is engaged principally in through traffic between cities and towns, and its road bed is usually constructed with the "T" rail, and, in some cases, upon graded and rock-ballasted roads. Many lines carry express and light freight and even special freight cars, and, in some parts of the West, sleeping cars are now operated. They usually exercise powers not enjoyed by street railways, such as the power of eminent domain for the acquisition of a private right of way or the operation of freight cars.[2]

It will readily appear that the interurban railway creates an entirely new problem. There is considerable difference of opinion as to the doctrine on which the determination of the question of whether a railway imposes a new burden depends. It is said in some cases that the electric street railway is not an additional burden because it is merely a modern development from the private vehicle and stage coach of former time and the same law should apply to both, but there is a distinct difference between the street railway and the ordinary vehicle in that it runs upon fixed tracks, turns aside for no one, obstructs the streets with poles, and by its wires increases the hazard of the use of the highway. In some cases the carriage of freight is held to be the fact

[2] Diebold v. Kentucky Trac. Co., 117 Ky. 146, 77 S. W. Rep. 674. It has been held in a number of jurisdictions that the law applying to the street railway is applicable to an interurban railway while operating its cars within the municipality, but when it runs its cars in the open country outside of the municipality at a high rate of speed and upon a track substantially the same as the track of a steam railroad, it is governed by the alw applicable to steam railroads. Cincinnati Ry. Co. v. Lohe, 68 Ohio St. 101, 67 L. R. A. 637 (1903); Riggs v. St. Francis Ry. Co., 120 Mo. App. 335, 96 S. W. Rep. 707 (1906); McNabb v. United Ry. Co., 94 Md. 71, 519 Atl. Rep. 421; Cedar Rapids Ry. Co. v. Cummins, 125 Ia. 430, 101 N. W. Rep. 176 (1904); San Francisco Ry. Co. v. Scott, 75 Pac. Rep. 575 (1904); Kinsey v. Union Trac. Co., 169 Ind. 563 (1907); Jeffers v. Indianapolis, 68 Atl. Rep. 361 (1907).

which distinguishes the commercial railroad from the street railway, and determines whether the interurban is a commercial road, and, as such, imposes an additional servitude[3].

The character of the motive power is in no way controlling in determining the question whether the road to be constructed is a street railway or a commercial railroad or whether its construction is or is not an additional servitude[4].

The only satisfactory test, we submit, is whether the operation of the traction railway upon the street or highway is in furtherance of the uses of the highway for which it was originally intended, that is, to accommodate the public travel and to afford persons the opportunity to go from one part of the city or town to another on foot or in vehicles with such movable property as they may wish to transport[5].

The easement acquired by the public in a street or highway is the right to use it, not only according to the existing modes of travel and transportation, but also according to all such other modes as may arise in the ordinary course of improvement which are in furtherance of the intention of the original dedication or condemnation; but the use of the street cannot be so enlarged as to accummulate burdens on the land not originally contemplated[6].

The street railway facilitates the travel upon the streets of a municipality and thus relieves the side-walks of passengers and the road-way of vehicles. It may therefore be said to be an aid to

[3] Zehren v. Milwaukee Ry. Co., 99 Wis. 83, 74 N. W. Rep. 538 (1898); Wilder v. Aurora Trac. Co., 216 Ill. 493 (1905); Rische v. Texas Trans. Co., 27 Tex. Civ. App. 33, 66 S. W. Rep. 324 (1901). But see note 11.

[4] Wilder v. Aurora Trac. Co., 216 Ill. 493, 527, 75 N. E. Rep. 194 (1905); Chicago Ry. Co. v. Milwaukee Ry. Co., 45 Wis. 561; 70 N. W. Rep. 678, 37 L. R. A. 856; Kinsey v. Union Trac. Co., 169 Ind. 563 (1907); Shaaf v. Cleveland Ry. Co., 66 Ohio St. 215, 64 N. E. Rep. 145 (1902); Goddard v. Chicago Ry. Co., 104 Ill. App. 533 (1902); Palmer v. Larchmont Elec. Co., 158 N. Y. 231 (1899).

[5] Abbott v. Milwaukee Trac. Co., 126 Wis. 634 (1906); Goddard v. Chicago Ry. Co., 104 Ill. App. 532 (1902); Zehren v. Milwaukee Ry. Co., 99 Wis. 83, 74 N. W. Rep. 538 (1898); Hiss v. Baltimore Pass. Ry. Co., 52 Md. 542, 552 (1897); W. Jersey Ry. Co. v. Camden Ry. Co., 52 N. J. Eq. 31, 29 Atl. Rep. 423. The easement acquired by the public in a street or highway is the right to use it, not only according to the existing modes of travel and transportation, but all such other modes as may arise in the ordinary course of improvement which are in furtherance of the intention of the original dedication, but the use of the street cannot be so enlarged as to accumulate burdens on the land not contemplated in the dedication or condemnation.

[6] W. Jersey Ry. Co. v. Camden Ry. Co., 52 N. J. Eq. 31, 29 Atl. Rep. 423; Lonaconning Ry. Co. v. Coal Co., 95 Md. 630, 53 Atl. Rep. 420 (1902).

the easement of passage. On the other hand, if the railroad occupies all or a portion of the highway so as to continually interfere with the travel of the public thereon, it is an obstruction to the easement of passage and a new burden is thereby imposed. A steam railroad occupies the highway, but does not relieve it. It carries passengers from long distances into a city, accommodates itself only very incidentally to local traffic, and it operates large trains of cars so as to interfere materially with the use of the street and so deprives the public of the beneficial enjoyment thereof.

Where the interurban railway operates its cars in the streets of a city in the same manner as a street railway, stops at the street corners for the accommodation of passengers, constructs its road bed so as to conform with the grade of the street, runs at a moderate rate of speed and does not interfere with the traffic on the highway, it may be said to be in furtherance of the purposes of the street and not an additional burden thereon[7].

If, however, a railway is engaged primarily in interurban traffic and large interurban cars pass through the town for the principal purpose of carrying through traffic to other towns, it does not relieve traffic of the street, but increases the burden of the city or town by carrying over its streets carloads of persons and property from other localities, merely passing through and imposes an additional servitude.

In Younkin v. Milwaukee Trac. Co., 120 Wis. 477, 99 N. W. Rep. 215 (1904), the Court says:

"The defendant claims the right to run its trains and cars from the city of Milwaukee directly through the city of Waukesha and to Waukesha Beach. In doing so it is conceded that, while such trains or cars are interurban, they do cast an additional burden on the lands of abutting owners, which entitles them to compensation; but it is claimed that the moment such trains or cars pass into the city of Waukesha they cease to cast any such additional burden upon the lands of such abutting owners. And yet such trains or cars may be loaded with through passengers. The only difference is that while in the city of Waukesha such

[7] Watson v. Fairmount Ry. Co., 49 W. Va. 528, 39 S. E. Rep. 193; Brickles v. Milwaukee Trac. Co., 134 Wis. 538, 114 N. W. Rep. 810; Jeffers v. Indianapolis, 68 Atl. 361.

trains or cars, in obedience to requirements stop at street crossings, whereas in the country they only stop when convenient, or at points remote from each other. Counsel for the defendant argues that as the trains or cars with passengers from Milwaukee might, at the city limits of Waukesha, change from such interurban cars to regular street cars, and then at the westerly limits of the city again change into interurban cars, that, therefore, it is substantially the same as though the interurban train or cars should continue with its passengers directly through the city; especially as the ordinance expressly authorized the street railway to connect with the interurban railway. While such argument may be plausible, yet it is really begging the question. It might be argued on the same theory that a commercial railway passenger train, with the permission of the city, might be run over the street railway tracks without compensation to the abutting lot owners. We must hold that the running of such interurban trains and cars over the street railway tracks upon Lincoln Avenue was an additional burden upon the lands of the plaintiffs as such abutting lot owners."

The contrary view, however, is taken in several jurisdictions upon the ground that the interurban railway is merely a modern development of the use of the street and is not new but merely an ancient form of travel by improved means consistent with the general uses of the street. In a very interesting case the Supreme Court of Indiana decided by a divided court of three to two that the operation of an interurban railway within a city over the tracks of the street railway does not constitute additional burden although the railway was authorized to carry freight in the city and was operating a railway of a commercial nature. (Kinsey v. Union Traction Co., 169 Ind. 561 [1907]).

The majority and minority opinions of the court present very ably the contrary views on this question. Gillet, J., says:

"It is also my opinion that the interurban car, which tends more than almost any other material influence to make the residents of country and city a homogeneous people, is a proper vehicle on the city street. Public interests point to the fact that the interurban car should be recognized as a proper means of using the streets. To deny it the use of the public ways in large cities would be to take from the service a large part of its flexibility and facility. As a vehicle, the interurban car conduces to the advantage of the traveling public, by permitting passengers to enter

or leave the conveyance in the heart of the city, or at intersecting streets, and, in the transportation of property, it is thereby made possible to receive and discharge packages along the line of travel, and, at some points, to load and unload considerable quantities of freight at the merchants' door. It is a most important fact that the interurban freight-car greatly relieves the congestion of busy streets, since it furnishes a more practical means of handling traffic that must necessarily be thereon. Between the shipper or the consignee of freight and the railroad terminal there is distance, and this implies traffic by wagon. It would involve a shameful economic waste, as well as a decided prejudice to the city, for a railroad company, of any kind, to condemn or acquire a private right of way to a central terminal, although it is evident that the location of a more remote terminal would involve a greater amount of teaming upon the streets. As the use of the interurban car is reasonably consistent with other street uses, it is practicable to use the public ways as a means whereby such cars may reach conveniently located terminals,—in fact, it is the only means—and, figuring that the average haul would be least from a station in the exact business center of the city, it would seem to be fair to assume that, as between such a location and one more remote, for every block that an interurban car, carrying the equivalent of twenty wagon loads of local freight, moves, it takes off of the streets the burden of twenty wagons traveling the same distance. As this freight must be upon the streets in any event, and as it may be moved thereon with perhaps not more than one-twentieth of the disturbance to the public that the required number of wagons would occasion, it is plain that, so far from such cars increasing the burden of the streets—regarded collectively—they could not, in the nature of things, handle enough freight, local or otherwise, to equal the burden of additional teaming which terminals comparatively remote from the business center would occasion. It is therefore plain that while the use of the streets by interurban cars creates additional traffic on some streets, yet it greatly relieves other streets. When once a reason, founded in the local public interest, is found for admitting the interurban freight-car to the use of a street in reaching its terminal, there is, within the authorities generally, no difficulty in affirming the right to burden other streets with such cars, for the advantage is local, and it is simply a question of the power to redistribute traffic, of the authority to burden some streets with additional traffic to secure relief to congested streets in the central part of the city. As an abstract proposition, no one would doubt the existence of such a power, and I can perceive no objec-

tion to it in the concrete, since the use is not new, but is merely the ancient one of travel, by an improved means, consistent with general street uses. As has been frequently said, the easement of travel upon an urban way is very comprehensive, and as long as the use is within the assumed purposes of the appropriation, and reasonably consistent with other street uses, I do not think that the abutter can in most circumstances have ground of complaint."[8]

The contrary view is very forcibly expressed by Judge Jordan:

"Keeping in view the principles asserted by the authorities to which we have referred, we may next inquire, in the light of facts and the law applicable thereto, what is the character of the road or roads with which we have to deal in this appeal, and into what class are they placed under the facts as alleged in the complaint. Briefly summing up the facts, we have here presented a traction company with a thirty-year franchise to run passenger-, baggage-, express- and freight-trains. There are no limits to the size of its cars or trains; no limit to the number of trains, nor the rate of speed at which they may be propelled. Tracks laid with "T" rails as heavy and of the same pattern and shape as those of the ordinary railroad passenger-cars. The company is actually engaged in operating its electric cars and trains from the city of Marion to the city of Indianapolis, a distance of eighty miles, and from the city of Muncie to Indianapolis, a distance of sixty miles, operating both freight- and passenger-cars. The cars are sixty feet long, and carry 150 passengers. Twenty-eight regular passenger-cars or trains run daily in and out of the city of Indianapolis. Many cars and trains are used exclusively for hauling freight a distance of from ten to eighty miles, a greater part of which is hauled forty miles and over. Eight of the passenger-trains make but one stop between Indianapolis and Muncie, and stop only once between the limits of the city of Indianapolis and the terminal station, a distance of four miles, crossing more than fifty streets within the city of Indianapolis. Its through cars do not stop to take on passengers

[8] The court held, however, in this case that if the interurban railway ran its train over the street in front of an abutter's residence in a negligent manner so as to shake the house and cause injury thereto and to interfere with her sleep, frighten horses hitched in front of her house and cause them to run away, and to render the street dangerous to persons traveling thereon, libellant is entitled to recover damages, not because the right to operate interurban cars imposes a new and additional burden on her property, but because such cars have been operated in front of her house in a unjustifiable and unlawful manner.

after leaving the terminal station. Its passenger-cars frequently run in trains of three cars, and it runs freight-cars consisting of three and more cars every day. Passenger-cars are provided with baggage compartments for trunks and ordinary baggage, water coolers and closets, and are twice the size of the cars run upon the street-car lines in Indianapolis. Outside of the city cars run from forty to sixty miles per hour, and within the city and over College avenue at a rate of twenty to thirty miles per hour. Outside of the city of Indianapolis the road is not operated upon the public highway, but on a private right of way paralleling the Big Four Railroad to Marion and Muncie. It is not intended to, and does not, do a local business, but a through business in travel and freight. It charges a rate of fare forbidden to be charged by a street railroad in Indianapolis and refuses transfers, which the statute absolutely requires from a street railroad operating in the city of Indianapolis. It is extending and will complete lines to Chicago, Illinois, Columbus, Ohio and Fort Wayne, Indiana, and proposes to and will put on sleeping-cars to run on through cars and trains between the aforesaid cities and other points, thereby transporting all of its trains over College avenue. It is not a street railroad, but a "commercial railroad," carrying persons and freight in competition with steam roads both for long and short distances. It shakes the ground, etc., and has damaged plaintiff, as charged in the complaint, etc." * * * * "Certainly these facts show that there is a wide difference between the railway here involved and what the many authorities which we have cited recognize and regard as an urban or street railway. The fundamental purpose of the road here involved appears not to be to a accommodate or subserve the travel upon the streets of the city of Indianapolis, but, on the contrary, it is shown to be a thoroughfare between the latter city and other cities or points for the distance of many miles beyond. In its purposes, uses, equipments and mode of operation it is materially different from the urban or street railroad, except that it employs electricity as a motive power. It is shown frequently to run passenger-trains composed of three large cars, and to run daily freight-trains of a like number of heavy cars. It is neither a street railroad in fact, nor is it shown to be operated for street railroad purposes. Further to emphasize, we have, under the facts, a railroad which in no sense is operated to promote the utility of the public streets of the city of Indianapolis. It is not merely engaged in doing business between the latter city and its suburbs. It is not an extension of a city street railway over intervening territory between distant cities and communi-

ties. Its cars are not light and small when compared with those of the ordinary steam roads. As a result of its operation some of the usual discomforts due to the operation of the ordinary steam roads are present, viz., loud noises, dirt and dust, shaking or vibrations of the ground, and other annoyances or detriments which affect the owners of abutting property situated on the streets over which the road is operated. There is also the presence of danger or peril which continually menace the safety of persons using the public street. Possibly it may be said that difference in degree in respect to these matters exist. But the question presented is not as to whether it constitutes a burden to the same degree as that imposed by a steam railroad, but is it a burden upon the public street in addition to that to which it was originally dedicated or appropriated? Surely, under the circumstances, this road, in its character and operation, so nearly approaches the ordinary steam commercial railroad that a dividing line between it and the latter cannot consistently with reason be drawn. Consider the road and the system to which it belongs all in all, in our opinion it comes clearly within the class of commercial railways, which, as said in 1 Lewis, Eminent Domain (2nd ed.), Sec. 111, 'embraces all railroads for general freight and passenger traffic between one town and another, or between one place and another.' If this character of a commercial road cannot be accepted to test the question in regard to its being an additional servitude upon the fee of the public streets, when, then, and under what circumstances can the line of demarcation be drawn between roads which constitute a new use of the streets and an added burden thereon and those which do not? While it may be conceded that the use of the public streets by appellees for the operation of their railways is quite a matter of economy in their favor, still such use, as shown in this case, is a diversion from and incompatible with the public use to whch the streets were originally dedicated or appropriated, and is, therefore, and additional burden upon the fee of the abutting owner, for which the latter is entitled to compensation."[9]

It is apparent that the opinion of the majority of the court is based upon the assumption that local public interest and convenience for the carriage of passengers and freight out of the city overbalanced the additional burden of the railway upon the

[9] See also Zehren v. Milwaukee Ry. Co., 99 Wis. 83, 74 N. W. 538, 41 L. R. A. 575; Chicago Ry. Co. v. Milwaukee, 95 Wis. 561, 70 N. W. Rep. 679, 37 L. R. A. 856 (1897); Abbott v. Milwaukee Trac. Co., 126 Wis. 634 (1906); Schuster v. Milwaukee Ry. Co., 126 N. W. Rep. 126 (1910).

streets. It is difficult to see how the arguments in support of the decision will not apply with equal force to a steam railroad. As the minority judge says, the resemblance of such a road to the steam railroad is so close that a distinction cannot reasonably be drawn and the difference is merely one of degree and not of character of burden imposed.

An entirely different question arises when we consider the relation of the interurban railway to the abutting owners upon a country road over which it is operating its cars.[10] The public necessities of the streets in a municipality are greater, and therefore, it may be contended that increased burdens may be properly imposed upon them. The court says in Van Brunt v. Flatbush, 128 N. Y. 50, 27 N. E. Rep. 973:

"In the ordinary country highways of the state, the public simply have an easement in the soil for traveling. * * * * The public easements, however, in the streets of cities and villages are more extensive. In urban streets the public convenience and health, and the general welfare require that the soil thereof should be subjected to greater burdens. They may be used for the laying of water and gas pipes, and the construction of sewers, and some other purposes. The public generally have an interest in and are benefited by such improvements, and they are necessities of modern life."

The rule that the imposition of an additional burden depends upon whether the interurban railway is in furtherance of the uses of the highway for which it was originally intended, applies with perhaps greater force to the country road than to the streets of the city.

If the railway which is operating upon the highway in the country is practically the same in character as the street railway; that is, is operated principally for the use of local traffic and is similar in equipment and construction, it may properly be considered not to be an additional burden. So it has been held that where a street railway company runs its cars into the country upon roads which are merely extensions of the city streets, for the purpose of carrying persons to and from its suburbs, it par-

[10] See also Zehren v. Milwaukee Elec. Co., 99 Wis. 83, 74 N. W. Rep. 538 (1898); Montgomery v. Santa Anna Ry. Co., 104 Cal. 186, 37 Pac. Rep. 786.

takes of the nature of a street railway and is not an additional burden.[11]

When, however, the interurban car or train is operating principally for the carriage of through passengers or freight from one city to another and only incidentally and to a small degree for the accommodation of local traffic, the railway is not serving the purposes of the dedication of the road except in a limited sense, but on the contrary burdens the highway with travel which would not otherwise be there.[12]

A number of cases base their decision, that the interurban is an additional burden, upon its resemblance to the steam road, concluding that it is a commercial railroad and, as such, is governed by the same law as the steam road. So it has been decided where the railroad is authorized to carry express, mail or freight, operates large cars at a high rate of speed, constructs its tracks similar to those of a steam road with heavy "T" rails, grades and ballasts its road bed, is operated largely over its own right of way and carries passengers mainly for long distances from city to city, stopping only at designated points or stations for an occasional passenger, it is a commercial railway.[13] The underlying principle, however, is not that an interurban railway of such character resembles the steam road, but that such a use

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[11] Floyd v. Rome Ry. Co., 77 Ga. 614, 3 S. E. Rep. 3 (1886); Humphreys v. Ft. Smith Trac. Co., 71 S. W. Rep. 662 (1903); Greene v. City & Suburban Ry. Co., 78 Md. 294, 28 Atl. 626 (1894); Howe v. W. End Ry. Co., 167 Mass. 46 (1896).

[12] Abbott v. Milwaukee Trac. Co., 126 Wis. 634 (1906); Goddard v. Chicago Ry. Co., 104 Ill. App. 532 (1902); Zehren v. Milwaukee Ry. Co., 99 Wis. 83, 74 N. W. Rep. 538, 41 L. R. A. 578 (1898); Hiss v. Baltimore Pass. Ry. Co., 52 Md. 542, 552 (1897); W. Jersey Ry. Co. v. Camden Ry. Co, 52 N. J. Eq. 31, 29 Atl. Rep. 423: The Court says, "A highway cannot be diverted by the authority of the legislature or those who enjoy the easement to other properties than those which it was intended or acquired, nor can it be so enlarged as to accumulate burdens on the land not contemplated in the dedication or condemnation."

[13] Chicago Ry. Co. v. Milwaukee, 95 Wis. 56, 70 N. W. Rep. 679, 36 L. R. A. 856 (1897); Abbott v. Milwaukee Trac. Co., 126 Wis. 634 (1906); Schuster v. Milwaukee Ry. Co., 126 N. W. Rep. 126 (1910); Riggs v. St. Francis Ry. Co., 120 Mo. App. 335, 96 S. W. Rep. 707 (1906); Diebald v. Kentucky Trac. Co., 117 Ky. 146, 77 S. W. Rep. 674; Rische v. Texas Trans. Co., 27 Tex. Civ. App. 33, 66 S. W. Rep. 324 (1901); Wilder v. Aurora Trac. Co., 216 Ill. 493 (1905).

In Zehren v. Milwaukee Ry. Co., 99 Wis. 83, 74 N. W. Rep. 538 (1898), the Court held that an interurban railway operating upon "T" rails and carrying freight was a commercial railroad and differed from the ordinary commercial railroad only in degree, but not in character.

of the highway is contrary to the purpose of its dedication or appropriation by burdening it with additional traffic and permanent obstructions.[14]

There are a number of cases which appear to be in conflict with the general weight of authority, but almost every case can be reconciled therewith by the fact that the railway resembled the street railway in construction and equipment and was operated principally for the accommodation of local traffic. In a number of cases the character of the railway is not stated, but either it is apparent from the context that it is essentially of the nature of a street railway or the cases were decided before the interurban railway had developed its modern commercial character.[15]

Whether an interurban railway is an additional servitude, therefore, is largely a question of fact and depends on whether it resembles in character a street railway and operates its cars for the accommodation of local traffic, or whether it resembles a commercial railroad and operates its cars for interurban and through traffic.

This whole question, in so far as it affects the abutter, depends upon whether he owns the fee of the street, over which the car passes, subject to the public easement. Where the title to the public streets and highways is vested in the public, the abutter has only, in addition to such public easement, the right of ingress or egress to and from his premises, and an action

[14] It is held in Michigan Central Ry. Co. v. Hammond Elec. Co., 42 Ind. App. 66 (1908), the fact that a street railway carries mail and express does not make it a commercial railroad. See also Galveston Ry. Co. v. Houston Elec. Co., 122 S. W. Rep. 287 (1909).

[15] Georgetown Trac. Co. v. Mulholland, 76 S. W. 148 (1903); Ashland Ry. Co. v. Faulkner, 43 L. R. A. 554, 10 A. and E. R. Cas. (N. S.) 223 (1898); Southern Ry. Co. v. Atlantic Ry. Co., 111 Ga. 679, 35 S. E. Rep. 876, 51 L. R. A. 125 (1900); Ehret v. Camden Ry. Co., 61 N. J. Eq. 171, 47 Atl. Rep. 562 (1900). In this case the Court says: "Nothing in the bill intimates that the cars, or motive power, or speed, or tracks are to be different from other roads when under the name of trolley railways. It must be assumed that the road is to be used as an ordinary street railway, the motive power of which is electricity, the features of such road are that its tracks are laid so as to not interfere with the use of the surface of the road by other vehicles, that its cars are of such size and run at such speed as not to interfere with other traffic, that such stops are made as will accommodate those living along the line of the road. So used, I do not perceive the least difference in the adaptability of such a road to the uses of the highway, whether it be a country road or a municipal street. Its design is to serve the primary uses of the highway; namely, to enable the people to pass from one place to another."

against the traction company for damages only in case of obstruction thereto.[16]

To sum up, we find that the question of additional servitude is based, by the predominant weight of authority, upon the question whether the operation of the railroad or railway, upon the street or highway, is consistent with the uses for which they were intended in the original dedication and appropriation, and the courts are also taking more into consideration the question whether the local public service rendered by the interurban railway outweighs the burden imposed by it upon the streets and country roads.

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[16] Chicago Ry. Co., 95 Wis. 561, 70 N. W. 679, 37 L. R. A. 856 (1907); Schaaf v. Cleveland Ry. Co., 66 Ohio St. 215, 64 N. E. 145 (1902); Schuster v. Milwaukee Ry. Co., 126 N. W. 26 (1910); Lonaconing Ry. Co. v. Coal Co., 95 Md. 630, 53 Atl. Rep. 420, 29 A. & Eng. R. Cas. (N. S.) 8 (1902); Peddicord v. Baltimore Ry. Co., 34 Md. 463 (1871); Rankin v. St. Louis Ry. Co., 98 Fed. 479 (1899); Ehret v. Camden Ry. Co., 61 N. J. Eq. 171, 47 Atl. Rep. 562 (1900); Borden v. Atlantic Highlands Ry. Co., 18 N. J. L. J. 305 (1895); Austin v. Detroit Ry. Co., 96 N. W. Rep. 35 (1903); N. Penn. R. R. v. Inland Trac. Co., 205 Pa. St. 579, 55 Atl. Rep. 774 (1903).