

The amount which the Toronto Railway Company were ordered to pay was \$80,000. This order of the Board was the one made a rule of Court, upon which execution was issued.

On the 15th September, 1909, the railway company applied to the Board for leave to appeal to the Supreme Court of Canada from the order of the 3rd July, 1909; the Board refused leave; no application was made to the Supreme Court of Canada or any Judge to permit an appeal; and so the decision of the Board became, by virtue of sec. 56, sub-sec. 9, of the Dominion Railway Act, R.S.C. 1906 ch. 37, final and incapable of being questioned or reviewed.

Reference to British Columbia Electric R.W. Co. Limited v. Vancouver Victoria and Eastern R.W. Co., [1914] A.C. 1067; Toronto R.W. Co. v. City of Toronto (1916), 53 S.C.R. 222.

The liability of the Toronto Railway Company being thus determined by the Board, and the statute giving finality to the decision, its enforcement should not be delayed by directing the trial of an issue already concluded.

It may be that the sheriff cannot take possession of and sell the railway under a *fi. fa.*; but that does not prevent the issue of the writ—it concerns only its execution. There may be assets which can be taken and sold without interfering with a “public utility;” and a writ of *fi. fa.* may be a necessary preliminary to the taking of the appropriate proceedings for realisation.

The procedure provided by sec. 46 of the Dominion Railway Act for the making of the order of the Board a rule of Court was attacked. The Dominion Act makes the Provincial Courts, so far as their executive and ministerial officers are concerned, ancillary to the Court or Board constituted by the Act for the purpose of determining the rights which come within the purview of the statute. This means the adopting by the Dominion of the machinery provided by the Province; but does not give to the Provincial Judges any control over orders of the Board directed to be enrolled and enforced.

While, in one sense, the order is not final, it does finally and unconditionally direct payment of \$80,000, and is quite sufficient in form to warrant the issue of execution for that amount.

Motion dismissed with costs.