

pany should make a payment of \$80,000 on account towards the cost of construction.

The third order was dated the 4th February, 1918, and was made by MIDDLETON, J., in the Supreme Court of Ontario, refusing a stay of execution against the Toronto Railway Company: *Re City of Toronto and Toronto R.W. Co.* (1918), 13 O.W.N. 414, 42 O.L.R. 82.

The appeal was heard by VISCOUNT FINLAY, VISCOUNT CAVE, LORD SUMNER, and LORD PARMOOR.

Sir John Simon, K.C., and D. L. McCarthy, K.C., for the appellants, contended that the order for payment of part of the cost of construction was not authorised by the Railway Act of Canada.

G. R. Geary, K.C., and Irving S. Fairty, for the city corporation, respondents, argued: first, that special leave to appeal from orders of the Railway Board could not be granted; secondly, that the order for special leave to appeal in the present case ought to be rescinded, on the ground that the relevant facts were not correctly stated in the petition; and, thirdly, that the order for payment of part of the cost of construction, made against the appellants, was authorised by the Act and could not be impeached.

The judgment of the Judicial Committee was read by VISCOUNT FINLAY, who, after stating the facts, said that the petition to the Judicial Committee for special leave to appeal was presented in July, 1918, nine years after the date of the principal order appealed against. The petition contained a paragraph (19), which had reference to the great lapse of time that had taken place. This paragraph stated that since 1909 the whole question involved had been in dispute between the petitioners (the Toronto Railway Company) and the city corporation; that until 1917 the petitioners were unaware whether and to what extent the city corporation would press for payment; and that after the judgment given in *British Columbia Electric R.W. Co. v. Vancouver Victoria and Eastern R.W. Co.*, [1914] A.C. 1067, the petitioners hoped that no further attempt would be made to enforce payment.

Their Lordships, after full consideration, had arrived at the conclusion that the Railway Board was not exempt from the prerogative of the Crown to grant special leave to appeal. That Board is not a mere administrative body; it is a Court of Record; and it may be of importance that in some special cases its decisions on points of law should be taken, on special leave, direct to His Majesty in Council. The power, however, is one which, in the case of the Railway Board, should be very sparingly exercised.