

SEPTEMBER 20TH, 1909.

RE TORONTO R. W. CO. AND CITY OF TORONTO.

Street Railway—Contract with Municipal Corporation—Construction of Lines of Railway upon Streets of City—Determination by Street Railway Company—Order in Council and Decision of Judicial Committee—55 Vict. ch. 99 (O.)—8 Edw. VII. ch. 112 (O.)

Appeal by the city corporation from a decision or order of the Ontario Railway and Municipal Board. The order was pronounced after hearing the parties upon an application made by the company, upon notice to the corporation, complaining that the corporation engineer refused to approve of plans of a line or lines of railway which the company proposed to construct upon and along certain streets, and praying for an order that the engineer be required to state his objections, if any, and that, in the absence of valid objections, the plans be taken as approved and the corporation restrained from interfering with the construction of the railway in accordance with the plans. The order found and declared: (1) that the company had the right to construct their railway upon certain streets therein specified; (2) that the corporation denied the right of the company and prevented the company from constructing their railway upon the said streets, and thereby committed a breach of the agreement between the company and the corporation; (3) that the corporation be enjoined from doing any acts to prevent the applicants from constructing lines of railway upon the said streets as set forth in the plans.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, and MACLAREN, JJ.A.

W. E. Middleton, K.C., and W. Johnston, for the city corporation.

W. Nesbitt, K.C., and D. L. McCarthy, K.C., for the company.

Moss, C.J.O., delivering the judgment of the Court, said that the question of law arising was in all substantial respects the same as that dealt with by the Judicial Committee of the Privy Council in *City of Toronto v. Toronto R. W. Co.*, [1907] A. C. 315. . . . The Judicial Committee decided that, subject to clauses 14 and 17 of the conditions, it was for the company, and not for the city engineer with the approval of the city council, to determine