

order of the Ontario Railway and Municipal Board, pronounced on the 17th day of June, 1912, and setting aside such order. The said order permitted the appellants to deviate their line of railway from Yonge street, at a point near Farnham avenue, and to continue the same in a southerly direction in the main parallel to Yonge street, to a new terminus, over what was described as a private right-of-way, which, however, crossed five streets within the municipal limits of the respondents.

Sir Robert Finlay, K.C., C. A. Moss, and Geoffrey Lawrence, for the appellants.

W. O. Danckwerts, K.C., and Irving S. Fairty, for the respondents.

The appeal was heard by THE LORD CHANCELLOR, LORD SHAW, and LORD MOULTON.

THEIR LORDSHIPS' judgment was delivered by

LORD MOULTON:—The history of the litigation in this matter is as follows:—

The Toronto and York Radial Company is a railway company which, so far as is material to the decision of the present case, may be taken to be the successors in law to the Metropolitan Street Railway Company of Toronto, which was incorporated by an Act of Legislature of the Province of Ontario passed in the 40th year of the reign of Queen Victoria, and chaptered 84, for the purpose of constructing, maintaining, and operating railways upon and along streets and highways within the jurisdiction of the Corporation of the City of Toronto, and of any of the adjoining municipalities as they might be authorized to pass along, under and subject to any agreement thereafter to be made between that company and the councils of the said city and of the said municipalities, and subject to any by-laws of the same

At the date of the passing of the said Act and until the first day of January, 1888, the portion of Yonge street, to which this case relates, was within the County of York, but by proclamation, dated the 24th September, 1887, the boundaries of the city of Toronto were extended so as to include a portion of such county, such proclamation to take effect from the 1st day of January, 1888. By virtue of such extension, almost the whole of the aforesaid portion of Yonge