the liabilities of the Toronto Railway Company under the order of the 27th February, 1917; and it was not to be supposed that the Legislature of Ontario, knowing that a breach of that order had occurred and could not be remedied without some further allowance of time, intended to authorise the imposition of a daily penalty commencing from the day following that on which the Act became law. It was not the intention of the Legislature that the Board should be authorised to impose penalties except after giving to the railway company a warning that after a specified period penalties would be imposed, and an opportunity of avoiding them by compliance, within that period, with the requirements of the Board; and, accordingly, the order of the 19th April, 1918, was not authorised by the Act.

Apart from the above considerations, the procedure adopted by the Railway and Municipal Board in making the order was open to question. The railway company appeared before the Board on the 19th April, 1918, for another purpose. No claim had been made by the city corporation for penalties under the recent Act, no notice or summons had been given or issued by the Board which indicated that the question of penalties would come under consideration, nor was this question even referred to at any time before judgment was delivered. Accepting the view that the company were gravely in default, they were yet entitled, before being subjected to a heavy penalty, to have notice of the claim and an opportunity to meet it. Whatever view, therefore, might be taken as to the construction of sec. 260*a*, it seemed doubtful whether the present order could stand.

No opinion was expressed upon the question whether the Ontario Railway and Municipal Board should be regarded as a "Superior Court" within the meaning of sec. 96 of the British North America Act.

The appeal should be allowed, and the respondents should pay the costs of this appeal and of the appeal to the Appellate Division.

*Appeal allowed.*