

tion take into account all the circumstances, including the effect on the owners of abutting lands, and must judicially determine whether it should impose any and what conditions on which its approval should be granted. Approval is refused except subject to conditions expressed.

There is no jurisdiction to reverse that order, and still less to uphold it, while striking out the condition which was a vital part thereof. The matter was entirely within the discretion of the Board, and if the terms on which it was exercised are disapproved, the order, which was inseparable from the condition, should be rescinded.

Atkin, K.C., replied.

The appeal to the Judicial Committee of the Privy Council was heard by LORD ATKINSON, LORD SHAW OF DUNFERMLINE, LORD MERSEY, and LORD ROBSON.

Their Lordships' judgment was delivered by

LORD SHAW OF DUNFERMLINE:—This is an appeal from a judgment of the Supreme Court of Canada dated June 15th, 1910. That judgment dismissed an appeal from an order of the Board of Railway Commissioners for Canada, which order was made on October 6th, 1909.

The facts giving rise to the question before their Lordships may be stated in a word. The Grand Trunk Pacific Railway Company constructed a branch line to the town of Fort William, in the Province of Ontario, and in order to "establish and maintain its terminals and other works in connection therewith" it entered into an agreement with the corporation of that town on March 29th, 1905. By the agreement the corporation granted to the railway company "free of cost and all liability the right to build on the level and operate in perpetuity a double track line of railway on all the streets of the municipal corporation coloured red" on a certain plan. Two of those streets were Empire avenue and McKellar or Hardisty street. The railway company then applied under sec. 159 of the Railway Act of 1906, for approval of the location of its line of railway.

On October 6th, 1909, the Board of Railway Commissioners ordered that "subject to the terms and conditions contained in the said agreements, and subject to the condition that the applicant shall do as little damage as possible and make full compensation to all persons interested for