

MIDDLETON, J., IN CHAMBERS.

FEBRUARY 4th, 1918.

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

Execution—Order of Dominion Board of Railway Commissioners Directing Payment by Railway Company of Sum of Money to Municipal Corporation—Order Made Rule of Supreme Court of Ontario—Issue of Writ of Fi. Fa. thereon—Jurisdiction of Board—Finality of Order—Railway Act, R.S.C. 1906 ch. 37, secs. 46, 56 (9)—Procedure—Sale of Public Utility under Execution.

MOTION by the railway company for an order staying the writ of *fi. fa.* issued by the city corporation upon an order of the Dominion Board of Railway Commissioners, made a rule of the Supreme Court of Ontario, pending the determination of the right of the corporation to receive payment of the money for the levying of which the writ was issued, and for an order directing the trial of an issue to determine such right.

D. L. McCarthy, K.C., for the railway company.
C. M. Colquhoun, for the city corporation.

MIDDLETON, J., in a written judgment, said that in 1906 the Board ordered the construction of a bridge upon the line of Queen street over the river Don and over certain railway tracks upon the bank of the river. The bridge was constructed. The city corporation paid the cost in the first instance; but the ultimate incidence of the cost remained an open question until the 23rd June, 1909, when a decision was given, afterwards embodied in a formal order of the Board, dated the 3rd July, 1909, to the effect that the Toronto Railway Company should pay 15 per cent. of the cost, other railway companies 70 per cent., and the city corporation the remaining 15 per cent.

While this order was final in its nature, it contained no definite direction to pay; and matters were allowed to remain in an unsettled shape until 1917, when, on the 30th November, an order was made for payment by each of the other contributing companies to the city corporation of a named sum which, in the opinion of the Board, was well within the ultimate sum payable—the payment so directed being without prejudice to the contention of any party as to the correctness of the accounts presented by the city corporation.

* This case and all others so marked to be reported in the Ontario Law Reports.