

DECEMBER 31ST, 1909.

RE NIAGARA FALLS BOARD OF TRADE AND INTERNATIONAL R. W. CO.

Ontario Railway and Municipal Board — Jurisdiction — International Railway Company—Passenger Fares—Approval of Tariff by Park Commissioners—Ontario Railway Act, sec. 170, sub-sec. 5—Supervision by Board.

Appeal by the railway company from an order of the Ontario Railway and Municipal Board, made upon the application of the Board of Trade, requiring the railway company to accept a 5 cent cash fare on their cars for conveying passengers for any distance not more than 3 miles south of Bridge street in the city of Niagara Falls.

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

W. Nesbitt, K.C., and M. Lockhart Gordon, for the appellants.
F. W. Griffiths, for the respondents.

MEREDITH, J.A.:—This case has been treated as one affecting the jurisdiction of the Ontario Railway and Municipal Board: but I am by no means sure that it is a case of that character: that depends upon whether the Board acquired jurisdiction by misconstruction of an enactment conferring jurisdiction upon them, or merely misconstrued an enactment in a matter within their jurisdiction; as, however, there is a right of appeal to this Court upon any question of law, whether affecting jurisdiction or not, it is quite immaterial whether the questions involved affect, or do not affect, jurisdiction.

The questions involved present no great difficulty. The main one is whether sub-sec. 5 of sec. 170 of the present Ontario Railway Act applies to the appellants. That sub-section provides that the section shall not apply to a company whose tariff for passenger fares is subject to the approval of any Commissioners in whom are vested any park or lands owned by the Crown for the use of the public of the Province of Ontario. Under an agreement made between the appellants and the Commissioners of Queen Victoria Niagara Falls Park—Commissioners within the meaning of sub-sec. 5 — the appellants' tariff for passengers was made "subject to the approval of the Commissioners," and that agreement was by legislative enactment approved, ratified, confirmed, and declared to be valid and binding on the parties