

STREET RAILWAY—FRANCHISE—GRANT IN REVERSION—CONFIRMING ACT—DECLARATION IN CONFIRMING ACT AS TO AGREEMENT—STREET RAILWAY ACT (R.S.O. 1887. c. 171) s.18—55 VICT. c. 99 ONT.

*Toronto v. Toronto Railway Co.* (1916) A.C. 542. This was an appeal from the Supreme Court of Ontario. The point in controversy was as to the rights of the Toronto Railway Company in a portion of Yonge Street originally excepted from the franchise granted to the Company, but over which the city had subsequently acquired control. Under the Street Railway Act (R.S.O. 1887, c. 171) the city had power to grant a franchise for a street railway, for a period not exceeding 20 years. In September, 1891, the city made an agreement with the Toronto Railway to grant a franchise for 20 years from that day, and also for a further period of ten years, provided the agreement should be confirmed by the Legislature. The Legislature, by 55 Vict. c. 99 Ont., approved the agreement. At the time of the agreement the city limits extended beyond the Canadian Pacific Railway tracks on Yonge Street 1,320 feet, but on this 1,320 feet the County of York had previously granted to the York Radial Ry. exclusive rights to operate a street railway which was still existing, and this franchise did not expire until 1915. The agreement between the city and the Toronto Railway provided that the company was to have the exclusive right to operate its railway in Toronto, except, *inter alia*, over the 1,320 feet of Yonge Street but that the railway should have exclusive rights on the excepted part, so far as the city could grant the same. In 1915 the franchise of the Radial Railway over the 1,320 feet having expired, the city became entitled to grant a franchise over that part, and the Toronto Railway applied to the Ontario Municipal Railway Board for leave to extend its railway over the same. The Board granted the leave, and the Appellate Division of the Supreme Court of Ontario affirmed the order, and it is from that decision that the present appeal was brought. The main contention on the part of the city was that in 1891 it had no present right to grant a franchise over the 1,320 feet, and that they had no power to grant a franchise to take effect at some future time. The judicial committee of the Privy Council (Lord Buckmaster, L.C., and Lords Loreburn and Shaw) overruled these contentions and dismissed the appeal. Their Lordships held that a declaratory clause in the Confirmatory Act purporting to give the effect of the agreement could not be considered as in any way controlling, modifying, or affecting, the construction of the agreement which it confirmed.