

stated in their Lordships' judgment and the above head-note.

The appellant company appealed to the Supreme Court for a declaration that to impose the condition was beyond the jurisdiction of the Board, and that the order of the Board should be upheld as unconditional.

The Supreme Court held that the condition was within the jurisdiction of the Court to impose.

Section 47 of the Railway Act relates to the conditions which the Board may impose and is as follows:—

“The Board may direct in any order that such order or any portion or provision thereof, shall come into force, at a future time, or upon the happening of any contingency, event or condition in such order specified, or upon the performance to the satisfaction of the Board, or person named by it, of any terms which the Board may impose upon any party interested, and the Board may direct that the whole or any portion of such order, shall have force for a limited time, or until the happening of a specified event.”

July 25th, 1911. Sir R. Finlay, K.C., Atkin, K.C., and G. F. Spence, for the appellants contended that the Board had no power to impose the condition in question, that it was separable from the rest of the order and ought to be separated. The terms of sec. 47 are so general that the section must be read in connection with the specific provisions of the Act relating to compensation. It should be read together with secs. 235 and 237, and the power to order compensation is limited to the matters specifically referred to in these sections, and could not be arbitrarily extended so as to include compensation not specifically authorized by statute. There was no power to extend compensation from cases arising in consequence of the construction of a railway to those arising from its location. In regard to the imposition of a condition improperly, see *Rex v. Dodds*, [1905] 2 K. B. 41. It was contended that the condition should be struck out as *ultra vires* and that the appellants were entitled to treat the order as valid and to act upon it as if no such condition were imposed.

J. S. Ewart, K.C., for the respondents the Fort William Land Investment Company, contended that sec. 47 on its true construction authorized the Board to impose the condition contained in its order; otherwise it had implied authority to frame its order as it thought right. The Board in considering whether a proper location should or should not be approved must in the proper exercise of its discre-