

concerned, it would make no difference whether it should be ascribed to damages for breach of contract or to damages in tort; but, in the opinion of their Lordships, the payment fell to be made as damages for tort committed in the breach of a statutory prohibition.

Appeal dismissed with costs.

JANUARY 20TH, 1920.

TORONTO R.W. CO. v. CITY OF TORONTO.
(PENALTY CASE).

Street Railway—Penalty for Non-compliance with Order of Ontario Railway and Municipal Board—Confirmation of Order by 7 Geo. V. ch. 92, sec. 17 (O.)—Failure to Furnish and Operate Additional Cars within Time Fixed by Order—Power to Impose Penalty Given by sec. 260a of Ontario Railway Act as Enacted by Amending Act 8 Geo. V. ch. 30, sec. 4—Criminal Matter—Powers of Provincial Legislature—British North America Act, secs. 91 (27), 92 (15)—Enforcing Compliance with Previous Order—Lapse of Time Fixed by Previous Order—Validity of Order of Board—Punishment of Past Breach—Procedure of Board—Penalty Imposed without Notice to Railway Company—Status of Board—“Superior Court.”

An appeal by the Toronto Railway Company from the judgment of the Appellate Division of the Supreme Court of Ontario, *Re Toronto R.W. Co. and City of Toronto* (1918), 44 O.L.R. 381, affirming an order of the Ontario Railway and Municipal Board of the 19th April, 1918, requiring the appellants to pay to the city corporation, respondents, the sum of \$24,000.

The appeal was heard by VISCOUNT FINLAY, VISCOUNT CAVE, and LORD SHAW.

A. C. Clauson, K.C., and D. L. McCarthy, K.C., for the appellants.

G. R. Geary, K.C., and Irving S. Fairty, for the respondents.

VISCOUNT CAVE, reading the judgment of the Board, said, after stating the facts, that it was contended, first, that sec. 260a of the Ontario Railway Act, as enacted by 8 Geo. V. ch. 30, sec. 4, if it was to be construed as authorising the imposition of a penalty for a past offence, dealt with a criminal matter, and was therefore beyond the powers of the Provincial Legislature, exclusive legis-