

in connection with the question of validation, they were indicating that that was a special expense of validation. I cannot see that that fits into what is covered by the scope of tolls.

---

PRIVY COUNCIL.

NOVEMBER 2ND, 1911.

GRAND TRUNK PACIFIC RW. CO. v. FORT WILLIAM LAND-OWNERS AND FORT WILLIAM LAND INVESTMENT CO. ET AL.

[1912] A. C. 224; 13 Can. Ry. Cas. 187.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

*Board of Railway Commissioners—Jurisdiction—Municipal Streets—Railway upon or along Highway—Leave to Construct—Approval of Location—Condition Imposed—Payment of Damages to Abutting Land-owners—Construction of R. S. C. (1906), c. 37, ss. 47, 155, 159, 235, 237.*

Having obtained the consent of the municipality to use certain public streets for that purpose, the G. T. Pac. Rw. Co. applied to the Railway Board for leave to construct and approval of the location of the line upon and along the highways in question. None of the lands abutting on these highways were to be appropriated for the purposes of the railway, nor were the rights or facilities of access thereto to be interfered with except in so far as might result from inconvenience caused by the construction and operation of the railway.

DOM. RW. BD., in granting the application, made an order that the railway "make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street."

SUPREME COURT OF CANADA (43 S. C. R. 412; 11 Can. Ry. Cas. 271), sustained above order, Davies and Duff, JJ., dissenting.

PRIVY COUNCIL reversed above judgments, holding that under s. 237 (3) of R. S. C. (1906), c. 37, the power to award damages was in respect of construction, and s. 47 did not on its true construction extend that power to meet the case of location.

That as the condition failed there had been no approval of the location.

An Appeal by special leave from a judgment of the Supreme Court of Canada, June 15th, 1910.

The Board of Railway Commissioners on October 6th, 1909, in pursuance of powers vested in them by the Railway Act, R. S. C., 1906, ch. 37, ordered that the appellant company might construct its line of railway along certain streets through the city of Fort William notwithstanding the strong objections thereto of the respondents that it would be injurious to their properties which abutted on the said streets. The order was made subject to the express condition