

a draw in such bridge in case the Crown should at any time thereafter determine it to be necessary for the purposes of navigation. By Order in Council of 3rd October, 1882, and an agreement made in pursuance thereof on the 23rd of December, 1882, between the said company and the Crown, permission was given to the former to construct a bridge upon the said undertaking to build a swing in the bridge if the Crown considered it necessary, or in case of the carrying out of the proposed canal for the improvement of the Trent River navigation, and in that case it being considered necessary that there should in that case be a new swing bridge over the said canal, the cost of the swing and the necessary pivot pier therefor to be borne by the said company. The canal having been constructed, it became necessary to have a new swing bridge over the canal on the company's line of railway. This bridge was built, and the the suppliant company discharged the obligation to which it succeeded to pay the cost of the pivot pier and of the swing or superstructure of the bridge. The cost of the maintenance and operation of the bridge being in dispute between the parties, the petition herein was filed to determine the question of liability therefor.

*Held*, that in the absence of any stipulation in the agreement between the parties as to which should bear the cost of such maintenance and operation, the suppliants having built the pivot pier and swing as part of its railway and property should maintain and operate them at their own cost.

*Chrysler, K.C., and D'Arcy Scott*, for suppliant. *Newcombe, K.C.*, for Crown.

Burbidge, J.]

[June 30.]

CANADIAN PACIFIC RY. CO. v. THE KING.

*Construction of branch line—Subsidy—Agreement to pay—Ascertainment of amount—"Cost"—"Equipment."*

By 3 Edw. VII. c. 37, s. 2, it was provided that the Governor in Council might grant the Canadian Pacific Railway Company in aid of the construction of a certain branch line, a subsidy of \$3,200 per mile, where the line did not cost more on the average than \$15,000 per mile, and that where such cost was exceeded, a further subsidy might be given of 50 per cent. on so much of the average cost of the mileage subsidized as was in excess of \$15,000 per mile, such subsidy not exceeding in the whole the sum of \$6,400 per mile. By the 1st section of the Act the expression "cost" was defined to mean the "actual, necessary and