

REVIEW OF CURRENT ENGLISH CASES.

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RAILWAY—POWERS OF BOARD OF RAILWAY COMMISSIONERS—
ORDER AUTHORIZING BRIDGES—COST OF WORK—ORDER
AGAINST PROVINCIAL RAILWAY—ULTRA VIRES—RAILWAY
ACT (R.S.C. c. 37), ss. 59, 237, 238—B.N.A. ACT (30 VICT.
c. 3), s. 92 (10).

British Columbia Electric Ry. v. Vancouver, Victoria and Eastern Ry. (1914) A.C. 1067. This was an appeal from the Supreme Court of Canada affirming an order of the Board of Railway Commissioners. This order had been made in the following circumstances. The city of Vancouver desired to alter the grade of four streets in the city which were crossed by the tracks of a railway under Dominion control, and on two of which streets a railway under provincial control operated a street railway, and the city applied to the Dominion Board of Railway Commissioners for authority to carry the streets over the Dominion railway tracks on bridges. The Board authorized the work to be done, and ordered that a part of the cost should be borne by the railway under provincial control, on the ground that that company would be benefited by the alteration. The Judicial Committee of the Privy Council (Lords Moulton, Parker, and Sumner, and Sir. Geo. Farewell) held, reversing the Supreme Court of Canada, that the Board of Railway Commissioners had no power in the circumstances to make such an order against the railway under provincial control. Their Lordships point out that the application was made by the city against the railway under Dominion control. No relief was asked as against the tramway company, which was notified merely that it might see that its rights were not interfered with, but that company was not asking any privilege, so that its presence did not give the Board any jurisdiction to make the order against it. Their Lordships held that the fundamental error of the Railway Commissioners was that they considered that the fact that the tramway company would be benefited by the works gave them jurisdiction to order them to pay part of the cost; but their Lordships say there is nothing in the Railway Act which gives any such jurisdiction.