

guarded, and preserved; and the provision touching the purchase of overhead plant contained in the agreement of the 13th November, 1889, meant no more than that the respondents should be entitled to purchase, when they purchased the underground system, such poles and plant of the overhead system as might be then found lawfully erected on the streets and public places.

No estoppel arose, as there was no evidence whatever that both the contracting parties were not fully aware of their respective legal rights.

Appeal dismissed with costs.

OCTOBER 23RD, 1916.

*TORONTO AND YORK RADIAL R.W. CO. v. CITY OF TORONTO.

Street Railway—Agreement with Municipal Corporations—Construction—Ontario Railway Act, R.S.O. 1914 ch. 185, secs. 105 (8), 250—Order of Ontario Railway and Municipal Board—Approval of Plans for Construction of Turn-outs and Switches to Cross Sidewalk of Highway—Franchise—Location and Construction—Operation—Necessity for Consent of City Corporation—Engineering Grounds.

Appeal by the Toronto and York Radial Railway Company from the judgment of the First Divisional Court of the Appellate Division of the Supreme Court of Ontario, *Re Toronto and York Radial R.W. Co. and City of Toronto* (1915), 35 O.L.R. 57, 9 O.W.N. 254, allowing the appeal of the Corporation of the City of Toronto from an order of the Ontario Railway and Municipal Board.

The appeal was heard by a Board composed of VISCOUNT HALDANE, LORD ATKINSON, LORD SHAW, and LORD PARMOOR.

Sir Robert Finlay, K.C., and I. F. Hellmuth, K.C., for the appellants.

A. C. Clauson, K.C., and G. R. Geary, K.C., for the Corporation of the City of Toronto, respondents.

The judgment of the Board was delivered by LORD PARMOOR, who, after referring to the facts and to the provisions of secs. 105 (8) and 250 of the Ontario Railway Act, R.S.O. 1914 ch.