

tion for such a contention. The application to the Board was to approve a plan, and until it had made an operative order it was not incumbent (even if it was permissible) upon any objector to appeal against interim expressions of the view of the Board in matters of fact or law. It might well be that the operative order might not have been objectionable to the Corporation, and until they learnt its terms they could not be required to decide whether they would dispute it or not.

On the 17th June, 1912, the Ontario Railway and Municipal Board made an order approving the plans filed by the appellants, and on the 16th December, 1912, leave was obtained to appeal against that order. On the 13th February, 1913, the Appellate Division of the Supreme Court of Ontario gave an unanimous judgment, allowing the appeal and setting aside the order, and it is from this decision that the present appeal is brought.

Their Lordships are of opinion that the decision of the Appeal Court was right and should be affirmed. The line of the appellants in the portion of Yonge street which, ever since 1st January, 1888, has been within the city of Toronto, has been held and operated by the appellants or their predecessors, under and by virtue of the franchise and privileges obtained by them under the agreements of 25th June, 1884, and 20th January, 1886. It is true that these agreements were made with the County of York (within whose jurisdiction this portion of Yonge street then lay), and not with the city of Toronto, but by the indenture of 20th August, 1888, the County of York conveyed to the city of Toronto the whole of its interests in the portion of Yonge street within the city. It is not necessary to decide whether, under the circumstances, the Corporation of Toronto became formally the successors of the County of York under the agreement, so far as it related to this portion of the track, to such an extent that they could have enforced obedience to the terms of the agreement by proceedings in their own name, because, even if that were not so, the County of York were clearly trustees on behalf of the Corporation of Toronto of their rights under these agreements with regard to such portion of the track, and could not have released the appellants from any of its conditions, otherwise than by the request or with the consent of the Corporation of Toronto. The appellants are thus bound by the whole of the