

MUNICIPAL LAW.

REG. v. TORONTO RAILWAY COMPANY.

*Street railways—Dominion Railway Act not applicable to Municipal control
—Persons in charge of street car.*

Defendants were convicted of operating cars in the City of Toronto which had no vestibule protection for conductors as alleged to be required by a City by-law, which provided that all cars were to be provided with "vestibules to protect the motorman and persons in charge of such car from exposure, etc." On appeal to the County Judge from a conviction made by the Police Magistrate,

Held, 1. An electric street railway does not become a Dominion railway or work, and as such removed from the legislation control of a local legislature, by reason of its tracks crossing the tracks of two Dominion railways.

2. A conductor of a street railway company is a "person in charge of a car" within the meaning of the by-law.

[TORONTO, March 28, 1899—McDougall, Co. J.]

This was an appeal from the conviction of the defendants, The Toronto Railway Company, made by the Police Magistrate for the City of Toronto for an alleged breach of city by-law No. 3280 entitled a by-law "to provide for the constructing of vestibules for the shelter of motormen and others upon the cars of electric railway companies." The section of the by-law which was claimed to have been disregarded by the defendants reads as follows:—"(2) Every electric railway company operating its railway within the limits of the said city shall not during the month of December of the current year (1894) or during the months of January, February, March, November and December of any year hereafter run or operate or cause or suffer or permit to be operated on its railway or line within the said city any street car unless the same shall be provided with proper and sufficient vestibules to protect the motorman and persons in charge of such car from exposure to cold, snow, rain or sleet while engaged in operating such car." The question in dispute was as to whether the defendants were bound to provide a vestibule for each end of the car and to protect by a vestibule the conductor as well as the motorman.

J. Bicknell, for the appellants. *Fullerton, Q. C.*, contra.

MCDUGALL, Co. J.—The sole question which I now consider is the construction to be placed upon the by-law and whether its language compels a vestibule to be provided at each end of the car, or, putting the query in another way—does the conductor of a car, whose station when not collecting fares is at the rear end of the car, come within the protection of the by-law under the words "motorman and persons in charge of the car while engaged in operating such car." Apart from the question raised as to the validity of the by-law by reason of the provisions of the Dominion Railway Act it is, I may say, admitted that if a proper construction of the words, "motorman and persons in charge of such car while engaged in operating such car" includes the conductor as well as the motorman, then the conviction must stand, but if it be held otherwise the conviction must be set aside.