whether its so doing would be consistent with their duties, or within their powers in other respects, because they are of opinion that nothing done under the powers of this agreement can in any way affect the rights of the respondents with regard to the portion of Yonge street owned by them and situated within their own jurisdiction.

On the 11th May, 1911, the proceedings in this matter were commenced by an application being made to the Ontario Railway and Municipal Board on behalf of the appellants for the approval by the Board of "a plan to deviate the track on the metropolitan division from Yonge street to a private right of way," which was described as being about 125 feet to the west, running parallel with Yonge street. On looking at the plan it is obvious that this is a misdescription of the proposal in that the proposed line lies only partially upon land proposed to be acquired by the railway company, and that it crosses in four or five places, public highways which are not, and necessarily cannot be, described as portions of a private right of way. The object and effect of the proposed plan is plain. The company desired by it to take the line off Yonge street without obtaining the consent of the Municipality, and it was not concealed from their Lordships in the argument that it would in future be contended that, thereafter, they would not be using the franchise or privilege obtained by the agreements of 1884 and 1886, or be affected by the fact that such franchise and privilege would terminate in June, 1915.

The respondents, the Corporation of Toronto, opposed the application, and contended that the company had no right to deviate from Yonge street, and that the Board had no jurisdiction to allow the deviation. The Board rejected that contention, and, on the 25th day of October, 1911, they delivered a written opinion to the effect that the company had the right to deviate to their own right of way. It has been strongly contended before their Lordships, as it was in the Court below, that the respondents were bound forthwith to appeal against this expression of opinion of the Board, and that their not having done so should have been punished by a refusal of leave to appeal from the operative order subsequently made by the Board, or should at any rate preclude them from disputing the correctness of the view of the Board as to the law of the case in any subsequent proceeding. Their Lordships are of opinion that there is no founda-