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TORONTO, DECEMBER 1, 1909.

No. 10.

COURT OF APPEAL.

NOVEMBER 22ND, 1909.

CANADIAN PACIFIC R. W. CO. v. CITY OF TORONTO.

GRAND TRUNK R. W. CO. v. CITY OF TORONTO.

Appeal—Privy Council—Application to Allow Security—Jurisdiction—Matter in Controversy—R. S. O. 1897 ch. 48.

Motion by the plaintiffs for the allowance of the security upon a proposed appeal to the Privy Council from the judgment of the Court of Appeal, 10 O. W. R. 483.

The motion was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

E. D. Armour, K.C., for the plaintiffs the Canadian Pacific Railway Company.

R. C. H. Cassels, for the plaintiffs the Grand Trunk Railway Company.

W. C. Chisholm, K.C., for the defendants.

The judgment of the majority of the Court was given by OSLER, J.A., who said that an appeal did not lie as of right under R. S. O. 1897 ch. 48. The controversy was not as to a pecuniary amount or of a pecuniary nature. It was simply as to the validity of an order of the Railway Committee. If it were a matter involving directly the value of property affected by the adjudication in the action, that value might be shewn by affidavit, as pointed out in the *Falkners Gold Mining Co. v. McKinnery*, [1901] A. C.