

Reports and Notes of Cases.

England.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Ont.]

[June 23.

TORONTO RAILWAY CO. v. CITY OF TORONTO.

Street Railway—Agreement with City Corporation—Exclusive right to operate upon streets—Exception as to a street then worked by another railway—Expiry of other railway's franchise—Right to operate upon portion of street released—Order of Ontario Railway and Municipal Board—55 Vict. c. 99 (O.).

On appeal from the Appellate Division of the Supreme Court of Ontario.

Under an agreement dated the 1st Sept., 1891, the appellants purported to grant to the predecessors of the respondents in title for a term of twenty years, and for a further period of ten years if enabling legislation were obtained, "the exclusive right . . . to operate surface street railways in the City of Toronto excepting . . . on that portion, if any, of V-street . . . over which the M. Street Railway claims the exclusive right to operate surface street railways . . . and also the exclusive right for the same term over the said portion of Y-street . . . so far as the said corporation can legally grant the same."

This agreement, on the face of it, being in excess of the powers of the corporation, the necessary statute for its confirmation was obtained. The right of the M. Street Railway ceased in 1915, and the respondents claimed that by virtue of the agreement they were then entitled, for the residue of the term created by the agreement, to use this portion of Y-street for the purposes of their railway for the residue of the term.

Held, that the grant of powers over the excepted portion of Y-street was not invalid by reason of being a grant in reversion, and therefore the order of the Ontario and Municipal Board, declaring the exclusive right of the respondents to operate upon the portion of Y-street in question should be affirmed.

Clauson, K.C., and Geary, K.C., for the appellants; Sir John Simon, K.C., and McCarthy, K.C., for the respondents.