

railway upon the "Esplanade" in the city of Toronto, and in that year, the C.P. Ry. Co. obtained permission from the Dominion Government to fill in part of Toronto harbour lying south the "Esplanade," and the general public eased along the pro- which it did. Several city streets abutted on the north side of the "Esplanade," and the general public eased along the pro- longations of these streets, with vehicles and on foot, for the purpose of access to the harbour. In 1892 an agreement was entered into between the city and the two railway companies respecting the removal of the sites of terminal stations, the erection of over-head traffic bridges and the closing or devia- tion of some of these streets. This agreement was ratified by statutes of the Dominion and provincial legislatures, the Domin- ion Act providing that the works mentioned in the agreement should be works for the general advantage of Canada. To re- move doubts respecting the right of the C.P. Ry. Co. to the use of portions of the bed of the harbour on which they had laid their tracks across the prolongations of the streets men- tioned, a grant was made to that company by the Dominion Government of the "use for railway purposes" on and over the filled-in areas included within the lines formed by the pro- duction of the sides of the streets. At a later date the Dominion Government granted these areas to the city, in trust to be used as public highways, subject to an agreement respecting the rail- ways, known as the "Old Windmill Line" agreement, and accepting therefrom strips of land 66 feet in width between the southerly ends of the areas and the harbour, reserved as and for "an allowance for a public highway." In June, 1909, the Board of Railway Commissioners, on application by the city, made an order directing that the railway companies should ele- vate their tracks on and adjoining the "Esplanade" and con- struct a viaduct there.

*Held*, GIROUARD and DUFF, JJ., dissenting, that the Board had jurisdiction to make such order; that the street prolonga- tions mentioned were highways within the meaning of the Railway Act; that the Act of Parliament validating the agree- ment made in 1892, did not alter the character of the agreement as a private contract affecting only the parties thereto, and that the C.P. Ry. Co., having acquired only a limited right in the filled-in land, had not such a title thereto as would deprive the public of the right to pass over the same as a means of communi- cation between the streets and the harbour.

Appeal dismissed with costs.