Their Lordships proceeded to consider the case upon its merits, first quoting and discussing secs. 59, 237, and 238 of the Railway Act. R.S.C. 1906 ch. 37. Sections 237 and 238 stand as found in the amending Act of 1909, 8 & 9 Edw. VII. ch. 32.

The first objection to the order for payment of part of the cost of the bridge was that the railway of the Toronto Railway Company is a provincial railway, and that any enactment giving power to throw upon it the cost of works would be ultra vires of the Dominion Parliament: sec. 92 of the British North America Act. It was also urged that the provincial railway company was not interested or affected by the works in question. Both of these objections were answered by Toronto Corporation v. Canadian Pacific R.W. Co., [1908] A.C. 54.

The Vancouver case, above cited, was chiefly relied upon by the appellants. Their Lordships distinguished that case.

Their Lordships were of opinion that sec. 46 of the Railway Act, R.S.C. 1906 ch. 37, was not ultra vires, and that the objection taken to the procedure followed in making the order a rule of Court failed. On this point they were content to refer to the judgment of Middleton, J.

The appeal failed on the merits.

The substantive order to appeal against which leave was obtained was made so long ago as July, 1909. The two subsequent orders were merely subsidiary. The fact that so long a period had elapsed since the order was made was one which would militate strongly against the granting of special leave. It appeared to their Lordships that the allegations in paragraph 19 of the petition were not borne out by the documentary evidence. They were unable to find anything in the correspondence that could lead the petitioners to doubt that the city corporation would press for payment.

It is incumbent on the petitioners in any case in which special leave is applied for to see that the facts are correctly brought to the notice of the Judicial Committee; and if, at any stage, it is found that there has been failure to do so, the leave may be rescinded.

Reference to Mohun Lall Sookul v. Bebee Doss (1861), 8 Moore Ind. App. 193, 195; Mussoorie Bank v. Raynor (1882), 7 App. Cas. 321, 328, 329.

Owing to the course which the case had taken, it was not necessary now to deal further with this point, but their Lordships thought it proper to say that, if the occasion had arisen for deciding on this objection, it would have been a matter for their grave consideration whether the leave should not be rescinded, however innocent the misrepresentation.

The appeal should be dismissed with costs.