

the terms of the reference to them, but they might award a mere nominal increase if they thought proper; the increase was to be based upon the rent reserved for the whole term, and not for any particular year or years of it; it might be upon each year's rent or upon the average of the whole twenty-one years, but so that in the result the average annual rent should be greater for the future term than the past.

*In re Geddes and Garde*, 32 O.R. 262, approved.

*H. D. Gamble*, for the lessor. *John Macgregor*, for the lessee.

Lount, J.]

[Jan. 7.

TOWNSHIP OF GLOUCESTER *v.* CANADA ATLANTIC R. W. CO.

*Way—Road allowance—Obstruction—Railways—Fences—Municipal corporation—By-law—Railway Act of Canada—Railway Committee of Privy Council—Injunction—Removal of obstruction—Jurisdiction.*

An action for an injunction to restrain the defendants from obstructing a highway in the township, by fences on both sides of the defendants' tracks where they crossed the highway, and for a mandatory order compelling the removal of the fences.

*Held*, 1. The allowance for the road in question having been made by a Crown surveyor was a highway within the meaning of s. 599 of the Municipal Act, and, although not an open public road used and travelled upon by the public, it was a highway within the meaning of the Railway Act of Canada, 51 Vict., c. 29.

2. Although the road allowance had not been cleared and opened up for public travel and had not been used as a public road, it was not necessary for the municipality to pass a by-law opening it before exercising jurisdiction over it; the council might direct their officers to open the road and such direction would be sufficient.

3. The right of the railway company under s. 90 (g) of the Railway Act to construct their tracks and build their fences across the highway was subject to s. 183, which provides against any obstruction to the highway, and s. 194, which provides for fences and cattle guards being erected and maintained; and, therefore, the defendants had no right to maintain fences which obstructed the highway or interfered with the public use or with the control over it claimed by the municipality.

4. The Railway Committee of the Privy Council had no jurisdiction to determine the questions in dispute; s. 11 (h) and (q) of the Railway Act not applying.

5. The Court had jurisdiction to grant the relief sought.

*Fenelon Falls v. Victoria R. W. Co.*, 29 Gr. 4, and *City of Toronto v. Lorsch*, 24 O.R. 227, followed.

6. The highway being vested in the township corporation who desired to open and make it fit for public travel, the plaintiffs were entitled to have