

THE CANADIAN PACIFIC RAIL- WAY COMPANY	} APPELLANTS;	1910 } <u>*June 15.</u>

AND

THE CITY OF OTTAWA AND CER- TAIN RESIDENTS OF THE CITY OF OTTAWA	} RESPONDENTS.

(GATINEAU BRANCH CASE.)

*Board of Railway Commissioners—Appeals on questions of law—
Stated case—Submission of specific question—Practice—Con-
struction of statute—R.S.C., 1906, c. 37, s. 55 and s. 56, s.-s. 3.*

An appeal, under the provisions of section 55, or section 56, sub-
section 3, of the "Railway Act," R.S.C., 1906, ch. 37, should not
be entertained by the Supreme Court of Canada until the Board
of Railway Commissioners for Canada has stated the case in
writing and submitted for the opinion of the court some ques-
tion which, in the opinion of the board, is a question of law.
(*Cf. "Regina Rates Case,"* 44 Can. S.C.R. 328, where this case
was followed by Anglin J., and 45 Can. S.C.R. at pp. 323 to 328.)

APPEAL by leave of the Board of Railway Commis-
sioners for Canada, from an order of the board,
dated 26th April, 1910, respecting the operation of
the trains on the Gatineau Branch of the Canadian
Pacific Railway.

On the 26th of April, 1910, on the application of
certain residents of the City of Ottawa residing for
the Summer seasons at various points of the branch
line of the railway in question, ordered that, during
the period from the 1st of May to the 1st of October in

*PRESENT:—Girouard, Davies, Idington, Duff and Anglin JJ.

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each year, the company should operate all its passenger trains, both north-bound and south-bound, on its Gatineau Branch, from and to a point at or near Sappers' Bridge, in the City of Ottawa, and furnish adequate and suitable accommodation for receiving and delivering passengers at that point.

On an application by the railway company for leave to appeal from the order, upon questions of law, leave to appeal was granted by the board, subject to and upon terms that the appeal should be prosecuted with expedition, but the order granting such leave did not state a case in writing submitting for the opinion of the court any question which, in the opinion of the board, was a question of law. (See *Cam. S.C. Prac.*, 2 ed., at p. 799, where the questions of law suggested on behalf of the appellants, on the application to the board, are recited.)

Chrysler K.C. appeared for the appellants.

Taylor McVeity for the City of Ottawa.

John J. O'Meara for the residents of the City of Ottawa interested.

The court, of its own motion, took objection to the form of the submission of the case by the board.

Chrysler K.C., on behalf of the appellants, contended that, it appeared by the printed case that the hearing before the board consisted of a discussion touching the previous history of the portion of the line of railway situated between Sappers' Bridge and the approaches to Alexandra Bridge along the east side of the Rideau Canal which was occupied by the

railway company by virtue of a lease from the Crown, for purposes specially indicated in the lease, by which, moreover, the lessees were prohibited from using the demised lands for purposes other than rights-of-way, from placing there more than three tracks or using any of such tracks for the purposes of sidings, from storing, side-tracking or allowing to stand thereon any cars, rolling stock or other movable property, and from erecting buildings of any description upon the premises; that the order was made without jurisdiction and that it could not be supported by the evidence nor by a proper construction of section 284 of the "Railway Act."

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After consultation, the following opinion, for the court, was delivered by

GIROUARD J.—The majority of the court is of the opinion that we cannot hear the appeal, at the present time at least, as the board has not submitted any question which, in the opinion of the board, is a question of law.

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Subsequently, on 2nd February, 1911, on an application to the registrar in chambers, and by consent of the parties, the appeal was dismissed with costs.