

APPENDIX



CONTAINING EXPLANATORY NOTES AND REFERENCES TO STATUTES, JUDGMENTS OF
COURTS, AND DECISIONS AND ORDERS OF THE ONTARIO
RAILWAY AND MUNICIPAL BOARD

RELATING TO LITIGATION

BETWEEN

THE TORONTO RAILWAY COMPANY

AND

THE CORPORATION OF THE CITY OF TORONTO

From December 8th, 1905, to December 31st, 1908

Prepared by the City Solicitor

APPENDIX.

I.

The Statute 55 Vic. chap. 99 is supplemented by Ontario Statute, 8 Edward VII. chap. 112, sec. 1, declaring the true intent and meaning of the original Act.

II.

The agreement as to removal of snow, printed at page 45 of pamphlet, has been interpreted by the Ontario Railway Board, on the application of the City, by a judgment dated April 23rd, 1907, dismissing the application for an order to restrain the Company from depositing snow and ice on the streets without the permission of the City.

On the 22nd of January, 1908, the Court of Appeal dismissed the City's appeal against this judgment.

III.

The judgment of Anglin, J., at page 76, was, by the judgment of the Court of Appeal, on November 13th, 1905, printed at page 91, varied by declaring that the City had control of time-tables and routes, and also declaring that day cars starting on a route before midnight, must finish their routes, although this might require them to run after midnight. On appeal to the Supreme Court by the Company, the Court, by a judgment dated May 1st, 1906, varied the judgments in the Courts below as set forth in No. 1 hereafter, and on April 26th, 1907, the Privy Council varied the said judgments, as set forth in No. 3 hereafter.

IV.

The Company, on December 5th, 1905, petitioned the Court to set aside the judgment of Winchester, J., printed at page 83, which application has been argued and reserved.

V.

An appeal by the Company against the findings of Judge Snider in the "Penalties" action, printed at page 87, has been argued before Teetzel, J., and judgment reserved.

VI.

The judgment of Street, J., at page 98, in the "Avenue Road Extension and Stops" case, has been varied on appeals to the Court of Appeal and the Privy Council, as set forth in Nos. 2 and 3 hereafter.

SYNOPSIS OF LITIGATION BETWEEN TORONTO RAILWAY CO. AND CITY OF TORONTO,
SINCE ISSUE OF PAMPHLET, DECEMBER 8TH, 1905.

Omnibus Case.

1. On May 1st, 1906, the Supreme Court of Canada delivered judgment in the "Omnibus Case" varying the judgment of the Court of Appeal.

(a) By limiting the application of the agreement of September 1st, 1891, to the territory then within the limits of the City.

(b) By reversing the judgments of the Court of Appeal and of Mr. Justice Anglin, and declaring that the Company had the right to determine when open cars should be discontinued in the autumn and resumed in the spring, and when cars should be heated.

Avenue Road Extension and Stops.

2. On June 29th, 1906, the Court of Appeal delivered judgment dismissing the Company's appeal against the judgment of Street, J., on November 23rd, 1905, in the "Avenue Road and Stops" case.

3. The City appealed against the judgment of the Supreme Court in the Omnibus Case, and the Company appealed against the judgment of the Court of Appeal in the "Avenue Road and Stops" case, and the appeals were consolidated, and on April 26th, 1907, the Judicial Committee of the Privy Council gave judgment on the consolidated appeal, and declared:

(a) That the Company had the right to determine what new lines should be established;

(b) That the Agreement of September 1st, 1891, applied only to the City, as constituted at that date;

(c) That the Company had the right to fix stopping places;

(d) That should the Company fail to establish new lines where the City desired them, the only remedy the City had was to grant that privilege to another Company.

Car Barns Case.

4. On June 21st, 1906, Meredith, C.J., delivered judgment in the "Car Barns" case, dismissing Company's action to restrain the City expropriating for park purposes lands at the corner of Bathurst Street and Vermont Avenue.

5. On October 19th, 1906, a Divisional Court (Boyd, C., Magee, J., and Mabee, J.), dismissed Company's appeal from judgment of trial Judge in "Car Barns" case.

6. On September 16th, 1907, Company discontinued appeal by company to Court of Appeal in "Car Barns" case.

Electrolysis.

7. On December 20th, 1906, an action was commenced against the Railway Company for damages to the water pipes of the City by electrolysis. A great deal of expert evidence has been collected, and the case is ready for trial, and may be brought on by either party on one month's notice.

Penalties.

8. Thirteen writs have been issued claiming daily penalties of \$100 per day, amounting in all to \$49,500, from December 6th, 1905, to April 14th, 1907.

Pavements on Track Allowances.

9. On May 10th, 1906, the Railway Company brought an action against the City for a declaratory judgment defining the liability of the Company and City as to the construction and maintenance of the pavements on the track allowances, and claiming damages to their rolling stock. The action has not been pressed to trial.

APPLICATIONS TO ONTARIO RAILWAY AND MUNICIPAL BOARD.

Lavatories, etc.

1. On December 1st, 1906, an application was filed before the Railway Board by the Toronto Railway Employees' Union and the City, for an order requiring the Toronto Railway Company to maintain suitable urinals, lavatories, drinking fountains and other conveniences for the use of employees of the Company, and the public, and for a direction as to the proportion of cost to be borne by the Company and the City.

On January 18th, 1907, the Board of Control directed that the City Solicitor ask the Railway Board that such lavatories, etc., be ordered as are necessary for use of railway employees only, and that City be left in a position to erect independent places for the use of the public.

The Company, after conferences with the Engineer and Medical Health Officer, has erected several, and obtained an adjournment sine die to be taken up as may be required after readjustment of Company's routes. No formal order has been yet made.

Bathurst, Arthur and Winchester Routes.

2. On January 23rd, 1907, The Ontario Railway and Municipal Board, on its own motion, made an order enjoining the City interfering with the Company

in changing its routes as to Bathurst Street, Arthur Street, and Winchester Street, and directing the Company to restore the service on the streets in question as it was when interrupted by the City. An application was then pending by the City to compel the Company to operate the routes which the Company had discontinued. On January 30th, 1907, by direction of the Board of Control, an application was filed asking the Railway Board to vary its order of January 23rd. Owing to the decision of the Privy Council placing the regulation of routes in the hands of the Company, this application has not been pressed to a hearing.

Snow Removal.

3. On April 23rd, 1907, on the application of the City for an order restraining the Company from depositing ice and snow upon the streets without the permission of the City, judgment was given dismissing the application, and on an appeal by the City to the Court of Appeal, that Court on January 22nd, 1908, gave judgment dismissing the appeal.

Assessment Appeal, 1907.

4. On April 29th, 1908, The Ontario Railway and Municipal Board made an order on the appeal by the Company from the assessment upon their storage plants confirmed by the Court of Revision, confirming a settlement arrived at between the parties.

Fenders.

5. On May 6th, 1908, on the application of the City, an order was made by the Ontario Railway Board that the Company equip their whole system with an approved fender within six months.

Overcrowding.

6. On May 17th, 1907, The Railway Board, on the City's application, made an order that the Company was forthwith to build 100 new cars, and put the same into commission so soon as tracks could be laid to accommodate them, and from ten to fifteen miles of single track on streets to be agreed upon between the Company and City.

Front Vestibules.

7. On May 17th, 1907, the Railway Board made an order, on the City's application, that the front platforms of all cars used by the Toronto Railway Company shall be enclosed on or before November 1st, 1907, to protect the motor-men by a door fastened with a spring lock on the inside.

Richmond Street Curves.

8. On May 23rd, 1907, The Ontario Railway and Municipal Board made an order upon the application of the Company, restraining the City from interfering

with the Company in laying down curves at the corner of Yonge and Richmond Streets. On September 23rd, 1907, the Court of Appeal gave leave to appeal against this order. On October 15th, 1907, further proceedings in the appeal were discontinued.

Open Cars and Heating Cars.

9. On November 5th, 1907, under instructions from the Board of Control, an application was filed by the City for an order from the Ontario Railway Board as to the use of open cars, and heating of closed cars, and on November 16th, 1907, further proceedings were discontinued on instructions from the Board of Control.

Rear Vestibules.

10. On June 2nd, 1908, Mr. Gibbons, the Business Agent of the Toronto Railway Employees' Union, filed an application to the Railway Board for an order directing the rear vestibules of closed cars to be enclosed. The City Solicitor was directed by the Board of Control to assist on this application. No appointment has been taken for the hearing, pending the action of the Company as to the adoption of the pay-as-you-enter system.

Riding on Front Seats.

11. On June 25th, 1908, the Railway Board, on its own motion, considered question of preventing passengers riding on front seats of open cars. A large number of delegates from various places gave their views and the Board reserved judgment.

Height of Steps.

12. On the instructions of the Board of Control, the City has taken charge of an application to the Railway Board by Dr. Helen MacMurchy for a regulation fixing the height of steps of street and electric cars operated by companies under the jurisdiction of the Railway Board. The Board has dismissed the application except as to West Toronto, London and Toronto. The application has been partially heard.

Assessment Appeal, 1908.

13. On December 21st, 1908, The Ontario Railway and Municipal Board made an order on the appeal by the Company from the assessment upon their storage plants, confirmed by the Court of Revision, confirming a settlement arrived at between the parties.