

46, 1933

In the Privy Council.

No. 98 of 1932.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

IN THE MATTER of APPLICATIONS OF THE CANADIAN NATIONAL RAILWAYS for Orders under Section 256 of the Railway Act for authority to construct a subway at St. Antoine Street in the City of Montreal as shown on General Plan YIA 31.10.4 dated August 16th, 1930, and filed with the Board under File No. 9437.319.13, and a subway at d'Argenson Street in the City of Montreal between Point St. Charles and St. Henri as shown on General Plan YIE 31.51.4 dated April 15th, 1930, on file with the Board under File No. 9437.319.7.

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BETWEEN

THE CITY OF MONTREAL - - - - *Appellant*

AND

THE CANADIAN NATIONAL RAILWAYS - *Respondent.*

CASE OF THE RESPONDENT.

1. This is an appeal by special leave from two Orders of the Board of Railway Commissioners for Canada (hereinafter called "the Board") numbers 45427, dated 9th September, 1930, and 45410, dated the 16th September, 1930. Record.
p. 6.
p. 18.

2. These Orders, which were made on the Respondent's applications accompanied by plans and after notice to the Appellant, authorised the construction by the Respondent of subways at St. Antoine Street and d'Argenson Street in the City of Montreal on the Respondent's line of railway as shown on plans and profiles filed with the Board. pp. 3-4.
p. 15.

In accordance with the Respondent's applications the orders directed the Appellant and certain utility companies— p. 6, l. 32.
p. 18, l. 33.

30 "to move such of their utilities as may be affected by the construction of the said subway, as and when required to do so by the Chief Engineer, Operating Department, of the Applicants."

RESPONDENT'S CASE.

Record.
p. 8, l. 16.
p. 10, l. 12.
p. 12.
p. 13, l. 21.
p. 17, l. 27.

3. After a modification had been made in one of the plans to meet an objection by the Appellant, the Appellant's solicitor wrote to the Secretary of the Board in reference to each application on the 22nd September, 1930, and the 13th September, 1930, stating that "the City has no objection to the application."

p. 7, l. 3.
p. 19, l. 4.

4. In accordance with the Respondent's applications and the letters from the Appellant's solicitor both orders directed that "all questions of costs be reserved for further consideration by the Board."

5. Both Orders were made for the purpose of carrying out parts of an extensive scheme, which had been authorised by statute and approved by Order of the Governor in Council, for re-adjusting the terminal facilities of the Canadian National Railways and minimising the danger to the public at level crossings in the City of Montreal. 10

6. No statement of facts certified by the Board is included in the Record, but the circumstances in which the said orders were made appear from the statements of facts in appeals numbers 1 to 6 included in a consolidated appeal to His Majesty in Council from judgments of the Supreme Court of Canada dated 1st March, 1932, wherein the Bell Telephone Company of Canada, the Montreal Light Heat & Power Consolidated, the Montreal Tramways Company and the Montreal Tramways Commission are Appellants and the Respondent is Respondent (Appeal No. 61 of 1932) and the Respondent craves leave to refer to the said Record. 20

p. 20, l. 29.

7. In the Appellant's Petition for special leave to appeal it is stated that the Appellant owns and maintains various municipal works on and under the surface of the streets in Montreal; that in lowering the level of the streets it will be necessary to make substantial alterations to the said works and that the Appellant desires to raise on appeal the same questions concerning the jurisdiction of the Board as are raised by the Appellants in the said appeals numbers 1 to 6 included in the said consolidated appeals.

8. The Respondent submits that the Board had jurisdiction under sections 255, 256, 257 and 39 of the Railway Act to make the orders in question. 30

9. Under Sections 255, 256 and 257 of the Railway Act the Board has power, when granting an application for the crossing of a highway by a Railway or where the Railway is already constructed across a highway, to impose such terms and conditions, or make such order, "as to protection, safety and convenience of the public as it deems expedient" and to give directions respecting supervision of the construction.

10. Section 39 of the Railway Act authorises the Board, in every case in which by an Order it directs works, to order by what company, municipality or person interested in or affected by such Order they shall be constructed.

Record.

11. The several questions raised by the Appellant in the Petition for special leave to appeal are referred to in the Case for the Respondents in the said consolidated appeal and the Respondent relies on and craves leave to refer to the said Case.

12. The Respondent submits that the said Orders of the Board number 45427 dated the 9th September, 1930, and number 45410 dated the 16th September, 1930, should be affirmed and that the appeal should be dismissed for the following among other

p. 6.

p. 18.

REASONS.

- (1) BECAUSE the Appellant assented to the applications in conformity with which the orders in question were made.
- (2) BECAUSE Municipal Corporations are subject to the jurisdiction of the Board.
- (3) FOR the Reasons set out in the Case for the Respondents in the said consolidated appeal (No. 61 of 1932) in so far as such Reasons are applicable to orders numbers 45427 and 45410.

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W. N. TILLEY.

C. F. H. CARSON.

In the Privy Council.

No. 98 of 1932.

*On Appeal from the Board of Railway
Commissioners for Canada.*

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Railways for Orders under Section 256 of the Railway
Act for authority to construct a subway at St. Antoine
Street in the City of Montreal as shown on General Plan
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St. Charles and St. Henri as shown on General Plan YIE
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under File No. 9437.319.7.**

BETWEEN

THE CITY OF MONTREAL *Appellant*

AND

**THE CANADIAN NATIONAL
RAILWAYS - - - Respondent**

CASE OF THE RESPONDENT.

BLAKE & REDDEN,

17 Victoria Street, S.W.1.