Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of George Shea, Mayor of the St. John's Municipal Council v. *The Reid-Newfoundland Company, from the Supreme Court of Newfoundland; delivered the 30th July* 1908.

Present at the Hearing:

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

This Appeal comes from Newfoundland, and is concerned with certain statutory privileges and obligations of a street railway company in times of snow.

By the St. John's Street Railway Act, 1896, the Respondent Company were authorized to construct, maintain, and operate a street railway in the town of St. John's. The railway was constructed; and its rails lie, and are used in, a number of streets in the town.

The enabling Act contained the following section, on the construction of which the present Appeal depends:—

> "42. The Company may remove snow and ice "from its tracks or any portion of them, so as to "enable it to operate its cars: Provided, however, "that in case such snow or ice shall be removed "from its track or disturbed or thrown out by the "plough, leveller, or tools of the Company, it shall "be the duty of the Company within forty-eight

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" hours to level the said snow or ice on each side
" of the track to a uniform depth, to be determined
" by the Engineer of the Council, and so as not to
" impede the ordinary traffic of the streets. On
" November first of each year the Company shall
" deposit with the Secretary of the Municipal Council
" the sum of $500 lawful money of Newfoundland,
" to be used by the said Council to carry out the
" provisions of this section in case the said Company
" fails to do so; said sum to be refunded to said
" Company, if not required, on the first day of May,
" and at no time between November and May shall
" said sum be less than $500."

The key to the understanding of this section is to be found by observing that it confers a licence and prescribes the conditions of that licence. The licence is to remove snow. Now, in case of snow in Newfoundland, the general traffic accommodates itself to the situation, and is carried on over the snow crust on sleighs. Accordingly the Respondent Company are authorized (by Section 47) to substitute sleighs for motors or cars during the winter months. But, *plus* this, they are allowed a further privilege, for which legislative sanction was required. They are allowed (on conditions) to break up the snow surface on which the general traffic is borne and uncover their railed track.

It is obvious that to do this involves the most serious invasion of the highway as a snow-covered road. It means the digging a trench in the snow-covered highway. This would plainly be a nuisance, which could be prevented by legal remedy. Accordingly what the Legislature has done here, by the initial words of Section 42, is to permit the removal of what forms the substance of the (snow) highway.

Here let it be observed that what is legalized is irrespective altogether of where the removed

snow is taken to. Wherever the removed snow is put, the licence is required, and the resulting evil to the public, to be provided against by conditions, is the derangement of the level of the highway, which occurs no matter where the stuff is put. The section, it is true, allows (but does not prescribe) that the removed snow may be put on the sides of the track. But the condition which it does prescribe is equally imperative, wherever the displaced snow is taken to.

Now, the statutory condition of this licence is that the snow on each side of the track shall within 48 hours be levelled on each side of the track to a uniform depth, to be determined by the Engineer of the Council of the town, and so as not to impede the ordinary traffic of the streets. In the present instance the Engineer determined eight inches to be the necessary depth, and it is not disputed that this was necessary to prevent the impeding of the ordinary traffic.

The present question arises in this way:— the Respondent Company found that they could not comply with the Engineer's requirement of eight inches, unless they removed some snow out of the streets altogether. This they refused to do. The Council accordingly removed the snow for them; and the dispute arises on the question whether this is a good charge by the Council when called on to account for the money deposited under Section 42. The action went to trial with a jury, the point of controversy being whether the Respondent Company were bound to pay for the cost of removing such snow as had to be got rid of in order to provide the Engineer's level of eight inches. The trial Judge laid down the law in unambiguous terms:

" it was no part of the Company's duty to " remove or carry from the street any part of " the said snow." This ruling was affirmed on appeal, the Chief Justice dissenting. Their Lordships are unable to support this decision.

It was proved, and indeed it is the Respondent Company's case, that the requirement of the Engineer could not be complied with without the removal, out of the street, of this snow; and this being so, the question is whether the Respondent Company are not bound to remove it. On the statement, it seems obvious that they are. Their right to interfere at all with the snow on the roadway depends on their fulfilling a certain condition. If the fulfilment of a condition involves something being done, done that must be, although it is not expressly prescribed. This is not to impose an additional condition, it is merely to give effect to that which is expressed, by insisting on its fulfilment, including the performance of what is physically necessary to its fulfilment. The contrary contention simply wipes out the condition; and in the present instance gives no effect to the express requirements of (1) compliance with the Engineer's datum level and (2) not impeding the ordinary traffic.

Some effort was made before their Lordships to create a difficulty out of the word "said," as if the duty of the Respondents was by the section limited to dealing with the particular particles of snow which they had removed from their track on to the rest of the road. This argument can only be maintained by ignoring the fact that the section states the depositing removed snow on the sides of the track merely as an alternative mode of removal. And, so far as the word "said" goes, it is (to

go strictly to work) identified with the antecedent "such," which again relates to "snow," generally, in the opening and main words of the section. Meticulous criticism, however, must not be allowed a licence to wreck the enactment under consideration, whatever it may be; and the true answer to these puzzles is that the obligation arises from the Company having removed the snow from their track, wherever they have put it, and in consequence of the break they have thus made in the general surface of the road—and that the enactment is directed to redressing the level thus destroyed. As already pointed out, the Engineer is entitled to act, although no snow whatever has been put on the sides of the track.

Their Lordships will humbly advise His Majesty that the Appeal be allowed, that the judgments below be set aside, and that instead thereof judgment be entered for the Defendant in the action (the Appellant) with costs in both Courts.

The Respondents will pay the costs of the Appeal.
