

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Commercial Cable Company v. The Attorney-General of Newfoundland, from the Supreme Court of Newfoundland; delivered the 10th July 1912.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

[DELIVERED BY LORD MACNAGHTEN.]

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In June 1905, when the Newfoundland Legislature passed the Taxing Act which imposes a tax on telegraphic cables, the only Telegraph Company doing business in the Colony was the Anglo-American. That Company, as the successors of the New York, Newfoundland, and London Telegraph Company, still possessed special rights and privileges in the island, including the right to compete for traffic with the Government. But the exclusive right of landing cables on the island which had been enjoyed by the Company and its predecessors for the period of fifty years had just expired.

The Anglo-American Telegraph Company had land lines in Newfoundland as well as submarine cables connecting Newfoundland with Ireland on the one hand and with Cape Breton Island on the other.

The Commercial Cable Company had several transatlantic cables connecting Ireland with Canso in Nova Scotia.

After the Taxing Act was passed the Commercial Cable Company laid a cable for the Government of Newfoundland from Port-aux-Basques on the south coast of the island to Canso.

On the 26th of August 1905 a contract was made between the Company and the Government for the maintenance and operation of this submarine cable and for the interchange of traffic at Canso.

By this contract the Government agreed to grant to the Company the right to land any of its through cables on Newfoundland upon terms and conditions as favourable to the Company as those under which any other cables, present or future, were granted landing rights and privileges by the Government save and except any special privileges then enjoyed by the Anglo-American Telegraph Company inclusive of the right of that Company to compete with the Government telegraph system. But this concession was subject to a condition or restriction expressed in the following words :—

“ it being understood and agreed that the Company shall  
 “ not compete with the Government for traffic, nor transmit  
 “ nor receive business from or to Newfoundland without the  
 “ permission of the Government unless and until the  
 “ privilege so to compete and transmit and receive be  
 “ granted by the Government to any other cable or cables  
 “ which may hereafter make connections with New-  
 “ foundland.”

Then in Clause 5 the contract provided that in the event of the Company (with the permission of the Government) landing cables as thereinbefore provided, it should be optional with the Company to transfer at its Newfoundland station instead of at Canso a part or the whole of the traffic exchanged with the Newfoundland Government system provided that the terms of transfer at the Newfoundland station should be the same as at Canso.

By the Act 6 Edw. VII., cap. 10, which was passed on the 10th of May 1906, the contract of the 26th of August 1905 was approved and confirmed, and it was enacted that the Governor-in-Council might grant lands not exceeding a specified quantity to the Company in fee simple and without charge for the purpose of erecting cable stations and cable houses.

Afterwards, on the invitation of the Government, the Company cut two of its transatlantic cables at a point in the ocean on a bank known as the Flemish Cap and extended those cables westward by means of new cables to Newfoundland, continuing them westward, one to a point in or near New York and the other to Canso. These through cables were landed on Newfoundland at a point on the shore near St. John's called Cuckold's Cove. In a hut there the cables were relayed by a process known as the Taylor-Brown-Dearlove system. By that system the through cable being divided into two sections, the section coming from the east is connected to the apparatus which receives the signals and automatically repeats them into the section going to the west and *vice versa*, so that the service is continuous although each through cable is composed of two sections. In this hut the Company maintains a staff of 12 men to transmit messages by hand in case of a breakdown in the automatic system.

The Taxing Act, 5 Edw. VII., cap. 7, passed on the 15th of June 1905, is entitled:—

“An Act to increase the Revenue by imposing Taxes upon business transacted by Telegraph and Telephone Companies within and in transit through the Colony.”

The preamble recites that:—

“It is desirable to increase the revenues of the Colony by the imposition of taxes upon telegraph, telephone, and cable companies doing business in the Colony, and upon companies owning stations transmitting or receiving

“ messages in or from the Colony by wireless methods of  
“ telegraphy.”

Section 1, so far as material to the present question, is as follows :—

“ (1.) In this Act ‘ company ’ shall mean any company  
“ corporate or unincorporate, or person carrying on any  
“ telegraph or telephone business in or from the Colony.”

Section 2 contains the following enactments :—

“ 2. Every company shall pay to His Majesty, His  
“ heirs and successors, for the public uses of the Colony on  
“ 30th day of June in each year the sums following, that is  
“ to say :—

“ (1.) A sum of \$4,000 in respect of every telegraphic  
“ cable between this Colony and any place outside this  
“ Colony for the time being belonging to or worked by  
“ or on behalf of the Company which now is, or here-  
“ after shall be, lauded on, extended to, or established  
“ in this Colony, provided that no single company  
“ shall be charged upon more than five telegraph  
“ cables.”

The question for the decision of this Board is whether the Commercial Cable Company is liable to taxation as a company carrying on telegraph business in or from the Colony?

If that question should be answered in favour of the Government a subsidiary question arises which is rather in the nature of a conundrum. It is this: Are the through cables of the Commercial Cable Company multiplied by division? Are they to be reckoned as two cables or as four cables for the purpose of taxation?

Having regard to the date of the Taxing Act and the date of the contract between the Government and the Company and the privileges which the Anglo-American Company still retained, it seems not improbable that in framing the Taxing Act the Government had in contemplation the very case which has occurred—the case of a Company landing its cables on the island, but precluded for a time from carrying on business

in or from the Colony. Be that as it may, the Commercial Cable Company was by the terms of its contract with the Government, which received legislative sanction, prohibited from competing with the Government or transmitting or receiving business from or to Newfoundland without the permission of the Government unless and until the privilege be granted to some other Cable Company. It is common ground that the Government has not granted the Company permission to transmit or receive business from or to Newfoundland, and that it has not granted such permission to any other cable or cables. It is admitted that the Company on its part has not transgressed, or attempted to transgress, the understanding or restrictive stipulation expressed in the contract of August 1905.

In these circumstances their Lordships are of opinion that the cables of the Commercial Cable Company landed on Newfoundland are not liable to taxation under the Taxing Act as the cables of a Company carrying on telegraph business in or from the Colony.

It seems to their Lordships that the term "business" used in the interpretation section of the Taxing Act must mean business in the ordinary or commercial sense of the word. Otherwise the section has no meaning. For, while, of course, it was competent for the Newfoundland Government to impose taxation on cables within its territorial jurisdiction, it was not competent for the Government to lay a tax on cables outside its territorial jurisdiction, and if the Taxing Act bears the construction for which the Government contends no interpretation clause was needed.

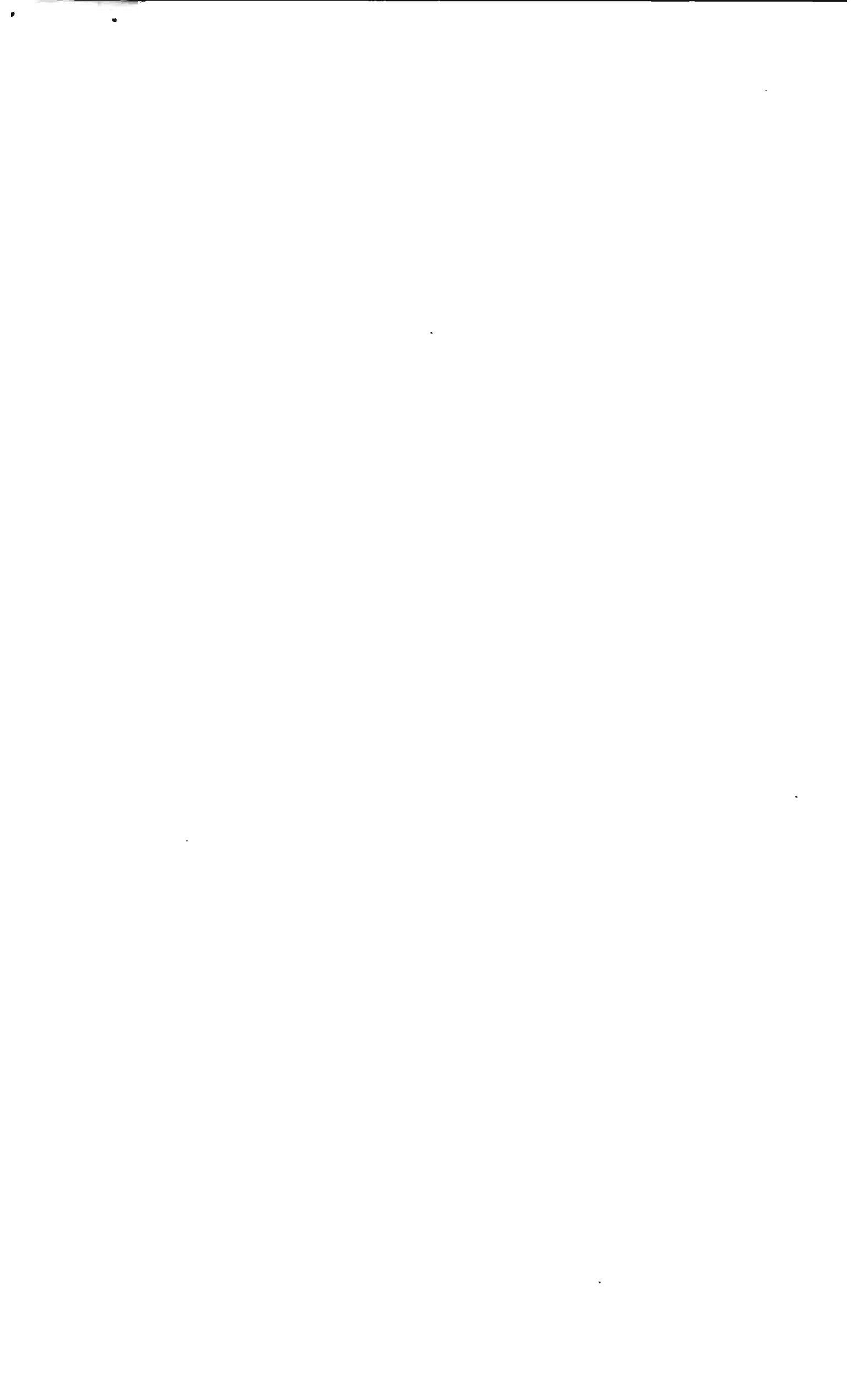
The leading counsel for the Government advanced a very singular argument. He said the Company did in fact do business within the Colony on more than one occasion. It seems that on more than one occasion the Government

telegraphic system in Newfoundland broke down and the Company came to the rescue. It allowed Government messages to be despatched from the hut at Cuckold's Cove. This was done at the request of the Government, and, as appears in the evidence, without prejudice to the rights of the parties. The Company gained nothing by it, for it was stipulated by the agreement of 1905 that interchange of traffic in Newfoundland was to be on the same terms as the interchange of traffic at Canso.

Their Lordships forbear to comment on this argument.

Their Lordships are of opinion that the Appeal should be allowed, and the Action dismissed with costs both here and below, and they will humbly advise His Majesty accordingly.

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In the Privy Council.

*Members of union have beneficial interest  
in property of union.  
It concerned with administration of funds.*

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THE COMMERCIAL CABLE COMPANY

*v.*

THE ATTORNEY-GENERAL OF  
NEWFOUNDLAND.

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DELIVERED BY LORD MACNAGHTEN.

LONDON:

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PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.