*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Newfoundland Steam Whaling Company, Limited,* v. *The Government of Newfoundland, from the Supreme Court of Newfoundland; delivered the 7th June* 1904.

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Present at the Hearing:

THE LORD CHANCELLOR.
LORD LINDLEY.
LORD KINROSS.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The Act to regulate the whaling industry was passed on the 22nd April 1902 and came into operation the same day. It made it illegal for any person to engage in the whaling industry, or in the manufacture therefrom, without a licence to be granted and issued as provided by the Act, subject to penalties recoverable by an informer. Section 2 required persons intending to apply for a licence to publish notices specifying, amongst other things, the area in respect of which it is to be applied for, and the intended site of the factory.

Section 3 empowers the Governor in Council to issue licences; and (1) no licence can be issued until the site of the factory shall have been approved by the Governor in Council, and such site must not be within fifty miles of another factory; and (2) the licence must define the area to which it is to apply, and within which no other factory can be erected. It must also describe the site of the factory sanctioned.

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Section 7 imposes an annual duty of 1,500 dollars on each licence. Section 8 provides for the forfeiture of licences for breach of their conditions. Section 18 deals specially with the case of factories at work or in course of erection at the time of the passing of the Act. Licences to such factories are subject to the same rules, as those applicable to new factories, except those relating to the publication of notice, and the approval of the site.

The Appellants are the proprietors of two factories, but only one of these, that at Rose-au-Rue, is the subject of the present Appeal and the other need not be further mentioned. The Rose-au-Rue factory was practically completed when the Act passed and it therefore fell under the provisions of Section 18.

During the whaling season of 1902 the Appellants carried on the whale fishery in connection with the Rose-au-Rue factory without obtaining or applying for a licence, thus rendering themselves liable to penalties, and at the same time depriving the Treasury of the duty chargeable upon a licence. On the 13th November 1902, the Minister of Marine and Fisheries wrote, by the direction of the Governor in Council, to the Agent of the Appellants calling attention to the Act, and to its violation by the Appellants, and adding, "Might I request "you to give this matter of application for a "licence * * * your earliest attention." On the 12th December the Appellants applied accordingly for a licence, and in their application described the limits to which they desired its operation to extend, and they specified the factory as Rose-au-Rue. On the 15th December the Appellants paid a sum, including 1,500 dollars in respect of the Rose-au-Rue factory, by a cheque in favour of the Minister of Marine and Fisheries. It is said that an official of that Department had pre-

viously asked for payment of the licence fee. A receipt was given, signed by the Minister of Marine and Fisheries, for the 1,500 dollars describing it "as a whaling licence fee for a "factory operated at Rose-au-Rue, * * * being "the amount due for the year 1902." On the 4th July 1903 (a fresh year having then commenced as defined in Section 7 of the Act) another payment of 1,500 dollars was made, and a receipt for it given in terms similar to those of the previous receipt.

On the 26th August 1903 a licence was issued headed "Whaling Certificate," tested in the name of the Governor, signed by command of the Governor by the Colonial Secretary, and sealed with the public seal of the Colony. The printed form originally had at the foot a form of receipt, but upon the receipt, and so as to obliterate it, are written the words—"This "certificate is to supersede and takes the place "of the licence which the within-named licensee "holds in the form of a receipt and under which "he has carried on his business." The licence so granted defined the area within which it was to operate, and the area so defined was narrower than that described in the Appellants' application though extending to the fifty miles required by the Act. The Appellants objected to the licence thus issued and claimed to have one for an area co-extensive with that defined in their application. The Government refused to comply with this claim.

The Appellants thereupon commenced the present proceedings, in accordance with the practice in force, by a petition filed in the Supreme Court against the Government of Newfoundland. Having stated the facts, they claimed, so far as is now material, first, a decree to the effect that they were entitled to a licence for the area described in their application; secondly, an amendment of the licence, so as

to make it include that area. The Attorney-General filed his answer. The case came on for hearing before the Supreme Court, and the Court by a majority dismissed the Appellants' case. Against that decision the present Appeal has been brought.

The argument for the Appellants was put in the following way:—That the Minister's letter of the 13th November 1902 amounted to a promise to grant to the Appellants a licence, in accordance with the Act, upon a proper application, though for an area not yet defined. That the Appellants' application of the 12th December defined the area, and that upon that, it was for the Government either to grant or refuse the licence as asked for. That by acceptance of the money and the receipt given on the 15th December, the Government accepted the area as defined in the application. And therefore it was contended, that either the receipt operated as a licence, having effect over the whole of that area, or else the receipt, in conjunction with what had gone before, amounted to a binding contract to grant such a licence. The Appellants specially relied upon the memorandum, at the foot of the licence actually issued, as showing that the receipt had been intended as a licence, and as a ratification of it in that sense.

The system of licences and the machinery for carrying it into effect are created by the Statute, and, as in all such cases, the provisions of the Statute must be complied with. The licence must be granted by the Governor in Council, and it must contain what the Act requires. The receipt does not purport to be issued by the Governor in Council. It contains no words appropriate to the grant of a licence. It does not, either by its own language or by reference to any other document, define the area over which it is to take effect. The memorandum at

the foot of the licence as issued, assuming (which is not clear) that that memorandum forms part of what is verified by the seal of the Colony, and the test of the Governor, could not make that a licence within the Act which was not so in fact. And to give to the memorandum the effect suggested, would be to make it contradict the express terms of the official document to which it is appended. Their Lordships are clearly of opinion that the receipt was not a licence.

It is equally impossible to accept the contention that there was a contract to grant the licence as claimed. To support the argument it would be necessary to attribute to every document a meaning which it cannot bear. The argument assumes that the letter of 13th November 1902 amounted to a promise to grant a licence. The letter contains nothing of the kind. The argument assumes that the receipt of the 15th December was an acceptance of the limits specified in the Appellants' application. It contains nothing of the kind. So that even assuming that the difficulties created by the statutory procedure could be got over, and that every document was issued by the competent authority, the contention would wholly fail on the facts.

It was also argued, but not very strenuously, that the Government was in some way estopped from denying the Appellants' right to what they claim. Their Lordships agree with the majority of the learned Judges in the Supreme Court, that there is no room in law for such a contention in the present case. They also think that there is no ground for it in fact, because they cannot find anywhere any representation on behalf of the Government on which the Appellants could act, that the licence about to be issued embodied the limits defined in the Appellants' application.

It is true, no doubt, that complications have arisen in the present case, and it may be that the Appellants have been placed in a position of difficulty, and possibly of some hardship. But if so, the real source of all the inconveniences has been the action of the Appellants themselves in carrying on their business after the passing of the Act, without taking proper steps to comply with its terms.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellants will pay the costs.