

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
Reid-Newfoundland Company v. The Anglo-  
American Telegraph Company, Limited, from  
the Supreme Court of Newfoundland;  
delivered the 30th July 1908.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

*[Delivered by Lord Macnaghten.]*

The Supreme Court of Newfoundland has decided that the Appellants are bound to account to the Respondents for certain messages transmitted by them through a wire carried along a section of the system of railways now in their occupation. This wire, which belongs to the Respondents, was originally provided by them for the use of a company incorporated in 1881, under the name of "the Newfoundland Railway Company," who were predecessors in title of the Appellants.

From the judgment founded on the decision of the Supreme Court the present Appeal is brought.

The question turns upon the meaning and effect of an agreement dated the 11th of August 1888. The parties to the agreement were, on the one hand, the Newfoundland Railway Company, which was then insolvent,

and the Receiver and Manager of the Newfoundland Railway Company appointed in January 1885 by the Court of Chancery in England at the instance of bondholders whose interest was in arrear, and, on the other hand, the Respondents as successors in title of a company which enjoyed a statutory monopoly for the period of fifty years from the 15th of April 1854, in regard to telegraphic communication in Newfoundland.

The Newfoundland Railway Company is no longer in existence. Its property, which consisted of so much of a projected line of railway as it was able to construct, was in course of time acquired by the Government and now forms a portion of the undertaking of the Appellants, who operate a system of railways known as "The Newfoundland Railway," connecting by a somewhat devious route the City of St. John's, in the south-east extremity of Newfoundland, with Port-aux-Basques, near Cape Ray, in the south-west corner of the island.

At the date of the agreement of 1888 the old Newfoundland Railway Company had completed only about 84 miles of their authorized undertaking, which was intended to be 340 miles in length. The portion actually constructed was the southern portion of the proposed undertaking. It extended from the City of St. John's to Whitbourne, with a branch to Harbour Grace and a line three miles long to Carbonear. In carrying out the work so far, the Newfoundland Railway Company had exhausted its means. It was in default. Its property was in the hands of a Receiver. The line was without telegraphic communication, and there were no funds available to

complete its equipment. In this state of things the agreement in question was approved by the Court in the bondholders' suit and duly executed.

The agreement provided that the Anglo-American Telegraph Company (the present Respondents) should have for a term of  $27\frac{1}{2}$  years from the 1st of November 1888, the exclusive right, for the purposes thereafter described, to enter upon the lands thereafter mentioned and to erect, maintain and operate "upon and along the lands forming the roadways of the southern division of the Railway Company's railway between St. John's and Harbour Grace and between Harbour Grace and Carbonear as many lines of telegraph for the purposes" of their business as they might deem necessary and "a special wire for the use of the Railway Company, their servants and agents and successors and assigns, for use in and about the management, operation and control of the said railway and all purposes connected with or incidental to such management, operation and control."

It was further provided that the Railway Company should not "pass or transmit any commercial messages over the said special wire except for the benefit and account of the Telegraph Company."

On the other hand, the Telegraph Company agreed to erect and equip and to maintain for  $27\frac{1}{2}$  years in good working order and operate at least two lines of telegraph wire "from the railway station . . . in St. John's to the railway station at Harbour Grace and from the railway station at Harbour Grace to the railway station at Carbonear"—one of such wires to be for the

use of the Telegraph Company, the other to be a wire "for the special and exclusive use of the "Railway Company and the Receiver and "Manager," and to be at all times open and ready for their use, and to be so constructed and maintained as to afford to them constant communication between each of the railway stations between St. John's and Harbour Grace and Harbour Grace and Carbonear. Then followed a provision enabling the Railway Company, in the event of the special wire becoming disabled or being incapable of transmitting messages, to use any other of the wires of the Telegraph Company for the like purposes for which they would be entitled to use the special wire, and a provision that at the end of 27½ years the Telegraph Company should be entitled to remove the telegraph lines, wires, instruments, and other property connected therewith.

In pursuance of this agreement the Respondents provided and maintained a special wire along the line of the railway for the use of the Newfoundland Railway Company, their successors and assigns.

The case of the Respondents is that, since the 1st of April 1898, the special wire has been used for unprivileged as well as privileged messages, and that the Appellants have not duly accounted for unprivileged messages passed or transmitted over the special wire as they were bound to do by the agreement.

It is not necessary to trace in detail the steps by which the railway system in the Colony was brought into its present condition. Partly by means of Commissioners with statutory powers and partly under contracts with the late Sir R. G. Reid, who was largely concerned in developing the resources of the Colony, the work was accomplished.

On the 13th of July 1897, by an indenture of that date, reciting, among other things, that the Newfoundland Railway Company had constructed a railway from St. John's to Harbour Grace with a branch to Carbonear, the Newfoundland Railway Company and the Receiver and Manager thereof, in pursuance of an order of the Court of Chancery in England and a like order of the Supreme Court of Newfoundland, sold and conveyed to the Government all the railways and property of the Company "subject to the subsisting contract with the Anglo-American Telegraph Company," that is, the agreement of the 11th August 1888 "as regards the telegraph lines along the said railway."

By a contract dated the 3rd March 1898, made between the Government and Reid, and duly confirmed by the Legislature, it was agreed that, upon certain terms therein mentioned, Reid should take over the entire railway system of the Colony on a lease for 50 years with a provision for the purchase of the reversion, and that Reid should also take over for a certain period and on certain terms all the Government telegraph lines in the Colony. Under that contract Reid took possession of the Government railways and telegraph lines on the 1st of April 1898.

By an Act passed in 1901 an agreement was confirmed under which the reversion of the Newfoundland Railway was resold and reconveyed to the Government, and the Government resumed possession of the Government telegraphs. With those exceptions all the rights, privileges, and liabilities of Reid, under the contract of 1898, were transferred to the Appellants, the Reid-Newfoundland Company. That Company was incorporated by the same Act for

the purpose of working the system of railways which Reid was then operating. Besides the business of the railway the Appellants were authorized by the Act to carry on the business of shipowners and a number of other undertakings which had no connection, or no direct connection, with the business of the railway. Under this contract the Appellants entered into possession of the Newfoundland Railway, including the railways between St. John's and Whitbourne, and between Whitbourne and Harbour Grace and the branch to Carbonear.

It was not disputed that since the 1st of April 1898 the special wire between St. John's and Whitbourne has been used for all purposes by Reid and by the Appellants as his successors, and that the purposes for which it has been used include, not only the business of the railways described in the agreement of 1888, but also the business of the railways subsequently constructed by or for the Government and now in the occupation of the Appellant Company, and the Company's shipping business and their other undertakings.

The Supreme Court, by a majority of two judges to one, has held that the business for which the special wire has been used by the Appellants other than the proper business of the line from St. John's to Whitbourne and Carbonear is not privileged by the agreement of 1888, and that an account must be taken of the messages passed or transmitted over the special wire by Reid and the Appellants other than messages connected with, or for purposes incidental to, the management, operation, and control of the line of railway between St. John's and Harbour Grace *via* Whitbourne and between Harbour Grace and Carbonear.

It is perfectly clear that the scope of the agreement of 1888 was limited to the railway described in the agreement as "the southern division of the railway," that is, to the railways from St. John's to Whitbourne, from Whitbourne to Harbour Grace, and from Harbour Grace to Carbonear. The language of the agreement is plain, and there is nothing in the circumstances of the case, as they existed in 1888, to suggest that the parties had in contemplation any extension of the railway or any further development of the undertaking by the old Newfoundland Railway Company, which had been for three years past in the hands of a Receiver and Manager, and had no means of completing the equipment of the line so far as it was actually constructed.

It is impossible for the Appellants to deny that they and their predecessor in title, Reid, had actual notice of the agreement of 1888. They knew perfectly well that the lines of telegraph along the southern division of the railway did not belong to the Government, and never had belonged to the Government. Both Reid and the Appellants were bound to give effect to the agreement which was scheduled to the Newfoundland Railway Act, 1898. By that agreement, under which Reid took over the system of railway now called "the Newfoundland Railway," it was stipulated (section 87) that, from and after the 15th April 1904 (the date on which the monopoly of the Telegraph Company expired), Reid should establish at his own cost telegraph connection between St. John's and the line at Whitbourne, and between the various branches and offices of the Government system. Indeed the Vice-President of the Reid-Newfoundland Company,

who says that he was "prior to 1901 . . . with " Mr. R. G. Reid in full charge," admits that he knew that the special wire belonged to the Respondents and that it was part of their system. He had, he said, never seen the agreement but of course he "had heard that " there was an agreement." There was, he said, no objection made by the Anglo-American Telegraph Company to the using of the through wire, as his Company did use it. The line, he added, was used for all purposes of their business north and west of Whitbourne. It was used in connection with the mill at Benton, with their coal operations at Howley, and with their quarry operations from which all the stone came for the street paving.

The case on all points is really too plain for argument.

Their Lordships agree in the judgment of the learned Chief Justice and adopt the reasons given by him. They will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

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