

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, from the Supreme Court of Newfoundland; delivered the 15th July 1910.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.
LORD COLLINS.
LORD SHAW.
SIR ARTHUR WILSON.

[DELIVERED BY SIR ARTHUR WILSON.]

This is an Appeal from a Judgment of the Full Bench of the Supreme Court of Newfoundland, delivered on the 1st May 1909. The precise form of the Judgment it seems unnecessary to examine. It is enough to say that in substance it restrained the Appellant Company (the Railway Company) from erecting, maintaining, or operating a line of telegraph upon their own land, for the purposes of the efficient working of their own railway, with the usual incidents which naturally follow from such an injunction.

The case was conducted on both sides before their Lordships on the footing that the result must depend upon the construction of an Agreement, dated the 11th August 1888, made between the Newfoundland Railway Company of the first part, one Evans, Receiver and Manager of that Company of the second part, and the now Respondents of the third part.

A former case between the same parties as those to the present Appeal, came before this Board a few years ago. The question in that case was with reference to the same Agreement as that now in controversy.

The material provisions of that contract for the present purpose are as follows :—

By the most important clause for the present purpose it was said :—

“ The Railway Company with the assent of the Receiver and Manager testified by his execution of these presents agree, first, that the Telegraph Company shall have for a term of twenty-seven and a half years from the first day of November A.D. one thousand eight hundred and eighty-eight the exclusive right at all reasonable times for the purposes hereinafter mentioned, to enter upon the lands hereinafter mentioned, and to build, 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 the business of the Telegraph Company as the Telegraph Company may 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, with all necessary and useful posts, wires, and other outfits so as the same shall be so put, placed, and erected, as not in any way to interfere with or obstruct the management and control by the Railway Company or the said Receiver and Manager or their or his agents and servants of the said lands and of the said Railway, or with the operation or traffic thereof, or with any of the buildings, erections, or other property of the Railway Company now on or which may hereafter be placed upon the said lands.”

By a subsequent clause the Railway Company agreed :—

“ Not to pass or transmit any commercial messages over the said special wire, except for the benefit and account of the Telegraph Company.”

And by a further clause the Telegraph Company agreed :—

“ With all reasonable despatch after the execution of this Agreement and at the sole cost and charge of the Telegraph Company to build and erect with good and suitable materials, and fully equip and fit with all necessary instruments, materials, matters and things, and for the

period of twenty-seven and a half years from the 1st day of November one thousand eight hundred and eighty-eight (*force majeure* excepted) continuously and efficiently maintain in good working order and operate at least two lines of telegraph wire from the railway station at Harbour Grace to the railway station at Carbonear, one of such wires to be for the use and purposes of the Telegraph Company, the other to be a wire (hereinbefore called the 'special wire') for the special and exclusive use of the Railway Company and the Receiver and Manager, their and his agents, servants and workmen, and to be at all times open and ready for their and his use, and to be so constructed and maintained as to afford to them and him constant communication between each of the railway stations between St. John's and Harbour Grace and Harbour Grace and Carbonear."

It will be noticed that the Contract under consideration was one between a Railway Company seeking its profits by serving the public as railway managers, and concerned with telegraphs so far as necessary for the safety of the railway and the efficiency of its working, and on the other hand a Telegraph Company seeking its profits by supplying telegraphic conveniences to the public. And in the principal clause of those cited, this distinction is clearly kept in view. It allows the Telegraph Company to erect and work lines for the purposes of its own business, and requires that Company to furnish for the use of the Railway Company a special wire for railway purposes.

The question that arose in the former case, was as to the extent of the right of the Railway Company to use the special wire provided for its use, whether that use was limited to the purposes of the Railway as it existed in 1888, the date of the Contract, or whether it extended to the purposes of the Railway as afterwards developed. What was held in that case by this Board affirming the view of the Court in the Colony was, that the right of using the wire was limited to the purposes of the Railway as it existed at the date of the Contract.

That decision, however inevitable, appears to have been felt by the Railway Company as

placing it in a difficulty, and that difficulty it proposed to meet in a way which has given rise to the present litigation. The Railway Company proposed to lay telegraph lines of their own along their own lands for the purposes of the working of their railway. This is what was objected to by the Plaintiffs in the present suit, and that objection prevailed in the Court of the Colony.

Their Lordships have to say whether that objection is well founded, and the solution of that question depends almost entirely upon the language of the Contract of 1888.

The argument on behalf of the Telegraph Company (an argument which was accepted by the Colonial Court) was largely based upon the use of the words "exclusive right" in the clause cited. It is necessary, therefore, to see what the "exclusive right" referred to is. It is not an "exclusive right" of entry; for the Railway Company remains in possession, and must do so in order to work its railway, which it is under an obligation to do. The exclusive right granted is to enter for the purpose of erecting, maintaining, and operating telegraph lines for the business of the Telegraph Company.

In their Lordships' opinion this exclusive privilege of erecting and working telegraph lines for the business of the Telegraph Company does not exclude the right of the Railway Company to erect and work telegraph lines on its own property for the purposes of its railway business. Their Lordships are unable to agree with the view taken of this case by the learned Judges in the Colony. Their Lordships are of opinion that the Railway Company is not shown to have exceeded its rights. They will humbly advise His Majesty that the judgment and decree of the Colonial Court should be set aside, and the suit dismissed with costs in the Court below.

The Respondents will pay the costs of this Appeal.



In the Privy Council.

THE REID-NEWFOUNDLAND
COMPANY

v.

THE ANGLO-AMERICAN TELEGRAPH
COMPANY.

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