

removing snow and ice from certain streets of the city in consequence of a breach of contract and negligence on the part of the defendant company, and to recover interest on the sum named.

The action was tried without a jury at Toronto.

W. N. Tilley, K.C., and C. M. Colquhoun, for the plaintiff corporation.

D. L. McCarthy, K.C., for the defendant company.

LENNOX, J., in a written judgment, said that the plaintiff corporation relied mainly upon conditions 21 and 22 of an agreement of the 1st September, 1891, between G. W. Kiely and others and the plaintiff corporation, as interpreted and settled by sec. 25 of the Act incorporating the Toronto Railway Company, 55 Vict. ch. 99 (O.)

After setting out sec. 25 and conditions 21 and 22, the learned Judge said that the defendant company came to trial upon the defences: (1) that it had carried out all obligations imposed upon it in regard to the removal of snow and ice, and the alleged expenditure by the plaintiff corporation, if made, was voluntary; (2) that, if the expenditure was made, it was not made bona fide, but was recklessly and wastefully made for purposes other than those alleged in the statement of claim.

At the opening of the trial, the defendant company was allowed to amend by setting up the absence of jurisdiction of the Court and the exclusive jurisdiction of the Ontario Railway and Municipal Board, under the Ontario Railway and Municipal Board Act, R.S.O. 1914 ch. 186, particularly sec. 22; and the plaintiff corporation was allowed to reply denying the exclusive jurisdiction of the Board, and setting up that, if it purported to confer exclusive jurisdiction, it was *ultra vires*.

As to the question of jurisdiction, the learned Judge said that, under sec. 22, the jurisdiction of the Board was very wide—"exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this Act or by any other general or special Act;" but, upon a careful reading of sec. 21, it did not appear that the plaintiff corporation was compelled to make an "application" to the Board for redress in respect of something that the defendant company ought to have done and failed to do, thereby occasioning loss to the plaintiff corporation. The learned Judge was not prepared to say that the plaintiff corporation was limited to the Board as the tribunal from which redress must be sought.

Reference to an Ontario Act "respecting certain matters pertaining to the City of Toronto," 63 Vict. ch. 102, sec. 5, and an