

decree for payment to the city corporation in respect of a tort arising out of a breach of the obligations resting upon the railway company under the Act of 1892, 55 Vict. ch. 99, which confirmed the agreement of 1891. The second question was as to the sound construction of that statute and agreement.

On the point of jurisdiction, the appellants founded their contention on sec. 260 of the Ontario Railway Act, R.S.O. 1914 ch. 185. Under it, the Board, in the event of violation of the agreement, was vested with very strong powers. It may make "such order as to it may seem just," and direct the company to do what "the Board deems necessary for the proper fulfilment of such agreement." And, in the event of the company remaining obdurate, the Board may itself enter into possession of the property and business and carry on the latter.

Were the city corporation, in the circumstances of the case, excluded from all common law remedy for the expense consequent upon the performance of an act of administration which they had themselves to take up in the interests of public convenience and for the avoidance of public danger—an act which, if the view of the Courts below was correct, was one which fell to be performed by the street railway company?

It might seem natural that the strong powers vested in the Board should be held to include, not only the doing of such things, but the making of such orders for payment of money as would clear up the situation which had been created; but their Lordships, after full consideration of the statutes, did not see in them any clause which, either expressly or by implication, gave the Board a power to grant a decree for a sum of money due as upon tort or in respect of breach of contract. It would require, in their Lordships' opinion, the clearest expression, or the clearest implication, to confer such a jurisdiction upon a statutory Board, and it would further require the clearest expression or implication to oust the jurisdiction of the ordinary Courts of the country, to which awards of damages for failure of duty, breach of contract, or commission of tort, are matters of plain and everyday jurisdiction. They accordingly find, agreeing with the Courts below, that they had jurisdiction to deal with the action and give a decree in respect to the claim sued for.

Upon the question of construction, their Lordships referred to sec. 25 of the Act of 1892 and clauses 21 and 22 of the agreement of 1891. They considered that the city corporation were quite within their rights in seeing to the streets being cleared, and that the expense so incurred, in so far as applicable to removing the improper deposit of the company, was one to recoup which the company were under obligation. So far as the payment was