

diction is conferred on it by this Act or by any other general or special Act."

Section 260 of the Ontario Railway Act, R.S.O. 1914 ch. 185, provides that where a street railway is operated upon or along a highway under an agreement with a municipal corporation, and it is alleged that such agreement has been violated, the Board shall make such order as may seem just, and by such order may direct the company or person operating the railway to do such things as the Board deems necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as in its opinion constitute a violation thereof; and (sub-sec. 2) for that purpose may enter upon the company's property and may exercise the functions of the directors.

This section was intended to get over the difficulty of forcing the railway company to obey an order of the Board; but it does not deprive the Court of jurisdiction to entertain an action for damages for breach of contract; and the question of ultra vires does not arise.

Clauses 21 and 22 of the agreement and sec. 25 of the Act were considered in *City of Toronto v. Toronto Railway* (1908), 16 O.L.R. 205, by the Court of Appeal. The result of that decision is, that the use of the electric sweeper was permissible; and that the snow which fell upon the track and was swept to the side was not a deposit within clause 22 of the agreement and sec. 25 of the Act.

The learned Judge said that, in his opinion, the effect of the clauses and section was to make it imperative upon the railway company to remove the snow and ice, whether 6 inches or more. If less than 6 inches, it might be evenly spread upon the adjacent portions of the roadway. If more than 6 inches, it should be removed and deposited at such point as might be ordered by the city engineer; and sec. 25 prohibited such deposit upon any street or public place without the permission of the city engineer. The effect of sec. 25 is not to do away with the portion of clause 22 which provides that, if the engineer so directs, the snow and ice to be removed shall be deposited at such point or points on or off the street as may be ordered by the engineer.

In the present case the defendants were ordered to remove the snow and ice, and they asked a direction as to where it should be placed. This the engineer refused to give, taking the position that they were not bound to furnish a place whereon the snow and ice might be deposited.

In the opinion of the learned Judge, the defendants were not relieved from their obligation, under the clauses and the section, to remove the snow and ice, even when the engineer refused to name the place where they might be deposited.