

authorized by a by-law of the municipality. (R.S.O., cap. 288, sec. 11 (2), 1897). At this point then it is pretty clear that the power to carry freight on the streets by the new agency of electricity is an employment of new and additional power conferred by the statute of Canada, 1892, and is to be brought into operation according to the provisions of the Ontario St. Ry. Act, that is, it must be sanctioned by the by-law of the municipality. The general approval indicated as required from the City Council in sec. 3, sub-sec. 2 of the Canada Act is thus pointed and particularized into an approval manifested by by-law in that behalf. A resolution by the Council giving approval would fall short technically and perhaps substantially of what is called for by the Street Railway Act.

But it is pointed out for the defendant that the provisions of the Street Railway Act in the Rev. Stat. of 1887 and 1897 do not apply to or affect any street railway company existing or incorporated before Feb. 1, 1883 (sec. 24 of 1887 and sec. 46 of 1897). As the Dominion leaves it to the Province to say by street railway legislation how the new power of electricity shall be exercised, that Province may in effect legislate so as to exempt this Co., though constituted a Dominion company, from the provisions of the Street Railway Act, and therefore to exempt it from having a by-law as a prerequisite to the carriage of freight. The Ontario legislation in this view and aspect is silent as to the employment of the new power, and it rests on the effect of earlier legislation.

Now the City Passenger Railway had from the first the power to transport freight on its lines by horse or animal power. New facilities were given to it afterwards by the Dominion to carry freight by means of electricity. Then the Dominion Act of 1892 says the new power is to be exercised on such terms, etc., as the City Council approves. Having regard to the earlier act of 1868, sec. 2, it appears that the City Council may by resolution permit the use of freight cars during the daytime (between 7 a.m. and 9 p.m.) Its approval of such use of the tracks for freight during the day is to be manifested by resolution, and the like approval for the carriage of freight at night may fairly be regarded as sufficient. On Sussex St. the construction of the pavement and tracks has been with a view to the carriage of freight and freight cars, and was supervised by the City Engineer. The Council has given its sanction by resolution to connect the lumber yard of the Edwards Co. with the track on Sussex St., and the city has also made connection at the other end of Sussex St., the only significance of which is to permit and approve of the carriage of lumber from the Edwards Co. along this street to the cars at the central depot. This has been the method of operating one part of this track on Sussex St. since 1896, and, in the absence of any evidence that the resolution has been rescinded or other act of disapproval equally notorious, I do not think the present litigation to end summarily this course of conduct originally approved by the City Council, should succeed. This branch of the case I dismiss with costs.

On the other part of the action for the building of the track, etc., on certain extensions of the line, the better opinion is that which I expressed at the close of the argument. It is not a case for specific performance, but for a reference as to damages. The case which goes furthest in modern days in favor of the plaintiff is *Fortescue vs. Smith*, 1894, 3 Ch., 621, but my brother Street declined to follow this in *City of Kingston vs. Kingston*, 28 O.R., 403, and his decision was upheld in the Court of Appeal, 25 App. Ont., 399. On this branch then judgment for the plaintiffs for such damages as the Master may find to be recoverable from the defendants. Further damages and costs reserved.

SHIPPING MATTERS.

The Niagara Navigation Co.

There have been persistent rumors lately about the purchase of this Co. by the Richelieu and Ontario Navigation Co., and the impression is that the deal will go through. A considerable majority of the stock is held by the estate of the late Sir Frank Smith, of Toronto, of which the Toronto General Trusts Corporation is executor. Under the provisions of Sir Frank's will, his son-in-law, Jno. Foy, the General Manager of the N.N.C., holds a power of attorney to vote on the estate's stock at all meetings of the Co. Mr. Foy is also a director of the Trusts Corporation, so that it may safely be said that whatever may be done will be on his decision. It is understood that negotiations are in progress and that E. B. Osler, who is a director of the N.N.C. as well as of the Trusts Corporation, is intermediary. The R. & O. N. Co. is evidently keen to buy, as the purchase would give it control of navigation from Niagara to the sea.

The N.N. Co. was incorporated in 1878 under the Dominion Companies Act, with an authorized capital of \$1,000,000, of which \$605,000 has been subscribed and paid up. Sir Frank Smith's estate owns about \$400,000 of the stock, and E. B. Osler, of Toronto, and W. Hendrie, of Hamilton, have about \$150,000, which was originally owned by the Niagara Falls Park and River Ry. Co., but which was not transferred to the International Traction Co. when it bought the Canadian line. The rest of the stock stands in the name of Jno. Foy, J. J. Foy, the estate of the late F. W. Cumberland, B. Cumberland, R. H. McBride, and J. B. Macdonald.

Sir Frank Smith was President of the Co. from its incorporation until his death early this year. B. Cumberland was the first Manager in 1878, and Jno. Foy has been Manager since then. The present directors are:—President, Jas. J. Foy; General Manager, Jno. Foy; Vice-President, B. Cumberland; other directors—J. B. Macdonald, R. H. McBride, E. B. Osler, W. Hendrie. J. J. Foy is solicitor of Sir Frank Smith's estate, Jno. Foy and J. B. Macdonald are sons-in-law of the late Sir Frank Smith, and R. H. McBride was Sir Frank's confidential accountant for many years.

The N. N. Co. on incorporation acquired the str. *Chicora* (the *Pretty Flower*), which was built by the Lairds in Liverpool in 1864. She is a side-wheeler with twin oscillating engines, length 221 ft., breadth 26 ft., depth 10 ft. 9 in.; tonnage, gross 930, register 539. Under her original name of the "Letter B" she ran as a blockade-runner during the civil war, and was brought to Canada by the Milloys, and afterwards run on Lakes Huron and Superior from Collingwood to Prince Arthur's Landing and Fort William, in the interest of the Northern Ry., under the ownership of Sir Frank Smith, F. W. Cumberland and N. Barnhart, who were directors of the N.N. Co.

The second steamer of the fleet, the *Cibola*, was built in Montreal in 1888, and put together at Deseronto, Ont., the engines being brought from Scotland. She was burned at Lewiston, N.Y., in 1895.

The third steamer, the *Chippewa* (the *Indian Chief*), was built at Hamilton in 1893, the engines being brought from New York. She is a side-wheeler, with condensing beam engines, her dimensions being: length 308 ft. 5 in., breadth 36 feet 3 in., depth 12 ft. 3 in.; tonnage, gross 1,514, register 764.

The fourth steamer, the *Corona* (the *Bright Sun Ray*), a side-wheeler, with diagonal compound Scotch engines, was built in Toronto in 1896. Her dimensions are: length, 270 ft. 3 in.; breadth, 32 ft. 4 in.; depth, 13 ft. 5 in.; tonnage, gross, 1,274, register 649.

The fifth steamer, the *Ongiara*, which is used as a ferry boat between Queenston, Ont., and Lewiston, N.Y., was built in Toronto in 1885. Her dimensions are: length,

90 ft. 5 in.; breadth, 18 ft. 4 in.; depth, 5 ft. 4 in.; tonnage, gross 98, register 64.

All the steamers are lit by electricity, and are thoroughly up-to-date in every particular. They enjoy a large business between Toronto, Niagara-on-the-Lake, Queenston and Lewiston, and the Co. has very favorable traffic arrangements with the Michigan Central Rd., the New York Central Rd., the Niagara Falls Park and River Ry. and the Niagara Gorge Rd.

The Co. owns docks at Niagara-on-the-Lake, Ont., Youngstown, N.Y., and Queenston, Ont. Its operations have been very satisfactory. A 6% dividend has been paid right along, and there are no liabilities outside small current accounts.

The Northern Navigation Company.

The N.N. Company of Ontario, Limited, recently offered for subscription \$238,300 of stock at 105. Following are extracts from the prospectus:

The Co. was formed in the spring of 1899 by the consolidation of the business of the Great Northern Transit Co., which had been doing steamship freight and passenger business on the Georgian Bay for 27 years, and the business of the North Shore Navigation Co., which has been doing business in the same waters for 11 years. During the 27 years that the Great Northern Transit Co. and the 11 years that the North Shore Navigation Co. were doing business the average dividends paid exceeded 10%. The authorized capital of the N.N. Co. is \$1,000,000, of which \$321,700 has been issued and paid up, and \$238,300 was recently offered for subscription, for the purpose of repaying the balance of money advanced for the building of the str. *Germanic*, and for the purchasing and refitting of the str. *Britannic*, also to pay for a controlling interest in the stock of the North-West Transportation Co., of which the N.N. Co. own \$153,000 out of a total capital of \$300,000.

The purchase of the stock in the N. W. T. Co., in addition to the benefits derived from the control, is looked upon by the directors as a valuable investment, when the assets of the Co. in steamers and cash and the earnings are considered. The assets of the N. W. T. Co. on Jan. 1, 1901, consisted of two steamers, the *United Empire* and *Monarch*, valued at \$225,000, and cash on deposit amounting to \$142,000. The net earnings of this Co. for the year ended Dec. 31, 1900, were \$37,000, or over 12% on the capital. A steel steamer is being constructed for this Co. at a cost of about \$285,000 complete, and it is proposed that the cost of this steamer shall be in part defrayed out of the cash surplus of \$142,000 at present on hand.

The steamers owned by the N.N. Co. of Ont. are:—*Atlantic*, *Germanic*, City of Collingwood, City of Midland, City of Toronto, *Majestic*, *Britannic*. The Co. has exclusive connections with the G.T.R. from all points on Georgian Bay at which the G.T. lines touch, viz:—Midland, Penetanguishene, Collingwood, Meaford and Owen Sound, to all points east of Sault Ste. Marie, and also an exclusive connection with the C.P.R. at Owen Sound for all points east of Sault Ste. Marie, and has a steamer running from Midland and Penetanguishene to Parry Sound; also a line running from Collingwood to Parry Sound, Point au Baril, Byng Inlet and French River throughout the season, and for three months in summer this line extends to Killarney, making close connection there with the main line of steamers from Collingwood and Owen Sound; also a line of four steamers a week from Collingwood, Meaford and Owen Sound to Sault Ste. Marie and all intermediate ports, and for this season has one of its steamers running from Sarnia to Lake Superior ports, making up the Sarnia line to three steamers and two sailings a week from Sarnia. The