

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
King v. The Alberta Railway and Irrigation
Company, from the Supreme Court of
Canada ; delivered the 25th July 1912.*

Present at the Hearing :
THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DUNEDIN.
LORD ATKINSON.

[DELIVERED BY LORD MACNAGHTEN.]

This is an Appeal from an Order of the Supreme Court of Canada reversing by a majority of three learned Judges to two the unanimous Supreme Court of Alberta, which affirmed the judgment of the judgment of the Trial Judge.

The question is whether the Provincial Government or the Respondents, the Irrigation Company, who were Defendants in the action are bound to construct the necessary bridges at the points where the Company's canals intersect the road allowances reserved throughout the Province of Alberta under the Dominion Lands Act, R.S.C. 1886, c. 54.

The action is concerned with two typical cases. In both the Company obtained permission to construct irrigation works in accordance with deposited plans which showed the points of intersection. In the one the proceedings were regular throughout and complete. In the other it would seem that some one or more of the directions and formalities prescribed by the North West Irrigation Act, 1898, or the rules made thereunder, were not complied with. No relief however was asked on that ground. The claim in both cases is for an order or judgment requiring the Company to

erect across its canals at the points of intersection proper and sufficient bridges with proper and sufficient approaches thereto.

By their Statement of Defence the Company admitted the allegations contained in the Statement of Claim and admitted further that unless the Company were entitled to interrupt public travel, as the statement of claim alleged they had done, the Plaintiff was entitled to the relief claimed.

The case may be summed up in a few words:—

Road allowances are strips of Crown land reserved from public sale and settlement. They were reserved originally for the sole purpose of making roads when and as roads might be required.

Before the road allowances were wanted for roads, the Irrigation Company obtained authority under the North West Irrigation Act, 1898, to cross the road allowances met with in their route. This authorization necessarily gives the Company the right to occupy the road allowances at the points of crossing and to dig out the surface of the land there for the purposes of their irrigation works.

Thereupon the land at a crossing which was originally vested in the Crown for one single purpose comes to be so vested for two purposes—diverse and to some extent antagonistic—both touching closely the interest of the public and both perpetual: (1) the convenience of wayfarers and travellers; and (2) the improvement of the country by irrigation. The first, however, is still the primary and paramount purpose. The second is subordinate, for the land is not freed from the original purpose when the Company obtains authority to take possession of it; nor, indeed, can it be freed from that purpose except by or in pursuance of some statutory enactment. The suggestion that the original purpose comes

to an end on the expiration of the period allowed for the construction of the Company's works is really not arguable.

Then there comes a time when the road allowances are wanted for roads. Who is to enforce the obligation of restoring them to a condition suitable for that purpose or otherwise doing what may be necessary to give effect to the original purpose—if there is a dispute about it? Clearly, the Attorney-General on behalf of the Crown. How is the obligation to be worked out? Due regard must be paid to both the purposes for which the land is held. The obvious and proper thing is to build bridges at the crossings where the road allowances have been made impassable by the Company's canals. Who is to build the necessary bridges? Surely the party for whose convenience and profit the road allowances have been interfered with. The Company has power under the Irrigation Act to construct "bridges." The word "bridges" in that connection must mean "bridges over the Company's canals where they interfere with roads or road allowances." The construction of the necessary bridges is therefore one of the purposes of the Company's undertaking.

It follows that the stipulation about building the necessary bridges to which the Company submitted on their original application is nothing more than a stipulation binding the Company to do, as a matter of contract, what it would have been bound to do if there had been no submission.

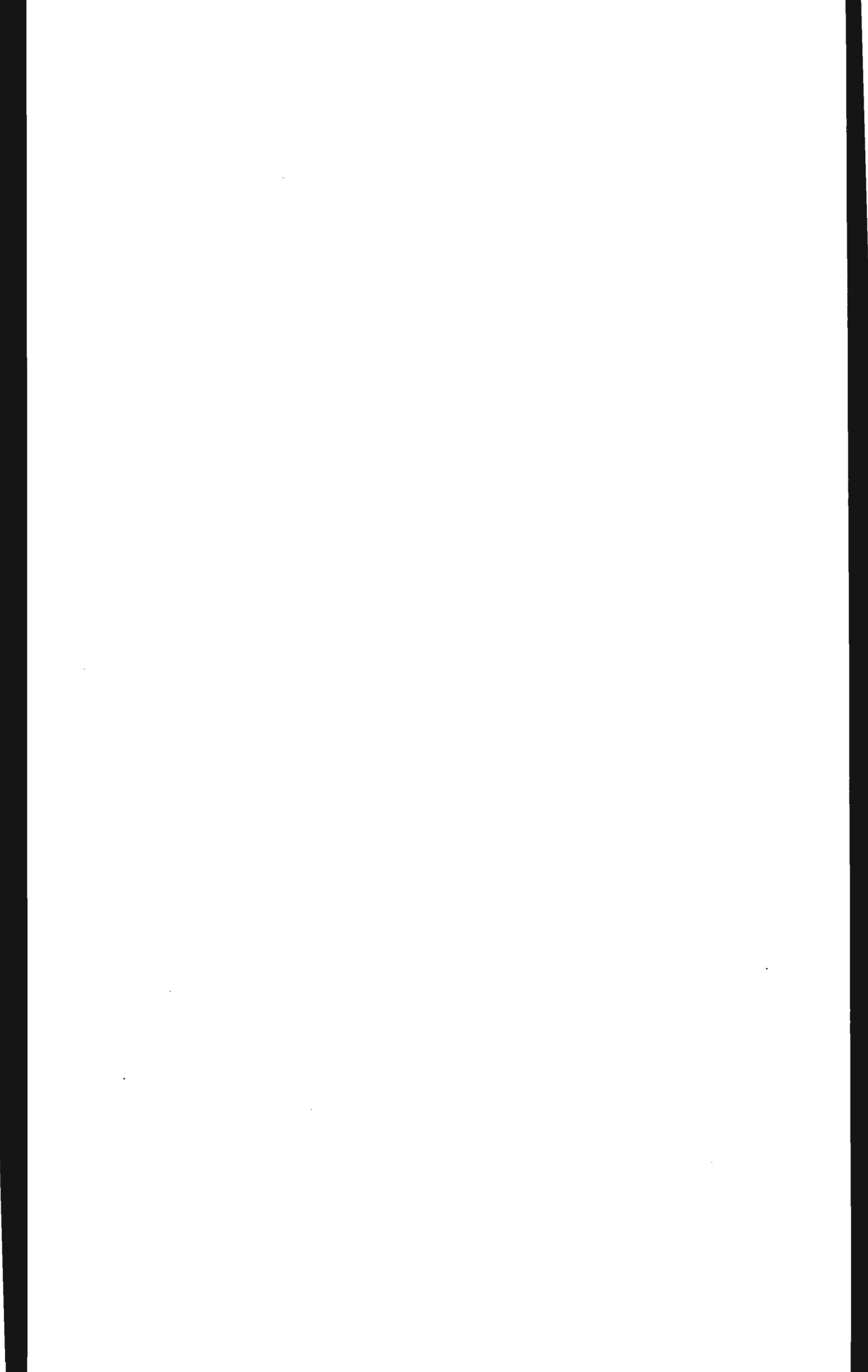
The result therefore is just the same whether the Company's proceedings have been regular, as in the case of No. 6, or irregular, as suggested in the case of No. 8.

Their Lordships may add that in their opinion Section 37 of the Irrigation Act to which frequent reference was made during the argument has no

application to road allowances. It deals only with "public highways theretofore publicly travelled" as such."

Their Lordships will therefore humbly advise His Majesty that the Appeal should be allowed, the Judgment of the Supreme Court reversed, and the Judgments of the Courts below (varied so as to conform to the order asked for by the Statement of Claim to which the Company by their Statement of Defence admitted the Plaintiff would be entitled if they failed in making good their defence on the point of law raised by them) restored without costs.

The costs paid under the order of the Supreme Court must be refunded, and there will be no costs of this Appeal.



In the Privy Council.

THE KING

v.

THE ALBERTA RAILWAY AND
IRRIGATION COMPANY.

DELIVERED BY LORD MACNAGHTEN.

LONDON :

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PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.