

THE ATTORNEY-GENERAL OF }
 ONTARIO AND THE MUNICI- }
 PALITY OF THE TOWNSHIP } APPELLANTS ;
 OF VAUGHAN (PLAINTIFFS)..... }

1892
 *Nov. 9.
 *Dec. 13.

AND

THE VAUGHAN ROAD COM- }
 PANY (DEFENDANTS) } RESPONDENTS.

ON APPEAL FROM THE CHANCELLOR OF ONTARIO.

*Statute—Application of—R.S.O. (1887) c. 159—53 V. c. 42 (O)—Applica-
 tion to company incorporated by special charter—Collection of tolls—
 Maintenance of road—Injunction.*

The provision of the General Road Companies Act of Ontario (R. S. O. [1887] c. 159) as amended by 53 V. c. 42 relating to tolls and repair of roads apply to a company incorporated by special acts and on the report of an engineer as provided by the general act that the road of such company is out of repair it may be restrained from collecting tolls until such repairs have been made.

Judgment of the Court of Appeal on motion for entering injunction (19 Ont. App. R. 234) overruled and that of the Divisional Court (21 O. R. 507) approved.

APPEAL by leave of the court from a decision of the Chancellor of Ontario without an intermediate appeal to the Court of Appeal.

The action is brought for an injunction restraining the defendants from collecting tolls upon their road and from keeping the toll-gates closed or otherwise maintained, so as to obstruct persons travelling along the road until the county engineer appointed under the provisions of 53 Vic. ch. 42 (O.), shall have examined the road in connection with certain proceedings alleged to have been taken under the provisions of that act, and shall have certified that the defendants' road had been repaired in a good and efficient manner.

*PRESENT :—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

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The respondents, the Vaughan Road Company, are incorporated by special charter, 13 & 14 Vic. cap. 134, and own a road in the township of Vaughan, and the question to be decided is: Does 53 Vic. ch. 42 (O.) "An Act to amend the General Road Companies Act" (R. S. O. [1887] ch. 159) apply to this company?

The amending act authorizes such proceedings as were taken in this case when a road subject to the General Road Companies Act is out of repair. The general act provided that certain sections only should extend to companies incorporated by private acts.

An application was made to a Divisional Court for an interim injunction which was granted (1), but the Court of Appeal reversed the order (2) holding that the provision extending a part of the general act to private companies did not make them subject to that act and, therefore, that 53 Vic. ch. 42 did not apply to this company. As this decision was given on the application for the interim injunction the plaintiffs could not appeal therefrom so they proceeded to trial before the Chancellor who, following the decision of the Court of Appeal on the question of law, dismissed the action. The plaintiffs then, by leave of the Supreme Court, appealed directly to that court from the judgment of the Chancellor.

S. H. Blake Q.C., and *Lawrence* for the appellants referred to *Endlich* on Interpretation of Statutes (3); *Luckraft v. Pridham* (4).

Bain Q.C. and *Kappele* for the respondents cited *The Queen v. Inhabitants of Merionethshire* (5); *The Queen v. Stock* (6); *Seward v. Vera Cruz* (7).

The judgment of the court was delivered by:

- (1) 21 O. R. 507. (4) 6 Ch. D. 205.
 (2) 19 Ont. App. R. 234. (5) 6 Q. B. 343.
 (3) P. 308 sec. 230. (6) 8 A. & E. 405.
 (7) 10 App. Cas. 59.

PATTERSON J.—It is not improbable that the fuller discussion before this court has directed attention to some features of the provincial legislation respecting road companies which were not made so prominent in the argument of the interlocutory motion before the Court of Appeal. Since the argument before us I have carefully examined the various statutes, and with the greatest respect for the opinions of the learned judges who concurred in the judgment which is in fact, though not in form, the subject of this appeal, I find myself unable to adopt their conclusion. I interpret the statutes in very much the same way as did the divisional court of the Common Pleas Division and the learned Chief Justice of Appeal.

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A short glance at some of the statutes will suffice to explain the grounds of my opinion.

I may observe that the terms "Charter" and "Act of Incorporation" seem to be used in the statutes interchangeably. Whether any road companies in the province exist, or ever existed, by royal charter I do not know, but it is evident that from the act of 1849 (1) to that of 1890 (2) the terms are used indifferently to denote a private act of incorporation (3).

The private act 13 & 14 Vic. ch. 134, adopting for the Vaughan Road Co. the terms of the act of 9 Vic. ch. 88, which incorporated the Albion Road Company of which the Vaughan Company was an offshoot, provided for the corporate existence and certain functions and powers of the company, but made no provision for the important subject—important as far as the public was concerned—of enforcing the proper maintenance and repair of the road.

(1) 12 V. c. 84. 1; C.S.U.C. c. 49 ss. 67, 121; 35
 (2) 53 V. c. 32. V. c. 33 s. 10; R.S.O. (1877) c.
 (3) Sec. 12 V. c. 84 s. 1; 16 V. 152 ss. 127, 152; R.S.O. (1887) c.
 c. 190 ss. 2, 6, 59; 18 V. c. 139 s. 159 ss. 128, 157.

1892 In 1853 the act 16 Vic. ch. 190 was passed,
 THE An Act to amend and consolidate the several Acts for the forma-
 ATTORNEY- tion of joint stock companies for the construction of roads and other
 GENERAL OF works in Upper Canada.
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v. That act recognized and dealt with two classes of
 THE companies :
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ROAD 1st. Companies incorporated under general acts ;
 COMPANY. 2nd. Companies for which charters had been obtained
 Patterson J. or which are otherwise described as having private acts
 of incorporation.

The 59th section of the act provided that certain enumerated sections and no other sections of the act should extend to companies of the second class.

The excluded sections were those which regulated the powers and functions of corporations as bodies politic formed under general acts. In the case of companies having special acts of incorporation those things were provided for by the private acts. In excluding the excluded sections the act of 1853 simply left each of those companies to live its own corporate life uninterfered with by enactments meant for companies of another class ; but every provision of the act which bore on the conduct of the enterprise which was the basis of the contract between the company and the public applied to all companies alike.

The sections that did not apply to companies which had special acts dealt with the subjects of the incorporation and ordinary corporate powers of companies (1) ; directors, shares, calls and actions for calls (2) ; the time within which works were to be completed (3) ; rate of tolls, width of tires, and intersection of roads (4) ; certain exemptions from paying toll (5) ; competency of officers and shareholders as witnesses (6) ; cure of informalities in the incorporation of some com-

(1) Ss. 1 to 5.

(2) Ss. 13 to 18.

(3) S. 27.

(4) Ss. 29-30.

(5) S. 91.

(6) S. 54.

panies (1); and the reports which the directors were to make to the municipality (2).

The subjects dealt with by the sections which applied to all companies alike may, in a general way, be thus specified:—

Expropriation of land and materials; arbitration; borrowing money or issuing new stock to facilitate the extension of the works; union of companies; dealings with municipalities; tolls; repair of road; protection of road; recovery of fines, &c.; limitation of actions; power of municipality to purchase the stock after 21 years from completion of the work.

Some of the learned judges in the courts below intimated an opinion that these provisions thus made applicable, or, to use the language of the statute, "extended" to companies having private acts of incorporation, became in effect parts of those private acts, and would so remain even if the general act was repealed, just as if enacted by way of direct amendment of the private act, and it was so contended before us on the part of the respondents. I notice the contention merely in order to say that I do not accede to it. There is nothing in the force of the language of the statute or in the necessity of the case to indicate that such was the intention of the legislature. The legislature, having at the moment in contemplation certain artificial bodies created for a certain purpose, laid down rules for their government as it might have done in the case of natural persons, and which rules it did in fact apply, in 1859, (3) to natural persons who purchased roads or other works at a sale under legal process. In the individual's case the rules could create no natural right, nor did they enter into the essence of the legal entity so as to prevent their being changed or superseded by other general rules at the will of the legislature.

(1) S. 55.

(2) S. 53.

(3) 22 V. c. 43.

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It will tend to clearness, and will do no violence to the act of 1853, to separate the two objects of the statute, which are not necessarily connected though they happen to be covered by the one document.

One of these objects is the incorporation of the companies which I have classed as no. 1, and providing for their ordinary corporate functions.

If we set on one side these companies of the first class, and range with them the companies of the second class, we have an array of corporate bodies undistinguishable from each other as legal entities, and differing only in the mode of their creation.

Over against this array of companies set the other part of the statute, containing the rules which are to govern all the companies alike.

It is manifest that, in respect of these rules, any one of the companies is subject to the statute in the same sense as any other of them.

The respondent company thus comes literally within the act of 1890, being "subject to the General Road Companies Act," the provisions of the act of 1853 having, in the particulars in discussion, been carried forward by way of the Consolidated Statutes of 1859 and the Revised Statutes, 1877, to the Revised Statutes, 1887, where they now appear in chapter 159.

In my opinion we should allow the appeal.

Appeal allowed with costs.

Solicitors for appellant: *Lawrence, Ormiston & Drew.*

Solicitors for respondents: *Bain, Laidlaw & Kappeler.*