

1895. THE CORPORATION OF THE VIL- }
 *Mar. 1. LAGE OF ST. JOACHIM DE LA } APPELLANT;
 *May 6. POINTE CLAIRE (PLAINTIFF)..... }

AND

THE POINTE CLAIRE TURN- }
 PIKE ROAD COMPANY (DE- } RESPONDENT.
 FENDANT)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

*Statute — Construction of — Retroactive effect — Municipal corporation —
 Turnpike Road Co. — Erection of toll gates — Consent of corporation.*

A turnpike road company had been in existence for a number of years and had erected toll gates and collected tolls therefor when an Act was passed by the Quebec Legislature, 52 V. c. 43, forbidding any such company to place a toll or other gate within the limits of a town or village without the consent of the corporation. Section 2 of said Act provided that "this Act shall have no retroactive effect," which section was repealed in the next session by 54 V. c. 36. After 52 V. c. 43 was passed, the company shifted one of its toll gates to a point beyond the limits of the village, which limits were subsequently extended so as to bring said gate within them. The corporation took proceedings against the company contending that the repeal of sec. 2 of 52 V. c. 43, made that Act retroactive and that the shifting of the toll gate without the consent of the corporation was a violation of said Act.

Held, affirming the decision of the Court of Queen's Bench, that as a statute is never retroactive unless made so in express terms, sec. 2 had no effect and its repeal could not make it retroactive; that the shifting of the toll gate was not a violation of the Act, which only applied to the erection of new gates, and that the extension of the limits of the village could not affect the pre-existing rights of the company.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), reversing the

*PRESENT:—Sir Henry Strong C.J. and Fournier, Taschereau, Sedgewick and King JJ.

judgment of the Superior Court in favour of the plaintiff.

The plaintiff municipality seeks by its action to have the defendant enjoined from continuing the toll gates erected by it within the municipality and to have the same demolished as being erected without the consent of the corporation under 52 Vic. ch. 43, which provides that—

Article 5089 of the Revised Statutes of the province of Quebec is replaced by the following :

5089. As soon as one mile of the road is made the company may put up toll gates and collect the tolls established by the board of directors, subject to the provisions of this section.

The company cannot, however, place any toll or other gate within the limits of any town or village incorporated by special charter or under the municipal code, unless the said corporation consents thereto.

2nd. This Act shall have no retroactive effect.

An Act passed in the following year, 54 Vic. ch. 36, was as follows :

Section 2 of the Act 52 Vic. ch. 43, amending the law respecting companies for stoning roads is hereby repealed.

The plaintiff claimed that the effect of such repeal was to make the former Act retroactive and so prevent the company defendant from continuing its maintenance of the toll gates and collecting tolls without the consent of the corporation. It was also contended that the Act was violated by the company shifting certain toll gates after the Act was passed to a point within the limits of the village as extended shortly before the passing of 54 Vic. ch. 36. The facts material to the decision are more fully stated in the judgment of the court.

The Superior Court held the plaintiff entitled to relief but its judgment was reversed by the Court of Queen's Bench. The plaintiff appealed.

Geoffrion Q.C. and *Charbonneau* for the appellant.

Saint-Pierre Q.C. for the respondent.

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The judgment of the court was delivered by—

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J.

TASCHEREAU J.—This is a very simple case. The respondent's turnpike road company for a number of years had erected and maintained toll gates under its charter within the present limits of the municipality appellant. In 1889, the legislature decreed that no toll gates should be placed within the limits of any town or village municipality without the consent of the corporation.

Did that enactment affect toll gates existing previously, or only those to be erected thereafter, is the only question raised on this appeal. The judgment appealed from determines that this legislation has no retroactive effect and consequently does not interfere with the respondent's toll gates, which had been in existence a long time before within the limits of the municipality appellant. And this, in my opinion, is clearly right. The appellant's case rests mainly on the following curious piece of legislation. To the enactment of the Act of 1889 to which I have referred was added "this Act shall have no retroactive effect." But in the following year, an Act was passed repealing these words. Now, what is the effect of this repeal? It is simply to leave the statute of 1889 as if the said words "this Act shall have no retroactive effect" had never been in it. And no Act has a retroactive effect if nothing to the contrary appears therein. So that the words "this Act shall have no retroactive effect" in the statute of 1889 were unnecessary, and their being struck out leaves the construction to be given to the statute the same as if they had never been in it, and has no other consequence.

As found by the Court of Appeal, as a matter of fact, this turnpike road company has erected no new toll gates since 1889 within the limits of the municipality

appellant. The shifting of its gates, and removal from one place to the other, did not constitute new gates. The municipality has extended its limits, but that cannot affect the respondent's pre-existing rights.

An objection to our jurisdiction to entertain this appeal was taken *in limine* by the respondent. But as we are of opinion that we should dismiss the appeal we assume jurisdiction, without determining the question raised thereupon, as we have often done in such cases, and as the Privy Council has done in many instances, amongst others, in *Braid v. The Great Western Railway Co.* (1).

The result is that the judgment of the Court of Appeal, which dismissed the appellant's action, is affirmed, and the appeal dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Nap. Charbonneau.*

Solicitor for the respondent: *Saint-Pierre & Pelissier.*

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—

(1) 1 Moo. P.C. N.S. 101.