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*Oct. 5.
*Dec. 9.

LA COMPAGNIE POUR L'ECLAIRAGE AU GAZ DE ST. HYACINTHE (PLAINTIFFS)................ APPELLANTS;

AND

LA COMPAGNIE DES POUVOIRS HYDRAULIQUES DE ST. HYACINTHE (DEFENDANTS)............... RESPONDENTS.

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

Construction of statute—By-law—Exclusive right granted by—Statute confirming—Extension of privilege—45 V. c. 79, s. 5 (P.Q.)—C.S.C. c. 65.

In 1881 a municipal by-law of St. Hyacinthe granted to a company incorporated under a general act (C.S.C. c. 65) the exclusive privilege for twenty-five years of manufacturing and selling gas in said city, and in 1882 said company obtained a special act of incorporation (45 V. c. 79, Q.), sec. 5 of which provided that "all the powers and privileges conferred upon the said company, as organized under the said general act, either by the terms of the act itself or by resolution, by-law or agreement of the said city of St. Hyacinthe, are hereby reaffirmed and confirmed to the company as incorporated under the present act, including their right to break up, &c., the streets * * * and in addition it shall be lawful for the company, in substitution for gas or in connection therewith. or in addition thereto, to manufacture, use and sell electric, galvanic or other artificial light, and to manufacture, store and sell heat and motive power derived either from gas or otherwise, and to convey the same by gas or otherwise * * * with the same privilege, and subject to the same liabilities, as are applicable to the manufacture, use and disposal of illuminating gas under the provisions of this act."

Held, affirming the decision of the Court of Queen's Bench, that the above section did not give the company the exclusive right for twenty-five years to manufacture and sell electric light; that the right to make and sell electric light with the same privilege as was applicable to gas did not confer such monopoly, but gave a new

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

privilege as to electricity entirely unconnected with the former purposes of the company; and that the word "privilege" there used could be referred to the right to break up streets and should not, therefore, be construed to mean the exclusive privilege claimed.

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Held also, that it was a private act notwithstanding it contained a clause declaring it to be a public act, and the city was not a party nor in any way assented to it; and that in construing it the court would treat it as a contract between the promoters and the legislature and apply the maxim *verba fortius accipiuntur contra proferentem* especially where exorbitant powers are conferred.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment of the Superior Court in favour of the defendants.

The only question for decision on this appeal was whether or not the plaintiff company had, by their special act of incorporation (1) and a by-law of the city council of St. Hyacinthe, the exclusive right to manufacture and sell electric light in the said city. The courts below held that the company had not the right.

The facts of the case, and the section of its charter on which the company relied, are set out in the judgment of the Chief Justice.

Geoffrion Q.C. for the appellant. The statute extends all privileges held by the company in the manufacture and sale of gas to the manufacture and sale of electric light. The language is in no way ambiguous and effect must be given to it even though it be arbitrary and unjust. Endlich on Interpretation of Statutes (2).

It is imperative on the appellant company, if it claims the privilege, to furnish electric light. Potter's Dwarris on Statutes. The light has been furnished and the company should be protected in carrying out its obligation.

Lafleur and *Blanchet* for the respondent. Plaintiff's

(1) 45 V. c. 79. (2) Par. 4.

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charter is a private act and should be construed strictly, and all presumptions made in favour of private rights and against exclusive privileges. Hardcastle on Statutes (1); *Dwyer* v. *Corporation of Port Arthur* (2); *City of London* v. *Watt* (3).

The privilege mentioned in the act will not be held to grant a monopoly if another construction is possible, which it is.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—The appellant company was originally incorporated in 1880, under the General Act, Consolidated Statutes (Canada), c. 65, for the purpose of manufacturing and selling illuminating gas in the city of St. Hyacinthe. The municipal authorities of St. Hyacinthe were assenting parties to this incorporation.

On the 11th of January, 1881, the city council of St. Hyacinthe passed a by-law granting to the appellant company an exclusive right and privilege to manufacture and sell gas in the city of St. Hyacinthe, both for lighting the streets and public places and for supplying the citizens therewith, for the term of twenty-five years from the date of the by-law, and the appellants were thereby authorized to build gas works and to make use of the streets and public roads of the city for placing the pipes necessary for distributing gas.

In 1882 the persons then composing the appellant company under the first incorporation obtained from the legislature of the province of Quebec a special Act of incorporation, being the Act 45 Vic. c. 79. The first section of this statute enacted the incorporation under the same name of the shareholders of the former com-

(1) Pp. 273-5. (2) 22 Can. S.C.R. 241.

(3) 22 Can. S.C.R. 301.

pany, and declared that the real estate, franchises, and assets of every kind belonging to the company so formed should belong to the company incorporated by the act, and should form part of its property to all intents and purposes. The fifth section of this act is in the following words:

All the powers and privileges conferred upon the said company, as organized under the said general act, either by the terms of the act itself, or by resolution, by-law, or agreement of the said city of St. Hyacinthe, are hereby reaffirmed and confirmed to the company as incorporated under the present act, including their right to break up, dig and trench so much and so many of the streets, squares, highways, lanes and public places, within the limits of the city of St. Hyacinthe, and the adjoining parishes in the county of St. Hyacinthe, as may be necessary for laying down the mains and pipes required to make the necessary connections between their works and the premises of their patrons, doing no unnecessary damage in the premises, and taking care, as far as may be, to preserve a free and uninterrupted passage through the said streets, squares, highways, lanes and public places while the said works are in progress, and in addition, it shall be lawful for the company, in substitution for gas, or in connection therewith, or in addition thereto, to manufacture, use and sell electric, galvanic or other artificial light, and to manufacture, store and sell heat and motive power, derived either from gas or otherwise, and to convey the same by pipes or wires, and with the same privilege and subject to the same liabilities as are applicable to the manufacture, use and disposal of illuminating gas under the provisions of this act.

The city of St. Hyacinthe did not in any way consent to this legislation, and was no party to it.

The last mentioned act did not recite or refer specifically to the by-law of the 11th January, 1881, or to the agreement entered into thereby between the city of St. Hyacinthe and the original company, conferring the monopoly, as regards gas, therein mentioned. Since 1882, up to the date of the action, the appellants had, to the exclusion of any other company, supplied gas for lighting purposes to the city and its inhabitants, and since 1887 they have also sold and supplied electric light.

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On the 16th February, 1894, on a petition presented by Antoine Morin, a by-law was passed by the city council of St. Hyacinthe, authorizing him, or any company or firm which he might subsequently form, to make use of the streets and roads of the city for placing poles, wires and other apparatus necessary for the construction of a line for the sale of electric light to the inhabitants of St. Hyacinthe. The appellants protested against the adoption of this by-law.

Subsequently, Antoine Morin and his associates applied to the Lieutenant-Governor in Council, under a general act of the province, for letters patent of incorporation, which were accordingly issued on the 19th of April, 1894, and thereby the respondent company was incorporated.

By the letters patent of incorporation the object of the respondent company was declared to be as follows:

> Pour l'achat, la possession et l'exploitation de forces motrices hydrauliques pour toutes sortes de fins industrielles, et notamment pour la production et la distribution, la vente et la location de la lumière, de la chaleur, et de la force motrice produites par l'électricité.

Upon their organization the respondents proceeded to make contracts with individuals, citizens of St. Hyacinthe, for lighting their houses and places of business by electricity, and at once began to construct in houses and streets of St. Hyacinthe a line and installation which at the date of the institution of the present action they were in process of completing.

The appellants insist that, by the fifth section of their special Act of incorporation of 1882, a like monopoly and exclusive privilege to furnish electric light was conferred upon them as was in terms conferred upon them by the by-law of the 11th January, 1881, in respect of gas.

The respondents' contentions are that the fifth section, according to its proper legal interpretation, does

not extend the exclusive privilege, which the by-law assumed to confer as to gas, to electric lighting; secondly, that the by-law itself was *ultra vires*; and thirdly, that if the construction of the fifth section of the Act of 1882 is such as the appellants insist the enactment itself was *ultra vires* of the Quebec Legislature.

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I shall not have to consider the two last objections as I entirely agree with the courts below, which have both construed the fifth section of the Act of 1882 in the manner the respondents contend for. I therefore confine my judgment exclusively to this question as to the proper meaning of the fifth section.

In the first place it is a most important consideration to be borne in mind, in the construction of this Act of the legislature, that it is a private Act to which the city of St. Hyacinthe was not a party, and which was not in any way assented to by it. It is none the less a private Act for the reason that it contains a clause declaring it to be a public Act (1). In *Dawson* v. *Paver* (2), Wigram V. C. says that:

Whether an Act is public or private does not depend upon any technical considerations (such as having a clause or declaration that the Act shall be deemed a public Act) but upon the nature and substance of the case.

And in Maxwell on Statutes (3) it is said that

enactments which invest private persons or bodies, for their own benefit and profit, with privileges and powers interfering with the property or rights of others, are construed more strictly perhaps than any other kind of enactment.

The courts take notice that these Acts are obtained on the petition of the promoters, and in construing them treat them as contracts between the applicants for them and the legislature on behalf of the public,

(1) *Richards* v. *Easto* 15 M. & W. 244; *Moore* v. *Shepherd* 10 Ex. 424; *Shepherd* v. *Sharp* 1 H. & N. 115.

(2) 5 Hare 434.

(3) Maxwell on Statutes 2 ed. p. 363.

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and the language in which they are expressed is treated as the language of the promoters, and the maxim *verba fortius accipiuntur contra proferentem* is applied to them; and the benefit of any ambiguity or doubt is given to those whose interests would be prejudicially affected, especially when such persons are not parties to the Act nor before the legislature as assenting to it. And particularly is this so where exorbitant powers, such as a monopoly, are conferred.

Further, it has been laid down by as high an authority as could be quoted that:

> If words in a local or personal Act seem to express an intention to enact something unconnected with the purpose of the promoters and which the committee, if they had done their duty, would not have allowed to be introduced, almost any construction, it has been said, would seem justifiable to prevent them from having that effect (1).

Having referred to these general rules applicable to the construction of private acts, I now proceed to examine the particular enactment in question, viz., the fifth section of the appellants special Act of 1882. In the first place, as I have already said, there is no recital of the by-law of the 11th January, 1881, and nothing on the face of the act to show that the attention of the legislature was called to its terms, or that it was in any way brought to their notice. The general confirmation of privileges conferred by the former general act, or by resolution, by-law or agreement of the city of St. Hyacinthe, contained in the first part of the section, would not, it is manifest, by itself confer any other exclusive right than that relating to the exclusive privilege, for twenty-five years, to light with gas. If the proposition of the appellants is correct, the monopoly which they claim as to electric lighting must be conferred by the subsequent part of the section, expressed in these words:

(1) Per Lord Blackburn, *River Wear Commons* v. *Adamson* (2 App. Cas. 743); Maxwell on Statutes 2 ed. p. 365.

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And in addition it shall be lawful for the company, in substitution for gas, or in connection therewith, or in addition thereto, to manufacture, use and sell electric, galvanic or other artificial light, and to manufacture, store and sell heat and motive power derived either from gas or otherwise, and to convey the same by pipes or wires, and with the same privilege and subject to the same liabilities as are applicable to the manufacture, use and disposal of illuminating gas under the provisions of this act.

The question then is really narrowed to this: Must we say that it was intended by the legislature by the words "with the same privilege" without more, and without having before them the by-law which defined the extent of the privileges as to gas, to grant to the appellants for their own exclusive private profit and advantage, a monopoly of selling electric light in the city of St Hyacinthe for the term of twenty-five years?

I am of opinion that but one answer is admissible to this question, that which has already been given by Mr. Justice Gill in the Superior Court, and by the Court of Queen's Bench. The purpose of the promoters in procuring their private act must be deemed to have been merely to extend their own powers, and to confirm existing by-laws and agreements The grant of a new exclusive privilege of electric lighting was something entirely unconnected with these purposes, something which concerned not merely the appellants themselves, but which would operate very prejudicially against the interests of the inhabitants of the city of St. Hyacinthe, and which it is not to be presumed the legislature would have granted without their consent, or at least without hearing them. To construe the statute in the way contended for by the appellants would therefore work a great injustice, and would be in direct violation of the general principles of construction applicable to such legislation, already referred to. It is said that the word "privilege" must necessarily mean an exclusive privilege to sell electric light,

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but I think that is not so, inasmuch as this word "privilege" can be referred to the privileges already conferred by the general act and by the by-law, and specified in the former part of the fifth section, viz., the privilege of 'breaking up, digging and trenching the streets, squares, highways, lanes and public places," and this interpretation is strengthened by the consideration that the "privilege" is coupled with a declaration that it is to be subject to the "same liabilities" as apply to the manufacture of gas, such liabilities being manifestly those before specified, viz., liabilities to take due care in exercising the privilege, to preserve a free passage through the streets, and to do no unnecessary damage.

I am of opinion that the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Geoffrion, Dorion & Allan.*

Solicitors for the respondent: *Lafleur & Macdougall.*