

1815.

CALEDONIAN
CANAL COM-
MISSIONERS
v.
GRANT.

The GOVERNMENT COMMISSIONERS for making
the CALEDONIAN CANAL, . . . *Appellants* ;
COLONEL ALEXANDER GRANT of Redcastle, *Respondent*.

House of Lords, 28th April 1815.

CLAUSE—ACT—TAKING OF LANDS.—The Caledonian Canal Commissioners in their Acts for making the canal, had powers conferred upon them, to take stone, &c., from out the lands “of any person or persons, adjacent, or lying convenient thereto.” The respondent’s quarry was five miles distant from the line of canal, and in a different county from those named in the Act. Held in the Court of Session that the Commissioners had *no* authority under the Statutes to take possession of this stone quarry, but, in respect of a prior agreement, held them entitled so to take the stone of that quarry. Affirmed in the House of Lords, excepting as to the Commissioners’ powers under the Statute, which the House of Lords held it unnecessary to determine.

At the time the Caledonian Canal was projected, the Government Commissioners, for carrying on that undertaking, had entered into a private agreement with the respondent’s predecessor, to allow them to take stone from his quarry of Redcastle, for the erection and purposes of the canal, “the rate of remuneration to be determined by Provost Brown of Elgin.”

There were stone quarries of a finer quality nearer the line of canal than Redcastle quarry, which latter was situated at the distance of five miles from it.

Mr Brown, who had been appointed to fix the remuneration, from his connection with the Canal Commissioners, and in their active employment, and from feelings of delicacy, refrained from fixing the remuneration; and matters stood in this situation, when the respondent succeeded to the estate of Redcastle. At this time the Commissioners had been taking stone from the quarry for some few years.

Having succeeded to the estate, the respondent became anxious to have the remuneration fixed in some way, to the satisfaction of both parties. He therefore pressed that matter, whereupon the Commissioners brought forward their claims under their Acts of Parliament, which, they alleged, empowered them to take all such for the purposes of the canal, at sametime stating, that they were willing to allow him a rent of £40 per annum for the quarry. This was refused, as

perfectly inadequate, looking to the value and quality of stone in the quarry, and the respondent brought the present action. This action concluded, 1st, That it should be adjudged, that the Commissioners had no power under the Acts of Parliament, to take the respondent's property against his will, and that in future they should be held removeable at the pleasure of the respondent; 2d, That for their past possession the Commissioners should be held liable for an adequate rent.

The Act gave power to take the lands of any person or persons, and "bore, dig, cut, trench, get, remove, take, and carry away earth, stone, clay, soil, &c., in or out of the lands or grounds of any person or persons *adjoining or lying convenient thereto*, and which may be necessary or proper for making," &c.

Upon this Act the Commissioners contended, 1st, That they had power to work the respondent's quarry for the uses of the canal, leaving it to be settled by a jury to what damages he should be entitled. 2d, They contended that the words of the Act were not ambiguous, that in the examination of the powers bestowed on them, that of digging and working *stone* was expressly mentioned, and that, instead of being confined to the direct limits of the canal, their powers were extended to all places and materials lying *adjoining* and *convenient* to the canal. 3d, That the agreement with the late Mr Grant was an acknowledgment of this right; and 4th, That the limitation of actions in the Acts was a bar to the present action.

In answer, the respondent contended, 1st, That the powers of the Commissioners to take lands, &c., for the purposes of the Act, was confined to a particular line, with the single exception of going five thousand yards for supplying the same with water, and making the necessary works therefor. And there was a clause in the Act which seemed to remove all doubt on the subject, which set forth that "the Commissioners in making the said navigation, shall not deviate more than 150 yards from the course or direction delineated in the said maps or plans, without the approbation or consent of the person or persons to whom the lands, grounds, or heritages so be cut through or made use of for the purposes of such deviation, shall belong." 2d, That the sections provide for fixing the value of lands taken for digging out the harbour at Beaully, building quays, warehouses, &c., but do not extend the remedy, or apply to a quarry at the distance of five miles, and situated in another county. 3d, That they

1815.

CALEDONIAN
CANAL COM-
MISSIONERS
v.
GRANT.

1815.

CALEDONIAN
CANAL COM-
MISSIONERS
v.
GRANT.

were not empowered to take stone from all quarries *con-venient*. 4th, That from the description in the Act of the *object*, it appeared that the operations were limited to the counties of Inverness and Argyll, and, therefore, it was plain that the legislature never meant to include property in the county of Ross, where the quarry in dispute is situated.

July 2, 1811.

The Lord Ordinary (Meadowbank) reported the case to the Court, and the Court pronounced this interlocutor: “On report of Lord Meadowbank, the Lords find in terms of the first conclusion of the libel, that the Commissioners, or others in their employ, had no power or authority under the statutes founded on, to take possession of the said stone quarry of Redcastle, situated in the county of Ross, without the consent of the proprietor; but in respect that the late proprietor of Redcastle had consented to the defenders and those employed by them, possessing and working the said quarry, which they have accordingly done for several years, and on the faith of being continued in possession so long as requisite for the construction of the said canal, basins, and appendages, the Commissioners had, with the knowledge and approbation of the proprietor, laid out large sums of money in building a pier, improving the quarry, and other works connected with it, whereby matters are not now entire: Therefore sustain the defences as to the removing, assoilzie the defenders from that conclusion of the libel, and decern: Find that the defenders are liable to the pursuer for adequate damages, rent, and compensation for the said quarry, and remit to the Lord Ordinary to hear counsel for the parties as to the mode of fixing the amount, and to proceed farther in the cause as his Lordship shall see just; supersede extract till the first box-day at the ensuing vacation.”

Feb. 12, 1812.

On reclaiming petition by the appellants (the respondent having acquiesced), the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—Even though the powers of the appellants to take stones from the quarry of Redcastle were doubtful, such doubt was removed by the agreement which the appellants made with the respondent’s predecessor, pursuant to the Acts of Parliament, passed for constructing the harbours. The appellants might have purchased from the proprietor of Redcastle, stones worked by the proprietor himself, but they could enter upon, and work the quarry themselves only by virtue of the powers given to them by

1815.

CALEDONIAN
CANAL COM-
MISSIONERS
v.
GRANT.

that or the subsequent Act of Parliament, and they could not have been justified in expending £2000, to enable them to work the quarry, if they had not proceeded upon such powers, which were admitted by the former proprietor of Redcastle, and could not now be challenged by his successor, who was bound by his acts and deeds. 2d, But, even if the power still rested solely upon the words of either Act of Parliament, there was no doubt, according to their right construction, that the appellants thereby received power to work the quarry in question. By the first Act of Parliament above set forth, the appellants were to construct one harbour in Loch Beauly, near to the town of Inverness, and another harbour to the west of Fort William, at the mouth of the river Lochy. By the second Act of Parliament, they were to maintain a navigation between the two harbours. By the first Act they were not only empowered to take and carry away stone, but also to dig, cut, get, and remove, earth and stone, “in or out of
“ the lands or grounds of any person or persons adjoining
“ *or lying convenient thereto*, and which may be necessary,
“ requisite, or proper, for making, carrying on, or repairing
“ any of the said works.”

By the second Act they received similar powers with reference to the navigation. The quarry of Redcastle is situated upon the shore of Loch Beauly, and was the most eligible resort for stone, because it was “*lying convenient thereto*.” Being thus situated on the very shore of the Loch on which the harbour was to be constructed, it was impossible to contend that it did not lie most “*convenient thereto*,” and convenient to the operations which they were to carry on. The standing orders of the House as to notice, have nothing to do with the construction of an Act of Parliament, nor can the fact of the respondent’s property being situated in the county of Ross, any way affect the question. 3d, Where, as in the present instance, peculiar powers are granted and a peculiar remedy provided, it follows that no other remedy can be had but the remedy so provided. And as the Act provides that no action shall be competent “after six months” after the act committed, the present action is incompetent.

Pleaded for the Respondent.—1st, There is no question here, whether the public are to be deprived of the benefit of the quarry. In the use of it, uncontrolled by the respondent, they are secured by the judgment acquiesced in, which holds the respondent bound, as on the footing of a solemn contract, to allow the commissioners the use of the quarry, “so long as

1815.

 CALEDONIAN
 CANAL COM-
 MISSIONERS
 v.
 GRANT.

“requisite for the construction of the canal, basins, and appendages.” The only question, therefore, is, how the recompense shall be settled? The respondent apprehends that, on the footing of a contract, the matter is left for the decision of the Court of Equity *secundum arbitrium boni viri*; and he is the more solicitous for this, that there is a distinction settled in practice, if not recognized in law, between the ascertainment of *damages*, and settling of *recompense*. The former, in cases like the present, are generally limited by a jury for the injury done to the surface, by the removal of earth and other materials of no intrinsic value; the latter is more properly applicable to the case of an agreement for the sale or lease of materials in themselves intrinsically valuable; 2d, To interfere with private property, and especially to confer on any set of persons, whether private undertakers, or trustees for the public, an authority forcibly to seize it, leaving the proprietor to a legal process for having his damages assessed, is always a dangerous and extraordinary power. And in no case does Parliament ever assume it, but under the pressure of absolute necessity, and with the most careful and strict precautions to secure due notice to the persons interested. Without such notice the most valuable rights of individuals may be injured; not only property of value taken without an adequate object, but contracts depending on the preservation of that property outraged, and individuals ruined past redress, or perhaps even the execution of other public works of still greater importance prevented. It is upon such views, that the standing orders of the House of Commons, requiring notices to be given of all such bills, are grounded. They are intended to secure, against the possibility of such extraordinary powers being delegated without those who may be interested in their execution, having a full opportunity of being heard against the bill. But this principle and those rules are, in this case, outraged in fact, much more in argument, if the doctrine contended for by the appellants is to be admitted. The bill applies only to the two counties of *Inverness* and *Argyll*, and the requisite precautions were of course taken to give notice only to the proprietors of those counties. But the respondent’s estate is in the county of *Ross*, and neither directly nor indirectly had the proprietor of that estate notice of the powers, under which, it is now said, he is liable to encroachment. 3d, This quarry lies at the distance of between five and six miles from the canal, and neither are there *express* words in the Acts, nor any construction deducible from the

practice of Parliament, and applicable to the *general* expressions made use of, which can be held to confer a power beyond the mere line of the canal, and the lands adjacent. The general expressions are to take earth and stone, &c., from the lands and grounds of persons *adjoining or lying convenient to the canal*, which cannot apply to this quarry, at so great a distance, and across a frith.

In the Crinan Canal Bill, in the Forth and Clyde Canal Bill, in the Leith Harbour Bill, and in the Peterhead Harbour Bill (where an extension of this power to dig the rude materials, happened, from the nature of the ground, to be necessary) it was only by an *express* declaration of such given power, to be exercised within an extent of so many miles from the line of operations that such was allowed. And even in the Acts now in question, there is one particular case, in which a similar extension of power is conferred, viz., for the purpose of taking in the necessary streams, and for accomplishing the requisite buildings for that purpose; to that effect, power is given to the extent of 5000 yards from the line of canal. And no power being given of a similar nature as to the taking of earth and stone, the appellants cannot take land or stone quarries five miles distant from the canal and situated in a different county. 4th, The provisions of the Act for giving a remedy to those persons whose property shall be taken, is not within the reach of the respondent; powers being given only to empanel juries in the counties of Inverness and Argyll, and there being no authority whatever to the Sheriff of Ross to take such proceedings under the Statute.

After hearing counsel,

It was declared by the Lords, That it is unnecessary in this case to determine whether the appellants had power or authority, under the Statutes founded on, to take possession of the stone quarry of Redcastle without the consent of the proprietor; and it is therefore ordered and adjudged, that the said petition and appeal be dismissed this House, and that the rest of the interlocutors therein complained of be, and the same are hereby affirmed.

For Appellants, *Thos. Plumer and Dav. Monypenny.*

For Respondent, *Sir Saml. Romilly, Geo. Jos. Bell, Fra. Horner.*

NOTE.—Unreported in the Court of Session.

1815.

CALEDONIAN
CANAL COM-
MISSIONERS
v.
GRANT.