

The United Manufacturing Company - - - - - *Appellants*

*v.*

The St. Maurice Power Company, Limited - - - - - *Respondents*

AND

The Attorney-General of Quebec - - - - - *Intervener*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE  
OF QUEBEC (APPEAL SIDE).

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 7TH MAY, 1926.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD ATKINSON.

LORD SHAW.

LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

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This is an appeal from a judgment of the Court of King's Bench (Appeal Side) for Quebec which reversed a judgment of the Superior Court of the Province given by MacLennan J. The latter judgment sustained an action of the appellants against the respondent Company, and enjoined the latter from doing any act which might interfere with what was held to be the vested right of the appellants to construct a dam or dams across the St. Maurice River, a tributary of the St. Lawrence. It also dismissed the intervention of the Attorney-General. The principal questions in the case are, firstly, whether certain Letters Patent, dated 23rd February, 1910, issued by the Lieutenant-Governor of the Province of Quebec and forming the Charter of Incorporation of

the appellant Company, of themselves gave it any right of property or to take possession for the purposes of its undertaking of the bed or bank of any part of the St. Maurice River, or of any part of the public property of the Province at the place in question. Secondly, whether, if the Letters Patent are to be interpreted as purporting to grant any such title, the Lieutenant-Governor had power to make such a grant. The Letters Patent were issued under provisions of the Quebec Companies Act, 1907, which enacted that he might by Letters Patent under the Great Seal create and constitute bodies corporate for any of the purposes or objects to which the legislative authority of the Province extended (excepting railways and insurance). By Section 21 it was provided that the Corporation so created might acquire, hold and alienate immovable property requisite for the carrying on of the undertaking, and should forthwith become and be invested with all property and rights, moveable and immovable, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking. By the Letters Patent, which were issued under this statute, the appellant Company was constituted a Corporation to carry on the business of manufacturers of electricity, and for this purpose to erect, construct and maintain a dam or dams in, over or across the St. Maurice River extending from within the limits of certain designated lots on one side of the river to certain designated lots on the other side, after having acquired from the riparian owners the properties necessary for the purpose. The Company was, however, before constructing such works to obtain permission from the Governor-General in Council (navigation being under Dominion jurisdiction), and the dams when constructed were to be such as would enable the water to be dammed up. The St. Maurice is a navigable river.

Such was the title of the appellant Company under its Letters Patent. Although they were granted in 1910 it has not yet constructed any works. Nor has it obtained any further title than whatever the Letters Patent conferred.

In 1919 the respondent Company was incorporated by Letters Patent issued under the seal of the Secretary of State of the Dominion Government. Later on, on 27th February, 1923, the respondent Company obtained from the Government of Quebec an emphyteutic lease, which transferred to it with alterations the benefit of a similar lease granted in 1916 to another company, the St. Maurice Lumber Company, and which granted to the respondent Company certain parts of the water power and the bed of the St. Maurice River for a term of 99 years, such parts overlapping what the appellants claim to have had granted to them by the Letters Patent of 1910.

On 5th March, 1923, the appellants commenced the action against the respondent Company, out of which this appeal arises, claiming a declaration of the vested rights of the appellants in the river to construct dams and otherwise, and an injunction in

accordance with this declaration. The respondent Company pleaded, denying the appellants' title and setting up its own lease. The Attorney-General of the Province intervened to support this defence. The case was tried in the Superior Court before Maclellan J., who gave judgment on 12th November, 1924, for the appellants, the plaintiffs. He held that the issue by the Lieutenant-Governor of the Letters Patent in 1910, under the authority of the Quebec Companies Act and of his other powers, created the appellants a corporation for the purpose of constructing and maintaining the dams in question, and that the Letters Patent, although they did not grant the ownership of the waters, bed or banks, did grant a franchise to place dams at specified points. The river being a navigable one was a dependency of the Crown Domain, and its beds and banks stand in a different position in law from public lands owned by the Province in absolute ownership, so that the restrictions which apply in the case of the latter do not apply in that of the former. The Letters Patent purported to grant no more than a privilege or licence, and the Crown retained its power under the common law to grant this. It was on these grounds that he decided in favour of the appellants.

The respondent Company and the Attorney-General appealed to the Court of King's Bench. The appeal was heard by Flynn, Guerin, Allard, Bernier and Rivard, JJ., who unanimously, on 15th June, 1925, reversed the judgment of Maclellan J. and dismissed the action.

Flynn J., in an elaborate opinion, laid down, firstly, that the Letters Patent of 1910 did not grant to the appellants any right of property or other right to take possession, but only capacity to carry out the undertaking for which there was incorporation; and, secondly, that if the Letters Patent had purported to grant right of property or to take possession, it was not within the power of the Lieutenant-Governor to make such a grant. The other learned Judges in the King's Bench concurred with Flynn J. in his first ground, but did not desire to express any opinion on his second point. It was therefore unanimously held that there was no occasion to decide it.

The first question which their Lordships have to consider is whether the Letters Patent of 1910 contained a grant to the appellants of any right of property or any power, to take possession of part of the river. These Letters Patent were not granted in Council, but on the face of them purport to be an exercise of a power conferred on the Lieutenant-Governor by the Quebec Companies Act of 1907 to constitute a corporation for definite purposes or objects. Under the instrument in question these objects and purposes are defined to be the carrying on of the business of manufacturers of electricity. For this purpose (which includes generation from water power as well as from steam or any other power) the corporation is to have power to construct the dams in question, after having acquired from the riparian proprietors the properties necessary for the purpose; to

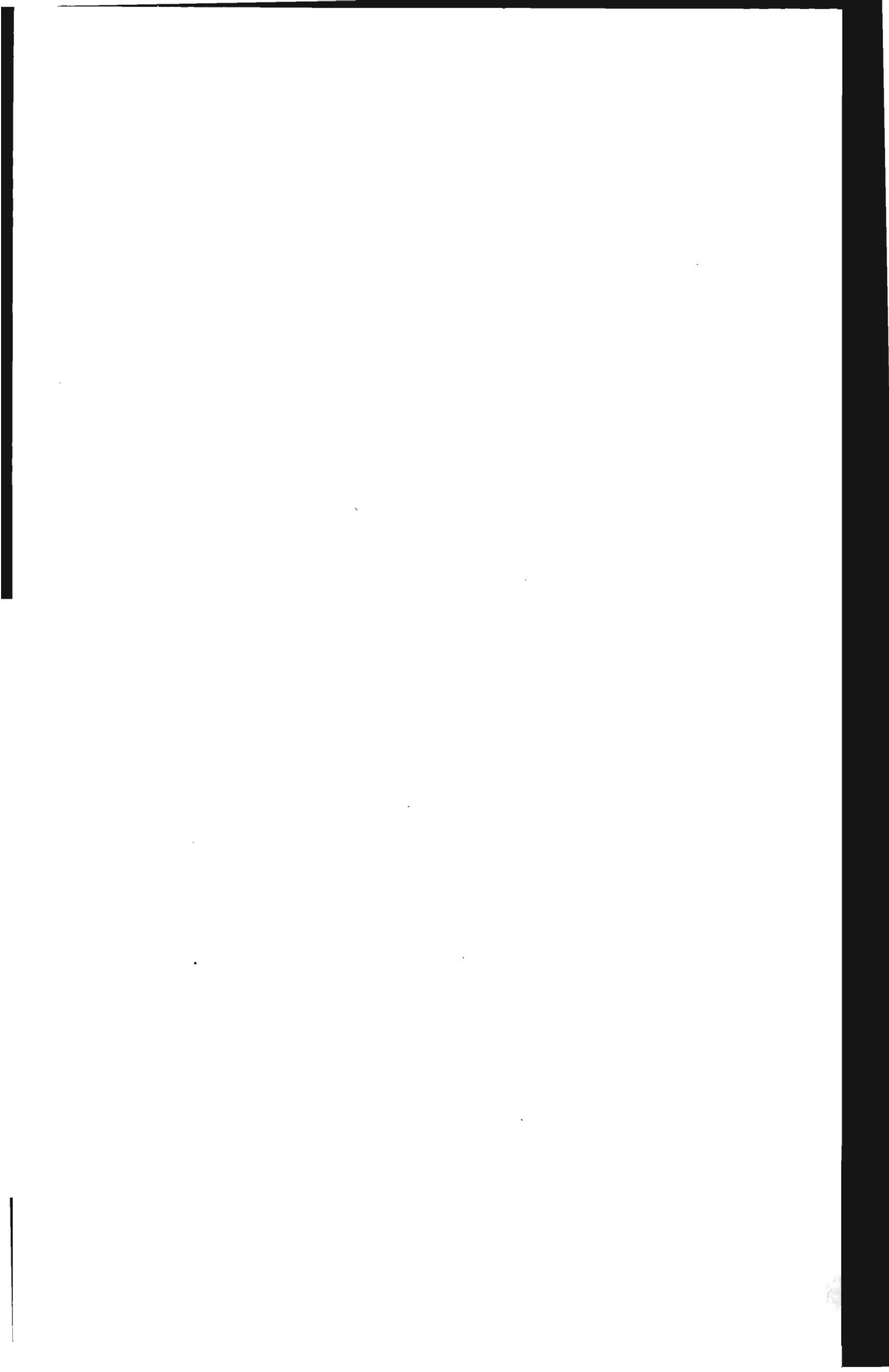
distribute electricity within certain counties, after obtaining the proper consents ; and to acquire, purchase or lease any such real estate, immoveable property and water power as may be requisite or convenient for the purposes of the Company. Other incidental powers are bestowed on it, all of which, unless it be in the instance of the power to construct dams, are in the nature of mere grants of capacity, as distinguished from proprietary grants.

On the question of whether the Letters Patent were issued for the purpose of effecting a grant, or whether they were issued merely in order to incorporate, under the provisions of the statute referred to, those who petitioned for them, it is to be observed that, as the correspondence and the terms of the petition show, the footing on which the petitioners proceeded was that, in their view, the river was not navigable at the place where the works were to be made, and that consequently the matter was not one in which the Dominion Government had to be approached. Further, that, before the dams across the river were constructed, the Company would acquire from the riparian proprietors the properties necessary for this purpose (a proposal which is hardly quite consistent with the view that the property in and control of the bed of the river was with the Province, as distinguished from the riparian owners who would control in the case of a non-navigable stream). Still further, it is to be noted that all that the petitioners paid to the Provincial authorities was, not a price for a franchise or a right of property, but only the usual fee of 130 dollars for the issue of Letters Patent. In addition to all this there was no application to the Minister of Lands and Forests charged with the control and administration of the public lands of the Province, which included the beds of its navigable rivers.

Having regard to these considerations as well as to the character of the Letters Patent their Lordships are in agreement with the unanimous view of the Court of King's Bench that this instrument conveys no right of property or franchise to take possession of any part of the public or other property. If its language can be said to be ambiguous it is open to the comment that in a question with the Crown such ambiguous language must be construed in favour of the Crown and not against it.

A further point was taken by Flynn J. He considered that even if the Letters Patent could be construed as purporting to make such a grant as that under discussion, the Lieutenant-Governor, acting as he did in 1910, had no power to make it. Into this question the other learned Judges thought it unnecessary to enter, because the first point was sufficient to dispose of the case. Flynn J. himself adopted this view. Their Lordships, without intending thereby to express any dissent from the opinion of Flynn J. on the second point, think that the course thus taken was right. They propose to follow the course adopted in the Court of King's Bench

For the reasons now given they will humbly advise His Majesty that this appeal should be dismissed with costs to the respondents. The intervener, the Attorney-General of Quebec, will bear his own costs.



In the Privy Council.

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THE UNITED MANUFACTURING COMPANY

v.

THE ST. MAURICE POWER COMPANY, LIMITED  
AND  
THE ATTORNEY-GENERAL OF QUEBEC.

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DELIVERED BY VISCOUNT HALDANE.

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