

wording of the section itself was concerned, only to companies within the definition clause, that was to railway companies. Railway companies might have powers to construct lines of telegraph or telephone, or for the conveyance of light, heat, power or electricity. When they had such powers, and no special power to enter on municipal property, the section empowered them to do so, if the municipality consented and under restrictions. But if by its Special Act the railway company had been in terms given larger and less restricted powers of the same kind, secs. 3 and 4, already referred to, shewed that these special powers were saved. An exception to that appeared in sub-section (g) of sec. 247, where the Board of Railway Commissioners was given jurisdiction to abrogate rights given by the Special Act to the extent of requiring the lines to be placed underground. As to that sub-section, two observations must be made. The first was that no question of its application was raised in this litigation. The second was that the application of the sub-section was excluded by the wording of sec. 21 of the Act of Incorporation. It was inconsistent with the provisions of that Act, for it was in reality only one of the provisions of the Railway Act of 1906, relating to railway companies, and was, therefore, excluded.

The only way in which sec. 247 of the Railway Act of 1906, was applicable to the appellants was by the language in which it was made applicable by sec. 21 of their Special Act. But if the provisions of sec. 90 of the Railway Act, 1888, as amended by the Railway Act, 1899, and in substance re-enacted with additions by the Railway Acts, 1903 and 1906, were, as appeared to be the case, kept alive by the Interpretation Act, those provisions were declared by sec. 21 of the Special Act, applicable only in so far as they were not inconsistent with the provisions of that Act. Moreover, the definitions of "company" and "railway" in sec. 21, made secs. 3 and 4 of the Railway Act, 1906, apply so that the provisions of the appellants' act of incorporation overrode and extended the provisions of sec. 247. In the result it appeared to their Lordships that the powers conferred by secs. 12 and 13 of the Act of Incorporation of 1902, remained intact.

In the Court below the trial Judge decided in favour of the appellants on the question of power to enter, and erect their poles without consent. The Court of Appeal took a different view. They held that the general restrictions