

incorporated with the special Act in substitution for the provisions of sec. 83 of ch. 66 of the Consolidated Statutes of Canada, and that the ruling of the learned Judge was erroneous; and it follows that the appeal must be allowed, and the judgment which has been entered set aside and a new trial ordered.

The costs of the last trial and of the appeal should be paid by the respondent.

MACLAREN and MAGEE, J.J.A., concurred.

HODGINS, J.A. (dissenting):—I am unable, with great respect, to agree with the conclusion that the effect of the Interpretation Act is to replace sec. 42 of R.S.O. 1897 ch. 207 (which, by force of the former, was substituted for the indemnity section incorporated in the original Act) by sec. 223 of the Railway Act of 1906.

The repeal of ch. 207, R.S.O. 1897, was the occasion which brought into play the provision of the Interpretation Act, as applied to this case.

But in the same Act which effected the repeal there is a distinct provision as to a possible clash between the special Act and in the general Act; and this specific reference should, I think, govern.

Under sec. 3, the Railway Act is "incorporated and construed as one Act with the special Act," and the special Act is defined in sec. 2, sub-sec. 1, as any Act authorising the construction of a railway or street railway, and with which the Railway Act is incorporated.

I take it that the effect of these two provisions is to amalgamate each special Act and the Railway Act into one Act, and that every part of each of them must be construed as if it had been contained in one Act: per Lord Selborne, L.C., in *Canada Southern R.W. Co. v. International Bridge Co.* (1883), 8 App. Cas. 723. Very properly, therefore, sec. 5 provides that where the provisions of the special Act and the provisions of the Railway Act are inconsistent, the special Act prevails. In this view, as the indemnity sections are inconsistent, that one which is part of the special Act overrides the other.

If the Interpretation Act applies at all, then the "substituted Act," referred to in it, is the product of the amalgamation of both Acts; and as, under it, the provision in the special Act governs, the result is the same.

I think the appeal should be dismissed.

*Appeal allowed; HODGINS, J.A., dissenting.*