

Irving S. Fairty, for the plaintiff.

W. E. Raney, K.C., for the defendant.

H. E. Rose, K.C., for the British & Colonial Land & Securities Co., Limited.

HON. MR. JUSTICE MIDDLETON:—The land company, though not parties to the action, appeared by counsel and desired to be heard. I allowed this, as they are the parties really concerned, and Rule 1086 relating to mandamus, appeared to me to afford a proper analogy for my guidance, as directed by Consolidated Rule 3.

The question arises under the City and Suburbs Plans Act, 2 George V. ch. 43. By that Act, assented to on the 16th of April, 1912, and coming into operation by proclamation on the 14th of May, 1912, it is provided:

“Where any person is desirous of surveying and subdividing into lots, with a view to a registration of a plan of the survey and subdivision, any tract of land lying within five miles of a city . . . he shall submit a plan of the proposed survey and sub-division to the Ontario Railway and Municipal Board for its approval,” and by sec. 5 that “no plan of any such land shall be registered unless it has been approved by the Board . . . and no lot laid down on a plan not so approved shall be sold or conveyed by description containing any reference to the lot as so laid down on such plan.”

The company, holding a large tract of land intended to be subdivided and sold in small lots, long prior to the passage of the Act in question had the same surveyed and subdivided, and a plan submitted to the council of the township of York for its approval. One general survey and plan was prepared, covering the entire parcel. This was the plan submitted and approved by the council. Part of the land being registered under the Land Titles Act and part under the Registry Act, it was found necessary to prepare separate plans of different sections for registration. These plans were merely copies of separate portions of the original survey. The survey and the subdivision were complete before the Act came into force; but the plans were not actually tendered for registration until after that time.

The Act does not profess to have any retrospective effect; and, apart from the general principle to be found in such cases as *Gardener v. Lucas*, 3 A. C. 601, “unless there