

## REPORTS AND NOTES OF CASES.

**England.**

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

TORONTO AND NIAGARA POWER COMPANY v. CORPORATION OF  
NORTH TORONTO.

*Construction of Statutes—Provisions inconsistent with powers conferred by special act—Power of company to erect poles for electric power without consent of municipality.*

Appeal by special leave from a judgment of the Court of Appeal for Ontario, who had reversed a judgment of Boyd, C., at the trial.

The action was brought by the appellants asking for an injunction to restrain the respondents from interfering with them in carrying on their work of erecting poles for carrying wires along the highway known as Eglinton avenue, in the town of North Toronto. The judge at the trial gave judgment for the plaintiffs, but his judgment was reversed, as above mentioned.

The company appealed.

Nesbitt, K.C., Atkin, K.C., and McCarthy, K.C., for the plaintiffs, appellants.

Sir R. Finlay, K.C., and T. A. Gibson, for the respondents.

The appellant company by their Act of Incorporation, passed in 1902, had power to erect poles and do all things necessary for the purpose of the exercise of their powers. Certain sections of the Railway Act 1888 as amended by the Act of 1899 were to apply to the appellants and their undertakings in so far as these provisions were not inconsistent with the Act of Incorporation.

Section 90 of the Act of 1888, as amended by the Act of 1899, which was one of the sections made applicable, gave power to any company to enter on a public place for the exercise of their powers with the consent of the municipal authority.

*Held*, that the restriction in this section was inconsistent with the provisions of the Act of Incorporation, and that the appellants could enter upon and break up the streets of a town for the purpose of erecting their poles without the consent of the municipal authority.

Section 247 of the Railway Act 1906 applies only to railway companies within the definition clause of the Act.

Judgment of the court below reversed.