

the Legislature of the Province, or partly from one and partly from the other. In the present case, by sec. 26 of its Act of incorporation, the company obtained from Parliament power to purchase and lease property, but no power of expropriation; it might obtain the latter power, in any Province, from its Legislature. If that be so, it follows, I think, that a Dominion company may, by application to the Legislature of a Province, have its powers over property in that Province enlarged, diminished, varied, or qualified in any manner whatever, whether such powers were originally obtained from the Dominion or from the Province, or partly from the one and partly from the other.

For these reasons, I am of opinion that the company having applied for and procured this Act of the Legislature modifying its rights and powers on and over highways, etc., is as much bound thereby as the municipalities, and that the Act is binding on both.

That being so, the judgment appealed from is right and ought to be affirmed.

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SEPTEMBER 14TH, 1903.

C.A.

MIDLAND NAVIGATION CO. v. DOMINION  
ELEVATOR CO.

*Ship—Charterparty — Breach — Failure to Deliver Cargo—  
Duty of Charterers—Time—Insurance—Failure to Carry  
Goods—Place of Loading—Terms of Contract — Custom  
of Port—Measure of Damages.*

Appeal by defendants from judgment of MACMAHON, J., 1 O. W. R. 593, in favour of plaintiffs in an action for the alleged breach of a contract by defendants to furnish plaintiffs' steamer "Midland Queen" with a cargo of grain to be carried from Fort William to Goderich.

Plaintiffs alleged failure to load the grain on the ship. Defendants denied liability and counterclaimed for damages for breach of plaintiffs' agreement to carry the grain.

The appeal was heard by MOSS, C.J.O., MACLENNAN, GARROW, and MACLAREN, JJ.A.

A. B. Aylesworth, K.C., and C. A. Moss, for appellants.

C. Robinson, K.C., and F. B. Hodgins, K.C., for plaintiffs.