HOUSE OF LORDS.

Friday, February 19, 1915.

(Before the Lord Chancellor (Viscount Haldane), Lords Dunedin, Atkinson, Parker, and Parmoor.)

SHARPNESS NEW DOCKS AND GLOUCESTER AND BIRMINGHAM NAVIGATION COMPANY *v.* ATTORNEY-GENERAL (*at the Relation of the Worcester Corporation*).

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Road—Local Government—Bridge—Repair of Bridge—Worcester and Birmingham Canal Act 1791 (31 *Geo. III, cap.* 59), *sec.* 61—*Common Law Obligation.*

Where the extent of an obligation is defined by statute the common law cannot be invoked to widen it.

Where a canal company were bound by statute to construct to the satisfaction of certain commissioners bridges which "shall from time to time be supported, maintained, and kept in sufficient repair," the company cannot be compelled to reconstruct the bridges to carry traffic heavier than was in contemplation by the commissioners when the bridges were built.

Decision of Court of Appeal, reported 1914, 3 K.B. 1, *reversed.*

Rex v. *Kerrison* (1815), 3 M. & S. 526, *distinguished.*

Dictum of Fletcher Moulton, L.J., in *Hertfordshire County Council* v. *Great Eastern Railway*, 1909, 2 K.B. 403, at p. 412, *discussed.*

Their Lordships' considered judgment was delivered by

LORD CHANCELLOR (HALDANE) — About the year 1812 a canal company, who were the predecessors in title of the appellants (bound by the obligation of the company), constructed certain bridges over a canal which extended from Birmingham to Worcester. These bridges formed part of works undertaken with the powers conferred by an Act 31 Geo. III, cap. 59. This Act authorised the construction of the canal itself, and provided by section 61 that the company should, among other things, make and from time to time maintain and support such bridges, arches, culverts, drains, and passages over, under, by the side of, or into the canal as certain commissioners should determine. The section further enacted that the company should not "make the said canal . . . across any common highway . . . until they should have made and perfected such bridges . . . across such highway . . . of such dimensions and in such manner as the commissioners . . . should adjudge proper, and all such . . . bridges . . . to be made should from time to time be supported, maintained, and kept in sufficient repair by the said company."

The bridges were constructed in a fashion approved and adjudged proper by the Commissioners. The question which arises in this appeal may be shortly stated. Since 1812 the ordinary traffic which might be expected to pass along the highways and cross the bridges has become materially heavier, and of this traffic there is some which the bridges will not bear unless they are reconstructed. The Court of Appeal decided that the appellants were liable to repair the bridges in such a way that they should be sufficient to bear the ordinary traffic which might at the present time be reasonably expected to pass along the highways carried by them over the canal—a conclusion which might obviously necessitate reconstruction. In so deciding they differed from Phillimore, J., who had held that the obligation was limited to keeping the bridges in such a condition that they could bear the traffic which might have been expected to pass over them in 1812, the date when they were made. The question is therefore whether the statute has imposed an obligation to reconstruct the bridges from time to time so as to bear traffic which, though ordinary, is progressively including heavier vehicles.

This question depends exclusively on sec. 61, and to the language of that section I therefore turn. I do not think that the words "supported" and "maintained" add anything to the effect of the expression "kept in sufficient repair." Now it is to be observed that what are to be kept in sufficient repair mean such bridges as were approved by the commissioners. In my opinion this language, so far as the natural meaning of the words goes, prescribes unambiguously the extent of the obligation to keep in repair. It appears to me to stop short of imposing on the appellants an obligation to reconstruct so as to provide bridges of a standard higher than that which the commissioners have prescribed. When they had certified what was to be perfected and made they were *prima facie functi officio.*

It will be observed that they are given no powers as regards maintenance, support, or repair, their supervision being confined to the original construction. Such, to my mind, is the natural import of the section, and unless there is some principle of law which directs that the language is to be read as implying something that is not expressed, that is what the meaning ought to be taken to be. Authorities were cited at the Bar in support of the proposition that a duty such as is contended for by the respondents ought to be implied, and among these authorities we were referred to *Rex* v. *Kerrison*, 3 M. & S. 526. There undertakers were authorised by statute to make a river navigable, and to cut the soil belonging to other persons in order to make a new channel, or other things necessary for making the river navigable. Substantially nothing further was said in the statute. The undertakers in the execution of these powers built a bridge over which they carried the highway, and for some time they repaired the bridge. Later on they contested their liability to do so.

They were indicted in consequence, and the Court of King's Bench—Ellenborough, C.J., and Le Blanc and Bayley, JJ.—held that the indictment would lie, for the words of the statute conferred on the undertakers a power to cut the highway only upon an implied condition that an adequate means of passage was substituted for the benefit of the public.

The words of the statute interpreted there were very different from the words we have to deal with. They prescribed nothing about liability to repair, and left the question of where the liability was to fall to be determined by implication. In the case before us this is otherwise. Section 61 contains a set of provisions which appear on their face to be intended as exhaustive. Under these circumstances I see no reason for departing from or adding to the natural meaning of the language. Authorities in cases of construction of statutes of this nature can rarely be of much value. The statutes, the language of which has to be construed, vary in expression, and as they must be read as a whole the materials for answering questions of interpretation ought primarily to be sought for within the four corners of the Act of Parliament, and not in what Judges, however eminent, have said either about other statutes, the language of which is different, or about the common law, which is superseded by the code expressed.

It may be that, as was said by Fletcher Moulton, L.J., in *Hertfordshire County Council* v. *Great Eastern Railway*, 1909, 2 K.B. at p. 412, where persons acting under statutory authority interrupt a highway they must, if nothing to the contrary is enacted, construct such works as will restore to the public its use, and maintain these works, unless the statute provides otherwise. But this does not touch the question in the present case, which is, there being a provision in the statute, what obligation its words impose. Nor does the other recent authority cited, *Macclesfield Corporation* v. *Great Central Railway*, 1911, 2 K.B. 528, carry the matter further. The point there turned on words in a statute which differed materially from those before us.

The Court of Appeal seem to have thought that the obligation under these words to maintain and repair might have imposed an obligation to make new works, by analogy to the general obligation of the county authority to keep a highway in such a condition that it could carry not only the traffic of the period at which it was made, but heavier traffic coming into existence subsequently. But section 61 of the Act which we have to construe in the present case does not appear to me to admit of resort to any presumption of intention based on the analogy of the common law. It contains a code, so far complete in itself, and it is self-contained.

I am therefore of opinion that the judgment of the Court of Appeal was wrong, and ought to be reversed. The declaration to be substituted for that contained in the order complained of should not, however, be in the form adopted by Phillimore, J. I think that his order should be varied by directing that the appellants are liable to support, maintain, and keep in repair each of the bridges (reserving Lowesmoor Bridge for further consideration) in the condition in which it was made and perfected in accordance with the adjudication of the Commissioners, and that the bridges as made in 1812 ought to be presumed to have satisfied the requirements which the Commissioners made. As this variation does not substantially modify the result of this appeal, the appellants (there having been no costs given at the trial) are entitled to their costs here and in the Court of Appeal.

I move accordingly.

LORD DUNEDIN—I concur, and as to the construction of this statute have nothing to add. I wish, however, to state explicitly my opinion that the whole question necessarily depends upon the proper construction of the statute; and that where the statute deals with the subject its provisions form a code on that subject, and cannot be added to by what has been called a common law doctrine.

I am unable to agree with the dictum of Moulton, L.J., in the case of *Hertfordshire County Council* v. *Great Eastern Railway*, which is approved of in the judgments in the Court of Appeal in this case, and which in my opinion is too broadly expressed, as it would import a common law obligation running side by side with the expressed statutory obligations.

The dictum is founded on the four cases of *Rex* v. *Inhabitants of Kent*, 13 East, 220; *Rex* v. *Inhabitants of Parts of Lindsey*, 14 East, 317; *Rex* v. *Kerrison*, 3 M. & S. 526; and *Reg.* v. *Inhabitants of Ely*, 15 Q.B. 827.

Now *Rex* v. *Inhabitants of Kent*, if looked into, will be found to be based upon an obligation extracted by construction from the words of the statute. The point of the judgment is thus put by Lord Ellenborough, C.J.—"Here the statute gives power to the company to take or alter the old highways for their own purposes, upon condition of leaving another passage as convenient in room, and if they do not perform the condition they are not entitled to do the act. It is a continuing condition." That case is therefore no authority for the proposition.

Rex v. *Inhabitants of Parts of Lindsey* only decided that the county was not liable to maintain the bridge in question but, so far from imposing liability on the canal company, it expressly points out that the company may discontinue the bridge.

There remain the two cases of *Rex* v. *Kerrison* and *Reg.* v. *Inhabitants of Ely*, and it is true that in neither of them was reliance placed on a clause of the statute enjoining anything on the parties who had made the bridge. In neither case, however, was there a specific statutory authorisation to make the bridge. In *Kerrison's* case the power was merely to straighten a river and cut new channels. A new channel had intercepted a highway, and a bridge had been made and continuously repaired by the undertakers since 1695. The court in 1815 held that they must still go on repairing it.

In *Reg.* v. *Inhabitants of Ely* the bridge was originally constructed by adventurers without any Act of Parliament soon after 1630, though their undertaking was in 1663 vested by Act of Parliament in a corporation. The judgment really followed the case of *Kerrison*.

I am not doubting the authority of these two cases. But it seems to me a perfectly different thing to come to the conclusion that when, without special statutory authority, there has been made an obstruction to a public road, which obstruction has been obviated by means of a bridge, then the right of the undertakers to continue the obstruction is conditional upon its maintaining the bridge, and to raise up a so-called common law doctrine of repair where the work in question is specifically allowed by statute; and when the statute itself in a clause or clauses expresses the conditions under which the work may be done.

Authorisation by statute to do a particular thing makes that thing, when done, a legal act, and imposes no liability. This has often been held, as in a question with private individuals—*e.g.*, in the cases as to sparks from locomotives and vibration caused by trains, and I see no reason why the principle is not equally sound in the case of a public right, and when the statute which authorises goes on to provide what are to be the rights and obligations flowing from the execution of the statutory Act, it is in it and it alone that rights and remedies must be found.

I think the right view was taken by Wright, J., in the case of *West Lancashire Rural District Council* v. *Lancashire and Yorkshire Railway Company*, 1903, 2 K.B. 394, where in a case which fell under the Railways Clauses Act of 1845 he treated the question as depending entirely on the true construction of the sections of that statute.

LORD ATKINSON—In the argument of this appeal many authorities were cited to establish that it is the duty of road authorities to keep their public highways in a state fit to accommodate the ordinary traffic which passes, or may be expected to pass, along them. As the ordinary traffic expands or changes in character, so must the nature of the maintenance and repairs of the highway alter to suit the change. No person really contests that principle.

It was further argued that where a canal or railway is cut through a highway, removing a piece of it, and those who do this are required to provide in the shape of the roadway over a bridge a new piece of highway as a substitute for the portion of the old so cut away, all the duties of maintenance and repair imposed by law on the road authority in reference to the old highway are imposed, at least *prima facie*, upon the body having authority over the substituted highway, and, just as the road authority would have been bound to keep the old piece of road fit for ordinary traffic, however increased or altered in character, so must the bridge authority keep their structure fit for the increased or altered ordinary traffic.

It is not disputed that the road authority cannot widen one of the public highways.

In my view little assistance can be obtained from the discussion of these general principles towards the solution of the question to be decided in this case. One must look first, and I think I might almost say look last, at the provisions of the statute under which were built the bridges in reference to which the dispute arises. Upon those provisions, which are in themselves complete, the decision must depend. The statute is the 31 Geo. III, c. 59. Section 61 is the important section. It prescribes that the company of proprietors therein mentioned "shall make, erect, and set up, and from time to time maintain and support such bridges, culverts, drains, and passages over, under, by the side of, or into the said canal, and the trenches and aqueducts communicating therewith, and the towing paths on the sides thereof of such dimensions and in such manner as the commissioners" (*i.e.*, the commissioners named in the Act) "shall from time to time judge necessary and appoint."

The commissioners are thus made the judges of the dimensions of those bridges which they consider it is necessary to construct, and the manner in which they are to be constructed. The further duty imposed upon them in this part of the section is, from time to time, to maintain and support the works—the bridges amongst them—which they shall have so made, erected, or set up. No duty is cast upon them in this part of the section to maintain any bridges other than those they have so erected. It is not to be assumed that when they "appointed" the bridges to be erected they did not do their duty, or did not to some extent contemplate an increase of the ordinary traffic, but it could not, I think, be supposed that they could have contemplated its alteration in character in the extraordinary way it has altered in recent years.

Then the section proceeds to enact that the company of proprietors shall not make the canal or any trench in or across any common, highway, public bridge-way, or footpath, unless they shall have made and perfected such bridges, passages, and arches across such highway, bridge-way, or path, and of such dimensions and in such manner as the said commissioners shall deem proper. This provision was obviously directed to secure that the public should not be put to the inconvenience of having their common highway or public bridle-way, or footpath, intersected until the substituted way had been provided. The commissioners are again made the absolute judges of the proper dimensions and the proper manner of construction of these bridges, and then the section proceeds to deal, not merely with the bridges, passages, and arches to be built across the highway, bridle-path, or foot-ways, but, in addition, with the works and conveniences, including bridges, mentioned in the earlier portion of the section.

It enacts that all such gates, stiles, bridges, arches, and other works and conveniences to be made shall from time to time "be

supported, maintained, and kept in sufficient repair."

If one asks oneself the question, what in relation to the crossing of the old highway where the canal is cut are the structures which are to be supported, maintained, and kept in good condition, surely the answer must be those particular bridges, passages, and arches which were built by the company of proprietors, of the dimensions and in the manner adjudged proper by the commissioners, and not bridges, passages, and arches not built by this company at all, but from time to time by their successors long afterwards. The identity of the work approved of by the commissioners must, I think, be preserved.

I cannot think the words "supported, maintained, and kept in sufficient repair" can be stretched to cover reconstruction in whole or in part so as to make the bridges so built and perfected something different from what they were left when finished according to the directions of the commission. Restoration so as to make them as near what they were when built as time, wear, and the elements will permit, are, in my view, the very utmost that can be required from the appellants, the successors of the builders.

I concur with my noble and learned friend Lord Dunedin in the criticism of the several authorities cited in argument.

I do not think, therefore, that the Attorney-General is entitled to either of the wide declarations he asked for. I agree with the order which has been suggested by my noble and learned friend on the Woolsack.

Lord Parker—So far as the result of this appeal depends only on the true construction of 31 Geo. III, cap. 59, the appellants are, in my opinion, entitled to succeed. That Act defined the conditions upon which the canal company might construct the canal across a common highway. It might do so if it carried the highway over the canal by a bridge the size and strength of which was to be determined by certain commissioners appointed by the Act, and every such bridge when completed was from time to time to be supported, maintained, and kept in sufficient repair by the company. The company, under the powers of the Act, constructed the canal across certain highways, carrying the highways over the canal by means of bridges which (as must be assumed after this lapse of time) were of the size and strength determined by the commissioners. In determining such size and strength the commissioners would of course be bound to take into account the requirements of the ordinary traffic which might be expected to pass over the bridges, but there was nothing to prevent them from taking into account also the possible or probable increase in the dimensions and weight of the vehicles then in use, and for all that is known they may have done so. It was clearly their duty to uphold the public interests as against those of the canal company.

Since these bridges were built the traffic which may reasonably be expected to pass over the highways in question has become considerably heavier by reason of the introduction of mechanical traction, and it is doubtful how far the bridges are of sufficient strength to bear this heavier traffic. The respondents contend that the company's obligation to maintain and support the bridges and keep them in sufficient repair involves an obligation to strengthen them as occasion may require, so that they will at all times be adequate to the ordinary traffic which may reasonably be expected to pass along the highways, however such traffic may increase in weight, and even though this obligation may involve pulling down and rebuilding the fabric itself. In my opinion this contention cannot be upheld. What the company has to support, maintain, and keep in repair is in each case the fabric of the particular bridge, the size and strength of which were originally determined by the commissioners appointed by the Act, and there is, I think, no principle of construction by which an obligation to maintain, support, and repair a particular fabric can be enlarged into an obligation to reconstruct or rebuild the fabric in such a way that it is materially different in strength, size, or otherwise from the particular fabric the subject of the obligation. The standard by which the obligation is to be judged is neither the ordinary traffic when the canal was constructed nor the ordinary traffic of to-day, but the bridge itself as determined by the commissioners under the Act.

The respondents relied on the common law principle laid down in the case of *Rex* v. *Kerrison*, 3 M. & S. 526, and other cases, and recently acted upon by the Court of Appeal in *Hertfordshire County Council* v. *Great Eastern Railway*, 1909, 2 K.B. 403. This principle is stated by Fletcher Moulton, L.J., in the last-mentioned case as follows —"Where persons, acting under statutory authority, for their own purposes interrupt a highway by some work which renders it impossible for the public to use it, an obligation is *prima facie* imposed upon them to construct such works as may be necessary to restore to the public the use of the highway so interrupted, and the obligation so imposed is of a continuing nature involving not only the construction of such works but also their maintenance."

It was contended that on this principle the company's obligations were not only those expressly imposed by the Act, but included a common law obligation under which it was bound from time to time to construct and maintain such bridges as would afford the public the same facilities for traffic which would have been enjoyed if the canal had never been carried across the highways in question.

For the reasons stated by the Lord Chancellor I think this contention fails. It is one thing to rely on a common law principle where a statute is silent. It is quite another thing to invoke a common law principle in order to impose an obligation different from or in addition to the obligations which are

defined by the statute as those subject to which a company may interfere with a highway.

In my opinion, therefore, the appeal should be allowed, and I am content with the order proposed by the Lord Chancellor.

LORD PARMOOR—The appellants are successors of the Company of Proprietors of the Worcester and Birmingham Canal Navigation, who, under the provisions of the Act 31 Geo. III, c. 59, constructed certain canal bridges and other works now vested in the appellants, subject to the same obligations and liabilities as those imposed upon the said Company of Proprietors.

The question raised is as to the standard of liability in supporting and maintaining in sufficient repair certain canal bridges constructed to make communication between the severed portions of certain highways within the city of Worcester.

The Court of Appeal have determined that the defendants are liable to support, maintain, and keep in repair the said bridges (reserving Lowesmoor Bridge) sufficient to bear the ordinary traffic of the district which might reasonably be expected to pass along the highway carried over the appellant's canal.

It was argued on the appeal to this House that the appellants are only bound to support, maintain, and keep under sufficient repair the bridges constructed by their predecessors with the sanction and approval of the commissioners appointed under the said Act, and that they are not bound to support or reconstruct such bridges so as to enable them to carry an increased weight of traffic, though such traffic might from time to time as conditions change be reasonably expected to pass along the highway.

The question is simply one of the construction of section 61 of the said Act. This section deals with three different subject-matters — (1) That the towing path shall be fenced off; (2) that certain accommodation works shall be constructed; (3) that the said Company of Proprietors shall not make the canal or any trench in or across any public highway until they shall have made and perfected such bridges across such highway, and of such dimensions and in such manner as the said commissioners shall adjudge proper, and bridges that shall from time to time be supported, maintained, and kept in sufficient repair by the said Company of Proprietors.

It is admitted, for the purpose of the case, that the bridges in question were originally made in accordance with the provisions of the said Act, and were approved and adjudged proper by the commissioners. What is the standard of liability placed upon the appellants to support, maintain, and keep these bridges in sufficient repair? I can find no difficulty in the language of the section giving to the words their ordinary meaning. It appears to me quite clear that the standard of support, maintenance, or repair is fixed, not in relation to the changing conditions of traffic, but to the character and strength of the structure as ordered and approved by the commissioners. It is a fixed standard, not a mutable one varying with the requirements of the traffic from time to time. In his argument on behalf of the respondents Mr Cave relied on three points—First, that the word "supported" implied more than the word "maintained," and placed an obligation upon the defendants to reconstruct a bridge not sufficiently strong to carry traffic which might reasonably be expected from time to time to pass along the highway on either side of any one of the bridges; secondly, that the word "sufficient" implied sufficiency for such traffic; thirdly, that in Acts of this character, which legalise the severance of a public highway, there is a presumption that the liability to support, maintain, and repair the substituted means of communication is the same as attaches to the road authority in respect of the severed portions of the highway.

As to points (1) and (2), I am unable to hold that an obligation to support and keep in sufficient repair a particular bridge can be construed as an obligation to reconstruct the bridge on a different scale or of a different strength and character. The main argument on which reliance was placed is that the appellants are, by presumption or implication, under the same obligation as the road authority, although no such obligation is expressly imposed. The obligation of a road authority is to keep the roads, as dedicated to the public, in a reasonably fit state to bear the ordinary traffic of the district which may reasonably be expected to come upon them—*Chichester Corporation* v. *Foster*, 1906, 1 K.B.; *Burgess* v. *The Northwich Local Board*, 6 Q.B.D. 264. *Hertfordshire County Council* v. *Great Eastern Railway*, 1909, 2 K.B. 413, is the case on which the respondents mainly rely. This case contains a sufficient reference to the earlier authorities. In my opinion it gives no support to the contention raised on behalf of the respondents. It not inaptly illustrates the difference between making a presumption where the statute is silent, and making a presumption where the nature and extent of the obligation are expressly defined in the terms of the statute. It was held that where there is a duty on a railway company to make some means of communication for the purpose of restoring the continuity of a severed highway, there is also involved a duty to keep in repair the substituted work, although there are no express words imposing the obligation in the statute.

Lord Moulton in his judgment expresses the opinion that to get rid of this presumption the company which has been authorised to sever a highway must show that the statute which legalised the severance contains some provisions amounting to an exemption from such an obligation, and that it is not enough that the statute is silent on the point. In the present case the statute is not silent either as to the nature of the substituted works or as to the obligation of the appellants to keep them in repair. The nature and strength of the substituted works are determined by the commissioners, and the obligation is to sup-

port and maintain in sufficient repair such works.

To make a presumption such as was made in the *Hertfordshire* case would be setting aside the statutory obligation and substituting a different one in its place. The substituted obligation would not only be different from that imposed by the statute, but under certain conditions inconsistent with it. It is not unreasonable to suppose that the commissioners directed bridges to be constructed with a margin of strength beyond what was necessary for the traffic which might at that date have been reasonably expected to pass over the severed highways, and so long as this margin was not exhausted the appellants would have been liable to fulfil their obligations of maintenance and repair, though the traffic was of an exceptional character and in excess of what might reasonably have been expected at the time. It may be true that in more recent times the balance has turned the other way, but this is no reason for rescinding the clear words of a statute. If in the public interest a different standard of liability from that imposed by 31 Geo. III, cap. 59, has become more convenient, it is a question for Parliament whether such different standard should be imposed, and at whose cost the necessary reconstruction should be carried out. The function of the Courts is simply to construe a statute so as to give effect to the will of Legislature and in the present case the language used is free from any ambiguity.

In my opinion the appeal should be allowed with costs, and the order varied in the form approved by the Lord Chancellor.

Their Lordships sustained the appeal.

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