1941

† June 2, 3.
* June 26.

THE CORPORATION OF THE CITY OF OTTAWA ..... APPELLANT;

AND

THE CORPORATIONS OF THE TOWN OF EASTVIEW AND THE VILLAGE OF ROCKCLIFFE PARK ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Municipal corporations—Public utilities—Supply of water by City of Ottawa to certain adjoining municipalities—Power of Ontario Municipal Board to fix rates under s. 59 (ii) of Ontario Municipal Board Act, R.S.O., 1937, c. 60 (as amended)—Effect of provisions of special Acts relating to said city's water works—Construction of statutes—"Generalia specialibus non derogant"—Appeal—Jurisdiction—"Final judgment" (Supreme Court Act, R.S.C., 1927 c. 35, ss. 2 (b), 36).

Clause (ii) (enacted in 1940, c. 20, s. 1) of s. 59 of *The Ontario Municipal Board Act* (R.S.O., 1937, c. 60) empowers the Ontario Municipal Board to "hear and determine the application of any municipality to confirm, vary or fix the rates charged or to be charged in connection with water supplied thereto by any other municipality."

* PRESENT:—Rinfret, Crocket, Davis, Hudson and Taschereau JJ.

Appellant, the City of Ottawa, has for some years supplied water to respondents, adjoining municipalities, which take the water at or near appellant's boundary line and carry it through their own mains to their consumers, appellant dealing only with the municipalities. There had been a written agreement between appellant and each of respondents as to rates, but the agreements had expired prior to the enactment in 1940 of said clause (ii), and since said expiry the parties have not agreed upon the rates to be paid by respondents for the water, which appellant has continued to supply.

Respondents each applied to the Board, pursuant to said clause (ii), to vary or fix the rates for water supplied. Appellant applied to the Board for an order dismissing respondents' applications, on the ground that the Board has no authority or jurisdiction to hear and determine them, by reason of the provisions of the special Acts relating to appellant City and the powers vested in its council under such Acts. The Board dismissed appellant's application, and the dismissal was affirmed by the Court of Appeal for Ontario ([1940] O.W.N. 524; [1941] 1 D.L.R. 483). Appellant, by special leave from said Court of Appeal, appealed to this Court. Respondents moved to quash the appeal for want of jurisdiction, on the ground that the judgment appealed from was not a "final judgment" within the meaning of ss. 2 (*b*) and 36 of the *Supreme Court Act* (R.S.C., 1927, c. 35). The appeal and the motion to quash were heard together.

Held: This Court had jurisdiction to hear the appeal. The judgment of the Court of Appeal was an adjudication determining a substantive right of the parties in controversy in that Court, and was therefore a "final judgment" within the definition in s. 2 (*b*) of said *Supreme Court Act*.

Held also: The appeal should be dismissed.

Per Rinfret, Crocket and Taschereau JJ.: (1) Appellant, under the special Acts regulating its water works system (Ont.: 35 Vic., c. 80; 42 Vic., c. 78; 3-4 Geo. V, c. 109; 6 Geo. V, c. 85), has power to supply water to respondents; and each of respondents, under *The Public Utilities Act* (R.S.O., 1937, c. 286), ss. 2 (1), 12, 25 (1), has power to purchase water from appellant and to regulate its supply in its municipal area.

(2) The Board has jurisdiction to fix the price of water supplied by appellant to each respondent from the time when an actual agreement in respect of rates ceased to exist; and for as long as the supply of water continues without the price or rate thereof being agreed upon by the parties themselves. Although, under its said special Acts, appellant has power to fix rates for water supplied to another municipality, yet the authority conferred upon the Board by said clause (ii) is not inconsistent with such powers of appellant; it may be read into the special Acts without repugnancy; and therefore the principle expressed in the maxim, *generalia specialibus non derogant* (discussed and cases thereon referred to), does not operate in the present case to exclude appellant from the Board's jurisdiction in the particular matter in question. (It was remarked that it was not contended that there was any power in the Board to compel appellant to supply or continue supplying water to respondents; that whether there is any governmental authority that can compel a municipality to supply water to another municipality was a question not before the Court).

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Per Davis J.: On the particular facts of the case, said clause (ii) applies, and the Board was right in deciding that it could proceed to hear respondents' applications. The Board was competent to make such decision, which was plainly something incidental to its administrative functions.

Per Hudson J.: Appellant has power to supply respondents with water, and the Board has power to fix the rates; but the Board cannot compel appellant to sell or deliver water to respondents and, in so far as the Board is concerned at least, appellant has the right to refuse to deliver water if the rates imposed are not satisfactory to it.

APPEAL by the Corporation of the City of Ottawa from that part of the judgment of the Court of Appeal for Ontario (1) which held that the Ontario Municipal Board had authority and jurisdiction, under clause (ii) (enacted in 1940, c. 20, s. 1) of s. 59 of *The Ontario Municipal Board Act* (R.S.C., 1937, c. 60), to hear the applications of the present respondent municipalities for orders fixing the rates to be charged to said municipalities for water supplied to them by the said City corporation.

The material facts and circumstances of the case and the questions in dispute are sufficiently stated in the reasons for judgment in this Court now reported.

Leave to appeal to the Supreme Court of Canada was granted by the Court of Appeal for Ontario.

The respondents moved to quash the appeal for want of jurisdiction, on the ground that the judgment appealed from was not a "final judgment" within the meaning of ss. 2 (*b*) and 36 of the *Supreme Court Act* (R.S.C., 1927, c. 35). The appeal and the motion to quash were heard together.

F. B. Proctor K.C. and *G. C. Medcalf* for the appellant.

H. E. Manning K.C. for the respondents.

The judgment of Rinfret, Crocket and Taschereau JJ. was delivered by

RINFRET J.—The City of Ottawa has been supplying water to the respondent municipalities for some period of time.

In April, 1940, the respondents made application to the Ontario Municipal Board for a hearing pursuant to clause (ii) of section 59 of *The Ontario Municipal Board Act* (c. 60 of R.S.O., 1937), praying the Board to vary or fix

(1) [1940] O.W.N. 524; [1941] 1 D.L.R. 483.

the rates for water supplied by the City of Ottawa, and that the contracts or agreements between the City and residents of these municipalities be considered with the same hearing.

The Board appointed May 14th, 1940, for the hearing of all parties interested, whereupon the City applied to the Board for an order dismissing all proceedings, on the ground that the Ontario Municipal Board had no authority or jurisdiction to vary or fix the rates charged, or to be charged, in connection with water supplied to the respondent municipalities by the City, by reason of the provisions of the various special Acts of the Legislature relating to the waterworks of the Corporation of the City of Ottawa and the special powers vested in the Council of the City under such Acts.

On the other hand, the respondents made an application to the Board for an order for production, for examination on discovery of the Chief Engineer of the City of Ottawa, and for the right to inspect the waterworks system of the City.

The Board delivered judgment dismissing the City of Ottawa's motion and holding that the respondents had the right to apply to the Board under and by virtue of sec. 59 (ii) of *The Ontario Municipal Board Act.*

The appellant City of Ottawa took advantage of sec. 103 of *The Ontario Municipal Board Act* and, alleging again that the Board had no jurisdiction in the premises and that its decision with regard to the application of sec. 59 (ii) was erroneous in law, it applied to the Court of Appeal of Ontario to have the respondents' applications and the other proceedings before the Board set aside.

Leave to appeal having been granted, the Court of Appeal affirmed the jurisdiction of the Board in the matter and dismissed the appeal of the City of Ottawa.

From that judgment, the City was given leave to appeal to the Supreme Court of Canada.

As pointed out in the reasons for judgment of the Chief Justice of Ontario, who delivered the unanimous judgment of the Court of Appeal:

> We are not concerned on this appeal with any question of the fairness of the rates charged, but only with the question of the Board's jurisdiction to vary or fix them.

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The judgment appealed from states that the respondent municipal corporations adjoin the City of Ottawa; and, none of them having any municipal waterworks of its own, the appellant has, for some considerable time, supplied water to them through its waterworks system. The method of supplying water has been similar in each case. Each of the respondents has laid its own water mains within its boundaries; and connection is made with a water main of the appellant's, at or near the boundary line. A meter, in each case, has been placed at this point; and each of the respondents pays according to fixed rates for the water measured by its meter. The appellant has nothing to do with the individual proprietor, or owner, or occupant supplied within the respondent municipality and deals only with the municipality.

The appellant raised the preliminary question that, in fact, it has no power vested in it to supply water to another municipality as such.

The appellant then set up the objection that all its rights and powers in respect of its waterworks are given to it by special Acts of the Legislature and that these rights and powers are not affected by the provisions of the general Act as amended in 1940 by the introduction of clause (ii) of sec. 59 of *The Ontario Municipal Board Act.*

The Court of Appeal held that it was not necessary to determine on this appeal the extent of the appellant's power to supply water to the respondent municipalities. It found that, in fact, it was supplying water and charging them for it; and it held that, so long as the appellant did, in fact, supply water to the respondents at a price, the jurisdiction of the Board, under sec. 59 (ii), to hear and determine an application by the respondents to vary or fix the rates charged by the appellant did not depend upon the establishment of some power in the appellant to supply the respondents with the water for which they pay. "One is entitled," said the learned Chief Justice, "to assume against the appellant that what appellant is doing and is being paid for, is done by some lawful authority."

Dealing then with the appellant's contention that the general Statute of 1940, extending the powers of the Municipal Board to the varying or fixing of the rates for water supplied by one municipality to another, should not

be deemed to apply to the appellant, because the latter is governed by and derives its powers from special Acts, the Court of Appeal proceeded to inquire from what source the appellant obtains its powers to fix the prices at which the water is supplied by it.

After having examined successively the Act of 1872, authorizing the construction of the appellant's waterworks, and the several Acts modifying this initial statute, the Court of Appeal came to the conclusion that the appellant did not take from the special Acts its power to establish prices to be paid to it for water supplied to the respondents, but that it took it "from some Act or under some principle of law of general application," and that there was no ground for excluding the appellant from the operation of the general provision contained in sec. 59 (ii) of *The Ontario Municipal Board Act.*

The judgment was, therefore, that the application to set aside the proceedings lodged before the Board should be dismissed and that the respondents shall be

> at liberty to proceed with their motion [to the Board] for directions and for an order for production and for the examination for discovery of the Chief Engineer of the [City of Ottawa], and for the right to inspect the waterworks system of the respondent [City of Ottawa] and generally as to the procedure to be followed in respect of the said applications.

In this Court, the preliminary question raised by the appellant must first be determined. In the Act of 1872 (1), which was the Act whereby the City of Ottawa was authorized to construct waterworks, a body corporate was created under the name of "Water Commissioners for the City of Ottawa." That body was given the powers necessary to build the works "and to carry out all and every the powers conferred on them by this Act."

The Commissioners were entrusted with the matter of supplying water to the City, and, for that purpose, could build and construct the necessary works and appliances requisite for that object. With the assent and approval of the Corporation of the City, they were empowered to acquire lands and buildings as, in their opinion, may be necessary to enable them to fulfill their duties. The lands, buildings, privileges and waters acquired by the Commissioners were to be vested in the Corporation of the City; and they were said to be

(1) 35 Vict., c. 80.

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for distributing water to the inhabitants of the City of Ottawa, or for the uses of the Corporation of the said City, or of the proprietors or occupiers of the land through or near which [the lines of pipes] may pass.

Then comes sec. 10 of the Act, whereunder

the Board of Commissioners for the time being shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof * * *

By sec. 11, the Commissioners were given the power and authority, and it was stated to be "their duty" from time to time to fix the price, rate or rent, which any owner or occupant of any house, tenement, lot or part of lot or both, in, through, or past which the water pipes shall run, shall pay as water rate or rent, "whether such owner or occupant shall use the water or not." These powers were to include the right to assess vacant lots of land in the City of Ottawa fronting on the streets under which the water pipes were to be placed and to tax them, "due regard being had to the assessment and to the advantage which the said lot shall derive from water works."

By sec. 13, full power was given the Commissioners to make and enforce all necessary by-laws and regulations for the collection of the water rent and the water rate. And, among the by-laws that it was declared to be lawful for the Commissioners so to make and enforce, they were authorized to prohibit, by fine or imprisonment, any person being occupant, tenant or inmate of any house supplied with water from the said waterworks from vending, selling or disposing of the water thereof (sec. 17).

Then follow certain provisions here immaterial; and we come to secs. 25, 26 and 27, to which special attention must be given:

25. The said commissioners shall have the full, entire and exclusive possession, control and management of the said lands and water works, and all things appertaining thereto; and shall and may in the name of the commissioners of waterworks for the City of Ottawa prosecute or defend any action or actions, suit or suits, or process at law or in equity, against any person or persons, for money due for the use of the water, for the breach of any contract, express or implied, touching the execution or management of the works, or the distribution of the water, or of any promise or contract made to or with them, and also for any injury, damage, trespass, spoil, nuisance or other wrongful act done, committed, or suffered to the said lands, works, water courses, sources of water supply, pipes, machinery, or any apparatus belonging to or connected with any part of the works, or for any improper use or waste of the water.

26. The water commissioners are hereby empowered to arrange with the corporation or with individuals for the extension of pipes in suburbs or partially built portions of the city, by allowing a deduction from the price charged for the water to such extent as the commissioners shall see fit on the cost of the said pipes when laid by the parties under the direction of the commissioners and subject to their approval; or the commissioners may lay the pipes, charging the said parties in addition to the usual water rate a yearly interest upon the cost of such extension, which interest, or such portion thereof as shall then be due, shall be paid at the same time and collected in the same manner as the water rates.

27. The water commissioners shall have power and authority to supply any corporation, person or persons with water although not resident within the City of Ottawa, and may exercise all other powers necessary to the carrying out of their agreements with such persons as well within the townships of Nepean, Gloucester and the incorporated village of New Edinburgh as within the City of Ottawa; and they may also from time to time make and carry out any agreement which they may deem expedient for the supply of water to any railway company or manufactory; provided that no power or authority shall be exercised under this clause without the consent and approbation of the corporation of the City of Ottawa.

The other provisions of the Act need not be referred to for the purposes of this appeal.

In 1879, by the Statute of Ontario, 42 Vict., ch. 78, the powers of the water works commissioners were transferred to the Corporation of the City of Ottawa to be exercised through its Council. The Council, immediately after the passing of the Act, was to appoint a special committee of aldermen to discharge all the duties heretofore attended to by the Water Commissioners, subject to the approval and according to the directions of the Council.

In 1913, by the Statute of Ontario, 3-4 Geo. V, ch. 109, provision was made for the election of a Board of Water Commissioners. This Board was to have the management, maintenance and conduct of the waterworks of the City and of all buildings, material, machinery, land, water and appurtenances thereto belonging.

By subsec. 2 of sec. 1 of this Act, the provisions of *The Public Utilities Act* applicable to municipal waterworks, except in so far as the same may be inconsistent with the provisions of this Act or of any other special Act relating to the waterworks of the City, were to apply to and govern the Board so elected and the members thereof and the waterworks of the City.

By that statute, the City was authorized to take from certain lakes in the County of Ottawa, in the Province of

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Quebec, and to convey to the City, a supply of water for its waterworks, its municipal purposes and the use of the inhabitants of the City.

Subsec. 2 of sec. 2 of that Act provided as follows:

> The said Corporation may enter into agreements with any municipal corporation in Ontario or Quebec situate along the line of any supply pipe for supplying water to such corporation, and may supply water under the terms of any such agreement.

By the same statute, the City was given power to construct works and to acquire land and other powers for the purposes of its waterworks; and it was also given power to borrow $5,000,000 for this purpose.

Contemporaneously with the statute just mentioned, the City of Ottawa caused two other statutes to be passed respectively by the Legislature of Quebec (c. 81 of 4 Geo. V) and by the Dominion Parliament (c. 166 of 3-4 Geo. V). The former statute gave the City of Ottawa authority to obtain water supply from certain lakes in Quebec and to construct the necessary works therefor, including the right to take and acquire land, to enter into agreements with the City of Hull and with any other municipalities as to terms upon which a supply of water may be provided for such municipal corporations, such terms and conditions to be determined by The Quebec Utilities Commission, if the City of Hull and the City of Ottawa could not agree on them.

The Quebec statute contained further provisions regarding expropriation and municipal taxation, which are immaterial here.

The Dominion statute also gave power to the City of Ottawa to take water from certain lakes in the Province of Quebec, with the consent and subject to the approval of the Government of the Province of Quebec, to supply water to the City of Hull

> and to any other municipal corporation in the Province of Ontario or in the Province of Quebec, for the municipal purposes of any such municipal corporation, and the use of the inhabitants of such corporation.

It contained powers to construct works, to enter upon lands, to acquire (by expropriation or otherwise) lands or rights in Ontario and for compensation thereof, subject to the legislative control of the Legislature of Ontario; with the special provision that the construction, erection and main-

tenance of the said works in, upon or over the Ottawa and Gatineau rivers shall be subject to the approval of the Minister of Public Works for Canada.

It was stated at bar that, for the purpose of exercising the powers conferred by the Ontario Act of 1913 (c. 109 of 3-4 Geo. V) authorizing the City to take a supply of water from certain lakes, the City passed its by-law No. 3649. This by-law was quashed by Lennox J. (1).

A subsequent by-law (No. 3678) passed for the same purpose was again quashed (2).

A joint appeal by the City of Ottawa from the quashing of its by-laws Nos. 3649 and 3678 was dismissed by the Court of Appeal (3).

In 1914, by *An Act respecting the City of Ottawa* (4 Geo. V, c. 82), provision was made for taking a vote of the municipal electors on two alternative water supply systems: that authorized by sec. 2 of the Act of 1913 (c. 109), commonly termed "the Thirty-One Mile Lake scheme"; and what was termed "the Ottawa River Mechanical Filtration scheme." The vote gave a majority in favour of the latter; and, by a further Act of the same year (c. 84), provision was made for carrying this scheme into effect, subject to the approval of the Provincial Board of Health. If this Board refused to approve of the plans and specifications of the Ottawa River scheme, the Thirty-One Mile Lake scheme was to be proceeded with.

The Provincial Board of Health refused to approve the plans and specifications of the Ottawa River scheme; but an Order was made directing it to do so; and the Ottawa River Filtration scheme was subsequently carried into effect.

In 1916, by the Statute, 6 Geo. V, c. 85, the control, management and maintenance of the waterworks of the City and of all buildings, material, machinery, land, water and appurtenances thereto belonging, was vested in the Board of Control of the City, which was to discharge, subject to the approval and according to the directions of its Council, all the duties required by the Act of 1872, or by any Acts passed in amendment thereof, to be discharged by the Water Commissioners.

(1) *Re Clarey and City of Ottawa* (1913) 5 O.W.N. 370.
(2) *Re Clarey and City of Ottawa* (1914) 5 O.W.N. 673.
(3) *Re Clarey and City of Ottawa* (1914) 6 O.W.N. 116.

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Whatever doubts may be expressed as to the constitutionality of the Dominion statute of 1913 in respect of the powers therein granted to the City of Ottawa, it is unnecessary to deal with them in this appeal, for the appellant City need not rely on those powers, or the corresponding rights therein conferred, for the purposes of its argument. It was, no doubt, deemed necessary to secure from the Parliament of Canada the authority to construct, erect and maintain the projected works in, upon, or over, the Ottawa and Gatineau rivers, subject to the approval of the Minister of Public Works for Canada. And nothing more need be said about that statute for the present.

But the Ontario statute of 1913 contains two important provisions:

First, it makes applicable to the Ottawa waterworks the provisions of *The Public Utilities Act,* except, of course, in so far as they may be inconsistent with the provisions of the special Acts relating to that City; and it enacts that, saving cases where it may be inconsistent with the special Acts, *The Public Utilities Act* shall apply to and govern the waterworks in question.

Second, it gives the City of Ottawa the power to

> enter into agreements with any municipal corporation in Ontario or Quebec situate along the line of any supply pipe for supplying water to such corporation [i.e., Ottawa], and may supply water under the terms of any such agreement.

Undoubtedly the Legislature of Ontario was competent to confer such powers on the City of Ottawa, and it is not to the point to argue that these powers were granted in an Act primarily intended to authorize the City to take water from lakes in the County of Ottawa, in the Province of Quebec, and convey to that City a supply of water for its waterworks, its municipal purposes and the uses of the inhabitants of the City, and that the scheme having for object the taking of the necessary water from the lakes in question was not carried out.

The scheme may have been abandoned, at least for the time being, but the powers remain and may yet be taken advantage of.

Moreover, the Statute itself is still in force; and it provides for several other matters, including the application of *The Public Utilities Act* and the authority to supply

water to other municipalities in Ontario and Quebec. It is not to be doubted that all these powers are still in existence and vested in the City of Ottawa.

It being so, there can be no doubt that the appellant City has the required power to supply water to the respondent municipalities. It is unnecessary, therefore, to speculate as to the possible meaning of the words "any corporation" in sec. 27 of the Act of 1872. It is possible that those words are sufficient to include a municipal corporation, as decided by the Court of Appeal, to whose attention the particular subsection 2 of sec. 2 of the Act of 1913 apparently was not brought.

As for the respondents, they have power, under *The Public Utilities Act* (c. 286 of R.S.O., 1937), to purchase water from the appellant and to regulate its supply in their respective municipal area. Sections 2 (1), 12 and 25 (1) are sufficient to give them that power.

We may now, therefore, discuss the main question arising on the appeal: Whether the special Acts regulating the waterworks system of the City of Ottawa have the effect of excluding the application to the latter of subs. (ii) of sec. 59 of *The Ontario Municipal Board Act.*

Section 59 deals with the general jurisdiction and powers of the Board in relation to municipal affairs.

Subsection (ii), added in 1940, extended the jurisdiction of the Board so as to give it the power to

> hear and determine the application of any municipality to confirm, vary or fix the rates charged or to be charged in connection with water supplied thereto by any other municipality.

The subsection obviously presupposes the existence of an already valid and binding contract between the applicant municipality and the municipality which supplies water; otherwise the words "confirm" and "vary" would be deprived of any meaning whatsoever. The Board is given the competency to confirm or vary rates already charged. This can happen only in cases where the supplying municipality has made a contract or an agreement with the applicant municipality. It must mean, therefore, that the Board is given authority to intervene in contracts or agreements and to modify the rates already agreed upon. The occasion for the Board's intervention may be a change of conditions or of circumstances; but the Board evidently is to be the judge of the necessity or, it may be,

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the opportunity of varying the rates, subject to the right of appeal from the Board to the Court of Appeal, upon a question of jurisdiction, or upon any question of law, as provided for by sec. 103 of the Board's Act. If the Board is not satisfied that circumstances warrant a variation in the rates, it need only confirm the latter.

It is not as easy to foresee under what conditions the Board may be called upon to "fix the rates charged or to be charged," for the Board is not given the power to compel a municipality to supply water to another municipality. As a result, the mere fixing of rates would become quite meaningless and inoperative. Conceivably the Legislature had in contemplation the case where a municipality would be willing to supply water to another municipality willing to take it, and where the two municipalities would find it impossible to agree on the rates. They may then refer the matter to the Board, which, in that case, may exercise the power to fix those rates.

And, of course, there may be a case, such as we have in this appeal, where the City of Ottawa has been supplying water for some time to the respondent municipalities without having previously fixed the rates therefor, and, assuming that the supplying and consuming municipalities would find it impossible to agree on the rate that should be charged for the supply, the Legislature has, by the legislation of 1940, designated the Ontario Municipal Board as the proper forum to go to for the purpose. Until that legislation was passed, presumably the supplying municipality would have had to apply to the ordinary courts for the fixation and recovery of the amount due to it on the basis of *quantum meruit*.

It would seem that such is the situation here, in so far as concerns the amount due to the appellant by the respondents for the water already supplied. If it be true, as we understood it to be, that for some time the water has been supplied to the Town of Eastview and to the Village of Rockcliffe Park without any agreement as to rates, and, as it would appear, the parties cannot come to an understanding as to the proper compensation to be paid for the water so supplied, the application of the respondents to have the rates fixed was properly made to the Ontario Municipal Board under sec. 59 (ii).

The above conclusion, however, can hold true only if the appellant was unable to show, as found by the Court of Appeal, that, up to the Statute of 1940, it had the exclusive right to fix its own rates for water supply, and that the Statute of 1940, which is of general application, cannot prevail against the special Acts concerning the waterworks systems of the City of Ottawa.

Such is the contention of the City, based on the well known maxim: "*Generalia specialibus non derogant.*" The scope of that maxim is well expressed in Halsbury, Laws of England, 2nd Ed., vol. 31, p. 549, par. 732:

> 732. Statutory rights are not to be abrogated except by plain enactment, and, therefore, general statutes, whether enacted previously or subsequently, do not, if couched in general terms, operate to control special rights granted by private statutes which, while conferring such special rights, have also imposed special obligations. Rights given by a special statute are not taken away because they cause difficulties in the permissive working of general statutes not directed to the special point. A subsequent general statute may, however, indicate an express intention to control or to abrogate particular rights, especially where those rights are attached to a particular locality, and the subsequent statute brings to it entirely new benefits.
>
> A private statute can only exclude the application of a general statute to the extent to which the provisions of the general statute are excluded expressly or by necessary implication.

The rule laid down by Lord Westbury in the case of *Ex parte The Vicar and Churchwardens of St. Sepulchre's, in re The Westminster Bridge Act, 1859* (1) is this:

> If the particular Act gives in itself a complete rule on the subject, the expression of that rule would undoubtedly amount to an exception of the subject-matter of the rule out of the [general] Act.

And, in *Seward* v. *The Owner of the "Vera Cruz"* (2), the Earl of Selborne, L.C., in the House of Lords, at p. 68, said:

> Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

Reference might also be made to the judgment delivered by Sir Alfred Wills, on behalf of the Judicial Committee,

(1) (1864) 33 L.J. Ch. 372, at 376.
(2) (1884) 10 App. Cas. 59.

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in *Esquimalt Waterworks Company* v. *Corporation of the City of Victoria* (1).

But the manner in which the principle should be applied is illustrated in *Toronto Railway Company* v. *Paget* (2), where the present Chief Justice of this Court, at p. 491, says:

> One possible view is that in such cases the provision in the general Act is to be wholly discarded from consideration; the other is that both provisions are to be read as applicable to the undertaking governed by the special Act so far as they can stand together, and only where there is repugnancy between the two provisions and then only to the extent of such repugnancy the general Act is to be inoperative.

In the same case, at p. 499, former Chief Justice Anglin of this Court said:

> It is not enough to exclude the application of the general Act that it deals somewhat differently with the same subject-matter. It is not "inconsistent," unless the two provisions cannot stand together.

The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception of the subject-matter of the rule from the general Act (See: *Ontario & Sault Ste. Marie Railway Company* v. *Canadian Pacific Railway Company* (3); *Upper Canada College* v. *City of Toronto* (4)).

In the words of Lord Halsbury, L.C., and of Lord Herschell, in *Tabernacle Permanent Building Society* v. *Knight* (5):

> Where is the inconsistency if both may stand together and both operate without either interfering with the other? * * * I think the test is, whether you can read the provisions of the later Act into the earlier without any conflict between the two.

If the rule, as expounded in the authorities just referred to, be applied in the present case, the Board of Commissioners was given the power to

> regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof.

We may pass over sec. 25 of the Act of 1872, on the assumption that it deals only with the control and manage-

(1) [1907] A.C. 499, at 509.
(2) (1909) 42 Can. S.C.R. 488.
(3) (1887) 14 Ont. R. 432.
(4) (1916) 37 Ont. L.R. 665, at 670.
(5) [1892] A.C. 298, at 302, 306.

ment of the physical properties appertaining to the water-works system; but, under sec. 26, the Water Commissioners were

> empowered to arrange with the corporation or with individuals for the extension of pipes in suburbs * * * by allowing a deduction from the price charged for the water to such extent as the commissioners shall see fit * * * charging the said parties in addition to the usual water rate a yearly interest upon the cost of such extension, which interest, or such portion thereof as shall then be due, shall be paid at the same time and collected in the same manner as the water rates.

And, under sec. 27,

> The water commissioners shall have power and authority to supply any corporation, person or persons with water although not resident within the City of Ottawa, and may exercise all other powers necessary to the carrying out of their agreements with such persons as well within the townships of Nepean, Gloucester and the incorporated village of New Edinburgh as within the City of Ottawa.

Moreover, we have already pointed out that, under the Act of 1913 (c. 109 of Statutes of Ontario, 3-4 Geo. V), the Corporation of the City of Ottawa

> may enter into agreements with any municipal corporation in Ontario or Quebec situate along the line of any supply pipe for supplying water to such corporation, and may supply water under the terms of any such agreement.

And the provisions of *The Public Utilities Act* applicable to municipal waterworks are made to apply to and govern the waterworks of the said City, except in so far as the same may be inconsistent with the provisions of the special Acts relating to the latter. If we refer to *The Public Utilities Act* then in force (c. 41 of 3-4 Geo. V), it is significant that the wording of sec. 9 of *The Public Utilities Act* is almost identical with the wording of sec. 10 of the special Act of 1872.

Reading the different sections we have referred to in the special Acts, and quite independently of the additional powers which may have been given to the appellant by the introduction of *The Public Utilities Act,* it would seem difficult not to conclude that the appellant has been given the authority to fix the prices and rates at which water is to be supplied by it. Indeed, its power to fix the prices and rates, if it were not otherwise expressed as it is, may be said to be incidental to its power to supply and to make agreements for that purpose. It is hardly conceivable that the City of Ottawa would have the authority

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to make agreements for the supply of water and that such authority would not carry with it the power to fix the price thereof.

Where, in sec. 10 of the Act of 1872, power is given to regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time to fix the prices for the use thereof; or in sec. 27, power and authority is given to supply any corporation, person, or persons, with water, although not resident within the City of Ottawa and it is said that the said Commissioners

> may exercise all other powers necessary to the carrying out of their agreements with such persons as well within the townships of Nepean, Gloucester and the incorporated village of New Edinburgh as within the City of Ottawa,

it would seem to follow that the power to make the agreement necessarily includes the power to fix the price, and that such power to fix the price is co-extensive with the power to supply the water.

In our opinion, therefore, the power to fix the prices and rates for the supply of water outside of Ottawa was granted to the latter by the special Acts concerning its waterworks system.

But it need not necessarily follow that the authority conferred upon the Ontario Municipal Board by sec. 59 (ii) is inconsistent with such powers as have been given to the City of Ottawa in its special Acts.

The authority of the Ontario Municipal Board under sec. 59 (ii) is for the purpose of supervising and controlling the rates charged or to be charged in connection with water supplied by one municipality to another municipality. As already noted, it presupposes that the prices or rates have already been fixed or agreed upon between the two municipalities; and, for some reasons of public concern present in the mind of the Legislature of Ontario, it enacts that the Board may confirm or vary these prices or rates charged or to be charged.

The two powers are not inconsistent. Those given in the general Act may well be read into the special Act without repugnancy. The City of Ottawa, in making its agreement with the other municipalities, will fix the rates; but, for some special reasons such as the happening of fresh circumstances or conditions, the Board may be asked

to intervene and to vary those prices and rates and it will be within the competency of the Board to order the variation to be made. The two provisions can stand together within the principle laid down in this Court, and already referred to, in *Toronto Railway Company* v. *Paget* (1); and, as a consequence, the maxim, *generalia specialibus non derogant,* does not operate in the present case to exclude the City of Ottawa from the jurisdiction of the Ontario Municipal Board in this particular matter.

That jurisdiction is to "hear and determine the application of any municipality to confirm, vary or fix the rates charged or to be charged," etc. The words "confirm, vary" imply that the rates are already in existence, either by having been agreed upon between the two municipalities or through having been fixed by the supplying municipality and accepted by the municipality taking the water. In that case, presumably the reason for the application to the Board for varying the rates might be the happening of fresh facts, changed conditions, or new circumstances of a nature to justify a modified price or consideration for the water supplied.

But the language of the legislation necessarily supposes already existing rates in respect of which the applicant municipality moves the Board to order a modification.

Of course, in the present case, the Court of Appeal, dealing with the applications of the Townships of Gloucester and Nepean (which had joined the present respondents in applying to vary or fix the rates for water supplied by the City of Ottawa), found that, at the time when the amendment of 1940 was enacted, the two townships had a contract still current by which the prices for water to be supplied were fixed for the term of the contract. It was deemed that the new legislation was not intended "to affect rights existing at the time of its enactment"; and, for that reason, the Court of Appeal decided that the appeal should be allowed as to the Townships of Gloucester and Nepean.

If, however, the new legislation does not affect contracts or agreements already in existence at the time it came into force, there can be no question that the intention of the Legislature was to vest in the Board the

(1) (1909) 42 Can. S.C.R. 488.

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necessary competency to modify, in respect of rates, contracts or agreements entered into at a date subsequent to the coming into force of the legislation.

It is also apparent that the Board has been given the power to fix rates for water already supplied, in cases where there has been no agreement as to rates. We apprehend that the right to "determine the application of any municipality to * * * fix the rates charged" can have no other meaning, or, at all events, is sufficiently wide to include such a power.

The Board accordingly has jurisdiction to fix the price of water supplied by the City of Ottawa to the Town of Eastview and the Village of Rockcliffe Park from the time when an actual agreement in respect of rates ceased to exist between the City and the two other municipalities respectively and for as long as the supply of water continues without the price or rate thereof being agreed upon by the parties themselves.

It was not contended that there was any power in the Municipal Board to compel the City of Ottawa to supply or to continue the supply of water to the respondents or either of them. And whether there is any governmental authority that can compel one municipality to supply water to another municipality is a question that is not before us.

The applications made to the Board by the respondents are merely "to vary or fix the rates for water supplied by the City of Ottawa." We find nothing, either in the order issued by the Board on September 27th, 1940, or in the judgment of the Court of Appeal, to indicate that the order of the Board has reference to anything more.

The respondents raised a preliminary point that this Court had no jurisdiction to entertain the appeal. The appeal was launched after special leave thereto was granted by the Court of Appeal; but the respondents contend that the judgment of the Board was not final within the definition of "final judgment" in the *Supreme Court Act*.

The point in controversy in the Court of Appeal, and upon which that Court made an adjudication, was in respect to the jurisdiction of the Ontario Municipal Board and the right of the respondents to bring the appellant before that Board for the object of fixing or varying the rates for the supply of water by the appellant to the

respondents. In our view, the judgment of the Court of Appeal determined a substantive right of the parties which was in controversy in that proceeding, and accordingly a matter well within the definition of "final judgment" in sec. 2 (*b*) of the *Supreme Court Act.* (*Quebec Railway, Light & Power Company* v. *Montcalm Land Company and the City of Quebec* (1)).

The appeal should be dismissed with costs.

DAVIS J.—This is an appeal by the City of Ottawa from the order of the Court of Appeal for Ontario which affirmed the jurisdiction of the Ontario Municipal Board.

The City of Ottawa has for many years supplied water to two adjoining municipalities, the Town of Eastview and the Village of Rockcliffe Park, by delivering the same, not to the individual consumers in those municipalities, but to the adjoining municipalities themselves, who take the water at or near the City's boundary line, carry it through their own waterworks systems, make delivery to their own consumers and apparently charge their consumers with whatever rates they see fit.

Not only has the City of Ottawa been supplying water to these adjoining municipalities for many years, but it is continuing to do so and makes no threat of cessation of the supply of water by it to these adjoining municipalities. Prior to an amendment to *The Ontario Municipal Board Act* made in 1940, to which I shall presently refer, the then existing written agreements between the City of Ottawa and these two adjoining municipalities respectively had expired by effluxion of time and the parties have since been unable to agree upon the price or rate to be paid by the adjoining municipalities to the City of Ottawa for the continued supply of water. Some tentative arrangement appears to have been made between the parties until the matter is settled, though the terms of any such arrangement are not disclosed.

By ch. 20 of the Statutes of Ontario, 1940, sec. 59 of *The Ontario Municipal Board Act,* R.S.O. (1937), ch. 60, which defines the general municipal jurisdiction of the Board, was amended by adding thereto the following clause:

(1) [1927] S.C.R. 545, at 560.

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59. (ii) hear and determine the application of any municipality to confirm, vary or fix the rates charged or to be charged in connection with water supplied thereto by any other municipality.

The adjoining municipalities made application to the Municipal Board, pursuant to this amendment, to have the rates to be charged them by the City of Ottawa fixed by the Board. But the City protested upon several grounds that the Board had no jurisdiction in the matter. The City contended that strictly it has not and never had any power to sell and deliver water to other municipal corporations; that if there is any such power, there is no obligation to do so; that the City, if it has authority to make an agreement for the supply of water, will impose whatever rates it thinks fair and that the Ontario Municipal Board has no right to interfere and fix the rates to be charged.

The Board heard argument on this preliminary objection of the City but decided that it had jurisdiction to proceed with the applications. The Court of Appeal, pursuant to sec. 103 of *The Ontario Municipal Board Act,* gave leave to the City to appeal to that Court. That Court affirmed the jurisdiction of the Municipal Board to deal with the applications of the two adjoining municipalities. The City of Ottawa now further appeals to this Court from that judgment.

The respondents, the adjoining municipalities, raised a preliminary point that this Court is without jurisdiction, contending that the order of the Court of Appeal is not a final judgment. But if the appellant, the City of Ottawa, succeeds in its appeal, that is, succeeds in its contention that the Ontario Municipal Board has no jurisdiction to entertain the applications of the adjoining municipalities to fix the rates to be charged, then that is the end of the matter, and I think the order appealed from comes within the definition of "final judgment" in the *Supreme Court Act.*

The validity of *The Ontario Municipal Board Act* was considered recently by the Privy Council in the case of *Toronto* v. *York* (1). In the judgment of the Privy Council the Board as constituted by the statute is primarily an administrative body and as such its constitution and operations are within the legislative competence of the

(1) [1938] A.C. 415.

Ontario legislature. The Privy Council did point out several sections in the Act which it thought involved judicial functions and as such beyond the legislative competence of the Ontario legislature, but considered those sections severable.

The real point in the appeal is whether or not the Municipal Board had the right to entertain an application to determine its own jurisdiction in the matter. The Board heard argument and decided it had power to proceed. On the particular facts of the case I think the Board was competent to say, as it did, that it could proceed with the applications of the adjoining municipalities to fix the rates to be charged. It was not in dispute that the City of Ottawa has been supplying water to these adjoining municipalities for many years and continues to do so. It is not suggested by the City that it desires or intends to cut off the supply of water to these adjoining municipalities. But the parties cannot agree upon the rate or price. On those facts I think it plain that the case is covered by the 1940 amendment to *The Ontario Municipal Board Act* and that the Board was right in saying that it could proceed to hear the applications to fix the rates to be charged. Such a decision is plainly something incidental to the administrative functions of the Board.

I should dismiss the appeal with costs.

HUDSON J.—It is unnecessary for me to restate the facts and the relevant sections of the Statute. My conclusion is that the City of Ottawa has power to supply the adjacent municipalities with water, but that the Ontario Municipal Board has not the power to compel Ottawa to sell or deliver water to these municipalities. I think that the true construction of the enactments is that the Ontario Municipal Board has power to fix the rates charged or to be charged by Ottawa to these municipalities, but that the City of Ottawa has the right, in so far as the Board is concerned at least, to refuse to deliver water if the rates thus imposed are not satisfactory.

It was contended on behalf of Eastview and Rockcliffe that the Provincial Minister of Health has the right to compel delivery of water but no such order has been made, and it is not necessary to the disposition of the

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present matter that this question should be considered. My view, therefore, is that the opinion of the Court of Appeal is substantially correct and that the appeal should be dismissed, with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Frank B. Proctor.*

Solicitors for the respondents: *Long & Daly.*