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*May 29.
*June 19.

CANADIAN NIAGARA POWER COMPANY..... } APPELLANTS;

AND

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF STAMFORD..... } RESPONDENT.

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THE ELECTRICAL DEVELOPMENT COMPANY OF ONTARIO } APPELLANTS;

AND

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF STAMFORD..... } RESPONDENT.

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THE ONTARIO POWER COMPANY OF NIAGARA FALLS..... } APPELLANTS;

AND

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF STAMFORD..... } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

*Assessment and taxes—Municipal by-law—Exemption from taxation —Validating legislation—School rates—"Public School Act,"* 55 *V. c.* 60, *s.* 4 *(Ont.)—Special by-law.*

By section 4 of the "Public Schools Act" of Ontario (55 Vict. ch. 60) it is provided that "no municipal by-law hereafter passed for

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

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exempting any portion of the ratable property of a municipality from taxation, in whole or in part, shall be held or construed to exempt such property from school rates of any kind whatsoever." A similar provision is contained in the "Municipal Act" (55 Vict. ch. 42, sec. 366), and both are now to be found in the Revised Statutes of Ontario, [1914] ch. 266, sec. 39, and ch. 192, sec. 396(*e*).

*Held*, affirming the judgment of the Appellate Division (30 Ont. L.R. 378, 384, 391), Duff J. dissenting, that the application of this legislation is not confined to the case of a by-law passed under the general powers of a municipality, but it applies to limit the effect of a special by-law exempting a company from all municipal assessment "of any nature or kind whatsoever" beyond an amount specified as its annual assessment, even when the by-law was confirmed by an Act of the legislature which declared it to be legal, valid and binding, "notwithstanding anything contained in any Act to the contrary." *Canadian Pacific Railway Co.* v. *City of Winnipeg* (30 Can. S.C.R. 558), distinguished.

*Held*, *per* Idington J.—The by-laws granting exemption did not conform to the statutory requirements and were, therefore, invalid.

(Applications for special leave to appeal to the Privy Council by the Canadian Niagara Power Co. and the Electrical Development Co. were refused, 4th Aug., 1914.)

APPEAL from decisions of the Appellate Division of the Supreme Court of Ontario(1), affirming in each case the order of the Ontario Railway and Municipal Board which dismissed an appeal from the Court of Revision confirming the assessment on appellant's property for school purposes.

In 1903 the Council of the Township of Stamford passed the following by-law.

"By-law No. 9, 1903.

"A by-law relating to the assessment and taxation of the property of the Canadian Niagara Power Company.

"Whereas the undertaking and works of the Canadian Niagara Power Company are calculated to con-

(1) 30 Ont. L.R. 378, 384, 391.

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tribute materially to the prosperity and well-being of the ratepayers of the municipality of the Township of Stamford, and it is expedient to grant the request of the said company to the council, to exempt the said company and its property within the municipality from municipal assessment in part, and to agree to and fix the assessment as hereinafter set forth and apportioned as hereinafter set forth.

"Be it therefore enacted by the Municipal Council of the Township of Stamford, acting under and by virtue of section 8 of 55 Victoria, chapter 8, and all and every other authority enabling it in that behalf, for itself, its successors and assigns, and it is hereby enacted that the annual assessment of all the real estate property, franchises and effects of the Canadian Niagara Power Company, situate from time to time within the municipality of the Township of Stamford be and the same is hereby fixed at the sum of one hundred and sixty thousand dollars ($160,000), apportioned as follows, namely: One hundred thousand dollars upon tunnels, wheelpits, power house, inlets and inlet bridges, and other principal works of the said company, from time to time situate in the Queen Victoria Niagara Falls Park, and sixty thousand dollars ($60,000) upon the other property of the said company from time to time situate in the said Park or elsewhere in the said municipality, for each and every year of the years 1903 to 1923, both years inclusive, and that the said company and its property in the municipality be, and they hereby are exempted in each year of the said years, from all municipal assessment or taxation of any nature or kind whatsoever beyond the amount to be ascertained in each such year by the application of the yearly rate levied by the municipal council in

each such year, to the said fixed assessment of $160,000, apportioned as aforesaid.

"And be it further enacted that if the said company shall refuse to pay taxes on the above assessment in any of the above years, the corporation or any lawful authority on its behalf may, if the same are not paid within the time limited for the return of the collector's roll, thereafter assess and collect taxes upon the said company and its property as if no exemption or commutation had been made."

The by-law was passed in 1903, and, from that date up to 1913, the amount demanded and paid yearly for school rates, as well as for the other rates and taxes, was based upon the fixed assessment of $160,000.

In the year 1913 the said township placed the assessment in respect of school rates at $900,000, which assessment forms the subject matter of the proceedings herein.

Similar by-laws were passed in 1904 in favour of the other appellant companies and were acted upon in the same way.

The by-law in favour of the Ontario Power Co. was validated by special Act of the legislature which provided that it should be legal, valid and binding notwithstanding anything in any Act contained to the contrary. The other companies claimed that their respective by-laws were made valid by the provisions of the "Municipal Act" authorizing exemptions from taxation.

After being assessed for school rates in 1913 in addition to the amount fixed by the by-laws each company appealed to the Court of Revision which affirmed the assessment. Further appeals to the Ontario Railway and Municipal Board and thence to the Appellate

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Division being unsuccessful they brought this appeal to the Supreme Court of Canada.

*Nesbitt K.C., Grier K.C.,* and *Glyn Osler* for the several appellants.

*Kingstone* for the respondent.

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THE CHIEF JUSTICE.—I am of opinion that this appeal should be dismissed with costs.

IDINGTON J.—The jurisdiction of this court herein must be found in section 41 of the "Supreme Court Act." Whether all the questions raised in argument or suggested by the opinion judgments of the court below can fall within the said section may be very doubtful. In the absence of any argument it would be difficult to draw any satisfactory line defining just what is implied in the phrase "concerning the assessment of property." Originally no doubt it was intended to be relative to the amount assessed or assessable as against some person.

Since that enactment was framed, 10 Edw. VII., ch. 88, section 19 has been passed to define the jurisdiction of the courts below relative to such appeals as they have heard.

I doubt if the range of what is opened thus for the consideration of the courts below is not much more extensive than that which section 41 has assigned to us to hear and determine.

Of course it is only within the latter we can act.

In the view I am about to express these considera-

(1) 30 Ont. L.R. 384.

tions may be of no consequence yet I do not wish to be considered hereafter as now holding that the appellate jurisdiction in each of these enactments is exactly co-extensive with the other.

The liability of the appellant to pay school taxes is what the parties no doubt desire to have determined. The assessment roll as it stands and as it has been maintained will if upheld herein no doubt so operate as to maintain the levy for school rates, objected to herein.

The eighth section of the Act incorporating the appellant is as follows:—

It shall be lawful for the corporation of any municipality, in any part of which the works of the company or any part thereof pass or are situate, by by-laws specially passed for that purpose, to exempt the said company and its property within such municipality, either in whole or in part, from municipal assessment or taxation, or to agree to a certain sum per annum, or otherwise, in gross, or by way or commutation or composition for payment, or in lieu of all or any municipal rates or assessments to be imposed by such municipal corporation, and for such term of years as to such municipal corporation may seem expedient, not exceeding twenty-one years, and any such by-law shall not be repealed unless in conformity with a condition contained therein.

This was passed in the same session of the legislature in 1892, as was an Act dealing with public school questions and of which section 4 was as follows:—

No municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

In this session the legislature also repealed by the "Municipal Assessment Act," 1892, sec. 28, the long standing legislation which had empowered the municipalities to grant bonuses in aid of manufacturers.

And, such means of aid having been so obliterated

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in same session, the municipal Acts were consolidated and what was intended as a complete code was enacted of which section 366 provided that municipal councils might by a two-thirds vote grant exemption from taxation (except as to school taxes) for a term of ten years renewable for the like term.

The incorporating Act in which the above quoted section 8 is found, formed chapter 8 of the statutes for the said session, and these other enactments are all in later chapters of the legislation of same session.

And curiously enough in the same session there was passed as chapter 48 of the Acts of said session, the "Consolidated Assessment Act," the result, if I am not mistaken, of a special commission to consider the questions of assessment and taxation.

This Act defined the duties of the assessor and amongst other things directed the assessment roll to be made in a form which provided for the assessment to be set out under columns shewing the actual values of each parcel of land, and then by section 49 thereof the assessor was required to swear that he had done so.

There are numerous provisions for specific exemptions and reductions, but nothing that could justify any assessor or anybody else presuming to comply with such a by-law as before us herein discarding these provisions and inventing something else to work out this provision of section 8, possessing many alternative powers.

It was absolutely impossible for the "Assessment Act" and this by-law to stand together.

But the alleged power to make any such by-law was not invoked till eleven years later. Meantime, (almost impossible as it would seem from the beginning

to have carried into execution such a statutory privilege by way of meddling with the assessment roll and all else that is the basis of what we have herein to deal with,) the legislature by the "Municipal Amendment Act," 1900, sec. 8, added to section 366, above referred to, section 366(*a*) by which it is declared that:—

> To render valid a by-law of the municipality for granting a bonus in aid of any manufacturing industry, the assent shall be necessary of two-thirds of all the ratepayers, etc., etc.

And by section 9 the bonus system was revived in the form and subject to the stringent requirements therein set forth for determining the matter.

Then section 10 defines what is to be held to be a bonus within said section 366(*a*), and other sections. And by sub-section (*g*) thereof:—

> A total or partial exemption from municipal taxation or the fixing of the assessment of any property for a term of years, etc., etc.,

is the gist of the definition relative to taxation, but the term is limited to ten years' renewal and exemption from taxation for school purposes is expressly excluded from the operation of the Act.

The scope of this legislation is such as to leave no doubt of the purpose of the legislature in relegating to the people the power to pass any by-law in the nature of a bonus.

The section 8 of the Act relied upon by appellant in its relation to this later legislation may be considered in a two-fold aspect.

In the first place it is to be observed that the language thereof as above quoted which renders it

> lawful for the corporation of any municipality * * * by by-laws specially passed for that purpose

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does not expressly enable the council to pass such by-law. The council never had any power but that expressly given it to represent the corporation and this was ever subject to such variation as the legislature chose to enact and to empower. The very language used excludes anything but the corporation itself making such a by-law. That corporate existence has always been the collective body of the inhabitants. Within this very language the old form of town meeting would in absence of any other enabling provision be alone what could determine anything relative to "a by-law specially passed" for any purpose.

The legislature has the right from time to time to vest such power of passing by-laws in such inhabitants or those representing them, and to declare who, as electors or otherwise, shall represent them, and enable the corporate body to speak and act. The mode or forms assigned by the legislature to do so must be observed.

Those acquiring from the legislature privileges by way of statute must above all others be presumed to know that the conditions upon which their privileges depend and that the mode of obtaining the enjoyment of such privileges, must be that assigned by the legislature and that the mode may vary from session to session.

If the appellant had chosen to act upon the privilege given it in 1892, then it might have been arguable that by section 10 of the "Municipal Act" of that time, the council might have had power to express the will of the municipal corporation.

At the time when the by-law in question was enacted this mode of expressing the will of the municipal corporation had ceased to exist in relation to the sub-

ject matter of conferring upon any one the benefit of such privilege as sought to be conferred.

In the next place the right to claim any of the benefits alternatively contemplated by section 8 of the appellant's incorporating Act, seems to me so much in conflict with all this later legislation that it has been thereby impliedly repealed.

It may be arguable that the privilege was in substance within the scope of what might have been conferred by the "Municipal Amendment Act," 1900, for the appellant may be held to be carrying on a manufacturing industry within same, but all such privileges became subject to the mode adopted by said Act for expressing the will of the corporation which involved the assent of the ratepayers, which was never got.

Again of the many forms alternatively given by said section 8, the parties chose that which was least defensible in law and had been rendered impossible by the enactment of the "Consolidated Assessment Act" to which I have already adverted.

The appellant having failed to procure the due enactment according to law of "a by-law specially passed for the purpose," I am of opinion that the by-law relied upon was wholly void and gave no such privilege as claimed.

The greater, of course, includes the less and leaves the appellant liable to the assessment complained of relative to school taxes.

If the legislation in conflict with the provisions upon which the appellant relies and the by-law rests, had been only that of the same session, I might have found it necessary to enter upon the question of the

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effect of such a conflict. But when we find all that so conflicting re-enacted at later sessions either directly or by implication before the alleged by-law was passed and such a definite settled form given to such conflicting legislation as appears in the enactments of 1900, as to render it impossible to conceive of such an ancient privilege being preserved merely by the supposed continuation of the powers of the council out of keeping with aught else bearing upon the subject, we must conclude that the section relied upon has been impliedly repealed.

The conflict is to my mind quite as expressive as that which was held in the House of Lords in the case of *Duncan* v. *Scottish North Eastern Railway Co.*(1), in 1870, or in the case of *Great Central Gas Consumers' Co.* v. *Clarke*(2), in 1863, where the privilege was the other way about, to have such repealing effect.

I only refer to these as typical of many more, some of which are collected in the more recent case of *Sion College* v. *London Corporation*(3).

I also agree with the further reasoning applied in the courts below.

I think there is no resemblance between this case and the *Canadian Pacific Railway Co.* v. *City of Winnipeg*(4), so much pressed upon us.

The appeal should be dismissed with costs.

Since writing the foregoing the May number for 1914 of the law reports brings a report of *The Associ-*

(1) L.R. 2 H.L. (Sc.) 20.
(2) 13 C.B.N.S. 838.
(3) [1900] 2 Q.B. 581.
(4) 30 Can. S.C.R. 558.

*ated Newspapers* v. *Mayor, etc., of London*(1), which I have read and considered. Though I find nothing therein to vary my opinion yet the *Sion College Case* (2) is, I observe, doubted therein, and a number of authorities are referred to which are instructive.

DUFF J. (dissenting). — The appellant company was incorporated by a special Act of the Province of Ontario, 55 Vict. ch. 8, by section 8 of which it was provided as follows:—

8. It shall be lawful for the corporation of any municipality, in any part of which the works of the company or any part thereof pass or are situate, by by-laws specially passed for that purpose, to exempt the said company and its property within such municipality, either in whole or in part, from municipal assessment or taxation, or to agree to a certain sum per annum, or otherwise, in gross, or by way of commutation or composition for payment, or in lieu of all or any municipal rates or assessments to be imposed by such municipal corporation, and for such term of years as to such municipal corporation may seem expedient, not exceeding twenty-one years, and any such by-law shall not be repealed unless in conformity with a condition contained therein.

A considerable amount of the property of the appellant company is within the Township of Stamford and, on the 11th of May, 1903, the following by-law was passed by that township:—

Whereas the undertaking and works of the Canadian Niagara Power Company are calculated to contribute materially to the prosperity and well-being of the ratepayers of the municipality of the Township of Stamford, and it is expedient to grant the request of the said company to the council, to exempt the said company and its property within the municipality from municipal assessment in part, and to agree to and fix the assessment as hereinafter set forth and apportioned as hereinafter set forth.

Be it therefore enacted by the Municipal Council of the Township of Stamford, acting under and by virtue of section 8 of 55 Victoria, chapter 8, and all and every other authority enabling it in that be-

(1) [1914] 2 K.B. 603. (2) [1900] 2 Q.B. 581.

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half, for itself, its successors and assigns, and it is hereby enacted that the annual assessment of all the real estate property, franchises and effects of the Canadian Niagara Power Company, situate from time to time within the municipality of the Township of Stamford be and the same is hereby fixed at the sum of one hundred and sixty thousand dollars ($160,000), apportioned as follows, namely: One hundred thousand dollars upon the tunnels, wheelpits, power houses, inlets and inlet bridges, and other principal works of the said company, from time to time situate in the Queen Victoria Niagara Falls Park, and sixty thousand dollars ($60,000) upon the other property of the said company from time to time situate in the said Park or elsewhere in the said municipality, for each and every year of the years 1903 to 1923, both years inclusive, and that the said company and its property in the municipality be, and they hereby are exempted in each year of the said years, from all municipal assessment or taxation of any nature or kind whatsoever beyond the amount to be ascertained in each such year by the application of the yearly rate levied by the municipal council in each such year, to the said fixed assessment of $160,000, apportioned as aforesaid.

And be it further enacted that if the said company shall refuse to pay taxes on the above assessment in any of the above years, the corporation or any lawful authority on its behalf may, if the same are not paid within the time limited for the return of the collector's roll, thereafter assess and collect taxes upon the said company and its property as if no exemption or commutation had been made.

Read a third time, and passed in Council this 11th day of May, A.D. 1903.

From 1903 to 1913 the provisions of this by-law were observed. In 1913 the appellant company's property was assessed at $900,000 in the assessment roll of the township. On behalf of the township it is now contended and this contention has been upheld by the Court of Appeal for Ontario, that this by-law must be construed as providing for a fixed assessment not for all purposes but for purposes other than that of determining the amount of taxes payable for school purposes. I have already referred to the provisions of the law bearing upon the point touching the assessment and taxation of property within the limits of municipalities in the Ontario Power Company case (see page 198). Leaving out of view for the moment section 77 of

the "Public Schools Act" of the year 1901, which was first enacted in the year 1892, the relevant provisions of the law touching the assessment and taxation of real property were in substance the same in 1892 as those to which I have referred in that case; and it will not be necessary for the purposes of this judgment to quote the provisions in detail. The foundation of the system of municipal taxation was the assessment roll, in which was entered the actual value of all property within the limits of the municipality not exempt from taxation. It was the duty of the council in each year to levy on the whole ratable property within its jurisdiction a sufficient sum to pay the debts of the corporation falling due within the year, the sums payable being calculated at the rate of so much in the dollar for the actual value of the property. The valuation of the property and generally the compilation of the assessment roll were entrusted to an officer, appointed by the corporation, called the assessor whose duties are laid down in the "Assessment Act." The valuation by the assessor was subject to revision in accordance with the provisions of the Act. It was the duty of the clerk of the municipality to prepare a roll known as the collector's roll in which was entered the assessed value of each parcel of property assessed and the amount of taxes payable calculated according to the rate for the year, the amounts payable in respect of any special rate, such, for example, as local improvement taxes or school rates being entered in a separate column with an appropriate caption. This roll is delivered to an officer called the collector whose duty it is to collect the sums set down as the taxes chargeable. The assessed value of the property is spoken of sometimes in the "Assessment Act" as "the

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assessment," which term is also applied to the process of constituting the assessment roll.

There can, I think, be no doubt that according to the proper construction of this by-law, reading it with reference to the assessment system prevailing at the time that the by-law was passed, it effectively provides that the sums mentioned are to be entered as the assessed value of the property referred to in the assessment roll and that that sum is to be taken as the assessed value of such properties for all the purposes of the collector's roll. That, I say, seems to be the meaning of the words. I shall consider in a moment the effect of section 4 of chapter 60 of 1892, otherwise section 77 of the "Public Schools Act," 1901. If that enactment applies then the effect of the by-law must be limited as thereby ordained; but giving the words of the by-law their own proper effect, interpreting the word "assessment" with reference to the machinery established by the "Assessment Act" and the "Municipal Act" for the assessment and taxation of property, I think there is nothing ambiguous in the by-law, that it has one meaning and only one meaning, viz., that indicated above. Before passing on to the question which appears to me to be the point of substance in the appeal, I may refer to the suggestion that in the common understanding the language used in this by-law would be read as applying in the limited way contended for by the respondents. I am quite unable to concur in that view. Ratepayers in Ontario municipalities accustomed to receiving annually their notices of assessment, each of which is an extract from the assessment roll, provisionally constituted by the assessor himself and before revision by the Court of Revision, shewing the assessed value of their ratable

property, know quite well the meaning and significance of the term "assessment." They understand that it is by reference to the assessed value as it appears in the assessment roll that the amount of taxes, whether in respect of the general rate or of any special rate, such as the school rates will be determined; and a by-law providing for fixing the annual assessment of given property at a named sum would be commonly understood to mean one thing and only one thing, viz., the fixing of the assessed value of such property for the purposes of ascertaining the amount of the taxes to be paid in respect of it.

It should be observed (I am still leaving out of consideration the amendment of the "Public Schools Act" above referred to) that by sections 117 and 118 of the "Public Schools Act," R.S.O. 1887, ch. 225, the municipal councils are required to levy and collect the moneys needed for school purposes on "the taxable property" within the municipality "in the manner provided" in the "Public Schools Act" and in the "Municipal and Assessment Acts." An exemption from assessment, therefore, in whole or in part, necessarily took the property exempted out of the category of property assessable for school purposes.

What I have just said will be sufficient to meet the contention that the authority conferred upon the municipality by the company's special Act to

> exempt * * * either in whole or in part from municipal assessment or taxation

does not include the authority to exempt from assessment or taxation for school purposes. The assessment is one, the machinery for taxation is a single machinery in each municipality. The whole system

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is worked by the officers of the corporation. It is true that the law requires the council to collect the funds requisitioned by the school trustees and to pay over to the school trustees the funds collected. But the assessment is none the less a municipal assessment, the taxation municipal taxation. The taxes payable in respect of the school rates or otherwise are a debt due to the municipality (sec. 131, ch. 48, 55 Vict.). And the fund realized is a product of municipal taxation as much as any other fund produced by a special rate and required by law to be devoted to a particular purpose. I may add that apart from the amendment of 1892 to which I am about to refer, I think the reasoning of the judgment of this Court in *Canadian Pacific Railway Co.* v. *City of Winnipeg*(1), applies and is conclusive.

I now come to the real point on the appeal. It is contended that notwithstanding the provisions of section 8 of chapter 8, 55 Vict., above quoted, the courts are constrained by an enactment passed in the same year, section 4 of chapter 60 of the statutes of 1892, to hold that this by-law does not operate to fix the assessment of the property in question for the purposes of determining the amount to be paid in respect of it for school rates. The three statutes to which I am about to refer were all assented to on the same day, and may, I presume, be taken to have been passed contemporaneously. The first is the enactment to which I have just referred and it reads as follows:—

> 4. No municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

(1) 30 Can. S.C.R. 558.

The second is section 366 of the "Consolidated Municipal Act" as follows:—

366. Every municipal council shall by a two-thirds vote of the members thereof have the power of exempting any manufacturing establishment or any water works or water company, in whole or in part, from taxation, *except as to school taxes*, for any period not longer than ten years, and to renew this exemption for a further period not exceeding ten years,

— this last mentioned enactment being a reproduction of section 366 of the "Municipal Act," ch. 184, R.S.O., 1887, with this exception, viz., that the words "except as to school taxes" are not found in the earlier Act and now for the first time appear.

The third is the incorporating statute, the relevant provision of which is quoted above.

We have here then the general provision introduced in 1892 into the "Public Schools Act" above quoted. We have the amendment of section 366 of the "Municipal Act" limiting the power of exemption from taxation to bring that section into harmony with the first mentioned provision, and we have the special Act dealing with the appellant company's property and the municipalities in which it may happen to be situated. The point to be considered is — the language of the company's Act being in itself sufficient and appropriate for empowering the municipalities referred to, to enter into a special arrangement with the appellant company in respect of the assessment of the company's property, whether those municipalities must be taken in the exercise of the special power thus conferred to be governed and controlled by the general provision inserted in the "Public Schools Act." I think the canon of construction *generalio specialibus*, etc., applies. I think it is a case in which the legislature having given its attention to a special

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case and provided for that special case in a special Act by language, the meaning of which in itself is unmistakable, the special Act must be held to govern notwithstanding the provisions of some enactment of general application passed either before, or at the same time, which provisions can be given reasonable and sensible operation without interfering with the powers conferred by the special Act. I think, in other words, that it is a case in which the general provision must be read as subject to the implied exception of those cases with which the legislature has specially dealt by special enactment. It is quite true that this rule being only a canon of construction must give way where a contrary intention appears. But I have been unable to find any evidence properly cognizable by a court of law (whose duty is limited to construing Acts of the legislature) of any such contrary intention. On the contrary, looking at these three statutes assented to on the same day, I find what appears to me to be evidence of the existence in fact of an intention conformable to the presumed intention upon which the canon above indicated is postulated. I find that evidence in the fact that section 366 of the "Municipal Act" upon which is based the general power of the municipalities to exempt from taxation was specifically amended in order to make it clear that the power to grant exemptions did not extend to taxation for school purposes. That was done while at the same moment the provisions of the appellant company's special Act conferring an unqualified power to exempt from taxation or assessment were allowed to go into effect.

I refer only briefly to the point made with regard to the "Public Schools Act" of 1909. I do not think

that the legislature in re-enacting this provision first passed in 1892 in terms obviously intended to make it clear that it applied to by-laws passed after the date of the first enactment of it, can be held to have extended the operation of this provision to by-laws to which in its original form it did not apply. If I am right in my view that the amendment of 1892 as it stood when it was passed in that year did not apply to by-laws passed under special powers relating to special property, then I can see no reason for holding that with regard to such by-laws the subsequent re-enactments of it have in any way widened its operation. I ought perhaps to refer to the suggestion — I do not think it was seriously pressed — that the provisions of the "Municipal Act" relating to bonuses governed this municipality in the exercise of this special power. I think those provisions are limited in their application to the exercise of the powers under the "Municipal Act."

ANGLIN J.—Having regard to the relations between school boards and municipal corporations in Ontario and to the manner in which the legislature of that province has dealt with school taxes, I am satisfied that its legislation, whether general or special, empowering municipal councils to exempt from taxation, enacted at or after the session of 1892, however broad and general in its terms, should not be construed as authorizing exemption from school taxation, in any form or to any extent, unless taxation for school purposes is expressly mentioned in such legislation. By a clause inserted in the "Public Schools Act" in that year (55 Vict., ch. 60, sec. 4), it is enacted that

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no municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

I respectfully concur in the construction put upon this provision by the learned Chief Justice of Ontario in his judgment in the Ontario Power Company's case. A corresponding restriction on the powers of exemption was at the time introduced into the "Municipal Act" (55 Vict., ch. 42, sec. 366). Both these provisions have since been continued in the legislation of Ontario and are now to be found in the Revised Statutes of Ontario, 1914, ch. 266, sec. 39, and ch. 192, sec. 396(*e*).

Had there been similar legislation in force in Manitoba when the by-law of the City of Winnipeg considered by this court in the *Canadian Pacific Railway Co.* v. *City of Winnipeg*(1), was enacted, I cannot think that it would have held that the exemption from

> all municipal rates, taxes and levies and assessments of every nature and kind whatsoever,

for which that by-law provided, would have been held to include exemption from school taxes.

As pointed out by the learned Chief Justice of Ontario, in his judgment in the Canadian Niagara Power Company's case, section 4 of chapter 60, of the statutes of 1892, is not

> an enactment prohibiting the granting of an exemption from school rates, but a mandate to all courts to hold and construe by-laws exempting from taxation as not extending to school rates.

The proper construction of the by-laws in question and of the legislative authorization on which they depend for their validity being that they do not ex-

(1) 30 Can. S.C.R. 558.

tend to exemption from school taxation, we are not confronted with the difficulty which would be presented, did these cases involve attempts to derogate from the effect of prior special statutes by subsequent general legislation.

The authority of the judgments of Divisional Courts in *Stratford Public School Board* v. *Stratford* (1) (which is probably distinguishable on other grounds), and *Way* v. *St. Thomas* (2), relied on by Mr. Nesbitt, is overborne by the judgment of the Ontario Court of Appeal in *Pringle* v. *Stratford* (3), and that of the Appellate Division in this case.

Notwithstanding Mr. Osler's ingenious attempt to differentiate the case of his clients, the Ontario Power Company, from the cases of the other appellants, if the view I take of the proper construction of exempting municipal by-laws passed since 1892 is correct, there is no real ground of distinction between them.

The appeal should be dismissed.

BRODEUR J.—In these three cases the same question is in issue. We are asked to determine whether the municipal corporation respondent could exempt from school taxes the company appellant.

Prior to 1874 the school boards in Ontario made their own assessment, levied and collected their own taxes. In 1874 the legislature authorized the school boards to have their taxes collected by the municipalities.

In 1879 the power for the school boards to collect their own taxes was discontinued and was vested in

(1) 2 Ont. W.N. 499. (2) 12 Ont. L.R. 240.
(3) 20 Ont. L.R. 246.

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the municipality. The school boards have since that time the right to determine the amount of money necessary to meet their expenditures; they would inform the municipality of the money required and the latter in collecting its taxes would at the same time levy the amount of money that would satisfy the needs of the school board.

Under that legislation it is evident that an abuse sprung up by which industrial establishments that were exempt from taxation by the municipality did not pay anything for school taxes, for the legislature, in 1892, by chapter 60, section 4, declared that

> no municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

That policy adopted by the legislature has been re-enacted several times since and there seems to be not the least shadow of a doubt as to the intention of the province in that respect.

The appellants in order to defeat that intention rely on special Acts conferring upon municipalities in which the works of the companies are situate, the power to exempt them from municipal assessment or taxation and they claim that those special Acts override the general provisions of the law. I am unable to accept such a conclusion. Of course, the legislature could have the right to exempt from school taxes any industrial establishment. But, in view of its settled policy it would require a formal enactment.

The instructions given by the legislature to the courts are to construe the by-laws providing exemption from taxation in such a manner that the exemptions should not cover school rates.

With such instructions the courts are powerless to find in any by-law an exemption from school taxes unless the legislature would formally declare by a special Act that the school taxes would be included in the exemption.

The appellants rely on the case of *Canadian Pacific Railway Co.* v. *City of Winnipeg*(1), decided by this court. But in the Province of Manitoba, in which that case was instituted, there was no legislation similar to the one we find in Ontario.

I am of opinion that the appellant companies were not exempt from school rates and that their appeals should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellants: *A. Munro Grier.*
Solicitors for the respondent: *Ingersoll & Kingstone.*

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ELECTRICAL DEVELOPMENT CO. v. TOWNSHIP OF STAMFORD(2).

THE CHIEF JUSTICE.—I am of the opinion that this appeal should be dismissed with costs.

IDINGTON J.—The appellant's claim to exemption from assessment for public school rates differs somewhat from that made in the case of The Canadian Niagara Power Co. v. Township of Stamford.

In the assumption, however, that the ordinary municipal rates and school rates and the assessments

(1) 30 Can. S.C.R. 558. (2) 30 Ont. L.R. 378.

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upon which they respectively rest are identical, these cases present the same fundamental errors of law and fact.

The municipal corporation in its relation to the school rates is but the servant or agent of the Public School Board. The latter formerly collected its own rates and later had an option either to do so or require the municipal council and its officers to do so.

There existed in the early stages of public school history great division of public opinion on the question of free school education based upon the principle that everything taxable, whether or not its owner had children to educate, should bear an equal proportionate share of the burden of the support of the public schools.

The school boards had to resort to the collection of rates in a variety of ways determined by the ratepayers of the section.

When the principle I have just adverted to became fully recognized and established by law the old forms of proceeding for levying the school rates existed in law, though gradually falling into disuse.

It was stated and not contradicted in argument that this survival in law of old methods of collection ceased in 1879.

There are yet instances such as in the unorganized districts where the school boards have to see to both assessing and collecting. And I am not sure but in regard to separate schools there still remains a survival in law relative to the collection of school rates.

All I am concerned with herein is to shew that it is simply as a matter of public expediency that the machinery of the municipal councils is used for the levying of the rates required to support the public schools, and

that it is a long time since the obligation of property owners to contribute their share in proportion to their means to the maintenance of the free public schools, was finally established and fully recognized.

The argument presented by counsel for appellant that it had no children to educate and that its existence or non-existence was a matter of indifference to the school board, who could not suffer thereby, sounded like an echo of that fierce argument, and vehement expostulation, heard half a century ago upon the wickedness of taking the money of the rich childless man to educate the pauper's child.

When due heed is paid to the history of the relations between the school board and the municipal corporation, and the settled policy of Ontario, in relation to the system of taxation to execute it, we are not so ready to assume that exemption from municipal assessment or taxation as a matter of course must involve all assessment and taxation carried into execution by municipal councils and their officers.

In order to make the matter clear the "Public Schools Act" was amended by chapter 60, section 4, of the Ontario statutes, in 1892, which expressly declared as follows:—

> No municipal by-law hereafter passed for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

And when the "Assessment Act" was consolidated in 1894, it was declared by section 22 defining the duties of the assessor that he should set out in separate columns of his roll, each parcel of land assessed, the actual value of the parcel exclusive of the buildings, the total of the actual value of the parcel of

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real property, the total amount of taxable real property and

the total value of the parcel if liable for school rates only.

This continues substantially the same in the Act under which the roll in question was made up. It is clearly implied that there is to be no diminution of the assessment so far as the basis for school rates, though there might be a "taxable value" as basis for other rates.

It was the next session after this consolidation that the curious Act now relied upon was passed and the attempt made thereby to ratify and confirm a by-law which respondent's council had passed in the previous month of September, 1904, without any authority.

The by-law itself which this enactment is alleged to have validated, by the last clause thereof, says:—

> And be it further enacted that this by-law and the provisions thereof shall come into full force and effect immediately after the municipality shall be authorized by sufficient legislative or other authority to pass the same.

If, as we are strongly urged to do in other matters herein, we are to apply the strict reading of the Act relative thereto, then as the legislature never "authorized" such a by-law to be passed, it never has been brought into force.

I place no stress upon this beyond shewing that we must apply common knowledge and common sense or we should never make much out of some Acts of the legislature by an absolute adherence to the letter thereof.

But it is to be observed relative to this by-law and statute, as to all statutory enactments conferring privileges, that the enactment establishing such must be

clear and express, and it is somewhat difficult in light of the foregoing considerations to find that this by-law and statute are so.

The language can be given a reasonable meaning without going so far as to read therein a privilege quite repugnant to the sense of right of that portion of mankind in Ontario as evinced by its legal history and the persistent Acts of its legislature.

For these reasons alone I should hold that the municipal assessments and taxes had in view were those strictly such in the sense of the term ordinary men understand to be such, and not such as would extend it to such as concerned the school boards acting by and through the municipal machinery, even though in a wider sense a school board might be spoken of as a municipal corporation.

It must never be forgotten that the council representing and acting for the corporation, and the school board though acting for and on behalf of those within the same territorial area, had for their respective constituents a different set of electors, and entirely different purposes and powers to execute.

All the ratepayers elected the school board, but only a limited number thereof elected the councils, and a still more restricted class had a voice in determining the concession of special privileges to any one.

The substantial difference of qualification between the two former classes, may not be great, but it illustrates the contention that the constituent bodies are not the same. And whilst the municipal corporation consists of all the inhabitants, the school board is constituted a corporation by itself.

Then if there be any doubt of the correctness of my view when I hold that upon all the foregoing

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grounds the appellant must fail, we find the legislature has in very expressive terms put an end to the contention set up, by the following enactment in the "Public Schools Act" of 1909:—

39. No by-law of a municipal council passed after the 14th day of April, 1892, or hereafter passed, for exempting any part of the ratable property in the municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind.

This enactment surely puts an end to all argument of the question. It was enacted after the alleged validation of the by-law in question, and comprehends it as well as others of a like kind.

The appeal should be dismissed with costs.

DUFF J. (dissenting).—I think this appeal should be allowed. I think it is unnecessary to do more than to refer to the reasons already given in the other two cases. (See page 179, *ante*, and page 198, *post*.)

ANGLIN J.—(The opinion of Mr. Justice Anglin is reported at page 187, *ante*.)

BRODEUR J.—(The opinion of Mr. Justice Brodeur is reported at page 189, *ante*.)

*Appeal dismissed with costs.*

Solicitors for the appellants: *McCarthy, Osler, Hoskin & Harcourt.*

Solicitors for the respondent: *Ingersol & Kingstone.*

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THE ONTARIO POWER CO. v. TOWNSHIP OF STAMFORD(1).

THE CHIEF JUSTICE.—I am of opinion that this appeal should be dismissed with costs.

(1) 30 Ont. L.R. 391.

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IDINGTON J.—This appeal was argued at the same time as the appeals of the Canadian Niagara Power Co. and of the Electrical Development Co. against same respondent, and the appellant seeks similar relief to that claimed therein relative to exemption from assessment for school rates.

The council of respondent, acting without authority passed a by-law fixing "the annual assessment" (whatever that may mean) of appellant's property. The same curious form is adopted as in the case of the by-law relative to the Electrical Development Company. Both were passed on the same day.

The Act of the legislature validating same was more direct in its language than in the by-law and Act involved in the latter case, and not so absurdly retrospective in its form.

I need not repeat what I have said in regard to the appeals in each of the other cases.

Much that I said in my opinions in same applies herein. Indeed, all that I have said in regard to the claim of the Electrical Development Company, except the statement of one of the arguments by counsel for the appellant, is applicable to this appeal. Counsel for this appellant did not use same argument, yet what I was led, as result thereof, to say may be well applied here.

And I think that the following section, 39, of the "Public School Act" of 1909,

> 39. No by-law of a municipal council passed after the 14th day of April, 1892, or hereafter passed, for exempting any part of the ratable property in the municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind,

is destructive of the possibility of any such claim as made herein. This enactment is but a reiteration of

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what had previously been enacted but operates from this later date and impliedly repeals if there was anything in regard to school rates in the legislation relied upon to repeal.

It would seem as if there was one small corner of the legislative domain in which the privilege hunter has, in Ontario, no ground for hope. The legislature seems to have been persistent and emphatic.

The cases I cited in the case of the Canadian Niagara Power Co. seem to answer the appellant's pretensions.

The appeal should be dismissed with costs.

DUFF J. (dissenting).—Before the construction of the appellant's works and pursuant to an agreement between the appellants and the respondent municipality, the municipality passed a by-law on the 10th October, 1904, in the following terms:—

By-law No. 11.—A by-law relating to the assessment and taxation of the property of the Ontario Power Company:—

Whereas the undertaking and the works of the Ontario Power Company are calculated to contribute materially to the prosperity and well-being of the ratepayers of the municipality of the Township of Stamford, and it is expedient to grant the request of the said company to the council and fix the assessment of the property within the municipality as hereinafter set forth and the apportionment thereof as hereinafter set forth.

Be it therefore enacted by the municipal council of the Township of Stamford for itself, its successors and assigns, and it is hereby enacted that the annual assessment of all the real estate, property, franchise and effects of the Ontario Power Company, situate from time to time within the Municipality of the Township of Stamford, and used for the corporate purpose of the company, be and the same is hereby fixed at the sum of $100,000, apportioned as follows, namely: $30,000 upon the gates, houses, penstocks, inlets, inlet bridges and other principal works of the company, situate in the Queen Victoria Niagara Falls Park, and $70,000 upon the other property of the said company, situate in the said park or elsewhere in the said municipality, for each and every year of the years 1904 to

1924, both years inclusive, and that the said company and its property in the municipality shall not be liable for any assessment or taxation of any nature or kind whatsoever beyonds the amount to be ascertained in each such year by the application of the yearly rate levied by the municipal council in each such year to the said fixed assessment of $100,000, apportioned as aforesaid.

And be it further enacted that if the said company shall refuse to pay taxes on the above assessment in any of the years the corporation or any lawful authority on its behalf may, if the same are not paid within the time limited for the return of the collector's roll, thereafter assess and collect taxes upon the said company and its property as if this by-law had not been passed.

And be it further enacted that this by-law and the provisions thereof shall come into full force and effect immediately after the municipality shall be authorized by sufficient legislative or other authority to pass the same.

Read a third time and passed the 10th day of October, 1904.

This by-law was confirmed by a special Act of the legislature, chapter 78 of the statutes of 1905, in the following terms:—

Whereas the Ontario Power Company, of Niagara Falls, has, by petition, represented that a certain by-law of the Corporation of the Township of Stamford, in the County of Welland, being By-law No. 11, and passed by the municipal council of the said township on the 10th day of October, 1904, should be confirmed and made in all respects legal and binding in accordance with the intent and meaning thereof; and whereas it is expedient to grant the prayer of the said petition;

Therefore His Majesty by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

1. By-law No. 11, of the Municipal Corporation of the Township of Stamford set forth as Schedule "A" to this Act, is legalized, confirmed and declared to be legal, valid and binding, notwithstanding anything in any Act contained to the contrary.

From the year 1905 to 1912 the provisions of the by-law were observed, but in the year 1913 the municipality proceeded to assess the property at the sum of $650,000, setting up for the first time the contention that the by-law must be read as limiting the "annual assessment" provided for, to assessment for purposes other than the purpose of determining the amount of

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school rates. The Court of Appeal for Ontario has sustained the respondent's contention. The first question to decide is: What, apart from section 77 of chapter 39, 1 Edw. VII., is the meaning of the "annual assessment" of the property of the company referred to in this by-law? The statutory provisions in force in 1904 relating to the assessment and taxation of lands within the limits of municipalities are mainly to be found in the "Assessment Act," ch. 224, of the Revised Statutes of Ontario, 1897. Section 6 of that Act provided:—

> 6. All municipal, local or direct taxes or rates, shall, where no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the municipality or other locality, according to the assessed value of such property, and not upon any one or more kinds of property in any particular or in different proportions.

The "assessed value" of property was determined by an annual valuation made by an officer denominated the assessor recorded in a document known as the assessment roll which was subject to revision as provided for by the Act. The process of determining the valuation as well as the value so arrived at are described by the term "assessment." The "Municipal Act," sec. 402, requires that the council of every municipal corporation shall in each year levy, on the whole ratable property within its jurisdiction a sufficient sum of money to pay all its valid debts. By section 403 the rates are to be calculated at

> so much in the dollar upon the actual value of all the real and personal property liable to assessment therein.

By section 71 of the "Public Schools Act," already referred to, the council of every municipality was required to levy and collect on the *"taxable property"*

in the manner provided by the "Public Schools Act" and in the "Municipal and Assessments Acts," such sums as might be required by the trustees for school purposes; and by section 129 of chapter 224 of the "Assessment Act," R.S.O., 1897, it was provided as follows:—

129. The clerk of every local municipality shall make a collector's roll or rolls as may be necessary, containing columns for all information, required by this Act to be entered by the collector therein; and in such roll or rolls he shall set down the name in full of every person assessed, and the assessed value of his real and personal property and taxable income, as ascertained after the final revision of the assessment roll, and he shall calculate, and opposite the assessed value, he shall set down in one column, to be headed "County Rates," the amount for which the person is chargeable for any sums ordered to be levied by the council of the county for county purposes, and in another column to be headed "Township Rate," "Village Rate," "Town Rate," or "City Rate," as the case may be, the amount with which the person is chargeable in respect of sums ordered to be levied by the council of the local municipality for the purposes thereof, or for the commutation of statute labour, and in other columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by the by-law imposing it, to be kept distinct and accounted for separately; and every such last mentioned rate shall be calculated separately, and the column therefor shall be headed "Special Rate," "Local Rate," Public School Rate," "Separate School Rate," or "Special Rate for School Debts," as the case may be.

This roll when completed is delivered to the "collector," whose duty it is to collect the amounts chargeable according to the roll.

Now I think it is reasonably clear that the "annual assessment" in respect of which this by-law makes provision, means the assessed value of the property "ascertained" in the manner mentioned in section 129 of the "Assessment Act," that is to say, the sums provided for in the by-law are the sums to be entered in the assessment rolls by the assessor as the "assessed value" of the property mentioned and in each case this

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"assessed value" is to be that to which the clerk of the municipality is to have regard for the performance of his duties under section 129. It is upon that value that the amounts payable in respect of the rates of every description referred to in that section are to be calculated. Reading this by-law, therefore, as intended to govern the municipality and the officers of the municipality in the working of this machinery for assessment and taxation which is set up by the "Assessment Act," the "Municipal Act" and the "Public Schools Act," it seems clearly enough on its face to provide that the sums which are thereby fixed as the "annual assessment" of the property referred to are to be in each case the "assessed value" of such property for the purpose of calculating among others the public school rate, or the separate school rate, as the case may be.

The amount payable in respect of any particular property depends upon the assessed value of the property. The "assessed value" of the property is the actual value unless it is otherwise provided by law. This by-law is an effort to provide otherwise. And the validating enactment quoted above seems to make this attempt effective. The enactment seems to provide that the by-law according to its true construction is to be legally valid notwithstanding anything in any Act to the contrary. It seems very clearly to be a case of a special Act making special provision for a particular case. And the general rule whereby the provisions of such a statute are not to be derogated from by the provisions of any general Act is emphasized as applicable to this statute.

Now the point on which the court below has proceeded is this: The "Public Schools Act" above re-

ferred to contains a provision, section 77, in the following words:—

> 77. No by-law passed by any municipality after the 14th day of April, 1892, for exempting any portion of the ratable property of a municipality from taxation in whole or in part shall be held or construed to exempt such property from school rates of any kind whatsoever.

The contention is that this enactment applies to the by-law in question. I cannot concur in this view. On the face of it it is a general provision applying to by-laws passed in exercise of general powers by any municipality. It has no necessary application to this special by-law dealing with a particular case validated by a special statute. It was suggested during the course of the argument that it ought to be treated as laying down a binding rule of construction. To that it seems to me that there is this unanswerable objection. The terms of the special statute of 1905 exclude the operation of any such general rule of construction.

ANGLIN J.—(The opinion of Mr. Justice Anglin is reported at page 187, *ante.*)

BRODEUR J.—(The opinion of Mr. Justice Brodeur is reported at page 189, *ante.*)

*Appeal dismissed with costs.*

Solicitors for the appellants: *Blake, Lash, Anglin & Cassels.*

Solicitors for the respondent: *Ingersoll & Kingstone.*