

57, 1938

# In the Privy Council

No. 3 of 1938

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

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BETWEEN:

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(Plaintiff) APPELLANT

AND

LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines, Limited,  
(Defendants) RESPONDENTS.

AND BETWEEN:

LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines, Limited,  
(Defendants) APPELLANTS

AND

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(Plaintiff) RESPONDENT.

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## CASE FOR THE APPELLANT

NORTHERN ONTARIO POWER COMPANY LIMITED

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Appeal) Northern Ontario Power Company Limited.*

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Cross-Appeal) La Roche Mines Limited (No Per-  
sonal Liability) and F. L. Heard, Liquidator of La  
Roche Mines Limited.*

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10 (*Defendants*) RESPONDENTS

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HEARD, Liquidator of La Roche Mines, Limited,  
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NORTHERN ONTARIO POWER COMPANY LIMITED,  
(*Plaintiff*) RESPONDENT.

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## CASE FOR THE APPELLANT

NORTHERN ONTARIO POWER COMPANY LIMITED

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20 1. This is an appeal by the Plaintiff and a cross-appeal by the Defendant from the Judgment of the Court of Appeal for Ontario which reversed the Judgment of the Trial Judge, Mr. Justice Greene, dismissing the action, and ordered Judgment to be entered for the Plaintiff for damages for breach of contract but limited the term of the contract to a period of ten years from its date. The Appellant complains of this limitation of the term of the contract. The Respondents cross-appeal to have the Judgment of the Trial Judge restored.

RECORD

2. The Appellant is incorporated under The Ontario Companies Act and its business is to generate electric power and to sell and distribute it to mining companies and other consumers throughout a wide territory in northern Ontario. It was formed in 1928 by the amalgamation of two earlier power companies. The Respondent Company is a mining company now in voluntary liquidation, and the Respondent F. L. Heard is its Liquidator.

p. 55—1. 22

3. In 1931 when the contract in question was made the Respondent Company was engaged in exploring and developing certain mining claims owned by it in the Township of Deloro. The property was in an early stage of development and it might or it might not become a valuable mine. Appellant had a main transmission line which passed across the country some three-quarters of a mile distant, and the Respondent Company applied to Appellant to connect this line with the wiring of the Respondent Company and to deliver electric current to Respondent. Two contracts were thereupon entered into, both of 30th December, 1931. One is the power contract, the other is the agreement for the transmission line to connect Appellant's main transmission line with a sub-station on Respondent's mining property.

Ex. 1  
p. 91—1. 20  
Ex. 2  
p. 97

p. 95

p. 95—1. 32

p. 93—1. 45

4. The power contract is on a standard form in use by the Appellant. It provided for the delivery by the Appellant to the Respondent Company, at the latter's transformer house located on Mining Claim H. R. 1001 in the Township of Deloro, of electric power at prices fixed. Appellant agreed to supply service for an initial installation of approximately 500 H.P. with provision for increases, and the Respondent Company agreed to pay for at least a minimum quantity of 50 H.P. for the first year of the agreement. Further power was to be supplied in accordance with Clause 6 of the contract which provided that the Respondent Company would not make any major change in or 10% addition to its installation without reasonable notice to the Appellant.

p. 95—1. 29

p. 94—1. 33

p. 94—1. 1

5. The period of the contract was fixed as "the mining life of the properties now or hereafter operated or owned or controlled by the consumer in the Porcupine District", that being the District in which the Township of Deloro is located. Clause 11 provided for cancellation by either party on certain defaults of the other. It was provided in Clause 6 that during the continuance of the contract no system of electricity other than that furnished by the Appellant should be used in said premises, providing the Appellant should be able and ready to supply the same, except with the written consent of the Appellant. While the power to be supplied was primarily for the use of the Respondent Company only, Clause 13 provided that the contract should not be assignable by the Respondent Company except with the written consent of the Appellant, but that such consent should not be unreasonably withheld.

p. 97—1. 20

6. The Transmission Line Agreement, which it was agreed should be read and construed as a part of the Power Contract, provided that

the Respondent Company should erect a power transmission line connecting a sub-station to be erected by the Respondent Company with Appellant's transmission line and cause to be conveyed to the Appellant a right-of-way for the transmission line so to be erected for the purpose of erecting and maintaining and operating an electric power transmission line to continue for all such time as Appellant should desire to use it for the purpose of its business. Provision was made for payment by Appellant to the Respondent Company of the cost of this transmission line by a rebate of 10% of all monies for power received by Appellant from the Respondent Company or any other consumer to whom power should be transmitted over the line until the expenditures of the Respondent Company had been repaid to it. Provision was made for the vesting of the transmission line in Appellant in proportion to the rebates made from time to time. Appellant was to have the right to use the transmission line for the purpose of supplying power to other customers provided the supply of power to the Respondent Company was not unduly interfered with thereby.

RECORD

p. 98—l: 20

p. 99—l: 10

7. In due course the Respondent Company constructed a transmission line connecting the Appellant's main line with Respondents' former house, and beginning 17th January, 1932, power was transmitted to and received by the Respondent Company. The Respondent Company was engaged in sinking a shaft and opening up underground levels on its property and continued its operations until May, 1932, using electric power delivered by the Appellant. Work was suspended in May, 1932, the Respondent Company having expended its available money.

p. 56—l: 40

8. The Respondent Company then looked for further money to continue the development of its property. In May, 1933, it arranged with Noranda Mines Limited, the owners of property adjoining, to do some prospecting and development work on the property, and for this purpose the Respondent Company wrote the Appellant authorizing it to turn on the electric power for Noranda Mines Limited. Nothing permanent came of this.

Ex. 3  
p. 104

9. In June, 1934, the Respondent Company made a contract with Sylvanite Gold Mines Limited whereby the latter agreed to expend \$15,000.00 in mining, prospecting, exploring and developing the property and for buildings, plant and equipment therefor, and in return the Sylvanite Company was given an option to require that the property should be sold by Respondent Company to a new Company in exchange for 840,000 shares of the new Company, the Sylvanite Company to have the right also to purchase shares in the new Company at an agreed price. In this connection on August 15th, 1934, the Respondent Company wrote Appellant requesting it to have the power turned on. The letter concluded with the following:

p. 145

Ex. 3 (a)  
p. 108—l: 30

“While Sylvanite is guaranteeing payment of the bills, the contract is with us, and the work is being done for us, so the bills

RECORD

“will be rendered to us. You can, whichever is more convenient for you, send them direct to the head office of the Company here, or have them delivered to the representative of our agent, Sylvanite, on the property.”

p. 27—l. 20-22 Pursuant to this request the electric current was again turned on and  
 p. 27—l. 40 to down to the time of the trial of this action had not been turned off,  
 p. 28—l. 19 and power supplied by Appellant was continuously used in mining operations upon the property.

p. 61—l. 20-30

10. After the agreement had been made with the Sylvanite Company, but before the letter of August 15th, 1934, certain other letters had been exchanged between the Appellant and the Respondent Company in which the Respondent Company stated that it had granted the Sylvanite Company a working option on the property and a right to sell the same to a new company, and said that if this were carried out the Respondent Company would surrender its Charter, and desired to know if Appellant had any claims against it. To this the Appellant replied that apart from any situation that might arise in connection with the existing Power Contract it had no claim. The Respondent Company then wrote enquiring more specifically whether there was anything in the contract which would prevent it selling out to a new company and distributing the proceeds among its shareholders. The Appellant replied, calling attention to Clause 13 of the Power Contract and to the provision for assignment with the consent of the Appellant, and stated that if the Respondent Company applied for this consent, coupling with it an acceptance by the new Company assuming the contract, the Appellant would be pleased to concur.

p. 153

11. On 31st October, 1934, an agreement was made by the Respondent Company by which in pursuance of its contract with the Sylvanite Company of 18th June, 1934, it sold its mining property to Delnite Mines Limited, the new Company formed for the purpose, and in consideration thereof was allotted 840,000 shares, fully paid and non-assessable, of the capital stock of the Delnite Company. No provision was made for the assignment of the Power Contract, and the Respondents say that the Delnite Company refused to assume it.

p. 110—l. 23

p. 110 to p. 120

12. A new correspondence with the Appellant was opened by the Respondent Company on November 30th, 1934. The Respondent Company, in this correspondence, took the position that having disposed of its property it was relieved of liability under the Power Contract and that it proposed to distribute its assets and surrender its Charter. The Appellant maintained that the Power Contract could not be terminated in this way and that the Respondent Company was still bound by it. As Appellant's power was still being used on the property and it was receiving payment therefor the Appellant saw no occasion to commence litigation, but stated that it would oppose any application by the Respondent Company to surrender its Charter and distribute its assets.

This was the position when the correspondence terminated on 3rd RECORD  
 April, 1935. On 11th October, 1935, the President of the Respondent p. 120  
 Company addressed a letter to its Directors, calling attention to the p. 121  
 position taken by the Appellant and the impossibility of surrendering the  
 Charter until the matter was cleared up. He therefore suggested that in  
 order to bring the matter to a head the Respondent Company should go  
 into voluntary liquidation. The Liquidator would then advertise for  
 claims. If the Appellant did not put in a claim the Liquidator could dis-  
 tribute the Delnite shares. If the Appellant put in a claim the Liquidator  
 10 would refuse to allow it, and the question whether the Appellant had a  
 claim "would be settled there and then". This suggestion was adopted,  
 and at a meeting of shareholders on 13th November, 1935, the Respon-  
 dent Mining Company resolved to go into voluntary liquidation and  
 appointed the Respondent F. L. Heard, Liquidator. The Liquidator there-  
 upon gave notice requiring all persons having any claim against the  
 Company to send it in by a certain date and that after that date the  
 assets of the Company would be distributed having regard only to  
 claims of which the Liquidator should then have had notice. pp. 156-157

13. The Appellant gave notice of its claim within the time fixed.  
 20 The Respondent Liquidator thereupon gave notice that the claim was p. 159  
 contested and requiring Appellant within thirty days to bring action to p. 160  
 establish the claim, and that in default the claim to rank as a creditor  
 would be forever barred. The Appellant thereupon brought this action  
 within the required time.

14. The Appellant's claim is that the power contract expressly  
 declared that it should extend for the mining life of the properties then  
 owned or operated by the Respondent Company and that it could not  
 properly be terminated by the Respondent Company except in accord-  
 ance with its terms, and that by the act of the Respondent Company in  
 30 going into voluntary liquidation and by the proceedings thereupon taken,  
 the Appellant became entitled to claim damages as for a repudiation by  
 the Respondents of the obligations of the contract. The Respondents by  
 their defence disputed that the alleged claim is a claim provable in a  
 voluntary winding up proceeding. They denied that Appellant had suf-  
 fered the amount of damages claimed or any damages, and alleged that  
 the Appellant had continued to supply power to the property and had  
 been paid for it by the new owner. They further alleged that the rates  
 or tolls prescribed in the agreement were unauthorized and excessive,  
 and that the agreement was void as being in restraint of trade. They  
 40 further alleged that the Statement of Claim did not disclose any cause p. 5  
 of action by reason of failure of the Appellant to conform to the provi-  
 sions of The Public Utilities Act, and particularly Part 5 thereof, and Part  
 13 of The Ontario Companies Act, and they pleaded the provisions of  
 these Acts by way of defence.

15. At the beginning of the trial it was agreed between Counsel p. 9—1. 30  
 that the Trial Judge should not fix the quantum of damages but that

RECORD

it should be a matter for a Reference, and that the Plaintiff should be required to establish at the trial only a prima facie case of damage.

16. The learned Trial Judge was of the opinion that the contract was terminated by the Respondent Company's sale of its mining properties, and he dismissed the action.

17. The Appellant appealed to the Court of Appeal, and the Appeal was heard by a Court composed of Rowell, C. J. O. Middleton, and Masten, JJ. A. The appeal was allowed and Appellant was held entitled to a claim for damages, but the Court held that by virtue of a provision of The Public Utilities Act hereinafter referred to, the period of the contract must be limited to ten years. On the argument, Counsel for the Respondents stated to the Court that the use of Appellant's electric power on the mining property in question had been discontinued and that the power used in the mining operations now being carried on is supplied by the Hydro-Electric Power Commission of Ontario. 10

p. 77—1. 11

18. The Court of Appeal gave effect to Appellant's claim that the contract created an express obligation on the part of the Respondent Company to see that during the continuance of the mining life of the properties then owned by it no system of electricity other than that furnished by the Appellant should be used in the premises, provided the Appellant was able and ready to supply it. Dealing with the several points raised by the Defendant the Court of Appeal were of opinion that there was no adequate basis for implying as the basis of the contract a term that its duration should continue only so long as the mine was operated by the Respondent Company. The Court was further of the opinion that the Respondent Company could not by going into voluntary liquidation absolve itself from its contractual liability and that the claim in question was entitled to rank in the winding up. The Court held, however, that a limitation of ten years must be placed upon the period of the contract by virtue of a provision of The Public Utilities Act which it considered operated upon the contracts of the Appellant. The Court of Appeal therefore directed that the Judgment of the Trial Judge should be set aside and that Judgment should be entered declaring that the Appellant is entitled to rank in the liquidation for damages to be fixed by the Master, but limiting the obligation in respect of which damages are to be assessed to a period of ten years from the date of the contract. 20 30

p. 79—1. 8

p. 80—1. 8

p. 79—1. 20

p. 80—1. 21

19. The decision of the Court of Appeal that Appellant's power to contract to supply power is limited to contracts for a period not exceeding ten years is of serious concern to Appellant. A mining company about to develop a mining property and to instal expensive electrical equipment and machinery must be assured of a sufficient supply of electric power at a fair price for the mining life of the property, otherwise it may find itself when its contract expires in the position of having to negotiate a new power contract under circumstances where it must have power at almost any price. There is no such limitation in the Letters Patent 40

incorporating Appellant nor in The Ontario Companies Act under which Letters Patent were issued. The powers expressly conferred by the Letters Patent are broad and unlimited as to time. They include power "to generate, accumulate, distribute, supply and sell" electricity and "to undertake and enter into contracts and agreements for the lighting of municipalities, buildings and other places and for the supply of light, heat and motive power for any or all public or private purposes", also power "to construct, maintain or operate lines of wires, poles, tunnels, conduits and other works and to conduct, store, buy, sell, contract for, dispose of and distribute any and all hydraulic electric or other mechanical power and with such lines, wires, poles, conduits, and other conductors or devices to conduct, convey, furnish or receive such electricity or other power or energy to and from any company or companies, person or persons." Further by Sec. 238 of The Ontario Companies Act (R.S.O. 1927 c. 218) it is declared that every corporation or company heretofore or hereafter created (of the several classes enumerated and which include this Company) shall unless otherwise expressly declared in the Act or instrument creating it, have and be deemed from its creation to have had the general capacity which the common law ordinarily attaches to corporations created by charter. Nowhere in the Companies Act is there to be found anything to limit Appellant's power to contract so amply given both by its Letters Patent and by the Act itself.

RECORD  
p. 84—1. 34

p. 85—1. 10

Bonanza  
Creek Gold  
Mining Co. v.  
Regem, 1916  
1 A.C. 566

The  
Interpretation  
Act, R.S.O.  
1927 c. 1, sec.  
27 (a)

(see Appendix  
to this Case)

20. The Court of Appeal based its opinion as to the limited power of Appellant to contract upon certain sections of The Public Utilities Act (R.S.O. 1927 c. 249) an Act which is not referred to either in The Ontario Companies Act or in Appellant's Letters Patent. The Public Utilities Act deals first with various municipally owned utilities and a series of sections (16-23) declares the powers of municipal corporations in respect of them. Sec. 22 is as follows:

30 "22. The corporation may, from time to time and upon such terms as may be deemed advisable, enter into contracts for the supply of a public utility to any person for any period not exceeding ten years."

Company public utilities are dealt with in Part V of The Act and by Sec. 59 in that Part it is provided that several enumerated sections in earlier parts of the Act which are enacted with respect to municipalities including Sec. 22 shall *mutatis mutandis* apply to a company. This Sec. 22, which in the case of municipalities to which it primarily relates is an enabling section giving them their power to contract to supply electricity, the Court of Appeal has held to become, when applied to Appellant, a restricting and negative provision imposing a limitation upon the powers to contract expressly and independently given the Appellant by The Companies Act and by its Letters Patent.

21. It is submitted, with respect, that upon well established principles of interpretation this is not the effect of The Public Utilities Act.



RECORD  
 Dr. Foster's  
 Case (1615)  
 6 Coke R. 107

The true intent and purpose of Sec. 22 is not to impose restrictions upon municipalities to prevent them making contracts for a period exceeding ten years but to enable them to contract for that period. There is nothing in the limited power to contract set forth in Sec. 22 of The Public Utilities Act repugnant to the broader powers to contract expressly conferred upon Appellant by its Letters Patent and by the Companies Act. There may well be public utility companies operating in Ontario, incorporated otherwise than by Letters Patent under The Ontario Companies Act, to whose powers Sec. 22 of The Public Utilities Act adds something. Sec. 22 is a general enabling provision intended to apply as such to all companies, however incorporated, and it is not proper in the case of a particular company which has been given broader powers independently, to convert it into a disabling provision. 10

22. With respect to Respondents' contention that the contract came to an end when it sold its property and that therefore there is no breach of contract, it is submitted that this is met by the express terms of the contract. It contains in Clause 11, an express provision for termination by the parties and thereby excludes any implied right to terminate. The period of the contract, that is the mining life of the property, had not expired. Whatever might have been arguable as to the effect of its suspension of operations for lack of funds in May, 1932, the Respondent Company definitely recognized the contract as still continuing in May, 1933, when it had the power turned on for Noranda Mines Limited and in August, 1934, when it wrote Appellant instructing it to deliver power to the property for the use of its agent, the Sylvanite Company, for the purpose of mining work on the property. Mining work on the property has continued ever since. Appellant acted most reasonably by offering, as soon as it was informed of the possibility of a sale of the property, to concur in an assignment of the power contract to the new company. Thereafter the steps taken by the Respondent Company were at its own risk and have resulted in its repudiation of the contract for which it has been held liable. Action was not brought until Respondents had made it necessary for Appellant to finally decide either to abandon its claim or to sue. Whether the sale of the property without an acceptance by the purchaser of an assignment of the power contract was under all the circumstances in itself a breach of the express or implied terms of the contract it is not important to determine. The repudiation found by the Court of Appeal fully supports the claim. 20 30

p. 108—1. 30

p. 106—1. 31

23. The objection of Respondents that the claim is not one entitled to rank in the winding-up is adequately dealt with in the reasons for judgment of the Court of Appeal. Whatever may be the merits of the decisions rendered in cases under The Assignments and Preferences Act relied upon by Respondents which place a strict and narrow meaning upon the word "debt" used in that Act they cannot limit the proper meaning of the words "all its liabilities" used in the winding-up sections of The Ontario Companies Act. Moreover there is ground for thinking 40

that the Legislature may have considered it proper to make a difference where in the case of The Assignments and Preferences Act there is no discharge of the debtor while in the winding-up of a company it disappears.

24. Appellant submits that the Judgment of the Court of Appeal for Ontario is wrong in so far as it restricts the obligation of the Respondent Company under the Power Contract to a time not after the 30th day of December, 1941, for the following

**REASONS**

- 10 (1). Because Appellant's power to contract is not restricted to a period not exceeding ten years.
- (2). Because Appellant had under its Letters Patent and under The Ontario Companies Act power to contract for the full period of the mining life of the property in question and did so contract.
- (3). Because the power of Appellant to contract is not restricted nor limited by Section 22 of The Public Utilities Act.

25. And Appellant submits that in all other respects the Judgment of the Court of Appeal is right and that the Judgment of the learned trial Judge was wrong for the following

**REASONS**

- 20 (1). Because the contract was not terminated by the sale by Respondent Company of its mining lands.
- (2). Because the Respondent Company still remained bound by its agreement that during the continuance of the contract no system of electricity other than that furnished by Appellant should be used in the premises.
- (3). Because the Respondent Company repudiated the obligation of the contract.
- 30 (4). Because the Respondent Liquidator refused to allow Appellant's claim and required action to be brought.
- (5). Because Appellant's claim is a proper claim and one that is entitled to rank in the winding-up for the damages that may be assessed under the Judgment.

R. S. ROBERTSON  
of Counsel for Appellant  
NORTHERN ONTARIO POWER  
COMPANY LIMITED  
Appellant in the first  
Appeal and Respondent in the  
Cross-Appeal.

## APPENDIX

Extracts from The Public Utilities Act being Ch. 249 of the Revised Statutes of Ontario, 1927, printed for convenience of reference

### PART I.

#### MUNICIPAL WATERWORKS

Power to lay down pipes, etc.

5. For the purpose of distributing the water the corporation may sink and lay down pipes, tanks, reservoirs, and other conveniences, and may from time to time alter their location or construction as the corporation may deem advisable. R.S.O. 1914, c. 204, s. 6. 10

Service pipes.

6. (1) The service pipes shall be laid down from the main pipe to the line of the highway by the corporation, and the corporation shall be responsible for keeping the same in repair.

Laying of, from line of street, to wall of building.

(2) Where a vacant space intervenes between the outer line of a highway and the wall of a building or other place into which the water is to be taken, the corporation may, with the consent of the owner, lay the service pipe across such vacant space to the interior face of the outer wall and charge the cost thereof to the owner of the premises, or the owner may himself lay the service pipe, if it is done to the satisfaction of the corporation. 20

Expenses of laying.

(3) The expense incidental to the laying and repairing of service pipes if laid or repaired by the corporation, except the repairing of the service pipes from the main pipe to the line of a highway, or of superintending the laying or repairing of the same, if laid or repaired by any other person, shall be payable by the owner to the corporation on demand, and if not so paid may be collected in the same manner as water rates.

Expenses of superintending.

(4) The expense of superintending the laying or repairing of a service pipe shall not exceed one dollar. R.S.O. 1914, c. 204, s. 7.

Service pipe to be under control of corporation.

7. (1) The service pipes from the line of a highway to the interior face of the outer wall of the building supplied, together with all branches, couplings, stopcocks and apparatus placed therein by the corporation shall be under its control, and if any damage is done to that portion of the service pipe or its fittings the owner or occupant of the building shall forthwith repair the same to the satisfaction of the corporation, and, in default of his so doing, whether notified or not, the corporation may enter upon the land where the service pipe is and repair the same, and charge the cost thereof to the owner or occupant of the premises, and the same may be collected in the same manner as water rates. 30

Prohibition as to using stopcock.

(2) The stopcock placed by the corporation inside the wall of the building shall not be used by the water taker, except in case of accident, 40

or for the protection of the building or the pipe and to prevent the flooding of the premises.

(3) Persons supplied with water by the corporation may be required to place only such taps for drawing and shutting off the water as are approved of by the corporation. R.S.O. 1914, c. 204, s. 8. Approval of taps by corporation.

9. (1) The corporation of every municipality having a system of waterworks shall supply water at all times to all public institutions situate therein and belonging to or maintained by the Province at such rents, rates or prices as may be fixed by by-law of the corporation, but not exceeding those charged to manufacturers. Rates at which water to be supplied to provincial institutions.

(2) For every contravention of subsection 1, the corporation shall incur a penalty not exceeding \$500, recoverable by action at the suit of the Crown. R.S.O. 1914, c. 204, s. 10. Penalty.

10. The corporation shall not be liable for damages caused by the breaking of any service pipe or attachment, or for shutting off of water to repair or to tap mains, if reasonable notice of the intention to shut off the water is given. R.S.O. 1914, c. 204, s. 11. Non-liability for breakage or stoppage.

11. The corporation may supply water upon special terms and for such term of years as may be agreed on to owners or occupants of land beyond the limits of the municipality, and may exercise all other powers necessary for carrying out any agreement for that purpose, and may also make any agreement which may be deemed expedient for the supply of water for any term not exceeding five years to any railway company, or manufactory, or to builders; but where water is to be supplied for any of the purposes mentioned in this section in another municipality, the corporation of which possesses waterworks, no pipes for that purpose shall be carried in, upon, through, over or under any highway, lane, or public communication within such other municipality without the consent of the council thereof. R.S.O. 1914, c. 204, s. 12. Power to supply water outside of municipality.  
Proviso.

30 13. Every person who

- (a) wilfully hinders or interrupts, or causes or procures to be hindered or interrupted the corporation, or any of its officers, contractors, agents, servants or workmen, in the exercise of any of the powers conferred by this Act;
  - (b) wilfully lets off or discharges water so that the same runs waste, or useless out of the works;
  - (c) being a tenant, occupant, or inmate of any house, building or other place supplied with water from the waterworks, lends, sells, or disposes of the water, gives it away, permits it to be taken or carried away, uses or applies it to the use or benefit of another, or to any use and benefit other than his own, increases the supply of water agreed for, or improperly wastes the water;
- 40

Prohibitions and penalties.

- (d) without lawful authority wilfully opens or closes any hydrant, or obstructs the free access to any hydrant, stopcock, chamber, pipe, or hydrant-chamber, by placing on it any building material, rubbish, or other obstruction;
- (e) throws or deposits any injurious, noisome or offensive matter into the water or waterworks, or upon the ice, if the water is frozen, or in any way fouls the water or commits any wilful damage, or injury to the works, pipes, or water, or encourages the same to be done;
- (f) wilfully alters any meter placed upon any service pipe or 10 connected therewith, within or without any building or other place, so as to lessen or alter the amount of water registered;
- (g) lays or causes to be laid any pipe or main to communicate with any pipe or main of the waterworks, or in any way obtains or uses the water without the consent of the corporation; or
- (h) washes or cleanses cloth, wool, leather, skin or animals, or places any noisome or offensive thing, or conveys, casts, throws or puts any filth, dirt, dead carcase or other noisome or offensive thing, or bathes in any lake, river, pond, creek, 20 spring, source or fountain which is the source of supply for such waterworks within such area as may be fixed and defined by order of the Department of Health, or causes, permits or suffers, the water of any sink, sewer or drain to run or be conveyed into the same, or causes any other thing to be done whereby the water therein may be in any way tainted or fouled,

shall for every such offence incur a penalty not exceeding \$20 or may be imprisoned, without the option of a fine, for any term not exceeding one month. R.S.O. 1914, c. 204, s. 14; 1920, c. 71, s. 1. 30

PART II.

MUNICIPAL PUBLIC UTILITY WORKS OTHER THAN WATERWORKS.

16. In this Part,

“Public Utility” shall mean artificial and natural gas, electrical power or energy, steam and hot water. R.S.O. 1914, c. 204, s. 17.

17. (1) The corporation of every urban municipality may manufacture, procure, produce and supply for its own use and the use of the inhabitants of the municipality any public utility for any purpose for which the same may be used; and for such purposes may purchase, construct, improve, extend, maintain and operate any works which may be deemed requisite, and may acquire any patent or other right for the manufacture or production of such public utility, and may also purchase, 40

Interpre-  
tation.

“Public  
Utility”.

Powers of  
corporations  
to produce and  
supply public  
utilities.

supply, sell or lease fittings, machines, apparatus, meters, or other things for any of such purposes.

(2) The corporation may sell and dispose of coke, tar, and every other by-product or residuum obtained in or from its works, and any surplus coal it may have on hand. May sell coke, etc.

(3) The corporation may purchase or rent such land and buildings as may be deemed necessary for the purpose of its undertaking. May rent or purchase lands.  
R.S.O. 1914, c. 204, s. 18.

19. The corporation, for the purpose of laying down, taking up, 10 examining, and keeping in repair the pipes, wires, and rods used for the purpose of its undertaking, may break up, dig, and trench in, upon, and under the highways, lanes, and other public communications, or, with the consent of the owner, in, upon and under any private property; or may, upon poles or otherwise, conduct such wires and rods along, over and across such highways, lanes, and other public communications, or, with the consent of the owner, upon private property. R.S.O. 1914, c. 204, s. 20. Corporation may break up streets, etc.

20. (1) The corporation may carry pipes, wires or rods, to any part of any building within the municipality parts of which belong to different owners, or are in possession of different tenants or occupants, passing 20 over the property of any owner, or of any tenant or occupant, to convey the public utility to the part of the building to which it is to be conveyed. Corporation may carry pipes, wires, and rods through parts of buildings to supply other parts.

(2) Such pipes, wires or rods shall be carried up and attached to the outside of the building unless consent is obtained to carry the same in the inside. R.S.O. 1914, c. 204, s. 21. Method.

21. The corporation may also break up and uplift all passages common to neighbouring owners, tenants, or occupants, and dig or cut trenches therein, for the purpose of laying down pipes, wires, or rods, or taking up, examining or repairing the same, doing as little damage as may be in the execution of the powers hereby conferred, and restoring 30 such passages to their original condition without unnecessary delay. R.S.O. 1914, c. 204, s. 22. May also break up passages common to neighbouring proprietors.

22. The corporation may, from time to time and upon such terms as may be deemed advisable, enter into contracts for the supply of a public utility to any person for any period not exceeding ten years. R.S.O. 1914, c. 204, s. 23. Contracts for supply of public utility for ten years.

## PART V.

### ALL COMPANY PUBLIC UTILITIES.

59. The provisions of sections 5, 6 and 7, except as to the manner of recovering charges and expenses, sections 9, 10 and 11 as to making 40 agreements for a supply of water to a railway company, manufactory or builder, and sections 13, 16, 17, 19, 20, 21 and 22, shall, *mutatis mutandis*, apply to a company. R.S.O. 1914, c. 204, s. 58. General powers.