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*May 13.

*Dec. 9.

THE CORPORATION OF THE CITY OF VANCOUVER ..... } APPELLANT;

AND

WILLIAM BAILEY ....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

Construction of statute—Special Act—Repeal of by general Act—Repeal by implication.

A general later statute, (and *a fortiori* a statute passed at the same time) does not abrogate an earlier special Act by mere implication.

The law does not allow an interpretation that would have the effect of revoking or altering a special enactment by the construction of general words, where the terms of the special enactment may have their proper operation without such interpretation.

APPEAL from a decision of the Supreme Court of British Columbia reversing the judgment of Mr. Justice Drake and quashing a by-law of the Corporation of the City of Vancouver which authorized a sum of money to be raised by debentures for supplying electric light in the city.

The by-law was voted on by the ratepayers of the City of Vancouver on 3rd October, 1894, and reconsidered and finally passed by the council on 8th October, 1894.

At the polling a majority of the ratepayers voted in favour of the by-law, but the total votes cast for the by-law did not amount to three-fifths of the number of votes polled.

The special Act incorporating the City of Vancouver (the "Vancouver Incorporation Act, 1886,") sub-sec. 8 of section 127, was amended by the British

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

Columbia statutes 1893, ch. 63, s. 7, so as to read as follows:

"Upon receiving the returns for the several wards the city clerk shall add up the names; and if it shall appear from such returns that the total number of votes cast for such by-law be three-fifths of the votes polled, the city clerk shall forthwith declare such by-law carried, otherwise he will declare the by-law lost."

Prior to the passing of the above amendment a majority of votes polled had been sufficient to carry such a by-law, but in 1893 the change was made by the provincial legislature on petition of the city council, the original Act being amended by striking out the words "a majority" in the subsection referred to and inserting the words "three-fifths" in lieu thereof.

During the same session of the British Columbia Legislature (1893) an Act was passed amending the "Municipal Act, 1892," which is a general Act applying to cities and other municipalities indiscriminately, and contains provisions granting to municipal councils powers *inter alia* to pass by-laws with the assent of the electors of a nature similar to the by-law in question. Sec. 33 of this statute (ch. 30 of 1893) amended sec. 119 of the "Municipal Act, 1892," so as to read as follows:

"No by-law to which the assent of the electors is necessary before the final passing thereof, shall be valid or of any effect unless the vote polled in favour thereof be that of a majority of the persons who shall vote upon such by-law.

This amendment changed the former statute by substituting the words "a majority" instead of the words "at least three-fifths" which were struck out of the clause previously in force.

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The 104th section of the "Municipal Act, 1892," was amended by adding a new subsection conferring the powers granted by this section and its subsections upon the municipal councils of the cities of Vancouver and New Westminster, notwithstanding anything in the special Acts relating to said cities inconsistent with or repugnant to the provisions of the said subsections.

The 4th section of the "Municipal Act, 1892," limits its application to the City of Vancouver, as follows: "This Act shall be construed as applying to the cities of New Westminster and of Vancouver only so far as it is not repugnant to or inconsistent with their Acts of incorporation, or any amendments thereto, or any Acts or proclamations applicable to either of them, but nothing contained in this section shall be construed into restricting or modifying the power of the Executive Council or the Legislative Assembly with reference to those municipalities or the Acts relating to them," &c., &c.

The appellants contended that the by-law required only a majority vote and that the "Municipal Act, 1892," as amended in 1893, overruled the provisions as to a three-fifths vote contained in sub-section 8, of sec. 127 of the "Vancouver Incorporation Act" as amended by sec. 7 of ch. 63 of 1893.

McCarthy Q.C. for the appellant.

Robinson Q.C. for the respondent.

THE CHIEF JUSTICE.—I agree with the judgment prepared by Mr. Justice Sedgewick in this case.

TASCHEREAU J.—I would dismiss this appeal. Mr. Justice McCreight's reasoning in the court below seems to me unanswerable.

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GWYNNE J.—I am of opinion that this appeal must be dismissed for the reasons stated in the judgment of Mr. Justice McCreight. The language of the legislature in respect of the matter under consideration is certainly very equivocal, but the true solution of the ambiguity created by that language is to hold that the action of the city of Vancouver as to the obtaining the assent of the ratepayers to by-laws is governed by sec. 7 of ch. 63 of the Acts of 1893 of the province, and that therefore the assent of the majority of three-fifths of the votes thereon is necessary to the validity of the by-law in question.

SEDGEWICK J. —This is a proceeding instituted in the Supreme Court of British Columbia to quash a certain by-law, by which the mayor of the city of Vancouver was authorized to raise a certain sum of money for the purpose of constructing and operating a system of electric light. The ground upon which it was sought to have the by-law declared invalid was, that it had not received the assent of three-fifths, but only of a majority, of the ratepayers of the city. Mr. Justice Drake, before whom the matter first came, refused to quash. Upon appeal to the Divisional Court his judgment was reversed, and it is from that judgment this appeal is taken.

The city of Vancouver was incorporated by the Vancouver Incorporation Act, 1886. Subsection 8 of section 127 of that Act enacted, in reference to proceedings for the purpose of giving effect to money by-laws of the city, that:

> Upon receiving the returns for the several wards the city clerk shall add up the names, and if it shall appear from such returns that the total number of votes cast for such by-law be a majority of the votes polled, the city clerk shall forthwith declare such by-law carried; otherwise he will declare the by-law lost.

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By an Act passed in 1893 this section was amended by substituting for the words "a majority" the words "three-fifths." It would follow, therefore, that if there is no other statute law upon the subject the judgment of the court appealed from is right, and that the by-law should be quashed inasmuch as it did not receive three-fifths of the votes polled in its favour when it was submitted to the ratepayers of Vancouver. Now, upon what additional statutes is based the contention that the by-law in question only required a majority of the votes polled? The Municipal Act of 1892, which is a general Municipal Act applying to the city of Vancouver as well as to other cities and townships indiscriminately, by section 104 gave municipal councils power to make by-laws for the constructing and operating of works for supplying the municipality with electric light. Section 119 provided that the by-law, in order to be valid, should receive the votes of three-fifths of the persons who voted upon it, and it was by virtue of the general provisions of this Act that the city of Vancouver purported to enact the by-law in question. Now, in 1893, section 119, just cited, was amended by substituting for the words "three-fifths" the words "a majority," so that this somewhat unusual event, unexampled in the history of legislation, occurred. Prior to 1893 a by-law in Vancouver, enacted for electric light purposes, required the assent of a majority of the voters, whereas a similar by-law elsewhere in the province required the assent of three-fifths of the voters, and that, upon the passing of the two Acts of 1893, in Vancouver the assent of three-fifths was necessary, whereas elsewhere in the province only a majority was necessary.

The contention of the appellants is that the Act of 1893, amending the general Municipal Act, controls and in effect absolutely nullifies the Vancouver Act,

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relying on section 21 of the Municipal Act, 1892, Amendment Act, 1893:

> The powers granted by this section 104, and its subsections, are hereby conferred upon the municipal councils of the cities of Vancouver and New Westminster, and the said section and its subsections shall apply to the said cities, notwithstanding anything in the special Acts relating to the said cities which may be inconsistent with, or repugnant to, the provisions of the said subsections.

The two Acts of 1893, above referred to, ch. 30 and ch. 63, were both passed at the same time, the 12th April of that year, and the sole question to be considered is whether the section just quoted must be read as in effect repealing section 7 of chapter 63. In my view every effort must be made to prevent such a result, and I think in the present case that effort was successfully made in the Divisional Court, before which this appeal was heard. Now, it is clear from the Amending Act of 1893, in relation to Vancouver, that it was passed at the instance and upon the petition of the municipality itself. The City Council had apparently, in specific terms, requested the legislature to enact that, in order to the validity of the money by-law, it should receive the assent of three-fifths of the voters interested as theretofore. The legislature had apparently acceded to the request of the city, and had, in the exact terms of their request, enacted the amending statute. Is that amending statute to have no effect because, in a general Act passed in the same session, made applicable throughout the province, there was an express provision that by-laws of that character should require the assent of only a majority of the voters. I cannot hold that such an intent can be imputed to the legislature. The principle contained in the maxim *generalia specialibus non derogant*, forcibly applies here. A general later statute (and *a fortiori* a statute passed at the same time), does not abrogate an earlier special one by mere implication;

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the law does not allow an interpretation that would have the effect of revoking or altering, by the construction of general words, any particular statute where the words may have their proper operation without it. As Maxwell says (1):

> Having already given its attention to the particular subject, and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless that intention is manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act, and that the general one was intended to embrace the special cases within the previous one, or something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. The general statute is read as silently excluding from its operation the cases which have been provided for by the special one.

Roberts v. *Bury Commissioners* (2); *Thorpe* v. *Adams* (3). For this reason I am of opinion that the by-law in question, not having been carried as required by the specific provisions of the Vancouver charter, as amended by the Act of 1893, is invalid, and that the judgment of the court appealed from must be sustained.

The appeal should be dismissed with costs.

KING J. concurred.

Appeal dismissed with costs.

Solicitor for the appellant: *A. St. G. Hammersley.*

Solicitor for the respondent: *E. P. Davis.*

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(1) 2 ed. p. 213.

(2) L.R. 4 C.P. 760.

(3) L.R. 6 C.P. 125.