The clause of the order set out above meant no more than that such mains as the Commissioners might deem necessary should be laid down. When they were laid, the inhabitants of the annexed district acquired the same rights (if any) as were possessed by the inhabitants of other parts of the city in which there were water-mains, to compel the furnishing of water, but no higher or other rights; and it was not suggested that any inhabitant of one of the older parts of the city would have a right of action against the Commission for damages occasioned by a failure of the supply occurring without the fault of the Commission.

The claim against the city corporation also failed. Even if the order of the Railway and Municipal Board, which was an order that the Commission should lay down certain mains, could be treated as casting some obligation upon the city corporation to compel the Commission, its servant, to do the work commanded, the claim against the city corporation, based upon the theory that the command was to maintain an adequate supply of water at all times and in all circumstances, failed for the reason given in the discussion of the similar claim made against the Commission.

The alternative claim, based upon negligence, is answered by Gagnon v. Town of Haileybury (1913), 5 O.W.N. 435, in which it is laid down that, even when a municipality sees fit to establish a fire brigade, it does not come under any legal obligation to have the brigade vigilant in protecting the property of ratepayers against fire. Here the allegation was not that the firemen did anything which they ought not to have done; the only possible claim against them was that they did not act as promptly as they ought to have acted in notifying the men at the pumping station that water was required. There may have been a little unnecessary delay in sending the message, but the Haileybury case shewed that, even if that delay was the cause of the damage, it did not give rise to a right of action.

Action dismissed with costs.