

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Kingston Light, Heat, and Power Company v. The Corporation of the City of Kingston, from the Court of Appeal for Ontario ; delivered the 20th April 1904.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

Their Lordships entertain no doubt at all that the questions raised by this Appeal have been rightly decided by the learned Judges in Ontario.

It appears to their Lordships, as it did to the Courts below, that the terms of the Agreement of 14th July 1896 are conclusive against the Appellants' claim to receive compensation for the franchise and goodwill. The general word "property," on which the Appellants' argument turns, is limited, as are the other substantives with which it is coupled, viz., "works," "plant," and "appliances," by the words which follow, "used for light, heat, and power purposes." It is impossible to suppose that the ideas of franchise and goodwill are meant to be included in this description, which is one of physical objects. But the matter is made still clearer by what follows. The 15th Article of the same Agreement shows the true position which the franchise

held in the conception of the parties to the Agreement, for under it, in the event of the Corporation taking over the works under the Agreement, "all their . . . franchises" are to be surrendered to the Corporation.

The other claim, for 10 per cent., is untenable; for this is not a case of expropriation, but of transfer of property under voluntary agreement.

The grounds of judgment thus adopted by their Lordships are those of the Court of Appeal, and are so well stated in the Judgment of that Court that it is unnecessary to amplify them.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed. The Appellants will pay the costs of it.

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