

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Winnipeg Electric Railway Company v. The City of Winnipeg; and on the Appeal of The City of Winnipeg v. The Winnipeg Electric Railway Company, from the Court of Appeal for the Province of Manitoba; delivered the 21st February 1912.

PRESENT AT THE HEARING :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

LORD ROBSON.

[DELIVERED BY LORD SHAW.]

The Appellants are the successors, by amalgamation, purchase, or agreement, of certain Companies hereinafter referred to, the general object of whose constitution was for the supply of light, heat, and power in and about the City of Winnipeg by gas or by electricity. This is stating the position of the Appellants in the most general terms. It was not denied by the Counsel for the Respondents that the powers, rights, privileges, and franchises belonging to the respective Companies who were predecessors of the Appellants have been taken up and carried forward by reason of the various transactions of amalgamation and otherwise, and are now vested in the Appellants. As, however, a most minute criticism has been made of the powers

which are now sought to be exercised by the Appellants, it is necessary to state in detail what these were, and what were the various steps by which the present situation has been reached.

In the year 1880 the Manitoba Electric and Gas Light Company was incorporated by an Act of the Legislature of Manitoba (43 Vict., cap. 36), and by Section 23 of the Statute the Company was empowered to supply light and heat in Manitoba by gas, electricity, or other means. While the area of the operations of the Company was not limited to the City of Winnipeg, the authority, as is seen, did not extend to the supply of power. By various sections of the Statute the Company was given large powers for the acquisition of property for their purposes, and for the construction, erection, and use of their works, and also "to alienate any of their personal property, lands, tenements, rights, and franchises, or any interest therein, as they should see fit." Authority was given to "break up, dig, and trench so much and so many of the public streets, roads, squares, highways, and other public places in any municipality or other portion of the province as may at any time be necessary or required for laying down or erecting the mains, pipes, or wires, to conduct the gas or electricity from the works of the said Company to the customers thereof," or for taking up, altering, or repairing the same.

To save coming back upon it, there are two observations which may be made upon this, which is the first of these incorporating Statutes. In the first place, their Lordships do not feel disposed to assent to the proposition that power to do certain things "for laying down or erecting the mains, pipes, or wires," is to be read as a power which did not extend to the putting up of

poles upon which the wires could hang, and they are not surprised to learn that during the thirty years which have elapsed since the passing of the Act such a point was never taken. Language of this kind must be reasonably construed: and a perusal of other sections of the Statute and of other expressions occurring in the course of the Act, shows quite clearly that the accompaniment of poles for the wiring is simply what is implied in any reasonable reading of the powers to be exercised by the Company.

In the second place, the 23rd, 25th, and 29th sections of this Act of 1880 appear by their provisions to present a most reasonable view of the natural relations which exist on the one hand between a Municipality whose streets are used in the course of the operations for the supply of gas and electrical power and, on the other, of the Company furnishing the supply. Under the 25th section it is provided that the Company shall so construct and locate their works and all apparatus connected therewith as not to endanger the public health, convenience, or safety, the whole works, &c., to be open to visit and inspection by the Municipality at all reasonable times, and the Company being bound to obey "all just and reasonable orders and directions they shall receive." Section 29 also makes fairly clear what are the rights and duties of Company and Municipality respectively, by providing that, when streets are broken up, wires erected, and so forth, the Company is to do no unnecessary damage, and take care, as far as may be, to preserve free passage through the said streets, and make such openings as the Municipality or the Governor in Council, as the case may be, shall permit and point out, and place such guards, lamps, &c., and taking such precautions as may be necessary for

the prevention of accidents. There follow provisions for the finishing and replacing the work and restoration of the streets. It is provided further that, for the purpose of laying mains, it shall not be lawful for the Company, except with the written consent of the engineer of the Municipality, to break up or interfere with the streets until after thirty days' notice in writing, but for the purpose of laying or erecting service pipes or wires, or for repairing such, this may be done without any notice.

These provisions have been referred to because, as already indicated, they point to such a regulation and an accommodation of the private interests of the Company with the public interests of the inhabitants as seems, if reasonably acted upon, adequate to protect both, and to prevent frictions or collision. The language of these provisions not unnaturally reappears in the agreements between the City and the Companies after referred to.

In this year, 1889, if there ever could have been any question as to whether the right to put up poles was included in the Manitoba Electric and Gas Company's power that question was set at rest. Reference was frequently made to an agreement of date the 15th July 1889 between the City of Winnipeg and the Manitoba Electric and Gas Light Company. It was thereby agreed that the City should grant its permits for poles under certain conditions. One of these was that the Company should give to the City the right to use free of charge such poles as the Council might require for light and power, and for the stringing of wires for the fire alarm system, &c. Notice is taken by this time of the Electric Light and Power Company of Winnipeg, of which nothing further is heard, and of the North-West Electric Company, incorporated a month before, and to be hereinafter referred to, and it is

provided that the Manitoba Electric and Gas Company shall give to these other companies "the right to string wires upon their poles for the purpose of light (arc, incandescent, or otherwise) and power distribution, upon payment by them of a fair annual rental." So far as the City is concerned it thus appears to be clear (1) that the limitation of the Manitoba Company to light and heat was not acted upon, but on the contrary, (2) provision was made for communication of power to the City over the Company's poles, and (3) the use of these for power distribution by the newly formed Company was specially provided for.

Provisions are made for the issue of permits and for forfeiture in the case of the violation of any of the conditions. No suggestion of forfeiture in consequence of any such violation was made in this case. Thousands of permits have been issued, the whole of which, the Board was informed, were, with the exception of one, in the name of the Manitoba Gas Company. It should be further explained that it was provided by the Agreement that "wherever in this Agreement the Company is named or referred to it should be taken to mean and include, as well as the said Company, its successors and assigns, as fully and to all intents and purposes as if its successors and assigns were in each case specially mentioned."

In November of the same year 1889 another agreement was entered into between the City and the Manitoba Electric and Gas Light Company, under which arrangements were made, in consideration of the issue of permits to erect poles, for the furnishing of maps, and for other practical directions and requirements being made, and in particular for the Company leaving space for and providing "a top arm on each of their poles for the line of wires for civic purposes."

It is thus quite clear that by this time the system of the electric supply, in its widest sense, under which the requirements and conveniences of the City, as well as of the customers of the Company, were all provided for, was in full operation.

In June of this year 1889 the North-West Electric Company, Limited, was incorporated by Letters Patent under the Manitoba Joint Stock Companies Act, "for the purpose and with the object of acquiring, building, constructing, erecting, operating, and maintaining an electric lighting system or systems, electric street railways, electric motors, or other electrical power . . . in the various cities, towns, and villages, in the Province of Manitoba." The objects of the new Company were not limited to light and heat but they include, in short, everything within the widest range of an Electric Company's business. An amalgamation of this concern with the Manitoba Electric and Gas Light Company was possibly, and, it may be, manifestly, in contemplation. On the 23rd August the City agreed with the North-West Electric Company (then two months old) to give permits for the erection of poles on similar conditions to those granted to the Manitoba Electric and Gas Light Company in the previous month, namely, on the 15th July. It was provided that the new Company should give to the old, just as a month before it had been provided that the old Company should give to the new, the right to string wires upon their poles upon payment of a fair annual rental. In all this the City actively co-operated.

In 1892 a third company, called the Winnipeg Electric Street Railway Company, was incorporated. This was done by an Act of the Legislature of Manitoba (55 Vict., cap. 56). Authority was given to construct and operate a railway on the streets of the city and adjacent municipalities

and to exercise all powers set forth in a byelaw scheduled to the Act. The Company was also authorised to carry on the business of selling, licensing, and disposing of electric light, heat, or power, and was to have the right to erect all necessary "poles, wires, conduits, and appliances." The provisions of the byelaw, which contains a reference to the keeping of machinery and power houses within the city, will be afterwards referred to. This Company came into operation and erected and used poles for wires placed in the streets.

On the 4th January 1898 this Street Railway Company acquired by conveyance from the Manitoba Company all the assets of the latter, including "all franchises, rights, powers, &c." On the 9th June 1900 the Street Railway Company absorbed the second Company, namely, the North-West Company, taking over by purchase all its assets, including "all franchises, rights, powers, &c." None of these consolidations took place without the knowledge of the Municipality of the City of Winnipeg. On the contrary the City continued its co-operation, participating in the use of the plant and receiving supplies just as before.

In 1902 a fourth company, called the Winnipeg General Power Company, was incorporated by Act of the Legislature of Manitoba (1 & 2 Edward VII., cap. 75). It was given the fullest powers of carrying on the business of electricity "for the purpose of light, heat, or motive power, and any other purpose for which the same may be used," and to acquire, make or operate "all necessary works in Manitoba for the purpose aforesaid and for the utilisation, transmission, and supply of electricity, or water power, including poles, wires, pipes, conduits, and appliances of every kind necessary or advisable therefor, and which may, with the consent of the Council of any Muni-

“cipality affected be erected in or along any
“streets or highways in the Province of Mani-
“toba, subject to the provisions hereinafter
“contained.” By Section 9 it was provided that,
in the event of the Company and any Muni-
cipality failing to agree as to the terms of the
exercise of the franchise or rights, there should
be an appeal to the Lieutenant-Governor of
Manitoba, and by Section 18 it was provided
that the Company might enter into an agree-
ment with any other Company for amalgamation,
and the amalgamated Company should have
“all the rights of exercising the powers, privi-
“leges, and franchises of the Companies entering
“into such agreement or a party to such sale
“or purchase.”

The position of the General Power Com-
pany, accordingly, was this. It had unlimited
powers with regard to the electrical business.
In the event of a Municipality failing to agree
to such details as the erection of poles for wires,
there was an appeal to the Lieutenant-Governor,
and it was specially provided that any amalga-
mation of the Company with existing Companies
should give the amalgamation the powers of
the Companies absorbed. This must, of course,
be read as in addition to, and not in derogation
of, the powers conferred upon itself.

The Street Railway Company had not yet
joined the combination. But in the year 1904
the Street Railway Company and the Power
Company amalgamated by agreement, and the
amalgamation was ratified by the Legislature in
4 & 5 Edward VII., cap. 72, and 9 Edward VII.,
cap. 108, of the Statutes of Manitoba. The
validity of any of the amalgamations referred
to has in no particular been questioned in the
present case.

The amalgamated Company was named the
Winnipeg Electric Railway Company, and they
are the Appellants herein. They, in point of

fact, are accordingly the successors by amalgamation of the Electric Street Railway Company and the Winnipeg General Power Company, and the successors by purchase of the Manitoba Electric and Gas Light Company and the North-West Electric Company. The details of all these transactions need not be further entered upon, but the result is as stated.

It may now be mentioned that the Power Company (incorporated in 1902) had, prior to the agreement of amalgamation, commenced the erection of large and important works at Lac du Bonnet, some sixty or seventy miles from the City of Winnipeg, for the purpose of generating electricity by water power. These operations were important and involved large expenditure, and it is manifest that the transmission of power to communities like the City of Winnipeg,—power supplied by nature and converted and conveyed by suitable apparatus,—was not unlikely to be put to the best use of, and at the least cost to, the consumer, if it could be linked up with the system or systems in operation within the Municipality so as to reduce to a minimum all interference with the streets or highways, and to take advantage of existing and available plant.

After an analysis of the statutes, agreements, &c., under which the Companies ultimately amalgamating were constituted, their Lordships are unable to discover anything forbidding or restricting the importation into the City of Winnipeg of power from outside its bounds. Such a restriction, which might seriously hamper the operations of the Company in conveying, for the use of consumers within the City, power which could be obtained from outside on easier terms than by manufacture inside, might be to the disadvantage of all parties,—producers and consumers,—and such a prohibition or limitation accordingly would not

be readily implied. In their Lordships' opinion, neither by implication nor expression, is there a prohibition or limitation of such a kind in this case. In the arguments presented for the City of Winnipeg, the argument upon this head was confined to the point of a restriction as to the construction, &c., of "power houses" within the City, the restriction being applicable to the case of the Street Railway Company as now to be mentioned.

The argument is that, although this restriction occurs in the case of the Street Railway Company alone, it must be read into a restriction of all the powers of all the other Companies of which the amalgamation was composed, and that the wider and unlimited powers of the other Companies amalgamated are restricted by the clause as to the Street Railway. This contention is somewhat singular, and does not appear to their Lordships to be justified by the language of the statutes, agreements, or other documents founded on. This might be sufficient for determination of the point. But in view of the arguments submitted it may be right to quote the exact terms of the restriction itself in the case of the Street Railway Company. It occurs in the byelaw of the City of Winnipeg, which is confirmed by the Act to incorporate the Winnipeg Electric Street Railway Company (55 Vict., cap. 56), assented to on the 20th April 1892. Section 11 of the byelaw is as follows: "The railway property of
 " all kinds, including cars, equipment, power
 " house, engines, dynamos, and appliances of
 " all kinds relating to the railway
 " shall be liable to taxation The
 " Company shall place and keep within the
 " City limits all their engines, machinery,
 " power houses, repair shops, and construction
 " shops (if any)." It may be observed that this

section is primarily a section dealing with taxation. Neither it nor any part of the byelaw or the Act of the Legislature prohibits the Company from purchasing power or entering into a transaction of that kind which might prove highly advantageous and economical. Nor, in the second place, with regard to "power houses," upon which the argument has dwelt, does it oblige the Company to erect such power houses, but what the clause does do is to say that, if these are required, they shall be kept within the City limits and be liable to the City taxation. In the opinion of their Lordships, it is not legitimate to convert a section of this character into a restriction upon the Winnipeg Electric Street Railway Company of the importation of power, or a compulsitor upon that Company to be its own manufacturer of power within the City bounds. Such a restriction might prove, and the figures laid before the Board and admitted by both sides, seem to show that that was the case here, highly detrimental to the interests both of the Company and the community.

On this part of the case, however, there remains a further point to which in view of the arguments so anxiously submitted to the Board, it is, in the opinion of their Lordships, expedient to deal. The point is this; apart altogether from the general argument against prohibition which has been tabled, how do the facts stand as to the "houses," apparatus, &c., for the conversion of power imported into the City; and do not these reasonably and adequately satisfy the provision as to "power houses" under the Act? Their Lordships venture to refer to the lucid narrative in the Judgment of Mr. Justice Mathers upon this subject:—

"Prior to amalgamation the Power Company had commenced the construction of a hydro-electric power plant at Lac du Bonnet on the Winnipeg River, about sixty-four miles from Winnipeg, and had expended a large

“ sum of money upon the same. After amalgamation the
 “ amalgamated Company completed, at an additional
 “ expense of several millions of dollars, this work, including
 “ the erection of a transmission line, which crossed the
 “ Red River into the City of Winnipeg to a power house or
 “ sub-station (hereinafter referred to as the Mill Street
 “ sub-station) erected by the Defendant Company on
 “ property it then owned abutting on the Red River.

“ In this sub-station there is transforming apparatus for
 “ the purpose of reducing the voltage of the current brought
 “ over the transmission line, and also a generating plant for
 “ the purpose of generating direct current. The direct
 “ current generators are operated by a motor driven by the
 “ alternating current brought over the transmission line,
 “ and the direct current so generated is sent out of the Mill
 “ Street sub-station and is used for the purpose of propelling
 “ the street cars through the City of Winnipeg. . . .

“ In June 1906 the Defendants’ hydro-electric plant at
 “ Lac du Bonnet was completed, and on the 13th June the
 “ Defendants began to send current over the transmission
 “ wires to their Mill Street sub-station. It comes over the
 “ transmission wires at a voltage of about 55,000 volts, and
 “ so enters the sub-station. It then passes through a trans-
 “ former, which steps it down to about 2,200 volts. Part of
 “ this reduced current is used to drive direct current genera-
 “ tors which supply the current for the Defendants’ street
 “ railway system, and part of it is used for the purpose of
 “ their electric lighting system throughout the City, and for
 “ commercial power. It leaves the sub-station at 2,200
 “ volts, but at different points through the City it passes
 “ through further transformers which reduce it to 110 to
 “ 120 volts, which reduced current passes over secondary
 “ wires into the various buildings where light is used.”

In these circumstances, their Lordships are disposed to think that the language of the byelaw as to the Company keeping within the City limits their engines, machinery, power houses, &c., is amply satisfied by what has actually been done by the Appellant Company. Unless, in short, the language of this byelaw excludes the importation of power, it appears to be the case in fact that its language, as well as its spirit, have been complied with within the City limits.

Failing the case upon the power house, the City of Winnipeg, however, has presented another point, which is this: Assuming that there is no

restriction upon the importation of power from outside, still that power has to be linked up with the machinery for conversion, reduction of voltage, and transmission within the City, and for this purpose of connection six poles were required, and for the erection of these poles no authority was given. Whatever view may be entertained as to the taking of such a point, it turns out not to be in accord with the facts. The letters have been produced in the case, and the narrative given by Mr. Justice Mathers on the subject has not been controverted:—

“ In order that the current brought from Lac du Bonnet
 “ might be utilised for the purpose of operating the Defen-
 “ dants’ street car lines and their electric lighting and power
 “ systems it was necessary to erect six additional poles,
 “ three along the Thistle Street Lane from Victoria Street
 “ eastward, and three along Mill Street from Thistle Street
 “ Lane to the then existing line of the Defendants.

“ On 17th August 1905 Mr. Phillips, the Defendants’
 “ Manager, wrote to H. N. Ruttan, the City Engineer, the
 “ following letter:—‘ Dear Sir, Kindly grant permit to
 “ ‘ extend pole line on south side of Thistle Street Lane
 “ ‘ from end of present line east on Victoria Street, three
 “ ‘ poles east, and also on Mill Street, east side, from end of
 “ ‘ present line south to Thistle Lane, three poles.’

“ That letter, as well as the other letters in which
 “ applications for permits were made, was headed,
 “ ‘ Winnipeg Electric Railway Company,’ and underneath,
 “ ‘ operating Winnipeg Street Railway; Manitoba Electric
 “ ‘ and Gas Light Company; North-West Electric Com-
 “ ‘ pany; and Winnipeg General Power Company.’ In
 “ the ordinary way this request for permit was referred to
 “ the City electrician. His duty was to ascertain whether
 “ or not the portion of the street intended to be occupied
 “ by the proposed poles was required for any City poles,
 “ and on the electrician replying that the erection of these
 “ poles would not interfere with the City, a permit No. 3545
 “ was issued by S. H. Reynolds, the Assistant City
 “ Engineer, pursuant to a general practice that had pre-
 “ vailed in the office, in the following terms: ‘ Manitoba
 “ ‘ Electric and Gas Light Company is hereby permitted to
 “ ‘ erect poles. (Here follows a description of several
 “ ‘ locations where poles may be erected, having no reference
 “ ‘ to this action, and continues)—Also to extend poles line
 “ ‘ on south side of Thistle Street Lane from end of present

“ ‘ line east of Victoria Street three poles east ; also on Mill
 “ ‘ Street, east side from end of present line south to Thistle
 “ ‘ Lane, three poles, under the requirements of the City
 “ ‘ byelaws and the regulations of the Committee on Works
 “ ‘ and any special agreements relating to this matter’ ”

It thus appears to be undoubted that, so far as permits were concerned, these were obtained from the City authorities. In this situation, what is the attitude which the Respondents have assumed ? They have challenged their own permits—not only these six permits, but the thousands of others—as having been granted without a byelaw. Their Lordships do not enter upon the topic at length because, in their opinion, the granting of permits did not require a byelaw in each case, but was an executive act to carry out a general byelaw such as is admitted to have been quite properly passed. Otherwise business could not be carried on, and at any moment the authorities or an official of the City could bring the entire operations, which have involved great capital expenditure, to a deadlock, bringing upon all parties sudden and great inconvenience and loss.

Furthermore, their Lordships do not leave out of view the fact that, after the amalgamation of the Appellant Company was completed, and after the large expenditure for the transmission of power to the Red River and the bridging of that river to the City had been incurred, and with full knowledge on the part of everybody of the meaning and effect of these great operations :---

“ The City recognised the continued existence of its
 “ contract with them by passing byelaws on the 11th
 “ February 1907, and on the 4th March 1907, fixing a
 “ schedule pursuant to which the Defendants must operate
 “ their cars It also, on 24th June 1907, under the
 “ powers contained in Byelaw 543, passed a resolution
 “ requiring notice to the railway company to proceed at
 “ once with the construction and operation of double street
 “ railway lines on ten different streets or parts of streets in

“ the City, and directed the work to commence on these
“ lines not later than the 1st of July 1907.”

This is the language of Mr. Justice Mathers, and the accuracy of his narrative was not denied, nor of what succeeds:—

“ The Defendant Company proceeded as required with
“ the construction of these lines, and have expended a large
“ sum of money in doing so, and in subsequently operating
“ them. It is true that the resolution is directed to the
“ Winnipeg Electric Street Railway Company, and not to
“ the Defendant Company. It does not seem to me that
“ that makes any difference, because the Plaintiff knew of
“ the amalgamation of that Company with the Power
“ Company, and that at that time the power by which the
“ street railway was being operated was that derived from
“ Lac du Bonnet. Byelaw 543 provides that five per cent.
“ of the gross earnings of the street railway shall be paid
“ annually to the Plaintiff. These sums, aggregating about
“ \$100,000, have been paid by the Defendant Company to
“ the Plaintiff since it has begun to use the Lac du Bonnet
“ power, and this money has been accepted by the
“ Plaintiff.”

In their Lordships' opinion, the facts of this case give ample warrant for the conclusion which Mr. Justice Mathers reaches, in which conclusion their Lordships concur, that “ after
“ these unequivocal acts recognizing the continued
“ existence of the contract, entailing a large
“ expenditure by the Defendants, the City is too
“ late now to have it declared that the Defendants
“ have forfeited their privileges in the streets.”

Were it open to the City authorities to go back upon the permits issued by themselves and their predecessors, and to obtain a declaration that these have all along been invalid, serious and far-reaching consequences might ensue,—the traffic of the City might be dislocated or stopped and the municipal services provided from the supply would cease and the City itself plunged in darkness. Their Lordships think it right to add their opinion, however, that, important as the questions of the history and acting of parties are, the rights and interests both of the City and

the Appellants are upon the statutes and documents themselves, not on a basis so precarious and insecure.

The question that arises after the facts are thus reviewed is: What was it that the City of Winnipeg in those circumstances really desired? The case, notwithstanding all its length and complexity, has never gone beyond the initial demand suddenly made by the City Solicitor of Winnipeg in his letter of the 3rd May 1906: "I beg to notify you that, unless you are prepared to treat with the City as to the terms upon which power shall be brought in, an application will be made restraining you from exercising such privilege within the City limits until such time as you have made application to the City, and an agreement is reached."

Throughout all the length of the case the same objection, for apparently the same reason, is made—the objection that the Appellants have no right to import power into the City, that the City can forbid this, and that its consent must be obtained at a price. In their Lordships' opinion, for the reasons already stated, that contention is not well founded in law.

It is here proper to state that, as the result of the argument before their Lordships' Board, the demands of the Respondents were conveniently placed before their Lordships by their learned Counsel, and an Order or Decree is now asked under the following four heads:—

" 1. That it may be declared that the Defendants have not the right to use the three poles on the south side of Thistle Street Lane and the three poles on the east side of Mill Street mentioned in the Permit No. 3545, dated 8th September 1905, for the transmission of electric energy for the purpose of working the street railway which has been produced outside the City limits, or has been produced by means of electric energy or other power produced outside the City limits.

" 2. That it may be declared that the works of the Defendants situate at Lac du Bonnet and the machinery

“ there installed constitute a power house, engines, and
 “ machinery within the meaning of Clause 11 of Byelaw
 “ No. 543 of the City of Winnipeg, referred to in the
 “ Pleadings herein, and that the Defendants have failed in
 “ this respect to fulfil the conditions mentioned in the said
 “ byelaw, and that their enjoyment of the privileges
 “ conferred by the said byelaw should cease until the
 “ Defendants comply with the said conditions as contained
 “ in the said Clause 11 of the byelaw.

“ 3. That it may be declared that the Defendants have
 “ no right without the consent of the City Council to erect
 “ poles or wires in the streets, lanes, or highways of the
 “ City of Winnipeg for the purpose of transmitting electric
 “ power developed outside the City limits.

“ 4. That the Defendants may be restrained from using
 “ without the consent of the City any poles and wires
 “ erected by them, for the purpose of transmitting electric
 “ power developed outside the City limits, and from erecting
 “ any poles or wires to be used for such purpose without
 “ the like consent.”

It is not necessary to enter upon the question of whether the language of these orders squares with that employed in the suit—probably at least it is not inconsistent with it. Their Lordships are of opinion that the orders thus sought are beyond the rights of the Respondents.

With regard to the first conclusion, in their Lordships' opinion, the Defendants have the right to use the poles mentioned for the transmission of energy for the purpose of working the street railway.

As to the second conclusion, that it may be declared that the Lac du Bonnet works and machinery constitute a power house, &c., within the meaning of Clause 11 of the byelaw, and that the Defendants have failed to fulfil the conditions in the byelaw, and that their privileges should cease until they so do, their Lordships are of opinion that this proceeds entirely upon the error already referred to. The power houses for conversion, reduction, and distribution already within the City amply satisfy the provisions of the byelaw, and there

is no occasion for attempting to extend those provisions to power houses, &c., 60 or 70 miles away, or to import into any arrangements between the City and the Appellants a prohibition which nowhere expressly appears against importation of power.

As to the third conclusion, that it may be declared that the Defendants have no right, without the City's consent, to erect poles or wires for transmitting power developed outside the City limits, their Lordships cannot agree to such a declaration, which is inconsistent with the view already expressed, adverse to the restriction of the importation of power.

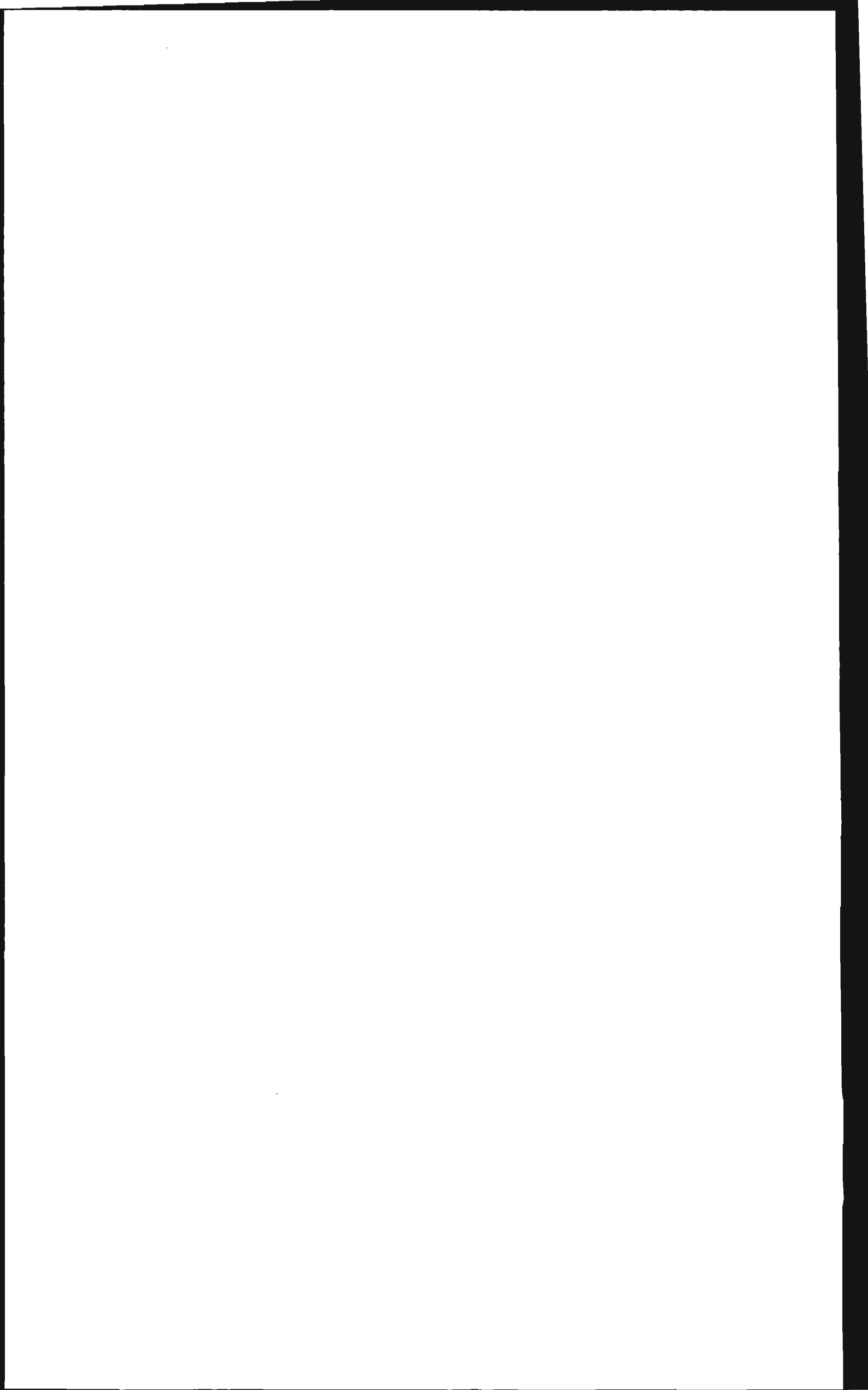
As to the fourth conclusion, that the Defendants may be restrained from using, without the City's consent, poles or wires for transmitting power developed outside the City limits, that conclusion is clearly negatived for the reasons already given.

It is unnecessary, in the view of their Lordships, to enter upon the question which bulked somewhat largely in the arguments, namely, the position of the City as having itself been a participant in the benefits to be derived from the introduction of power from outside. It appears to be clear, not only that subsequent to the formation of the Appellant Company, but prior thereto, and during the *regime* of their predecessors, the City and all the Companies concerned co-operated, permits were granted for the erection of poles, orders were issued by the City in regard to location and otherwise, and provision was made for the service of the City as a consumer on specially arranged terms. After the amalgamation elaborate arrangements were made for the erection of a sub-station and for carrying out all arrangements consequent upon the introduction of power from outside, such introduction being mentioned in letters

proceeding from the City officials. It is also apparently matter of common knowledge that, while the City was thus impliedly assenting, and indeed actually co-operating in regard to the scheme, the Appellants were, on the other hand, in the course of expending millions of dollars on the completion of the scheme. Whether such action on the part of the City, carried on during a long term and with the knowledge of expenditure as referred to, would bar the rights of the City to such an objection against the introduction of power which is at the bottom of all these protracted legal proceedings, need not of course be separately determined, the view of their Lordships on the fundamental rights of parties being as above stated.

Their Lordships are of opinion that both of the Judgments of the Court below were erroneous. The learned Trial Judge, Mr. Justice Mathers, decided substantially in the terms of the Orders formulated at the Bar of the Board by the Respondents' Counsel, that the Appellants were not entitled to erect or maintain poles or wires in the streets of the City for the purpose of transmitting electrical energy developed outside. Upon that their Lordships' opinion has been already expressed. On appeal, however, it was held that the Appellants had no right to erect or maintain such poles for the transmission of electric energy for any purpose other than their street railway. In other words, as the Respondents' Case puts it, the Court held that the rights of the Company to use the streets without the assent of the City for the transmission of electrical energy, wherever produced, are confined to one purpose, namely, the purpose of operating its street railway. This decision, their Lordships think, goes far beyond the real point which was at issue between the parties, and the Respondents not unnaturally

expressed themselves willing to accept the view of Mr. Justice Mathers. But in both cases, for the reasons given, their Lordships think that the Suit under all its heads falls to be dismissed. and they will humbly advise His Majesty accordingly that the Appeal of the Winnipeg Electric Railway Company should be allowed and the cross Appeal by the City of Winnipeg be refused. The City will bear the costs of the proceedings at this Board and full costs in the Courts below.



In the Privy Council.

THE WINNIPEG ELECTRIC RAILWAY
COMPANY

^{2.}
THE CITY OF WINNIPEG;

AND

THE CITY OF WINNIPEG

^{2.}

THE WINNIPEG ELECTRIC RAILWAY
COMPANY.

DELIVERED BY LORD SHAW.

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