Privy Council Appeal No. 44 *of* 1916.

Vancouver Power Company (Limited) - - *Appellants,*

v.

The Corporation of the District of North Vancouver - - - - - - *Respondents,*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1917.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SHAW.
LORD SUMNER.

[*Delivered by* LORD SHAW.]

This appeal is brought from a judgment of the Court of Appeal of British Columbia, dated the 4th April, 1916, dismissing an appeal by the appellants against the judgment of Mr. Justice Murphy, dated the 29th June, 1915.

The respondents, the Corporation of the District of North Vancouver, are a municipality incorporated under the Municipal Act of the Province of British Columbia. On the 16th August, 1905, they entered into an agreement with the appellants, the Vancouver Power Company (Limited), granting to the latter power for the construction, maintenance, and operation, within the limits of the district, of all the works, power-houses, buildings, poles, and wires required "for the generation, distribution, and sale of electricity for light, heat, and power, and any other purpose." By clause 11 of that agreement, a monopoly or exclusive right was granted to the Company.

By the same clause 11, however, it was provided :—

"But at the expiration of ten years from the said date of this agreement the Corporation may, upon giving at least twelve months' prior notice in writing of its intention to do so, assume the ownership of the electric lighting system within the limits of the district, together with all the real and personal property of the Company used, in use, or to be used in the operation of the lighting system within the limits aforesaid, upon payment being made by the Corporation to the Company of the value of the said lighting system as a going concern, but not including any payment for goodwill."

On the 13th May, 1907, a portion of the district municipality described in Schedule B to chapter 35 of the Acts of British Columbia, 1906, was incorporated as the City of North Vancouver. The provisions of that Act will be presently referred to. On the 14th August, 1914, the respondents, the Corporation of the district, gave notice of their intention, in terms of section 11 of the agreement, to assume the ownership of the electric lighting system. No objection is taken to the form of this notice, and it is, of course, admitted that it was given in time.

The proceedings out of which the present appeal arises were by way of special case; and the action was begun on the 14th June, 1915. The facts are set out in the case, and the question for decision is formulated as follows:—

"Whether the plaintiff by reason of having given the said notice of intention to purchase is entitled at the expiration of ten years from the 16th day of August, 1905, to assume ownership of the electric lighting system of the defendant, situate within the area comprising the City of North Vancouver and within the area comprising the District of North Vancouver, together with all the real and personal property of the defendant used, in use, or to be used in the operation of the said lighting system within the said areas upon payment therefor in the manner provided in the said agreement."

This question was answered by both Courts in the affirmative, and their Lordships are of opinion that that answer was correct.

The appellants, the Vancouver Power Company, present an argument to the effect that the notice is invalid, in consequence principally of the City of North Vancouver having been carved out of the District as already stated. Part of the Company's operations and plant are within the City: part extends beyond the City bounds and into other portions of the District. So far as practical working is concerned, the incorporation of the City as a separate municipality seems to have imported no change in the working of the system of the appellants as a unity, a unity which covers territory both within and beyond the City. Under these circumstances one could have imagined a strong objection being formulated to any attempt by a separate City notice—applicable only within the City bounds—to terminate the agreement for the City itself, thus splitting up the ownership of the concern and producing in all likelihood an unworkable business result. The present objection however is to a notice which has been given exactly in terms of the agreement, by the party with whom the agreement was made, viz., the respondent District Municipality, and covering the exact case provided for, viz., the entire locality to which the agreement applied. In their Lordships' opinion, the incorporation of the City of North Vancouver did not result in dividing the agreement of the 16th August, 1905, into two agreements.

It was contended, however, that the carving out of the City

from the District produced such a state of matters as to make the provision as to the taking over of the ownership of the concern at the end of the ten years unavailing, and thus impliedly to operate the repeal or deletion of that provision.

This contention is manifestly much in the interest of the appellants; but, in their Lordships' opinion, it is without foundation either on the statute or on the agreement.

Section 23 of the City of North Vancouver Incorporation Act 35 of 1906 is in these terms :—

"23. The three agreements made by the Corporation of the District of North Vancouver with the Vancouver Power Company (Limited), for street car service, street lighting, and the supply of electric light and power, respectively, and the agreements made by the said Corporation with the British Columbia Telephone Company (Limited), and the Vancouver Ferry and Power Company (Limited), in so far as the several agreements affect the area by letters patent under this statute incorporated as the City of North Vancouver, are hereby ratified and confirmed, and shall be adopted and carried into effect by the Council of the City of North Vancouver, but in other respects the said companies shall be subject to the ordinary jurisdiction of the Council."

On a true construction of this section, it appears to the Board that the agreements scheduled in the Act are not in any respect destroyed or repealed so far as the City is concerned, but on the contrary are ratified and confirmed, the effect of this being to preserve intact the rights of both parties, that is to say, on the one hand of the Power Company, and on the other of the District Municipality. It follows from this that the right of acquisition in the latter body is not abrogated, but remains unimpaired. In the second place, however, the City authorities having come into power within the City area, the Act very naturally provides that in so far as the City is concerned the provisions of the agreement affecting the City area shall be adopted and carried into effect by the City Council. No occasion arises for attempting to give any technical definition or consideration to these simple words, "adopted and carried into effect," and no difference or dispute between City and District is before their Lordships or is even suggested. The sole point before the Board is raised by a third party, namely, the Power Company, as to the alleged effect of the separate creation of the City upon the clause as to the assumption of ownership at the end of ten years. Their Lordships are of opinion that the right to assume ownership remains as in the agreement, and that the conditions of the assumption—namely, that proper notice be given—having been complied with, the objection of the appellants is unsound.

Their Lordships will humbly advise His Majesty that the appeal be disallowed with costs.

In the Privy Council.

VANCOUVER POWER COMPANY (LIMITED)

v.

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER.

DELIVERED BY LORD SHAW.

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