

SECOND DIVISIONAL COURT.

JUNE 13TH, 1919.

*RE OTTAWA GAS CO. AND CITY OF OTTAWA.

Highway—Closing and Sale of Part of Highway in City—Municipal Act, R.S.O. 1914 ch. 192, sec. 472 (1) (c)—Pipes of Gas Company Laid under Soil of Highway—29 Vict. ch. 88 (Can.)—Powers of Municipal Council and Gas Company—Expense of Removal of Pipes—Compensation—Award Set aside.

Appeal by the Corporation of the City of Ottawa from the award of an arbitrator fixing at \$1,699.11 the compensation or damages to be paid by the appellants for the injury suffered by the Ottawa Gas Company by the closing up of a portion of Hawthorne avenue, in the city of Ottawa, under a by-law of the city council.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and MIDDLETON, JJ.

F. B. Proctor, for the appellants.

G. F. Henderson, K.C., for the respondents.

MEREDITH, C.J.C.P., in a written judgment, said that the main question was, whether there was any conflict between the power conferred by legislation upon the municipal council and the power in like manner conferred upon the gas company, upon which powers the parties' rights in this matter depended.

Broadly stated, the power conferred upon the municipal council enabled them lawfully to stop up the highway and sell the "soil and freehold" of it; and that conferred upon the gas company enabled them to "lay down" in that highway their gas-pipes, and, "at all times and from time to time," to open up and "dig up" the highway for the purpose of repairs or renewals, "or laying down new plant and pipes."

The rights conferred upon the gas company are highway rights only—there is no power to expropriate land; the company got only that which, in another but less convenient form, they already had in common with the rest of the public; they already had the right to carry their goods or services, on foot or in vehicles, over the highway; but for the much greater convenience, not only of seller and buyer but of the public using the highway, they were permitted to carry their gas in pipes under the surface of high-

*This case and all others so marked to be reported in the Ontario Law Reports.